September 23, 2008

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 hearing may require a re-evaluation of the staff's position.

This staff report was prepared by Planning Manager David Stagnaro, AICP.
The Development Agreement, Exhibit 3, will be forwarded to the Planning Commission as soon as it is available, prior to the meeting of October 2, 2008.
Resolution No. 08-0371

STOCKTON CITY COUNCIL

RESOLUTION APPROVING THE SETTLEMENT AGREEMENT WITH THE SIERRA CLUB AND THE CALIFORNIA ATTORNEY GENERAL REGARDING THE GENERAL PLAN LITIGATION AND APPROVING THE FILING OF A CALIFORNIA ENVIRONMENTAL QUALITY ACT NOTICE OF EXEMPTION

On December 11, 2007, the City Council adopted two resolutions. The first, Resolution No. 07-0514, certified the EIR for the City's 2035 General Plan Update (the "Project") and adopted the related California Environmental Quality Act (CEQA) Findings and Statement of Overriding Considerations for the Project. The second, Resolution No. 07-0515, approved the 2035 General Plan Update and Infrastructure Studies (and Bicycle Master Plan). The General Plan Update provides direction to the City when making land use and public service decisions. All specific plans, subdivisions, public works projects, and zoning decisions must be consistent with the City's General Plan; and

The next day, on December 12, 2007, City staff filed a Notice of Determination for the Project with the County Recorder's Office; and

On January 10, 2008, the Morada Area Association and Sierra Club filed two separate Petitions for Writs of Mandate (Case Nos. CV034370 and CV034405) seeking to set aside the City's approvals of the Project on the ground that they violated CEQA. Pursuant to a stipulation signed by Petitioners and the City, an order granting consolidation of the two matters (Consolidated Case No. CV034370) was entered on January 31, 2008; and

Subsequently, attorneys from the California Department of Justice, on behalf of the Attorney General himself, contacted the City's attorneys and staff to express their possible interest in intervening in the case on the side of the Petitioners in the absence of what the Attorney General's office considered to be more aggressive City policies addressing the issue of global climate change. Recently, the City, the Sierra Club, and the Attorney General's office have engaged in productive settlement discussions, with the result that a comprehensive settlement agreement between these parties (though not the Morada Area Association) was tentatively reached (subject to City Council approval) in mid August 2008; and

Like the Sierra Club and the Attorney General, the City wants to ensure that its General Plan and the City's implementing actions address greenhouse gas ("GHG") reduction in a meaningful and constructive manner. These parties all recognize that development on the urban fringe of the City must be carefully balanced with accompanying infill development to be consistent with the state mandate of reducing

City Atty: /s/ Len
Review Date: September 3, 2008
GHG emissions, since unbalanced development will cause increased driving and increased motor vehicle GHG emissions. Therefore, the settling parties, including the City, want to promote balanced development, including adequate infill development, downtown vitalization, affordable housing, and public transportation. In addition, the parties want to ensure that development on the urban fringe is as revenue-neutral to the City as to infrastructure development and the provision of services as possible; and

At a public meeting held on August 26, 2008, the City Council and City staff heard extensive testimony on the original public draft of the proposed Settlement Agreement, including concerns raised by individuals in the development industry who could be affected by terms of the Agreement. Issues of particular note regarded the desirability of making the terms of the Agreement more flexible during the approximately two-year period in which City staff was preparing a proposed Climate Action Plan for eventual submission to the City Council. After hearing testimony to this effect, as well as testimony from people who stated that they would appreciate more time to review the Agreement, the City Council voted to delay action on the Agreement by at least one week. Based on the testimony regarding the need for increased flexibility, the City Attorney subsequently worked with counsel for the Sierra Club and the Attorney General’s office to modify the original language to add such flexibility, which is reflected in the final version of the Agreement; and

In light of all of the above considerations, and recognizing that any legislative actions contemplated by the Settlement Agreement require public input and, in some instances, environmental review prior to City Council actions, which shall reflect such input and environmental information, pursuant to State law, the parties have agreed that the City staff shall prepare various plans and studies for the City Council’s consideration and potential adoption that are aimed at effecting the parties’ above-stated general goals for future development in the City; and

