

**PLANNING COMMISSION  
RESOLUTION NO. 2024-23**

**RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF ANTIOCH  
RECOMMENDING CITY COUNCIL APPROVAL OF A DEVELOPMENT AGREEMENT  
BETWEEN THE CITY OF ANTIOCH AND APS WEST COAST, INC., FOR THE  
AMPORTS PROJECT (UP-20-14, AR-20-18, V-21-04)**

**WHEREAS**, the City of Antioch (“City”) received a request from APS West Coast, Inc. (“Applicant”) seeking City approval of a Development Agreement for The AMPORTS Project (“Project”) (UP-20-14, AR-20-18, V-21-04);

**WHEREAS**, the project site is located at 2301 Wilbur Avenue (APNs 051-020-006 and 051-020-012);

**WHEREAS**, to strengthen the public planning process, encourage private participation in comprehensive planning and reduce the economic risk of development, the Legislature of the State of California adopted Section 65864, *et. seq.* of the Government Code, which authorizes the City of Antioch to enter into an agreement with any person having a legal or equitable interest in real property providing for the development of such property in order to establish certainty in the development process;

**WHEREAS**, the City of Antioch previously adopted an implementing ordinance (Article 32 of the Zoning Ordinance) authorizing and regulating the use of Development Agreements;

**WHEREAS**, the City and APS West Coast, Inc. have negotiated the Development Agreement attached as Exhibit A to this resolution;

**WHEREAS**, the proposed Development Agreement complies with the requirements of Article 32 of the City of Antioch Zoning Code;

**WHEREAS**, on September 1, 2021, the Planning Commission adopted the Initial Study / Mitigated Negative Declaration (IS/MND), Mitigation Monitoring and Reporting Program (MMRP) for the AMPORTS Project;

**WHEREAS**, on September 1, 2021 the Planning Commission approved a Use Permit, Design Review and Variance for the development of an automotive logistics and processing facility the project site;

**WHEREAS**, the Planning Commission duly gave notice of public hearing as required by law;

**WHEREAS**, the Planning Commission, on December 4, 2024 duly held a public hearing, received and considered evidence, both oral and documentary; and

**WHEREAS**, the adoption of this Development Agreement will not adversely affect the comprehensive General Plan and it is consistent with the General Plan and carries out the purposes of the General Plan.

**NOW THEREFORE, BE IT RESOLVED** that in recommending approval to the City Council of the Development Agreement between the City of Antioch and APS West Coast, Inc., the Planning Commission makes the following findings, as required in Antioch Municipal Code § 9-5.3207, which are based on its review and consideration of the entire record, including the recitals above and any oral or written testimony provided at the hearing:

1. There have been no substantial changes to the project through the Development Agreement. Therefore, The AMPORTS IS/MND and MMRP are the appropriate environmental documents for the proposed project.
2. The Development Agreement implements General Plan objectives by working toward the redevelopment of heavy industrial areas along the Wilbur Avenue corridor and providing appropriate incentives to attract new businesses.

**NOW THEREFORE BE IT FURTHER RESOLVED** that the Planning Commission recommends the City Council approve the Development Agreement between the City of Antioch and APS West Coast, Inc. for The AMPORTS Project, in the form attached as Exhibit A, subject to such changes as may be approved by the City Council.

\* \* \* \* \*

**I HEREBY CERTIFY** that the foregoing resolution was adopted by the Planning Commission of the City of Antioch at a regular meeting thereof held on the 4th day of December 2024, by the following vote:

**AYES:** Commissioners Webber, Jones, Lutz, Martin and Perez

**NOES:** None

**ABSTAIN:** None

**ABSENT:** Commissioner Hills and Riley

*Kevin Scudero*

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**KEVIN SCUDERO**  
**Secretary to the Planning Commission**

# EXHIBIT A

## ORDINANCE NO. \_\_\_\_

### **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ANTIOCH APPROVING A DEVELOPMENT AGREEMENT BETWEEN THE CITY OF ANTIOCH AND APS WEST COAST, INC. FOR THE AMPORTS PROJECT (UP-20-14, AR-20-18, V-21-04)**

**WHEREAS**, the City of Antioch (“City”) received a request from APS West Coast, Inc. (“Applicant”) seeking City approval of a Development Agreement for The AMPORTS Project (“Project”) (UP-20-14, AR-20-18, V-21-04);

**WHEREAS**, the project site is located at 2301 Wilbur Avenue (APNs 051-020-006 and 051-020-012);

**WHEREAS**, to strengthen the public planning process, encourage private participation in comprehensive planning and reduce the economic risk of development, the Legislature of the State of California adopted Section 65864, *et. seq.* of the Government Code, which authorizes the City of Antioch to enter into an agreement with any person having a legal of equitable interest in real property providing for the development of such property in order to establish certainty in the development process;

**WHEREAS**, the City of Antioch previously adopted an implementing ordinance (Article 32 of the Zoning Ordinance) authorizing and regulating the use of Development Agreements;

**WHEREAS**, the City and APS West Coast, Inc. have negotiated the Development Agreement attached as Exhibit A to this resolution;

**WHEREAS**, the proposed Development Agreement complies with the requirements of Article 32 of the City of Antioch Zoning Code;

**WHEREAS**, on September 1, 2021, the Planning Commission adopted the Initial Study / Mitigated Negative Declaration (IS/MND), Mitigation Monitoring and Reporting Program (MMRP) for the Amports Project;

**WHEREAS**, on September 1, 2021 the Planning Commission approved a Use Permit, Design Review and Variance for the development of an automotive logistics and processing facility the project site;

**WHEREAS**, the Planning Commission conducted a duly notice public hearing on December 4, 2024 at which it recommended to the City Council that the Development Agreement be approved. The City Council held a duly noticed public hearing on -----  
---- at which all interested persons were allowed to address the Council on the Development Agreement.

The City Council of the City of Antioch does ordain as follows:

### **SECTION 1: Recitals**

The recitals above are true and correct and are hereby adopted as findings as if fully set forth herein.

### **SECTION 2: Findings**

The City Council finds that the Development Agreement is consistent with the City's General Plan as well as all provisions of the City's Zoning Ordinance and Municipal Code, as required in Antioch Municipal Code § 9-5.3207. The City Council finds that the Development Agreement implements General Plan objectives by working toward the redevelopment of heavy industrial areas along the Wilbur Avenue corridor and providing appropriate incentives to attract new businesses.

### **SECTION 3: City Council Review**

The City Council has reviewed, considered, and evaluated all of the information prior to acting upon Ordinance.

### **SECTION 4: Record of Proceedings**

The documents and other materials that constitute the record of proceedings upon which the City Council has based its recommendation are located in and may be obtained from the City of Antioch's Clerk's Office, 200 H Street, Antioch, CA 94509

### **SECTION 5: Development Agreement**

The Development Agreement included as Exhibit "A" is hereby approved, subject to minor and clarifying revisions approved by the City Manager and City Attorney, and the City Manager is authorized and directed to sign it on behalf of the City of Antioch.

### **SECTION 6: CEQA**

An IS/MND was certified for the AMPORTS Project on September 1, 2021. The City Council has concluded that there have been no substantial changes to the project through the Development Agreement. Therefore, in accordance with the California Environmental Quality Act (CEQA) Guidelines Section 15162, a subsequent environmental document is not required.

### **SECTION 7: Severability**

Should any provision of this Ordinance, or its application to any person or circumstance, be determined by a court of competent jurisdiction to be unlawful, unreasonable, or otherwise void, that determination shall have no effect on any other provision of this Ordinance or the application of this Ordinance to any other person or circumstance and, to that end, the provisions hereof are severable.

### **SECTION 8: Publication; Effective Date**

This Ordinance shall take effect and be enforced within thirty (30) days from and after the date of its adoption by the City Council at a second reading and shall be posted and published in accordance with the California Government Code.

\* \* \* \* \*

**I HEREBY CERTIFY** that the foregoing Ordinance was introduced at a regular meeting of the City Council of the City of Antioch, held on the \_\_\_ day of \_\_\_\_\_, 2025, and passed and adopted at a regular meeting thereof, held on the \_\_\_ day of \_\_\_\_\_, 2025.

**AYES:**

**NOES:**

**ABSTAIN:**

**ABSENT:**

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**MAYOR OF THE CITY OF ANTIOCH**

**ATTEST:**

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**CITY CLERK OF THE CITY OF ANTIOCH**

**RECORDING REQUESTED BY AND  
WHEN RECORDED MAIL TO:**

**CITY OF ANTIOCH**  
200 H Street  
Antioch, CA 94509  
Attention: City Clerk

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(Space above line for Recorder's use only)

Address: 2301 and 2603 Wilbur Avenue  
Antioch, California  
APN: 051-020-006 and 051-020-012

The undersigned declare(s):

Documentary Transfer Tax is: \$0.00 [Gov't Code §§ 27388.1(a)(2) and 27388.2(b); Rev. & Tax. Code § 11911]

computed on full value of property conveyed, or

computed on full value of less of liens and encumbrances remaining at time of sale.

unincorporated area:  City of Antioch

Signature of Declarant

APS WEST COAST, INC.

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By: Jacob Brown  
Its: Chief Financial Officer

**DEVELOPMENT AGREEMENT**

**BETWEEN**

**THE CITY OF ANTIOCH, A MUNICIPAL CORPORATION**

**AND**

**APS WEST COAST, INC., A CALIFORNIA CORPORATION**

**Adopted by the Antioch City Council**

**on \_\_\_\_\_, 2024**

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**DEVELOPMENT AGREEMENT BETWEEN THE CITY OF ANTIOCH AND  
APS WEST COAST, INC.**

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THIS DEVELOPMENT AGREEMENT (“**Agreement**”) by and between the City of Antioch, a municipal corporation (“**City**”) and APS West Coast, Inc. a California corporation (“**Developer**”) (each a “**Party**” and collectively the “**Parties**”), pursuant to the authority of Division 1, Chapter 4, Article 2.5, Sections 65864 *et seq.* of the California Government Code (the “**Statute**”) <sup>1</sup> is entered into as of \_\_\_\_\_, 2024 (the “**Effective Date**”) in the following factual context:

RECITALS

A. To strengthen the public planning process, encourage private participation in comprehensive planning and reduce the economic risk of development, the California State Legislature enacted the Statute, which authorizes the City to enter into a development agreement with any person having a legal or equitable interest in real property regarding the development of such property.

B. Developer proposes to develop an automotive logistics and processing facility for vehicles prior to their distribution to dealerships (the “**Project**”) on the real property commonly known as 2301 and 2603 Wilbur Avenue, in the City of Antioch, also known as Contra Costa County Assessor’s Parcel No. 051-020-006 and 051-020-012, and more particularly described in **Exhibit A** (sometimes “**2301 Wilbur**” or “**2603 Wilbur**,” respectively, and sometimes collectively the “**Property**”). The Project includes the conversion and upgrade of the existing wharf for roll on/roll off operations (the “**Pier Upgrades**”), construction of a new pre-engineered metal building of approximately 25,328 square feet (the “**New Building**”), and new site improvements (the “**Improvements**”) - including new paving, the demolition and construction of new utility connections, stormwater improvements, lighting, and fencing on the Property, all in accordance with the Project Approvals defined in **Recital D** of this Agreement.

C. In exchange for the covenants contained in this Agreement and the continued commitment of Developer to provide the benefits described in the Project Approvals, when and if the Project proceeds, and in order to encourage the investment by Developer necessary to proceed with the Project, the City is willing to enter into this Agreement to set forth the rights of Developer to complete the Project as provided in this Agreement.

D. The City Council has approved the following which collectively are referred to as the “**Project Approvals**”:

(1) Resolution No. 2021-20 adopted by the Planning Commission on September 1, 2021 certifying the Initial Study/Mitigated Negative Declaration for the Project and adopting the Mitigation Monitoring and Reporting Program.

(2) Resolution No. 2021-21, adopted by the Planning Commission on September 1, 2021 approving a Use Permit (UP-20-14), Design Review (AR-20-18), and Variance (V-21-04), subject to conditions on approval, a true and correct copy of which is appended to this Agreement as **Exhibit B** and incorporated herein by this reference.

The Project Approvals impact a Thirty-Eight and 9/10<sup>th</sup>- (38.9-) acre area of the Property (“**Affected Property**”).

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<sup>1</sup> All further statutory references in this Development Agreement shall be to the California Government Code, unless otherwise stated.

