TO: Mayor and City Council
FROM: James E. Glaser, Secretary
City Planning Commission

SUBJECT: PUBLIC HEARING REGARDING THE REQUESTS FOR THE 2004 CITY OF STOCKTON SPHERE OF INFLUENCE AGREEMENT PROJECTS: APPROVAL OF PROPOSED INITIAL STUDIES/NEGATIVE DECLARATIONS FOR THE SPHERE OF INFLUENCE AGREEMENTS (IS15-04 AND IS18-04); SPHERE OF INFLUENCE AGREEMENT FOR A.G. SPANOS-TRINITY CAPITAL, ET AL. - NORTHWEST SOI AMENDMENT AREA (DA2-04); SPHERE OF INFLUENCE AGREEMENT FOR KELLEY TRUST/GRIUPE INVESTMENT COMPANY - SHIMA TRACT SOI AMENDMENT AREA (DA3-04); SPHERE OF INFLUENCE AGREEMENT FOR ALPINE PACKING COMPANY - WEST LANE SOI AMENDMENT AREA (DA4-04); SPHERE OF INFLUENCE AGREEMENT FOR ROBERT LAUCHLAND - NORTHWEST SOI AMENDMENT AREA (DA6-04); AND SPHERE OF INFLUENCE AGREEMENT FOR CARL THOMPSON - NORTHWEST SOI AMENDMENT AREA (DA7-04)

RECOMMENDATION

It is recommended that the City Council adopt two resolutions and five ordinances, as follows:

1. Two resolutions approving Initial Studies/Negative Declarations (IS15-04 and IS18-04);

2. Five ordinances, approving each of the five requested Sphere of Influence (SOI) Agreements for the noted properties (DA2-04, DA3-04, DA4-04, DA6-04, DA7-04).

Findings for each of the above-recommended actions have been incorporated into the respective resolutions and ordinances that are attached to this newsletter.

DISCUSSION

Background

At its regular meeting of August 26, 2004, and its special meeting of September 2, 2004, the City Planning Commission considered and subsequently recommended approval of the requests of A.G. Spanos, et al., for: Initial Studies/Negative Declarations (IS15-04 and IS18-04), and Sphere of Influence (SOI) Agreements (DA2-04, DA3-04, DA4-04, DA6-04, DA7-04). The SOI Agreements are intended to vest the right to file land use entitlement applications for properties located north and northwest of the existing City limits (see attached exhibits).
Present Situation

**Environmental Clearance (IS15-04 AND IS18-04)**

Staff is recommending approval of two Initial Studies/Negative Declarations (IS15-04 and IS18-04), which must be considered and approved prior to approval of any related discretionary applications. IS15-04 and IS18-04 have been prepared in compliance with the California Environmental Quality Act (CEQA), the State CEQA Guidelines, and the City of Stockton Guidelines for the Implementation of CEQA. Information related to the environmental clearance required for the project is provided in the staff report to the Planning Commission (Environmental Exhibit 1). IS15-04 and IS18-04 and the Response to Comments documents are attached as Environmental Exhibits 2, 3, 4, and 5 respectively. Information about the Initial Studies/Negative Declarations is included in the Staff Report to the Planning Commission, attached as Exhibits 1-5. A summary of the Planning Commission's public hearing discussion of the environmental documentation and SOI agreements is provided below.

**Sphere of Influence Agreements (DA2-04, DA3-04, DA4-04, DA6-04, DA7-04)**

The applicants are requesting Sphere of Influence (SOI) Agreements for the noted properties. The noted Agreements are part of the City of Stockton’s proposed SOI Amendment application to the Local Agency Formation Commission (LAFCo). The SOI agreements will allow the applicants to participate in the City’s normal and customary land use planning and permitting processes, in conformance with the City’s adopted policies, regulations, rules and guidelines and state and federal laws and regulations applicable to the unincorporated territory of San Joaquin County that is within the planning jurisdiction of the City of Stockton. The proposed Sphere of Influence Agreement would, if approved, in combination with a LAFCo approved Sphere of Influence Amendments covering the affected properties, ensure that the City’s ongoing General Plan update process could continue to have access to the City’s processes for considering land use or future development proposals whose implementation could occur under the City’s incorporated jurisdiction. The proposed Agreements also require that the City of Stockton request that the San Joaquin County Local Agency Formation Commission (LAFCo) amend the boundary of the Stockton Sphere of Influence (SOI) to include the properties delineated in the noted planning Agreements.

The Planning Commission is recommending that the City Council approve the Initial Studies/Negative Declarations (IS15-04 and IS18-04) and the SOI Agreements (DA2-04, DA3-04, DA4-04, DA6-04, DA7-04). The table below provides a summary of the SOI Amendment data.

<table>
<thead>
<tr>
<th>Applicant</th>
<th>SOI Name</th>
<th>SOI/IS No.</th>
<th>Acreage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Grupe/Kelley</td>
<td>Shima Tract</td>
<td>1/IS15-04</td>
<td>1,966</td>
</tr>
<tr>
<td>Alpine Meat Packing</td>
<td>West Lane</td>
<td>1/IS15-04</td>
<td>374</td>
</tr>
<tr>
<td>Carl Thompson</td>
<td>Thompson</td>
<td>2/IS18-04</td>
<td>645</td>
</tr>
</tbody>
</table>
Community Development Department staff have analyzed the requested SOI agreements, in consultation with the applicable City departments. Staff is of the opinion that the agreements are appropriate for the intended purpose of vesting the right to file for land use entitlements under the City's requirements. The life of these agreements is proposed to be five years.

**Public Hearing Discussion**

A representative of the Sierra Club appeared and submitted written comments in opposition to the approval of Initial Studies/Negative Declarations (IS15-04 and IS18-04) and related project applications on the following basis:

- Incomplete project description;
- An EIR should be prepared to analyze project impacts;
- A Water Supply Assessment should be prepared; and
- SOI Amendment applications do not comply with LAFCo requirements.

Staff has reviewed the letter and concluded: that the Project Description is complete for the purpose of processing the noted requests; an EIR is not warranted at this time; and that a Water Supply Assessment is not necessary because no demand for additional water supplies is requested or generated by these applications. With regard to the SOI Amendment applications, City staff and the respective applicants have been in contact with LAFCo to determine application requirements. The City Council previously authorized and directed the City Manager (August 24, 2004 City Council meeting) to file the SOI Amendment request with the LAFCo which inturn will determine the adequacy of the applications submitted.

During the City Council public hearing of August 24, 2004, regarding the filing of the SOI Amendments with LAFCo, the representative of the Sierra Club raised the issue of consistency with the City's General Plan. The argument raised was that as a matter of law the Sphere of Influence agreements cannot be consistent with the City's General Plan because the General Plan boundary does not include the territory which are the subject of the agreements. The State of California's General Plan Guidelines (Guidelines) explains the evaluation of a project's consistency to a general plan involves more than an objective evaluation of the general boundary. Instead, the Guidelines emphasize a subjective evaluation of a general plan's "objectives and policies." Staff has reviewed the policies and objectives of the General Plan Policy Document and in Staff's opinion, the proposed Sphere of Influence agreements further and do not obstruct the objectives and policies of the Stockton General Plan. To this end, staff is recommending that the following General Plan consistency finding be adopted as follows:

The 2004 SOI Amendment Project with consideration of all its aspects will further the objectives and policies of the General Plan and not obstruct their attainment.
Said finding has been included in each of the proposed ordinances for the SOI Agreements.

Planning Commission Action

Following the public hearing and their deliberation, the Planning Commission voted (4 to 3) (Bruce, Kontos and Cusumano dissenting) to recommend that the City Council:

1) Approve Initial Studies/Negative Declarations IS15-04 and IS18-04; and
2) Approve SOI agreements (DA2-04, DA3-04, DA4-04, DA6-04, DA7-04).

Public Notification

Notice in the local newspaper at least one time, ten (10) days prior to the public hearing; and notice to owners of record as shown on the last equalized tax roll and addresses within 300 feet of the site at least ten (10) days prior to the public hearing (Stockton Municipal Code Sections 16-525).

Votes Required

Four (4) votes of the City Council are necessary to approve the noted requests.

JAMES E. GLASER, SECRETARY
CITY PLANNING COMMISSION

APPROVED BY CITY MANAGER

JEG:DJS:cl

Attachments

cc: City Attorney w/attachments
    City Clerk w/attachments
    City Manager w/attachments
    Deputy City Manager Gordon Palmer w/attachments

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INITIAL STUDIES/NEGATIVE DECLARATIONS
IS15-04/IS18-04

EXHIBITS 1-5
Item E-1(a): ENVIRONMENTAL CLEARANCE – Initial Studies/Negative Declarations for the SOI Amendment Agreements

Data: At its regular meeting of August 26, 2004, the Planning Commission will accept oral comments on and consider adoption of the Initial Studies/Negative Declarations for the Sphere of Influence (SOI) Amendment Agreements Project (IS15-04/IS18-04). The Initial Studies/Negative Declarations must be considered and adopted prior to taking action on the project. The requested SOI Amendment Agreement (DA2-04, DA3-04, DA4-04, DA6-04, DA7-04) applications are included on this same agenda as Item E-2 (b), (c), (d), (e), (f).

The Initial Studies/Negative Declaration addresses the potential environmental impacts of the SOI Amendment Agreements. A description of the SOI Amendment Agreement applications is included in the staff report for those applications.

The Initial Studies/Negative Declarations (IS15-04/IS18-04) were prepared pursuant to the California Environmental Quality Act (CEQA) and the State CEQA Guidelines (Sections 15070 through 15074). The Initial Study is a “full disclosure” document which informs the public and appropriate decision makers of the environmental consequences of the proposed project.

On or before July 16, 2004, the IS15-04/IS18-04 and related Notice of Intent to Adopt Negative Declarations were prepared and distributed for a 30-day public review period in order to accept agency and public comments regarding the adequacy of the analysis (Exhibits 2 and 3). The Responses to Comments for IS15-04 and IS18-04 are being transmitted to the Commission as Exhibits 4 and 5, respectively.

Discussion: The City of Stockton, as the public agency which has the principal responsibility for approving or carrying out the project, is the “Lead Agency”, as defined under CEQA. The Community Development Department coordinated the preparation and public review of IS15-04 and IS18-04, in accordance with Sections 15070 through 15074 of the State CEQA Guidelines.
The Planning Commission must independently review, consider and recommend approval of the Initial Studies/Negative Declarations considering its adequacy and compliance with State and City CEQA Guidelines prior to recommending approval of any related discretionary authorizations.

**Recommendation:** It is recommended that the Planning Commission review, consider and recommend approval of the Initial Studies/Negative Declarations (IS15-04/IS18-04), subject to the following findings:

1. The Initial Studies/Negative Declarations (IS15-04/IS18-04) have been completed in compliance with the California Environmental Quality Act (CEQA), State CEQA Guidelines and City of Stockton Guidelines for the Implementation of CEQA.

2. The Initial Studies/Negative Declarations (IS15-04/IS18-04) have been reviewed and considered prior to any related project approvals, reflects the City’s independent judgement and has been found to be adequate for said approvals.

3. Based on the review of IS15-04/IS18-04, and consideration of all written and oral comments received, it has been determined that, subject to any modifications identified in IS15-04/IS18-04, the project will not have a significant effect on the environment.

August 20, 2004

**Note:** Staff reports are prepared well in advance of the Planning Commission consideration of the proposal and reflect the staff’s view based on the best available information at the time the report was formulated. Evidence submitted during the course of the public meeting may require a re-evaluation of the staff’s position.

This Staff Report has been prepared by Senior Planner David Stagnaro, AICP.
CITY OF STOCKTON
SPHERE OF INFLUENCE
AMENDMENT NO. 2

Draft Initial Study
City of Stockton File No. 18-04

Prepared for:

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CITY OF STOCKTON
Community Development Department
Planning Division
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Stockton, CA 95202
(209) 937-8444

Prepared by:

LSA ASSOCIATES, INC.
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Raney and Associates
1401 Halyard Drive, Suite 120
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JULY 15, 2004
CITY OF STOCKTON
SPHERE OF INFLUENCE AMENDMENT

Draft Initial Study
City of Stockton File No. 15-04

Prepared for:

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JUNE 4, 2004

A copy of this document is available for review in its entirety at the Community Development Department, Planning Division, Permit Center, 345 North El Dorado Street, Stockton, CA.
CITY OF STOCKTON
SPHERE OF INFLUENCE
AMENDMENT NO. 1

Responses to Comments
City of Stockton File No. 15-04

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AUGUST 19, 2004

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CITY OF STOCKTON
SPHERE OF INFLUENCE
AMENDMENT NO. 2

Responses to Comments
City of Stockton File No. 18-04

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AUGUST 19, 2004

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Stockton City Council  
425 N. El Dorado Street  
Stockton, CA 95202

24 August 2004

RE: Stockton Sphere of Influence (SOI) Amendment and SOI No. 2 Draft Initial Studies

Councilmembers:

The Mother Lode Chapter of the Sierra Club has already submitted initial comments on the two sets of SOI Amendment applications (letters of July 8 and August 12, 2004). We now submit the following additional comments on the Draft Initial Studies for the five properties that comprise the original Stockton Sphere of Influence (SOI) Amendment and SOI No. 2.

The Sierra Club incorporates by reference the comments submitted by the City of Lodi. We agree with the issues that the City of Lodi has raised and join that City’s representatives in protesting the gross inadequacy of the Initial Study documents.

The two Initial Studies/Negative Declarations are in clear violation of major principles of the California Environmental Quality Act (CEQA), as described below. In addition, the Initial Studies/Negative Declarations fail to comply with requirements of State law to prepare a Water Supply Assessment, and to prepare a Services Plan and Municipal Services Review according to Local Agency Formation Agency (LAFCO) statutes.

These applications to amend the current SOI of the City of Stockton to add some 7,000 acres are grossly premature, since the City has not yet adopted an updated general plan that includes land use designations for these areas. The only reason these applications are being submitted prematurely to LAFCo is because the City and the developers are afraid a slow growth initiative that would require a public vote to amend the SOI will be passed by the voters on the November 2 ballot.

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Representing 18,000 members in 24 counties in Northern and Central California
Alpine - Amador - Butte - Calaveras - Colusa - El Dorado - Glenn - Lassen - Modoc - Nevada - Placer - Plumas  
Sacramento - San Joaquin - Shasta - Sierra - Siskiyou - Solano - Stanislaus - Sutter - Tehama - Tuolumne - Yolo - Yuba

A copy of this document is available for review in its entirety at the Community Development Department, Planning Division, Permit Center, 345 North El Dorado Street, Stockton, CA.
The premature timing of these applications is especially evident because the City has just recently released a Notice of Preparation (dated August 13, 2004) announcing the preparation of the EIR for the updated General Plan. These five areas proposed for SOI Amendment are within the area designated for growth by the draft General Plan. However, it should be noted that the updated General Plan land use map has been proposed by staff and consultants and has not yet received a single public hearing by the City, yet the EIR is already underway! These SOI applications represent very significant modifications to the existing SOI of the City. The applications should be considered, if at all, in the updated General Plan EIR. The applications cannot be considered until the GP EIR is certified and the new GP is adopted. The City is rushing these five applications to LAFCO in violation of numerous State environmental laws.

THE TWO INITIAL STUDIES/NEGATIVE DECLARATIONS’ PROJECT DESCRIPTIONS ARE INCOMPLETE, IN CLEAR VIOLATION OF CEQA

The City’s most fundamental violation of CEQA is that it failed to analyze the whole of the project. CEQA defines any “project” as “the whole of an action, which has a potential for resulting in either a direct physical change or a reasonably foreseeable indirect change in the environment.” Guidelines § 15378(a) (emphasis added). Courts interpret the term “project” so as to “maximize protection of the environment.” See McQueen v. Bd. of Directors (1988) 202 Cal.App.3d 1136, 1143 (disapproved on other grounds in Western States Petroleum Assn. v. Superior Court (1995) 9 Cal.4th 559, 570). Moreover, CEQA requires that, “[w]here individual projects are, or a phased project is, to be undertaken and where the total undertaking comprises a project with significant environmental effect, the lead agency shall prepare a single program EIR for the ultimate project.” CEQA Guidelines § 15165; see also CEQA Guidelines § 15168. Thus, CEQA requires that an agency take an expansive view of any particular project as it conducts the environmental review for that project.

The City violated this fundamental tenet of CEQA by narrowly describing the project as a Sphere of Influence Amendment for five properties and failing to include the ultimate development contemplated for the properties. The City’s Initial Studies state:

The proposed action does not involve reorganization changes, such as annexation to the City; nor does the action grant development entitlements or approvals. In fact, the application does not involve or otherwise describe specific land uses (e.g., development plan) that may be proposed for the area subject to the revised Sphere of Influence. Any proposal concerning the use of the subject properties will be contained in subsequent applications, if any, concerning the use of the properties. Therefore, the planning agreements or revised Sphere of Influence would not result in or allow for development of real property.

(Initial Study (“IS”) 15-04 at 2; IS 18-04 at 5)

This description blatantly distorts the purpose of the Sphere of Influence Amendment, as well as the agreements being signed with the developers as “precursors to the Sphere of Influence boundary amendment” that allow the property owners to “vest a right” to the City’s current planning requirements (IS 15-04 at 2; IS 18-04 at 5). The Agreement between the City of
Stockton and the Grupe Investment Company, Inc. for the Shima Tract of land, for example, reveals the ultimate intent of the Sphere of Influence Amendment. The Agreement states:

Grupe and City ultimately seek to secure through a ‘Specific Plan’ and ‘Subsequent Development Agreement’ an enforceable arrangement by which Grupe shall be allowed to develop within 1,800 acres of the Project site: (a) 5,250 market-rate residential units, 750 multi-family units, and 1,500 active senior adult units; (b) 65 acres of office space; (c) two (2) hotels; (d) a four acre village center; (e) 15 acres of retail; (f) 40 acres of marina and marina village; (g) three school sites; (h) 140 acres of lakes; (i) 150 acres of parks; (j) a 5-acre recreation center; (k) 4 neighborhood club sites; and (l) greenbelts, trails and electric vehicle pathways.

(City/Grupe Agreement at 4-5)

Similarly, the City’s Agreement with the Alpine Packing Co., Inc. states:

Alpine and City ultimately seek to secure ... an enforceable arrangement by which Alpine shall be allowed to develop ... (a) 800 market-rate residential units, 300 multi-family units, and 150 active senior adult units, (b) 15 acres of retail, (c) a school site (d) 27 acres of lakes, (e) 30 acres of parks, (f) two (2) neighborhood club sites, and (g) a greenbelt and trails.

(Alpine Packing Co. Agreement at 4 ¶ B)

The City’s agreements with the other three property owners do not indicate specific unit counts of proposed housing and commercial acreage proposed for development, but they similarly contemplate the ultimate development of the land. See Thompson Agreement at 1 (seeking Land Use Plan for development of the property to the maximum extent allowed by City’s current ordinances); JR Lauchland & Sons Vineyards Agreement at 4 (same); Spanos Agreement at 1-2 (same).

The City’s refusal to analyze the ultimate development contemplated by the Sphere of Influence Amendment and related agreements contravenes the most basic principles of CEQA. Settled law holds that the approval of land use planning enactments, such as Sphere of Influence amendments, serves as a crucial “first step” toward approval of any particular development project, and thus the impact of the planning enactment itself must be analyzed under CEQA. See City of Carmel-By-the-Sea v. Bd. of Supervisors of Monterey County (1986) 183 Cal.App.3d 229, 244; City of Redlands v. County of San Bernardino (2002) 96 Cal.App.4th 398, 409.

These cases instruct that an EIR must analyze not only the policies for growth set forth in the planning enactment, but also the ultimate development contemplated by the planning enactment. See City of Redlands, 96 Cal.App.4th at 403, 409 (requiring county to prepare EIR for amendments to general plan policies that would effectively allow additional development in unincorporated areas within a city’s “sphere of influence”). As the court in City of Redlands explained, “CEQA reaches beyond mere changes in language in an agency’s policy to the ultimate consequences of such changes in the physical environment.” 96 Cal.App.4th at 409. Thus, environmental review of a “first phase” planning enactment “must necessarily include a
consideration of the larger project, i.e., the future development permitted by the amendment.”
Id. (citing Christward Ministry v. Superior Court (1986) 184 Cal.App.3d 180, 194 (holding that a
city must prepare an EIR for a general plan amendment adopting land use designations for a
landfill)).

Critically, environmental review of the development allowed by a planning enactment must take
place regardless of whether the agency is currently reviewing a specific development project for
the subject property. See Bozung, 13 Cal.3d at 279, 282; Christward Ministry, 184 Cal.App.3d at
194-95 (“The fact future development is not certain to occur and the fact the environmental
consequences of a general plan amendment changing a land use designation are more amorphous
does not lead to the conclusion no EIR is required.”).

In Bozung, the Local Agency Formation Commission (“LAFCO”) approved the annexation of
677 acres of land by the City of Camarillo, which was a first step for the parcel’s ultimate
development for residential, recreational, and commercial purposes. 13 Cal.3d at 281. LAFCO
argued that it need not analyze the impacts of its action because “such an approval is merely
permissive and does not compel the City to annex.” Id. at 278. The Supreme Court rejected this
argument, stating: “That, in theory, the city eventually may not use the entitlement by not
annexing, does not retroactively turn a project into a nonproject.” Id. at 279. The Court went on
to hold that, in order to satisfy CEQA’s objectives of requiring review at the earliest feasible
time in the planning process, LAFCO must review the environmental consequences of
developing the entire 677 acres at the annexation approval stage, regardless of whether the
actual annexation or development ultimately takes place. Id. at 279, 282-85. Likewise in the
present case, the City must analyze the impacts of the ultimate development currently
contemplated by the Sphere of Influence Amendment, even if the City’s current approval does
not involve a specific development plan.

Similarly, in Koster v. County of San Joaquin, petitioners challenged the sufficiency of an EIR
for a general plan amendment that authorized a county’s growth into two new towns. (1996) 47
Cal.App.4th 29, 31. The trial court denied the challenge, finding that the designation of the
towns in the County’s General Plan did not actually “authorize the construction of anything.” Id.
at 34. The Court of Appeal overturned the trial court’s decision, holding that this “first step of
analysis [as to] whether there will be any new towns” must itself comply with CEQA. Id. at 39-
40 (emphasis in original). In a statement equally applicable to the present case, the court
reasoned that “[i]t makes more sense to first determine the legal outcome of . . . the ‘fundamental
policy debate over where future development ought to occur.’” Id. at 41; see also Christward
Ministry, 184 Cal.App.3d at 194 (an EIR “should address whether the uses permitted by the
designation . . . should be allowed . . . . This is a separate question from the question whether a
particular facility should be granted a permit in an area already carrying a . . . [given]
designation.”)

Thus, the City must analyze not only the impacts of the Sphere of Influence Amendments in the
abstract, but also the impacts of the ultimate development contemplated for the properties being
annexed.
POTENTIAL ENVIRONMENTAL IMPACTS MUST BE ANALYZED IN AN EIR

The addition of the five subject properties to the Stockton Sphere of Influence, followed by the subsequent annexation and development of the 7,000 acres will have a range of potential environmental impacts that must be analyzed in a full environmental impact report (EIR). Based on project descriptions included in the draft development agreements and the land use densities assigned to the properties by the draft land use map of the updated Stockton General Plan (see newsletter table, attached), these five properties could support construction of approximately 27,000 new housing units and over 200 acres of associated commercial uses:

Alpine Meat: 1,250 housing units, 15 acres retail
Shima Tract/Grupe: 7,500 housing units, 65 acres office, 2 hotels, 19 acres retail
NW/Spanos: 14,720 housing units, 103 acres retail
NW/Thompson: 3,308 housing units, 10 acres retail
Lauchland: Included in Spanos, above

TOTALS 26,778 housing units, 212 acres retail

Sources: 1. Per draft development agreement.
   3. Unit count for Villages "C" of the Preferred Land Use Alternative.

This amount of urban development, which would represent a population of 80,334 new residents (assuming 3.0 persons per household, consistent with the draft General Plan assumptions) could have the following impacts, which must be analyzed in an EIR:

X Traffic from the new housing alone (26,778 units times 10 average daily trips = 227,780 new vehicle trips) could overwhelm the regional and local roadway system which, in turn, would degrade already poor air quality;

X Conversion of 7,000 acres of prime and other agricultural lands could have an impact on remaining agricultural operators;

X Water supplies and sewage treatment capacity for existing residents may be jeopardized, if the new development cannot be adequately served by the City's existing and planned infrastructure (existing plant, wells, and surface water supplies);

X Conversion of 7,000 acres could affect sensitive and listed species, including the Swainson's hawk and giant garter snake, resulting in an unauthorized "take" of species;

X Other existing City services could be adversely affected by 80,334 new residents, such as schools;

X Incorporating 7,000 acres of land into the Stockton Sphere would have growth-inducing impacts and would dramatically reduce the potential for creation of an "urban separator" or greenbelt between Stockton and Lodi;

X The SOI amendments could adversely affect Lodi plans to expand the White Slough wastewater treatment facility, forcing the City to curtail plans for land disposal of treated effluent thereby increasing discharges to Delta waterway; existing and expanded treatment ponds could in turn adversely affect growth planned downwind;
X The SOI amendments could have other cumulative impacts, encouraging more property owners to apply for SOI amendment, thereby accelerating development projects in the pipeline, including lands designated for growth in the draft Stockton General Plan land use map; and

X The SOI amendments could have other environmental impacts that are typically associated with large scale urban development.

THE INITIAL STUDIES/NEGATIVE DECLARATIONS FAIL TO COMPLY WITH REQUIREMENTS OF STATE LAW TO PREPARE A WATER SUPPLY AND DEMAND ASSESSMENT

The amount of urban development reasonably anticipated for each of the five SOI applications would surpass the criteria in State laws that would trigger the requirement to prepare detailed water supply and demand assessments. Senate Bills 610 (Chapter 643, Statutes of 2001) and Senate Bill 221 (Chapter 642, Statutes of 2001) amended State law, effective January 1, 2002, to require detailed information regarding water availability to be provided to the city and county decision-makers prior to approval of large development projects. Both statutes also require this detailed information be included in the specified administrative record that serves as the evidentiary basis for an approval action by the city or county on such projects.

Under SB 610, water assessments must be furnished to local governments for inclusion in any environmental documentation for certain projects (as defined in Water Code 10912 [a]) subject to the California Environmental Quality Act. Projects that must prepare water assessments include:

1. A proposed residential development of more than 500 dwelling units.
2. A proposed shopping center or business establishment employing more than 1,000 persons or having more than 500,000 square feet of floor space.
3. A proposed commercial office building employing more than 1,000 persons or having more than 250,000 square feet of floor space.
4. A proposed hotel or motel, or both, having more than 500 rooms.
5. A proposed industrial, manufacturing, or processing plant, or industrial park planned to house more than 1,000 persons, occupying more than 40 acres of land, or having more than 650,000 square feet of floor area.
6. A mixed-use project that includes one or more of the projects specified in this subdivision.
7. A project that would demand an amount of water equivalent to, or greater than, the amount of water required by a 500 dwelling unit project.