The Agreement has no adverse environmental consequences, whether direct or indirect. Rather, it merely contemplates that the City staff will prepare for City Council’s consideration several plans and ordinances aimed at reducing future development’s contributions to the problem of climate change. The City Council has not waived its discretion to approve, modify or reject any of the plans and ordinances contemplated under the Settlement Agreement. Therefore, by entering into the Settlement Agreement, the City Council has not committed to any definite course of action that could result in a direct or a reasonably foreseeable indirect physical change in the environment. Moreover, the Settlement Agreement expressly acknowledges that the appropriate level of environmental review will be prepared for each of the various proposals specified in the Agreement. To the extent that any of the actions contemplated under the Settlement Agreement could in the future result in changes in the environment, such changes would be benign or environmentally beneficial and consistent with State legislative policy as set forth in the Global Warming Solutions Act of 2006, commonly known as “AB 32,” which requires California as a whole to achieve by the year 2020 GHG reductions such that overall state emissions are no greater than those that occurred in 1990; and
For these reasons and others identified below, the City has determined that the Agreement does not constitute a "project" within the meaning of CEQA and qualifies for four independent, though complementary, exemptions from CEQA; and

First, the Settlement Agreement is not a "project" because it does not commit the City to a course of action with reasonably foreseeable adverse environmental effects. Rather, the Agreement, which does not involve the direct approval of any general plan amendment, ordinance, or other defined legislative action, merely sets in motion a process that may generate a proposed "project" down the line in the form of the staff-proposed Climate Action Plan (see paragraphs 8 of Agreement), which will require compliance with CEQA before it can be adopted by the City Council either as submitted or as modified (assuming that the Council rejects the option of "no project"). Consistent with CEQA case law, the City will undertake formal environmental review only when City staff comes up with a specific proposal for which environmental analysis can be meaningful. Notably, the "Transit Gap Study" required by Paragraph 5 and the "Early Climate Protection Actions" required by paragraph 9 of the Agreement in its final form stop short of requiring specific mitigation strategies, but rather only involve consideration of possible options for reducing GHG emissions, which, if effective, would almost certainly involve environmentally beneficial, rather than detrimental, results.

Second, the "common sense" exemption set forth under CEQA Guidelines section 15061, subdivision (b)(3), applies to the Settlement Agreement. Because it can be seen with certainty that there is no possibility that the execution of the Settlement Agreement could have a significant (adverse) effect on the environment, the Agreement is not subject to CEQA; and

Third, the Settlement Agreement is categorically exempt from CEQA, pursuant to CEQA Guidelines section 15308, because approval of the Agreement is an action by a regulatory agency for the protection of the environment. This categorical exemption applies to "actions taken by regulatory agencies, as authorized by state or local ordinance, to assure the maintenance, restoration, enhancement, or protection of the environment where the regulatory process involves procedures for protection of the environment." The existing local legal authority for pursuing both the Climate Action Plan and the Early Climate Protection Actions is General Plan Policy HS-4.20, which requires the City to "adopt new policies, in the form of a new ordinance, resolution, or other type of policy document, that will require new development to reduce its greenhouse gas emissions to the extent feasible in a manner consistent with state legislative policy as set forth in Assembly Bill (AB) 32 (Health & Saf. Code, § 38500 et seq.) and with specific mitigation strategies developed by the California Air Resources Board (CARB) pursuant to AB 32"; and

Fourth, the Settlement Agreement is also exempt from CEQA pursuant to CEQA Guidelines section 15183, because the Agreement would not authorize any development beyond what was contemplated in the General Plan EIR. That provision, based on section 21083.3 of the Public Resources Code, creates an exemption for impacts of projects that are consistent with a General Plan that was the subject of an
environmental impact report, as is the case here. Although in some instances this exemption will apply only to some, but not all, impacts of qualifying projects, in other instances all impacts of projects would come under the exemption. The Settlement Agreement is an example of the latter kind of project. Here, only the timing of development contemplated by the General Plan, and perhaps the amount of energy conservation needed, may be affected; but any changed assumptions would be environmentally benign or beneficial compared to what the General Plan EIR assumed; and

