

**TEMPORARY ROAD MAINTENANCE AGREEMENT**  
**(RELATED SANTA CLARA)**

This Temporary Road Maintenance Agreement (this “**Agreement**”), dated as of \_\_\_\_\_, 2020 and effective as of the Effective Date (as defined in Recital D below), is made by and between Related Santa Clara, LLC, a Delaware limited liability company (“**Master Developer**”), and the City of Santa Clara, a chartered municipal corporation (“**City**”). City and Master Developer may be referred to individually as a “**Party**” and collectively as the “**Parties.**”

**RECITALS**

A. Master Developer and City entered into that certain Disposition and Development Agreement dated for reference purposes as of August 12, 2016, and recorded October 7, 2016, as Document No. 23456796 in the Official Records of Santa Clara County, California (as it may be amended from time to time, the “**DDA**”), by which Master Developer was designated Master Developer for the Related Santa Clara project (the “**Project**”). The Project is proposed for property that is presently owned by City (the “**Project Site**”), as described in Exhibit A and shown in Exhibit B, each of which is attached hereto and incorporated herein by this reference, and the DDA provides for City to enter into long-term ground leases with Master Developer (or Phase Developers) for portions of the Project Site in phases as it develops the Project (the “**Ground Leases**”). Any capitalized term not defined in this Agreement shall have the meaning provided in the DDA.

B. Pursuant to the DDA and other Project entitlements, Master Developer proposes to demolish and remove portions of Stars and Stripes Drive and Centennial Boulevard on the Project Site (the “**Existing Roads**”), which are shown with the portions to be removed delineated on Exhibit C attached hereto and incorporated herein by this reference. The Existing Roads provide public access to the VTA transit plaza (the “**Transit Center**”) and San Francisco Forty-Niner support operations adjacent to the Project Site (together, the “**Adjacent Uses**”) by connecting with Tasman Drive. Removing the Existing Roads would eliminate public access to and from the Adjacent Uses. Master Developer’s plan for development of the Project includes certain new permanent roads that will provide alternate public access between the Adjacent Uses and Tasman Drive (the “**Permanent Roads**”), as shown conceptually on Exhibit C.

C. In order to maintain access to the Adjacent Uses and Tasman Drive and to facilitate construction of the Project and transition to the permanent circulation system planned for the Project, City determined that before the Existing Roads are closed and until one or more of the Permanent Roads is constructed, it is necessary to provide alternate access to and from the Adjacent Uses by a temporary roadway connecting the Adjacent Uses with Great America Parkway (the “**Temporary Road**”).

D. City approved Master Developer’s plans for construction of the Temporary Road, and issued a Permit to Enter dated November 20, 2019 and an Encroachment Permit dated November 21, 2019 (together, the “**Temporary Road Construction Approvals**”). Master Developer has commenced construction of the Temporary Road pursuant to the Temporary Road Construction Approvals, which the Parties anticipate will be completed by mid-July, 2020. The date that the Temporary Road is accepted by City, as evidenced by a notice of completion or other similar document issued by City, shall be the “**Effective Date**” of this Agreement. Upon the Effective Date, the Temporary Road Construction Approvals (and all obligations and liabilities set forth therein) shall terminate except as to the elements

of the Temporary Road Construction Approvals that expressly survive termination or expiration of the Temporary Road Construction Approvals. The location of the Temporary Road and additional portions of the Project Site that will be used or accessed by Master Developer in connection with its maintenance and other obligations under this Agreement (together with the Temporary Road, the “**Road Zone**”) are shown in **Exhibit D** attached hereto and incorporated herein.

E. City acknowledges that after one or more Permanent Roads are constructed, the Temporary Road may continue to be useful and necessary to provide access to construction vehicles to facilitate construction of the Project (“**Construction Vehicle Use**”).

F. The route of the Temporary Road crosses over the former Santa Clara All-Purpose Landfill owned by City (the “**Landfill**”) that has been closed and is subject to certain post-closure monitoring and maintenance-related requirements. Master Developer acknowledges that locating the Temporary Road on the Landfill requires measures to protect the Landfill from harm that may arise from the ongoing presence and use of the Temporary Road, including by way of illustration and not limitation that the Temporary Road may increase the risk of ponding or standing water from potholes, settlement or other causes that might enter the Landfill and may cause settlement or damage protective measures in the Landfill unless protective measures are taken.

G. Pursuant to Section 14.1 of the DDA, the Parties have entered into a Landfill Operation and Maintenance Agreement (the “**Landfill O&M Agreement**”) dated May 26, 2020, with respect to their relative rights and obligations relating to Landfill conditions at the Project Site and development of the Project on and affecting the Landfill.

H. Portions of the Project Site currently are used to provide Non-NFL Event Parking Spaces for events at Levi’s Stadium as described in Section 5.5 of the DDA, and are used to provide parking for NFL-related events (the “**NFL Event Parking**” and together with the Non-NFL Event Parking Spaces, the “**Stadium Parking**”), all pursuant to separate agreements. The Parties anticipate that a portion of the Project Site located east of Great America Parkway and south of the Temporary Road will continue to be used for Stadium Parking (the “**Stadium Parking Area**”), at least during initial phases of the Project. The Temporary Road includes a driveway into the Stadium Parking Area as shown in **Exhibit D** (the “**Parking Driveway**”), which connects to the Temporary Road and provides access between the Stadium Parking Area and Great America Parkway (the Parking Driveway and portion of the Temporary Road between the Parking Driveway and Great America Parkway, the “**Stadium Parking Access**”).

I. On \_\_\_\_\_, 2020 the City Council of Santa Clara approved this Agreement and authorized its execution.

J. Master Developer is willing to maintain the Temporary Road and satisfy the other obligations in this Agreement in return for being able to close and remove the Existing Roads as part of developing the Project, subject to the terms and conditions of this Agreement.

**NOW, THEREFORE**, in consideration of the mutual promises, conditions and covenants set forth herein, the Parties agree as follows.

**1. Temporary Road Timing and Use.**

a. The Temporary Road (or the alternate access for the Adjacent Uses provided pursuant to **Section 1.e** below) shall remain open and available for public use until City determines in its reasonable discretion, and gives Master Developer written notice, that one or more of the Permanent Roads have been constructed, Approved and accepted by City and opened for public use in a final location and configuration sufficient to provide permanent access to the Adjacent Uses (the “**Permanent Road Completion Notice**”).

b. Upon receiving the Permanent Road Completion Notice, Master Developer shall close the Temporary Road to public use (except for occasional use for access to the Stadium Parking Area), including installing such barriers as City reasonably determines necessary to prevent public vehicular, bicycle and pedestrian access (designed as needed to allow construction-related use and occasional use for access to the Stadium Parking Area), and thereafter may continue to use the Temporary Road for construction vehicles related to development of the Project. The Stadium Parking Access portion of the Temporary Road shall not be used by Master Developer for construction-related purposes during any time when it is open for public access to the Stadium Parking Area. Thereafter, when Master Developer determines, in its sole and absolute discretion, that the Temporary Road is no longer necessary for use by construction vehicles, it shall send City written notice thereof (the “**Construction Use Completion Notice**”). Master Developer’s maintenance obligations regarding the Temporary Road shall be as specified in **Section 6**.

c. When both of the notices specified in **Sections 1.a and 1.b** above have been given, the City shall issue a notice (the “**Temporary Road Expiration Notice**”). As soon as possible but in no event later than seven (7) days after receiving the Temporary Road Expiration Notice, Master Developer shall promptly erect permanent barricades across the Temporary Road (i) at the northern end of the Transit Center and (ii) immediately east of the Parking Driveway if the Stadium Parking Area is being used for Stadium Parking at the time, otherwise at the western end of the Temporary Road at its intersection with Great America Parkway, in each location as and where specified by City to prevent vehicular, bicycle and pedestrian use of the Temporary Road. After completion of the barriers and their Approval by City, City shall give Master Developer written notice of such approval (the “**Barrier Completion Notice**”).

d. City, in its sole discretion, may include in the Temporary Road Expiration Notice a requirement that Master Developer remove any or all portions of the Temporary Road that are not located on property that has been ground leased to Master Developer, and take any actions necessary to put the affected land in a condition suitable for commencement of the construction of the permanent improvements for the Project planned to be located on the affected land. In connection with such removal and land reconditioning, Master Developer shall comply with all applicable state regulations and the Project’s Stormwater Pollution Prevention Plan. City may also require Master Developer to retain certain features such as fencing, erosion control and drainage basins adjoining the Temporary Road (so long as retention of such features does not conflict with any other laws, regulations or orders applicable to the Project) and may impose additional reasonable measures not inconsistent with law or regulation and for the purpose of environmental protection, avoidance of flooding, or protection of

persons or property from hazards. In such event, Master Developer shall obtain such permits and approvals as may be required and shall complete such removal and actions at Master Developer's sole cost and expense within six (6) months after such notice. Master Developer may also elect to remove all or portions of the Temporary Road and take the actions with respect to the affected land as specified herein, except for the Stadium Parking Access if still required for access to the Stadium Parking Area; provided, if Master Developer notifies City that it so elects, City may instead elect by written notice to Master Developer (the "**Road Retention Notice**") to keep the Temporary Road or portions thereof that Master Developer desires to remove (the "**City Retained Road**"), in which case City shall assume all maintenance, liability and other obligations under this Agreement as to any City Retained Road, effective as of the date City so notifies Master Developer, and the Term of this Agreement shall terminate as to the City Retained Road as of the date of the Road Retention Notice, all subject to such Master Developer liabilities and obligations that may still apply and all provisions of this Agreement that may survive following such termination. City shall give Master Developer written notice when City Approves completion of such road removal and land restoration (the "**Removal Completion Notice**"). Notwithstanding the above, if City or Master Developer determines there is a possibility that the Parking Driveway may need to be relocated to a different connection point with the Temporary Road due to relocation of the Stadium Parking Area, and the relocated connection point is not then known, they shall consult in good faith to determine what, if any, portion of the Temporary Road may be removed while allowing for such relocation of the Parking Driveway and continued access to the Stadium Parking Area. If City initially requires Master Developer to remove only a portion of the Temporary Road and later elects to require Master Developer to remove all or a portion of the remainder at one or more later times, City shall give Master Developer notice(s) of such later requirement(s) and each additional removal shall be subject to the terms of this Agreement.