Under SB 221, approval by a city or county of large residential subdivisions over 500 housing units also requires preparation of similar detailed water supply and demand assessments and a written verification of water supplies from the provider (Government Code section 66473.7).

In addition, SB 221 amended the development agreement statutes (Government Code 65867.5 (c) to require that an agreement for project subject to SB 221 may not be approved without first complying with the new law: “A development agreement that includes a subdivision, as defined
in Section 66473.7, shall not be approved unless the agreement provides that any tentative map prepared for the subdivision will comply with the provisions of Section 66473.7.”

The contents of the water supply and demand assessment required by SB 610 is summarized in Water Code section 10910(c)(3):

If the projected water demand associated with the proposed project was not accounted for in the most recently adopted urban water management plan, or the public water system has no urban water management plan, the water assessment for the project shall include a discussion with regard to whether the public water system's total projected water supplies available during normal, single dry, and multiple dry water years during a 20-year projection will meet the projected water demand associated with the proposed project, in addition to the public water system's existing and planned future uses, including agricultural and manufacturing uses.

The City's agreements with all five of the SOI applications contemplate the ultimate development of the land. See Thompson Agreement at 1 (seeking Land Use Plan for development of the property to the maximum extent allowed by City's current ordinances); JR Lauchland & Sons Vineyards Agreement at 4 (same); Spanos Agreement at 1-2 (same); Grupe Agreement at 4-5 (same); Alpine Agreement at 4 (same). The amount of ultimate development for each clearly surpasses the thresholds established in Water Code 10912 (a) and, thus, these applications must comply with this section.

The Initial Studies/Negative Declarations fail to comply with State law that requires preparation of a water supply and demand assessment. None of the five SOI applications materials contain a water assessment that meets the content requirement of Water Code Section 10910. The five separate SOI applications do include water supply studies as part of their LAFCO Services Plans, but the water studies are inconsistent in their treatment of water supply. However, all five water studies are consistent when they state that there is insufficient water supply to serve future anticipated growth in the Stockton planning area unless a new surface water supply from the Delta, or other sources, is approved by State regulators and constructed.

The water supply study in the Shima Tract (Grupe) Services Plan describes the City’s water supply situation:

With the adoption of the 1990 City General Plan, the City sought firm surface water supplies from the Delta. A new water right application was submitted to the State Water Resources Control Board in 1996 requesting an increasing amount of surface water starting from approximately 20,000 acre-feet/year (AF/year) in 2002 to 125,900 AF/year in 2050. The City is currently preparing the environmental analysis for this ongoing application.

Per the 2003 Delta Water Supply Feasibility Report, water demand is expected to increase from the current demand of 67,948 AF/year to 85,330 AF/year by 2015, and 177,900 AF/year (158.8 MGD) by 2050. This report used the current General Plan build-out population of 340,000 for 2015, and projected a population of 658,890 in 2050 based on an assumed 1.9% growth rate beyond 2015. At the present time, the City does not
have enough water supplies to meet projected water demands over the next 50 years, nor the supply to meet current water demands during dry and critical years.

Conservation, rationing, and water recycling are parts of the plan to meet COSMA's future demand, but cannot reach the area's future needs. Substantially increasing the rate of groundwater pumping is not a viable option because it would lead to increased salt water intrusion and degrade groundwater quality. The City intends to pursue its Delta water rights application to make up most of the projected shortfall between future water demand and future supply. The 2003 Delta Water Supply Feasibility Report recommends that once these supplies are secured the City expand its treatment capacity and undertake "conjunctive" water use whereby Delta water would be injected into the groundwater basin when water is available in excess of demand and withdrawn when surface water supplies are limited.

(Shima SOI Amendment Service Plan at 1-3, 1-4, emphasis added)

In contrast, the Northwest (Spanos) SOI Service Plan describes the tenuous nature of recent surface water purchases by the City and notes that plans to draw supplies from the Delta are only one alternative the City is examining:

In 1999, the City of Stockton, SEWD, Cal Water, and County executed a ten-year renewable agreement with the Oakdale Irrigation District and the South San Joaquin Irrigation District to purchase up to 30,000 acre-feet of water annually. The actual quantity of water transferred would vary based upon the inflow into the New Melones Reservoir... When annual inflow is less than 450,000 acre-feet, the contract provides that the amount of water to be made available would be reduced to 8,000 acre-feet...

The City is also exploring other alternatives to meet anticipated water supply requirements. These alternatives include an application with the State Water Resources Control Board to perfect the City’s rights to water in the Delta, groundwater storage in the Farmington area, extension of the Folsom South Canal to San Joaquin County, and participation in a joint conjunctive use project involving north San Joaquin County water agencies, the County, and other interested parties. None of these alternatives, however, has yet been implemented.

The City will also continue to support the efforts of the County, SEWD, and other interested parties in pursuing additional surface water supplies for the City Water Utility, City, and those affected by the overdraft of the groundwater basin in eastern San Joaquin County. These efforts include, but are not limited to, supporting SEWD’s efforts to obtain water rights for wet year water from Little John Creek and the Calaveras and Stanislaus Rivers, and supporting the County’s efforts to obtain water rights on the Mokelumne and American Rivers.

(Spanos SOI Amendment Service Plan at 7, emphasis added)

The Spanos Service Plan also acknowledges the water assessment requirements of SB 610 and SB 221 but illegally defers the issue to a later phase of the project: “New State laws require municipalities to demonstrate the ability to provide a 20-year water supply for residential
developments over 500 units. As such, the City is preparing a water supply assessment to quantify its 20-year water supply. It is expected that all developments will be required to prepare a supplement to this assessment. The City will supply water on a first-come, first serve basis regardless of geo-political boundaries” (Spanos SOI Amendment Service Plan at 7).

The SB 610 statutes require that if an adequate water supply cannot be verified for a project, then the lead agency must include in the environmental document specific information about plans to obtain adequate supplies. The lead agency must also adopt specific findings before the project is approved:

... If the city or county, if either is required to comply with this part pursuant to subdivision (b), concludes as a result of its assessment, that water supplies are, or will be, insufficient, the city or county shall include in its water supply assessment its plans for acquiring additional water supplies, setting forth the measures that are being undertaken to acquire and develop those water supplies. Those plans may include, but are not limited to, information concerning all of the following:

(1) The estimated total costs, and the proposed method of financing the costs, associated with acquiring the additional water supplies.

(2) All federal, state, and local permits, approvals, or entitlements that are anticipated to be required in order to acquire and develop the additional water supplies.

(3) Based on the considerations set forth in paragraphs (1) and (2), the estimated timeframes within which the public water system, or the city or county if either is required to comply with this part pursuant to subdivision (b), expects to be able to acquire additional water supplies.

(b) The city or county shall include the water supply assessment provided pursuant to Section 10910, and any information provided pursuant to subdivision (a), in any environmental document prepared for the project pursuant to Division 13 (commencing with Section 21000) of the Public Resources Code.

(c) The city or county may include in any environmental document an evaluation of any information included in that environmental document provided pursuant to subdivision (b). The city or county shall determine, based on the entire record, whether projected water supplies will be sufficient to satisfy the demands of the project, in addition to existing and planned future uses. If the city or county determines that water supplies will not be sufficient, the city or county shall include that determination in its findings for the project.

(Section 10911(a) of the Water Code)

Each of the water supply studies in the Services Plans for the five SOI applications admit that adequate water supplies are not available to the City of Stockton to serve existing and planned growth, plus the projects. Each of the water supply studies fail to provide the information related to “estimated total costs, and the proposed method of financing the costs, associated with acquiring the additional water supplies,” as well as a listing of “All federal, state, and local permits, approvals, or entitlements that are anticipated to be required in order to acquire and develop the additional water supplies.” The water studies also do not identify “the estimated timeframes within which the public water system... expects to be able to acquire additional water supplies.”
THE SOI AMENDMENT APPLICATIONS DO NOT COMPLY WITH LAFCO SERVICE REQUIREMENTS

As noted above, the Initial Studies/Negative Declarations fail to comply with State law that requires preparation of a water supply and demand assessment. Because a detailed analysis to prove that adequate water supplies are available to serve the 7,000 acres of lands proposed for addition to Stockton's SOI have not been prepared, the documents also fail to comply with LAFCO requirements that mandate preparation of an adequate Municipal Services Review and Service Plans for the SOI applications. The five separate SOI applications are inconsistent in their treatment of LAFCO service issues, and none of the applications contains an adequate assessment of water supply and other critical service needs.

California Government Code Section 56653 requires preparation of what is commonly referred to as a City Services Plan. Section 56653 states:

(a) Whenever a local agency or school district submits a resolution of application for a change of organization or reorganization pursuant to this part, the local agency shall submit with the resolution of application a plan for providing services within the affected territory.

(b) The plan for providing services shall include all of the following information and any additional information required by the commission or the executive officer:

1. An enumeration and description of the services to be extended to the affected territory.

2. The level and range of those services.

3. An indication of when those services can feasibly be extended to the affected territory.

4. An indication of any improvement or upgrading of structures, roads, sewer or water facilities, or other conditions the local agency would impose or require within the affected territory if the change of organization or reorganization is completed.

5. Information with respect to how these services will be financed.

Government Code Section 56668 lists the factors that must be considered by LAFCO when reviewing proposals for reorganization, such as SOI amendments and annexations.

Factors to be considered in the review of a proposal shall include, but not be limited to, all of the following:

(a) Population, population density; land area and land use; per capita assessed valuation; topography, natural boundaries, and drainage basins; proximity to other populated areas; the likelihood of significant growth in the area, and in adjacent incorporated and unincorporated areas, during the next 10 years.

(b) Need for organized community services; the present cost and adequacy of governmental services and controls in the area....
(e) The effect of the proposed action and of alternative actions, on adjacent areas, on mutual social and economic interests, and on the local governmental structure of the county.

(d) The conformity of both the proposal and its anticipated effects with both the adopted commission policies on providing planned, orderly, efficient patterns of urban development, and the policies and priorities set forth in Section 56377.

(e) The effect of the proposal on maintaining the physical and economic integrity of agricultural lands, as defined by Section 56016.

(f) The definiteness and certainty of the boundaries of the territory, the nonconformance of proposed boundaries with lines of assessment or ownership, the creation of islands or corridors of unincorporated territory, and other similar matters affecting the proposed boundaries.

(g) Consistency with city or county general and specific plans.

(h) The sphere of influence of any local agency which may be applicable to the proposal being reviewed.

(i) The comments of any affected local agency.

(j) The ability of the newly formed or receiving entity to provide the services which are the subject of the application to the area, including the sufficiency of revenues for those services following the proposed boundary change.

(k) Timely availability of water supplies adequate for projected needs as specified in Section 65352.5.

(l) The extent to which the proposal will assist the receiving entity in achieving its fair share of the regional housing needs as determined by the appropriate council of governments.

(m) Any information or comments from the landowner or owners.

(n) Any information relating to existing land use designations.

The services plans for the five SOI applications do not contain data and analysis that allows LAFCO to make determinations for each of the factors listed above. For example, the services plans do not contain data about the proposed “Population, population density; land area and land use...” in SOI areas as required by Section 56668 (a). Similarly the services plans do not discuss “The effect of the proposal on maintaining the physical and economic integrity of agricultural lands, as defined by Section 56016“ as required by Section 56668 (e). Each of the services plans admit that the City does not a have an adequate water supply, so the analysis cannot prove a “Timely availability of water supplies adequate for projected needs as specified in Section 65352.5“ as required by Section 56668 (k).

The Cortese/Knox/Hertzberg Local Government Reorganization Act of 2000 (CKH Act) requires the Local Agency Formation Commission (LAFCO) in each county to update the Spheres of Influence (SOI) for all applicable jurisdictions in the county by January 1, 2006. The CKH Act further requires that a Municipal Service Review (MSR) be conducted prior to, or in conjunction with, the update of an SOI (Government Code section 56430). The MSR evaluates the capability of a jurisdiction to serve their existing residents and future development in their SOI.

Pursuant to Government Code Section 56430, an MSR must have written determinations that address the following issues in order to update an SOI:

1. Infrastructure Needs and Deficiencies
2. Growth and Population
3. Financing Constraints and Opportunities
4. Cost Avoidance Opportunities
5. Opportunities for Rate Restructuring
6. Opportunities for Shared Facilities
7. Government Structure Options
8. Evaluation of Management Efficiencies
9. Local Accountability and Governance

Only two of the five SOI Amendment applications (Shima Tract and Alpine) contain any responses to the MSR “written determinations” required by Government Code Section 56430. The Northwest/Spanos, NW/Thompson, and Lauchland SOI applications do not contain any MSR analysis and are deficient on their face in terms of complying with the LAFCO statutes, as updated by the CKH Act. However the MSR responses for the Shima and Alpine SOI applications also do not comply with the CKH Act since the “written determinations” included in the Shima Tract Services Plan/MSR contain numerous statements that are unsubstantiated by factual evidence in the report. For example, the “written determinations” in the report state “There is no evidence that Stockton cannot adequately serve the proposed SOI areas in the short-term or the long-term” (Shima SOI Amendment Service Plan at 3-72). This statement as applied to long term water supply is clearly contradicted by the previous analysis in the same document which found that “At the present time, the City does not have enough water supplies to meet projected water demands over the next 50 years, nor the supply to meet current water demands during dry and critical years” (Shima SOI Amendment Service Plan at 1-3, 1-4).

State law requires LAFCOs to review SOIs every five years (Government Code Section 56425). Although State law requires LAFCOs to conduct such a review, the City of Stockton has not revised its SOI since 1973, so neither LAFCO nor the City has yet completed a comprehensive MSR. The Executive Officer of the San Joaquin LAFCO has adopted a schedule to complete MSRs for all jurisdictions in the county. The City of Stockton is scheduled to complete its comprehensive MSR during the General Plan Update program. Thus, these SOI applications are grossly premature and the Service Plans and MSRs fail to comply with LAFCO statutes.

In summary, we urge the City to deny these SOI Amendment applications and refuse to send them to LAFCO. If the City Council foolishly forwards these SOI Amendment applications with the illegal Initial Studies/Negative Declarations, we will be forced to challenge the City’s actions in court.

If there are any questions regarding these comments, you may contact me at eparfrey@webintelects.net, or 209/462-7079. Please send a copy of any responses to all responses received on the NDs (not just responses to our comments) to me at 1421 W. Willow Street, Stockton, 95203. Please do NOT send further responses and notices on the SOI Amendment applications to the Mother Lode Chapter office of the Sierra Club in Sacramento at the address indicated on the letterhead.
Sincerely,

Eric Parfrey, chair
Sierra Club, Mother Lode Chapter

cc: Stockton City Council and Planning Commission
Lodi City Council
San Joaquin County Board of Supervisors
San Joaquin LAFCO
Rachel Hooper and Brian Johnson, Shute, Mihaly & Weinberger
SPHERE OF INFLUENCE AGREEMENTS
DA2-04/DA3-04/DA4-04/DA6-04/DA7-04

EXHIBITS 1-6
Items E-1 (b), (c), (d), (e), (f): CONTINUED PUBLIC HEARINGS - Sphere of Influence Agreements
Case Nos. DA2-04, DA3-04, DA4-04, DA6-04, DA7-04, A.G. Spanos-Trinity Capital, Kelley
Trust/Grupe Investment Co., Thompson, Alpine Packing Co., Lauchland, et al

Data: A.G. Spanos-Trinity Capital, Kelley Trust/Grupe Investment Co., Thompson, Alpine Packing Co., Lauchland, et al, are requesting five Sphere of Influence (SOI) Agreements (Agreement) to vest the right to file land use entitlement applications for the noted properties. The noted SOI Agreements are part of the City of Stockton's proposed SOI Amendment application to the Local Agency Formation Commission (LAFCo). On August 24, 2004, the City Council will consider a resolution to authorize and direct the City Manager to file the SOI Amendment to LAFCO. It is anticipated that on September 14, 2004, the City Council will consider whether to approve the SOI agreements. The proposed term for the SOI agreements is five years. The following table provides additional information related to the SOI Agreement applications:

<table>
<thead>
<tr>
<th>Applicant</th>
<th>SOI Name</th>
<th>SOI /IS No.</th>
<th>Acreage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Spanos, et al</td>
<td>Northwest</td>
<td>1/IS15-04</td>
<td>2,485</td>
</tr>
<tr>
<td>Grupe/Kelley</td>
<td>Shima Tract</td>
<td>1/IS15-04</td>
<td>1,966</td>
</tr>
<tr>
<td>Alpine Meat Packin</td>
<td>West Lane</td>
<td>1/IS15-04</td>
<td>374</td>
</tr>
<tr>
<td>Carl Thompson</td>
<td>Thompson</td>
<td>2/IS18-04</td>
<td>645</td>
</tr>
<tr>
<td>Bob Lauchland, et al</td>
<td>Lauchland</td>
<td>2/IS18-04</td>
<td>145</td>
</tr>
<tr>
<td><strong>Total Acreage</strong></td>
<td></td>
<td></td>
<td><strong>5,615</strong></td>
</tr>
</tbody>
</table>

General Plan: The project sites are not currently within the City's General Plan boundary. However, all of the noted properties are within the City’s Draft General Plan Update Land Use Diagram.

Environmental Clearance: Staff is recommending approval of two Initial Studies/Negative Declarations (IS15-04 and IS18-04) (see Item E-2[a] on this same agenda).

Discussion: The applicants are requesting Sphere of Influence (SOI) Agreements (Agreement) to vest the right to file land use entitlement applications for the noted properties. The noted Agreements are part of the City of Stockton's proposed SOI Amendment application to the Local Agency Formation Commission (LAFCo). The SOI agreements will allow the applicants to participate in the City's normal and customary land use planning and permitting processes, in conformance with the
City's adopted policies, regulations, rules and guidelines and state and federal laws and regulations applicable to the unincorporated territory of San Joaquin County that is within the planning jurisdiction of the City of Stockton. The proposed Sphere of Influence Agreement would, if approved, in combination with a LAFCo approved Sphere of Influence Amendments covering the affected properties, ensure that the City's ongoing General Plan update process could continue to have access to the City's processes for considering land use or future development proposals whose implementation could occur under the City's incorporated jurisdiction. The proposed Agreements also require that the City of Stockton request that the San Joaquin County Local Agency Formation Commission (LAFCo) amend the boundary of the Stockton Sphere of Influence (SOI) to include the properties delineated in the noted planning Agreements.

Recommendation: Approval based on the following findings for DA2-04, DA3-04, DA4-04, DA6-04 and DA7-04:

1. The proposed Development Agreement is consistent with and necessary for the consideration and approval of the proposed SOI amendment applications.

2. The City has reviewed Initial Studies (IS15-04/IS18-04) for the project and has independently concluded that the SOI Amendment agreements are not expected to generate any significant, adverse environmental impacts and has, therefore, adopted Negative Declarations (IS15-04 and IS18-04) for the project.

August 18, 2004

Note: Staff reports are prepared well in advance of the Planning Commission consideration of the proposal and reflect the staffs view based on the best available information at the time the report was formulated. Evidence submitted during the course of the public hearing may require a re-evaluation of the staffs position.

This Staff Report has been prepared by Senior Planner David Stagnaro, AICP.

:::ODMA\GRPWISE\COS.CDD.CDD_Library:40681.1
AGREEMENT BY AND BETWEEN THE CITY OF STOCKTON
AND A.G SPANOS CONSTRUCTION COMPANY; BERT
CASTELANELLI AND LINDA CASTELANELLI; C& C FARMS,
L.P.; EIGHT MILE ROAD PARTNERS, LLC; ANTHONY
FUGAZI; WILLIAM E. HAMMONDS; ISOLA CORPORATION;
TONY & MARY MARTIN FAMILY FARM, L.P.; RIO BLANCO
RANCH; AND YOUR SEREAYPHEAP RELATING TO
APPROXIMATELY 3,183.13 ACRES.
RECORDED BY:

MICHAEL D. HAKEEM

AND WHEN RECORDED MAIL TO:

MICHAEL D. HAKEEM
HAKEEM, ELLIS & MARENGO
3414 Brookside Road, Suite 100
Stockton, CA  95219

AGREEMENT BY AND BETWEEN THE CITY OF STOCKTON
AND THE GRUPE INVESTMENT COMPANY, INC. RELATING
TO 1,800 ACRES KNOWN AS THE SHIMA TRACT

A copy of this document is available for review in its entirety at the Community
Development Department, Planning Division, Permit Center, 345 North El Dorado
Street, Stockton, CA.
RECORDING REQUESTED BY:

MICHAEL D. HAKEEM

AND WHEN RECORDED MAIL TO:

MICHAEL D. HAKEEM
HAKEEM, ELLIS, AND MARENKO
3414 BROOKSIDE ROAD, SUITE 100
STOCKTON, CA 95219

AGREEMENT BY AND BETWEEN THE CITY OF STOCKTON
AND THE ALPINE PACKING COMPANY RELATING TO
370 ACRES AT THE NORTHWEST CORNER OF EIGHT MILE
ROAD AND WEST LANE IN NORTHEAST STOCKTON

A copy of this document is available for review in its entirety at the Community
Development Department, Planning Division, Permit Center, 345 North El Dorado
Street, Stockton, CA.
RECORDING REQUESTED BY:

GARY W. SAWYERS

AND WHEN RECORDED MAIL TO:

GARY W. SAWYERS
LAW OFFICES OF GARY W. SAWYERS
6715 N. Palm Avenue, Suite 116
Fresno, CA 93704

AGREEMENT BY AND BETWEEN THE CITY OF STOCKTON
AND THE JR LAUCHLAND & SONS VINEYARDS RELATING
TO APPROXIMATELY 145 ACRES

A copy of this document is available for review in its entirety at the Community Development Department, Planning Division, Permit Center, 345 North El Dorado Street, Stockton, CA.
RECORDING REQUESTED BY:
Blank
AND WHEN RECORDED MAIL TO:
Name
ADDRESS
Stockton, California

AGREEMENT BY AND BETWEEN THE CITY OF STOCKTON AND
CARL W. THOMPSON, JR. and FRANCINE A. THOMPSON, CO-
TRUSTEES OF THE C. AND F. THOMPSON FAMILY TRUST dated
JUNE 7, 2000 RELATING TO APPROXIMATELY ____ ACRES.
RECORDING REQUESTED BY:
Blank
AND WHEN RECORDED MAIL TO:
Name
ADDRESS
Stockton, California

AGREEMENT BY AND BETWEEN THE CITY OF STOCKTON
AND A.G SPANOS CONSTRUCTION COMPANY; BERT
CASTELANELLI AND LINDA CASTELANELLI; C & C FARMS,
L.P.; EIGHT MILE ROAD PARTNERS, LLC; ANTHONY
FUGAZI; WILLIAM E. HAMMONDS; ISOLA CORPORATION;
TONY & MARY MARTIN FAMILY FARM, L.P.; RIO BLANCO
RANCH; AND YOUN SEREAYPHEAP RELATING TO
APPROXIMATELY 3,183.13 ACRES.
RECITALS

AGREEMENT

ARTICLE 1. GENERAL PROVISIONS
- Section 1.01 Incorporation of Recitals
- Section 1.02 Covenants
- Section 1.03 Effective Date
- Section 1.04 Term

ARTICLE 2. APPLICABLE LAW AND PROCESSING.
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  - (a) Laws Currently in Effect
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  - (c) Processing Fees
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ARTICLE 4 MISCELLANEOUS
- Section 4.01 Notices
- Section 4.02 Indemnification and Hold Harmless
  - (a) Acts of Property Owner
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- Section 4.05 Statutory Contents Requirement
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- Section 4.07 Statute of Limitations
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Section 4.09 No Third Party Rights Created
Section 4.10 Construction
Section 4.11 Other Miscellaneous Terms
Section 4.12 Exhibits
Section 4.13 Recordation
AGREEMENT
BY AND BETWEEN THE CITY OF STOCKTON
AND
A.G SPANOS CONSTRUCTION COMPANY; BERT CASTELANELLI
AND LINDA CASTELANELLI; C& C FARMS, L.P.; EIGHT MILE ROAD
PARTNERS, LLC; ANTHONY FUGAZI; WILLIAM E. HAMMONDS;
ISOLA CORPORATION; TONY & MARY MARTIN FAMILY FARM,
L.P.; RIO BLANCO RANCH; AND YOUN SEREAYPHEAP
RELATING TO APPROXIMATELY 3,183.13 ACRES

THIS AGREEMENT ("Agreement") is entered into this ___ day of _______ 2004, by and between the CITY OF STOCKTON, a political subdivision of the State of California (hereinafter "City"), and A.G. Spanos Construction; Bert Castelanelli and Linda Castelanelli; C&C Farms, L.P.; Eight Mile Road Partners, LLC; Anthony Fugazi; William E. Hammonds; Isola Corporation; Tony & Mary Martin Family Farm, L.P.; Rio Blanco Ranch; and Youn Sereaypheap (hereinafter "Property Owner"), pursuant to the provisions of Article 2.5 of Chapter 4 of Division 1 of Title 7 of the California Government Code, Sections 65864 through 65869.5 and the City of Stockton Municipal Code, Chapter 16, Part IX, Sections 16-180 through 16-195, inclusive. Property Owner and City are, from time to time, hereinafter referred to individually as a "party" and collectively as the "parties." This Agreement is entered into on the basis of the following facts, understandings and intentions of the parties.

RECITALS

A. The subject of this Agreement are those certain parcels of land, consisting of approximately Three Thousand One Hundred and Eighty-Three (3,183) acres located within the City Sphere of Influence or subject to a request to revise the City’s sphere of influence to include the land, as diagrammed in Exhibit “A-1” and more particularly described in Exhibit “A-2” attached hereto and incorporated herein by this reference, and referred to herein as the "Project Site". Property Owner represents that it has an equitable or a legal interest in the Project Site and that all other persons holding legal or equitable interests in the Project Site shall be bound by this Agreement.

B. As further described in Recital C below, Property Owner and City ultimately seek to secure through a "Land Use Plan" and "Subsequent Development
agreement" an enforceable arrangement by which Property Owner shall be allowed to develop within Project Site in accordance with the ordinances, policies and standards of the City, the maximum size and height of buildings, at within the density of population and intensity of buildings and with reservations and dedications for public purposes as authorized by the General Plan and Zoning Ordinance.

C. The Subsequent Development Agreement, and not this Agreement, is the "Development Agreement" referred to in the Development Code in Chapter 16 of the City ordinances. Property Owner and City envision that the benefits and burdens of the Project described in Recital B above shall only become enforceable through the Subsequent Development Agreement, which the parties will make a good faith effort to negotiate simultaneous with the City's review of Property Owner's Land Use Plan application (and any necessary Zoning/General Plan Amendment application) so that it may be entered into and executed by the parties at such time as a Final EIR is certified, and the Land Use Plan application (and any necessary Zoning/General Plan Amendment application) is acted upon by the City. Therefore, neither City nor Property Owner obligates itself to benefit or burden the Project Site with the above described Project until such time as a Final EIR is certified, the Land Use Plan application is favorably acted upon by the City, the Subsequent Development Agreement is successfully negotiated, entered into, approved and becomes binding on the parties, and all such Project Approvals have not been challenged within the applicable statutes of limitation, as further described in Section 2.03(g) and Section 2.03(h) of this Agreement. However, if Property Owner so chooses, it may subject itself to the benefits and burdens of the Project without the execution and approval of a Subsequent Development Agreement, if such benefits and burdens have been adopted by the City in the current General Plan update. Consistent with the above, nothing contained in this Agreement shall be interpreted as providing an obligation (of requiring the parties to enter into such a Subsequent Development Agreement or to approve such Land Use Plan and Zoning) different than that obligation (if any) that would otherwise apply in the absence of this Agreement under the current City General Plan update. Any Subsequent Development Agreement must include all owners of an interest within the Project Site unless City, in its sole discretion, allows a Subsequent Development Agreement involving less than all owners of an interest within the Project Site.