E. On \_\_\_\_\_, 2024, at a duly noted public hearing, the Planning Commission of the City of Antioch adopted Resolution No. 2024-\_\_\_\_\_, recommending approval of this Agreement.

F. On \_\_\_\_\_, 2024, after a duly noticed public hearing, the City Council considered this Agreement and conducted a first reading of Ordinance No.2024- \_\_\_\_\_ approving this Agreement.

G. On \_\_\_\_\_, 2024, the City Council conducted a second reading and adopted Ordinance No. 2024-\_\_\_\_\_ approving this Agreement.

H. After receipt of the Project Approvals, Developer obtained building permits and invested significant funds to construct the Pier Upgrades at 2301 Wilbur. Developer wishes to begin moving cargo through the pier but wishes to delay construction of most Improvements including but not limited to the New Building. Some of the Improvements are proposed to be constructed within thirty (30) days of execution of this Agreement; some within several years; and others would be constructed when the number of vessels that access the site increases to a point where construction of those Improvements is financially viable. The timelines for construction of the Improvements are described in Section 2.5 below. The New Building may or may not be constructed; if it is constructed, any Improvements associated with the New Building will be required to be constructed at that time. City and Developer intend that this Agreement will allow Developer to postpone the construction of most upland Improvements identified in the Project Approvals until the Project can demonstrate the financial viability of the Affected Property for cargo shipping.

I. Developer currently stores automobiles on 2603 Wilbur, which storage is a preexisting legal non-conforming use. City and Developer intend that once Developer berths the first vessel at the pier, Developer will begin making payments to City as set forth in this Agreement for cars stored on 2603 Wilbur as well as the Affected Property.

## AGREEMENT

In this factual context and intending to be legally bound, the Parties agree as follows:

### **ARTICLE 1 TERM AND APPLICABLE LAW**

1.1 Incorporation of Recitals. The preamble, the Recitals, and all defined terms set forth in both are incorporated into this Agreement by this reference.

1.2 Term.

1.2.1 The term of this Agreement shall commence as of the Effective Date and continue for ten (10) years thereafter, to and including \_\_\_\_\_, 2034 (the “**Term**”), unless sooner terminated or extended as provided herein. The term shall automatically be extended by: (a) any period of Enforced Delay (as defined herein); (b) any period of time during which a lawsuit brought by a third party challenging any aspect of the Project is pending; and/or (c) any period of time during which the filing of a referendum petition or initiative petition delays development of the Project. All such original and extended periods are referred to as the “**Term**” Subject to ARTICLE 8, in the event that Developer shall fail to make the “**Operational Improvements**” within the timeframe established by and in compliance with in Section 2.6.1, below, the Term shall be reduced to four (4) years.

1.2.2. The expiration of the Term shall not be interpreted to, and shall not affect, terminate or waive any additional rights that Developer may have that exist independently of this



Agreement and derive from common law vesting or other laws or regulations of the State or the City.

1.2.3 The Term and the term of any Project Approval may be extended from time-to-time pursuant to Section 3.4, or ARTICLE 5.

1.3 Applicable Law. The rules, regulations, and official policies governing permitted uses of the Property and density and improvement requirements applicable to development of the Property in accordance with the Project Approvals shall be the ordinances, rules, regulations, and official policies in force as of the Effective Date (collectively, the “**City Regulations**”), except as otherwise expressly provided in the Project Approvals or this Agreement. The law applicable to the Project shall be (a) the City Regulations, (b) the Project Approvals and (c) this Agreement (collectively, the “**Applicable Law**”). If there is a conflict between this Agreement and the City Regulations or Project Approvals, this Agreement shall control. If there is a conflict between the Project Approvals and the City Regulations, the Project Approvals shall control.

## ARTICLE 2 COVENANTS OF DEVELOPER

2.1 Obligations of Developer Generally. Developer shall have no obligation to proceed with or complete the Project at any particular time or at all, except as provided in Section 2.6. However, to the extent that Developer proceeds with the Project, it shall comply with the Applicable Law, as defined in Section 1.3.

2.2 Development of the Property. Developer hereby agrees that development of the Project shall be in accordance with the Project Approvals, including any conditions of approval and the mitigation measures for the Project as adopted by the City, and any amendments to the Project Approvals as may, from time to time, be approved pursuant to this Agreement. Developer shall not be obligated to construct any particular aspect of the Project except as required under this Agreement.

### 2.3 Fees.

2.3.1 Developer shall pay when due all generally applicable fees in effect, and at the rates and in the amounts applicable, at the time of payment. Developer shall pay project specific fees as required by the Project Approvals. “**Generally Applicable Fees**” are those fees of the City that are applicable to (a) all similar residential projects, or (b) all construction work similar in nature to work required by the Project Approvals. Generally Applicable Fees include development impact fees adopted after the Effective Date. “**Project Specific Fees**” are fees imposed by the Project Approvals that are not Generally Applicable Fees.

2.3.2 In addition, Developer shall pay processing fees and charges of every kind and nature imposed by City, including planning processing deposits, to cover the actual costs to City of processing applications for subsequent approvals or for monitoring compliance with and review of subsequent submittals for any Project Approvals granted or issued, as such fees and charges are adjusted from time to time.

2.4 Improvements. To the extent required by this Agreement, Developer shall construct the public and private Improvements and make all dedications required by, and more particularly described in the Project Approvals. Developer shall perform the work in accordance with the standards and specifications established by Applicable Law. To the extent there are no such standards or specifications in the Applicable Law other than this Agreement, the work shall be performed in accordance with industry standards and in a good and workmanlike manner, as approved by the City Engineer.

2.5 Specific Development Obligations. In addition to the conditions of approval contained in the Project Approvals (*see Exhibit B*), the Developer and the City have agreed that the development of the Project is subject to certain specific development obligations as described herein. These specific development obligations, together with the other terms and conditions of this Agreement, provide the incentive and consideration for the City entering into this Agreement. The Parties understand that any conditions of approval that are applicable to construction of the development obligations below shall be satisfied at the time such development obligation is constructed. By way of example only, when Developer paves the area of the Affected Property as described in Section 2.5.2.1 below, it shall observe condition of approval B.3, which requires standard dust control methods, condition of approval G.2, which requires impervious surfaces constructed by the Project to meet C.3 requirements, etc.

2.5.1 Initial Improvements. Developer will construct the following Improvements, as shown on the plans approved September 1, 2021, (the “**Initial Improvements**”) within thirty (30) days of full execution of this Agreement:

2.5.1.1 Dimensioned diagram verifying off-street capacity for two full size auto carriers per Condition of Approval K.16.

2.5.1.2 Maintenance of sight distance triangles per Condition of Approval I.1.

2.5.1.3 Stop signs per Condition of Approval K.13.

2.5.1.4 Installation of “idle free” signage per Condition of Approval K.25.

2.5.1.5 Implementation of parking lot sweeping program per Condition of Approval E.1.

2.5.1.6 Verification of turning templates per Condition of Approval K.12.

2.5.2 Operational Improvements. Developer will construct the following Improvements, as shown on the plans approved September 1, 2021 (the “**Operational Improvements**”), within the Affected Property by the earlier of the fourth year following the Effective Date or the berthing of the 33rd vessel:

2.5.2.1 Paving of the approximately twenty- (20-) acre portion of the Affected Property per Condition of Approval A.12.

2.5.2.2 Employee parking lot and pathway per Condition of Approval A.14.

2.5.2.3 Parking lot striping and signing plan per Condition of Approval K.7.

2.5.3. New Building. If the New Building is constructed, any Improvements associated with it (e.g., undergrounding of utilities per Conditions of Approval H.1, connection to water and sewer mains per Condition of Approval H.13) shall be constructed at that time.

2.5.4. Other Improvements. All other Improvements, as well as the extensions of utilities within Wilbur Avenue, the widening of Wilbur Avenue, and the property dedication along Wilbur Avenue are not required to be constructed until Developer berths a number of vessels at

the pier beyond those allowed under the Project Approvals (*i.e.*, eight (8) vessel calls per year with the potential to increase in calls as provided in mitigation measure AIR-3). An extension to this requirement shall be allowed subject to the review and approval of the City Manager. Should an extension be granted then the per occupied truck fee shall remain in effect.

2.5.5. Conditions on Construction. The construction-related conditions in Conditions of Approval B.1-4 and any applicable conditions related to the mitigation monitoring and reporting program in Conditions of Approval J.1-2 shall apply to construction of the improvements described above.

2.6 Truck Trip Fee. Developer shall pay to City the sum of fifty and 00/100 Dollars (\$50.00) per occupied car carrier truck trip, inbound and outbound, which funds shall be tendered to City quarterly for use in the City's sole and absolute discretion. This amount shall be increased annually according to the San Francisco-Oakland-Hayward Consumer Price Index for all Urban Consumers ("CPI"). Applicant shall also provide a quarterly report of the number of vehicles stored and the number of car carrier trips at the site. The vehicle carrier fee and report shall be delivered to the City Manager's Office.

### ARTICLE 3 COVENANTS OF THE CITY

3.1 Obligations of City Generally. The City shall act in good faith to accomplish the intent of this Agreement. City shall cooperate with Developer so that it receives the benefits of and the rights vested by this Agreement, including obtaining from other governmental entities necessary or desirable permits or other approvals for the Project.

3.2 No Conflicting Enactments. The City may adopt new or modified rules, regulations or official policies after the Effective Date, and such new or modified rules, regulations, or official policies shall be included within the Applicable Law; provided, however, such new or modified rules, regulations, or official policies (whether adopted by action of City Council or other body or personnel, by initiative, by referendum, or otherwise) shall be applicable to the Project, and/or to any development on the Affected Property, only to the extent that such application does not modify the Project, does not prevent or impede development of any portion of the Property pursuant to Applicable Law, and does not conflict with this Development Agreement. Any new or modified rule, regulation or official policy (whether adopted by action of the City Council or other body or personnel, by initiative, by referendum, or otherwise) shall be deemed to conflict with this Development Agreement if it seeks to accomplish any one or more of the following results, either with specific reference to the Project or to any development of the Affected Property, or as part of a general enactment that would otherwise apply to the Affected Property:

3.2.1 Reduce the density or intensity of the Affected Property as allowed by the Applicable Law;

3.2.2 Reduce the density or intensity of development allowed on the Affected Property under the Applicable Law;

3.2.3 Change any General Plan or Zoning Code land use designation or permitted use of the Affected Property as described in the Applicable Law;

3.2.4 Require, for any work necessary to develop the Project on the Affected Property, the issuance of permits, approvals, or entitlements by City other than those required by Applicable Law; or

3.2.5 Materially limit the processing of, the procuring of applications for, or approval of Project Approvals.

Nothing in this Agreement shall restrict the City's discretion to impose conditions on approvals other than the Project Approvals for the Project.

3.3 Permitted Uses. The permitted uses of the Affected Property; the density and intensity of use of the Property; the maximum height, bulk and size of buildings are as set forth in the Project Approvals, which City confirms and vests by this Agreement.

3.4 Life of Project Approvals. By approval of this Agreement, City extends and vests the term of the Project Approvals for the Term (including any subsequent extensions). The term of each Project Approval shall expire no sooner than (a) this Agreement or (b) the term otherwise applicable to the Project Approval if this Agreement were not in effect, whichever occurs later. The City shall not require Developer to enter into any agreement that is inconsistent with this Agreement or the Project Approvals.

3.5 Conflict of City and State or Federal Laws. In the event that federal or state laws or regulations enacted after the Effective Date prevent or preclude compliance with one or more provisions of this Development Agreement, each Party shall provide the other Party with written notice of such federal or state law or regulation, a copy of such law or regulation, and a statement concerning the conflict with the provisions of this Development Agreement. The Parties shall, within 30 days, meet and confer in good faith in a reasonable attempt to modify this Development Agreement so as to comply with such federal or state law or regulation. City, without the obligation to incur costs or liability, shall reasonably cooperate with Developer in securing of any permits, approvals, or entitlements that may be required as a result of modifications or suspensions made pursuant to this section.

3.6 Life of Legislative Approvals and Project Approvals. The term of any Project Approval shall be automatically extended for the longer of the Term of this Development Agreement or the term otherwise applicable to such Legislative Approval or Project Approval.