Fifth, the "Transit Gap Study" required by Paragraph 5 and the "Early Climate Action Protection Actions" required by paragraph 9 of the Settlement Agreement are statutorily exempt from CEQA pursuant to CEQA Guidelines section 15262, which provides that CEQA does not apply to "feasibility and planning studies for possible future actions[.]" This exemption applies because neither Paragraph 5 nor Paragraph 9 in its form commits the City to impose any particular GHG reduction strategies on relevant development projects. Rather, they merely require the City to explore the feasibility of specified potential options; now, therefore,

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

1. The City Council, after review and consideration of the California Environmental Quality Act Notice of Exemption No. CE138-08 for the Settlement Agreement for the 2035 General Plan Update, and after using its independent judgment, approves filing of the California Environmental Quality Act Notice of Exemption for the Settlement Agreement for the 2035 General Plan Update based on the determination that was made on September 9, 2008, that this Agreement is not a "project" and qualifies for the application of exemptions from CEQA set forth in Sections 15061, subdivision. (b)(3), 15308, 15183, and 15262 of the California Environmental Quality Act Guidelines, based on the findings that: (a) the Settlement Agreement does not commit the City to a course of action with reasonably foreseeable adverse environmental effects; (b) there is no reasonable possibility that the Settlement Agreement will result in a significant adverse effect on the environment; (c) any potential effects that could result would be environmentally beneficial or (at worst) benign; (d) the City Council's decision to approve the Agreement is an example of an action by an agency to protect the environment; (e) implementation of the Agreement will not result in any adverse effects not already fully disclosed in the General Plan EIR certified in December 2007; and (f) Paragraphs 5 and 9 of the Agreement require nothing more than feasibility and planning studies and do not dictate any specific outcomes for the development projects to which they are addressed. The Council determines that any one of these grounds would have been sufficient to reach the same conclusion, namely, that the City has no obligation to conduct formal CEQA review in connection with approval of the Agreement.
2. The City Council hereby approves the Settlement Agreement, a copy of which is attached as Exhibit A, between the City, the Sierra Club and the State Attorney General's Office and authorizes the City Manager to execute it.

3. The City Manager is hereby authorized to take the steps that are appropriate to carry out the purpose and intent of this resolution.

PASSED, APPROVED AND ADOPTED ___ SEP - 9 2008

EDWARD J. CHAVEZ Mayor
of the City of Stockton

ATTEST:

KATHERINE GONG MEISSNER
City Clerk of the City of Stockton
MEMORANDUM OF AGREEMENT

This Memorandum of Agreement ("Agreement") is entered into by and between the City of Stockton ("City"), Edmund G. Brown Jr., Attorney General of California, on behalf of the People of the State of California ("Attorney General"), and the Sierra Club, and it is dated and effective as of the date that the last Party signs ("Effective Date"). The City, the Attorney General, and the Sierra Club are referred to as the "Parties."

RECITALS

On December 11, 2007, the City approved the 2035 General Plan, Infrastructure Studies Project, Bicycle Master Plan, Final Environmental Impact Report ("EIR"), and Statement of Overriding Considerations. The General Plan provides direction to the City when making land use and public service decisions. All specific plans, subdivisions, public works projects, and zoning decisions must be consistent with the City’s General Plan. As adopted in final form, the General Plan includes Policy HS-4.20, which requires the City to "adopt new policies, in the form of a new ordinance, resolution, or other type of policy document, that will require new development to reduce its greenhouse gas emissions to the extent feasible in a manner consistent with state legislative policy as set forth in Assembly Bill (AB) 32 (Health & Saf. Code, § 38500 et seq.) and with specific mitigation strategies developed by the California Air Resources Board (CARB) pursuant to AB 32."