D. Property Owner has or will apply to the City for certain environmental and land use approvals, permits and other entitlements relating to the development of the Project. These actions are collectively referred to in this Agreement as the "Project Approvals," and include the following:

(l) CEQA Compliance. Pursuant to the California Environmental Quality Act, the State CEQA Guidelines, and the City's local CEQA implementing guidelines and procedures (collectively, "CEQA"), the Project and the Project Approvals will be the subject of an environmental impact report ("EIR") and any other environmental review required for CEQA compliance. The information in the EIR will be considered by the Planning Commission and the City Council as part of its consideration of the Land Use Plan and related Project Approvals.
(2) **Land Use Plan.** As described in Section 2.03(g) of this Agreement, if a Land Use Plan application is submitted to City under this Agreement, Property Owner shall prepare and submit the Land Use Plan as a single application, which Plan/application shall encompass the entire Project Site, and which Plan/application shall be consistent with the land use policies of the City and the provisions of this Agreement. However, nothing in this Agreement shall be interpreted to require the submittal of any Land Use Plan application by Property Owner if it does not seek to develop the Project Site with uses other than "Agricultural Uses" (as that term is defined below) during the Term of this Agreement. Consistent with the forgoing, should Property Owner make application for a Land Use Plan, nothing in this Agreement shall be interpreted to require that such submittal include exhaustive planning text or proposals for that portion of the Project Site which is intended to be used only for those agricultural uses currently allowed on the Project Site without a discretionary permit under the City General Plan and Land Use Ordinance(s) ("Agricultural Uses"). Subject to this Agreement, if submitted, said Land Use Plan application shall conform to the parties' purpose and intent evidenced in Recital C of this Agreement.

(3) **Zoning/General Plan Amendment.** Land use designations consistent with the Land Use Plan and a related General Plan amendment bringing those land use designations into the General Plan text and diagrams, shall be adopted concurrently with the Land Use Plan if a Land Use Plan is approved by the City. Such zoning and its related General Plan amendment is collectively referred to as "Zoning" in this Agreement.

(4) **Vesting Tentative Map.** The Project Approvals will include an application for a vesting tentative map ("Vesting Tentative Map") for the Project Site, which Map, if approved, will allow for the filing of multiple final vesting maps ("Final Vesting Maps") pursuant to § 66452.6 (a) of the Subdivision Map Act.

(5) **Subsequent Development Agreement.** As stated, it is the parties' intent to negotiate in good faith the Subsequent Development Agreement simultaneous with the City's review of the Land Use Plan application (and any necessary Zoning/General Plan Amendment application) with the intent that the Subsequent Development Agreement may be approved and executed at the same time the Land Use Plan application is acted upon.

E. In addition to the Project Approvals Property Owner later may make application for other land use approvals, actions, agreements, permits or other entitlements necessary or desirable to the development of the Project ("Subsequent Approvals"), including without limitation subsequent subdivision maps, site plan approvals, development plan approvals, use and grading permits, lot line adjustments, sewer and water connections, design review, building permits and certificates of occupancy. Conditions of approval to such Subsequent Approvals shall also be considered included in any reference to the Subsequent Approvals.
F. On ____________ 2004, the Planning Commission, following a duly noticed and conducted public hearing, recommended that the City Council ("Council") approve this Agreement. On ____________ 2004 the Council, following a duly noticed and conducted public hearing, introduced City Ordinance ___________ relating to the approval of this Agreement. On ____________ 2004 the Council adopted Ordinance ___________ thereby approving this Agreement on behalf of City. Ordinance No. ___________ is attached to this Agreement as Exhibit "B".

G. As used in this Agreement, the phrase "Rights and Obligations" means the entirety of the provisions of this Agreement (all the benefits, burdens and other provisions). Further, the phrase "Rights and Obligations" is comprised of the term "Rights" -- which is used in this Agreement to mean all of the rights and other benefits of the Agreement, and the term "Obligations" -- which is used in this Agreement to mean all of the duties, obligations, responsibilities and other burdens of this Agreement.

H. Development of the Project in accordance with this Agreement and the Subsequent Development Agreement will provide for orderly growth consistent with the goals, policies, and other provisions of the City's General Plan.

I. In preparing this Agreement, the parties have been guided by the opinion in the matter of Santa Margarita Area Residents Together v. San Luis County Board of Supervisors (2000) 84 Cal.App.4th 221. This decision decided that a development agreement was valid under the state Development Agreement statute though the agreement focused on the planning stages of the project and anticipated that a subsequent development agreement may be prepared and approved for the specific underlying project. In preparing this Development Agreement the parties obtained a copy of the development agreement which was the subject of the above reference litigation and customized the form of that agreement to this Agreement.

J. The City Council of the City of Stockton finds and declares that this Agreement is consistent with the general plan of the City of Stockton. This finding is based upon the written staff report, oral comments by the City staff and other written and oral testimony received at the public hearing.

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

AGREEMENT

ARTICLE 1. GENERAL PROVISIONS.

Section 1. 01. Incorporation of Recitals. The preamble, the Recitals, and all defined terms set forth in both, are hereby incorporated into this Agreement as if set forth herein in full.
Section 1.02 Covenants. The provisions of this Agreement shall constitute covenants and/or servitudes which shall run with the land comprising the Project Site.

Section 1.03. Effective Date. This Agreement shall become effective upon the effective date of Ordinance No. _____ approving this Agreement, or the date upon which this Agreement is executed by Property Owner and by the City, whichever is later ("Effective Date").

Section 1.04. Term

(a) The "Term" of this Agreement shall be determined pursuant to this Section 1.04. The Term shall commence upon the Effective Date and shall continue until the first to occur of the following:

(1) The fifth (5th) anniversary of the Effective Date; or,

(2) That date that a Land Use Plan is approved, becomes effective (through the resolution or ordinance adopting it taking legal effect), is binding on the parties, and is not undone by a referendum or is not challenged within the applicable statute of limitations.

(b) In addition to the Term described in subdivision (a) above, the Term shall be for:

(1) Any period or periods of time up to a maximum of seven (7) years from the Effective Date in which this Agreement or any of the Project Approvals (including the Subsequent Development Agreement) is the subject of litigation in a California court of competent jurisdiction initiated by a party other than Property Owner or City or their respective assigns, transferees or successors in interest; and

(2) Any period of time up to a maximum of seven (7) years from the Effective Date in which this Agreement or the Project Approvals are suspended pending the legal outcome of an electoral vote on a referendum.

(c) Following the expiration of the Term, this Agreement shall be deemed terminated and of no further force and effect.

ARTICLE 2. APPLICABLE LAW AND PROCESSING.

Section 2.01 Right to Applicable Law. During the Term of this Agreement any and all Project Approvals (e.g. General Plan amendment(s), Land Use Plan, Zoning, Subsequent Development Agreement) shall be processed, considered, reviewed, acted
upon (i.e., approved, conditionally approved or denied) by City pursuant only to this Agreement and the "Applicable Law" it describes.

Section 2.02. Applicable Law. The "Applicable Law" shall mean all of the following:

(a) Laws Currently in Effect. Those "City Laws" in force, effect and operation on __________, 2004. As used in the preceding sentence, "City Laws" shall mean and include all City laws, ordinances, resolutions, rules, regulations, policies, or any other action, whether enacted or adopted by the City, or its electorate through the initiative or referendum process.

(b) Changes in State and Federal Law. Those changes in City Law expressly required by State or federal laws or regulations. If the application of such changes prevents or precludes performance, of one or more provisions of this Agreement, City and Property Owner shall take any and all such actions as may be necessary or appropriate to ensure that the provisions of this Agreement shall be implemented to the maximum extent practicable.

(c) Processing Fees. Those processing fees ("Processing Fees") charged by the City for the City's administrative time and related costs incurred relating to the preparation and/or consideration of any application for Project Approvals requested by Property Owner and to the extent that said Processing Fees are adopted and in effect Citywide at such time(s) said applications are submitted to the City.

Section 2.03. City Processing of Approvals.

(a) Application Processing. Upon receipt of an application accepted as complete by the City and upon payment of Processing Fees for any Project Approval meeting the requirements of Applicable Law (such applications and Processing Fees collectively referred to herein as the "Application"), City shall commence and complete all steps necessary to act on (approve, conditionally approve or deny) the Application, including without limitation:

(1) The notice and holding of all required public hearings; and

(2) Taking final action on the application (approve, conditionally approve or deny) in compliance with this Agreement and the Applicable Law.

(b) Decision on Application. City may impose conditions of approval on an Application to the extent that such conditions of approval are consistent with the Applicable Law, or are necessary to make the Application consistent with or bring the Application into compliance with the Applicable Law. If City denies any such Application for a Project Approval, City must specify in writing the basis for the making
such denial in order to assist the Property Owner in resubmitting and ultimately securing City approval of the requested Project Approval. Any such denial or specified modifications shall be consistent with this Agreement and the Applicable Law. City and Property Owner shall, with due diligence and in good faith, cooperate to process and either approve, conditionally approve or deny any applications for Project Approvals.

(c) **Cooperation.** Property Owner shall provide City, in a timely manner, all documents, applications, plans, and other information necessary for the City to carry out its obligations hereunder and shall cause Property Owner’s planners, engineers, and other consultants to submit to City, in a timely manner, all required materials and documents. It is the express intent of Property Owner and City to cooperate and diligently work to process and either approve, conditionally approve or deny all Applications for Project Approvals.

(d) **Processing Timelines.** City shall review materials submitted for processing, considering and acting upon (approving or denying) the EIR, Land Use Plan, Zoning and Subsequent Development Agreement in a timely and expeditious manner. City staff shall review and comment upon administrative draft materials within 30 days of submittal by Property Owner.

(e) **Other Governmental Permits.** Property Owner shall apply in a timely manner for such other permits, approvals, grants, agreements and other entitlements ("Entitlements") as may be required by other agencies having jurisdiction over, or in connection with the development of, or provision of services to, the Project. City shall cooperate with Property Owner relative to such entitlements.

(f) **Environmental Mitigation.** In connection with City's review of the Project Approvals, Subsequent Approvals or issuance of any other permit, approval or other entitlement that is subject to CEQA, City shall promptly commence and diligently process any and all preliminary reviews, initial studies and other assessments required by CEQA, and to the extent permitted or required by CEQA and accepted and agreed to by Property Owner, City shall use and adopt any environmental impact report(s) certified for the Project addenda thereto and other existing environmental reports and studies as adequately addressing the environmental impacts of such matter or matters without requiring new or supplemental environmental documentation.

(g) **Land Use Plan Application.** When a subdivision of the property is desired, Property Owner shall make application to the City for a Land Use Plan subject to this Agreement. In order to allow for proper environmental critique and land planning, the Land Use Plan application submitted by Property Owner shall describe the Project and shall expressly state that Property Owner is willing, through the Subsequent Development Agreement, to commit to the Rights and Obligations outlined in Recital paragraph B(1) through (5) of this Agreement if, and only if, Property Owner secures the benefits and burdens outlined in Recital paragraph B(a) through (5) of this Agreement. The Land Use Plan shall indicate all necessary information regarding the location, scope and detail of the proposed benefit and/or burden of the Project, but shall recognize and indicate that its implementation will be accomplished through the Subsequent Development Agreement. However, if Property Owner so chooses, it may subject itself to the benefits and burdens of the Project without the execution and approval of a
Subsequent Development Agreement, if such benefits and burdens have been adopted by the City in the Land Use Plan. If a Land Use Plan application for the Project and Project Site is submitted to City during the Term of this Agreement, Property Owner shall prepare and submit the Land Use Plan as a single application, which Land Use Plan application shall encompass the entire Project Site, and which Plan/application shall be consistent with the development policies of the City, including the requirement for public participation, and the provisions of this Agreement. However, nothing in this Agreement shall be interpreted to require the submittal of any Land Use plan application by Property Owner if it does not seek to use any portion of the Project Site for uses other than those Agricultural Uses allowed under City Law during the Term of this Agreement. Consistent with the forgoing, should Property Owner make application for such Land Use Plan, nothing in this Agreement shall be interpreted to require that such submittal include exhaustive planning text or proposals for that portion the Project Site which is designated to be used only for Agricultural Uses currently allowed on the Project Site under City Law. Subject to this Agreement, if submitted, said Land Use Plan application shall conform to the parties' purpose and intent evidenced in Recital C of this Agreement.

(h) Subsequent Development Agreement. Simultaneous with City review of the Land Use Plan, City and Property Owner will make a good faith effort to negotiate a Subsequent Development Agreement that shall, if agreed upon, provide Property Owner with a vested right to the benefits and burdens of the Project. However, if Property Owner chooses, it may subject itself to the benefits and burdens of the Project without the execution and approval of a Subsequent Development Agreement, if such benefits and burdens have been adopted in the current General Plan Update. Subsequent Development Agreement and all other Project Approvals are of legal force, effect and operation, provided that the Land Use Plan, Subsequent Development Agreement and other Project Approvals are of the form and substance mutually agreed to by the parties and further provided that a legal challenge to such Subsequent Development Agreement and other Project Approvals has not been filed and served within the applicable statute of limitations. In the event that such a legal challenge is filed and served within the applicable statutes of limitations, the parties shall meet and confer to determine what course of action to take.

ARTICLE 3. DEFAULT; ANNUAL REVIEW; TRANSFER NOTICE.

Section 3.01. Default.

(a) Failure or unreasonable delay by either party to perform any term, provision, or condition of this Agreement for a period of thirty (30) days after receipt of a written "Notice of Default" from the other party shall constitute a default under this Agreement, subject to extensions of time by mutual consent of the parties in writing. Said Notice of Default and extensions of time shall be given pursuant to Section 4.01 of this Agreement. Said Notice of Default shall specify the nature of the alleged default and, where appropriate, the manner and period of time in which said alleged default may be satisfactorily cured. If the nature of the alleged default is such that it cannot reasonably be cured within such 30-day period, the commencement of the cure within such time period and the diligent prosecution to completion of the cure shall be deemed a cure within such period.

(b) During any period of curing, neither party shall be considered in
default for the purposes of termination or institution of a Legal Action. If the alleged default is cured, then no default shall exist and the noticing party shall take no further action.

(c) Subject to the foregoing, after Notice of Default and expiration of the 30-day period without cure, either party, at its option, may institute a Legal Action.

(d) Evidence of a party's default may also arise in the course of the regularly scheduled Annual Review of this Agreement as described in Section 3.02 of this Agreement.

(e) Failure or delay by either party in giving Notice of Default pursuant to this Section shall not constitute a waiver of any default. Any failure or delay by either party in asserting any of its rights or remedies as to any default shall not operate as a waiver of any default or of any such rights or remedies or deprive the party of its Legal Rights or right to bring a Legal Action which the party may deem necessary to protect, assert, or enforce any such Legal Rights.

Section 3.02. Annual Review. The City shall review the extent of good faith compliance by Property Owner with the terms of this Agreement at least every 12 months from the Effective Date (the "Annual Review"). The City Planning Director may, in his or her sole discretion, review such good faith compliance more often than once every 12 months. At the time of such Annual Review (whether every 12 months or sooner) the Property Owner shall be required to demonstrate good faith compliance with the terms of this Agreement. City failure to hold such an Annual Review shall not constitute a default under this Agreement.

Section 3.03. Enforced Delay: Extension of Time Performance. In addition to Land Use 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, acts of God, governmental restrictions imposed or mandated by other governmental entities, enactment of conflicting state or federal laws or regulations, new or supplemental environmental regulations, judicial decisions, or similar basis for excused performance which is not within the reasonable control of the party to be excused. Litigation attacking the validity of this Agreement, any of the Project Approvals, or any permit, ordinance, entitlement or other action of a governmental agency necessary for the development of the Project pursuant to this Agreement shall be deemed to create an excusable delay as to Property Owner. Upon the request of either party hereto, an extension of time for such cause will be granted in writing for the period of the enforced delay, or longer as may be mutually agreed upon.

Section 3.04. Notice of Transfer. City shall have no approval power over any transfer of all or any portion of the Project Site. In any such transfer, Property Owner shall not sever any Rights from any Obligations under this Agreement; instead, the transferee (successor interest) shall take all Rights with all the Obligations under this
Agreement. Property Owner shall provide written notice to City (such notice given pursuant to § 4.01 of this Agreement) of its sale of all or any portion of the Project Site to a third party within thirty (30) days of such sale. The "sale" for the purposes of Property Owner providing City with such notice shall mean the recordation of a grant deed(s) relating to that sale. Failure of Property Owner to provide such notice shall be subject to Section 3.01 of this Agreement.

ARTICLE 4. MISCELLANEOUS.

Section 4.01. Notices.

(a) Any notice or communication required hereunder between City or Property Owner shall be in writing, and may be given either personally, by registered or certified mail, return receipt requested, or by facsimile (fax) transmission. If given by such registered or certified mail, the same shall be deemed to have been given and received on the first to occur of (i) actual receipt by any of the addressees designated below as the party to whom notices are to be sent, or (ii) five (5) days after such a registered or certified letter containing such notice, properly addressed, with postage prepaid, is deposited in the United States mail. If personally delivered, a notice shall be deemed to have been given when delivered to the party to whom it is addressed. If sent by facsimile transmission, a notice shall be deemed to have been given when received by the party to whom it is addressed. Any party hereto may at any time, by giving ten (10) days written notice to the other party hereto, designate any other address in substitution of the address to which such notice or communication shall be given.

(b) Such notices or communications shall be given to the parties at their addresses set forth below:

If to City, to:

Mr. Jim Glaser, Director
Community Development Department
City of Stockton
Stockton, CA 95202
Telephone: (209) 937-8444
Facsimile: (209) 937-8893

If to Property Owner, to:

Name
Address
Stockton, California

(c) A party may change its notice information by giving notice (in the form and manner required by this Section 4.01) to the other party. Thereafter, notices,
demands and other pertinent correspondence shall be addressed and transmitted consistent with such new information.

Section 4.02. Indemnification and Hold Harmless.

(a) Acts of Property Owner. As relates only to acts of Property Owner, Property Owner hereby agrees to defend, indemnify and save harmless the City, its elected and appointed officers, agents, employees, and representatives from any and all claims, demands, damages, costs, expenses, judgments or liability arising out of this Agreement or attempted performance of the provisions hereof, including but not limited to those predicated upon theories of violation of statute, ordinance, or regulation, professional malpractice, negligence, or recklessness including negligent or reckless operation of motor vehicles or other equipment, furnishing of defective or dangerous products or completed operations, premises liability, inverse condemnation, violation of civil rights or any act or omission to act, whether or not it be willful, intentional or actively or passively negligent on the part of Property Owner or its agents, employees or independent consultants directly responsible to Property Owner; providing further that the foregoing shall apply to any wrongful acts or any active or passively negligent acts or omissions to act, committed jointly or concurrently by Property Owner or its agents, employees or independent consultants involved in work under this Agreement. Nothing contained in the foregoing indemnity provision shall be construed to require indemnification for claims, demands, damages, costs, expenses or judgments resulting solely from the negligence or willful misconduct of City.

(b) Acts of City. As relates to acts of the City, Property Owner hereby agrees to defend, indemnify and save harmless the City, its elected and appointed officers, agents, employees, and representatives from any and all claims, demands, damages, costs, expenses, judgments or liability alleged against City and/or its elected and appointed officers, agents and employees and representatives arising out of City's performance under this Agreement or attempted performance under this Agreement. Nothing contained in the foregoing indemnity provision shall be construed to require indemnification for claims, demands, damages, costs, expenses or judgments resulting solely from the negligence or willful misconduct of City. In any action brought against City is a result of the approval of any aspect of Property Owner's proposals for the Project Site in which damages are not sought, and the action is directed at reversing, nullifying or remanding such approval or approvals, then, and only in such circumstances shall Property Owner have the authority to make the following unilateral election:

Property Owner may decide to limit its defense and indemnity obligations hereunder by making written concessions on all issues raised in such action, thereby mooting out all issues in the action. Property Owner understands and agrees that the effect of such concessions may range from remanding the Project for City's reconsideration to abandonment of the Project.
by Property Owner. Property Owner also understands and agrees that in the event of its use of this election, it shall be responsible for the payment of all costs and attorney's fees connected with the litigation, including plaintiffs' attorney's fees. In order to make the aforesaid unilateral election, Property Owner must provide at that time an unconditional written waiver and release of all causes of action it does then have against the City as a result of any official errors or omissions, or negligence in the handling or approval of Property Owner's project, including without limitation any action for delay of development, temporary taking of Property Owner's property, or interference with Property Owner's prospective economic advantage.

Section 4.03. Pending Sphere of Influence Request. This Agreement is not intended to affect in any way (negatively or positively) the sphere of influence application Property Owner currently has pending before the City, or any amendments which may be made to it. Property Owner shall be allowed to seek such sphere of influence application and City shall be allowed to consider and act on such application without the adoption of the Land Use Plan or any of the other Project Approvals discussed in this Agreement.

Section 4.04. Venue. This Agreement has been executed and delivered in, and shall be interpreted, construed, and enforced pursuant to and in accordance with the laws of the State of California. All rights and obligations of the parties created hereunder are performable in the San Joaquin County, San Joaquin County shall be the venue for any Legal Action or proceeding that may be brought, or arise out of, in connection with or by reason of this Agreement.

Section 4.05. Statutory Contents Requirement. The requirements of Government Code section 65865.2 are satisfied by the Applicable Law described by this Agreement.

Section 4.06. Good Faith Reasonable Action. Each party shall use its best efforts and take and employ all necessary actions to ensure that the rights secured by the other party through this Agreement can be enjoyed, neither party shall take any action that will deprive the other party of the enjoyment of the rights secured through this Agreement, and each party shall act without delay on the matters which are the topic of this Agreement.

Section 4.07. Statute of Limitations. Pursuant to Government Code § 65009, no action or proceeding ("Action") by a person, public agency, or public or private corporation, partnership, association, organization nor other business or non-business entity other than the parties to the Agreement (or their successors) to attack, review, interpret, set aside, void, or annul all or any portion of the this Agreement or the decision of the City to approve and execute it shall be maintained or allowed unless the Action is commenced and service is made on the City within ninety (90) days from the date this
Agreement is adopted by the City.

Section 4.08. Third Party Lawsuit/Indemnity. In the event of a lawsuit instituted by a party other than the parties to this Agreement (or their successors in interest), including another governmental entity or official ("Third Party") challenging the validity of any provision of this Agreement ("Agreement Challenge"), the approvals ("Approval Challenge"), or any other aspect of the Project (all such Challenges are collectively referred to this Agreement as "Challenge"), the parties shall cooperate in defending against the Challenge. City shall tender the complete defense of the Challenge to Property Owner (the "Tender") and upon Property Owner's acceptance of the Tender, Property Owner shall indemnify and hold harmless the City from all costs and liabilities arising from the Challenge and shall control the defense, and Property Owner shall be responsible only for the attorneys' fees owing to the legal counsel that Property Owner chooses. Should Property Owner refuse to accept the Tender by City, City may defend the Challenge and if City so defends, Property Owner shall indemnify and hold City harmless from all Third Party attorneys' fees and costs related to such defense.

Section 4.09. No Third Party Rights Created. Nothing in this Agreement, whether expressed or implied, is intended to confer any rights or remedies under or by reason of this Agreement on any persons other than the parties to it and their respective permitted successors and assigns, nor if anything in this Agreement intended to relieve or discharge the obligations or liabilities of any third persons or any right of action against any party to this Agreement.

Section 4.10. Construction. This Agreement has been reviewed and revised by legal counsel for both City and Property Owner, and no presumption or rule that ambiguities shall be construed against the drafting party shall apply to the interpretation or enforcement of this Agreement.

Section 4.11. Other Miscellaneous Terms. The singular includes the plural; the masculine gender includes the feminine; "shall" is mandatory; "may" is permissive. If there is more than one signer of this Agreement, the signer obligations are joint and several.

Section 4.12. Exhibits. This Agreement consists of fifteen (15) pages (excluding Title page, table of contents and notaries acknowledgment pages), and two (2) exhibits which constitute in full, the final and exclusive understanding and agreement of the parties and supersedes all negotiations or previous agreements between the parties with respect to all or any part of the subject matter hereof. The following exhibits are attached to this Agreement and incorporated herein by this reference for all purposes:

Exhibit “A-1” Project Site Map
Exhibit “A-2” Legal Description
Exhibit B - Ordinance No. ________ (Approving this Agreement).
Section 4.13. Recordation. Property Owner shall sign this Agreement and shall deliver this Agreement to the City for the Mayor to sign. No later than ten (10) days after the Mayor signs this Agreement, the City Clerk shall record an executed copy of this Agreement in the Official Records of the County of San Joaquin.
IN WITNESS WHEREOF, the City and Property Owner have executed this Agreement as of the date first set forth above.

"CITY"

CITY OF STOCKTON,
 a political subdivision of the State of California

________________________________________
Mayor

Date: ___________

Attest: __________________________________
City Clerk

Date: ___________

Approved as to Form:

________________________________________
City Attorney

Date: ___________

"PROPERTY OWNER"

Name: A.G. SPANOS CONSTRUCTION

By: ___________________________________

Name: _________________________________
Title: ___________________________________

Date: ___________

Approved as to Form:

________________________________________

(ACKNOWLEDGMENTS ATTACHED)
Name: BERT CASTELANELLI AND LINDA CASTELANELLI

By: ________________________________

Name: ________________________________  Date: __________
Title: ________________________________

Approved as to Form:

_______________________________

(ACKNOWLEDGMENTS ATTACHED)

"PROPERTY OWNER"

Name: C&C FARMS, LLC

By: ________________________________

Name: ________________________________  Date: __________
Title: ________________________________

Approved as to Form:

_______________________________

(ACKNOWLEDGMENTS ATTACHED)

Name: ANTHONY FUGAZI

By: ________________________________

Name: ________________________________  Date: __________
Title: ________________________________

Approved as to Form:

_______________________________
ACKNOWLEDGMENTS ATTACHED

Name: WILLIAM E. HAMMONDS

By: _____________________________

Name: __________________________
Title: ___________________________

Date: ______________

Approved as to Form:

__________________________________

ACKNOWLEDGMENTS ATTACHED

Name: ISOLA CORPORATION

By: _____________________________

Name: __________________________
Title: ___________________________

Date: ______________

Approved as to Form:

__________________________________

ACKNOWLEDGMENTS ATTACHED

Name: TONY & MARY MARTIN FAMILY FARM, L.P.