3.7 Timing of Construction and Completion. The Parties acknowledge that, with the exception of the obligations assumed by Developer in Section 2.5.1 and 2.5.2, Developer cannot at this time predict when or the rate at which the Project will be constructed. The Parties agree that there is no requirement that Developer initiate or complete construction of the Project within any particular period of time, or at all, and City shall not impose such a requirement on Developer, the Property, or any Project Approval. In light of the foregoing, the Parties agree that, with the exception of the obligations assumed by Developer in Section 2.5.1 and 2.5.2, Developer may construct the Project at the rate and time Developer deems appropriate within the exercise of its reasonable business judgment, subject to Applicable Law and the terms of this Agreement. Further, Developer may implement the Project in phases, in Developer's reasonable discretion.

3.8 Processing Project Approvals. Upon submission by Developer of any application for a Project Approval, City shall cooperate and diligently work to promptly process, consider, and approve such application, and shall apply only Applicable Law and any applicable federal or state laws. City shall retain its discretionary authority in its consideration of any and all Project Approvals that involve discretionary decisions; provided, however, such consideration shall be regulated solely by the Applicable Law, any applicable federal or state law, and this Development Agreement.

3.9 Vested Development Rights. The City confirms and grants to Developer the vested right to pursue the Project in accordance with the Applicable Law and Project Approvals (once they are granted), and the provisions of this Development Agreement, including, without limitation, Developer's vested right to develop the Project on the Affected Property. In the event of any conflict or inconsistency between this Development Agreement and the Applicable Law or between this Development Agreement and any Project Approvals, this Development Agreement

shall prevail and control to the fullest extent legally possible. This Agreement shall be enforceable as set forth in Section 10.2 below. No subsequently adopted ballot measures or initiatives shall have any application to the Affected Property or Project unless Developer shall expressly consent.

#### ARTICLE 4 CITY RESERVATIONS OF AUTHORITY

4.1 City's Reservations of Authority. Notwithstanding any other provision of this Agreement to the contrary, the following regulations and provisions shall apply to the development of the Property:

4.1.1 City Regulations regarding processing fees and charges, enacted after the Effective Date, provided such procedures are uniformly applied on a City-wide basis to all substantially similar types of development projects and properties.

4.1.2 City Regulations relating to hearing bodies, petitions, applications, notices, findings, records, hearings, reports, recommendations, appeals and any other matter of procedure, enacted after the Effective Date, provided such procedures are uniformly applied on a City-wide basis to all substantially similar types of development projects and properties.

4.1.3 City Regulations governing construction standards and specifications, enacted after the Effective Date, including (a) City's building code, plumbing code, mechanical code, electrical code, fire code and grading code, (b) all uniform construction codes applicable in City at the time of building permit issuance, and (c) design and construction standards for road and storm drain facilities; provided any such regulation has been adopted and uniformly applied by City on a citywide basis and has not been adopted for the purpose of preventing or otherwise limiting construction of all or any part of the Project.

4.1.4 City Regulations enacted after the Effective Date that may be in conflict with this Agreement or the Project Approvals but that are necessary to protect persons or property from dangerous or hazardous conditions that create a threat to the public health or safety or create a physical risk, based on findings by the City Council identifying the dangerous or hazardous conditions requiring such changes in the law, why there are no feasible alternatives to the imposition of such changes, and how such changes would alleviate the dangerous or hazardous condition. Changes in laws, regulations, plans or policies that are specifically mandated and required by changes in state or federal laws or regulations that require such to apply to the Project.

Notwithstanding anything to the contrary provided herein, as provided in the Statute at Section 65869.5: "In the event that state or federal law or regulations, enacted after [this Agreement] has been entered into, prevent or preclude compliance with one or more provisions of [this Agreement], such provisions of [this Agreement] shall be modified or suspended as may be necessary to comply with such state or federal laws or regulations."

#### ARTICLE 5 AMENDMENT

5.1 Amendment of Approvals. To the extent permitted by state and federal law, any Project Approval or Subsequent Project Approvals (hereafter in this ARTICLE 6, an "Approval") may, from time to time, be amended or modified in the following manner.

5.1.1 Administrative Project Amendments. Upon the written request of Developer for an amendment or modification to an Approval, or this Agreement, or for other consent under this Agreement, the Community Development Director, or his/her designee (collectively "Authorized Official") shall determine whether the requested amendment or modification: (a) is minor when considered in light of the Project as a whole; (b) is substantially consistent with Applicable Law; and (c) will result in no new environmental impacts. If the



Authorized Official finds that the proposed amendment or modification is minor, substantially consistent with Applicable Law, and will result in no new significant environmental impacts, the amendment shall be determined to be an “**Administrative Project Amendment**” and the Authorized Official may, except to the extent otherwise required by law, approve the Administrative Project Amendment, following consultation with other relevant City staff, without notice and public hearing. Without limiting the generality of the foregoing, lot line adjustments, non-substantial reductions in the density, intensity, scale or scope of the Project, minor alterations in vehicle circulation patterns or vehicle access points, substitutions of comparable landscaping for any landscaping shown on any final development plan or landscape plan, variations in the design and location of structures that do not substantially alter the design concepts of the Project, variations in the location or installation of utilities and other infrastructure connections or facilities that do not substantially alter the design concepts of the Project, and minor adjustments to the Property diagram or Property legal description shall be treated as Administrative Project Amendments.

5.1.2 Non-Administrative Project Amendments. Any request of Developer for an amendment or modification to an Approval which is determined not to be an Administrative Project Amendment as set forth above shall be subject to review, consideration and action pursuant to the Applicable Law and this Agreement.

5.1.3 Project Amendment Exemptions. Amendment of an Approval requested by Developer shall not require an amendment to this Agreement. Instead, the amendment automatically shall be deemed to be incorporated into the Project and the Project Approvals and vested under this Agreement.

5.2 Amendment of This Agreement. This Agreement may be amended from time to time, in whole or in part, by mutual written consent of the Parties or their successors in interest, as follows:

5.2.1 Administrative Agreement Amendments. The City Manager and City Attorney are authorized on behalf of the City to enter into any amendments to this Agreement other than amendments which substantially affect (a) the term of this Agreement (excluding extensions of time for performance of a particular act), (b) permitted uses of the Property, (c) provisions for the reservation or dedication of land, (d) the density or intensity of use of the Property or the maximum height or size of proposed buildings, or (v) monetary payments by Developer. Such amendments (“**Administrative Agreement Amendment**”) shall, except to the extent otherwise required by law, become effective without notice or public hearing.

5.2.2 Non-Administrative Agreement Amendments. Any request of Developer for an amendment or modification to this Agreement which is determined not to be an administrative Agreement Amendment as set forth above shall be subject to review, consideration and action pursuant to the Applicable Law and this Agreement.

## **ARTICLE 6 ASSIGNMENT, TRANSFER AND MORTGAGEE PROTECTION**

6.1 Assignment of Interests, Rights and Obligations. Nothing herein limits the right of Developer to freely alienate or transfer all or any portion of the Property. However, Developer may only transfer or assign all or any portion of its interests, rights or obligations under this Agreement or the Project Approvals, including any amendments thereto (a “**Transfer**”), subject to the requirements for City’s consent set forth in this ARTICLE 6, to any third party who acquires an interest or estate in the Affected Property or any portion thereof including, without limitation, a sublessee of all or a portion of Affected Property, or all or some of the improvement(s) located thereon (a “**Transferee**”). City consent shall not be required if Developer transfers all or a portion of the Affected Property to an Affiliated Party, or conveys a security interest in the Affected

Property to a mortgagee. An “**Affiliated Party**” is defined as any corporation, limited liability company, partnership or other entity that is controlling of, controlled by, or under common control with Developer, and “**control**,” for purposes of this definition, means record or beneficial ownership, effective management, and/or control over the other entity, subject only to major events requiring the consent or approval of the other owners of such entity.

## 6.2 Transfer Agreements.

6.2.1 Written Agreement. In connection with a Transfer by Developer (other than a Transfer by Developer to an Affiliated Party (as defined in Section 6.1) or to a Mortgagee (as defined below in 6.4)), Developer and the Transferee shall enter into a written agreement (a “**Transfer Agreement**”), with City’s consent in writing to the Transfer, regarding the respective interests, rights and obligations of Developer and the Transferee in and under the Agreement and the Project Approvals. Such Transfer Agreement may (a) release Developer from obligations under the Agreement or the Project Approvals that pertain to that portion of the Affected Property being transferred, as described in the Transfer Agreement, provided that the Transferee expressly assumes such obligations, (b) transfer to the Transferee vested rights to improve and use that portion of the Affected Property being transferred, and (c) address any other matter deemed by Developer to be necessary or appropriate in connection with the transfer or assignment. Developer shall notify the City in writing that it plans to execute a Transfer Agreement at least 60 days in advance of the execution date and provide City with such information as may be required by City to demonstrate the Transferee’s qualifications and financial ability to complete the Project on the Affected Property. City shall have 30 days from the date of such notice to review the information and provide a determination to Developer. City shall not withhold its consent unless the City reasonably determines that the Transferee, or an entity with similar or related ownership or control as Transferee, is or has been a party to litigation filed against the City or if the Transferee lacks the financial ability to complete the Project on the Affected Property. If City does not consent to the Transfer, City shall provide its reasons in writing and shall meet with Developer in good faith to determine what additional information may be necessary for City to provide its consent. Such a process shall not extend beyond a 30-day period.

6.2.2 Binding. Any Transfer Agreement shall be binding on Developer, the City and the Transferee, and shall not release Developer absent express language in the Transfer Agreement. Upon recordation in the Official Records of Contra Costa County of any Transfer Agreement, Developer shall be released from those obligations assumed by the Transferee therein, subject to the provisions of 6.2.1 above.

To the extent that City consent to a Transfer or Transfer Agreement is required by this Section 6.2, such Consent shall not be unreasonably withheld, conditioned, or delayed. City’s failure to respond to a request for consent within 15 calendar days shall be deemed an approval of such Transfer or Transfer Agreement. City’s Community Development Director shall have the authority to provide consent under this Section 6.2.

## 6.3 Mortgagee Protection.

6.3.1 Priority. This Agreement shall be superior and senior to any lien placed upon the Property or any portion thereof after the date of recording of this Agreement, including the lien of any deed of trust or mortgage (“**Mortgage**”). The foregoing notwithstanding, no breach of this Agreement shall defeat, render invalid, diminish or impair the lien of any Mortgage made in good faith and for value, but all of the terms and conditions contained in this Agreement (including but not limited to the City’s remedies to terminate the rights of Developer and its successors and assigns under this Agreement, to terminate this Agreement, and to seek other relief as provided in this Agreement) shall be binding upon and effective against any person or entity, including any deed of trust beneficiary or mortgagee (“**Mortgagee**”) who acquires title to the

Property, or any portion thereof, by foreclosure, trustee's sale, deed in lieu of foreclosure, or otherwise.

6.3.1 Mortgagee Not Obligated. The provisions of 6.3.1 notwithstanding, no Mortgagee shall have any obligation or duty under this Agreement to construct or complete the Project, or to guarantee such construction or completion; provided, however, that a Mortgagee shall not be entitled to devote the Property to any uses or to construct any improvements other than those uses or improvements provided for or authorized by this Agreement, or otherwise under the Project Approvals.

6.3.2 Notice of Default to Mortgagee. If the City receives a written notice from a Mortgagee or from Developer requesting a copy of any notice of default given Developer and specifying the address for notice, then the City shall deliver to the Mortgagee at the Mortgagee's cost, concurrently with delivery to Developer, any notice with respect to any claim by the City that Developer has committed an event of default. Each Mortgagee shall have the right during the same period available to Developer to cure or remedy, or to commence to cure or remedy, the event of default claimed or the areas of noncompliance set forth in the City's notice. The City Manager is authorized on behalf of the City to grant to the Mortgagee an extension of time to cure or remedy, not to exceed an additional 60 days.

## **ARTICLE 7 COOPERATION IN THE EVENT OF LEGAL CHALLENGE, INDEMNITY**

Developer, as the real party in interest, shall defend, indemnify, and hold harmless the City, with legal counsel reasonably acceptable to the City Attorney, in any action brought by a third party to challenge concerning: (a) the validity, legality, or constitutionality of any term, condition, obligation, fee, dedication, or exaction required or imposed by this Development Agreement; (b) the procedures utilized in or the sufficiency of the environmental review associated with this Development Agreement; and (c) the implementation of this Development Agreement through such further actions, measures, procedures, and approvals as are necessary to satisfy the Development Agreement's requirements. Notwithstanding anything to the contrary, Developer shall have no duty to indemnify City from or against claims for consequential damages, or from or against City's gross negligence or willful misconduct.

