

# City of Sacramento

## Legislation Text

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File #: 2020-00641, Version: 1

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**Title:**

**Delta Shores - Agreements with M&H Realty Partners VI, L.P for Acquisition, Reimbursement and Credits for Construction of Infrastructure (Two-Thirds Vote Required) [Published for 10-Day Review 08/13/2020]**

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**Location:** Districts 7 and 8

**Recommendation:**

1) Pass a Motion: a) determining that it is in the City's best interests to suspend competitive-bidding for the "Acquisition, Reimbursement, and Credit Agreement for Construction of Delta Shores Public Infrastructure" between the City and M&H Realty Partners VI, L.P., under which the City will acquire public improvements financed through the Delta Shores Impact Fee Program; and b) authorizing the City Manager or the City Manager's designee to sign and deliver that agreement on the City's behalf; and 2) adopt a Resolution a) approving standard-form: i) "Reimbursement-and-Credit Agreement for Delta Shores Infrastructure"; and ii) "Delta Shores Fee Credits Certificate of Assignment"; and b) authorizing the City Manager or the City Manager's designees to sign and deliver the standard-forms for specific projects within the area covered by the Delta Shores Planned Unit Development Area upon approval as to legal form by the City Attorney's Office.

**Contact:** Arwen Wacht, Program Specialist, (916) 808-7535; Sheri Smith, Special Districts Manager, (916) 808-7204, Department of Finance

**Presenter:** None

**Attachments:**

- 1-Description/Analysis
- 2-Acquisition, Reimbursement, and Credit Agreement for Construction of Delta Shores Public Infrastructure
- 3-Resolution
- 4-Exhibit A (Reimbursement-and-Credit Agreement for Delta Shores Infrastructure)
- 5-Exhibit B (Delta Shores Fee Credits Certificate of Assignment)

**Description/Analysis**

**Issue Detail:** On September 24, 2019, the City Council approved the updated Delta Shores Finance Plan (the Finance Plan) and established the associated Delta Shores Impact Fee (DSIF). Property owners and developers are required to execute a reimbursement agreement, before the release of credits or funds as payment for public-infrastructure projects that are funded by the DSIF, and are needed to develop properties within in the Delta Shores Planned Unit Development Area (PUD Area).

Staff is seeking the City Council's (a) approval of the attached standard-form "Reimbursement-and-Credit Agreement for Delta Shores Infrastructure" (Reimbursement Agreement) and the attached standard-form "Delta Shores Fee Credits Certificate of Assignment" (Certificate) and (b) authorization for the City Manager to sign and deliver Reimbursement Agreements for individual development projects within the PUD area even if they exceed \$250,000; and (c) authorization for the City Manager to sign Certificates to indicate the City's consent to the assignment of DSIF credits.

The purposes of a standard-form Reimbursement Agreement are to implement the DSIF program and to promote efficiency and uniformity in administration. A Reimbursement Agreement will usually involve amounts that exceed the City Manager's contracting authority under the Sacramento City Code, so most Reimbursement Agreements will require the City Council's review and approval. Approval of the attached resolution allows for the efficient administration of routine development projects by delegating authority to City Manager to sign standard-form Reimbursement Agreements, which are used to implement the City Council's prior approval of the Finance Plan and DSIF. Use of similar standard-form agreements has proven to be very effective time saving tool for both developers and the City in the North Natomas, Railyards, and Jacinto Creek Planning Areas. Staff will bring to the City Council any Reimbursement Agreement that must be materially modified because of the associated project's circumstances.

Before the DSIF was established, the developer of Delta Shores, M&H Realty Partners VI, L.P (the Developer), began constructing a portion of backbone infrastructure that is eligible for reimbursement under the Finance Plan and constructed over 900,000 square feet of retail space. The attached "Acquisition, Reimbursement, and Credit Agreement for Construction of Delta Shores Public Infrastructure" (ARC Agreement) differs from the standard-form Reimbursement Agreement because it (a) reduces the amount of reimbursement and credit amounts to account for the constructed retail space; (b) does not require the Developer to have competitively bid the construction contracts and subcontracts, as they were awarded before adoption of the DSIF; and (c) does not require compliance with Sacramento City Code section 3.60.190 (concerning apprentices), as the construction contracts and subcontracts were advertised for bid and awarded before that sections operative date, December 25, 2014.

**Policy Considerations:** Under chapter 3.60 of the City Code, contracts for construction of public infrastructure must be awarded through competitive bidding *unless* one of the listed exceptions to competitive bidding applies. Staff recommends that the City Council invoke one of those exceptions

for the ARC Agreement by determining, by a two-thirds vote, “that it is in the best interests of the city to suspend competitive bidding” for contracts awarded prior to the establishment of the DSIF. (See City Code § 3.60.170.D.) Suspension of bidding is in the City’s best interests here because it solves the timing issue related to adoption of the DSIF, which occurred after the construction of the improvements identified in the ARC Agreement, and allows the City to use fee revenues to acquire backbone infrastructure in accordance with the Finance Plan.

Suspension of competitive bidding for the ARC Agreement does not expose the City or the public to excessive costs. The ARC Agreement limits reimbursements from the City to the amount that the DSIF can support. To ensure the integrity of the City’s bidding requirements, any contracts for reimbursable facilities awarded after adoption of the DSIF will be subject to the formal bidding process.

Adoption of the proposed resolution is consistent with the intention the Finance Plan to construct or acquire public infrastructure in a timely manner and to promote fairness and equity. This is consistent not only with the practice in other planning areas with associated financing plans but also with the City’s goal of implementing improvements and efficiencies to the development approval process.

The Sacramento City Code Section 4.04.020 and Council Rules of Procedure (Chapter 7, Section E.2.d) mandate that unless waived by a 2/3 vote of the City Council, all labor agreements and all agreements greater than \$1,000,000 shall be made available to the public at least ten (10) days prior to council action. This item was published for 10-day review on August 13, 2020 as required.

**Environmental Considerations:** The Reimbursement Agreement establishes financing mechanisms for the construction of certain public facilities that are required by the Delta Shores Planned Unit Development, are included in the Finance Plan, and have been reviewed by the Environmental Impact Report (EIR) that was completed as part of the Delta Shores project (P06-197). The EIR was certified by the City Council on January 13, 2009 (Resolution No. 2009-030). The Planning and Design Commission later certified the EIR and an addendum for the commercial-development portion of the Delta Shores project (P14-025) on April 16, 2015.

Under the CEQA Guidelines, moreover, the approval of standard-form agreements does not constitute a project because it merely creates a funding mechanism unrelated to a specific project and is therefore exempt from review (14 Cal. Code Regs. § 15378(b)(4)).

**Sustainability:** Not applicable.

**Commission/Committee Action:** None.

**Rationale for Recommendation:** Authorizing the City Manager and the City Manager’s designee to execute standard-form Reimbursement Agreements for specific projects will ensure that the

reimbursement of public infrastructure funded by DSIF revenue complies with City Code.

**Financial Considerations:** Reimbursements and fee credits provided under the standard-form Reimbursement Agreement are funded by revenue collected as part of the DSIF program, the most current version of which was adopted by City Council on September 24, 2019 (Resolution No. 2019-0378). Fees are collected solely within the boundaries of the PUD Area and may be used only for the purposes outlined in the Finance Plan. There are no impacts on the City's other funds.

**Local Business Enterprise (LBE):** Not applicable.