By: _____________________________

Name: __________________________

Date: ______________
Title: __________________________

Approved as to Form:

_____________________________

(ACKNOWLEDGMENTS ATTACHED)

Name: RIO BLANCO RANCH

By: __________________________

Name: ______________________
Title: _______________________

Date: __________

Approved as to Form:

_____________________________

(ACKNOWLEDGMENTS ATTACHED)

Name: YOUN SERAYPHEAP

By: __________________________

Name: ______________________
Title: _______________________

Date: __________

Approved as to Form:

_____________________________

(ACKNOWLEDGMENTS ATTACHED)
AGREEMENT BY AND BETWEEN THE CITY OF STOCKTON
AND THE GRUPE INVESTMENT COMPANY, INC. RELATING
TO 1,800 ACRES KNOWN AS THE SHIMA TRACT
RECITALS

AGREEMENT

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   Section 1.01 Incorporation of Recitals.
   Section 1.02 Covenants
   Section 1.03 Effective Date
   Section 1.04 Term

ARTICLE 2. APPLICABLE LAW AND PROCESSING.
   Section 2.01 Right to Applicable Law
   Section 2.02 Applicable Law
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ARTICLE 3 DEFAULT; ANNUAL REVIEW; TRANSFER NOTICE
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Section 4.11 Other Miscellaneous Terms
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AGREEMENT
BY AND BETWEEN THE CITY OF STOCKTON
AND
THE GRUPE INVESTMENT COMPANY, INC.
RELATING TO 1,800 ACRES KNOWN AS THE SHIMA TRACT

THIS AGREEMENT ("Agreement") is entered into this ___ day of _______ 2004, by and between the CITY OF STOCKTON, a municipal corporation (hereinafter "City"), and GRUPE INVESTMENT COMPANY, INC., a California corporation (hereinafter "Grupe"), pursuant to the provisions of Article 2.5 of Chapter 4 of Division 1 of Title 7 of the California Government Code, Sections 65864 through 65869.5 and the City of Stockton Municipal Code, Chapter 16, Part IX, Sections 16-180 through 16-195, inclusive (the "City Municipal Code"). Grupe and City are, from time to time, hereinafter referred to individually as a "party" and collectively as the "parties." This Agreement is entered into on the basis of the following facts, understandings and intentions of the parties.

RECITALS

A. The subject of this Agreement are those certain parcels of land, consisting of approximately one thousand eight hundred (1,800) acres located within the City Sphere of Influence or subject to a request to amend the City’s sphere of influence to include the land, as diagrammed in Exhibit “A-1” and more particularly described in Exhibit “A-2” attached hereto and incorporated herein by this reference, commonly known as Shima Tract and referred to herein as the "Project Site". Grupe represents that it has an equitable or a legal interest in the Project Site and that all other persons holding legal or equitable interests in the Project Site shall be bound by this Agreement.

B. As further described in Recital C below, Grupe and City ultimately seek to secure through a "Specific Plan" and "Subsequent Development Agreement" an enforceable arrangement by which Grupe shall be allowed to develop within the Project Site in accordance with the ordinances, policies and standards of the City, the permitted uses, the maximum height and size of buildings, within the density of population and intensity of buildings and with reservations and dedications for public purposes as authorized by the General Plan and Zoning Ordinance (the "Project").
C. The Subsequent Development Agreement, and not this Agreement, is the "Development Agreement" referred to in the Development Code in Chapter 16 of the City ordinances. Grupe and City envision that the benefits and burdens of the Project described in Recital B above shall only become enforceable through the Subsequent Development Agreement, which the parties will make a good faith effort to negotiate simultaneous with the City's review of Grupe's Specific Plan application (and any necessary Zoning/General Plan Amendment application) so that it may be entered into and executed by the parties at such time as a Final EIR is certified, and the Specific Plan application (and any necessary Zoning/General Plan Amendment application) is acted upon by the City. Therefore, neither City nor Grupe obligates itself to benefit or burden the Project Site with the above described Project until such time as a Final EIR is certified, the Specific Plan application is favorably acted upon by the City, the Subsequent Development Agreement is successfully negotiated, entered into, approved and becomes binding on the parties, and all such Project Approvals have not been challenged within the applicable statutes of limitation, as further described in Section 2.03(g) and Section 2.03(h) of this Agreement. However, if Grupe so chooses, it may subject itself to the benefits and burdens of the Project without the execution and approval of a Subsequent Development Agreement, if such benefits and burdens have been adopted by the City in a Specific Plan. Consistent with the above, nothing contained in this Agreement shall be interpreted as providing an obligation (of requiring the parties to enter into such a Subsequent Development Agreement or to approve such Specific Plan and Zoning) different than that obligation (if any) that would otherwise apply in the absence of this Agreement under the current City General Plan or any updates. Any Subsequent Development Agreement must include all owners of an interest within the Project Site unless City, in its sole discretion, allows a Subsequent Development Agreement involving less than all owners of an interest within the Project Site.

D. Grupe has or will apply to the City for certain environmental and land use approvals, permits and other entitlements relating to the annexation and the development of the Project. These actions are collectively referred to in this Agreement as the "Project Approvals," and include the following:

(1) CEQA Compliance. Pursuant to the California Environmental Quality Act, the State CEQA Guidelines, and the City's local CEQA implementing guidelines and procedures (collectively, "CEQA"), the Project and the Project Approvals will be the subject of an environmental impact report ("EIR") and any other environmental review required for CEQA compliance. The information in the EIR will be considered by the Planning Commission and the City Council as part of its consideration of the Specific Plan and related Project Approvals.

(2) Specific Plan. As described in Section 2.03(g) of this Agreement, if a Specific Plan application is submitted to City under this Agreement, Grupe shall prepare and submit the Specific Plan as a single application, which Plan/application shall encompass the entire Project Site, and which Plan/application shall be consistent with the
land use policies of the City and the provisions of this Agreement. However, nothing in this Agreement shall be interpreted to require the submittal of any Specific Plan application by Grupe if it does not seek to develop the Project Site with uses other than "Agricultural Uses" (as that term is used below) during the Term of this Agreement. Consistent with the forgoing, should Grupe make application for a Specific Plan, nothing in this Agreement shall be interpreted to require that such submittal include exhaustive planning text or proposals for that portion of the Project Site which is intended to be used only for those agricultural uses currently allowed on the Project Site without a discretionary permit under the City General Plan and Land Use Ordinance(s) ("Agricultural Uses"). Subject to this Agreement, if submitted, said Specific Plan application shall conform to the parties' purpose and intent evidenced in Recital C of this Agreement.

(3) Zoning/General Plan Amendment. Land use designations consistent with the Specific Plan and a related General Plan amendment bringing those land use designations into the General Plan text and diagrams, shall be adopted concurrently with the Specific Plan if a Specific Plan is approved by the City. Such zoning and its related General Plan amendment is collectively referred to as "Zoning" in this Agreement.

(4) Vesting Tentative Map. The Project Approvals will include an application for a vesting tentative map ("Vesting Tentative Map") for the Project Site, which Map, if approved, will allow for the filing of multiple final vesting maps ("Final Vesting Maps") pursuant to § 66452.6 (a) of the Subdivision Map Act.

(5) Subsequent Development Agreement. As stated, it is the parties' intent to negotiate in good faith the Subsequent Development Agreement simultaneous with the City's review of the Specific Plan application (and any necessary Zoning/General Plan Amendment application) with the intent that the Subsequent Development Agreement may be approved and executed at the same time the Specific Plan application is acted upon.

E. In addition to the Project Approvals Grupe may later make application for other land use approvals, actions, agreements, permits or other entitlements necessary or desirable to the development of the Project ("Subsequent Approvals"), including without limitation subsequent subdivision maps, site plan approvals, development plan approvals, use and grading permits, lot line adjustments, sewer and water connections, design review, building permits and certificates of occupancy. Conditions of approval to such Subsequent Approvals shall also be considered included in any reference to the Subsequent Approvals.

F. On___________, 2004, the Planning Commission, following a duly noticed and conducted public hearing, recommended that the City Council ("Council") approve this Agreement. On __________, 2004 the Council, following a duly noticed and conducted public hearing, adopted Ordinance __________ thereby approving this Agreement on behalf of City. Ordinance No.__________ is attached to this Agreement as
operation on the Effective Date of this Agreement. As used in the preceding sentence, "City Laws" shall mean and include all City laws, ordinances, resolutions, rules, regulations, policies, or any other action, whether enacted or adopted by the City, or its electorate through the initiative or referendum process.

(b) Changes in State and Federal Law. Those changes in City Law expressly required by State or federal laws or regulations. If the application of such changes prevents or precludes performance, of one or more provisions of this Agreement, City and Grupe shall take any and all such actions as may be necessary or appropriate to ensure that the provisions of this Agreement shall be implemented to the maximum extent practicable.

(c) Processing Fees. Those processing fees ("Processing Fees") charged by the City for the City's administrative time and related costs incurred relating to the preparation and/or consideration of any application for Project Approvals requested by Grupe and to the extent that said Processing Fees are adopted and in effect Citywide at such time(s) said applications are submitted to the City.

Section 2.03. City Processing of Approvals.

(a) Application Processing. Upon receipt of an application accepted as complete by the City and upon payment of Processing Fees for any Project Approval meeting the requirements of Applicable Law (such applications and Processing Fees collectively referred to herein as the "Application"), City shall commence and complete all steps necessary to act on (approve, conditionally approve or deny) the Application, including without limitation:

(1) The notice and holding of all required public hearings; and
(2) Taking final action on the application (approve, conditionally approve or deny) in compliance with this Agreement and the Applicable Law.

(b) Decision on Application. City may impose conditions of approval on an Application to the extent that such conditions of approval are consistent with the Applicable Law, or are necessary to make the Application consistent with or bring the Application into compliance with the Applicable Law. If City denies any such Application for a Project Approval, City must specify in writing the basis for the making such denial in order to assist Grupe in resubmitting and ultimately securing City approval of the requested Project Approval. Any such denial or specified modifications shall be consistent with this Agreement and the Applicable Law. City and Grupe shall, with due diligence and in good faith, cooperate to process and either approve, conditionally approve or deny any applications for Project Approvals.

(c) Cooperation. Grupe shall provide City, in a timely manner, all
its obligations hereunder and shall cause Grupe's planners, engineers, and other consultants to submit to City, in a timely manner, all required materials and documents. It is the express intent of Grupe and City to cooperate and diligently work to process and either approve, conditionally approve or deny all Applications for Project Approvals.

(d) **Processing Timelines.** City shall review materials submitted for processing, considering and acting upon (approving or denying) the EIR, Specific Plan, Zoning and Subsequent Development Agreement in a timely and expeditious manner. City staff shall review and comment upon administrative draft materials within 30 days of submittal by Grupe.

(e) **Other Governmental Permits.** Grupe shall apply in a timely manner for such other permits, approvals, grants, agreements and other entitlements ("Entitlements") as may be required by other agencies having jurisdiction over, or in connection with the development of, or provision of services to, the Project. City shall cooperate with Grupe relative to such entitlements.

(f) **Environmental Mitigation.** In connection with City's review of the Project Approvals, Subsequent Approvals or issuance of any other permit, approval or other entitlement that is subject to CEQA, City shall promptly commence and diligently process any and all preliminary reviews, initial studies and other assessments required by CEQA, and to the extent permitted or required by CEQA and accepted and agreed to by Grupe, City shall use and adopt any environmental impact report(s) certified for the Project, addenda thereto, and other existing environmental reports and studies as adequately addressing the environmental impacts of such matter or matters without requiring new or supplemental environmental documentation.

(g) **Specific Plan Application.** When a subdivision of the property is desired, Grupe shall make application to the City for a Specific Plan subject to this Agreement. In order to allow for proper environmental critique and land planning, the Specific Plan application submitted by Grupe shall describe the Project and shall expressly state that Grupe is willing, through the Subsequent Development Agreement, to commit to the Rights and Obligations outlined in Recital paragraph B in this Agreement if, and only if, Grupe secures the benefits and burdens outlined in Recital paragraph B in this Agreement. The Specific Plan shall indicate all necessary information regarding the location, scope and detail of the proposed benefit and/or burden of the Project, but shall recognize and indicate that its implementation will be accomplished through the Subsequent Development Agreement. However, if Grupe so chooses, it may subject itself to the benefits and burdens of the Project without the execution and approval of a Subsequent Development Agreement, if such benefits and burdens have been adopted and required by the City in the Specific Plan. If a Specific Plan application for the Project and Project Site is submitted to the City during the Term of this Agreement, Grupe shall prepare and submit the Specific Plan as a single application, which Specific Plan application shall encompass the entire Project Site, and which Plan/application shall be consistent with the development policies of the City, including the requirement for public participation, and the provisions of this Agreement. However, nothing in this Agreement shall be interpreted to require the submittal of any Specific Plan application by Grupe if it does not seek to use any portion of the Project Site for uses other than those Agricultural Uses allowed under City Law during the Term of this Agreement. Consistent with the
forgoing, should Grupe make application for such Specific Plan, nothing in this Agreement shall be interpreted to require that such submittal include exhaustive planning text or proposals for that portion the Project Site which is designated to be used only for Agricultural Uses currently allowed on the Project Site under City Law. Subject to this Agreement, if submitted, said Specific Plan application shall conform to the parties' purpose and intent evidenced in Recital C of this Agreement.

(h) Subsequent Development Agreement. Simultaneous with City review of the Specific Plan, City and Grupe will make a good faith effort to negotiate a Subsequent Development Agreement that shall, if agreed upon, provide Grupe with a vested right to the benefits and burdens of the Project. However, if Grupe chooses, it may subject itself to the benefits and burdens of the Project without the execution and approval of a Subsequent Development Agreement, if such benefits and burdens have been adopted and required by the Specific Plan. The Subsequent Development Agreement and all other Project Approvals are of legal force, effect and operation, provided that the Specific Plan, the subsequent Development Agreement and other Project Approvals are of the form and substance mutually agreed to by the parties and further provided that a legal challenge to such Subsequent Development Agreement and other Project Approvals has not been filed and served within the applicable statute of limitations. In the event that such a legal challenge is filed and served within the applicable statutes of limitations, the parties shall meet and confer to determine what course of action to take.

ARTICLE 3. DEFAULT; ANNUAL REVIEW; TRANSFER NOTICE.

Section 3.01. Default.

(a) Failure or unreasonable delay by either party to perform any term, provision, or condition of this Agreement for a period of thirty (30) days after receipt of a written "Notice of Default" from the other party shall constitute a default under this Agreement, subject to extensions of time by mutual consent of the parties in writing. Said Notice of Default and extensions of time shall be given pursuant to Section 4.01 of this Agreement. Said Notice of Default shall specify the nature of the alleged default and, where appropriate, the manner and period of time in which said alleged default may be satisfactorily cured. If the nature of the alleged default is such that it cannot reasonably be cured within such 30-day period, the commencement of the cure within such time period and the diligent prosecution to completion of the cure shall be deemed a cure within such period.

(b) During any period of curing, neither party shall be considered in default for the purposes of termination or institution of a Legal Action. If the alleged default is cured, then no default shall exist and the noticing party shall take no further action.

(c) Subject to the foregoing, after Notice of Default and expiration of the 30-day period without cure, either party, at its option, may institute a Legal Action.

(d) Evidence of a party's default may also arise in the course of the regularly scheduled Annual Review of this Agreement as described in Section 3.02 of this Agreement.
(e) Failure or delay by either party in giving Notice of Default pursuant to this Section shall not constitute a waiver of any default. Any failure or delay by either party in asserting any of its rights or remedies as to any default shall not operate as a waiver of any default or of any such rights or remedies or deprive the party of its Legal Rights or right to bring a Legal Action which the party may deem necessary to protect, assert, or enforce any such Legal Rights.

Section 3.02. Annual Review. The City shall review the extent of good faith compliance by Grupe with the terms of this Agreement at least every 12 months from the Effective Date (the "Annual Review"). The City Planning Director may, in his or her sole discretion, review such good faith compliance more often than once every 12 months. At the time of such Annual Review (whether every 12 months or sooner) Grupe shall be required to demonstrate good faith compliance with the terms of this Agreement. City failure to hold such an Annual Review shall not constitute a default under this Agreement.

Section 3.03. Enforced Delay: Extension of Time Performance. In addition to Land Use 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, acts of God, governmental restrictions imposed or mandated by other governmental entities, enactment of conflicting state or federal laws or regulations, new or supplemental environmental regulations, judicial decisions, or similar basis for excused performance which is not within the reasonable control of the party to be excused. Litigation attacking the validity of this Agreement, any of the Project Approvals, or any permit, ordinance, entitlement or other action of a governmental agency necessary for the development of the Project pursuant to this Agreement shall be deemed to create an excusable delay as to Grupe. Upon the request of either party hereto, an extension of time for such cause will be granted in writing for the period of the enforced delay, or longer as may be mutually agreed upon.

Section 3.04. Notice of Transfer. City shall have no approval power over any transfer of all or any portion of the Project Site. In any such transfer, Grupe shall not sever any Rights from any Obligations under this Agreement; instead, the transferee (successor in interest) shall take all Rights with all the Obligations under this Agreement. Grupe shall provide written notice to City (such notice given pursuant to § 4.01 of this Agreement) of its sale of all or any portion of the Project Site to a third party within thirty (30) days of such sale. The "sale" for the purposes of Grupe providing City with such notice shall mean the recordation of a grant deed(s) relating to that sale. Failure of Grupe to provide such notice shall be subject to Section 3.01 of this Agreement.

ARTICLE 4. MISCELLANEOUS.

Section 4.01. Notices.
(a) Any notice or communication required hereunder between City or Grupe shall be in writing, and may be given either personally, by registered or certified mail, return receipt requested, or by facsimile (fax) transmission. If given by such registered or certified mail, the same shall be deemed to have been given and received on the first to occur of (i) actual receipt by any of the addressees designated below as the party to whom notices are to be sent, or (ii) five (5) days after such a registered or certified letter containing such notice, properly addressed, with postage prepaid, is deposited in the United States mail. If personally delivered, a notice shall be deemed to have been given when delivered to the party to whom it is addressed. If sent by facsimile transmission, a notice shall be deemed to have been given when received by the party to whom it is addressed. Any party hereto may at any time, by giving ten (10) days written notice to the other party hereto, designate any other address in substitution of the address to which such notice or communication shall be given.

(b) Such notices or communications shall be given to the parties at their addresses set forth below:

If to City, to:

Mr. Jim Glaser, Director
Community Development Department
City of Stockton
Stockton, CA 95202
Telephone: (209) 937-8444
Facsimile: (209) 937-8893

If to Grupe, to:

Mr. Kevin Huber, President
Grupe Investment Company, Inc.
3255 W. March Lane, Suite 400
Stockton, CA 95209
Telephone: (209) 473-6000
Facsimile: (209) 473-6001

(c) A party may change its notice information by giving notice (in the form and manner required by this Section 4.01) to the other party. Thereafter, notices, demands and other pertinent correspondence shall be addressed and transmitted consistent with such new information.

Section 4.02. Indemnification and Hold Harmless.

(a) Acts of Grupe. As relates only to acts of Grupe, Grupe hereby agrees to defend, indemnify and save harmless the City, its elected and appointed officers, agents, employees, and representatives from any and all claims, demands, damages,
costs, expenses, judgments or liability arising out of this Agreement or attempted
performance of the provisions hereof, including but not limited to those predicated upon
theories of violation of statute, ordinance, or regulation, professional malpractice,
negligence, or recklessness including negligent or reckless operation of motor vehicles or
other equipment, furnishing of defective or dangerous products or completed operations,
premises liability, inverse condemnation, violation of civil rights or any act or omission
to act, whether or not it be willful, intentional or actively or passively negligent on the
part of Grupe or its agents, employees or independent consultants directly responsible to
Grupe; providing further that the foregoing shall apply to any wrongful acts or any active
or passively negligent acts or omissions to act, committed jointly or concurrently by
Grupe or its agents, employees or independent consultants involved in work under this
Agreement. Nothing contained in the foregoing indemnity provision shall be construed to
require indemnification for claims, demands, damages, costs, expenses or judgments
resulting solely from the negligence or willful misconduct of City.

(b) Acts of City. As relates to acts of the City, Grupe hereby agrees to
defend, indemnify and save harmless the City, its elected and appointed officers, agents,
employees, and representatives from any and all claims, demands, damages, costs,
expenses, judgments or liability alleged against City and/or its elected and appointed
officers, agents and employees and representatives arising out of City's performance
under this Agreement or attempted performance under this Agreement. Nothing
contained in the foregoing indemnity provision shall be construed to require
indemnification for claims, demands, damages, costs, expenses or judgments resulting
solely from the negligence or willful misconduct of City. In any action brought against
City as a result of the approval of this Agreement or of any aspect of Grupe's proposals
for the Project Site in which damages are not sought, and the action is directed at
reversing, nullifying or remedying such approval or approvals, then, and only in such
circumstances shall Grupe have the authority to make the following unilateral election:

Grupe may decide to limit its defense and indemnity
obligations hereunder by making written concessions on all
issues raised in such action, thereby mooting out all issues in
the action. Grupe understands and agrees that the effect of such
concessions may range from remanding the Project for City's
reconsideration to abandonment of the Project by Grupe. Grupe
also understands and agrees that in the event of its use of this
election, it shall be responsible for the payment of all costs and
attorney's fees connected with the litigation, including
plaintiffs' attorney's fees. In order to make the aforesaid
unilateral election, Grupe must provide at that time an
unconditional written waiver and release of all causes of action
it then have against the City as a result of any official
errors or omissions, or negligence in the handling or approval
of Grupe's project, including without limitation any action for
delay of development, temporary taking of Grupe's property, or interference with Grupe's prospective economic advantage.

Section 4.03. Pending Sphere of Influence Request. This Agreement is not intended to affect in any way (negatively or positively) the sphere of influence amendment application Grupe currently has pending before the City, or any amendments which may be made to it. Grupe shall be allowed to seek such sphere of influence application and City shall be allowed to consider and act on such application without the adoption of the Specific Plan or any of the other Project Approvals discussed in this Agreement.

Section 4.04. Venue. This Agreement has been executed and delivered in, and shall be interpreted, construed, and enforced pursuant to and in accordance with the laws of the State of California. All rights and obligations of the parties created there under are performable in the San Joaquin County, and San Joaquin County shall be the venue for any Legal Action or proceeding that may be brought, or arise out of, in connection with or by reason of this Agreement.

Section 4.05. Statutory Contents Requirement. The requirements of Government Code section 65865.2 are satisfied by this Agreement.

Section 4.06. Good Faith Reasonable Action. Each party shall use its best efforts and take and employ all necessary actions to ensure that the rights secured by the other party through this Agreement can be enjoyed. Neither party shall take any action that will deprive the other party of the enjoyment of the rights secured through this Agreement, and each party shall act without delay on the matters which are the topic of this Agreement.

Section 4.07. Statute of Limitations. Pursuant to Government Code § 65009, no action or proceeding ("Action") by a person, public agency, or public or private corporation, partnership, association, organization nor other business or non-business entity other than the parties to the Agreement (or their successors) to attack, review, interpret, set aside, void, or annul all or any portion of the this Agreement or the decision of the City to approve and execute it shall be maintained or allowed unless the Action is commenced and service is made on the City within ninety (90) days from the date this Agreement is adopted by the City.

Section 4.08. Third Party Lawsuit/Indemnity. In the event of a lawsuit instituted by a party other than the parties to this Agreement (or their successors in interest), including another governmental entity or official ("Third Party") challenging the validity of any provision of this Agreement ("Agreement Challenge"), the approvals ("Approval Challenge"), or any other aspect of the Project (all such Challenges are collectively referred to this Agreement as "Challenge"), the parties shall cooperate in defending against the Challenge. City shall tender the complete defense of the Challenge to Grupe (the "Tender") and upon Grupe's acceptance of the Tender, Grupe shall
indemnify and hold harmless the City from all costs and liabilities arising from the Challenge and shall control the defense, and Grupe shall be responsible only for the attorneys' fees owing to the City's legal counsel. Should Grupe refuse to accept the Tender by City, City may defend the Challenge and if City so defends, Grupe shall indemnify and hold City harmless from all Third Party attorneys' fees and costs related to such defense.

Section 4.09, No Third Party Rights Created. Nothing in this Agreement, whether expressed or implied, is intended to confer any rights or remedies under or by reason of this Agreement on any persons other than the parties to it and their respective permitted successors and assigns, nor if anything in this Agreement intended to relieve or discharge the obligations or liabilities of any third persons or any right of action against any party to this Agreement.

Section 4.10, Construction. This Agreement has been reviewed and revised by legal counsel for both City and Grupe, and no presumption or rule that ambiguities shall be construed against the drafting party shall apply to the interpretation or enforcement of this Agreement.

Section 4.11, Other Miscellaneous Terms. The singular includes the plural; the masculine gender includes the feminine; "shall" is mandatory; "may" is permissive. If there is more than one signer of this Agreement, the signer obligations are joint and several.

Section 4.12, Exhibits. This Agreement consists of eighteen (18) pages (excluding Title page, table of contents and notaries acknowledgment pages), and three (3) exhibits which constitute in full, the final and exclusive understanding and agreement of the parties and supersedes all negotiations or previous agreements between the parties with respect to all or any part of the subject matter hereof. The following exhibits are attached to this Agreement and incorporated herein by this reference for all purposes:

Exhibit “A-1” Project Site Map
Exhibit “A-2” Legal Description
Exhibit B - Ordinance No. _________ (approving this Agreement).

Section 4.13, Recordation. Grupe shall sign this Agreement and shall deliver this Agreement to the City for the City Manager to sign. No later than ten (10) days after the City Manager signs this Agreement, the City Clerk shall record an executed copy of this Agreement in the Official Records of the County of San Joaquin.

IN WITNESS WHEREOF, the City and Grupe have executed this Agreement as of the date first set forth above.
"CITY"

CITY OF STOCKTON,
a municipal corporation

By: ____________________________________________
   Mark Lewis, Esq.
   City Manager

Attest:

By: ____________________________________________
   Katherine Gong Meissner
   City Clerk

Approved as to Form:
Office of the City Attorney

By: ____________________________________________
   Guy D. Petzold
   Deputy City Attorney

"GRUPE"

GRUPE INVESTMENT COMPANY, INC.
a California corporation

By: ____________________________________________
   Name: _______________________________________
   Title: ________________________________________
Approved as to Form:

MICHAEL D. HAKEEM
Grupe's Attorney

(ACKNOWLEDGMENTS ATTACHED)
EXHIBIT "A-1"

PROJECT SITE MAP
EXHIBIT "A-2"

LEGAL DESCRIPTION
EXHIBIT "B"

ORDINANCE NO. _____
RECORDERING REQUESTED BY:

MICHAEL D. HAKEEM

AND WHEN RECORDED MAIL TO:

MICHAEL D. HAKEEM
HAKEEM, ELLIS, AND MARENGO
3414 BROOKSIDE ROAD, SUITE 100
STOCKTON, CA 95219

AGREEMENT BY AND BETWEEN THE CITY OF STOCKTON
AND THE ALPINE PACKING COMPANY RELATING TO
370 ACRES AT THE NORTHWEST CORNER OF EIGHT MILE
ROAD AND WEST LANE IN NORTHEAST STOCKTON
RECITALS

AGREEMENT

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Section 4.09 No Third Party Rights Created
Section 4.10 Construction
Section 4.11 Other Miscellaneous Terms
Section 4.12 Exhibits
Section 4.13 Recordation
AGREEMENT

BY AND BETWEEN THE CITY OF STOCKTON

AND

ALPINE PACKING COMPANY, INC.