Developer shall defend the City with qualified legal counsel subject to the approval of the City Attorney, which approval shall not be unreasonably withheld, conditioned, or delayed. Developer shall pay all costs, damages, attorney's fees, and other court-ordered costs awarded to any third party in any legal action in which Developer's duties to defend, indemnify, and hold the City harmless arise under this ARTICLE 7. The City shall promptly notify Developer of any action filed and the Parties shall cooperate fully in the defense of such action.

The Parties expressly recognize that the obligation stated in this ARTICLE 7 do not require or contemplate that Developer shall indemnify or hold harmless or be responsible for any error, omission, intentional act, negligent act, or default of, or any injury caused by any City department or dependent special district that is formed by or the receives funding as a result of any term or condition of this Agreement.

## **ARTICLE 8 DEFAULT; TERMINATION; ANNUAL REVIEW**

### **8.1 Default.**

8.1.1 Remedies in General; No Damages. City and Developer agree that, as part of the bargained for consideration of this Agreement, in the event of default by either Party, the only remedy shall be declaratory relief or specific performance of this Agreement. In no event



shall either Party, or any of their officers, agents, representatives, officials, employees or insurers, be liable to the other Party for monetary damages, whether actual, consequential, punitive or special, for any breach or violation of this Agreement. The Parties agree that any action or proceeding to cure, correct or remedy any default or to enforce any covenant or promise under this Agreement shall be limited solely and exclusively to the remedies expressly provided. Following notice and expiration of any applicable cure periods and completion of the dispute resolution process set forth in ARTICLE 9 below, either Party may institute legal or equitable proceedings to cure, correct, or remedy any default, or to enforce any covenant or promise herein, enjoin any threatened or attempted violation, or enforce by specific performance, declaratory relief or writ of mandate the obligations and rights of the Parties. As noted above, in no event shall either Party be liable for any monetary damages. Any legal action to interpret or enforce the provisions of this Agreement shall be brought in the Superior Court for Contra Costa County, California.

8.1.2 Cure Period. Subject to extensions of time by mutual consent in writing of the Parties, breach of, failure, or delay by either Party to perform any term or condition of this Agreement shall constitute a default. In the event of any alleged default of any term, condition, or obligation of this Agreement, the Party alleging such default shall give the defaulting Party notice in writing specifying the nature of the alleged default and the manner in which such default may be satisfactorily cured (“**Notice of Breach**”). The defaulting Party shall cure the default within 30 days following receipt of the Notice of Breach, provided, however, if the nature of the alleged default is non-monetary and such that it cannot reasonably be cured within such 30-day period, then the commencement of the cure within such time period, and the diligent prosecution to completion of the cure thereafter, shall be deemed to be a cure, provided that if the cure is not diligently prosecuted to completion, then no additional cure period shall be provided. If the alleged failure is cured within the time provided above, then no default shall exist and the noticing Party shall take no further action to exercise any remedies available hereunder. If the alleged failure is not cured, then a default shall exist under this Agreement and the non-defaulting Party may exercise any of the remedies available.

8.1.3 Procedure on Default by Developer. If Developer is alleged to be in default hereunder by City then after notice and expiration of the cure period specified above and the dispute resolution process set forth in ARTICLE 9 below, City may institute legal proceedings against Developer pursuant to this Agreement, and/or give notice of intent to terminate or modify this Agreement to Developer pursuant to California Government Code Section 65868. Following notice of intent to terminate or modify this Agreement as provided above, the matter shall be scheduled for consideration and review at a duly noticed and conducted public hearing in the manner set forth in Government Code Sections 65865, 65867 and 65868 by the City Council within 60 calendar days following the date of delivery of such notice (the “**Default Hearing**”). Developer shall have the right to offer written and oral testimony prior to or at the time of the Default Hearing. If the City Council determines that a default has occurred and is continuing, and elects to terminate the Agreement, City shall give written notice of termination of the Agreement to Developer by certified mail and the Agreement shall thereby be terminated 30 days thereafter; provided, however, that if Developer files an action to challenge City’s termination of the Agreement within such 30-day period, then the Agreement shall remain in full force and effect until a trial court has affirmed City’s termination of the Agreement and all appeals have been exhausted (or the time for requesting any and all appellate review has expired). This Section 8.1.3 shall not be interpreted to constitute a waiver of Section 65865.1 of the Government Code, but merely to provide a procedure by which the Parties may take the actions set forth in Section 65865.1.

8.1.4 Procedure on Default by City. If the City is alleged by Developer to be in default under this Agreement, then after notice and expiration of the cure period and completion of the dispute resolution procedures below, Developer may enforce the terms of this Agreement by an action at law or in equity, subject to the limitations set forth above.

8.2 Excusable Delay; Extension of Time of Performance. In addition to specific provisions of this Agreement, neither Party shall be deemed to be in default where delays in performance or failures to perform are due to, or a necessary outcome of, war, insurrection, strikes or other labor disturbances, walk-outs, riots, floods, earthquakes, fires, pandemics, casualties, acts of God, enactment or imposition against the Project of any moratorium, or any time period for legal challenge of such moratorium by Developer, 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 or any of the Project Approvals or implementing or subsequent approvals, or any permit, ordinance, entitlement or other action of a governmental agency other than the City necessary for the development of the Project pursuant to this Agreement, or Developer's inability to obtain materials, power or public facilities (such as water or sewer service) to the Project, shall be deemed to create an excusable delay as to Developer. Upon the request of either Party, an extension of time for the performance of any obligation whose performance has been so prevented or delayed shall be memorialized in writing. The City Manager is authorized on behalf of the City to enter into such an extension. The term of any such extension shall be equal to the period of the excusable delay, or longer, as may be mutually agreed upon.

8.3 Annual Review. Throughout the Term, and at least once every 12 months, City may request that Developer provide City with a written report demonstrating its good-faith compliance with the terms of this Agreement (the "**Written Report**"). The City Manager and City Attorney shall review the Written Report to determine whether Developer is in good-faith compliance with the terms of the Agreement and, if they have concerns about Developer's compliance, shall schedule a review before the City Council (the "**Periodic Review**"). At least 10 days prior to the Periodic Review, the City shall provide to Developer a copy of any staff reports and documents to be used or relied upon in conducting the review (and, to the extent practical, related exhibits) concerning Developer's performance. Developer shall be permitted an opportunity to respond to the City's evaluation of Developer's performance, either orally at a public hearing or in a written statement, at Developer's election. Any written response shall be directed to the Community Development Director. At the conclusion of the Periodic Review, the City Council shall make written findings and determinations, on the basis of substantial evidence, as to whether or not Developer has complied in good faith with the terms and conditions of this Agreement. If the City Council finds and determines, based on substantial evidence, that Developer has not complied with such terms and conditions, the City Council may initiate proceedings to terminate or modify this Agreement, in accordance with Government Code Section 65865.1, by giving notice of its intention to do so, in the manner set forth in Government Code Sections 65867 and 65868. If after receipt of the Written Report, the City does not (a) schedule a Periodic Review within 2 months, or (b) notify Developer in writing of the City's determination after a Periodic Review, then it shall be conclusively presumed that Developer has complied in good faith with the terms and conditions of this Agreement during the year covered under the Written Report.

8.4 Notice of Compliance. Within 30 days following any written request which Developer or a Mortgagee may make from time to time, the City shall execute and deliver to the requesting party (or to any other party identified by the requesting party) a written "**Notice of Compliance**," in recordable form, duly executed and acknowledged by the City, that certifies: (a) this Agreement is unmodified and in full force and effect, or if there have been modifications, that this Agreement is in full force and effect as modified and stating the date and nature of the modifications; (b) there are no current uncured defaults under this Agreement or specifying the dates and nature of any default; and (c) any other information reasonably requested by Developer or the Mortgagee. The failure to deliver such a statement within such time shall constitute a conclusive presumption against the City that this Agreement is in full force and effect without modification except as may be represented by Developer and that there are no uncured defaults in the performance of Developer, except as may be represented by Developer.

## ARTICLE 9 DISPUTE RESOLUTION

9.1 Dispute; Confidentiality. Any controversy or dispute arising out of or related to this Agreement, or the development of the Project (a “**Dispute**”), shall be subject to private negotiation among the Parties, and if then not resolved shall be subject to non-binding mediation followed by litigation, if necessary, as set forth below. Each Party agrees that any Dispute, and all matters concerning any Dispute, will be considered confidential and will not be disclosed to any third-party except (a) disclosures to a Party’s attorneys, accountants, and other consultants who assist the Party in the resolution of the Dispute, (b) as provided below with respect to the mediation, and (c) as otherwise required by law, including without limitation, the California Public Records Act.

9.2 Private Negotiation. If a Dispute arises, the Parties agree to negotiate in good faith to resolve the Dispute. If the negotiations do not resolve the Dispute to the reasonable satisfaction of the Parties within 30 days from a written request for a negotiation, then the Dispute shall be submitted to mediation pursuant to Section 9.3.

9.3 Mediation. Within 30 days following the written request to negotiate, either Party may initiate non-binding mediation (the “**Mediation**”), conducted by JAMS, Inc. (“**JAMS**”) or any other agreed-upon mediator. Either Party may initiate the Mediation by written notice to the other Party. The mediator shall be a retired judge or other mediator, selected by mutual agreement of the Parties. If the Parties cannot agree within 15 days after the Mediation notice, the mediator shall be selected through the procedures regularly followed by JAMS. The Mediation shall be held within 30 days after the Mediator is selected, or a longer period as the Parties and the mediator mutually decide. If the Dispute is not fully resolved by mutual agreement of the Parties within 30 days after completion of the Mediation, then either Party may commence an action in state or federal court. The Parties shall bear equally the cost of the mediator’s fees and expenses, but each Party shall pay its own attorneys’ and expert witness fees and any other associated costs.

9.4 Injunction. Nothing in this ARTICLE 9 shall limit a Party’s right to seek an injunction or restraining order from a court of competent jurisdiction in circumstances where such relief is deemed necessary to preserve assets.

## ARTICLE 10 MISCELLANEOUS

10.1 Defined Terms; Citations. The capitalized terms used in this Agreement, unless the context obviously indicates otherwise, shall have the meaning given them in this Agreement. Except as otherwise expressly stated, all citations are to the Government Code of the State of California.

10.2 Enforceability. As provided in Section 65865.4, this Agreement shall be enforceable by either Party notwithstanding any change enacted or adopted (whether by ordinance, resolution, initiative, or any other means) in any applicable general plan, specific plan, zoning ordinance, subdivision ordinance, or any other land use ordinance or resolution or other rule, regulation or policy adopted by the City that changes, alters or amends the ordinances, rules, regulations and policies included in the Applicable Law, except as this Agreement may be amended or canceled pursuant to Section 65868 or modified or suspended pursuant to Section 65869.5.

10.3 Other Necessary Acts. Each Party shall execute and deliver to the other all such other further instruments and documents as may be reasonably necessary to carry out the Project Approvals and this Agreement and to provide and secure to the other Party the full and complete enjoyment of its rights and privileges under this Agreement.

10.4 Construction. Each reference in this Agreement to this Agreement or any of the Project Approvals shall be deemed to refer to this Agreement or the Project Approval, as it may be amended from time to time. This Agreement has been reviewed and revised by legal counsel for both the City and Developer, and no presumption or rule that ambiguities shall be construed against the drafting party shall apply to the interpretation or enforcement of this Agreement.

10.5 Covenants Running with the Land. Subject to the Transfer provisions in ARTICLE 6, all of the provisions contained in this Agreement shall be binding upon and benefit the Parties and their respective heirs, successors and assigns, representatives, lessees, and all other persons acquiring all or a portion of, or interest in, the Property, whether by operation of law or in any manner whatsoever. All of the provisions contained in this Agreement shall be enforceable as equitable servitudes and shall constitute covenants running with the land pursuant to California law including, without limitation, Civil Code Section 1468. Each covenant herein to act or refrain from acting is for the benefit of or a burden upon the Property, as appropriate, runs with the Property and is for the benefit of and binding upon the Developer, and each successive owner of all or a portion of the Property, during its ownership of such property.