The policy lists the following "potential mitigation strategies," among others, for the City to consider:

(a) Increased density or intensity of land use, as a means of reducing per capita vehicle miles traveled by increasing pedestrian activities, bicycle usage, and public or private transit usage; and

(b) Increased energy conservation through means such as those described in Appendix F of the State Guidelines for the California Environmental Quality Act.

The 2035 General Plan also includes other Policies and goals calling for infill development, increased transit, smart growth, affordable housing, and downtown revitalization.

In December 2006, in accordance with the requirements of the California Environmental Quality Act ("CEQA"), the City prepared and circulated a Draft EIR. Comments were received on the EIR; the City prepared responses to these comments and certified the EIR in December 2007.
On January 10, 2008, the Sierra Club filed a Petition for Writ of Mandate in San Joaquin County Superior Court (Case No. CV 034405, hereinafter “Sierra Club Action”), alleging that the City had violated CEQA in its approval of the 2035 General Plan. In this case, the Sierra Club asked the Court, among other things, to issue a writ directing the City to vacate its approval of the 2035 General Plan and its certification of the EIR, and to award petitioners’ attorney’s fees and costs.

The Attorney General also raised concerns about the adequacy of the EIR under CEQA, including but not limited to the EIR’s failure to incorporate enforceable measures to mitigate the greenhouse gas (“GHG”) emission impacts that would result from the General Plan.

The City contends that the General Plan and EIR adequately address the need for local governments to reduce greenhouse gas (“GHG”) emissions in accordance with Assembly Bill 32, and associated issues of climate change.

Because the outcome of the Parties’ dispute is uncertain, and to allow the Stockton General Plan to go forward while still addressing the concerns of the Attorney General and the Sierra Club, the Parties have agreed to resolve their dispute by agreement, without the need for judicial resolution.

The parties want to ensure that the General Plan and the City’s implementing actions address GHG reduction in a meaningful and constructive manner. The parties recognize that development on the urban fringe of the City must be carefully balanced with accompanying infill development to be consistent with the state mandate of reducing GHG emissions, since unbalanced development will cause increased driving and increased motor vehicle GHG emissions. Therefore, the parties want to promote balanced development, including adequate infill development, downtown vitalization, affordable housing, and public transportation. In addition, the parties want to ensure that development on the urban fringe is as revenue-neutral to the City as to infrastructure development and the provision of services as possible.

In light of all the above considerations, the Parties agree as follows, recognizing that any legislative actions contemplated by the Agreement require public input and, in some instances, environmental review prior to City Council actions, which shall reflect such input and environmental information, pursuant to State law:
AGREEMENT

Climate Action Plan

1. Within 24 months of the signing of this Agreement, and in furtherance of General Plan Policy HS-4.20 and other General Plan policies and goals, the City agrees that its staff shall prepare and submit for City Council adoption, a Climate Action Plan, either as a separate element of the General Plan or as a component of an existing General Plan element. The Climate Action Plan, whose adoption will be subject to normal requirements for compliance with CEQA and other controlling state law, shall include, at least, the measures set forth in paragraphs 3 through 8, below.

2. The City shall establish a volunteer Climate Action Plan advisory committee to assist the staff in its preparation and implementation of the Plan and other policies or documents to be adopted pursuant to this Agreement. This committee shall monitor the City’s compliance with this Agreement, help identify funding sources to implement this Agreement, review in a timely manner all draft plans and policy statements developed in accordance with this Agreement (including studies prepared pursuant to Paragraph 9, below), and make recommendations to the Planning Commission and City Council regarding its review. The committee shall be comprised of one representative from each of the following interests: (1) environmental, (2) non-profit community organization, (3) labor, (4) business, and (5) developer. The committee members shall be selected by the City Council within 120 days of the Effective Date, and shall serve a one-year term, with no term limits. Vacancies shall be filled in accordance with applicable City policies. The City shall use its best efforts to facilitate the committee’s work using available staff resources.