e. City and Master Developer acknowledge that planned construction of the segment of the Permanent Roads from the Transit Center up to the Project roadway identified as "Avenue C" at a higher elevation will prevent use of the Temporary Road for a period of time, which would interfere with access to the Adjacent Uses. During each such period of time, or any other period of time when construction of the Permanent Roads and other Project improvements would prevent access to the Temporary Road, Master Developer shall implement measures to provide such alternate routes as may be needed to maintain uninterrupted access to the Adjacent Uses, subject to City Approval (including requisite permits and agreements) in its reasonable discretion.

f. After the Temporary Road Expiration Notice has been issued and the Temporary Road has been closed to public use, Master Developer shall have no right to use any portion of the Temporary Road that is not located on property ground leased to Master Developer for any purpose unless City in its sole discretion grants such right by a separate agreement between the Parties.

**2. License to Enter.** City hereby grants Master Developer a non-exclusive license to enter the Road Zone for all purposes described in and required by this Agreement. The term of the license shall run concurrently with the term of this Agreement as to each portion of the Road Zone adjacent to each portion of the Temporary Road then covered by this Agreement, and shall expire as to each portion of the Road Zone when this Agreement terminates as to its segment of the Temporary Road. City also hereby grants Master Developer a non-exclusive license over portions of the Project Site as necessary for Master Developer to fulfill its obligations under **Section 3** of this Agreement. Master Developer's use of these licenses and activities on the Road Zone and the Project Site shall be subject to all applicable provisions of this Agreement and applicable law.

**3. Compliance with Other Approvals.** Master Developer at its own expense shall obtain, and fully comply with, any public or private permits and approvals required for maintenance and removal (if it occurs pursuant to this Agreement) of the Temporary Road, including but not limited to approvals from agencies that regulate the Landfill and any documentation necessary to provide for uninterrupted utility service to users of utilities that would otherwise be disrupted by closure of the Existing Roads or creation and use of the Temporary Road (together, the “**Other Approvals**”). City shall assist Master Developer as reasonably required in providing information needed for the required applications. City’s costs in assisting Master Developer in this manner shall be treated as City Costs pursuant to Section 26 of the DDA.

**4. Treatment of the Landfill.** Without limiting the foregoing **Section 3**, the following shall apply regarding any work on the Landfill associated with the Temporary Road’s presence and use on the Landfill (the “**Landfill Obligations**”).

a. Master Developer shall comply with all Waste Discharge Requirements (“**WDRs**”) and all other regulatory requirements regarding the Landfill as may apply to the Temporary Road, shall require its contractors and subcontractors to do the same, and shall ensure that its contractors and subcontractors are familiar with the same. Any Notice of Violation or other enforcement or penalty action by agencies regulating the Landfill to the extent they arise from actions or failures to act by or on behalf of Master Developer related to the Temporary Road, and any consequent penalties, shall be attributable to Master Developer and not City, except to the extent such Notice of Violation or enforcement or penalty action arises from actions or failures to act by the City.

b. Master Developer shall notify City and any regulatory agency requiring such notice within twenty-four (24) hours, or such shorter time that may be required by an agency or applicable regulations, after learning of any damage, interference or other harm to the Landfill or related facilities arising from actions or failures to act by or on behalf of Master Developer or from the existence, use or removal of the Temporary Road, to ensure proper tracking and reporting, and Master Developer shall require its contractors and subcontractors to do the same. Master Developer’s responsibility to provide such notices and remedy such problems shall include, without limitation, damage, interference or other harm of the following aspects of the Landfill and its protective measures (collectively, the “**Landfill Protections**”): the gas collection and monitoring system; storm water controls on and around the Landfill; the cover and its erosion or damage; the clay cap and its failure or damage; leachate or other hazardous substance release; and environmental monitoring systems. City shall notify Master Developer and agencies requiring notice of City’s discovery of any such problem; provided, City’s delay or failure to provide such notice shall not, in and of itself, impose liability or responsibility for such problem on the City. Master Developer shall have documents prepared by a licensed professional engineer if needed and repair any damage to the Landfill Protections arising from actions or failures to act by or on behalf of Master Developer or from the Temporary Road and its use within twenty-four (24) hours of learning of the damage, or in the case of repairs that reasonably take longer, shall initiate such repairs within such twenty-four (24) hours and complete such repairs in the minimum time feasible, and until the repairs are complete Master Developer shall take all measures as may be required by City or regulatory agencies to mitigate any harm to the public, the Landfill or the environment that may arise from such damage. Without limiting the foregoing, such damage repair may include providing engineering and constructing improvements to prevent a recurrence and improve the existing condition (by way of illustration and not limitation, designing and building a pipe reroute around an area of accelerated settlement rather than a short term in-place pipe segment repair).

c. Without limiting any other provision in this Agreement or the requirements of any applicable permit or regulation, Master Developer shall notify City and regulatory agencies within twenty-four (24) hours after learning of any non-compliance with WDR Provisions 20 29, and 33 arising from actions or failures to act by or on behalf of Master Developer or from the Temporary Road and its operation, use, maintenance or removal, and Master Developer shall require its contractors and subcontractors to do the same.

d. The Parties acknowledge that whether for purposes of public health and safety or because of regulatory requirements, action is required as quickly as possible to address a regulatory violation, damage or other problem regarding the Landfill related to the Temporary Road. The Parties recognize that during the period the Temporary Road is expected to be in existence, Master Developer is more likely than City to have equipment and personnel available in the vicinity to quickly respond to address the situation.

i. Unless City notifies Master Developer that City will undertake the required action, to avoid delay, Master Developer shall promptly respond and take all action as may be required by City or regulatory agencies to address the situation.

ii. The Party undertaking the action may request during or after its work that the other Party cooperate to investigate the cause and determine responsibility. Once the immediate situation is resolved, if requested by the Party undertaking the action, the Parties shall determine the extent to which each Party is responsible. To the extent the situation arose from actions or failures to act by the Party not undertaking the action or on such Party's behalf, such Party shall reimburse the Party undertaking the action for its direct costs. In no instance shall the time required to determine responsibility or reimburse costs excuse the Party undertaking the action delaying the action or failing to meet required timeframes

e. Master Developer shall be responsible for any additional cost of operating the Landfill or any existing environmental control or compliance monitoring system or component of the Landfill, arising from construction, operation, use, maintenance or removal of the Temporary Road, as determined by City in its reasonable discretion, except to the extent such additional cost is caused by the actions or failure to act of the City.

f. The terms of the Landfill O&M Agreement shall govern if and to the extent inconsistent with this Agreement; provided, however, that the specific terms in this **Section 4** shall apply notwithstanding anything to the contrary in the Landfill O&M Agreement or the DDA.

## **5. Recordings Against Title to the Project Site.**

a. **Memorandum.** A memorandum of this Agreement (the "**Memorandum**") shall be recorded by City against title to the Project Site to make record notice of City's and Master Developer's rights and obligations hereunder. The Memorandum shall be deemed a Permitted Exception pursuant to Article 13 of the DDA. Upon termination of this Agreement (in its entirety or as to any portion of the Road Zone), City and Master Developer shall, at the request of either party, execute and record a Notice of Termination as provided in Paragraph 6.24 of **Exhibit F** or any instrument or documentation that a title company may require to remove from title this Agreement as to the applicable portion of the Road Zone.

b. **Temporary Road Public Use Reservation.** Prior to execution of a Ground Lease for any portion of the Project Site that includes any portion of the Temporary Road, City shall record an instrument in a form reasonably approved by Master Developer reserving the Temporary Road for public use (the “**Temporary Road Public Use Reservation**”), which will remain in effect so long as the Temporary Road is required for public use pursuant to this Agreement and shall terminate concurrently with delivery of the Temporary Road Expiration Notice; provided, if at such time City determines that the Stadium Parking Access portion of the Temporary Road remains necessary for access to the Stadium Parking Area, the Temporary Road Public Use Reservation shall remain in effect only as to such portion until City determines it no longer is necessary. The Temporary Road Public Use Reservation shall be deemed a Permitted Exception pursuant to Article 13 of the DDA. Upon termination of the Temporary Road Public Use Reservation (in its entirety or as to any portion of the Road Zone), City and Master Developer shall, at the request of either party, execute and record any instrument or documentation that a title company may require to remove from title the Temporary Road Public Use Reservation as to the applicable portion of the Road Zone.