10.6 Attorneys' Fees. If any legal action or other proceeding is commenced to enforce or interpret any provision of, or otherwise relating to, this Agreement, the losing party or parties shall pay the prevailing party's or parties' actual expenses incurred in the investigation of any claim leading to the proceeding, preparation for and participation in the proceeding, any appeal or other post-judgment motion, and any action to enforce or collect the judgment including without limitation contempt, garnishment, levy, discovery and bankruptcy. For this purpose "**expenses**" include, without limitation, court or other proceeding costs and experts' and attorneys' fees and their expenses. The phrase "**prevailing party**" shall mean the party which is determined in the proceeding to have prevailed or which prevails by dismissal, default or otherwise.

10.7 No Agency, Joint Venture or Partnership. The City and Developer disclaim the existence of any form of agency relationship, joint venture or partnership between the City and Developer. Nothing contained in this Agreement or in any document executed in connection with this Agreement shall be construed as creating any relationship other than a contractual relationship between the City and Developer.

10.8 No Third Party Beneficiary. This Agreement is made solely and specifically among and for the benefit of the Parties, and their respective successors and assigns subject to the express provisions relating to successors and assigns, and no other party other than a Mortgagee will have any rights, interest or claims or be entitled to any benefits under or on account of this Agreement as a third party beneficiary or otherwise.

10.9 Notices. All notices, consents, requests, demands or other communications to or upon the respective Parties shall be in writing and shall be effective for all purposes: (a) upon receipt on any City business day before 5:00 PM local time and on the next City business day if received after 5:00 PM or on other than a City business day, including without limitation, in the case of (i) personal delivery, or (ii) delivery by messenger, express or air courier or similar courier, or (b) 5 days after being duly mailed certified mail, return receipt requested, postage prepaid, all addressed as follows:

TO CITY:

City of Antioch  
Attention: City Manager  
200 H Street  
Antioch, CA 94509

TO DEVELOPER:

APS West Coast, Inc.  
Attention: Chief Financial Officer  
10060 Skinner Lake Drive, 2<sup>nd</sup> Floor  
Jacksonville, FL 32246

With a Mandatory Copy to:

City of Antioch  
Attention: City Attorney  
200 H Street  
Antioch, CA 94509

With a Mandatory Copy to:

Reuben, Junius & Rose, LLP  
Attention: Matthew D. Visick  
1 Bush Street, Suite 600  
San Francisco, CA 94104

In this Agreement “**City business days**” means days that the Antioch City Hall is open for business and does not currently include Fridays, Saturdays, Sundays, and federal and state legal holidays. Either Party may change its address by written notice to the other on five business days’ prior notice in the manner set forth above. Receipt of communication by facsimile or electronic mail shall be sufficiently evidenced by a machine-generated confirmation of transmission without notation of error. In the case of illegible or otherwise unreadable facsimile transmissions, the receiving Party shall promptly notify the transmitting Party of any transmission problem and the transmitting Party shall promptly resend any affected pages.

10.10 Entire Agreement and Exhibits. This Agreement constitutes in full, the final and exclusive understanding and agreement of the Parties and supersedes all negotiations or previous agreements of the Parties with respect to all or any part of the subject matter of this Agreement. No oral statements or prior written matter not specifically incorporated in this Agreement shall be of any force and effect. No amendment of, supplement to, or waiver of any obligations under this Agreement will be enforceable or admissible unless set forth in a writing approved by the City and Developer. The following exhibit is attached to this Agreement and incorporated for all purposes:

Exhibit A      Legal Description 2301 and 2603 Wilbur Avenue

Exhibit B      Resolution No. 2021-21

10.11 Counterparts. This Agreement may be executed in any number of identical counterparts and each counterpart shall be deemed to be an original document. All executed counterparts together shall constitute one and the same document, and any counterpart signature pages may be detached and assembled to form a single original document. This Agreement may be executed by signatures transmitted by facsimile, adobe acrobat or other electronic image files and these signatures shall be valid, binding and admissible as though they were ink originals.

10.12 Recordation of Development Agreement. Pursuant to Section 65868.5, no later than 10 days after the City enters into this Agreement, the City Clerk shall record an executed copy of this Agreement in the Official Records of the County of Contra Costa.

[SIGNATURES FOLLOW]

This Agreement has been entered into by and between Developer and the City as of the Effective Date.

CITY:

DEVELOPER

CITY OF ANTIOCH,  
a Municipal corporation

APS WEST COAST, INC.,  
a California corporation

\_\_\_\_\_  
By: Kwame P. Reed  
Its: Acting City Manager

\_\_\_\_\_  
By: Jacob Brown  
Its: Chief Financial Officer

APPROVED AS TO FORM:

APPROVED AS TO FORM:

REUBEN, JUNIUS & ROSE, LLP

\_\_\_\_\_  
By: Thomas Lloyd Smith  
Its: City Attorney

\_\_\_\_\_  
By: Corie A. Edwards  
Its: Attorney

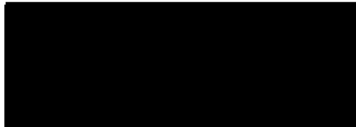
ATTEST:

\_\_\_\_\_  
By: Ellie Householder  
Its: City Clerk

**Exhibit A**

Legal Description 2301 and 2603 Wilbur Avenue





**The real property situated in the City of Antioch, County of Contra Costa, State of California, described as follows:**

PARCEL A:

PARCEL ONE:

PORTIONS OF SECTIONS 16, 17, 20 AND 21, TOWNSHIP 2 NORTH, RANGE 2 EAST, MOUNT DIABLO BASE AND MERIDIAN IN THE COUNTY OF CONTRA COSTA, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

BEGINNING AT A POST MARKED "B.1" BEING AT A POINT THAT BEARS SOUTH 89° 08' EAST 661.04 FEET AND NORTH 0° 43' EAST 25.0 FEET FROM THE CORNER COMMON TO SAID SECTIONS 16, 17, 20 AND 21; SAID COMMON CORNER BEING SOUTH 1° 18' 15" WEST 27.0 FEET FROM CONCRETE MONUMENT MARKED "FP1", NORTH 1° 18' 15" EAST 27.0 FEET FROM CONCRETE MONUMENT MARKED "FP2" AND SOUTH 7° 27' 11" WEST 1925.46 FEET FROM CONCRETE MONUMENT WITH BRASS CAP INSCRIBED "CALIF. LANDS COMM. - FIBER - 1947" AND FROM WHICH POINT OF BEGINNING A CONCRETE MONUMENT MARKED "FP3" BEARS NORTH 0° 43' EAST 2.0 FEET AND NORTH 89° 08' WEST 2.0 FEET, THENCE FROM SAID POINT OF BEGINNING, SOUTH 0° 43' WEST 25.00 FEET; THENCE SOUTH 0° 53' WEST AT 27.0 FEET A CONCRETE MONUMENT MARKED "FP4" BEARS NORTH 89° 08' WEST 2.0 FEET, A TOTAL DISTANCE OF 392.07 FEET TO A POINT IN THE NORTHERLY LINE OF THE 100 FEET STRIP DESCRIBED IN THE DEED FROM FRANK E. PEABODY TO SAN FRANCISCO AND SAN JOAQUIN VALLEY RAILWAY COMPANY, A CORPORATION, DATED JUNE 04, 1898 AND RECORDED JULY 20, 1898 IN BOOK 79 OF DEEDS, PAGE 127, IN THE OFFICE OF THE COUNTY RECORDER OF CONTRA COSTA COUNTY, CALIFORNIA, FROM WHICH POINT A CONCRETE MONUMENT MARKED "FP5" BEARS NORTH 88° 58' WEST 2.0 FEET AND NORTH 0° 53' EAST 2.0 FEET; THENCE, ALONG THE NORTHERLY LINE OF SAID 100 FOOT STRIP, NORTH 88° 58' WEST 1332.59 FEET TO A POINT FROM WHENCE A CONCRETE MONUMENT MARKED "FP6" BEARS NORTH 1° 28' EAST 2.0 FEET AND SOUTH 88° 58' EAST 2.0 FEET; THENCE NORTH 1° 28' EAST 423.41 FEET TO A POINT FROM WHENCE A CONCRETE MONUMENT MARKED "FP8" BEARS NORTH 1° 28' EAST 2.0 FEET; THENCE NORTH 88° 15' 30" WEST 662.91 FEET TO A POINT FROM WHENCE A CONCRETE MONUMENT MARKED "FP9" BEARS NORTH 1° 05' EAST 2.0 FEET AND SOUTH 88° 15' 30" EAST 2.0 FEET; THENCE NORTH 1° 05' EAST AT 1029.89 FEET A CONCRETE MONUMENT MARKED "FP10" BEARS SOUTH 88° 55' EAST 2.0 FEET, A TOTAL DISTANCE OF 1225.07 FEET TO A POINT FROM WHENCE THE SAID CORNER COMMON TO SECTIONS 16, 17, 20 AND 21 BEARS SOUTH 45° 20' 53" EAST 1835.92 FEET AND A CONCRETE MONUMENT WITH BRASS CAP INSCRIBED "CALIF. LANDS COMM. - BOARD - 1947" BEARS SOUTH 81° 07' 10" EAST 402.72 FEET; THENCE, ALONG THE ORDINARY HIGH WATER MARK ALONG THE SOUTHERLY SIDE OF THE SAN JOAQUIN RIVER, NORTH 58° 06' 15" EAST 143.69 FEET TO A POINT FROM WHENCE SAID CONCRETE MONUMENT WITH BRASS CAP INSCRIBED, "CALIF. LANDS COMM - BOARD - 1947" BEARS SOUTH 63° 24' 43" EAST 308.53 FEET; THENCE CONTINUING ALONG SAID ORDINARY HIGH WATER MARK, NORTH 88° 01' 15" EAST 192.06 FEET, NORTH 66° 44' 15" EAST 384.35 FEET, NORTH 44° 43' 15" EAST 519.73 FEET, NORTH 60° 39' 15" EAST 204.85 FEET, SOUTH 85° 23' 45" EAST 149.82 FEET, NORTH 78° 42' 15" EAST 305.10 FEET NORTH 56° 26' 15" EAST 94.17 FEET TO A POINT FROM WHENCE



SAID CONCRETE MONUMENT WITH BRASS CAP INSCRIBED "CALIF. LANDS COMM. - FIBER - 1947" BEARS SOUTH 44° 37' 21" WEST 259.81 FEET; THENCE, CONTINUING ALONG SAID ORDINARY HIGH WATER MARK, NORTH 69° 16' 15" EAST 273.98 FEET TO A POINT FROM WHENCE THE SAID CORNER COMMON TO SECTIONS 16, 17, 20 AND 21 BEARS SOUTH 17° 26' 35" WEST 2296.66 FEET AND SAID CONCRETE MONUMENT WITH BRASS CAP INSCRIBED "CALIF. LANDS COMM. - FIBRE - 1947" BEARS SOUTH 57° 16' 48" WEST 521.50 FEET; THENCE, LEAVING SAID ORDINARY HIGH WATER MARK, SOUTH 0° 43' WEST, AT 401.83 FEET A CONCRETE MONUMENT MARKED "FP11" BEARS NORTH 89° 17' WEST 2.0 FEET, A TOTAL DISTANCE OF 2176.26 FEET TO THE POINT OF BEGINNING.

AS SURVEYED BY J.G. BARNARD, IN AUGUST 1947, A MAP OF SAID SURVEY BEING FILED JANUARY 16, 1948, IN THE BOOK 12, LICENSED SURVEYOR'S MAPS, PAGE 29, IN THE OFFICE OF THE COUNTY RECORDER OF THE COUNTY OF CONTRA COSTA, STATE OF CALIFORNIA.

EXCEPTING THEREFROM:

1) ALL OIL, GAS AND OTHER HYDROCARBONS AND MINERAL SUBSTANCES (EXCEPT WATER) LYING MORE THAN 100 FEET BELOW THE SURFACE OF SAID REAL PROPERTY, AS RESERVED IN THE DEED FROM SANTA FE LAND IMPROVEMENT COMPANY, A CALIFORNIA CORPORATION, TO FIBERBOARD PRODUCTS, INC., A DELAWARE CORPORATION, DATED JULY 09, 1946 AND RECORDED NOVEMBER 15, 1946, IN BOOK 955 OF OFFICIAL RECORDS, PAGE 400.