RELATING TO 370 ACRES AT THE NORTHWEST CORNER OF EIGHT MILE ROAD AND WEST LANE IN NORTHEAST STOCKTON

THIS AGREEMENT ("Agreement") is entered into this ___ day of _____ 2004, by and between the CITY OF STOCKTON, a municipal corporation (hereinafter "City"), and ALPINE PACKING COMPANY, a California corporation (hereinafter "Alpine"), pursuant to section 65864 et seq. of the Government Code of the State of California. Alpine and City are, from time to time, hereinafter referred to individually as a "party" and collectively as the "parties." This Agreement is entered into on the basis of the following facts, understandings and intentions of the parties.

RECITALS

A. The subject of this Agreement are those certain parcels of land, consisting of approximately three hundred seventy (370) acres located within the City Sphere of Influence or subject to a request to amend the City's sphere of influence to include the land, as diagrammed in Exhibit "A-1" and more particularly described in Exhibit "A-2" attached hereto and incorporated herein by this reference, commonly known as the Alpine Packing property and referred to herein as the "Project Site". Alpine represents that it has an equitable or a legal interest in the Project Site and that all other persons holding legal or equitable interests in the Project Site shall be bound by this Agreement.

B. As further described in Recital C below, Alpine and City ultimately seek to secure through a "Specific Plan" and "Subsequent Development Agreement" an enforceable arrangement by which Alpine shall be allowed to develop within the Project Site in accordance with the ordinances, policies and standards of the City, the permitted uses, the maximum height and size of buildings, within the density of population and intensity of buildings and with reservations and dedications for public purposes as authorized by the General Plan and Zoning Ordinance (the "Property").

C. The Subsequent Development Agreement, and not this Agreement, is the "Development Agreement" referred to in the Development Code in Chapter 16 of the City Ordinances. Alpine and City envision that the benefits and burdens of the Project
described in Recital B above shall only become enforceable through the Subsequent Development Agreement, which the parties will make a good faith effort to negotiate simultaneous with the City's review of Alpine's Specific Plan application (and any necessary Zoning/General Plan Amendment application) so that it may be entered into and executed by the parties at such time as a Final EIR is certified, and the Specific Plan application (and any necessary Zoning/General Plan Amendment application) is acted upon by the City. Therefore, neither City nor Alpine obligates itself to benefit or burden the Project Site with the above described Project until such time as a Final EIR is certified, the Specific Plan application is favorably acted upon by the City, the Subsequent Development Agreement is successfully negotiated, entered into, approved and becomes binding on the parties, and all such Project Approvals have not been challenged within the applicable statutes of limitation, as further described in Section 2.03(g) and Section 2.03(h) of this Agreement. However, if Alpine so chooses, it may subject itself to the benefits and burdens of the Project without the execution and approval of a Subsequent Development Agreement, if such benefits and burdens have been adopted by the City in a Specific Plan. Consistent with the above, nothing contained in this Agreement shall be interpreted as providing an obligation (of requiring the parties to enter into such a Subsequent Development Agreement or to approve such Specific Plan and Zoning) different than that obligation (if any) that would otherwise apply in the absence of this Agreement under the current City General Plan or any updates. Any Subsequent Development Agreement must include all owners of an interest in Alpine Packing property unless City, in its sole discretion, allows a Subsequent Development Agreement involving less than all owners of an interest in Alpine Packing property.

D. Alpine has or will apply to the City for certain environmental and Specific Plan approvals, permits and other entitlements relating to the development of the Project. These actions are collectively referred to in this Agreement as the "Project Approvals," and include the following:

(1) CEQA Compliance. Pursuant to the California Environmental Quality Act, the State CEQA Guidelines, and the City's local CEQA implementing guidelines and procedures (collectively, "CEQA"), the Project and the Project Approvals will be the subject of an environmental impact report ("EIR") and any other environmental review required for CEQA compliance. The information in the EIR will be considered by the Planning Commission and the City Council as part of its consideration of the Specific Plan and related Project Approvals.

(2) Specific Plan. As described in Section 2.03(g) of this Agreement, if a Specific Plan application is submitted to City under this Agreement, Alpine shall prepare and submit the Specific Plan as a single application, which Plan/application shall encompass the entire Project Site, and which Plan/application shall be consistent with the land use policies of the City and the provisions of this Agreement. However, nothing in this Agreement shall be interpreted to require the submittal of any Specific plan application by Alpine if it does not seek to develop the Project Site with uses other than "Agricultural Uses" (as that term is used below) during the Term of this Agreement. Consistent with the forgoing, should Alpine make application for a Specific Plan, nothing in this Agreement shall be interpreted to require that such submittal include exhaustive planning text or proposals for that portion of the Project Site which is intended to be used only for those agricultural uses currently allowed on the Project Site.
without a discretionary permit under the City General Plan and Specific Plan Ordinance(s) ("Agricultural Uses"). Subject to this Agreement, if submitted, said Specific Plan application shall conform to the parties' purpose and intent evidenced in Recital C of this Agreement.

(3) Zoning/General Plan Amendment. Land use designations consistent with the Specific Plan and a related General Plan amendment bringing those land use designations into the General Plan text and diagrams, shall be adopted concurrently with the Specific Plan if a Specific Plan is approved by the City. Such zoning and its related General Plan amendment is collectively referred to as "Zoning" in this Agreement.

(4) Vesting Tentative Map. The Project Approvals will include an application for a vesting tentative map ("Vesting Tentative Map") for the Project Site, which Map, if approved, will allow for the filing of multiple final vesting maps ("Final Vesting Maps") pursuant to § 66452.6 (a) of the Subdivision Map Act.

(5) Subsequent Development Agreement. As stated, it is the parties' intent to negotiate in good faith the Subsequent Development Agreement simultaneous with the City's review of the Specific Plan application (and any necessary Zoning/General Plan Amendment application) with the intent that the Subsequent Development Agreement may be approved and executed at the same time the Specific Plan application is acted upon.

E. In addition to the Project Approvals Alpine later may make application for other land use approvals, actions, agreements, permits or other entitlements necessary or desirable to the development of the Project ("Subsequent Approvals"), including without limitation subsequent subdivision maps, site plan approvals, development plan approvals, use and grading permits, lot line adjustments, sewer and water connections, design review, building permits and certificates of occupancy. Conditions of approval to such Subsequent Approvals shall also be considered included in any reference to the Subsequent Approvals.

F. On _____________, 2004, the Planning Commission, following a duly noticed and conducted public hearing, recommended that the City Council ("Council") approve this Agreement. On _____________, 2004 the Council, following a duly noticed and conducted public hearing adopted Ordinance ___________ thereby approving this Agreement on behalf of City. Ordinance No. ___________ is attached to this Agreement as Exhibit "B".

G. As used in this Agreement, the phrase "Rights and Obligations" means the entirety of the provisions of this Agreement (all the benefits, burdens and other provisions). Further, the phrase "Rights and Obligations" is comprised of the term "Rights" -- which is used in this Agreement to mean all of the rights and other benefits of the Agreement, and the term "Obligations" -- which is used in this Agreement to mean all of the duties, obligations, responsibilities and other burdens of this Agreement.

H. Development of the Project in accordance with this Agreement and the Subsequent Development Agreement will provide for orderly growth consistent with the goals, policies, and other provisions of the City's General Plan.
I. In preparing this Agreement, the parties have been guided by the decision in the matter of Santa Margarita Area Residents Together v. San Luis County Board of Supervisors (2000) 84 Cal.App.4th 221. This decision decided that a development agreement was valid under the state Development Agreement statute though the agreement focused on the planning stages of the project and anticipated that a subsequent development agreement may be prepared and approved for the specific underlying project. In preparing this Agreement the parties obtained a copy of the agreement which was the subject of the above referenced litigation and customized the form of that agreement to this Agreement.

J. The City Council of the City of Stockton finds and declares that this Agreement is consistent with the general plan of the City of Stockton. This finding is based upon the written staff report, oral comments by the City staff and other written and oral testimony received at the public hearing.

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

AGREEMENT

ARTICLE 1. GENERAL PROVISIONS.

Section 1.01. Incorporation of Recitals. The preamble, the Recitals, and all defined terms set forth in both, are hereby incorporated into this Agreement as if set forth herein in full.

Section 1.02. Covenants. The provisions of this Agreement shall constitute covenants and/or servitudes which shall run with the land comprising the Project Site.

Section 1.03. Effective Date. This Agreement shall become effective upon the effective date of Ordinance No. _____ approving this Agreement, or the date upon which this Agreement is executed by Alpine and by the City, whichever is later ("Effective Date").

Section 1.04. Term

(a) The "Term" of this Agreement shall be determined pursuant to this Section 1.04. The Term shall commence upon the Effective Date and shall continue until the first to occur of the following:

(1) The fifth (5th) anniversary of the Effective Date; or,

(2) That date that a Specific Plan is approved, becomes effective (through the resolution or ordinance adopting it taking legal effect), is binding on the parties, and is not undone by a referendum or is not challenged within the applicable statute of limitations.
(b) In addition to the Term described in subdivision (a) above, the Term shall be for:

(1) Any period or periods of time up to a maximum of seven (7) years from the Effective Date in which this Agreement or any of the Project Approvals (including the Subsequent Development Agreement) is the subject of litigation in a California court of competent jurisdiction initiated by a party other than Alpine or City or their respective assigns, transferees or successors in interest; and

(2) Any period of time up to a maximum of seven (7) years from the Effective Date in which this Agreement or the Project Approvals are suspended pending the legal outcome of an electoral vote on a referendum.

(c) Following the expiration of the Term, this Agreement shall be deemed terminated and of no further force and effect.

ARTICLE 2. APPLICABLE LAW AND PROCESSING.

Section 2.01 Right to Applicable Law. During the Term of this Agreement any and all Project Approvals (e.g. General Plan amendment(s), Specific Plan, Zoning, Subsequent Development Agreement) shall be processed, considered, reviewed, acted upon (i.e., approved, conditionally approved or denied) by City pursuant only to this Agreement and the "Applicable Law" it describes.

Section 2.02. Applicable Law. The "Applicable Law" shall mean all of the following:

(a) Laws Currently in Effect. Those "City Laws" in force, effect and operation on the Effective Date of this Agreement. As used in the preceding sentence, "City Laws" shall mean and include all City laws, ordinances, resolutions, rules, regulations, policies, or any other action, whether enacted or adopted by the City, or its electorate through the initiative or referendum process.

(b) Changes in State and Federal Law. Those changes in City Law expressly required by State or federal laws or regulations. If the application of such changes prevents or precludes performance, of one or more provisions of this Agreement, City and Alpine shall take any and all such actions as may be necessary or appropriate to ensure that the provisions of this Agreement shall be implemented to the maximum extent practicable.

(c) Processing Fees. Those processing fees ("Processing Fees") charged by the City for the City's administrative time and related costs incurred relating to the preparation and/or consideration of any application for Project Approvals requested by Alpine and to the extent that said Processing Fees are adopted and in effect Citywide at such time(s) said applications are submitted to the City.

Section 2.03. City Processing of Approvals.
(a) **Application Processing.** Upon receipt of an application accepted as complete by the City and upon payment of Processing Fees for any Project Approval meeting the requirements of Applicable Law (such applications and Processing Fees collectively referred to herein as the "Application"), City shall commence and complete all steps necessary to act on (approve, conditionally approve or deny) the Application, including without limitation:

1. The notice and holding of all required public hearings; and

2. Taking final action on the application (approve, conditionally approve or deny) in compliance with this Agreement and the Applicable Law.

(b) **Decision on Application.** City may impose conditions of approval on an Application to the extent that such conditions of approval are consistent with the Applicable Law, or are necessary to make the Application consistent with or bring the Application into compliance with the Applicable Law. If City denies any such Application for a Project Approval, City must specify in writing the basis for the making such denial in order to assist Alpine in resubmitting and ultimately securing City approval of the requested Project Approval. Any such denial or specified modifications shall be consistent with this Agreement and the Applicable Law. City and Alpine shall, with due diligence and in good faith, cooperate to process and either approve, conditionally approve or deny any applications for Project Approvals.

(c) **Cooperation.** Alpine shall provide City, in a timely manner, all documents, applications, plans, and other information necessary for the City to carry out its obligations hereunder and shall cause Alpine's planners, engineers, and other consultants to submit to City, in a timely manner, all required materials and documents. It is the express intent of Alpine and City to cooperate and diligently work to process and either approve, conditionally approve or deny all Applications for Project Approvals.

(d) **Processing Timelines.** City shall review materials submitted for processing, considering and acting upon (approving or denying) the EIR, Specific Plan, Zoning and Subsequent Development Agreement in a timely and expeditious manner. City staff shall review and comment upon administrative draft materials within 30 days of submittal by Alpine.

(e) **Other Governmental Permits.** Alpine shall apply in a timely manner for such other permits, approvals, grants, agreements and other entitlements ("Entitlements") as may be required by other agencies having jurisdiction over, or in connection with the development of, or provision of services to, the Project. City shall cooperate with Alpine relative to such entitlements.

(f) **Environmental Mitigation.** In connection with City's review of the Project Approvals, Subsequent Approvals or issuance of any other permit, approval or other entitlement that is subject to CEQA, City shall promptly commence and diligently process any and all preliminary reviews, initial studies and other assessments required by CEQA, and to the extent permitted or required by CEQA and accepted and agreed to by Alpine, City shall use and adopt any environmental impact report(s) certified for the Project, addenda thereto, and
other existing environmental reports and studies as adequately addressing the environmental impacts of such matter or matters without requiring new or supplemental environmental documentation.

(g) **Specific Plan Application.** When a subdivision of the property is desired, Alpine shall make application to the City for a Specific Plan subject to this Agreement. In order to allow for proper environmental critique and land planning, the Specific Plan application submitted by Alpine shall describe the Project and shall expressly state that Alpine is willing, through the Subsequent Development Agreement, to commit to the Rights and Obligations outlined in Recital paragraph B in this Agreement if, and only if, Alpine secures the benefits and burdens outlined in Recital paragraph B in this Agreement. The Specific Plan shall indicate all necessary information regarding the location, scope and detail of the proposed benefit and/or burden of the Project, but shall recognize and indicate that its implementation will be accomplished through the Subsequent Development Agreement. However, if Alpine so chooses, it may subject itself to the benefits and burdens of the Project without the execution and approval of a Subsequent Development Agreement, if such benefits and burdens have been adopted and required by the City in the Specific Plan. If a Specific Plan application for the Project and Project Site is submitted to the City during the Term of this Agreement, Alpine shall prepare and submit the Specific Plan as a single application, which Specific Plan application shall encompass the entire Project Site, and which Plan/application shall be consistent with the development policies of the City, including the requirement for public participation, and the provisions of this Agreement. However, nothing in this Agreement shall be interpreted to require the submittal of any Specific plan application by Alpine if it does not seek to use any portion of the Project Site for uses other than those Agricultural Uses allowed under City Law during the Term of this Agreement. Consistent with the forgoing, should Alpine make application for such Specific Plan, nothing in this Agreement shall be interpreted to require that such submittal include exhaustive planning text or proposals for that portion the Project Site which is designated to be used only for Agricultural Uses currently allowed on the Project Site under City Law. Subject to this Agreement, if submitted, said Specific Plan application shall conform to the parties' purpose and intent evidenced in Recital C of this Agreement.

(h) **Subsequent Development Agreement.** Simultaneous with City review of the Specific Plan, City and Alpine will make a good faith effort to negotiate a Subsequent Development Agreement that shall, if agreed upon, provide Alpine with a vested right to the benefits and burdens of the Project. However, if Alpine chooses, it may subject itself to the benefits and burdens of the Project without the execution and approval of a Subsequent Development Agreement, if such benefits and burdens have been adopted and required by the Specific Plan. The subsequent Development Agreement and all other Project Approvals are of legal force, effect and operation, provided that the Specific Plan, Subsequent Development Agreement and other Project Approvals are of the form and substance mutually agreed to by the parties and further provided that a legal challenge to such Subsequent Development Agreement and other Project Approvals has not been filed and served within the applicable statute of limitations. In the event that such a legal challenge is filed and served within the applicable statutes of limitations, the parties shall meet and confer to determine what course of action to take.

**ARTICLE 3. DEFAULT; ANNUAL REVIEW; TRANSFER NOTICE.**
Section 3.01. Default.

(a) Failure or unreasonable delay by either party to perform any term, provision, or condition of this Agreement for a period of thirty (30) days after receipt of a written "Notice of Default" from the other party shall constitute a default under this Agreement, subject to extensions of time by mutual consent of the parties in writing. Said Notice of Default and extensions of time shall be given pursuant to Section 4.01 of this Agreement. Said Notice of Default shall specify the nature of the alleged default and, where appropriate, the manner and period of time in which said alleged default may be satisfactorily cured. If the nature of the alleged default is such that it cannot reasonably be cured within such 30-day period, the commencement of the cure within such time period and the diligent prosecution to completion of the cure shall be deemed a cure within such period.

(b) During any period of curing, neither party shall be considered in default for the purposes of termination or institution of a Legal Action. If the alleged default is cured, then no default shall exist and the noticing party shall take no further action.

(c) Subject to the foregoing, after Notice of Default and expiration of the 30-day period without cure, either party, at its option, may institute a Legal Action.

(d) Evidence of a party's default may also arise in the course of the regularly scheduled Annual Review of this Agreement as described in Section 3.02 of this Agreement.

(e) Failure or delay by either party in giving Notice of Default pursuant to this Section shall not constitute a waiver of any default. Any failure or delay by either party in asserting any of its rights or remedies as to any default shall not operate as a waiver of any default or of any such rights or remedies or deprive the party of its Legal Rights or right to bring a Legal Action which the party may deem necessary to protect, assert, or enforce any such Legal Rights.

Section 3.02. Annual Review. The City shall review the extent of good faith compliance by Alpine with the terms of this Agreement at least every 12 months from the Effective Date (the "Annual Review"). The City Planning Director may, in his or her sole discretion, review such good faith compliance more often than once every 12 months. At the time of such Annual Review (whether every 12 months or sooner) Alpine shall be required to demonstrate good faith compliance with the terms of this Agreement. City failure to hold such an Annual Review shall not constitute a default under this Agreement.

Section 3.03. Enforced Delay: Extension of Time Performance. In addition to Specific Plan 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, acts of God, governmental restrictions imposed or mandated by other governmental entities, enactment of conflicting state or federal laws or regulations, new or supplemental environmental regulations, judicial decisions, or similar basis for excused
performance which is not within the reasonable control of the party to be excused. Litigation attacking the validity of this Agreement, any of the Project Approvals, or any permit, ordinance, entitlement or other action of a governmental agency necessary for the development of the Project pursuant to this Agreement shall be deemed to create an excusable delay as to Alpine. Upon the request of either party hereto, an extension of time for such cause will be granted in writing for the period of the enforced delay, or longer as may be mutually agreed upon.

Section 3.04. Notice of Transfer. City shall have no approval power over any transfer of all or any portion of the Project Site. In any such transfer, Alpine shall not sever any Rights from any Obligations under this Agreement; instead, the transferee (successor in interest) shall take all Rights with all the Obligations under this Agreement. Alpine shall provide written notice to City (such notice given pursuant to § 4.01 of this Agreement) of its sale of all or any portion of the Project Site to a third party within thirty (30) days of such sale. The "sale" for the purposes of Alpine providing City with such notice shall mean the recordation of a grant deed(s) relating to that sale. Failure of Alpine to provide such notice shall be subject to Section 3.01 of this Agreement.

ARTICLE 4. MISCELLANEOUS.

Section 4.01. Notices.

(a) Any notice or communication required hereunder between City or Alpine shall be in writing, and may be given either personally, by registered or certified mail, return receipt requested, or by facsimile (fax) transmission. If given by such registered or certified mail, the same shall be deemed to have been given and received on the first to occur of (i) actual receipt by any of the addressees designated below as the party to whom notices are to be sent, or (ii) five (5) days after such a registered or certified letter containing such notice, properly addressed, with postage prepaid, is deposited in the United States mail. If personally delivered, a notice shall be deemed to have been given when delivered to the party to whom it is addressed. If sent by facsimile transmission, a notice shall be deemed to have been given when received by the party to whom it is addressed. Any party hereto may at any time, by giving ten (10) days written notice to the other party hereto, designate any other address in substitution of the address to which such notice or communication shall be given.

(b) Such notices or communications shall be given to the parties at their addresses set forth below:

If to City, to:

Mr. Jim Glaser, Director
Community Development Department
City of Stockton
Stockton, CA 95202
Telephone: (209) 937-8444
Facsimile: (209) 937-8893
If to Alpine, to:

Michael D. Hakeem, Esq.
Hakeem, Ellis & Marengo
3414 Brookside Road
Stockton, CA 95219
Telephone: (209) 474-2800
Facsimile: (209) 474-3654

(c) A party may change its notice information by giving notice (in the form and manner required by this Section 4.01) to the other party. Thereafter, notices, demands and other pertinent correspondence shall be addressed and transmitted consistent with such new information.

Section 4.02. Indemnification and Hold Harmless.

(a) Acts of Alpine. As relates only to acts of Alpine, Alpine hereby agrees to defend, indemnify and save harmless the City, its elected and appointed officers, agents, employees, and representatives from any and all claims, demands, damages, costs, expenses, judgments or liability arising out of this Agreement or attempted performance of the provisions hereof, including but not limited to those predicated upon theories of violation of statute, ordinance, or regulation, professional malpractice, negligence, or recklessness including negligent or reckless operation of motor vehicles or other equipment, furnishing of defective or dangerous products or completed operations, premises liability, inverse condemnation, violation of civil rights or any act or omission to act, whether or not it be willful, intentional or actively or passively negligent on the part of Alpine or its agents, employees or independent consultants directly responsible to Alpine; providing further that the foregoing shall apply to any wrongful acts or any active or passively negligent acts or omissions to act, committed jointly or concurrently by Alpine or its agents, employees or independent consultants involved in work under this Agreement. Nothing contained in the foregoing indemnity provision shall be construed to require indemnification for claims, demands, damages, costs, expenses or judgments resulting solely from the negligence or willful misconduct of City.

(b) Acts of City. As relates to acts of the City, Alpine hereby agrees to defend, indemnify and save harmless the City, its elected and appointed officers, agents, employees, and representatives from any and all claims, demands, damages, costs, expenses, judgments or liability alleged against City and/or its elected and appointed officers, agents and employees and representatives arising out of City's performance under this Agreement or attempted performance under this Agreement. Nothing contained in the foregoing indemnity provision shall be construed to require indemnification for claims, demands, damages, costs, expenses or judgments resulting solely from the negligence or willful misconduct of City. In any action brought against City is a result of the approval of this Agreement or of any aspect of Alpine's proposals for the Project Site in which damages are not sought, and the action is directed at reversing, nullifying or remanding such approval or approvals, then, and only in such circumstances shall Alpine have the authority to make the following unilateral election:
Alpine may decide to limit its defense and indemnity obligations hereunder by making written concessions on all issues raised in such action, thereby mooting out all issues in the action. Alpine understands and agrees that the effect of such concessions may range from remanding the Project for City's reconsideration to abandonment of the Project by Alpine. Alpine also understands and agrees that in the event of its use of this election, it shall be responsible for the payment of all costs and attorney's fees connected with the litigation, including plaintiffs' attorney's fees. In order to make the aforesaid unilateral election, Alpine must provide at that time an unconditional written waiver and release of all causes of action it does then have against the City as a result of any official errors or omissions, or negligence in the handling or approval of Alpine's project, including without limitation any action for delay of development, temporary taking of Alpine's property, or interference with Alpine's prospective economic advantage.

Section 4.03. Pending Sphere of Influence Request. This Agreement is not intended to affect in any way (negatively or positively) the sphere of influence amendment application Alpine currently has pending before the City, or any amendments which may be made to it. Alpine shall be allowed to seek such sphere of influence application and City shall be allowed to consider and act on such application without the adoption of the Specific Plan or any of the other Project Approvals discussed in this Agreement.

Section 4.04. Venue. This Agreement has been executed and delivered in, and shall be interpreted, construed, and enforced pursuant to and in accordance with the laws of the State of California. All rights and obligations of the parties created there under are performable in the San Joaquin County, and San Joaquin County shall be the venue for any Legal Action or proceeding that may be brought, or arise out of, in connection with or by reason of this Agreement.

Section 4.05. Statutory Contents Requirement. The requirements of Government Code section 65865.2 are satisfied by this Agreement.

Section 4.06. Good Faith Reasonable Action. Each party shall use its best efforts and take and employ all necessary actions to ensure that the rights secured by the other party through this Agreement can be enjoyed, neither party shall take any action that will deprive the other party of the enjoyment of the rights secured through this Agreement, and each party shall act without delay on the matters which are the topic of this Agreement.

Section 4.07. Statute of Limitations. Pursuant to Government Code § 65009, no action or proceeding ("Action") by a person, public agency, or public or private corporation, partnership, association, organization nor other business or non-business entity other than the parties to the Agreement (or their successors) to attack, review, interpret, set aside, void, or annul all or any portion of the this Agreement or the decision of the City to approve and execute it shall be
maintained or allowed unless the Action is commenced and service is made on the City within ninety (90) days from the date this Agreement is adopted by the City.

Section 4.08. Third Party Lawsuit/Indemnity. In the event of a lawsuit instituted by a party other than the parties to this Agreement (or their successors in interest), including another governmental entity or official ("Third Party") challenging the validity of any provision of this Agreement ("Agreement Challenge"), the approvals ("Approval Challenge"), or any other aspect of the Project (all such Challenges are collectively referred to this Agreement as "Challenge"), the parties shall cooperate in defending against the Challenge. City shall tender the complete defense of the Challenge to Alpine (the "Tender") and upon Alpine's acceptance of the Tender, Alpine shall indemnify and hold harmless the City from all costs and liabilities arising from the Challenge and shall control the defense, and Alpine shall be responsible only for the attorneys' fees owing to the City's legal counsel. Should Alpine refuse to accept the Tender by City, City may defend the Challenge and if City so defends, Alpine shall indemnify and hold City harmless from all Third Party attorneys' fees and costs related to such defense.

Section 4.09. No Third Party Rights Created. Nothing in this Agreement, whether expressed or implied, is intended to confer any rights or remedies under or by reason of this Agreement on any persons other than the parties to it and their respective permitted successors and assigns, or if anything in this Agreement intended to relieve or discharge the obligations or liabilities of any third persons or any right of action against any party to this Agreement.