## **6. Maintenance of Temporary Road.**

a. So long as this Agreement remains in effect pursuant to **Section 10**, Master Developer at its sole cost shall maintain, repair and replace the Temporary Road as needed to assure it remains in a safe and functional condition for all transportation needs without interruption and without material defects, in compliance with the Landfill Obligations and all applicable regulatory requirements regarding protection of the Landfill, and in compliance with the maintenance standards specified in **Exhibit E** attached hereto and incorporated herein by this reference (cumulatively, the “**Road Maintenance Obligations**”).

b. City shall maintain and repair or retain third parties to maintain and repair the traffic signals, cameras and traffic loops installed by Master Developer as part of the intersection of the Temporary Road with Great America Parkway, and Master Developer shall reimburse City for its related costs, which costs shall be treated as City Costs pursuant to Section 26 of the DDA. City shall create a separate account for the meter serving the signals and accessory equipment, and Master Developer shall reimburse City for the electricity used, which shall be treated as a City Cost pursuant to Section 26 of the DDA. Following the later of (i) closure of the entire length of the Temporary Road to public use pursuant to this Agreement, (ii) when City notifies Master Developer that the Stadium Parking Access portion of the Temporary Road no longer is required for access to the Stadium Parking Area and the remainder of the Temporary Road already has been closed to public use, or (iii) when Master Developer sends City the Construction Use Completion Notice, Master Developer at its sole cost shall remove the traffic signal and related equipment at the intersection as directed by City.

c. Master Developer shall consult as necessary with City regarding whether any of the mitigation measures described in the Mitigation Monitoring and Reporting Program in Exhibit C to the DDA (the “**MMRP**”) apply to work performed under this Agreement, and shall comply with all applicable mitigation measures.

## **7. Failure to Satisfy Maintenance and Repair Obligations.**

a. If at any time City determines in its reasonable discretion that Master Developer has not satisfied a Road Maintenance Obligation or Landfill Obligation, or any portion or component of

the Temporary Road (or the Landfill as a result of activities under this Agreement) requires maintenance, repair or replacement, City shall deliver written notice to Master Developer, and Master Developer shall perform or commence performance of the needed work within seven (7) Business Days of receiving such notice, or such longer time as may be agreed upon in writing by the Parties (subject to any requirement to perform a Landfill Obligation in less time), weather permitting, and thereafter shall diligently pursue such work to completion. If City determines that the condition of the Temporary Road or Landfill presents an emergency due to the presence of an immediate hazard and so notifies Master Developer, then within forty-eight (48) hours after such notice, weather permitting, Master Developer shall take action to ameliorate the hazardous condition and thereafter, within five (5) days after such notice, weather permitting, shall commence any required Road Maintenance Obligation or Landfill Obligation or other work and diligently pursue such work to completion. Notwithstanding the above, if City determines in its reasonable discretion that the nature of the emergency requires action sooner than the timing described above and Master Developer is not able or willing to provide quicker action, City shall have the right (but not the obligation) to exercise any of City's rights pursuant to subsection (b) below without waiting for expiration of the time limits specified above.

b. If Master Developer does not commence and complete required Road Maintenance Obligations or Landfill Obligations after receiving City's notice as specified above, City shall have the right (but not the obligation) to do any or all of the following: (i) perform the required Road Maintenance Obligation or Landfill Obligation; (ii) close the portion of the Temporary Road that is in an unsafe condition until the problem is corrected; and/or (iii) take any other action within City's authority to enforce the Road Maintenance Obligations or Landfill Obligations, correct the deficiencies, or otherwise to avoid the risk of harm to (A) the public, or (B) the Landfill. City shall recover from Master Developer the full amount incurred and all costs, including attorneys' fees, relating to the collection thereof. The provisions in this Agreement regarding Master Developer's indemnification and insurance obligations shall apply regarding any City action to perform or not perform a Road Maintenance Obligation or a Landfill Obligation or to temporarily close or not close the Temporary Road pursuant to this **Section 7.b**.

**8. Insurance.** Master Developer shall procure and maintain insurance coverages for the Term of this Agreement, including any extensions, consisting of the types and coverage amounts required under **Exhibit G** attached hereto and incorporated herein. The cost of such insurance shall be borne by Master Developer. City and its elected and appointed officials, officers, employees, attorneys, contractors and agents of City and, as applicable, the partners, Affiliates (as defined in the DDA), members, and owners, and the officers, partners, agents, employees and members of each of them (or of its successors or assigns) (each, a "**City Party**" and, collectively, the "**City Parties**") shall be included as additional insureds under the applicable insurance policies consistent with the requirements of **Exhibit G**.

a. No Limitation on Indemnities. Master Developer's compliance with the provisions of this **Section 8** shall in no way relieve or decrease Master Developer's indemnification obligations or any of Master Developer's other obligations or liabilities under this Agreement.

b. Master Developer's Personal Property. Master Developer shall be responsible, at its expense, for separately insuring Master Developer's equipment and personal property.



c. **Contractors.** Master Developer shall include all contractors and subcontractors as insureds under its policies or shall require each contractor and subcontractor to furnish separate insurance certificates and endorsements. All coverages for contractors and subcontractors shall be subject to all the requirements stated herein. Without limiting the foregoing, these provisions shall apply to contractors and subcontractors that may from time to time perform maintenance on the Temporary Road. All equipment and personal property of contractors and subcontractors shall be separately insured by Master Developer or the contractors or subcontractors.

**9. Relationship to Other Agreements.** To the extent this Agreement is silent on any detail, the terms of the DDA shall apply to the extent relevant. This Agreement shall govern in the event of any conflict with the DDA. In the event of any conflict between this Agreement and the Landfill O&M Agreement, the Landfill O&M Agreement shall govern as specified in **Section 4.f**.

**10. Term.** This Agreement and Master Developer's Road Maintenance Obligations and Landfill Obligations hereunder shall commence on the Effective Date and shall terminate as follows:

a. Upon City's issuance of a Removal Completion Notice, as to the Temporary Road or any portion thereof covered by such Removal Completion Notice.

b. As to the Temporary Road or any portion thereof that is located on a portion of the Project Site that is subject to a Ground Lease, this Agreement and Master Developer's obligations hereunder shall terminate when each of the following have occurred: (i) the Temporary Road is closed to public use in accordance with **Section 1.b** of this Agreement but is not covered by a Removal Completion Notice and (ii) both Parties reasonably agree that the pertinent portion of the Temporary Road is not needed for access to the Stadium Parking Area.

c. As to any City Retained Road, upon the date of the Road Retention Notice pursuant to **Section 1.d**.

**11. Post Default Obligations.**

a. Whether or not the DDA still is in effect, even if an Event of Default of this Agreement by Master Developer pursuant to Article 2 of **Exhibit F** has occurred, if the Temporary Road has been built, the Existing Roads have been removed but the Permanent Roads have not been built and the Temporary Road has not been removed with the affected land restored, this Agreement and Master Developer's obligations hereunder shall remain in effect, including but not limited to the following: (A) Master Developer's Road Maintenance Obligations shall continue in effect until the Temporary Road no longer is required for access to the Adjacent Uses; (B) at City's election, Master Developer shall be required to construct roads within the Project Site as needed in City's reasonable discretion to provide public road access between Tasman Drive and the Adjacent Uses, which may or may not follow the routes of the Permanent Roads as intended by Master Developer; (C) at City's election, Master Developer shall be required to remove the Temporary Road when it no longer is required and restore the land affected; and (D) Master Developer's Landfill Obligations shall continue in effect until the Temporary Road is removed and the land restored pursuant to the terms of this Agreement.

b. An Event of Default by Master Developer of this Agreement, the DDA or any other Project Approval shall not terminate Master Developer's obligation to maintain the Temporary Road so long as it is required to provide public road access to the Adjacent Uses.

**12. No Mechanics' Liens.** Master Developer shall not permit any mechanics' or other liens to be levied against the Project Site for any labor or material furnished or claimed to have been furnished in connection with the Temporary Road, and Master Developer shall hold City free and harmless from any and all Losses, cost or expense connected with or arising from any such lien or the Temporary Road.

**13. Hazardous Substance Acknowledgement and Indemnification.**

a. **Hazardous Substance Indemnification.** In addition to, and without limiting, the Indemnifications set forth in **Exhibit F**, Master Developer shall Indemnify the City Parties from and against any and all Losses incurred by or asserted against any City Party in connection with, arising out of, or in response to, or in any manner relating to:

i. Master Developer's breach of any obligation under this Agreement with respect to Hazardous Substances;

ii. Master Developer's violation of any obligation under this Agreement with respect to its compliance with Environmental Laws;

iii. Any Release or threatened Release of a Hazardous Substance, or any condition of pollution, contamination or Hazardous Substance-related nuisance on, under or from real property on the Project Site to the extent the Release, threatened Release, condition, contamination or nuisance was caused, contributed to, or exacerbated by the actions of Master Developer (or a contractor to Master Developer working for Master Developer) under this Agreement; provided, that this subsection (iii) shall not apply to the extent such violation, Release, threatened Release, condition, contamination or nuisance commenced or was created by or caused, contributed to or exacerbated by any City Party.