2) THE INTEREST DESCRIBED IN QUITCLAIM DEED EXECUTED BY FIBERBOARD PRODUCTS, INC., A CORPORATION, TO COUNTY OF CONTRA COSTA, A POLITICAL SUBDIVISION OF THE STATE OF CALIFORNIA, DATED APRIL 05, 1948, RECORDED APRIL 26, 1948, IN BOOK 1193 OF OFFICIAL RECORDS, PAGE 509.

3) THE INTEREST DESCRIBED IN THE DEED TO THE COUNTY OF CONTRA COSTA RECORDED OCTOBER 22, 1958, BOOK 3249, PAGE 246, OF OFFICIAL RECORDS.

ALSO EXCEPTING THEREFROM:

THAT PORTION AS DESCRIBED IN THE CERTIFICATE OF COMPLIANCE RECORDED DECEMBER 19, 2005 AS INSTRUMENT NO. 2005-485430 OF OFFICIAL RECORDS OF CONTRA COSTA COUNTY.

PARCEL TWO:

A EXCLUSIVE EASEMENT FOR INGRESS, EGRESS, STORAGE AND SIMILAR USE OF CERTAIN RAIL LINE OVER PARCEL C, PARCEL MAP MS 12-85, FILED SEPTEMBER 05, 1986, BOOK 124 OF PARCEL MAPS, PAGE 7, CONTRA COSTA COUNTY RECORDS MORE BRIEFLY DESCRIBED AS:

COMMENCING AT THE NORTHWEST CORNER OF PARCEL "C"; THENCE ALONG THE WEST LINE OF PARCEL "C", SOUTH 01° 30' 23" WEST, 84.00 FEET TO ITS INTERSECTION WITH THE SOUTH EDGE OF THE 30.00 FOOT ACCESS & UTILITY EASEMENT SHOWN ON (124 PM 7), SAID POINT BEING THE TRUE POINT OF BEGINNING; THENCE FROM THE POINT OF BEGINNING ALONG THE STATED ACCESS EASEMENT, SOUTH 89° 27' 43" EAST, 95.31 FEET;

THENCE SOUTH 01° 30' 23" WEST, 249.48 FEET MORE OR LESS TO A POINT ON THE SOUTH BOUNDARY OF PARCEL "C"; THENCE ALONG THE SOUTH BOUNDARY SHOWN ON (124 PM 7); THENCE ALONG THE SOUTH AND WEST BOUNDARY OF PARCEL "C" NORTH 79° 07' 37" WEST, 78.99 WEST, 78.99 FEET; THENCE NORTH 01° 30' 23" EAST, 235.16 FEET; RETURNING TO THE POINT OF BEGINNING SAID EASEMENT ENCOMPASSING .53 ACRES.

PARCEL THREE:

A NON-EXCLUSIVE EASEMENT FOR RAIL SPUR AND PIPELINE EASEMENT GRANTED TO ROY A. CUNHA, A MARRIED MAN AS HIS SOLE AND SEPARATE PROPERTY, AS TO AN UNDIVIDED 35% INTEREST; DONALD T. CLEMETSON AND JEANETTE E. CLEMETSON, HUSBAND AND WIFE AS COMMUNITY PROPERTY, AS TO AN UNDIVIDED 35% INTEREST; ALBERT C. SNELL, JR., A MARRIED MAN, AS TO AN UNDIVIDED 18% INTEREST; AND ROBERT J. MCGUIRE, JR., A MARRIED MAN, AS TO AN UNDIVIDED 12% INTEREST; ALL AS TENANTS IN COMMON RECORDED ON MARCH 24, 2006 AS INSTRUMENT NO. 2006-0090646 OF OFFICIAL RECORDS OF SAID COUNTY.

PARCEL B:

PARCEL ONE:

PORTION OF THE SOUTHEAST ¼ OF SECTION 17, TOWNSHIP 2 NORTH, RANGE 2 EAST, MOUNT DIABLO BASE AND MERIDIAN, DESCRIBED AS FOLLOWS:

BEGINNING ON THE NORTHERN LINE OF THE COUNTY ROAD KNOWN AS WILBUR AVENUE, AT THE SOUTHWESTERN CORNER OF THE PARCEL OF LAND DESCRIBED IN THE DEED FROM E.S. SWEENEY, ET UX, TO S. DAYRE FREEMAN, DATED DECEMBER 16, 1939, RECORDED DECEMBER 21, 1939, IN BOOK 535 OF OFFICIAL RECORDS, PAGE 114; THENCE FROM SAID POINT OF BEGINNING, NORTH 89° 15' WEST, ALONG THE NORTHERN LINE OF WILBUR AVENUE, 901.39 FEET TO THE SOUTHEASTERN CORNER OF THE PARCEL OF LAND DESCRIBED IN THE DEED FROM BEN MORRIS TO LOUISE MCCULLOUGH, DATED APRIL 22, 1941, RECORDED NOVEMBER 03, 1941 IN BOOK 634 OF OFFICIAL RECORDS, PAGE 181; THENCE NORTHERLY ALONG THE EASTERN LINE OF SAID MCCULLOUGH PARCEL (634 OR 181), AS FOLLOWS: NORTH 744 FEET; EAST 121 FEET, AND NORTH 180 FEET TO THE NORTHEASTERN CORNER OF SAID MCCULLOUGH PARCEL (634 OR 181) SAID NORTHEASTERN CORNER BEING ON THE LOW WATER LINE OF THE SAN JOAQUIN RIVER; THENCE NORTH 89° 35' EAST, ALONG SAID LOW WATER LINE, 44.22 FEET AND NORTH 78° 15' EAST 752 FEET TO THE NORTHWESTERN CORNER OF SAID FREEMAN PARCEL (535 OR 114); THENCE SOUTH, ALONG THE WESTERN LINE OF SAID FREEMAN PARCEL (535 OR 114), A DISTANCE OF 1087 FEET TO THE POINT OF BEGINNING.

EXCEPTING THEREFROM:

ANY PORTION OF THE ABOVE DESCRIBED PROPERTY LYING NORTH OF THE ORDINARY HIGH WATER MARK OF SAN JOAQUIN RIVER.

EXCEPTING THEREFROM:

THAT PORTION DESCRIBED IN THE DEED TO THE COUNTY OF CONTRA COSTA, RECORDED MARCH 15, 1957 IN BOOK 2948, PAGE 276 OF OFFICIAL RECORDS.

PARCEL TWO:

BEGINNING AT A POINT ON THE NORTH LINE OF THE COUNTY ROAD, 50 FEET NORTH AND SOUTH 89° 15' EAST, 924.96 FEET FROM THE ¼ SECTION CORNER BETWEEN SECTIONS 17 AND 20, TOWNSHIP 2 NORTH, RANGE 2 EAST, MOUNT DIABLO BASE AND MERIDIAN; THENCE RUNNING NORTH 1087 FEET TO STATION AT LOW WATER LINE AND SAN JOAQUIN RIVER; THENCE ALONG LOW WATER LINE NORTH 78° 15' EAST 63.1 FEET TO STATION; NORTH 43° 15' EAST, 246.18 FEET TO STATION; NORTH 61° 35' EAST, 189.42 FEET TO STATION; THENCE SOUTH 1373.46 FEET TO STATION ON NORTH LINE OF THE HEREINBEFORE MENTIONED ROAD; THENCE ALONG NORTH LINE OF SAID ROAD, NORTH 89° 15' WEST, 396.36 FEET TO THE PLACE OF BEGINNING, AND BEING A PART OF THE SOUTHEAST ¼ OF SECTION 17, TOWNSHIP 2 NORTH, RANGE 2 EAST, MOUNT DIABLO BASE AND MERIDIAN.

EXCEPTING THEREFROM:

ANY PORTION OF THE ABOVE-DESCRIBED PROPERTY LYING NORTH OF THE ORDINARY HIGH WATER MARK OF SAN JOAQUIN RIVER.

EXCEPTING THEREFROM:

THAT PORTION DESCRIBED IN THE DEED TO THE COUNTY OF CONTRA COSTA, RECORDED MARCH 15, 1957 IN BOOK 2948, PAGE 276 OF OFFICIAL RECORDS.

PARCEL THREE:

AN EXCLUSIVE EASEMENT FOR INGRESS, EGRESS, STORAGE AND SIMILAR USE OF CERTAIN RAIL LINE OVER PARCEL C, PARCEL MAP MS 12-85, FILED SEPTEMBER 05, 1986, BOOK 124 OF PARCEL MAPS, PAGE 7, CONTRA COSTA COUNTY RECORDS MORE BRIEFLY DESCRIBED AS:

COMMENCING AT THE NORTHWEST CORNER OF PARCEL "C"; THENCE ALONG THE WEST LINE OF PARCEL "C", SOUTH 01° 30' 23" WEST, 84.00 FEET TO ITS INTERSECTION WITH THE SOUTH EDGE OF THE 30.00 FOOT ACCESS & UTILITY EASEMENT SHOWN ON (124 PM 7), SAID POINT BEING THE TRUE POINT OF BEGINNING; THENCE FROM THE POINT OF BEGINNING, ALONG THE STATED ACCESS EASEMENT, SOUTH 89° 27' 43" EAST, 95.31 FEET; THENCE SOUTH 01° 30' 23" WEST, 249.48 FEET MORE OR LESS TO A POINT ON THE SOUTH BOUNDARY OF PARCEL "C"; THENCE ALONG THE SOUTH BOUNDARY SHOWN ON (124 PM 7); THENCE ALONG THE SOUTH AND WEST BOUNDARY OF PARCEL "C" NORTH 79° 07' 37" WEST, 78.99 FEET; THENCE NORTH 01° 30' 23" EAST, 235.16 FEET; RETURNING TO THE POINT OF BEGINNING SAID EASEMENT ENCOMPASSING 0.53 ACRES.

**Exhibit B**

Resolution No. 2021-21

**PLANNING COMMISSION  
RESOLUTION NO. 2021-21**

**RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF ANTIOCH  
APPROVING A USE PERMIT, DESIGN REVIEW, AND VARIANCE (UP-20-14, AR-20-  
18, V-21-04) FOR AMPORTS ANTIOCH VEHICLE PROCESSING FACILITY  
AT 2301 WILBUR AVENUE**

**WHEREAS**, the City of Antioch received an application from AMPORTS for approval of an Initial Study / Mitigated Negative Declaration, Use Permit, Design Review, and Variance for the development of an automotive logistics and processing facility for vehicles prior to their distribution to dealerships. The project includes the conversion and upgrade of the existing wharf for roll on/roll off operations, construction of a new building, and new site improvements - including new paving, stormwater improvements, and fencing at 2301 Wilbur Avenue (UP-20-14, AR-20-18, V-21-04) (APNs 051-020-006 and 051-020-012);

**WHEREAS**, an Initial Study / Mitigated Negative Declaration and Mitigation Monitoring and Reporting Program was prepared in accordance with the California Environmental Quality Act (CEQA) Guidelines Section 15162, and considered by the Planning Commission on August 18, 2021;

**WHEREAS**, the Planning Commission duly gave notice of public hearing as required by law;

**WHEREAS**, the Planning Commission September 1, 2021, duly held a public hearing, received and considered evidence, both oral and documentary; and

**WHEREAS**, on September 1, 2021, the Planning Commission adopted the Initial Study / Mitigated Negative Declaration, Mitigation Monitoring and Reporting Program for the project.

**NOW, THEREFORE, BE IT RESOLVED** that the Planning Commission does hereby make the following findings required for approval of the Use Permit:

1. The granting of such Use Permit will not be detrimental to the public health or welfare or injurious to the property or improvements in such zone or vicinity.

The proposed vehicle processing facility is required to comply with multiple conditions of approval that address the project's impact on public health and the properties in the vicinity. The vehicle processing facility is located in an industrial district with similar uses in close proximity. Based upon the conditions imposed, the proposed use will not create adverse impacts to the surrounding businesses and residents.

2. The use applied at the location indicated is properly one for which a Use Permit is authorized.

The site is zoned Heavy Industrial (M-2). The Heavy Industrial District allows vehicle storage with the approval of a use permit.

3. The site for the proposed use is adequate in size and shape to accommodate such use, and all parking, and other features required.

The proposed site is adequate in size and shape to accommodate a vehicle processing facility. The proposed facility will provide ample space for the vehicles to be stored along with ample employee parking.

4. That the site abuts streets and highways adequate in width and pavement type to carry the kind of traffic generated by the proposed use.

The project site is currently vacant, partially paved, and has an existing wharf and is located on Wilbur Avenue, which is adequate in width and pavement type to carry the traffic generated by the proposed use.