3. The Climate Action Plan shall include the following measures relating to GHG inventories and GHG reduction strategies:

a. Inventories from all public and private sources in the City:

   (1) Inventory of current GHG emissions as of the Effective Date;

   (2) Estimated inventory of 1990 GHG emissions;

   (3) Estimated inventory of 2020 GHG emissions.

The parties recognize that techniques for estimating the 1990 and 2020 inventories are imperfect; the City agrees to use its best efforts, consistent with methodologies developed by ICLEI and the California Air Resources
Board, to produce the most accurate and reliable inventories it can without disproportionate or unreasonable staff commitments or expenditures.

b. Specific targets for reductions of the current and projected 2020 GHG emissions inventory from those sources of emissions reasonably attributable to the City’s discretionary land use decisions and the City’s internal government operations. Targets shall be set in accordance with reduction targets in AB 32, other state laws, or applicable local or regional enactments addressing GHG emissions, and with Air Resources Board regulations and strategies adopted to carry out AB 32, if any, including any local or regional targets for GHG reductions adopted pursuant to AB 32 or other state laws. The City may establish goals beyond 2020, consistent with the laws referenced in this paragraph and based on current science.

c. A goal to reduce per capita vehicle miles traveled ("VMT") attributable to activities in Stockton (i.e., not solely due to through trips that neither originate nor end in Stockton) such that the rate of growth of VMT during the General Plan’s time frame does not exceed the rate of population growth during that time frame. In addition, the City shall adopt and carry out a method for monitoring VMT growth, and shall report that information to the City Council at least annually. Policies regarding VMT control and monitoring that the City shall consider for adoption in the General Plan are attached to this Agreement in Exhibit A.

d. Specific and general tools and strategies to reduce the current and projected 2020 GHG inventories and to meet the Plan’s targets for GHG reductions by 2020, including but not limited to the measures set out in paragraphs 4 through 8, below.

4. The City agrees to take the following actions with respect to a green building program:

a. Within 12 months of the Effective Date, the City staff shall submit for City Council adoption ordinance(s) that require:
(1) All new housing units to obtain Build It Green certification, based on then-current Build It Green standards, or to comply with a green building program that the City after consultation with the Attorney General, determines is of comparable effectiveness;

(2) All new non-residential buildings that exceed 5000 square feet and all new municipal buildings that exceed 5000 square feet to be certified to LEED Silver standards at a minimum, based on the then-current LEED standards, or to comply with a green building program that the City, after consultation with the Attorney General, determines is of comparable effectiveness;

(3) If housing units or non-residential buildings certify to standards other than, but of comparable effectiveness to, Build It Green or LEED Silver, respectively, such housing units or buildings shall demonstrate, using an outside inspector or verifier certified under the California Energy Commission Home Energy Rating System (HERS), or a comparably certified verifier, that they comply with the applicable standards.

(4) The ordinances proposed for adoption pursuant to paragraphs (1) through (3) above may include an appropriate implementation schedule, which, among other things, may provide that LEED Silver requirements (or standards of comparable effectiveness) for non-residential buildings will be implemented first for buildings that exceed 20,000 square feet, and later for non-residential buildings that are less than 20,000 and more than 5,000 square feet.

(5) Nothing in this section shall affect the City's obligation to comply with applicable provisions of state law, including the California Green Building Standards Code (Part 11 of Title 24 of the California Code of Regulations), which, at section 101.7, provides, among other things, that "local government entities retain their discretion to exceed the standards established by [the California Green Building Standards Code]."

b. Within 18 months of the Effective Date, the City staff shall submit for City Council adoption ordinance(s) that will require the reduction of the GHG emissions of existing housing units on any occasion when a permit to make substantial modifications to an existing housing unit is issued by the City.

c. The City shall explore the possibility of creating a local assessment district or other financing mechanism to fund voluntary actions by owners of
commercial and residential buildings to undertake energy efficiency measures, install solar rooftop panels, install "cool" (highly reflective) roofs, and take other measures to reduce GHG emissions.

d. The City shall also explore the possibility of requiring GHG-reducing retrofits on existing sources of GHG emissions as potential mitigation measures in CEQA processes.

e. From time to time, but at least every five years, the City shall review its green building requirements for residential, municipal and commercial buildings, and update them to ensure that they achieve performance objectives consistent with those achieved by the top (best-performing) 25% of city green building measures in the state.