Master Developer's obligations under this **Section 13.a**, and its indemnities contained elsewhere in this Agreement, shall: (1) apply regardless of the availability or amount of insurance proceeds; and (2) survive expiration or other termination of this Agreement. However, if it is reasonable to assert that a claim for Indemnification under this **Section 13** is covered by a pollution liability insurance policy, pursuant to which such City Party is an insured party or a potential claimant, then City shall reasonably cooperate with Master Developer in asserting a claim or claims under such insurance policy or indemnity but without waiving any of its rights under this **Section 13.a**. Master Developer specifically acknowledges and agrees that it has an immediate and independent obligation to defend the City Parties from any claim that may reasonably fall or is otherwise determined to fall within the indemnification provision of **Section 13.a.i**, even if the allegations are or may be groundless, false or fraudulent. Master Developer's obligation to defend under this **Section 13.a** shall arise at the time such claim is tendered to Master Developer and shall continue at all times thereafter. Notwithstanding the foregoing, if a City Party is a named insured on a pollution liability insurance policy obtained by Master Developer, such City Party will not seek indemnification from Master Developer under this **Section 13.a** unless it has asserted and diligently pursued a claim for insurance under such policy and until any limits from the policy are exhausted, on condition that (i) Master Developer pays any self-insured retention amount

required under the policy, (ii) Master Developer pays such City Party's costs and expenses (including attorneys' fees and expenses) of pursuing such claim, (iii) Master Developer agrees to a tolling of any and all statutes of limitation relating to such City Party's right to seek indemnification under this **Section 13.a**, and (iv) nothing in this sentence requires any City Party to pursue a claim for insurance through litigation prior to seeking indemnification from Master Developer. The provisions of Paragraphs 5.3 and 5.4 of Exhibit F shall apply to any matters covered by this **Section 13**.

b. **Hazardous Substance Acknowledgement.** Master Developer recognizes that, in entering upon the Project Site under this Agreement, it and its contractors may be working with, or be exposed to substances or conditions that are toxic or otherwise hazardous. Master Developer acknowledges that the City is relying on the Master Developer to identify and evaluate the potential risks involved and to take all appropriate precautions to avoid such risks to its Contractors. Master Developer agrees that it is assuming full responsibility for ascertaining the existence of such risks, evaluating their significance, implementing appropriate safety precautions for its Contractors and making the decision on how (and whether) to enter upon the Project Site, with due regard to such risks and appropriate safety precautions.

c. **Proper Disposal of Hazardous Substances.** Master Developer assumes sole responsibility for managing, removing and properly disposing of any waste produced during or in connection with Master Developer's entry onto the Road Zone including, without limitation, preparing and executing any manifest or other documentation required for or associated with the removal, transportation and disposal of Hazardous Substances to the extent required in connection with the Master Developer's activities hereunder.

d. **Hazardous Substances.** For purposes of this Agreement, the term "**Hazardous Substance**" shall mean any material, waste, chemical, compound, substance, mixture, or byproduct that is identified, defined, designated, listed, restricted or otherwise regulated under Environmental Laws as a "hazardous constituent", "hazardous substance", "hazardous waste constituent", "infectious waste", "medical waste", "biohazardous waste", "extremely hazardous waste", "pollutant", "toxic pollutant", or "contaminant", or any other designation intended to classify substances by reason of properties that are deleterious to the environment, natural resources, wildlife or human health or safety, including, without limitation, ignitability, infectiousness, corrosiveness, radioactivity, carcinogenicity, toxicity and reproductive toxicity. Hazardous Substance includes, without limitation, any form of natural gas, petroleum products or any fraction thereof, asbestos, asbestos-containing materials, PCBs, PCB-containing materials, and any substance that, due to its characteristics or interaction with one or more other materials, wastes, chemicals, compounds, substances, mixtures or byproducts, damages or threatens to damage the environment, natural resources, wildlife or human health or safety.

e. **Environmental Laws.** For purposes of this Agreement, the term "**Environmental Laws**" shall mean all federal, state and local laws, regulations, ordinances, and judicial and administrative directives, orders and decrees dealing with or pertaining to solid or hazardous waste, wastewater discharges, drinking water, air emissions, Hazardous Substance releases or reporting requirements, Hazardous Substance use or storage, and employee and community right-to-know requirements with respect to Hazardous Substances, related to the Temporary Road and this Agreement.

f. **Release.** For purposes of this Agreement, the term "**Release**" shall mean any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching,

dumping, or disposing into the environment (including the abandonment or discarding of barrels, containers, and other closed receptacles containing any Hazardous Substance or pollutant or contaminant).

g. **Soils Investigation.** If work under this Agreement requires any soils investigations, then Master Developer warrants as follows:

i. If any soils investigation permitted hereby involves the drilling of holes having a diameter dimension that could create a safety hazard for persons, said holes shall during any drilling operations be carefully safeguarded and shall upon the completion of said drilling operations be refilled (and compacted to the extent necessary) to the level of the original surface penetrated by the drilling.

ii. City has no responsibility or liability of any kind or character with respect to any utilities that may be located in or on the Road Zone. Master Developer has the sole responsibility to locate the same and to protect the same from damage. Master Developer shall be solely responsible for any damage to utilities or damage resulting from any damaged utilities.

iii. All soils test data and reports prepared based thereon, obtained from these activities shall be provided to City upon request and City may use said data for whatever purposes it deems appropriate, including making it available to others for use in connection with any development. Such data, reports and City use shall be without any charge to City.

iv. Any hole drilled shall, if not refilled and compacted at the end of each day's operation, be carefully safeguarded and secured after the completion of each day's work, as shall the drilling work area and any equipment if left on the Road Zone.

**14. Maintenance, Restoration, Vacating.** Entry upon the Road Zone by Master Developer is an acknowledgment by Master Developer that all dangerous places and defects in said Road Zone are known to it. Master Developer shall maintain the Road Zone in accordance with the Road Maintenance Obligations. Upon completion of any maintenance or other work in the Road Zone, if the Road Zone is not then covered by a Ground Lease, Master Developer shall remove any and all personal property on the Road Zone unless and until required to satisfy Master Developer's next maintenance or other obligation under this Agreement. Upon termination of this Agreement, if the Road Zone is not then covered by a Ground Lease, Master Developer shall vacate the Road Zone and remove any and all personal property located thereon. City shall have the right without notice to dispose of any property left by Master Developer after it has vacated the Road Zone, if the Road Zone is not then covered by a Ground Lease. City makes no representations or warranties, express or implied, with respect to the environmental condition of the Road Zone or the surrounding property (including without limitation all facilities, improvements, structures and equipment thereon and soil and groundwater thereunder), or compliance with any Environmental Laws, and gives no indemnification, express or implied, for any Losses arising out of or related to the presence, discharge, migration or Release or threatened Release of any Hazardous Substance in or from the Road Zone.

**15. Compliance With Laws.** All entries, activities and operations of Master Developer and/or its contractors or subcontractors under this Agreement shall be performed in a safe and reasonable manner and in full compliance with all applicable laws, rules, statutes, ordinances and

regulations of all federal, state and local governmental authorities, including but not limited to mitigation measures, if any, and the obtaining of all necessary governmental permits, authorizations and approvals.

**16. Security of Road Zone.** If the Road Zone or any portion thereof is fenced by Master Developer, as may occur from time to time as part of maintenance or other work, Master Developer shall maintain said fence in good condition and repair any damage caused by Master Developer or as a result of use of the Temporary Road; provided however, that Master Developer shall have no responsibility under this Agreement for any loss or damage resulting (or alleged to result) from design of the Temporary Road. During the term of this Agreement, Master Developer shall be solely responsible for keeping all of its equipment and other property located in the Road Zone secure at all times, and City shall have no responsibility whatsoever in that regard.

**17. Entry under Master Developer Authority.** Master Developer assumes all responsibility for the safety of all persons entering the Project Site pursuant to **Section 2** of this Agreement.

**18. Signs.** Except for construction signs, temporary safety or warning signs, regulatory signs, or any other signs approved by City, Master Developer shall not place, erect or maintain any sign, advertisement, banner or similar object within the Road Zone.

**19. Recitals and Exhibits.** The above Recitals and the following Exhibits attached to this Agreement are incorporated into and made a part of this Agreement.

- Exhibit A: Legal Description of Project Site
- Exhibit B: Plan of Project Site
- Exhibit C: Location of Existing Roads and Future Permanent Roads
- Exhibit D: Location of Road Zone
- Exhibit E: Road Maintenance Obligations
- Exhibit F: Miscellaneous Provisions
- Exhibit G: Insurance Requirements

***[/SIGNATURES BEGIN ON NEXT PAGE.]***

IN WITNESS WHEREOF, Master Developer and City have executed this Agreement as of the Effective Date.

