

FIRST AMENDMENT TO OPERATING MEMORANDUM TO
DEVELOPMENT AGREEMENT AND WILDHORSE OPEN SPACE REHABILITATION
AND CONSTRUCTION AGREEMENT
FOR THE DAVIS AGRICULTURAL BUFFER/GREENBELT AREA

THIS FIRST AMENDMENT is made and entered into this 23 day of ^{FEBRUARY} , 2000,
by and between the City of Davis, a municipal corporation (hereinafter "city") and
Wildhorse Group LLC, a California Limited Liability Company (hereinafter
"Wildhorse") who agree as follows:

RECITALS

- A. The City and Wildhorse entered into that certain agreement entitled "Operating Memorandum to Development Agreement and Wildhorse Open Space Rehabilitation and Construction Agreement for the Davis Agricultural Buffer/Greenbelt area dated February 17, 1999 (hereinafter the "Agreement") under which Wildhorse agreed to remediate and rehabilitate the Davis Agricultural Buffer/Greenbelt Area (the "Buffer").
- B. The parties now desire to modify that Agreement to modify the implementation time frames and phases, by combining Phase I and Phase II into one phase, while retaining the overall time frames for this work.

AGREEMENTS

NOW, THEREFORE, the parties agree as follows:

1. The parties agree that the revised Revegetation Specifications prepared by Frank Chan and dated May 4, 1999, attached hereto, are hereby incorporated into Exhibit B of the Agreement.
2. Section 5.A. of the Agreement is revised as follows:
 5. A. Construction and Acceptance of Buffer Improvements.

Construction of the Buffer Improvements shall be completed in accordance with the construction schedule included in the Specifications. Construction of those Improvements specified as "Phase I Buffer Improvements" and those improvements specified as "Phase II Buffer Improvements" on Exhibit B shall be completed no later than December 31, 2000. Generally, the planting of trees and planting shrubs will be complete by February 29, 2000; the planting of native grasses will be complete by December 31, 2000. This modification of the schedule will permit weed abatement and site preparation during 2000. Upon City's certification of the completion of construction of both the Phase I and Phase II Buffer Improvements (the "Buffer Improvements") to the City's reasonable satisfaction, the City shall accept

Wildhorse's offer of dedication of the Buffer and Buffer Improvements. The Buffer Improvements and their respective construction schedules are shown in the Specifications, as amended by this First Amendment.

Until such time as the City accepts Wildhorse's offer of dedication of the Buffer and the Buffer Improvements, the public shall have no right to use or enter the Buffer.

3. Section 5.B of the Agreement is revised as follows:

5. B. Establishment and Maintenance of Improvements.

Notwithstanding the City's acceptance of Wildhorse's offer of dedication of the Buffer and the Buffer Improvements, Wildhorse, at its sole expense, shall be obligated to establish and maintain the Buffer Improvements until the City certifies that the level of acceptance delineated in Section 1.02 of the Specifications has been achieved for the Buffer Improvements, as set forth in Paragraph 6, below.

4. Sections 6, 7 and 8 of the Agreement are revised as follows:

6. Representatives of Wildhorse and the City shall meet at the Buffer periodically after City's certification of completion of construction ("Completion Date") of the Buffer Improvements for the express purpose of inspecting the affected areas to determine whether the establishment and maintenance of the Improvements and the vegetation is proceeding in accordance with the Specifications and whether Wildhorse is utilizing reasonable efforts to effect the level of acceptance concerning the Improvements as is delineated in Section 1.02 of the Specifications. The periodic meeting shall occur at the site on or about the date six (6) months after the Completion Date and at succeeding six-month intervals thereafter for a minimum period of two (2) years after the Completion Date, subject to extension as provided below. Wildhorse shall have the right to designate a third-party consultant, acceptable to the City, to provide assistance and guidance to the City in making its determination at each periodic inspection; however, the City shall be the final arbiter as to the level of acceptance and the reasonableness of Wildhorse's efforts during the preceding 6-month period. City shall provide Wildhorse with written notice of its determination within fifteen (15) days of each periodic inspection. The periodic inspections are intended to assure that the establishment and maintenance of the Improvements and vegetation is proceeding in accordance with the Specifications. Wildhorse's obligation to establish and maintain the Buffer Improvements shall terminate two years from the date of completion unless, the City reasonably determines that Wildhorse's efforts during any 6-month period(s) were not reasonable or that the establishment and maintenance has not proceeded in accordance with the Specifications, in which case the City shall determine a reasonable extension of the 2-year period (and shall provide Wildhorse with timely written notice of such determination), which extension(s) shall be for the express purpose of providing the additional time required for Wildhorse's to effect the required level of acceptance; and the parties shall inspect the Buffer at the end of the

extended period to determine the reasonableness of Wildhorse's efforts during the extended period.

7. City may require, prior to its certification of the completion of construction of the Buffer Improvements, that Wildhorse provide security for its obligation to pay for expenses incurred by Wildhorse in establishing and maintaining the Buffer Improvements. Such security may be in the form of a letter of credit, surety bond or cash deposit in such amount as reasonably may be determined by the City to cover the costs likely to be incurred in establishing and maintaining the Buffer Improvements and shall be subject to the provisions concerning security set forth in Paragraph 10 below, except that the security required by this section shall be in addition to the security required by section 9 and 10 and shall secure performance of Wildhorse's maintenance and establishment obligations under this Agreement .

8. Wildhorse shall warrant, as to f the Buffer Improvements, that the Buffer Improvements i shall be free from defects for a period of two (2) years from the Completion Date of the Buffer Improvements, or such longer period as reasonably may be determined by the City pursuant to Paragraph 6 above. Wildhorse agrees that within a reasonable period after its receipt of written notice from the City, it either shall promptly effect any repairs or replacements necessary to comply with this paragraph or, at the City's election, shall promptly reimburse the City for the reasonable costs incurred by the City in effecting such repairs or replacements. All repair and replacement work shall be done in accordance with the Specifications.

5. The first paragraph Section 1.01A of Division II, Specific Conditions is revised as follows:

This Specification covers erosion control seeding and revegetation planting and related work at the Wildhorse Ag Buffer/Greenbelt Area. The revegetation work will be implemented in one phase. The initial seeding and planting will occur in the fall of 2000. Maintenance and supplemental seeding and planting will be implemented and any remedial or supplemental work needed completed in 2001. Preseeding vegetation control will begin in the fall of 1999 and conclude at the time of the initial erosion control seeding. Post-seeding vegetation control will begin in February-March of 2001 and conclude October-December 2001.

6. Other Terms Unchanged.

Except as expressly set forth herein, all terms and conditions of the Agreement shall remain unchanged and in full force and effect.

Dated: 3 | 7 | 00 CITY OF DAVIS,
a municipal corporation

By: John Meyer
Its: CITY MANAGER

Dated: 3/9/00 WILDHORSE GROUP, LLC
a California limited liability company

By: Dearborn Inc., its managing
member

Scott Rodde
Scott Rodde, President

ATTEST:

By: Bette E. Racki
Bette Racki
City Clerk

APPROVED AS TO FORM:

By: Harriet Steiner
Harriet Steiner
City Attorney