5. Within 12 months of the Effective Date, the City staff shall submit for City Council adoption a transit program, based upon a transit gap study. The transit gap study shall include measures to support transit services and operations, including any ordinances or general plan amendments needed to implement the transit program. These measures shall include, but not be limited to, the measures set forth in paragraphs 5.b. through 5.d. In addition, the City shall consider for adoption as part of the transit program the policy and implementation measures regarding the development of Bus Rapid Transit ("BRT") that are attached to this Agreement in Exhibit B.

a. The transit gap study, which may be coordinated with studies conducted by local and regional transportation agencies, shall analyze, among other things, strategies for increasing transit usage in the City, and shall identify funding sources for BRT and other transit, in order to reduce per capita VMT throughout the City. The study shall be commenced within 120 days of the Effective Date.

b. Any housing or other development projects that are (1) subject to a specific plan or master development plan, as those terms are defined in §§ 16-540 and 16-560 of the Stockton Municipal Code as of the Effective Date (hereafter "SP" or "MDP"), or (2) projects of statewide, regional, or areawide significance, as defined by the CEQA Guidelines (hereafter "projects of significance"), shall be configured, and shall include necessary street design standards, to allow the entire development to be internally accessible by vehicles, transit, bicycles, and pedestrians, and to allow access to adjacent neighborhoods and developments by all such modes of transportation.
c. Any housing or other development projects that are (1) subject to an SP or MDP, or (2) projects of significance, shall provide financial and/or other support for transit use. The imposition of fees shall be sufficient to cover the development’s fair share of the transit system and to fairly contribute to the achievement of the overall VMT goals of the Climate Action Plan, in accordance with the transit gap study and the Mitigation Fee Act (Government Code section 66000, et seq.), and taking into account the location and type of development. Additional measures to support transit use may include dedication of land for transit corridors, dedication of land for transit stops, or fees to support commute service to distant employment centers the development is expected to serve, such as the East Bay. Nothing in this Agreement precludes the City and a landowner/applicant from entering in an agreement for additional funding for BRT.

d. Any housing or other development projects that are (1) subject to an SP or MDP or (2) projects of significance, must be of sufficient density overall to support the feasible operation of transit, such density to be determined by the City in consultation with San Joaquin Regional Transit District officials.

6. To ensure that the City’s development does not undermine the policies that support infill and downtown development, within 12 months of the Effective Date, the City staff shall submit for City Council adoption policies or programs in its General Plan that:

   a. Require at least 4400 units of Stockton’s new housing growth to be located in Greater Downtown Stockton (defined as land generally bordered by Harding Way, Charter Way (MLK), Pershing Avenue, and Wilson Way), with the goal of approving 3,000 of these units by 2020.

   b. Require at least an additional 14,000 of Stockton’s new housing units to be located within the City limits as they exist on the Effective Date (“existing City limits”).

   c. Provide incentives to promote infill development in Greater Downtown Stockton, including but not limited to the following for proposed infill developments: reduced impact fees, including any fees referenced in paragraph 7 below; lower permit fees; less restrictive height limits; less restrictive setback requirements; less restrictive parking requirements; subsidies; and a streamlined permitting process.
d. Provide incentives for infill development within the existing City limits but outside Greater Downtown Stockton and excluding projects of significance. These incentives may be less aggressive than those referenced in paragraph 6.c., above.