5. The granting of such Use Permit will not adversely affect the comprehensive General Plan.

The use will not adversely affect the comprehensive General Plan because the project is consistent with the General Plan designation for the site of Industrial.

**BE IT FURTHER RESOLVED** that the Planning Commission does hereby make the following findings for the approval of a Variance for an eight-foot-high fence in the required front setback and a 10-foot landscaping front setback, where a 30-foot front landscaped setback is required:

1. That there are exceptional or extraordinary circumstances or conditions applicable to the property involved, or to the intended use of the property, that do not apply generally to the property or class of use in the same zone or vicinity.

The intended use of the property is a vehicle processing facility with a wharf. Due to the need to secure the vehicles, the USCG regulations to secure the site, the conditioned dedication for Wilbur Avenue, and the layout of the existing site, a reduced landscaping setback and security fence is most effectively placed close to Wilbur Avenue.

2. That the granting of such variance will not be materially detrimental to the public health or welfare or injurious to the property or improvements in such zone or vicinity.

The proposed 10-foot landscaping setback will allow for attractive landscaping to be installed at the site, which will help screen the fence and provide a buffer from the sidewalk and the barbed wire and will satisfy the USCG security requirements for the site. The conditions of approval also require the fence and landscaping to not cause a visual obstruction for drivers using the project's driveway. Therefore, the proposed reduced setback and fence will not be detrimental to the public health or injurious to the properties in the area.

3. That because of special circumstances applicable to the subject property, including size, shape, topography, location, or surroundings, the strict application of the zoning provisions is found to deprive the subject property of privileges enjoyed by other properties in the vicinity under the identical zone classifications.

The project site will be developed a wharf facility with vehicle storage. Providing robust security for the wharf, as required by the USCG is unique to properties along the water with a functioning with wharf. Restricting the project to a three-foot-tall fence in the front setback would limit the project's ability to provide adequate security for the site. The City is conditioning the project to dedicate right-of-way to the site, reducing the amount of frontage that would normally be used for a front setback, this requirement is not placed on all properties. Therefore, this property features special circumstances that require a reduced setback and eight-foot fence in the front setback.

4. That the granting of such variance will not adversely affect the comprehensive General Plan.

The proposed use of the project site is consistent with the General Plan designation of Industrial. The applicant's request would not adversely affect the comprehensive General Plan.

**NOW, THEREFORE, BE IT FURTHER RESOLVED** that the Planning Commission of the City of Antioch does hereby **APPROVE** a Use Permit, Design Review, and Variance for the development of an automotive logistics and processing facility for vehicles prior to their distribution to dealerships. The project includes the conversion and upgrade of the existing wharf for roll on/roll off operations, construction of a new building, and new site improvements - including new paving, stormwater improvements, and fencing at 2301 Wilbur Avenue (UP-20-14, AR-20-18, V-21-04) (APNs 051-020-006 and 051-020-012) subject to the following conditions:

**A. GENERAL CONDITIONS**

1. The development and all proposed improvements shall comply with the City of Antioch Municipal Code and City Standards unless a specific exception is granted thereto or approved by the City Engineer.

2. This approval expires two years from the date of approval (Expires September 1, 2023), unless: a building permit has been issued and construction has diligently commenced thereon and has not expired; a certificate of occupancy has been issued; or the use is established. Requests for extensions must be received in writing with the appropriate fees prior to the expiration of this approval. No more than one, one-year extension shall be granted.
3. City staff shall inspect the site for compliance with conditions of approval prior to final inspection approval.
4. The developer shall defend, indemnify, and hold harmless the City in any action brought challenging any land use approval or environmental review for the Project. In addition, developer shall pay any and all costs associated with any challenge to the land use approval or environmental review for the Project, including, without limitation, the costs associated with any election challenging the Project.
5. A final and unchallenged approval of this project supersedes previous approvals that have been granted for this site.
6. No permits or approvals, whether discretionary or mandatory, shall be considered if the applicant is not current on fees, reimbursement payments and other monies that are due.
7. The applicant shall obtain an encroachment permit for all work to be done within the public right-of-way or easement, and peak commute-hour traffic shall not be impeded by construction-related activity.
8. All required easements or rights of entry for off-site improvements shall be obtained by the applicant at no cost to the City of Antioch. Advance permission shall be obtained from any property or easement holders for any work done within such property or easements.
9. All existing easements shall be identified on the site plan and all plans that encroach into existing easements shall be submitted to the easement holder for review and approval, and advance written permission shall be obtained from any property owner or easement holder for any work done within such property or easement.
10. All access drive aisles shall be constructed per current ADA and City standards, subject to review and approval by the City Engineer.



11. All cracked, broken or damaged concrete curb, gutter and/or sidewalks in the public right-of-way along the project frontage shall be removed and replaced as required by the City Engineer and at no cost to the City.
12. On site Asphalt paving including repairs to existing pavement shall be designed for a minimum traffic index (TI) of 5.5 and shall have a minimum slope of 2%, concrete paving shall have a minimum slope of 0.75%, and asphalt paving for identified accessible parking stalls and access routes may have a minimum slope of 1.5% and a maximum 2% slope, or as approved by the City Engineer.
13. All on-site curbs, gutters and sidewalks shall be constructed of Portland cement concrete.
14. The applicant shall install and maintain parking lot and pathway within the project area at no cost to the City.

**B. CONSTRUCTION CONDITIONS**

1. The use of construction equipment shall be as outlined in the Antioch Municipal Code. Construction is restricted to weekdays between the hours of 8:00 AM and 5:00 PM. Requests for alternative days/times may be submitted in writing to the City Manager or designee for consideration.
2. The project shall comply with and supply all the necessary documentation for AMC § 6-3.2: Construction and Demolition Debris Recycling.
3. Standard dust control methods shall be used to stabilize the dust generated by construction activities. The developer shall post dust control signage with the contact number of the Developer, the Bay Area Air Quality Management District and the City.
4. Driveway access to neighboring properties shall be maintained at all times during construction.

**C. FIRE REQUIREMENTS**

1. All requirements of the Contra Costa County Fire District shall be met.

**D. FEES**

1. The developer shall pay all City fees which have been established by the City Council and as required by the Antioch Municipal Code.
2. The applicant shall pay all pass-through fees. Fees include but are not limited to:

- East Contra Costa Regional Fee and Financing Authority (ECCRFFA) Fee in effect at the time of building permit issuance.
  - Contra Costa County Fire Protection District Fire Development Fee in effect at the time of building permit issuance.
  - Development Impact Fee
  - Traffic Signal Fees
  - Gravity Flow Sewer Assessment Fee
  - School Impact Fees
  - Delta Diablo Sewer Fee
  - Contra Costa Water District Fee
3. The applicant shall pay the Contra Costa County Flood Control District Drainage Area fee in effect at the time of, and prior to issuance of, a building permit.
  4. Prior to the issuance of a certificate of occupancy, the property shall annex into Street Lighting and Landscape District 2A Zone 3 and accept a level of annual assessments sufficient to maintain street lights and landscaping adjacent to the project. The annual assessment shall cover the actual annual cost of maintenance as described in the Consolidated Engineer's Report for the City of Antioch Street Light and Landscape Maintenance District Numbers 1, 2A, 4, 5, 9, and 10.

E. **PROPERTY MAINTENANCE**

1. A parking lot sweeping program shall be implemented that, at a minimum, provides for sweeping immediately prior to the storm season and prior to each storm event.
2. The project shall comply with Property Maintenance Ordinance Section 5-1.204. No final landscape and irrigation plan shall be considered complete without an approved maintenance agreement reflective of standards contained in Section 5-1.204(G).
3. Property owner shall comply with all City municipal codes regarding the maintenance of property.
4. Property owner shall be responsible for maintaining all on-site and frontage landscaping and storm water detention basins.

F. **GRADING**

1. The grading operation shall take place at a time, and in a manner, so as not to allow erosion and sedimentation. Erosion measures shall be implemented during all construction phases in accordance with an approved erosion and sedimentation control plan.

2. The final grading plan for this development shall be approved by the City Engineer and signed by a California licensed civil engineer. No grading is allowed without a grading permit issued by the Building Department.
3. All elevations shown on the grading and improvement plans shall be on the USGS 1929 sea level datum or NAVD 88 with conversion information, or as approved by the City Engineer.

**G. CONSERVATION/NPDES**

1. The project shall comply with all Federal, State, and City regulations for the National Pollution Discharge Elimination System (NPDES) (AMC§6-9). Under NPDES regulations, the project is subject to provision C.3: New development and redevelopment regulations for storm water treatment. Provision C.3 requires that the project include storm water treatment and source control measures, as well run-off flow controls, so that post-project runoff does not exceed estimated pre-project runoff. C.3 regulations require the submittal of a Storm Water Control Plan (SWCP) that demonstrates how compliance will be achieved. The SWCP shall be submitted simultaneously with the project plans. An Operation and Maintenance Plan (O&M) for the treatment and flow-controls in the approved SWCP shall be submitted and approved before the Building Department will issue Certificate of Occupancy permits and shall be included in the project CC&Rs. Prior to building permit final and issuance of a Certificate of Occupancy, the applicant shall execute any agreements identified in the Storm Water Control Plan that pertain to the transfer of ownership and/or long-term maintenance of storm water treatment or hydrograph modification BMPs.
2. All impervious surfaces to be constructed as part of the project, including off-site roadways, are subject to C.3 requirements per State Regulations.
3. The following requirements of the federally mandated NPDES program (National Pollutant DISCHARGE Elimination System) shall be complied with as appropriate, or as required by the City Engineer:
  - a. Prior to issuance of permits for building, site improvements, or landscaping, the applicant shall submit a permit application consistent with the applicant's approved Storm Water Control Plan, and include drawings and specifications necessary for construction of site design features, measures to limit directly connected impervious area, pervious pavements, self-retaining areas, treatment BMPs, permanent source control BMPs, and other features that control storm water flow and potential storm water pollutants.
  - b. The Storm Water Control Plan shall be certified by a registered civil engineer, and by a registered architect or landscape architect as applicable. Professionals certifying the Storm Water Control Plan shall be registered in the

- State of California and submit verification of training, on design of treatment measures for water quality, not more than three years prior to the signature date by an organization with storm water treatment measure design expertise (e.g., a university, American Society of Civil Engineers, American Society of Landscape Architects, American Public Works Association, or the California Water Environment Association), and verify understanding of groundwater protection principles applicable to the project site (see Provision C.3.i of Regional Water Quality Control Board Order R2 2003 0022).
- c. Prior to building permit final and issuance of a Certificate of Occupancy, the applicant shall submit, for review and approval by the City, a final Storm Water BMP Operation and Maintenance Plan in accordance with City of Antioch guidelines. This O&M plan shall incorporate City comments on the draft O&M plan and any revisions resulting from changes made during construction.
  - d. Prior to building permit final and issuance of a Certificate of Occupancy, the applicant shall execute and record any agreements identified in the Storm Water Control Plan which pertain to the transfer of ownership and/or long-term maintenance of storm water treatment or hydrograph modification BMPs.
  - e. Prevent site drainage from draining across sidewalks and driveways in a concentrated manner.
  - f. Collect and convey all storm water entering, and/or originating from, the site to an adequate downstream drainage facility. Submit hydrologic and hydraulic calculations with the Improvement Plans to Engineering Services for review and approval.
  - g. Prior to issuance of the grading permit, submit proof of filing of a Notice of Intent (NOI) by providing the unique Waste Discharge Identification Number (WDID#) issued from the Regional Water Quality Control Board.
  - h. Submit a copy of the Storm Water Pollution Prevention Plan (SWPPP) for review to the Engineering Department prior to issuance of a building and/or grading permit. The general contractor and all subcontractors and suppliers of materials and equipment shall implement these BMP's. Construction site cleanup and control of construction debris shall also be addressed in this program. Failure to comply with the approved construction BMP may result in the issuance of correction notices, citations, or a project stop work order.
  - i. Install appropriate clean water devices at all private storm drain locations immediately prior to entering the public storm drain system. Applicant shall implement Best Management Practices (BMP's) at all times.
  - j. Install on all catch basins "No Dumping, Drains to River" decal buttons.