Section 4.10. Construction. This Agreement has been reviewed and revised by legal counsel for both City and Alpine, and no presumption or rule that ambiguities shall be construed against the drafting party shall apply to the interpretation or enforcement of this Agreement.

Section 4.11. Other Miscellaneous 'Terms. The singular includes the plural; the masculine gender includes the feminine; "shall" is mandatory; "may" is permissive. If there is more than one signer of this Agreement, the signer obligations are joint and several.

Section 4.12. Exhibits. This Agreement consists of fifteen (15) pages (excluding Title page, table of contents and notaries acknowledgment pages), and three (3) exhibits which constitute in full, the final and exclusive understanding and agreement of the parties and supersedes all negotiations or previous agreements between the parties with respect to all or any part of the subject matter hereof. The following exhibits are attached to this Agreement and incorporated herein by this reference for all purposes:

Exhibit “A-1” Project Site Map
Exhibit “A-2” Legal Description
Exhibit B Ordinance No. _________ (approving this Agreement).

Section 4.13. Recordation. Alpine shall sign this Agreement and shall deliver this Agreement to the City for the City Manager to sign. No later than ten (10) days after the City Manager signs this Agreement, the City Clerk shall record an executed copy of this Agreement in the Official Records of the County of San Joaquin.
IN WITNESS WHEREOF, the City and the Alpine have executed this Agreement as of the date first set forth above.

"CITY"

CITY OF STOCKTON,
a municipal corporation

By: ____________________________________________

Mark Lewis, Esq.
City Manager

Attest:

By: ____________________________________________

Katherine Gong Meissner
City Clerk

Approved as to Form:
Office of the City Attorney

By: ____________________________________________

Guy D. Petzold
Deputy City Attorney

"ALPINE"

ALPINE PACKING COMPANY, INC.
a California corporation

By: ____________________________________________

Name: ____________________________________________
Title: ____________________________________________
Approved as to Form:

MICHAEL D. HAKEEM
Alpine’s Attorney

(ACKNOWLEDGMENTS ATTACHED)
EXHIBIT "A-1"

PROJECT SITE MAP
EXHIBIT “A-2”

LEGAL DESCRIPTION
EXHIBIT "B"

ORDINANCE NO. ______
AGREEMENT BY AND BETWEEN THE CITY OF STOCKTON
AND THE JR LAUCHLAND & SONS VINEYARDS RELATING
TO APPROXIMATELY 145 ACRES
RECITALS

AGREEMENT

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   Section 1.03 Effective Date
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AGREEMENT
BY AND BETWEEN THE CITY OF STOCKTON
AND
JR LAUCHLAND & SONS VINEYARDS
RELATING TO 145 ACRES

THIS AGREEMENT ("Agreement") is entered into this ___ day of _______ 2004, by and between the CITY OF STOCKTON, a municipal corporation (hereinafter "City"), and James R. Lauchland, Robert E. Lauchland and Richard J. Lauchland, collectively doing business as JR LAUCHLAND & SONS VINEYARDS (hereinafter "Lauchland"), pursuant to the provisions of Article 2.5 of Chapter 4 of Division 1 of Title 7 of the California Government Code, Sections 65864 through 65869.5 and the City of Stockton Municipal Code, Chapter 16, Part IX, Sections 16-180 through 16-195, inclusive (the "City Municipal Code"). Lauchland and City are, from time to time, hereinafter referred to individually as a "party" and collectively as the "parties." This Agreement is entered into on the basis of the following facts, understandings and intentions of the parties.

RECATALS

A. The subject of this Agreement is that certain land, consisting of approximately 145 acres located within the City Sphere of Influence or subject to a request to revise the City’s sphere of influence to include the land, as diagrammed in Exhibit “A-1” and more particularly described in Exhibit “A-2” attached hereto and incorporated herein by this reference, and referred to herein as the "Project Site". Lauchland represents that it has an equitable or a legal interest in the Project Site and that all other persons holding legal or equitable interests in the Project Site shall be bound by this Agreement.

B. As further described in Recital C below, Lauchland and City ultimately seek to secure through a "Land Use Plan and/or a Specific Plan" and "Subsequent Development Agreement" an enforceable arrangement by which Lauchland shall be allowed to develop within the Project Site in accordance with the ordinances, policies and standards of the City, the maximum size and height of buildings within the density of population and intensity of buildings and with reservations and dedications for public purposes as authorized by the General Plan and Zoning Ordinance (the "Project").
C. The Subsequent Development Agreement, and not this Agreement, is the "Development Agreement" referred to in the Development Code in Chapter 16 of the City ordinances. Lauchland and City envision that the benefits and burdens of the Project described in Recital B above shall only become enforceable through the Subsequent Development Agreement, which the parties will make a good faith effort to negotiate simultaneous with the City's review of the first to occur of Lauchland's Land Use Plan and/or Specific Plan application(s) ("Land Use Plan/Specific Plan") (and any necessary Zoning/General Plan Amendment application) so that it may be entered into and executed by the parties at such time as a Final EIR is certified, and the Land Use Plan/Specific Plan application(s) (and any necessary Zoning/General Plan Amendment application) is acted upon by the City. Therefore, neither City nor Lauchland obligates itself to benefit or burden the Project Site with the above described Project until such time as a Final EIR is certified, the Land Use Plan/Specific Plan application(s) is/are favorably acted upon by the City, the Subsequent Development Agreement is successfully negotiated, entered into, approved and becomes binding on the parties, and all such Project Approvals have not been challenged within the applicable statutes of limitation, as further described in Section 2.03(g) and Section 2.03(h) of this Agreement. However, if Lauchland so chooses, it may subject itself to the benefits and burdens of the Project without the execution and approval of a Subsequent Development Agreement, if such benefits and burdens have been adopted by the City in the then-current General Plan update and/or a Land Use Plan/Specific Plan. Consistent with the above, nothing contained in this Agreement shall be interpreted as providing an obligation (or requiring the parties to enter into such a Subsequent Development Agreement or to approve such Land Use Plan/Specific Plan and Zoning) different than that obligation (if any) that would otherwise apply in the absence of this Agreement under the current City General Plan or any updates. Any Subsequent Development Agreement must include all owners of an interest within the Project Site unless City, in its sole discretion, allows a Subsequent Development Agreement involving less than all owners of an interest within the Project Site.

D. Lauchland has or will apply to the City for certain environmental and land use approvals, permits and other entitlements relating to the annexation and the development of the Project. These actions are collectively referred to in this Agreement as the "Project Approvals," and include the following:

(1) CEQA Compliance. Pursuant to the California Environmental Quality Act, the State CEQA Guidelines, and the City's local CEQA implementing guidelines and procedures (collectively, "CEQA"), the Project and the Project Approvals will be the subject of an environmental impact report ("EIR") and any other environmental review required for CEQA compliance. The information in the EIR will be considered by the Planning Commission and the City Council as part of its consideration of the Land Use Plan/Specific Plan and related Project Approvals.

(2) Land Use Plan/Specific Plan. As described in Section 2.03(g) of this Agreement, if Land Use Plan and/or Specific Plan application(s) is/are submitted to City under this Agreement, Lauchland shall prepare and submit the Land Use Plan and the
Specific Plan (respectively) as single applications, which Plan/application shall encompass the entire Project Site, and which Plan/application shall be consistent with the land use policies of the City and the provisions of this Agreement. However, nothing in this Agreement shall be interpreted to require the submittal of any Land Use Plan/Specific Plan application(s) by Lauchland if it does not seek to develop the Project Site with uses other than "Agricultural Uses" (as that term is used below) during the Term of this Agreement. Consistent with the foregoing, should Lauchland make application for a Land Use Plan and/or Specific Plan, nothing in this Agreement shall be interpreted to require that such submittal include exhaustive planning text or proposals for that portion of the Project Site which is intended to be used only for those Agricultural Uses currently allowed on the Project Site without a discretionary permit under the City General Plan and Land Use Ordinance(s) ("Agricultural Uses"). Subject to this Agreement, if submitted, said Land Use Plan and/or Specific Plan application(s) shall conform to the parties' purpose and intent evidenced in Recital C of this Agreement.

(3) **Zoning/General Plan Amendment.** Land use designations consistent with the Land Use Plan/Specific Plan and a related General Plan amendment bringing those land use designations into the General Plan text and diagrams, shall be adopted concurrently with the Land Use Plan/Specific Plan if a Land Use Plan and/or Specific Plan is approved by the City. Such zoning and its related General Plan amendment is collectively referred to as "Zoning" in this Agreement.

(4) **Vesting Tentative Map.** The Project Approvals will include an application for a vesting tentative map ("Vesting Tentative Map") for the Project Site, which Map, if approved, will allow for the filing of multiple final vesting maps ("Final Vesting Maps") pursuant to § 66452.6 (a) of the Subdivision Map Act.

(5) **Subsequent Development Agreement.** As stated, it is the parties' intent to negotiate in good faith the Subsequent Development Agreement simultaneous with the City's review of any Land Use Plan/Specific Plan application (and any necessary Zoning/General Plan Amendment application) with the intent that the Subsequent Development Agreement may be approved and executed at the same time the Land Use Plan/Specific Plan application is acted upon.

E. In addition to the Project Approvals Lauchland may later make application for other land use approvals, actions, agreements, permits or other entitlements necessary or desirable to the development of the Project ("Subsequent Approvals"), including without limitation subsequent subdivision maps, site plan approvals, development plan approvals, use and grading permits, lot line adjustments, sewer and water connections, design review, building permits and certificates of occupancy. Conditions of approval to such Subsequent Approvals shall also be considered included in any reference to the Subsequent Approvals.

F. On __________ 2004, the Planning Commission, following a duly noticed and conducted public hearing, recommended that the City Council ("Council")
approve this Agreement. On __________, 2004 the Council, following a duly noticed and conducted public hearing, adopted Ordinance __________ thereby approving this Agreement on behalf of City. Ordinance No.__________ is attached to this Agreement as Exhibit “B”.

G. As used in this Agreement, the phrase "Rights and Obligations" means the entirety of the provisions of this Agreement (all the benefits, burdens and other provisions). Further, the phrase "Rights and Obligations" is comprised of the term "Rights" -- which is used in this Agreement to mean all of the rights and other benefits of the Agreement, and the term "Obligations" -- which is used in this Agreement to mean all of the duties, obligations, responsibilities and other burdens of this Agreement.

H. Development of the Project in accordance with this Agreement and the Subsequent Development Agreement will provide for orderly growth consistent with the goals, policies, and other provisions of the City's General Plan.

I. In preparing this Agreement, the parties have been guided by the decision in the matter of Santa Margarita Area Residents Together v. San Luis County Board of Supervisors (2000) 84 Cal.App.4th 221. This decision decided that a development agreement was valid under the state Development Agreement statute though the agreement focused on the planning stages of the project and anticipated that a subsequent development agreement may be prepared and approved for the specific underlying project. In preparing this Agreement the parties obtained a copy of the agreement which was the subject of the above referenced litigation and customized the form of that agreement to this Agreement.

J. The City Council of the City of Stockton finds and declares that this Agreement is consistent with the general plan of the City of Stockton. This finding is based upon the written staff report, oral comments by the City staff and other written and oral testimony received at the public hearing.

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

AGREEMENT

ARTICLE 1. GENERAL PROVISIONS.

Section 1.01. Incorporation of Recitals. The preamble, the Recitals, and all defined terms set forth in both, are hereby incorporated into this Agreement as if set forth herein in full.

Section 1.02. Covenants. The provisions of this Agreement shall constitute covenants and/or servitudes which shall run with the land comprising the Project Site.
Section 1.03. Effective Date. This Agreement shall become effective upon the effective date of Ordinance No. ____ approving this Agreement, or the date upon which this Agreement is executed by Lauchland and by the City, whichever is later ("Effective Date").

Section 1.04. Term.

(a) The "Term" of this Agreement shall be determined pursuant to this Section 1.04. The Term shall commence upon the Effective Date and shall continue until the first to occur of the following:

(1) The fifth (5th) anniversary of the Effective Date; or

(2) That date that a Land Use Plan and/or Specific Plan is approved, becomes effective (through the resolution or ordinance adopting it taking legal effect), is binding on the parties, and is not undone by a referendum or is not challenged within the applicable statute of limitations.

(b) In addition to the Term described in subdivision (a) above, the Term shall be for:

(1) Any period or periods of time up to a maximum of seven (7) years from the Effective Date in which this Agreement or any of the Project Approvals (including the Subsequent Development Agreement) is the subject of litigation in a California court of competent jurisdiction initiated by a party other than Lauchland or City or their respective assigns, transferees or successors in interest; and

(2) Any period of time up to a maximum of seven (7) years from the Effective Date in which this Agreement or the Project Approvals are suspended pending the legal outcome of an electoral vote on a referendum.

(c) Following the expiration of the Term, this Agreement shall be deemed terminated and of no further force and effect.

ARTICLE 2. APPLICABLE LAW AND PROCESSING.

Section 2.01 Right to Applicable Law. During the Term of this Agreement any and all Project Approvals (e.g. General Plan amendment(s), Land Use Plan/Specific Plan, Zoning, Subsequent Development Agreement) shall be processed, considered, reviewed, acted upon (i.e., approved, conditionally approved or denied) by City pursuant only to this Agreement and the "Applicable Law" it describes.

Section 2.02. Applicable Law. The "Applicable Law" shall mean all of the following:
(a) **Laws Currently in Effect.** Those "City Laws" in force, effect and operation on the Effective Date of this Agreement. As used in the preceding sentence, "City Laws" shall mean and include all City laws, ordinances, resolutions, rules, regulations, policies, or any other action, whether enacted or adopted by the City, or its electorate through the initiative or referendum process.

(b) **Changes in State and Federal Law.** Those changes in City Law expressly required by State or federal laws or regulations. If the application of such changes prevents or precludes performance, of one or more provisions of this Agreement, City and Lauchland shall take any and all such actions as may be necessary or appropriate to ensure that the provisions of this Agreement shall be implemented to the maximum extent practicable.

(c) **Processing Fees.** Those processing fees ("Processing Fees") charged by the City for the City's administrative time and related costs incurred relating to the preparation and/or consideration of any application for Project Approvals requested by Lauchland and to the extent that said Processing Fees are adopted and in effect Citywide at such time(s) said applications are submitted to the City.

**Section 2.03. City Processing of Approvals.**

(a) **Application Processing.** Upon receipt of an application accepted as complete by the City and upon payment of Processing Fees for any Project Approval meeting the requirements of Applicable Law (such applications and Processing Fees collectively referred to herein as the "Application"), City shall commence and complete all steps necessary to act on (approve, conditionally approve or deny) the Application, including without limitation:

1. The notice and holding of all required public hearings; and
2. Taking final action on the application (approve, conditionally approve or deny) in compliance with this Agreement and the Applicable Law.

(b) **Decision on Application.** City may impose conditions of approval on an Application to the extent that such conditions of approval are consistent with the Applicable Law, or are necessary to make the Application consistent with or bring the Application into compliance with the Applicable Law. If City denies any such Application for a Project Approval, City must specify in writing the basis for the making such denial in order to assist Lauchland in resubmitting and ultimately securing City approval of the requested Project Approval. Any such denial or specified modifications shall be consistent with this Agreement and the Applicable Law. City and Lauchland shall, with due diligence and in good faith, cooperate to process and either approve, conditionally approve or deny any applications for Project Approvals.
(c) **Cooperation.** Lauchland shall provide City, in a timely manner, all documents, applications, plans, and other information necessary for the City to carry out its obligations hereunder and shall cause Lauchland’s planners, engineers, and other consultants to submit to City, in a timely manner, all required materials and documents. It is the express intent of Lauchland and City to cooperate and diligently work to process and either approve, conditionally approve or deny all Applications for Project Approvals.

(d) **Processing Timelines.** City shall review materials submitted for processing, considering and acting upon (approving or denying) the EIR, Land Use Plan/Specific Plan. Zoning and Subsequent Development Agreement in a timely and expeditious manner. City staff shall review and comment upon administrative draft materials within 30 days of submittal by Lauchland.

(e) **Other Governmental Permits.** Lauchland shall apply in a timely manner for such other permits, approvals, grants, agreements and other entitlements ("Entitlements") as may be required by other agencies having jurisdiction over, or in connection with the development of, or provision of services to, the Project. City shall cooperate with Lauchland relative to such entitlements.

(f) **Environmental Mitigation.** In connection with City’s review of the Project Approvals, Subsequent Approvals or issuance of any other permit, approval or other entitlement that is subject to CEQA, City shall promptly commence and diligently process any and all preliminary reviews, initial studies and other assessments required by CEQA, and to the extent permitted or required by CEQA and accepted and agreed to by Lauchland, City shall use and adopt any environmental impact report(s) certified for the Project, addenda thereto, and other existing environmental reports and studies as adequately addressing the environmental impacts of such matter or matters without requiring new or supplemental environmental documentation.

(g) **Land Use Plan/Specific Plan Application.** When a subdivision of the property is desired, Lauchland shall make application to the City for a Land Use Plan and/or Specific Plan subject to this Agreement. In order to allow for proper environmental critique and land planning, the Land Use Plan/Specific Plan application(s) submitted by Lauchland shall describe the Project and shall expressly state that Lauchland is willing, through the Subsequent Development Agreement, to commit to the Rights and Obligations outlined in Recital paragraph D in this Agreement if, and only if, Lauchland secures the benefits and burdens outlined in Recital paragraph D in this Agreement. Any Land Use Plan or Specific Plan shall indicate all necessary information regarding the location, scope and detail of the proposed benefit and/or burden of the Project, but shall recognize and indicate that its implementation will be accomplished through the Subsequent Development Agreement. However, if Lauchland so chooses, it may subject itself to the benefits and burdens of the Project without the execution and approval of a Subsequent Development Agreement, if such benefits and burdens have been adopted and required by the City in the Land Use Plan/Specific Plan. If a Land Use Plan/Specific Plan application for the Project and Project Site is submitted to the City during the Term of this Agreement, Lauchland shall prepare and submit the Land Use Plan/Specific Plan as a single application, which Land Use Plan/Specific Plan application shall encompass the entire Project Site, and which Plan/application shall be consistent with the development policies of the City, including the requirement for public
participation, and the provisions of this Agreement. However, nothing in this Agreement shall be interpreted to require the submittal of any Land Use Plan/Specific Plan application by Lauchland if it does not seek to use any portion of the Project Site for uses other than those Agricultural Uses allowed under City Law during the Term of this Agreement. Consistent with the foregoing, should Lauchland make application for such Land Use Plan/Specific Plan, nothing in this Agreement shall be interpreted to require that such submittal include exhaustive planning text or proposals for that portion the Project Site which is designated to be used only for Agricultural Uses currently allowed on the Project Site under City Law. Subject to this Agreement, if submitted, said Land Use Plan/Specific Plan application shall conform to the parties' purpose and intent evidenced in Recital C of this Agreement.

(h) Subsequent Development Agreement, Simultaneous with City review of any Land Use Plan or Specific Plan, City and Lauchland will make a good faith effort to negotiate a Subsequent Development Agreement that shall, if agreed upon, provide Lauchland with a vested right to the benefits and burdens of the Project. However, if Lauchland chooses, it may subject itself to the benefits and burdens of the Project without the execution and approval of a Subsequent Development Agreement, if such benefits and burdens have been adopted and required by the then-current General Plan update and/or the Land Use Plan/Specific Plan. The Subsequent Development Agreement and all other Project Approvals are of legal force, effect and operation, provided that the Land Use Plan/Specific Plan, the Subsequent Development Agreement and other Project Approvals are of the form and substance mutually agreed to by the parties and further provided that a legal challenge to such Subsequent Development Agreement and other Project Approvals has not been filed and served within the applicable statute of limitations. In the event that such a legal challenge is filed and served within the applicable statutes of limitations, the parties shall meet and confer to determine what course of action to take.

ARTICLE 3. DEFAULT; ANNUAL REVIEW; TRANSFER NOTICE.

Section 3.01. Default.

(a) Failure or unreasonable delay by either party to perform any term, provision, or condition of this Agreement for a period of thirty (30) days after receipt of a written "Notice of Default" from the other party shall constitute a default under this Agreement, subject to extensions of time by mutual consent of the parties in writing. Said Notice of Default and extensions of time shall be given pursuant to Section 4.01 of this Agreement. Said Notice of Default shall specify the nature of the alleged default and, where appropriate, the manner and period of time in which said alleged default may be satisfactorily cured. If the nature of the alleged default is such that it cannot reasonably be cured within such 30-day period, the commencement of the cure within such time period and the diligent prosecution to completion of the cure shall be deemed a cure within such period.

(b) During any period of curing, neither party shall be considered in default for the purposes of termination or institution of a Legal Action. If the alleged default is cured, then no default shall exist and the noticing party shall take no further action.

(c) Subject to the foregoing, after Notice of Default and expiration of the
30-day period without cure, either party, at its option, may institute a Legal Action.

(d) Evidence of a party's default may also arise in the course of the regularly scheduled Annual Review of this Agreement as described in Section 3.02 of this Agreement.

(e) Failure or delay by either party in giving Notice of Default pursuant to this Section shall not constitute a waiver of any default. Any failure or delay by either party in asserting any of its rights or remedies as to any default shall not operate as a waiver of any default or of any such rights or remedies or deprive the party of its Legal Rights or right to bring a Legal Action which the party may deem necessary to protect, assert, or enforce any such Legal Rights.

Section 3.02. Annual Review. The City shall review the extent of good faith compliance by Lauchland with the terms of this Agreement at least every 12 months from the Effective Date (the "Annual Review"). The City Planning Director may, in his or her sole discretion, review such good faith compliance more often than once every 12 months. At the time of such Annual Review (whether every 12 months or sooner) Lauchland shall be required to demonstrate good faith compliance with the terms of this Agreement. City failure to hold such an Annual Review shall not constitute a default under this Agreement.

Section 3.03. Enforced Delay: Extension of Time Performance. In addition to Land Use 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, acts of God, governmental restrictions imposed or mandated by other governmental entities, enactment of conflicting state or federal laws or regulations, new or supplemental environmental regulations, judicial decisions, or similar basis for excused performance which is not within the reasonable control of the party to be excused. Litigation attacking the validity of this Agreement, any of the Project Approvals, or any permit, ordinance, entitlement or other action of a governmental agency necessary for the development of the Project pursuant to this Agreement shall be deemed to create an excusable delay as to Lauchland. Upon the request of either party hereto, an extension of time for such cause will be granted in writing for the period of the enforced delay, or longer as may be mutually agreed upon.

Section 3.04. Notice of Transfer. City shall have no approval power over any transfer of all or any portion of the Project Site. In any such transfer, Lauchland shall not sever any Rights from any Obligations under this Agreement; instead, the transferee (successor in interest) shall take all Rights with all the Obligations under this Agreement. Lauchland shall provide written notice to City (such notice given pursuant to § 4.01 of this Agreement) of its sale of all or any portion of the Project Site to a third party within thirty (30) days of such sale. The "sale" for the purposes of Lauchland providing City with such notice shall mean the recordation of a grant deed(s) relating to that sale. Failure of Lauchland to provide such notice shall be subject to Section 3.01 of this Agreement.
ARTICLE 4. MISCELLANEOUS.

Section 4.01. Notices.

(a) Any notice or communication required hereunder between City or Lauchland shall be in writing, and may be given either personally, by registered or certified mail, return receipt requested, or by facsimile (fax) transmission. If given by such registered or certified mail, the same shall be deemed to have been given and received on the first to occur of (i) actual receipt by any of the addressees designated below as the party to whom notices are to be sent, or (ii) five (5) days after such a registered or certified letter containing such notice, properly addressed, with postage prepaid, is deposited in the United States mail. If personally delivered, a notice shall be deemed to have been given when delivered to the party to whom it is addressed. If sent by facsimile transmission, a notice shall be deemed to have been given when received by the party to whom it is addressed. Any party hereto may at any time, by giving ten (10) days written notice to the other party hereto, designate any other address in substitution of the address to which such notice or communication shall be given.

(b) Such notices or communications shall be given to the parties at their addresses set forth below:

If to City, to:

Mr. Jim Glaser, Director
Community Development Department
City of Stockton
Stockton, CA 95202
Telephone: (209) 937-8444
Facsimile: (209) 937-8893

If to Lauchland, to:

Mr. Robert E. Lauchland
JR Lauchland & Sons Vineyards
3855 W. Turner Road
Lodi, CA 95252
Telephone: (209) 368-2613
Facsimile: (916) 683-7197

(c) A party may change its notice information by giving notice (in the form and manner required by this Section 4.01) to the other party. Thereafter, notices, demands and other pertinent correspondence shall be addressed and transmitted consistent with such new information.

Section 4.02. Indemnification and Hold Harmless.

(a) Acts of Lauchland. As relates only to acts of Lauchland, Lauchland
hereby agrees to defend, indemnify and save harmless the City, its elected and appointed
officers, agents, employees, and representatives from any and all claims, demands,
damages, costs, expenses, judgments or liability arising out of this Agreement or
attempted performance of the provisions hereof, including but not limited to those
predicated upon theories of violation of statute, ordinance, or regulation, professional
malpractice, negligence, or recklessness including negligent or reckless operation of
motor vehicles or other equipment, furnishing of defective or dangerous products or
completed operations, premises liability, inverse condemnation, violation of civil rights
or any act or omission to act, whether or not it be willful, intentional or actively or
passively negligent on the part of Lauchland or its agents, employees or independent
consultants directly responsible to Lauchland; providing further that the foregoing shall
apply to any wrongful acts or any active or passively negligent acts or omissions to act,
committed jointly or concurrently by Lauchland or its agents, employees or independent
consultants involved in work under this Agreement. Nothing contained in the foregoing
indemnity provision shall be construed to require indemnification for claims, demands,
damages, costs, expenses or judgments resulting solely from the negligence or willful
misconduct of City.

(b) Acts of City. As relates to acts of the City, Lauchland hereby agrees to
defend, indemnify and save harmless the City, its elected and appointed officers, agents,
employees, and representatives from any and all claims, demands, damages, costs,
expenses, judgments or liability alleged against City and/or its elected and appointed
officers, agents and employees and representatives arising out of City's performance
under this Agreement or attempted performance under this Agreement. Nothing
contained in the foregoing indemnity provision shall be construed to require
indemnification for claims, demands, damages, costs, expenses or judgments resulting
solely from the negligence or willful misconduct of City. In any action brought against
City as a result of the approval of this Agreement or of any aspect of Lauchland's
proposals for the Project Site in which damages are not sought, and the action is directed
at reversing, nullifying or remanding such approval or approvals, then, and only in such
circumstances shall Lauchland have the authority to make the following unilateral
election:

Lauchland may decide to limit its defense and indemnity
obligations hereunder by making written concessions on any or
all issues raised in such action, thereby mooting out such issues
in the action. Lauchland understands and agrees that the effect
of such concessions may range from remanding the Project for
City's reconsideration to abandonment of the Project by
Lauchland. Lauchland also understands and agrees that in the
event of its use of this election, it shall be responsible for the
payment of all costs and attorney's fees connected with the
litigation, including plaintiffs' attorney's fees. In order to make
the aforesaid unilateral election, Lauchland must provide at
that time an unconditional written waiver and release of all
causes of action it does then have against the City as a result of
any official errors or omissions, or negligence in the handling
or approval of Lauchland’s project, including without limitation
any action for delay of development, temporary taking of
Lauchland’s property, or interference with Lauchland’s
prospective economic advantage.