7. Within 12 months of the Effective Date, the City staff shall submit for City Council adoption amendments to the General Plan to ensure that development at the City’s outskirts, particularly residential, village or mixed use development, does not grow in a manner that is out of balance with development of infill. These proposed amendments shall include, but not be limited to, measures limiting the granting of entitlements for development projects outside the existing City limits and which are (1) subject to an SP or MDP, or (2) projects of significance, until certain criteria are met. These criteria shall include, at a minimum:

a. Minimum levels of transportation efficiency, transit availability (including BRT) and Level of Service, as defined by the San Joaquin Council of Government regulations, City service capacity, water availability, and other urban services performance measures;

b. Firm, effective milestones that will assure that specified levels of infill development, jobs-housing balance goals, and GHG and VMT reduction goals, once established, are met before new entitlements can be granted;

c. Impact fees on new development, or alternative financing mechanisms identified in a project’s Fiscal Impact Analysis and/or Public Facilities Financing Plan, that will ensure that the levels and milestones referenced in paragraphs 7.a. and 7.b., above, are met. Any such fees:

(1) shall be structured, in accordance with controlling law, to ensure that all development outside the infill areas within existing City limits is revenue-neutral to the City (which may necessitate higher fees for development outside this area, depending upon the costs of extending infrastructure);

(2) may be in addition to mitigation measures required under CEQA;

(3) shall be based upon a Fiscal Impact Analysis and a Public Facilities Financing Plan.

d. The City shall explore the feasibility of enhancing the financial viability of infill development in Greater Downtown Stockton, through the use of such mechanisms as an infill mitigation bank.
8. The City shall regularly monitor the above strategies and measures to ensure that they are effectively reducing GHG emissions. In addition to the City staff reporting on VMT annually, as provided in paragraph 3.c., the City staff or the advisory committee shall report annually to the City Council on the City’s progress in implementing the strategies and measures of this Agreement. If it appears that the strategies and measures will not result in the City meeting its GHG reduction targets, the City shall, in consultation with the Attorney General and Sierra Club, make appropriate modifications and, if necessary, adopt additional measures to meet its targets.

**Early Climate Protection Actions**

9. To more fully carry out those provisions of the General Plan, including the policy commitments embodied in those General Plan Policies, such as General Plan Policy HS-4.20, intended to reduce greenhouse gas emissions through reducing commuting distances, supporting transit, increasing the use of alternative vehicle fuels, increasing efficient use of energy, and minimizing air pollution, and to avoid compromising the effectiveness of the measures in Paragraphs 4 through 8, above, until such time as the City formally adopts the Climate Action Plan, before granting approvals for development projects (1) subject to an SP or MDP, or (2) considered projects of significance, and any corresponding development agreements, the City shall take the steps set forth in subsections (a) through (d) below:

(a) City staff shall:

(1) formulate proposed measures necessary for the project to meet any applicable GHG reduction targets;

(2) assess the project’s VMT and formulate proposed measures that would reduce the project’s VMT;

(3) assess the transit, especially BRT, needs of the project and identify the project’s proposed fair share of the cost of meeting such needs;

(4) assess whether project densities support transit, and, if not, identify proposed increases in project density that would support transit service, including BRT service;
(5) assess the project's estimated energy consumption, and identify proposed measures to ensure that the project conserves energy and uses energy efficiently;

(6) formulate proposed measures to ensure that the project is consistent with a balance of growth between land within Greater Downtown Stockton and existing City limits, and land outside the existing City limits;

(7) formulate proposed measures to ensure that City services and infrastructure are in place or will be in place prior to the issuance of new entitlements for the project or will be available at the time of development; and

(8) formulate proposed measures to ensure that the project is configured to allow the entire development to be internally accessible by all modes of transportation.

(b) The City Council shall review and consider the studies and recommendations of City staff required by paragraph 9(a) and conduct at least one public hearing thereon prior to approval of the proposed project (though this hearing may be folded into the hearing on the merits of the project itself).

(c) The City Council shall consider the feasibility of imposing conditions of approval, including mitigation measures pursuant to CEQA, based on the studies and recommendations of City staff prepared pursuant to paragraph 9(a) for each covered development project.

(d) The City Council shall consider including in any development approvals, or development agreements, that the City grants or enters into during the time the City is developing the Climate Action Plan, a requirement that all such approvals and development agreements shall be subject to ordinances and enactments adopted after the effective date of any approvals of such projects or corresponding development agreements, where such ordinances and enactments are part of the Climate Action Plan.