- k. If sidewalks are pressure washed, debris shall be trapped and collected to prevent entry into the storm drain system. No cleaning agent may be discharged into the storm drain. If any cleaning agent or degreaser is used, wash water shall be collected and discharged to the sanitary sewer, subject to the approval of the sanitary sewer District.
- l. Include erosion control/storm water quality measures in the final grading plan that specifically address measures to prevent soil, dirt, and debris from entering the storm drain system. Such measures may include, but are not limited to, hydro seeding, gravel bags and siltation fences and are subject to review and approval of the City Engineer. If no grading plan is required, necessary erosion control/storm water quality measures shall be shown on the site plan submitted for an on-site permit, subject to review and approval of the City Engineer. The applicant shall be responsible for ensuring that all contractors and subcontractors are aware of and implement such measures.
- m. Sweep or vacuum the parking lot(s) a minimum of once a month and prevent the accumulation of litter and debris on the site. Corners and hard to reach areas shall be swept manually.
- n. Ensure that the area surrounding the project such as the streets stay free and clear of construction debris such as silt, dirt, dust, and tracked mud coming in from or in any way related to project construction. Areas that are exposed for extended periods shall be watered regularly to reduce wind erosion. Paved areas and access roads shall be swept on a regular basis. All trucks shall be covered.
- o. Clean all on-site storm drain facilities a minimum of twice a year, once immediately prior to October 15 and once in January. Additional cleaning may be required if found necessary by City Inspectors and/or City Engineer.
- p. Install full trash capture device(s) in storm water catch basins that collect water from the project site. A "full trash capture device" is defined as any device or series of devices that traps all particles retained by a 5mm mesh screen and has a design treatment capacity of not less than the peak flow rate resulting from a one-year, one-hour, storm in the tributary drainage catchment area. Selected devices must be detailed on the building permit plan submittal and approved by Public Works prior to installation.

H. UTILITIES

1. All existing and proposed utilities (e.g. transformers and PMH boxes) shall be undergrounded and subsurface in accordance with the Antioch Municipal Code, except existing P.G.& E. towers, if any, or as approved by the City Engineer.
2. All storm water flows shall be collected onsite and discharged into an approved public storm drain system or, if with applicable regulatory approval, into the river.
3. Trash enclosures shall drain to sanitary sewer and shall incorporate methods to contain refuse runoff at the front-gate and pedestrian access point to prevent storm water from entering the enclosure.
4. The sewer collection system shall be constructed to function as a gravity system.
5. A reduced pressure backflow preventer assembly shall be installed on all City water meter services.
6. Double detector check fire line backflow assemblies shall be enclosed within an easement granted to the City, as needed, and at no cost to the City.
7. The developer shall provide all offsite and onsite improvements necessary to provide adequate water pressure and volume to serve this development, as approved by the City Engineer. This will include a minimum residual pressure of 20 psi with all losses included at the highest point of water service and a minimum static pressure of 50 psi.
8. The developer shall install all infrastructure to serve the site. Infrastructure for access to the site (sewer, water, storm, joint trench, and surface improvements) shall be completed prior to issuance of building permits unless pursuant to a written Improvement Agreement, including securities, between the applicant and the City.
9. The developer shall minimize water and sewer connection tie-ins to wet utility mains.
10. All onsite utilities shall be privately maintained and connected to public facilities in accordance with City Standards, or as approved by the City Engineer.
11. All proposed drainage facilities, including open ditches, and except for any grassy swales for storm water quality filtration, shall be constructed of Portland Concrete Cement or as approved by the City Engineer.
12. All structures onsite shall be connected to water and sewer mains for service.



**I. LANDSCAPING**

1. Sight distance triangles shall be maintained per Antioch Municipal Code § 9-5.1101, Site Obstructions at Intersections, or as approved by the City Engineer. Landscaping and signage shall not create a sight distance problem.
2. Detailed landscaping and irrigation plans for the entire site shall be submitted to the City for review and approval. All landscaping and irrigation shall be installed in accordance with approved plans prior to the issuance of certificates of occupancy for the landside building.
3. Landscaping for the project shall be designed to comply with the applicable requirements of City of Antioch Ordinance No. 2162-C-S the State Model Water Efficient Landscape Ordinance (MWELO). Prior to issuance of a building permit, the applicant shall demonstrate compliance with the applicable requirements of the MWELO in the landscape and irrigation plans submitted to the City.

**J. MITIGATION MONITORING AND REPORTING PROGRAM**

1. The developer shall comply with all mitigation measures identified in the Mitigation Monitoring and Reporting Program (MMRP) for the AMPORTS Antioch Vehicle Processing Facility Project.
2. The applicant shall comply with mitigation measure AIR-3 in the MMRP, which states:

MM AIR-3: Reduce Annual Vessel Calls, Provide Emissions Offsets, or Otherwise Demonstrate a Reduction in Emissions. To reduce operation phase NOX emissions to below the BAAQMD annual and daily mass emissions thresholds, the Applicant shall limit vessel calls to no more than eight (8) vessel calls per year; or incorporate additional emission reduction measures which may include but are not limited to the following:

- Secure and surrender NOx emissions offsets for NOx emissions over the BAAQMD threshold of significant; or,
- Truck fleet electrification
- Truck fleet alternative fuels (natural gas, hydrogen, etc.)
- Truck model year restrictions, e.g., 2018 or newer
- Truck idling restrictions

The Applicant shall be responsible for the preparation of documents demonstrating revised operational characteristics are below BAAQMD annual

and daily mass thresholds of significance for NO<sub>x</sub>, and shall also be responsible for a third-party verification on behalf of the City, if required by the City's Planning Manager.

**K. PROJECT SPECIFIC CONDITIONS**

1. This approval applies to the project plans and other design drawings provided to the City of Antioch on January 29, 2021; the updated wharf plans provided to the City of Antioch on March 23, 2021; the topographic map prepared by Cinquini & Passarino, Inc. provided to the City of Antioch on April 28, 2021; and the updated conceptual stormwater control plan sheet (CG-201) dated May 4, 2021.
2. The property owner shall dedicate and improve prior to the commencement of operations at the site an additional right-of-way along the project frontage as necessary for the widening of Wilbur Avenue to accommodate a 108-foot-wide arterial roadway, to the satisfaction of the City Engineer. The centerline of the widened road will be no nearer to the applicant's property than the centerline of the current road.
3. Applicant shall be responsible for the design and construction of all frontage improvements, along the project frontage on Wilbur Avenue including a 5-foot-wide sidewalk, 5-foot-wide landscaping planter, curb and gutter. Asphalt paving shall be designed for a minimum traffic index (T.I.) of 9.0 and shall have a minimum slope of 2%. Pavement section shall be a minimum of 6" A.C. over 18" Class II A.B.
4. Applicant shall conform all new improvements with existing improvements at the cost of the applicant. Transitions shall all occur offsite from the project frontage.
5. The applicant shall locate the front boundary fence 10 feet back from the modified front property line. Screening landscaping shall be installed within this 10-foot area with plants such as oleander to screen the fence. The landscaping shall be shown on the building permit for the landside work and shall be subject to review and approval by the Planning Division.
6. Applicant shall design and construct all signing and striping necessary to conform the existing Wilbur Avenue improvements with the new improvements constructed by this project all at the cost of the applicant.
7. Striping of Wilbur Avenue along project frontage section shall be restriped and restored to the satisfaction of the City Engineer prior to the commencement of operations.
8. There is an existing railroad spur that serves this parcel. As a part of the frontage improvements, the railroad company may require improvements to the railroad



crossing meet current standards. The Developer shall obtain the necessary permits and construct the improvements required by the railroad owner, or governing entity, for any necessary improvements to the railroad crossing. If the railroad spur is removed, the Developer shall rebuild the roadway where the railroad spur was removed to the satisfaction of the City Engineer.

9. The parking lot striping and signing plan shall be approved by the City Engineer.
10. All parking spaces shall be double-striped and all parking lot dimensions shall meet minimum City policies and Antioch Municipal Code requirements.
11. No Parking Any Time (R26) signage shall be installed per California MUTCD standards at locations along project frontage as approved by the City Engineer.
12. The applicant shall show a turning template on the building permit site plan verifying that delivery trucks can safely ingress, egress and successfully maneuver throughout the site.
13. The location of the trash enclosures shall be shown on the building permit submittal for the landside operations. The waste company shall provide approval for the location of all trash enclosures, subject to the approval of the City Engineer. Trash enclosures shall not be located within any easement areas.
14. The building permit submittal shall include detailed plans of the location and design of the trash enclosure, in compliance with Antioch Municipal Code Section § 9-5.1401, including:
  - a. The walls of the trash enclosure structure shall be constructed of solid masonry material with a decorative exterior surface finish compatible to the main structure(s). A split face concrete block finish is recommended;
  - b. The trash enclosure structure shall have solid heavy gauge metal gates; the trash enclosure should be designed to allow walk-in access by tenants without requiring the main enclosure gates to be opened;
  - c. The trash enclosure walls shall be a minimum six feet in height. The minimum dimensions for the trash enclosure shall be adequate for the size and number of dumpster units and recycling bins; and signage identifying the types of recyclable materials accepted for collection at the trash enclosure shall be conspicuously posted within the enclosure;
  - d. If visible from public view, the perimeter of the trash enclosure structure shall be planted with landscaping, including a combination of shrubs and/or climbing evergreen vines.

15. Stop signs shall be installed at driveway exits onto Wilbur Avenue prior to the commencement of operations.
16. The project entry shall allow for two (2) full-sized auto-carriers to be queue in line at the gate without any portion of the vehicle protruding into the travel lanes on Wilbur Avenue. The building permit plans for the landside work shall show the revised project entry and a template of the two (2) full-sized auto-carriers queued.
17. Developer shall extend the existing sewer main on Wilbur Avenue to the full extent of site frontage and connect to Wilbur Avenue sewer main for service. Developer shall be responsible for one quarter of the cost and a reimbursement mechanism will be established for the remaining three-quarters of the cost. The work shall be completed prior to the commencement of operations at the site.
18. The stevedore trailer shall be built on a permanent foundation and hooked up to utilities. The trailer shall be subject to administrative design review prior to the submittal of building permits for the trailer.
19. The roof of the office and vehicle process facility shall be gray toned instead of white and shall be subject to review and approval by the Planning Division prior to the issuance of a building permit for the building.
20. The perimeter chain link fence adjacent to the public right-of-way shall have vinyl clad hardware.
21. The perimeter chain link fence shall be a maximum height of seven feet with an additional one foot of barbed wire. The total fence height shall not exceed eight feet.
22. Prior to issuance of a building permit for the landside work or commencement of operations at the site, whichever comes first, the developer shall secure the required regulatory permits to use, operate, and maintain the existing storm water outfall which drains the site directly to the San Joaquin River.
23. The developer shall secure all required regulatory permits necessary for the construction and operation of the site.
24. Fencing shall not obstruct sight distance triangles, as required per Antioch Municipal Code § 9-5.1101, Site Obstructions at Intersections.
25. In alignment with the City's adopted Climate Action Plan (2010), the City requires this development to install at least 1 "Idle Free" incidental sign encouraging drivers not to idle their vehicle in order to reduce air pollution and greenhouse gas emissions. The City recommends the sign be placed in an area where drivers are likely to see it when they park and wait, such as at the beginning of a drive thru or

pick up area. The sign's location shall be shown on plans and shall be reviewed and approved by staff at the building permit stage. The City requires that the sign be 12"x18" and meet existing City requirements for signage, such as for no parking signs, traffic sign mounting, and signage in the right of way. The applicant shall visit the Idle Free Bay Area website at <https://idlefreebayarea.org/resources/> in order to view a sample bilingual Idle Free sign. This template sign can be used by the applicant when having a sign designed and printed.

26. Per the letter dated June 30, 2021, AMPORTS acknowledges the need to enter into a formal agreement with the City of Antioch regarding the public/private partnership for this project to be a success for all parties. AMPORTS also agrees to work in good faith to develop an agreement to mitigate City impacts as well as negotiate City protections and cost reimbursement for administration of a PIDP grant if awarded.

\* \* \* \* \*

I HEREBY CERTIFY the foregoing resolution was duly adopted by the Planning Commission of the City of Antioch at a regular meeting thereof held on the 1<sup>st</sup> day of September 2021.

**AYES:** Motts, Barrow, Gutilla, Martin, and Schneiderman

**NOES:** none

**ABSTAIN:** none

**ABSENT:** Parsons and Riley

  
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**Forrest Ebbs**  
Secretary to the Planning Commission








# 2024-23\_AMPORTS\_Dev Agmt

Final Audit Report

2024-12-05

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