Section 4.03. Pending Sphere of Influence Request. This Agreement is not
intended to affect in any way (negatively or positively) the sphere of influence
amendment application Lauchland currently has pending before the City, or any
amendments which may be made to it. Lauchland shall be allowed to seek such sphere
of influence application and City shall be allowed to consider and act on such
application without the adoption of the Land Use Plan/Specific Plan or any of the other
Project Approvals discussed in this Agreement.

Section 4.04. Venue. This Agreement has been executed and delivered in, and
shall be interpreted, construed, and enforced pursuant to and in accordance with the laws
of the State of California. All rights and obligations of the parties created there under are
performable in the San Joaquin County, and San Joaquin County shall be the venue for
any Legal Action or proceeding that may be brought, or arise out of, in connection with
or by reason of this Agreement.

Section 4.05. Statutory Contents Requirement. The requirements of Government
Code section 65865.2 are satisfied by this Agreement.

Section 4.06. Good Faith Reasonable Action. Each party shall use its best efforts
and take and employ all necessary actions to ensure that the rights secured by the other
party through this Agreement can be enjoyed. Neither party shall take any action that
will deprive the other party of the enjoyment of the rights secured through this
Agreement, and each party shall act without delay on the matters which are the topic of
this Agreement.

Section 4.07. Statute of Limitations. Pursuant to Government Code § 65009, no
action or proceeding ("Action") by a person, public agency, or public or private
corporation, partnership, association, organization nor other business or non-business
entity other than the parties to the Agreement (or their successors) to attack, review,
interpret, set aside, void, or annul all or any portion of the this Agreement or the decision
of the City to approve and execute it shall be maintained or allowed unless the Action is
commenced and service is made on the City within ninety (90) days from the date this
Agreement is adopted by the City.

Section 4.08. Third Party Lawsuit/Indemnity. In the event of a lawsuit instituted
by a party other than the parties to this Agreement (or their successors in interest),
including another governmental entity or official ("Third Party") challenging the
validity of any provision of this Agreement ("Agreement Challenge"), the approvals
("Approval Challenge"), or any other aspect of the Project (all such Challenges are collectively referred to this Agreement as "Challenge"), the parties shall cooperate in defending against the Challenge. City shall tender the complete defense of the Challenge to Lauchland (the "Tender") and upon Lauchland's acceptance of the Tender, Lauchland shall indemnify and hold harmless the City from all costs and liabilities arising from the Challenge and shall control the defense, and Lauchland shall be responsible only for the attorneys' fees owing to the City's legal counsel. Should Lauchland refuse to accept the Tender by City, City may defend the Challenge and if City so defends, Lauchland shall indemnify and hold City harmless from all Third Party attorneys' fees and costs related to such defense.

Section 4.09. No Third Party Rights Created. Nothing in this Agreement, whether expressed or implied, is intended to confer any rights or remedies under or by reason of this Agreement on any persons other than the parties to it and their respective permitted successors and assigns, nor if anything in this Agreement intended to relieve or discharge the obligations or liabilities of any third persons or any right of action against any party to this Agreement.

Section 4.10. Construction. This Agreement has been reviewed and revised by legal counsel for both City and Lauchland, and no presumption or rule that ambiguities shall be construed against the drafting party shall apply to the interpretation or enforcement of this Agreement.

Section 4.11. Other Miscellaneous Terms. The singular includes the plural; the masculine gender includes the feminine; "shall" is mandatory; "may" is permissive. If there is more than one signer of this Agreement, the signer obligations are joint and several.

Section 4.12. Exhibits. This Agreement consists of ________ (__) pages (excluding Title page, table of contents and notaries acknowledgment pages), and three (3) exhibits which constitute in full, the final and exclusive understanding and agreement of the parties and supersedes all negotiations or previous agreements between the parties with respect to all or any part of the subject matter hereof. The following exhibits are attached to this Agreement and incorporated herein by this reference for all purposes:

Exhibit "A-1" Project Site Map
Exhibit "A-2" Legal Description
Exhibit B - Ordinance No. ________ (approving this Agreement).

Section 4.13. Recordation. Lauchland shall sign this Agreement and shall deliver this Agreement to the City for the City Manager to sign. No later than ten (10) days after the City Manager signs this Agreement, the City Clerk shall record an executed copy of this Agreement in the Official Records of the County of San Joaquin.

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

"CITY"

CITY OF STOCKTON,
a municipal corporation

By: ____________________________
    Mark Lewis, Esq.
    City Manager

Attest:

By: ____________________________
    Katherine Gong Meissner
    City Clerk

Approved as to Form:
Office of the City Attorney

By: ____________________________
    Guy D. Petzold
    Deputy City Attorney

"LAUCHLAND"

JR LAUCHLAND & SONS VINEYARDS

By: ____________________________
    Name: Robert E. Lauchland
By: ____________________________
   Name: James R. Lauchland

By: ____________________________
   Name: Richard J. Lauchland

Approved as to Form:

______________________________
Gary W. Sawyers
Lauchland's Attorney

(ACKNOWLEDGMENTS ATTACHED)
EXHIBIT "A-1"

PROJECT SITE MAP
EXHIBIT "A-2"

LEGAL DESCRIPTION

See attached
LEGAL DESCRIPTION

THAT CERTAIN REAL PROPERTY SITUATED IN THE COUNTY OF SAN JOAQUIN, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

PARCEL ONE:

A PORTION OF THE SOUTH ONE-HALF OF SECTION 29, TOWNSHIP 3 NORTH, RANGE 6 EAST, MOUNT DIABLO BASE AND MERIDIAN ACCORDING TO THE OFFICIAL PLAT THEREOF AND OF THE NORTH ONE-HALF OF SECTION 32, TOWNSHIP 3 NORTH, RANGE 6 EAST, MOUNT DIABLO BASE AND MERIDIAN, ACCORDING TO THE OFFICIAL PLAT THEREOF, DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE WEST LINE OF SAID SECTION 29, NORTH 0 DEGREES 27 MINUTES 40 SECONDS WEST, 1289.3 FEET FROM THE SOUTHWEST CORNER OF THAT CERTAIN "290" ACRE PARCEL OF LAND AS CONVEYED BY CARRIE M. THOMPSON AND HUSBAND TO GEO C. LAWRY, ET UX., BY DEED DATED DECEMBER 4, 1916, RECORDED DECEMBER 5, 1916 IN BOOK "A" OF DEEDS, VOLUME 286, PAGE 381, SAN JOAQUIN COUNTY RECORDS, FROM WHICH POINT OF BEGINNING A 5/8" SQUARE IRON PIN MARKED R.E. 5009 BEARS SOUTH 89 DEGREES 22 MINUTES 20 SECONDS EAST, 40 FEET AND RUNNING THENCE FROM SAID POINT OF BEGINNING SOUTH 89 DEGREES 22 MINUTES 20 SECONDS EAST, 4745.0 FEET TO A 5/8" SQUARE IRON PIN MARKED R.E. 5009 SET IN THE WESTERLY LINE OF THE RIGHT OF WAY OF THE WESTERN PACIFIC RAILWAY CO., AT A POINT NORTH 23 DEGREES 48 MINUTES 30 SECONDS WEST, 1342.4 FEET FROM THE SOUTHEAST CORNER OF THE "290" ACRE PARCEL OF LAND ABOVE MENTIONED; THENCE ALONG THE SAID WESTERLY LINE OF THE WESTERN PACIFIC RAILWAY RIGHT OF WAY SOUTH 23 DEGREES 48 MINUTES 30 SECONDS WEST, 1342.4 FEET TO THE SOUTHEAST CORNER OF SAID "290" ACRE PARCEL OF LAND; THENCE ALONG THE "CENTER LINE OF AN EAST WEST CANAL" ON THE SOUTHERLY BOUNDARY LINE OF SAID "290" ACRE PARCEL OF LAND SOUTH 89 DEGREES 54 MINUTES WEST, 5276.3 FEET TO THE SOUTHWEST CORNER OF SAID "290" ACRE PARCEL; THENCE ALONG THE WEST LINE OF SAID SECTIONS 32 AND 29, NORTH 0 DEGREES 27 MINUTES 40 SECONDS WEST, 1289.3 FEET TO THE POINT OF BEGINNING.

TOGETHER WITH AN UNDIVIDED ONE-HALF INTEREST IN THE PRIVILEGE OF IRRIGATION AND DRAINAGE ON THE CANAL THAT LIES ALONG THE SOUTHERLY LINE OF THE "290" ACRE PARCEL, RECORDED DECEMBER 5, 1916 IN BOOK "A" OF DEEDS, VOLUME 286, PAGE 381, SAN JOAQUIN COUNTY RECORDS.

PARCEL TWO:

TOGETHER WITH THAT PORTION OF THE EASTERLY ONE-HALF OF DE VRIES ROAD AS ABANDONED BY THE COUNTY OF SAN JOAQUIN BY RESOLUTION R-90-593, RECORDED MAY 11, 1990 AS INSTRUMENT NO. 90046970, OFFICIAL RECORDS, TITLE TO WHICH WOULD PASS BY A CONVEYANCE DESCRIBING SAID PARCEL.
EXHIBIT "B"

ORDINANCE NO. _____
RECORDING REQUESTED BY:
Blank
AND WHEN RECORDED MAIL TO:
Name
ADDRESS
Stockton, California

AGREEMENT BY AND BETWEEN THE CITY OF STOCKTON AND CARL W. THOMPSON, JR. and FRANCINE A. THOMPSON, Co-TRUSTEES OF THE C. AND F. THOMPSON FAMILY TRUST dated JUNE 7, 2000 RELATING TO APPROXIMATELY ____ ACRES.
RECITALS

AGREEMENT

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AGREEMENT
BY AND BETWEEN THE CITY OF STOCKTON
AND CARL W. THOMPSON, JR. and FRANCINE A. THOMPSON,
Co-TRUSTEES OF THE C. and F. THOMPSON FAMILY TRUST
dated JUNE 7, 2000
RELATING TO APPROXIMATELY ____ ACRES

THIS AGREEMENT ("Agreement") is entered into this ___ day of _______
2004, by and between the CITY OF STOCKTON, a political subdivision of the State of
California (hereinafter "City"), and Carl W. Thompson, Jr. and Francine A. Thompson,
Co-Trustees of the C. and F. Family Trust dated June 7, 2000 (hereinafter "Property
Owner"), pursuant to the provisions of Article 2.5 of Chapter 4 of Division 1 of Title 7 of
the California Government Code, Sections 65864 through 65869.5 and the City of
Stockton Municipal Code, Chapter 16, Part IX, Sections 16-180 through 16-195,
inclusive. Property Owner and City are, from time to time, hereinafter referred to as
"party" This Agreement is entered into on the basis of the following facts,
understandings and intentions of the parties.

RECITALS

A. The subject of this Agreement are those certain parcels of land, consisting
of approximately ______(____) acres located within the City Sphere of Influence or
subject to a request to revise the City’s sphere of influence to include the land, as
diagrammed in Exhibit “A-1” and more particularly described in Exhibit “A-2” attached
hereto and incorporated herein by this reference, and referred to herein as the "Project
Site". Property Owner represents that it has an equitable or a legal interest in the Project
Site and that all other persons holding legal or equitable interests in the Project Site shall
be bound by this Agreement.

B. As further described in Recital C below, Property Owner and City
ultimately seek to secure through a "Land Use Plan" and "Subsequent Development
Agreement" an enforceable arrangement by which Property Owner shall be allowed to
develop within Project Site in accordance with the ordinances, policies and standards of
the City, the maximum size and height of buildings, at within the density of population
and intensity of buildings and with reservations and dedications for public purposes as
authorized by the General Plan and Zoning Ordinance.

C. The Subsequent Development Agreement, and not this Agreement, is the
"Development Agreement" referred to in the Development Code in Chapter 16 of the
City ordinances. Property Owner and City envision that the benefits and burdens of the
Project described in Recital B above shall only become enforceable through the
Subsequent Development Agreement, which the parties will make a good faith effort to negotiate simultaneous with the City's review of Property Owner's Land Use Plan application (and any necessary Zoning/General Plan Amendment application) so that it may be entered into and executed by the parties at such time as a Final EIR is certified, and the Land Use Plan application (and any necessary Zoning/General Plan Amendment application) is acted upon by the City. Therefore, neither City nor Property Owner obligates itself to benefit or burden the Project Site with the above described Project until such time as a Final EIR is certified, the Land Use Plan application is favorably acted upon by the City, the Subsequent Development Agreement is successfully negotiated, entered into, approved and becomes binding on the parties, and all such Project Approvals have not been challenged within the applicable statutes of limitation, as further described in Section 2.03(g) and Section 2.03(h) of this Agreement. However, if Property Owner so chooses, it may subject itself to the benefits and burdens of the Project without the execution and approval of a Subsequent Development Agreement, if such benefits and burdens have been adopted by the City in the current General Plan update. Consistent with the above, nothing contained in this Agreement shall be interpreted as providing an obligation (of requiring the parties to enter into such a Subsequent Development Agreement or to approve such Land Use Plan and Zoning) different than that obligation (if any) that would otherwise apply in the absence of this Agreement under the current City General Plan update. Any Subsequent Development Agreement must include all owners of an interest within the Project Site unless City, in its sole discretion, allows a Subsequent Development Agreement involving less than all owners of an interest within the Project Site.

D. Property Owner has or will apply to the City for certain environmental and land use approvals, permits and other entitlements relating to the development of the Project. These actions are collectively referred to in this Agreement as the "Project Approvals," and include the following:

1) CEQA Compliance. Pursuant to the California Environmental Quality Act, the State CEQA Guidelines, and the City's local CEQA implementing guidelines and procedures (collectively, "CEQA"), the Project and the Project Approvals will be the subject of an environmental impact report ("EIR") and any other environmental review required for CEQA compliance. The information in the EIR will be considered by the Planning Commission and the City Council as part of its consideration of the Land Use Plan and related Project Approvals.

2) Land Use Plan. As described in Section 2.03(g) of this Agreement, if a Land Use Plan application is submitted to City under this Agreement, Property Owner shall prepare and submit the Land Use Plan as a single application, which Plan/application shall encompass the entire Project Site, and which Plan/application shall be consistent with the land use policies of the City and the provisions of this Agreement. However, nothing in this Agreement shall be interpreted to require the submittal of any Land Use plan application by Property Owner if it does not seek to develop the Project Site with uses other than "Agricultural Uses" (as that term is defined below) during the Term of this Agreement. Consistent with the forgoing, should Property Owner make
application for a Land Use Plan, nothing in this Agreement shall be interpreted to require that such submittal include exhaustive planning text or proposals for that portion of the Project Site which is intended to be used only for those agricultural uses currently allowed on the Project Site without a discretionary permit under the City General Plan and Land Use Ordinance(s) ("Agricultural Uses"). Subject to this Agreement, if submitted, said Land Use Plan application shall conform to the parties' purpose and intent evidenced in Recital C of this Agreement.

(3) Zoning/General Plan Amendment. Land use designations consistent with the Land Use Plan and a related General Plan amendment bringing those land use designations into the General Plan text and diagrams, shall be adopted concurrently with the Land Use Plan if a Land Use Plan is approved by the City. Such zoning and its related General Plan amendment is collectively referred to as "Zoning" in this Agreement.

(4) Vesting Tentative Map. The Project Approvals will include an application for a vesting tentative map ("Vesting Tentative Map") for the Project Site, which Map, if approved, will allow for the filing of multiple final vesting maps ("Final Vesting Maps") pursuant to § 66452.6 (a) of the Subdivision Map Act.

(5) Subsequent Development Agreement. As stated, it is the parties' intent to negotiate in good faith the Subsequent Development Agreement simultaneous with the City's review of the Land Use Plan application (and any necessary Zoning/General Plan Amendment application) with the intent that the Subsequent Development Agreement may be approved and executed at the same time the Land Use Plan application is acted upon.

E. In addition to the Project Approvals Property Owner later may make application for other land use approvals, actions, agreements, permits or other entitlements necessary or desirable to the development of the Project ("Subsequent Approvals"), including without limitation subsequent subdivision maps, site plan approvals, development plan approvals, use and grading permits, lot line adjustments, sewer and water connections, design review, building permits and certificates of occupancy. Conditions of approval to such Subsequent Approvals shall also be considered included in any reference to the Subsequent Approvals.

F. On _____________, 2004, the Planning Commission, following a duly noticed and conducted public hearing, recommended that the City Council ("Council") approve this Agreement. On _____________, 2004 the Council, following a duly noticed and conducted public hearing, introduced City Ordinance _______ relating to the approval of this Agreement. On _____________, 2004 the Council adopted Ordinance _______ thereby approving this Agreement on behalf of City. Ordinance No. _______ is attached to this Agreement as Exhibit "B".
G. As used in this Agreement, the phrase "Rights and Obligations" means the entirety of the provisions of this Agreement (all the benefits, burdens and other provisions). Further, the phrase "Rights and Obligations" is comprised of the term "Rights" -- which is used in this Agreement to mean all of the rights and other benefits of the Agreement, and the term "Obligations" -- which is used in this Agreement to mean all of the duties, obligations, responsibilities and other burdens of this Agreement.

H. Development of the Project in accordance with this Agreement and the Subsequent Development Agreement will provide for orderly growth consistent with the goals, policies, and other provisions of the City's General Plan.

I. In preparing this Agreement, the parties have been guided by the opinion in the matter of Santa Margarita Area Residents Together v. San Luis County Board of Supervisors (2000) 84 Cal.App.4th 221. This decision decided that a development agreement was valid under the state Development Agreement statute though the agreement focused on the planning stages of the project and anticipated that a subsequent development agreement may be prepared and approved for the specific underlying project. In preparing this Development Agreement the parties obtained a copy of the development agreement which was the subject of the above reference litigation and customized the form of that agreement to this Agreement.

J. The City Council of the City of Stockton finds and declares that this Agreement is consistent with the general plan of the City of Stockton. This finding is based upon the written staff report, oral comments by the City staff and other written and oral testimony received at the public hearing.

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

AGREEMENT

ARTICLE 1. GENERAL PROVISIONS.

Section 1.01. Incorporation of Recitals. The preamble, the Recitals, and all defined terms set forth in both, are hereby incorporated into this Agreement as if set forth herein in full.

Section 1.02 Covenants. The provisions of this Agreement shall constitute covenants and/or servitudes which shall run with the land comprising the Project Site.

Section 1.03. Effective Date. This Agreement shall become effective upon the effective date of Ordinance No. _____ approving this Agreement, or the date upon which this Agreement is executed by Property Owner and by the City, whichever is later ("Effective Date").

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Section 1.04. Term

(a) The "Term" of this Agreement shall be determined pursuant to this Section 1.04. The Term shall commence upon the Effective Date and shall continue until the first to occur of the following:

(1) The fifth (5th) anniversary of the Effective Date; or,

(2) That date that a Land Use Plan is approved, becomes effective (through the resolution or ordinance adopting it taking legal effect), is binding on the parties, and is not undone by a referendum or is not challenged within the applicable statute of limitations.

(b) In addition to the Term described in subdivision (a) above, the Term shall be for:

(1) Any period or periods of time up to a maximum of seven (7) years from the Effective Date in which this Agreement or any of the Project Approvals (including the Subsequent Development Agreement) is the subject of litigation in a California court of competent jurisdiction initiated by a party other than Property Owner or City or their respective assigns, transferees or successors in interest; and

(2) Any period of time up to a maximum of seven (7) years from the Effective Date in which this Agreement or the Project Approvals are suspended pending the legal outcome of an electoral vote on a referendum.

(c) Following the expiration of the Term, this Agreement shall be deemed terminated and of no further force and effect.

ARTICLE 2. APPLICABLE LAW AND PROCESSING.

Section 2.01 Right to Applicable Law. During the Term of this Agreement any and all Project Approvals (e.g. General Plan amendment(s), Land Use Plan, Zoning, Subsequent Development Agreement) shall be processed, considered, reviewed, acted upon (i.e., approved, conditionally approved or denied) by City pursuant only to this Agreement and the "Applicable Law" it describes.

Section 2.02. Applicable Law. The "Applicable Law" shall mean all of the following:

(a) Laws Currently in Effect. Those "City Laws" in force, effect and operation on __________, 2004. As used in the preceding sentence, "City Laws" shall mean and include all City laws, ordinances, resolutions, rules, regulations, policies, or
any other action, whether enacted or adopted by the City, or its electorate through the initiative or referendum process.

(b) Changes in State and Federal Law. Those changes in City Law expressly required by State or federal laws or regulations. If the application of such changes prevents or precludes performance, of one or more provisions of this Agreement, City and Property Owner shall take any and all such actions as may be necessary or appropriate to ensure that the provisions of this Agreement shall be implemented to the maximum extent practicable.

(c) Processing Fees. Those processing fees ("Processing Fees") charged by the City for the City's administrative time and related costs incurred relating to the preparation and/or consideration of any application for Project Approvals requested by Property Owner and to the extent that said Processing Fees are adopted and in effect Citywide at such time(s) said applications are submitted to the City.

Section 2.03. City Processing of Approvals.

(a) Application Processing. Upon receipt of an application accepted as complete by the City and upon payment of Processing Fees for any Project Approval meeting the requirements of Applicable Law (such applications and Processing Fees collectively referred to herein as the "Application"), City shall commence and complete all steps necessary to act on (approve, conditionally approve or deny) the Application, including without limitation:

(1) The notice and holding of all required public hearings; and

(2) Taking final action on the application (approve, conditionally approve or deny) in compliance with this Agreement and the Applicable Law.

(b) Decision on Application. City may impose conditions of approval on an Application to the extent that such conditions of approval are consistent with the Applicable Law, or are necessary to make the Application consistent with or bring the Application into compliance with the Applicable Law. If City denies any such Application for a Project Approval, City must specify in writing the basis for the making such denial in order to assist the Property Owner in resubmitting and ultimately securing City approval of the requested Project Approval. Any such denial or specified modifications shall be consistent with this Agreement and the Applicable Law. City and Property Owner shall, with due diligence and in good faith, cooperate to process and either approve, conditionally approve or deny any applications for Project Approvals.

(c) Cooperation. Property Owner shall provide City, in a timely manner, all documents, applications, plans, and other information necessary for the City to carry out its obligations hereunder and shall cause Property Owner's planners,
engineers, and other consultants to submit to City, in a timely manner, all required materials and documents. It is the express intent of Property Owner and City to cooperate and diligently work to process and either approve, conditionally approve or deny all Applications for Project Approvals.

(d) **Processing Timelines.** City shall review materials submitted for processing, considering and acting upon (approving or denying) the EIR, Land Use Plan. Zoning and Subsequent Development Agreement in a timely and expeditious manner. City staff shall review and comment upon administrative draft materials within 30 days of submittal by Property Owner.

(e) **Other Governmental Permits.** Property Owner shall apply in a timely manner for such other permits, approvals, grants, agreements and other entitlements ("Entitlements") as may be required by other agencies having jurisdiction over, or in connection with the development of, or provision of services to, the Project. City shall cooperate with Property Owner relative to such entitlements.

(f) **Environmental Mitigation.** In connection with City's review of the Project Approvals, Subsequent Approvals or issuance of any other permit, approval or other entitlement that is subject to CEQA, City shall promptly commence and diligently process any and all preliminary reviews, initial studies and other assessments required by CEQA, and to the extent permitted or required by CEQA and accepted and agreed to by Property Owner, City shall use and adopt any environmental impact report(s) certified for the Project addenda thereto and other existing environmental reports and studies as adequately addressing the environmental impacts of such matter or matters without requiring new or supplemental environmental documentation.

(g) **Land Use Plan Application.** When a subdivision of the property is desired, Property Owner shall make application to the City for a Land Use Plan subject to this Agreement. In order to allow for proper environmental critique and land planning, the Land Use Plan application submitted by Property Owner shall describe the Project and shall expressly state that Property Owner is willing, through the Subsequent Development Agreement, to commit to the Rights and Obligations outlined in Recital paragraph B(1) through (5) of this Agreement if, and only if, Property Owner secures the benefits and burdens outlined in Recital paragraph B(a) through (5) of this Agreement. The Land Use Plan shall indicate all necessary information regarding the location, scope and detail of the proposed benefit and/or burden of the Project, but shall recognize and indicate that its implementation will be accomplished through the Subsequent Development Agreement. However, if Property Owner so chooses, it may subject itself to the benefits and burdens of the Project without the execution and approval of a Subsequent Development Agreement, if such benefits and burdens have been adopted by the City in the Land Use Plan. If a Land Use Plan application for the Project and Project Site is submitted to City during the Term of this Agreement, Property Owner shall prepare and submit the Land Use Plan as a single application, which Land Use Plan application shall encompass the entire Project Site, and which Plan/application shall be consistent with the development policies of the City, including the requirement for public participation, and the provisions of this Agreement. However, nothing in this Agreement shall be interpreted to require the submittal of any Land Use plan application by Property Owner if it does not seek to use any portion of the Project Site for uses other than those
Agricultural Uses allowed under City Law during the Term of this Agreement. Consistent with the forgoing, should Property Owner make application for such Land Use Plan, nothing in this Agreement shall be interpreted to require that such submittal include exhaustive planning text or proposals for that portion the Project Site which is designated to be used only for Agricultural Uses currently allowed on the Project Site under City Law. Subject to this Agreement, if submitted, said Land Use Plan application shall conform to the parties’ purpose and intent evidenced in Recital C of this Agreement.

(h) **Subsequent Development Agreement.** Simultaneous with City review of the Land Use Plan, City and Property Owner will make a good faith effort to negotiate a Subsequent Development Agreement that shall, if agreed upon, provide Property Owner with a vested right to the benefits and burdens of the Project. However, if Property Owner chooses, it may subject itself to the benefits and burdens of the Project without the execution and approval of a Subsequent Development Agreement, if such benefits and burdens have been adopted in the current General Plan Update. Subsequent Development Agreement and all other Project Approvals are of legal force, effect and operation, provided that the Land Use Plan, Subsequent Development Agreement and other Project Approvals are of the form and substance mutually agreed to by the parties and further provided that a legal challenge to such Subsequent Development Agreement and other Project Approvals has not been filed and served within the applicable statute of limitations. In the event that such a legal challenge is filed and served within the applicable statutes of limitations, the parties shall meet and confer to determine what course of action to take.

**ARTICLE 3. DEFAULT; ANNUAL REVIEW; TRANSFER NOTICE.**

**Section 3.01. Default.**

(a) Failure or unreasonable delay by either party to perform any term, provision, or condition of this Agreement for a period of thirty (30) days after receipt of a written "Notice of Default" from the other party shall constitute a default under this Agreement, subject to extensions of time by mutual consent of the parties in writing. Said Notice of Default and extensions of time shall be given pursuant to Section 4.01 of this Agreement. Said Notice of Default shall specify the nature of the alleged default and, where appropriate, the manner and period of time in which said alleged default may be satisfactorily cured. If the nature of the alleged default is such that it cannot reasonably be cured within such 30-day period, the commencement of the cure within such time period and the diligent prosecution to completion of the cure shall be deemed a cure within such period.