(e) The City shall complete the process described in paragraphs (a) through (d) (hereinafter, "Climate Impact Study Process") prior to the first discretionary approval for a development project. Notwithstanding the foregoing, however, for projects for which a draft environmental impact report has circulated as of the Effective Date, the applicant may request that the City
either (i) conduct the Climate Impact Study Process or (ii) complete its consideration of the Climate Action Plan prior to the adoption of the final discretionary approval leading to the project's first phase of construction. In such cases, the applicant making the request shall agree that nothing in the discretionary approvals issued prior to the final discretionary approval (i) precludes the City from imposing on the project conditions of approvals or other measures that may result from the Climate Impact Study Process, or (ii) insulates the project from a decision, if any, by the City to apply any ordinances and/or enactments that may comprise the Climate Action Plan ultimately adopted by the City.

**Attorney General Commitments**

10. The Attorney General enters into this Agreement in his independent capacity and not on behalf of any other state agency, commission, or board. In return for the above commitments made by the City, the Attorney General agrees:

a. To refrain from initiating, joining, or filing any brief in any legal challenge to the General Plan adopted on December 11, 2007;

b. To consult with the City and attempt in good faith to reach an agreement as to any future development project whose CEQA compliance the Attorney General considers inadequate. In making this commitment, the Attorney General does not surrender his right and duties under the California Constitution and the Government Code to enforce CEQA as to any proposed development project, nor his duty to represent any state agency as to any project;

c. To make a good faith effort to assist the City in obtaining funding for the development of the Climate Action Plan.

**Sierra Club Commitments**

11. The Sierra Club agrees to dismiss the Sierra Club Action with prejudice on or before January 30, 2009, provided that between the Effective Date and January 29, 2009 the City has not granted development approvals, including but not limited to approval of development agreements, for any properties located north of Eight Mile Road. Notwithstanding the foregoing agreement to dismiss the Sierra Club Action, the City and Sierra Club agree that, in the event the City should use the EIR for the 2035 General Plan.
in connection with any other project approval, the Sierra Club has not waived its right (a) to comment upon the adequacy of that EIR, or (b) to file any action challenging the City’s approval of any other project based on its use and/or certification of the EIR.

**General Terms and Conditions**

12. This Agreement represents the entire agreement of the Parties, and supercedes any prior written or oral representations or agreements of the Parties relating to the subject matter of this Agreement.

13. No modification of this Agreement will be effective unless it is set forth in writing and signed by an authorized representative of each Party.

14. Each Party warrants that it has the authority to execute this Agreement. Each Party warrants that it has given all necessary notices and has obtained all necessary consents to permit it to enter into and execute this Agreement.

15. This Agreement shall be governed by and construed in accordance with the laws of the State of California.

16. This Agreement may be executed in counterparts, each of which shall be deemed an original. This Agreement will be binding upon the receipt of original, facsimile, or electronically communicated signatures.

17. This Agreement has been jointly drafted, and the general rule that it be construed against the drafting party is not applicable.

18. If a court should find any term, covenant, or condition of this Agreement to be invalid or unenforceable, the remainder of the Agreement shall remain in full force and effect.

19. The City agrees to indemnify and defend the Sierra Club, its officers and agents (collectively, “Club”) from any claim, action or proceeding (“Proceeding”) brought against the Club, whether as defendant/respondent, real party in interest, or in any other capacity, to challenge or set aside this Agreement. This indemnification shall include (a) any damages, fees, or costs awarded against the Club, and (b) any costs of suit, attorneys’ fees or expenses incurred in connection with the Proceeding, whether incurred by the Club, the City or the parties bringing such Proceeding. If the Proceeding is brought against both the Club and the City, the Club agrees that it may be defended by counsel for the City, provided that the City selects counsel that is acceptable to the Club; the Club may not unreasonably withhold its approval of such mutual defense counsel.