**CITY:**

**CITY OF SANTA CLARA,  
a California chartered municipal corporation**

By: \_\_\_\_\_  
Deanna J. Santana, its City Manager

**ATTEST:**

By: \_\_\_\_\_  
City Clerk

Dated: \_\_\_\_\_


**APPROVED AS TO FORM:**

By: \_\_\_\_\_  
Brian Doyle, City Attorney

Dated: \_\_\_\_\_

**MASTER DEVELOPER:**

**RELATED SANTA CLARA, LLC,  
a Delaware limited liability company**

By:  \_\_\_\_\_

Name: Steve Eimer

Title: Executive Vice President

**EXHIBIT A**  
**Legal Description of Project Site**

EXHIBIT A  
PROJECT SITE

All that real property situate in the City of Santa Clara, County of Santa Clara, State of California, described as follows

BEGINNING at the Southwest corner of that certain parcel designated as, "Remainder 1", on that certain Parcel Map recorded in Book 737 of Maps, at Pages 1 through 4, Santa Clara County Records; thence along the Southeasterly boundary of said Remainder 1, and Parcel 2 as shown on said map

1. North 70° 48' 54" East, 800.92 feet, to the common Southerly corner of Parcels 2 and 4 as shown on said map; thence along the Westerly and Northerly boundaries of said Parcel 4 the following eight courses
2. North 8° 10' 00" West, 1070.36 feet, to an angle point; thence
3. North 5° 35' 14" West, 191.73 feet, to the beginning of a tangent curve to the right; thence
4. Along said curve to the right, having a radius of 109.99 feet, through a central angle of 73° 36' 48", and an arc length of 141.32 feet to the end of said curve; thence
5. North 68° 01' 34" East, 247.17 feet, to the beginning of a tangent curve to the right; thence
6. Along said curve to the right, having a radius of 159.99 feet, through a central angle of 63° 38' 58", and an arc length of 177.73 feet to the end of said curve; thence
7. South 48° 19' 28" East, 120.04 feet, to the beginning of a tangent curve to the left; thence
8. Along said curve to the left, having a radius of 16.00 feet, through a central angle of 65° 46' 18", and an arc length of 18.37 feet to the end of said curve; thence
9. North 65° 54' 14" East, 452.69 feet, to the Northeast corner of said Parcel 4, at a point on the Westerly boundary of the lands of the Union Pacific Railroad Company (UPRR); thence
10. North 62° 36' 04" East, 50.00 feet, to the Easterly boundary of the lands of the UPRR, also being the Southwesterly sideline of Lafayette Street; thence along said common boundary
11. North 27° 23' 56" West, 383.89 feet, to the Southeasterly boundary of an abandoned portion of the former Santa Clara Alviso Road as said abandonment is shown on the Record of Survey filed in Book 613 of Maps, at Pages 16 through 19, Santa Clara County Records; thence along said Southeasterly boundary
12. North 62° 36' 04" East, 60.00 feet, to the Southeast corner of said abandonment as shown on said map, also being a Southerly corner of the lands of the State of California as shown in Parcel 6-First of the Final Order of Condemnation recorded in Book 4820, at Page 641, Santa Clara County Records; thence along the Southerly boundary of said Parcel 6-First the following five courses



13. North 18° 41' 34" West, 324.57 feet to an angle point; thence
14. North 4° 49' 01" West, 291.65 feet to an angle point; thence
15. North 76° 46' 00" East, 367.73 feet to the beginning of a tangent curve to the left; thence
16. Along said curve to the left, having a radius of 300.00 feet, through a central angle of 47° 19' 56", and an arc length of 247.83 feet to the end of said curve; thence
17. North 29° 26' 04" East, 115.92 feet to the Westerly most corner of the land granted to the State of California by Grant Deed recorded in Document No. 13607857, Official Records of Santa Clara County; thence along the Southerly boundary of said lands, along a non-tangent curve to the right, from a tangent that bears North 66° 06' 21" East
18. Along said curve to the right, having a radius of 987.00 feet, through a central angle of 0° 21' 48", and an arc length of 6.26 feet to a tangent compound curve to the right; thence
19. Along said curve to the right, having a radius of 1987.00 feet, through a central angle of 7° 36' 13", and an arc length of 263.69 feet to the end of said curve; thence
20. North 82° 36' 47" East, 359.94 feet to an angle point; thence
21. North 79° 54' 20" East, 63.77 feet to a point on the Southwesterly boundary of Parcel 1 of the lands conveyed to the Santa Clara County Flood Control and Water District by Grant Deed recorded in Book 0346, at Page 667, Santa Clara County Records; thence along the Southwesterly boundary of said lands
22. South 12° 32' 21" East, 124.61 feet, to the beginning of a tangent curve to the left; thence
23. Along said curve to the left, having a radius of 1204.94 feet, through a central angle of 22° 10' 15", and an arc length of 466.25 feet to the end of said curve; thence
24. South 34° 42' 36" East, 627.28 feet, more or less, to the general Westerly boundary of Parcel 1 of the deed recorded in Book 7888, at Page 224, Santa Clara County Records; thence along the Westerly boundary of said last-mentioned Parcel 1
25. South 38° 48' 48" West, 2.93 feet, more or less, to an angle point; thence
26. South 22° 11' 12" East, 158.39 feet, to an angle point; thence
27. South 54° 41' 12" East, 108.85 feet, more or less, to the Northerly most corner of Parcel 2 of the lands conveyed to the Santa Clara County Flood Control and Water District by Grant Deed recorded in Volume 0346, at Page 667, Official Records of Santa Clara County; thence along the Southwesterly boundary of said Parcel 2
28. South 34° 42' 36" East, 1676.65 feet, more or less, to the Southwest corner of said Parcel 2, also being the Northeast corner of Lot 19 of that certain Parcel Map recorded in Book 368 of Maps, at Pages 14 and 15, Santa Clara County Records; thence along the Northwesterly boundary of said Lot 19 and said Parcel Map the following four courses
29. North 84° 23' 47" West, 47.65 feet to an angle point; thence
30. South 23° 19' 21" East, 7.40 feet to an angle point; thence
31. North 84° 25' 47" West, 139.94 feet to an angle point; thence

32. South  $68^{\circ} 35' 42''$  West, 1603.17 feet to the Westerly most corner of said Parcel Map, at the Northeasterly sideline of Lafayette Street; thence perpendicularly across the Right of Way of Lafayette Street and the Union Pacific Railroad (UPRR)
33. South  $62^{\circ} 36' 04''$  West, 139.99 feet to the Westerly sideline of the UPRR; thence along said Westerly sideline
34. South  $27^{\circ} 23' 56''$  East, 1122.18' feet to the intersection of said Westerly sideline with the Northerly sideline of Tasman Drive as said intersection is shown on the Record of Survey map recorded in Book 345 of Maps, at Pages 1 through 8, Santa Clara County Records; thence leaving the Westerly sideline of the UPRR, and along said Northerly sideline the following five courses
35. South  $62^{\circ} 58' 45''$  West, 60.69 feet to an angle point; thence
36. South  $49^{\circ} 35' 12''$  West, 172.69 feet to an angle point; thence
37. South  $55^{\circ} 17' 27''$  West, 403.61 feet to an angle point; thence
38. South  $62^{\circ} 59' 29''$  West, 162.15 feet to the beginning of a tangent curve to the left; thence
39. Along said curve to the left, having a radius of 2920.84 feet, through a central angle of  $1^{\circ} 47' 48''$ , and an arc length of 91.59 feet to the Easterly most corner of Parcel 2 of the Grant for Right of Way Purposes recorded in Document No. 21195719, Santa Clara County Records; thence along the Northerly boundary of said Parcel 2 the following five courses
40. South  $63^{\circ} 11' 39''$  West, 150.97 feet to an angle point; thence
41. South  $63^{\circ} 10' 24''$  West, 14.76 feet to an angle point; thence
42. South  $60^{\circ} 42' 14''$  West, 120.03 feet to an angle point; thence
43. South  $46^{\circ} 39' 25''$  West, 41.19 feet to an angle point; thence
44. South  $60^{\circ} 42' 14''$  West, 203.54 feet, more or less to the Southeast corner of the Easement for Parking Purposes as shown in Parcel Three of the lease agreement recorded in Document No. 18721549, Santa Clara County Records; thence along the Easterly sides of said Parcel Three the following three courses
45. North  $26^{\circ} 03' 52''$  West, 394.25 feet to an angle point; thence
46. South  $63^{\circ} 56' 08''$  West, 15.50 feet to an angle point; thence
47. North  $26^{\circ} 03' 52''$  West, 59.36 feet to the Northerly most corner of said Parcel Three; thence along the Northwesterly line of said Parcel Three
48. South  $63^{\circ} 56' 08''$  West, 382.83 feet to the Northeasterly boundary of the lands granted to the Santa Clara Valley Water District by Grant Deed recorded in Book 1 288, at Page 241, Santa Clara County Records; thence along said Northeasterly boundary and along the Northeasterly boundary of the lands granted to the Santa Clara Valley Water District by Grant Deed recorded in Book B 811, at Page 392, Santa Clara County Records
49. North  $30^{\circ} 38' 56''$  West, 530.37 feet to the beginning of a tangent curve to the left; thence
50. Along said curve to the left, having a radius of 686.06 feet, through a central angle of  $26^{\circ} 15' 54''$ , and an arc length of 314.50 feet to the end of said curve; thence

51. North 56° 54' 50" West, 950.10 feet, to the Easterly sideline of Great America Parkway, as shown on the Record of Survey map recorded in Book 345 of Maps, at Pages 1 through 8, Santa Clara County Records; thence along said Easterly sideline
52. North 1° 58' 31" East, 340.86 feet to the POINT OF BEGINNING.

EXCEPTING therefrom any portion of the above-described lands that are within the Right of Ways of Lafayette Street, Great America Way or the Union Pacific Railroad.

Containing 238.57 acres, more or less.

Description prepared by BKF Engineers, in June, 2016.