(b) During any period of curing, neither party shall be considered in default for the purposes of termination or institution of a Legal Action. If the alleged default is cured, then no default shall exist and the noticing party shall take no further action.

(c) Subject to the foregoing, after Notice of Default and expiration of the 30-day period without cure, either party, at its option, may institute a Legal Action.
(d) Evidence of a party's default may also arise in the course of the regularly scheduled Annual Review of this Agreement as described in Section 3.02 of this Agreement.

(e) Failure or delay by either party in giving Notice of Default pursuant to this Section shall not constitute a waiver of any default. Any failure or delay by either party in asserting any of its rights or remedies as to any default shall not operate as a waiver of any default or of any such rights or remedies or deprive the party of its Legal Rights or right to bring a Legal Action which the party may deem necessary to protect, assert, or enforce any such Legal Rights.

Section 3.02. Annual Review. The City shall review the extent of good faith compliance by Property Owner with the terms of this Agreement at least every 12 months from the Effective Date (the "Annual Review"). The City Planning Director may, in his or her sole discretion, review such good faith compliance more often than once every 12 months. At the time of such Annual Review (whether every 12 months or sooner) the Property Owner shall be required to demonstrate good faith compliance with the terms of this Agreement. City failure to hold such an Annual Review shall not constitute a default under this Agreement.

Section 3.03. Enforced Delay: Extension of Time Performance. In addition to Land Use 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, acts of God, governmental restrictions imposed or mandated by other governmental entities, enactment of conflicting state or federal laws or regulations, new or supplemental environmental regulations, judicial decisions, or similar basis for excused performance which is not within the reasonable control of the party to be excused. Litigation attacking the validity of this Agreement, any of the Project Approvals, or any permit, ordinance, entitlement or other action of a governmental agency necessary for the development of the Project pursuant to this Agreement shall be deemed to create an excusable delay as to Property Owner. Upon the request of either party hereto, an extension of time for such cause will be granted in writing for the period of the enforced delay, or longer as may be mutually agreed upon.

Section 3.04. Notice of Transfer. City shall have no approval power over any transfer of all or any portion of the Project Site. In any such transfer, Property Owner shall not sever any Rights from any Obligations under this Agreement; instead, the transferee (successor interest) shall take all Rights with all the Obligations under this Agreement. Property Owner shall provide written notice to City (such notice given pursuant to § 4.01 of this Agreement) of its sale of all or any portion of the Project Site to a third party within thirty (30) days of such sale. The "sale" for the purposes of Property Owner providing City with such notice shall mean the recodation of a grant deed(s) relating to that sale. Failure of Property Owner to provide such notice shall be subject to Section 3.01 of this Agreement.
ARTICLE 4. MISCELLANEOUS.

Section 4.01. Notices.

(a) Any notice or communication required hereunder between City or Property Owner shall be in writing, and may be given either personally, by registered or certified mail, return receipt requested, or by facsimile (fax) transmission. If given by such registered or certified mail, the same shall be deemed to have been given and received on the first to occur of (i) actual receipt by any of the addressees designated below as the party to whom notices are to be sent, or (ii) five (5) days after such a registered or certified letter containing such notice, properly addressed, with postage prepaid, is deposited in the United States mail. If personally delivered, a notice shall be deemed to have been given when delivered to the party to whom it is addressed. If sent by facsimile transmission, a notice shall be deemed to have been given when received by the party to whom it is addressed. Any party hereto may at any time, by giving ten (10) days written notice to the other party hereto, designate any other address in substitution of the address to which such notice or communication shall be given.

(b) Such notices or communications shall be given to the parties at their addresses set forth below:

If to City, to:

Mr. Jim Glaser, Director
Community Development Department
City of Stockton
345 N. El Dorado Street
Stockton, CA 95202
Telephone: (209) 937-8444
Facsimile: (209) 937-8893

If to Property Owner, to:

Name
Address
Stockton, California

(c) A party may change its notice information by giving notice (in the form and manner required by this Section 4.01) to the other party. Thereafter, notices, demands and other pertinent correspondence shall be addressed and transmitted consistent with such new information.

Section 4.02. Indemnification and Hold Harmless.

(a) Acts of Property Owner. As relates only to acts of Property Owner, Property Owner hereby agrees to defend, indemnify and save harmless the City,
its elected and appointed officers, agents, employees, and representatives from any and all claims, demands, damages, costs, expenses, judgments or liability arising out of this Agreement or attempted performance of the provisions hereof, including but not limited to those predicated upon theories of violation of statute, ordinance, or regulation, professional malpractice, negligence, or recklessness including negligent or reckless operation of motor vehicles or other equipment, furnishing of defective or dangerous products or completed operations, premises liability, inverse condemnation, violation of civil rights or any act or omission to act, whether or not it be willful, intentional or actively or passively negligent on the part of Property Owner or its agents, employees or independent consultants directly responsible to Property Owner; providing further that the foregoing shall apply to any wrongful acts or any active or passively negligent acts or omissions to act, committed jointly or concurrently by Property Owner or its agents, employees or independent consultants involved in work under this Agreement. Nothing contained in the foregoing indemnity provision shall be construed to require indemnification for claims, demands, damages, costs, expenses or judgments resulting solely from the negligence or willful misconduct of City.

(b) Acts of City. As relates to acts of the City, Property Owner hereby agrees to defend, indemnify and save harmless the City, its elected and appointed officers, agents, employees, and representatives from any and all claims, demands, damages, costs, expenses, judgments or liability alleged against City and/or its elected and appointed officers, agents and employees and representatives arising out of City's performance under this Agreement or attempted performance under this Agreement. Nothing contained in the foregoing indemnity provision shall be construed to require indemnification for claims, demands, damages, costs, expenses or judgments resulting solely from the negligence or willful misconduct of City. In any action brought against City is a result of the approval of any aspect of Property Owner's proposals for the Project Site in which damages are not sought, and the action is directed at reversing, nullifying or remanding such approval or approvals, then, and only in such circumstances shall Property Owner have the authority to make the following unilateral election:

Property Owner may decide to limit its defense and indemnity obligations hereunder by making written concessions on all issues raised in such action, thereby mooting out all issues in the action. Property Owner understands and agrees that the effect of such concessions may range from remanding the Project for City's reconsideration to abandonment of the Project by Property Owner. Property Owner also understands and agrees that in the event of its use of this election, it shall be responsible for the payment of all costs and attorney's fees connected with the litigation, including plaintiffs' attorney's fees. In order to make the aforesaid unilateral election, Property Owner must provide at that time an unconditional written waiver and release of all causes of action it does then
have against the City as a result of any official errors or
omissions, or negligence in the handling or approval of
Property Owner’s project, including without limitation any
action for delay of development, temporary taking of Property
Owner’s property, or interference with Property Owner’s
prospective economic advantage.

Section 4.03. Pending Sphere of Influence Request. This Agreement is not
intended to affect in any way (negatively or positively) the sphere of influence
application Property Owner currently has pending before the City, or any amendments
which may be made to it. Property Owner shall be allowed to seek such sphere of
influence application and City shall be allowed to consider and act on such application
without the adoption of the Land Use Plan or any of the other Project Approvals
discussed in this Agreement.

Section 4.04. Venue. This Agreement has been executed and delivered in, and
shall be interpreted, construed, and enforced pursuant to and in accordance with the laws
of the State of California. All rights and obligations of the parties created there under are
performable in the San Joaquin County, San Joaquin County shall be the venue for any
Legal Action or proceeding that may be brought, or arise out of, in connection with or by
reason of this Agreement.

Section 4.05. Statutory Contents Requirement. The requirements of Government
Code section 65865.2 are satisfied by the Applicable Law described by this Agreement.

Section 4.06. Good Faith Reasonable Action. Each party shall use its best efforts
and take and employ all necessary actions to ensure that the rights secured by the other
party through this Agreement can be enjoyed, neither party shall take any action that will
deprive the other party of the enjoyment of the rights secured through this Agreement,
and each party shall act without delay on the matters which are the topic of this
Agreement.

Section 4.07. Statute of Limitations. Pursuant to Government Code § 65009, no
action or proceeding ("Action") by a person, public agency, or public or private
corporation, partnership, association, organization nor other business or non-business
entity other than the parties to the Agreement (or their successors) to attack, review,
interpret, set aside, void, or annul all or any portion of the this Agreement or the decision
of the City to approve and execute it shall be maintained or allowed unless the Action is
commenced and service is made on the City within ninety (90) days from the date this
Agreement is adopted by the City.

Section 4.08. Third Party Lawsuit/Indemnity. In the event of a lawsuit instituted
by a party other than the parties to this Agreement (or their successors in interest),
including another governmental entity or official ("Third Party") challenging the
validity of any provision of this Agreement ("Agreement Challenge"), the approvals
("Approval Challenge"), or any other aspect of the Project (all such Challenges are
collectively referred to this Agreement as "Challenge"), the parties shall cooperate in
defending against the Challenge. City shall tender the complete defense of the Challenge
to Property Owner (the "Tender") and upon Property Owner's acceptance of the Tender,
Property Owner shall indemnify and hold harmless the City from all costs and liabilities
arising from the Challenge and shall control the defense, and Property Owner shall be
responsible only for the attorneys' fees owing to the legal counsel that Property Owner
chooses. Should Property Owner refuse to accept the Tender by City, City may defend
the Challenge and if City so defends, Property Owner shall indemnify and hold City
harmless from all Third Party attorneys' fees and costs related to such defense.

Section 4.09. No Third Party Rights Created. Nothing in this Agreement,
whether expressed or implied, is intended to confer any rights or remedies under or by
reason of this Agreement on any persons other than the parties to it and their respective
permitted successors and assigns, nor if anything in this Agreement intended to relieve or
discharge the obligations or liabilities of any third persons or any right of action against
any party to this Agreement.

Section 4.10. Construction. This Agreement has been reviewed and revised by
legal counsel for both City and Property Owner, and no presumption or rule that
ambiguities shall be construed against the drafting party shall apply to the interpretation
or enforcement of this Agreement.

Section 4.11. Other Miscellaneous Terms. The singular includes the plural; the
masculine gender includes the feminine; "shall" is mandatory; "may" is permissive. If
there is more than one signer of this Agreement, the signer obligations are joint and
several.

Section 4.12. Exhibits. This Agreement consists of fifteen (15) pages (excluding
Title page, table of contents and notaries acknowledgment pages), and two (2) exhibits
which constitute in full, the final and exclusive understanding and agreement of the
parties and supersedes all negotiations or previous agreements between the parties with
respect to all or any part of the subject matter hereof. The following exhibits are attached
to this Agreement and incorporated herein by this reference for all purposes:

Exhibit “A-1” Project Site Map
Exhibit “A-2” Legal Description
Exhibit B - Ordinance No. _________ (Approving this Agreement).

Section 4.13. Recordation. Property Owner shall sign this Agreement and shall
deliver this Agreement to the City for the Mayor to sign. No later than ten (10) days after
the Mayor signs this Agreement, the City Clerk shall record an executed copy of this
Agreement in the Official Records of the County of San Joaquin.
IN WITNESS WHEREOF, the City and Property Owner have executed this Agreement as of the date first set forth above.

"CITY"

CITY OF STOCKTON,
a political subdivision of the State of California

__________________________                              Date: ____________
Mayor

Attest:______________________________________________

__________________________                              Date: ____________
City Clerk

Approved as to Form:

__________________________                              Date: ____________
City Attorney

"PROPERTY OWNER"

Carl W. Thompson, Jr. and Francine A. Thompson,
Co-Trustees of the C.and F. Family Trust dated June 7, 2000

__________________________
CARL W. THOMPSON, JR.

__________________________
FRANCINE A. THOMPSON

(ACKNOWLEDGMENTS ATTACHED)
CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

STATE OF CALIFORNIA )
) Ss:
COUNTY OF SAN JOAQUIN)

On ____________, 2004, before me, __________________________, Notary Public, personally appeared __________________________, personally known to me to or proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(is), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

__________________________ (SEAL)
Notary Public Signature

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

STATE OF CALIFORNIA )
) Ss:
COUNTY OF SAN JOAQUIN)

On ____________, 2004, before me, __________________________, Notary Public, personally appeared __________________________, personally known to me to or proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(is), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

__________________________ (SEAL)
Notary Public Signature
Resolution No. 

STOCKTON CITY COUNCIL

RESOLUTION APPROVING THE INITIAL STUDY/NEGATIVE DECLARATION FOR THE CITY OF STOCKTON SPHERE OF INFLUENCE AMENDMENT NO. 1 (IS 15-04) AND RELATED AGREEMENTS

WHEREAS, an Initial Study/Negative Declaration for the Sphere of Influence Amendment No. 1 and related Sphere of Influence Agreements (DA 2-04), (DA 3-04), and (DA 4-04) (the "Project") was prepared by the City of Stockton pursuant to the California Environmental Quality Act (Public Resources Code sections 21000, et seq., hereafter "CEQA"), the Guidelines for Implementation of the California Environmental Quality Act (14 California Code of Regulations, sections 15000 et seq., hereafter the "State CEQA Guidelines") and the City of Stockton Guidelines for Implementing CEQA ("Local Guidelines"); and

WHEREAS, at its legally noticed meetings of August 26, 2004, and September 2, 2004, the Stockton Planning Commission accepted oral comments on, considered, and recommended approval of the Initial Study/Negative Declaration (IS 15-04) by the City Council; and

WHEREAS, pursuant to the City of Stockton Guidelines for Implementation of CEQA, the approval of the Initial Study/Negative Declaration was scheduled for consideration at a public meeting which was conducted by the City Council on September 14, 2004; and

WHEREAS, by this resolution, the City Council, as a lead agency under CEQA for preparing the Initial Study/Negative Declaration and as the entity with final decision-making authority in regard to the related discretionary applications, desires to comply with the requirements of CEQA, the State CEQA Guidelines, and the Local Guidelines for consideration, approval, and use of the Initial Study/Negative Declaration by the City Council, and any other responsible agencies in connection with the approval and subsequent implementation of the Project; now, therefore,
BE IT RESOLVED BY THE COUNCIL OF THE CITY OF STOCKTON, AS FOLLOWS:

The Initial Study/Negative Declaration, IS 15-04 (which is on file in the City's Community Development Department/Planning Division), is hereby approved and adopted based on the following findings:

1. The City of Stockton has, as the Lead Agency under CEQA, reviewed and considered the "Initial Study/Negative Declaration" (IS 15-04), for this project prior to any related project approvals, and that the Initial Study/Negative Declaration reflects the City's independent judgment, and has been found to be adequate for said approvals.

2. The Initial Study/Negative Declaration (IS 15-04) has been completed in compliance with the California Environmental Quality Act (CEQA), State CEQA Guidelines, and City of Stockton Guidelines for the Implementation of CEQA.

3. Based on the review of IS 15-04 and consideration of all written and oral comments received, the City Council has determined that the project will not have a significant effect on the environment.

PASSED, APPROVED and ADOPTED ____________________________.

GARY A. PODESTO
Mayor of the City of Stockton

ATTEST:

KATHERINE GONG MEISSNER
City Clerk of the City of Stockton

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Resolution No. ________

STOCKTON CITY COUNCIL

RESOLUTION APPROVING THE INITIAL STUDY/NEGATIVE DECLARATION FOR THE CITY OF STOCKTON SPHERE OF INFLUENCE AMENDMENT NO. 2 (IS 18-04) AND RELATED AGREEMENTS

WHEREAS, an Initial Study/Negative Declaration for the Sphere of Influence Amendment No. 2 and related Sphere of Influence Agreements (DA 6-04 and DA 7-04) (the "Project") was prepared by the City of Stockton pursuant to the California Environmental Quality Act (Public Resources Code sections 21000, et seq., hereafter "CEQA"), the Guidelines for Implementation of the California Environmental Quality Act (14 California Code of Regulations, sections 15000 et seq., hereafter the "State CEQA Guidelines") and the City of Stockton Guidelines for Implementing CEQA ("Local Guidelines"); and

WHEREAS, at its legally noticed meetings of August 26, 2004, and September 2, 2004, the Stockton Planning Commission accepted oral comments on, considered, and recommended approval of the Initial Study/Negative Declaration (IS 18-04) by the City Council; and

WHEREAS, pursuant to the City of Stockton Guidelines for Implementation of CEQA, the approval of the Initial Study/Negative Declaration was scheduled for consideration at a public meeting which was conducted by the City Council on September 14, 2004; and

WHEREAS, by this resolution, the City Council, as a lead agency under CEQA for preparing the Initial Study/Negative Declaration and as the entity with final decision-making authority in regard to the related discretionary applications, desires to comply with the requirements of CEQA, the State CEQA Guidelines, and the Local Guidelines for consideration, approval, and use of the Initial Study/Negative Declaration by the City Council, and any other responsible agencies in connection with the approval and subsequent implementation of the Project; now, therefore,
BE IT RESOLVED BY THE COUNCIL OF THE CITY OF STOCKTON, AS
FOLLOWS:

The Initial Study/Negative Declaration, IS 18-04 (which is on file in the City's
Community Development Department/Planning Division), is hereby approved and adopted
based on the following findings:

1. The City of Stockton has, as the Lead Agency under CEQA, reviewed
   and considered the “Initial Study/Negative Declaration” (IS 18-04), for this project prior to
   any related project approvals, and that the Initial Study/Negative Declaration reflects the
   City's independent judgment, and has been found to be adequate for said approvals.

2. The Initial Study/Negative Declaration (IS 18-04) has been completed
   in compliance with the California Environmental Quality Act (CEQA), State CEQA
   Guidelines, and City of Stockton Guidelines for the Implementation of CEQA.

3. Based on the review of IS 18-04 and consideration of all written and
   oral comments received, the City Council has determined that the project will not have a
   significant effect on the environment.

PASSED, APPROVED and ADOPTED ____________________________

GARY A. PODESTO
Mayor of the City of Stockton

ATTEST:

KATHERINE GONG MEISSNER
City Clerk of the City of Stockton
ORDINANCE NO. ________

AN ORDINANCE APPROVING THE SPHERE OF INFLUENCE AGREEMENT FOR THE NORTHWEST SPHERE OF INFLUENCE PROJECT (A.G. SPANOS/TRINITY CAPITAL, DA 2-04)

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF STOCKTON, AS FOLLOWS:

SECTION 1. Findings.

Pursuant to Stockton Municipal Code section 16-525.080, the City Council of the City of Stockton hereby finds:

A. The proposed Sphere of Influence (SOI) Agreement is in the best interests of the City, complies with the Development Code, and contains the mandatory elements as required by Section 16-525.060(B) of the Stockton Municipal Code (SMC).

B. The proposed SOI Agreement is consistent with and necessary for the consideration of the related Northwest Sphere of Influence Amendment.

C. On balance, the project, with consideration of all its aspects, will further the objectives and policies of the General Plan and will not obstruct their attainment.

D. The proposed SOI Agreement, would not endanger, jeopardize or otherwise constitute a hazard to the public convenience, health, interest, safety or general welfare of persons residing or working in the City.

E. The environmental consequences of this proposed SOI Agreement has been examined in IS 15-04, which was considered and adopted prior to approval of this SOI Agreement.

SECTION 2. Sphere of Influence Agreement.

Pursuant to Stockton Municipal Code section 16-525.070, the City Council of the City of Stockton has conducted a public hearing on September 14, 2004, and hereby approves the Northwest Sphere of Influence Agreement (A.G. Spanos/Trinity Capital, DA 2-04), based on the above findings.
SECTION 3. Effective Date.

This ordinance shall take effect and be in full force thirty (30) days after its passage.

ADOPTED: __________________________

EFFECTIVE: ________________________

______________________________
GARY A. PODESTO
Mayor of the City of Stockton

ATTEST:

______________________________
KATHERINE GONG MEISSNER
City Clerk of the City of Stockton
ORDINANCE NO. ________

AN ORDINANCE APPROVING THE SPHERE OF INFLUENCE AGREEMENT FOR THE WEST LANE SPHERE OF INFLUENCE (ALPINE PACKING CO., DA 4-04)

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF STOCKTON, AS FOLLOWS:

SECTION 1. Findings.

Pursuant to Stockton Municipal Code section 16-525.080, the City Council of the City of Stockton hereby finds:

A. The proposed Sphere of Influence (SOI) Agreement is in the best interests of the City, complies with the Development Code, and contains the mandatory elements as required by Section 16-525.060(B) of the Stockton Municipal Code (SMC).

B. The proposed SOI Agreement is consistent with and necessary for the consideration of the related West Lane Sphere of Influence Amendment.

C. On balance, the project, with consideration of all its aspects, will further the objectives and policies of the General Plan and will not obstruct their attainment.

D. The proposed SOI Agreement, would not endanger, jeopardize or otherwise constitute a hazard to the public convenience, health, interest, safety or general welfare of persons residing or working in the City.

E. The environmental consequences of this proposed SOI Agreement has been examined in IS 15-04, which was considered and adopted prior to approval of this SOI Agreement.

SECTION 2. Sphere of Influence Agreement.

Pursuant to Stockton Municipal Code section 16-525.070, the City Council of the City of Stockton has conducted a public hearing on September 14, 2004, and hereby approves the West Lane Sphere of Influence Agreement (Alpine Packing Co., DA 4-04), based on the above findings.

City Atty:
Review Date: September 2004
SECTION 3. Effective Date.

This ordinance shall take effect and be in full force thirty (30) days after its passage.

ADOPTED: ____________________________

EFFECTIVE: ____________________________

GARY A. PODESTO
Mayor of the City of Stockton

ATTEST:

KATHERINE GONG MEISSNER
City Clerk of the City of Stockton
ORDINANCE NO. ________

AN ORDINANCE APPROVING THE SPHERE OF INFLUENCE AGREEMENT FOR THE LAUCHLAND SPHERE OF INFLUENCE PROJECT (BOB LAUCHLAND, ET AL., DA 7-04)

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF STOCKTON, AS FOLLOWS:

SECTION 1. Findings.

Pursuant to Stockton Municipal Code section 16-525.080, the City Council of the City of Stockton hereby finds:

A. The proposed Sphere of Influence (SOI) Agreement is in the best interests of the City, complies with the Development Code, and contains the mandatory elements as required by Section 16-525.060(B) of the Stockton Municipal Code (SMC).

B. The proposed SOI Agreement is consistent with and necessary for the consideration of the related Lauchland Sphere of Influence Amendment.

C. On balance, the project, with consideration of all its aspects, will further the objectives and policies of the General Plan and will not obstruct their attainment.

D. The proposed SOI Agreement, would not endanger, jeopardize or otherwise constitute a hazard to the public convenience, health, interest, safety or general welfare of persons residing or working in the City.

E. The environmental consequences of this proposed SOI Agreement has been examined in IS 18-04, which was considered and adopted prior to approval of this SOI Agreement.

SECTION 2. Sphere of Influence Agreement.

Pursuant to Stockton Municipal Code section 16-525.070, the City Council of the City of Stockton has conducted a public hearing on September 14, 2004, and hereby approves the Lauchland Sphere of Influence Agreement (Bob Lauchland, et al., DA 7-04), based on the above findings.
SECTION 3. Effective Date.

This ordinance shall take effect and be in full force thirty (30) days after its passage.

ADOPTED: __________________________

EFFECTIVE: __________________________

GARY A. PODESTO
Mayor of the City of Stockton

ATTEST:

KATHERINE GONG MEISSNER
City Clerk of the City of Stockton

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ORDINANCE NO. _________

AN ORDINANCE APPROVING THE SPHERE OF INFLUENCE AGREEMENT FOR THE THOMPSON SPHERE OF INFLUENCE PROJECT (CARL THOMPSON, DA 6-04)

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF STOCKTON, AS FOLLOWS:

SECTION 1. Findings.

Pursuant to Stockton Municipal Code section 16-525.080, the City Council of the City of Stockton hereby finds:

A. The proposed Sphere of Influence (SOI) Agreement is in the best interests of the City, complies with the Development Code, and contains the mandatory elements as required by Section 16-525.060(B) of the Stockton Municipal Code (SMC).

B. The proposed SOI Agreement is consistent with and necessary for the consideration of the related Thompson Sphere of Influence Amendment.

C. On balance, the project, with consideration of all its aspects, will further the objectives and policies of the General Plan and will not obstruct their attainment.

D. The proposed SOI Agreement, would not endanger, jeopardize or otherwise constitute a hazard to the public convenience, health, interest, safety or general welfare of persons residing or working in the City.

E. The environmental consequences of this proposed SOI Agreement has been examined in IS 18-04, which was considered and adopted prior to approval of this SOI Agreement.

SECTION 2. Sphere of Influence Agreement.

Pursuant to Stockton Municipal Code section 16-525.070, the City Council of the City of Stockton has conducted a public hearing on September 14, 2004, and hereby approves the Thompson Sphere of Influence Agreement (Carl Thompson, DA 6-04), based on the above findings.
SECTION 3. Effective Date.

This ordinance shall take effect and be in full force thirty (30) days after its passage.

ADOPTED: ____________________________

EFFECTIVE: ____________________________

GARY A. PODESTO
Mayor of the City of Stockton

KATHERINE GONG MEISSNER
City Clerk of the City of Stockton
ORDINANCE NO. __________

AN ORDINANCE APPROVING THE SPHERE OF INFLUENCE AGREEMENT FOR THE SHIMA TRACT SPHERE OF INFLUENCE PROJECT (GRUPE INVESTMENT CO./KELLEY TRUST, DA 3-04)

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF STOCKTON, AS FOLLOWS:

SECTION 1. Findings.

Pursuant to Stockton Municipal Code section 16-525.080, the City Council of the City of Stockton hereby finds:

A. The proposed Sphere of Influence (SOI) Agreement is in the best interests of the City, complies with the Development Code, and contains the mandatory elements as required by Section 16-525.060(B) of the Stockton Municipal Code (SMC).

B. The proposed SOI Agreement is consistent with and necessary for the consideration of the related Shima Tract Sphere of Influence Amendment.

C. On balance, the project, with consideration of all its aspects, will further the objectives and policies of the General Plan and will not obstruct their attainment.

D. The proposed SOI Agreement, would not endanger, jeopardize or otherwise constitute a hazard to the public convenience, health, interest, safety or general welfare of persons residing or working in the City.

E. The environmental consequences of this proposed SOI Agreement has been examined in IS 15-04, which was considered and adopted prior to approval of this SOI Agreement.

SECTION 2. Sphere of Influence Agreement.

Pursuant to Stockton Municipal Code section 16-525.070, the City Council of the City of Stockton has conducted a public hearing on September 14, 2004, and hereby approves the Shima Tract Sphere of Influence Agreement (Grupe Investment Co./Kelley Trust, DA 3-04), based on the above findings.
SECTION 3. Effective Date.

This ordinance shall take effect and be in full force thirty (30) days after its passage.

ADOPTED: ____________________________

EFFECTIVE: ____________________________

GARY A. PODESTO
Mayor of the City of Stockton

ATTEST:

KATHERINE GONG MEISSNER
City Clerk of the City of Stockton

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