Signed David Darling 6/08/2016  
Date



**EXHIBIT B**  
**Plan of Project Site**

CURVE TABLE			
CURVE	RADIUS	DELTA	LENGTH
C1	109.99	73°36'48"	141.32
C2	159.99	63°38'58"	177.73
C3	16.00	65°46'18"	18.37
C4	300.00	47°19'56"	247.83
C5	987.00	0°21'48"	6.26
C6	1987.00	7°36'13"	263.69
C7	1204.94	22°10'15"	466.25
C8	2920.84	1°47'48"	91.59
C9	686.06	26°15'54"	314.50

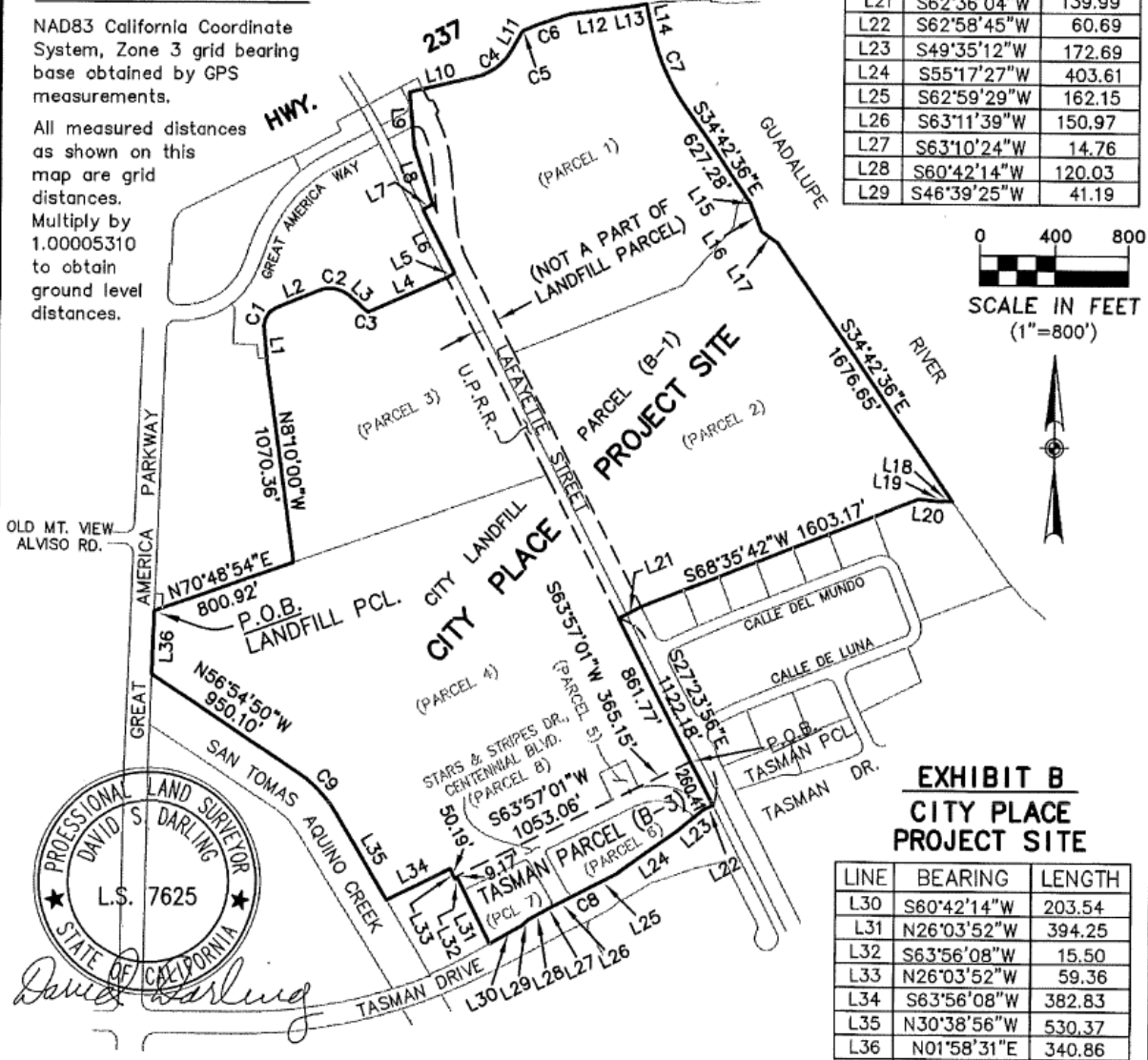
LINE TABLE		
LINE	BEARING	LENGTH
L1	N05°35'14"W	191.73
L2	N68°01'34"E	247.17
L3	S48°19'28"E	120.04
L4	N65°54'14"E	452.69
L5	N62°36'04"E	50.00
L6	N27°23'56"W	383.89
L7	N62°36'04"E	60.00
L8	N18°41'34"W	324.57
L9	N04°49'01"W	291.65
L10	N76°46'00"E	367.73

LINE TABLE		
LINE	BEARING	LENGTH
L11	N29°26'04"E	115.92
L12	N82°36'47"E	359.94
L13	N79°54'20"E	63.77
L14	S12°32'21"E	124.61
L15	S38°48'48"W	2.93
L16	S22°11'12"E	158.39
L17	S54°41'12"E	108.85
L18	N84°23'47"W	47.65
L19	S23°19'21"E	7.40
L20	N84°25'47"W	139.94
L21	S62°36'04"W	139.99
L22	S62°58'45"W	60.69
L23	S49°35'12"W	172.69
L24	S55°17'27"W	403.61
L25	S62°59'29"W	162.15
L26	S63°11'39"W	150.97
L27	S63°10'24"W	14.76
L28	S60°42'14"W	120.03
L29	S46°39'25"W	41.19

**BASIS OF BEARINGS**

NAD83 California Coordinate System, Zone 3 grid bearing base obtained by GPS measurements.

All measured distances as shown on this map are grid distances. Multiply by 1.00005310 to obtain ground level distances.



**EXHIBIT B  
CITY PLACE  
PROJECT SITE**

LINE	BEARING	LENGTH
L30	S60°42'14"W	203.54
L31	N26°03'52"W	394.25
L32	S63°56'08"W	15.50
L33	N26°03'52"W	59.36
L34	S63°56'08"W	382.83
L35	N30°38'56"W	530.37
L36	N01°58'31"E	340.86

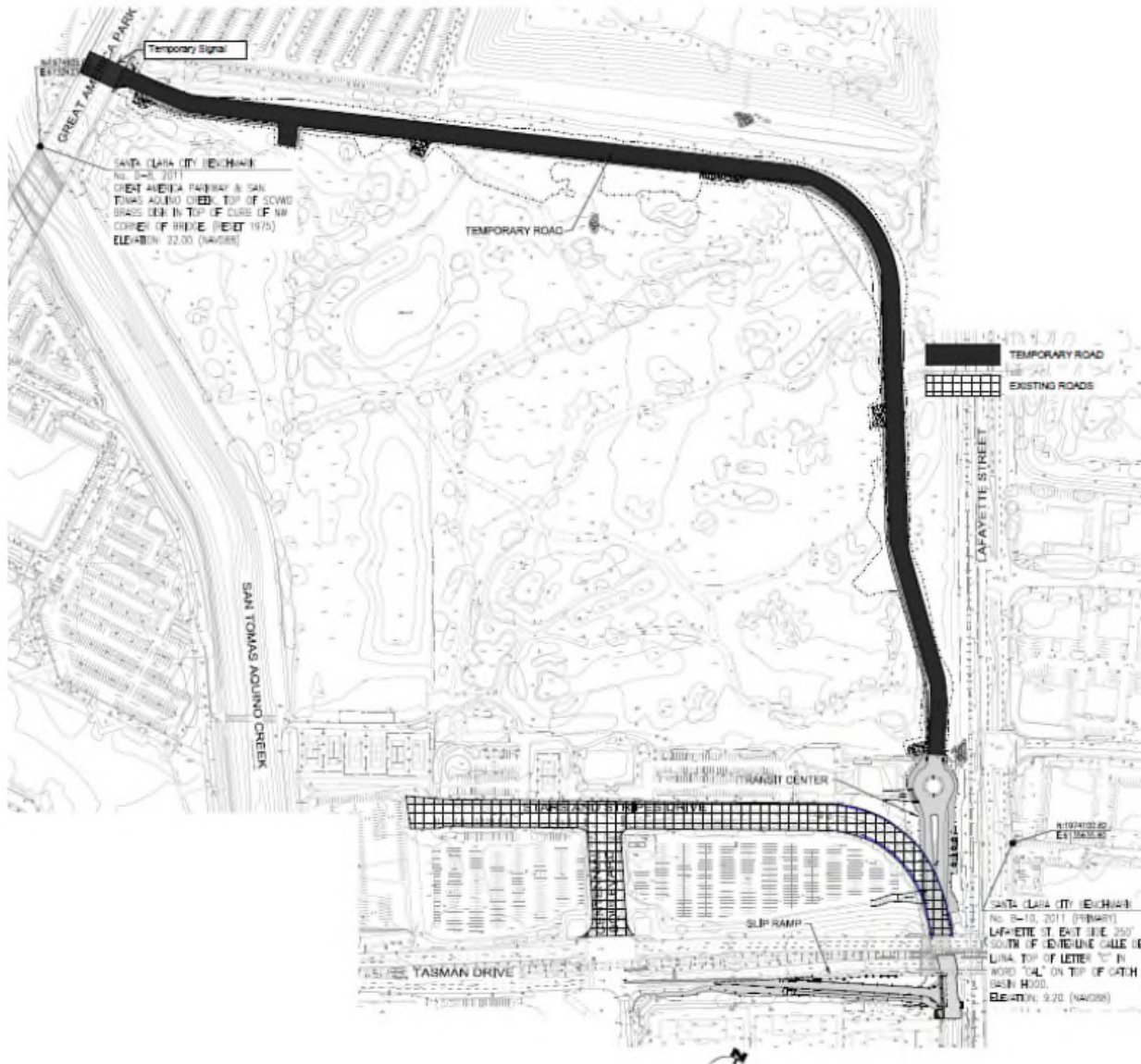


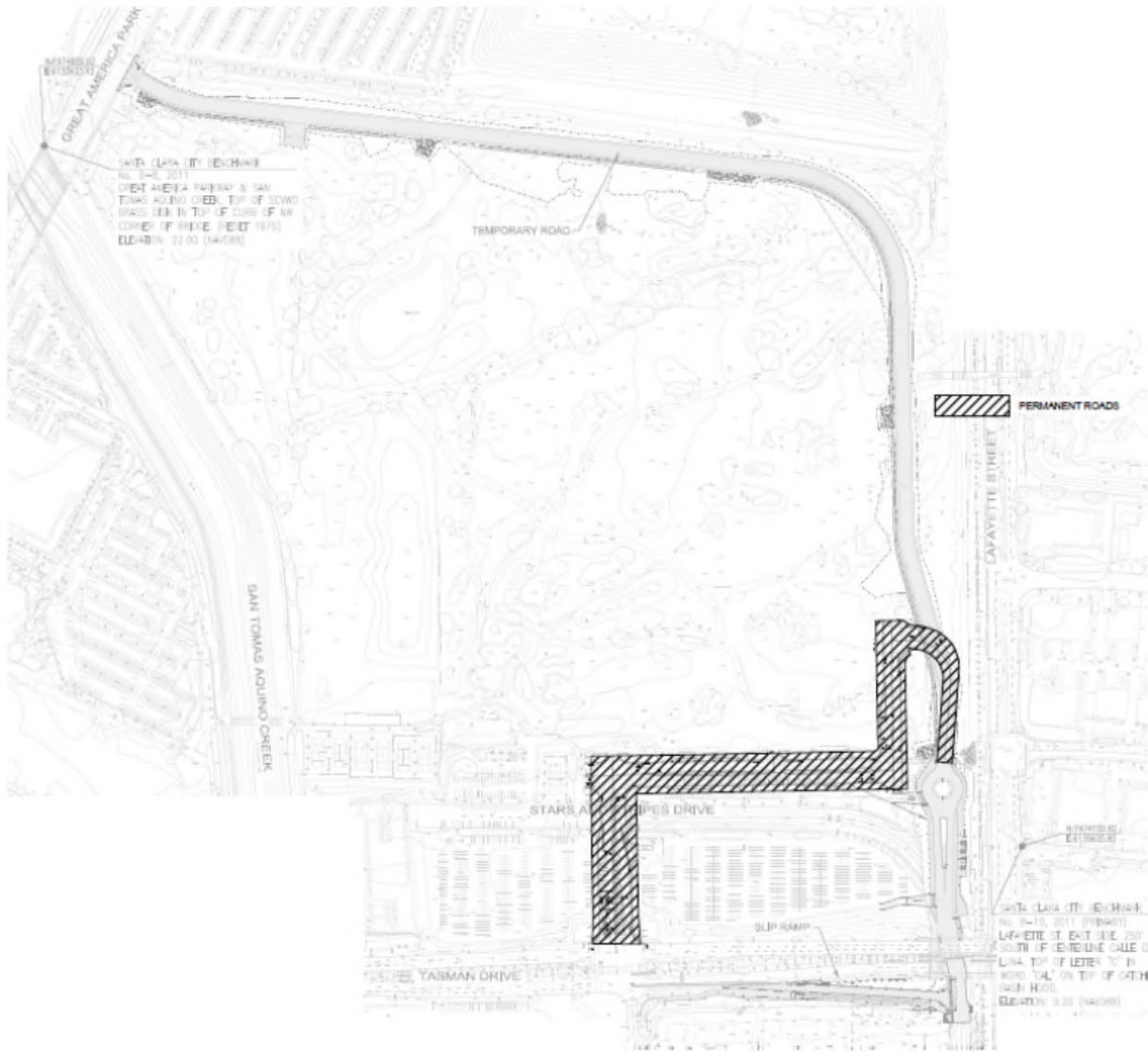
1730 N. FIRST STREET  
SUITE 600  
SAN JOSE, CA 95112  
408-467-9100  
408-467-9199 (FAX)

Subject EXHIBIT B  
CITY PLACE - PROJECT SITE  
Job No. 20156041  
By DSD Date 6-08-16 Chkd. DRT  
SHEET 1 OF 1

**EXHIBIT C**

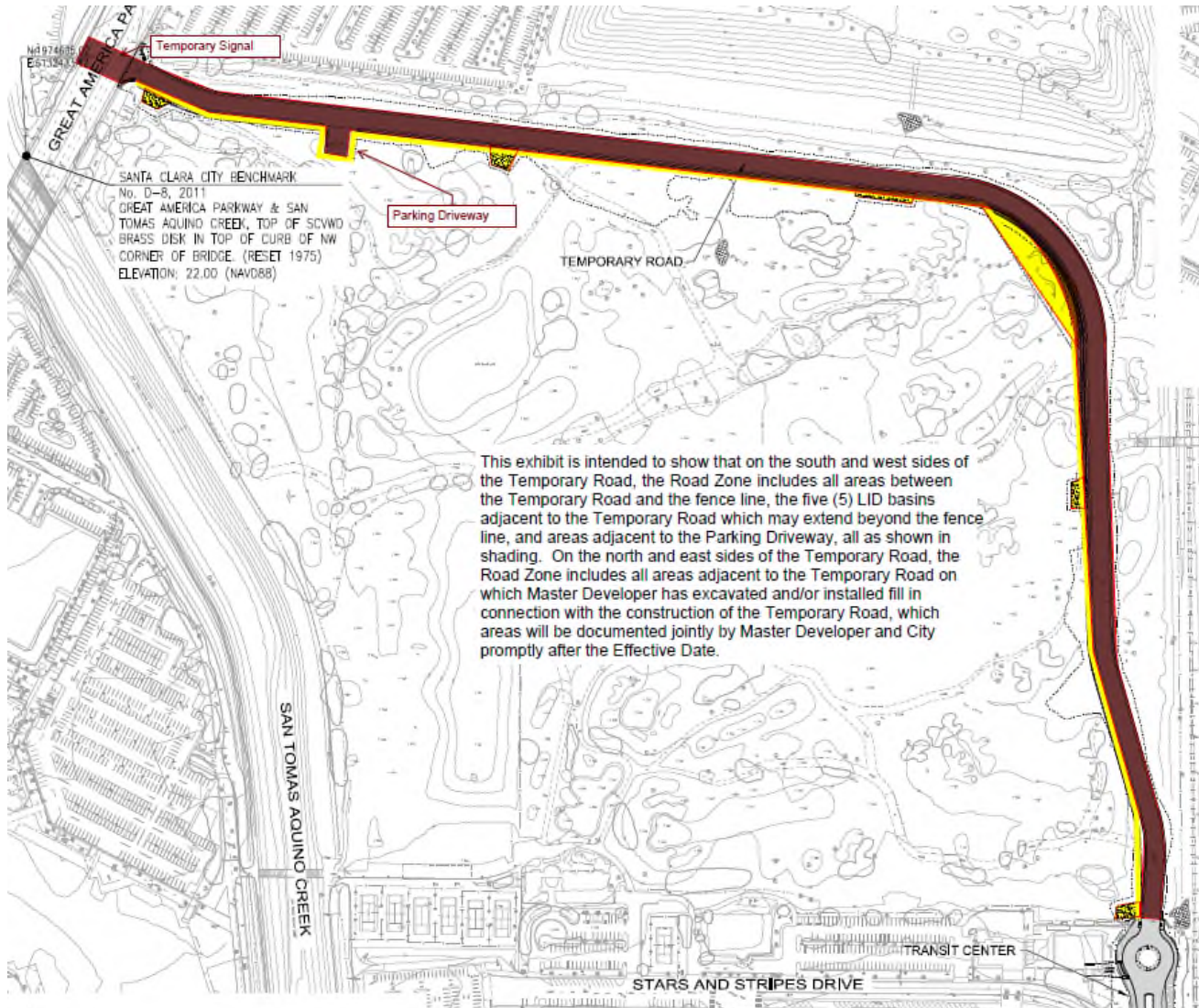
**Location of Existing Roads and Future Permanent Roads**







## EXHIBIT D Location of Temporary Road Zone



**EXHIBIT E**  
**Maintenance Obligations**

**Related Santa Clara City Center  
Temporary Road  
Maintenance Agreement  
Exhibit E: Maintenance Obligations  
Master Developer Maintenance Obligations**

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## 1. INTRODUCTION

The Related Santa Clara City Center development is directly north of Levi's Stadium in Santa Clara, California. The first phase of City Center to be developed (constructed) is Parcel 5, commonly referred to as the Tasman Block or Gateway District. Parcel 4's development will begin before Parcel 5's construction is completed. Parcel 5 development will require closing and removing portions of Stars and Stripes Drive and Centennial Boulevard, which currently provide access to adjacent land uses.

To maintain access to those adjacent uses, a temporary road has been built through the landfill on Parcel 4 to a temporary signalized intersection at Great America Parkway. The Temporary Road is governed by the Temporary Road Maintenance Agreement ("Road Agreement") to which this document is attached as an exhibit. Capitalized terms not defined in this exhibit shall have the meaning given in the Road Agreement.

This document provides the Master Developer's maintenance obligations for the Temporary Road. It is divided into three categories: preventive maintenance, operational maintenance, and emergency provisions. The Road Agreement contains additional provisions regarding the Temporary Road and Master Developer's responsibilities.

## 2. PREVENTIVE MAINTENANCE

### a. Sweeping

Sweeping shall take place two times per month, and within two (2) business days of notification of a complaint.

### b. LID Maintenance

The primary maintenance requirement for bioretention areas is the regular inspection and repair or replacement of the treatment measure's components. Routine maintenance is needed to ensure the flow is unobstructed, erosion is prevented, and the soils and plants are biologically active.

- Depending on the system needs, conduct quarterly inspections or as needed after a storm event as follows:
  - Inspect the bioretention surface area, inlets and outlets for obstructions and trash; clear any obstructions and remove weeds, debris and trash. Dispose of them properly.
  - Inspect bioretention area for standing water. If standing water does not drain within two (2) business days, the surface biotreatment soil should be tilled or replaced with the approved soil mix and replanted.
  - Check any underdrains for clogging. Use the cleanout riser to clean any clogged underdrains.
  - If mosquito larvae are observed, contact the County Vector Control District at (408) 918-4770 or (800) 675-1155.

- Maintain the irrigation system and ensure that plants are receiving the correct amount of water (if applicable).
- Inspect for basin overtopping or liner / sidewall leakage. Inspect for embankment or landfill damage in adjacent areas. Clear any drainage flow obstructions and repair any containment or other erosion damage.
- Annually before the rainy season (October 15 – April 15) begins:
  - Ensure that the vegetation is healthy and dense enough to provide filtering and protect soils from erosion. Prune and weed the bioretention area and remove trash. Remove and/or replace any dead plants. Do not use pesticides or other chemical applications to treat diseased plants, control weeds or remove unwanted growth.
  - Use compost and other natural soil amendments and fertilizers instead of synthetic fertilizers, especially if the system uses an underdrain.
  - Inspect the energy dissipator at the inlet to ensure it is functioning adequately, and that there is no scour of the surface mulch. Remove any accumulation of sediment.
  - Inspect the overflow pipe to make sure that it can safely convey excess flows to a storm drain. Repair or replace any damaged or disconnected piping. Use the cleanout riser to clear underdrains of obstructions or clogging material.
  - Inspect and replace wood mulch if needed. It is recommended that 2 to 3 inches of composted arbor mulch be applied once a year. Mulch shall also be replaced when erosion is evident; spot mulching may be sufficient for random void areas.
  - Inspect bioretention area using the following checklist.
- Annually at the end of the rainy season, and/or after large storm events:
  - Inspect the system for erosion of biotreatment soil, loss of mulch, standing water, structural failure, clogged overflows, weeds, trash and dead plants, and correct as needed. If using rock mulch, check for 3 inches of coverage.
  - Maintain the irrigation system (at the end of the rainy season) and ensure that plants are receiving the correct amount of water (if applicable).

Table 1 Inspection Requirements for Bioretention Facilities

Defect	Condition When Maintenance is Needed	Results Expected When Maintenance is Performed
<b>Standing Water</b>	Water stands in the bioretention area between storms and does not drain within 2 days after rainfall.	There should be no areas of standing water once storm event has ceased. Any of the following may apply: sediment or trash blockages removed, improved grade from head to foot of bioretention area, or added underdrains.
<b>Trash and debris accumulation</b>	Trash and debris accumulated in the bioretention area, inlet, or outlet.	Trash and debris removed from bioretention area and disposed of properly.
<b>Sediment</b>	Evidence of sedimentation in bioretention area.	Material removed so that there is no clogging or blockage. Material is disposed of properly.
<b>Erosion</b>	Channels have formed around inlets, there are areas of bare soil, and/or other evidence of erosion.	Obstructions and sediment removed so that water flows freely and disperses over a wide area. Obstructions and sediment are disposed of properly.
<b>Vegetation</b>	Vegetation is dead, diseased and/or overgrown.	Vegetation is healthy and attractive.
<b>Mulch</b>	Mulch is missing or patchy in appearance. Areas of bare earth are exposed, or mulch layer is less than 2 inches in depth.	All bare earth is covered, except mulch is kept 6 inches away from trunks of trees and shrubs. Mulch is even in appearance, at a depth of 2-3 inches.
<b>Miscellaneous</b>	Any condition not covered above that needs attention in order for the bioretention area to function as designed.	Meets the design specifications.

**c. Trash pickup or dumping**

All smaller items should be picked up by the street sweeping. All other items shall be removed within one (1) business day of notification of a complaint or observance by the street sweeper operator.

**d. Ponding management**

Inspect (a) the Temporary Road, (b) the Road Zone, and (c) on the north and east sides of the Temporary Road, any area within a 1:1 slope from any disturbed areas (i.e., area on which Master Developer has excavated and/or installed fill in connection with construction of the Temporary Road) through the depth of refuse (collectively, the “Inspection Area”), for ponding or standing water per landfill cover (“LEA pond management”) regulatory requirements. Address all applicable Waste Discharge

Requirements (“WDR”), including landfill cover inspection and damage repair requirements for the Inspection Area. Notify the City within 24 hours of standing water. Standing water or ponding shall be abated within thirty (30) business days, if feasible, or a ponding remedial plan shall be submitted to the City with a schedule for repair.

**e. Storm Water Controls**

Inspect integrity of roadway embankment erosion control measures and other stormwater BMPs. Restore or repair as required.

All slopes shall be hydroseeded or otherwise treated as specified in the applicable construction and post-construction requirements so as to prevent any bare slopes, with new hydroseeding or other measures as may be required.

All LID basin outflows, and each of the Storm Drain crossing inflows and outflows have rip rap to avoid erosion. These inflows/outflows erosion protections shall be inspected and repaired as needed. There are five (5) LID basins with Storm Drain crossings and an additional six (6) Storm Drain crossings along the Temporary Road.

The maintenance and inspection program for post-construction controls shall meet the requirements of Provision C.3 of the SCVURPPP NPDES permit. Master Developer shall submit an annual report describing its inspection and maintenance work in the form attached hereto as Appendix A (the “Annual Stormwater Report”).

**f. Vegetation Control**

In addition to specific vegetation control measures described elsewhere in this Exhibit E, Master Developer shall maintain all vegetation within the Road Zone as needed to preserve the condition of the Temporary Road and other features in the Road Zone and prevent an unsightly appearance, including but not limited to removing weeds as needed and mowing. Use of pesticides, herbicides, fertilizer or other treatments shall conform to City practice in the City’s public open spaces (unless City requests otherwise and Master Developer agrees).

**3. OPERATIONAL MAINTENANCE**

**a. Pothole or other damage**

Potholes shall be abated within three (3) business days of verification of the existence of a pothole.

**b. Settlement**

Inspect the Inspection Area and landfill systems in the Inspection Area monthly for settlement, and repair any damage within thirty (30) days of verification of settlement or as required for regulatory compliance, whichever is earlier.



**c. Lighting**

Maintain all light poles and lights installed along the Temporary Road. If a light bulb goes out, it shall be replaced within two (2) business days of notification. Any settlement of light poles or leaning poles shall be repaired within two (2) business days of notification or sooner if there is a hazard to the public. Master Developer shall fund electricity as specified in the Road Agreement.

**d. Graffiti removal**

Removal of graffiti must occur within two (2) business days of notification.

**e. Striping repainting**

Pavement striping shall be repainted within five (5) business days if any impact or repair affects the pavement striping or after being notified or otherwise learning that visibility of striping is impaired.

**f. Traffic signal**

The City of Santa Clara will be responsible for operation of the temporary traffic signal system located at the intersection of the Temporary Road and Great America Parkway. Maintenance of this traffic signal will be by third parties hired by the City. Master Developer shall fund maintenance expenses and electricity as specified in the Road Agreement.

**g. Fencing**

Master Developer shall repair or replace all permanent or temporary fencing installed in association with the Temporary Road, the gate across the Parking Driveway, and ancillary security materials as needed within two (2) business days of notification of damage.

**h. Signage**

If a sign is removed or damaged and the City determines that its replacement is necessary, the City will produce and install the new sign. Master Developer will reimburse the expenses.

**i. LFG and other Landfill Environmental Systems**

Master Developer shall be responsible for any damage to the landfill, the LFG system or any landfill environmental system (including but not limited to stormwater control, vegetative cover and vegetation, clay cap, environmental monitoring, leachate or other hazardous substance release) arising from or worsened by the Temporary Road, whether from construction, maintenance, repair, removal, fill, settlement, traffic, liquid accumulation or other cause. Without limiting the foregoing and as illustration, Master Developer shall be responsible for the following damage arising from the Temporary Road:

- \* LFG Damage: Any damage to the LFG system, for any disruption of normal LFG extraction, monitoring, or emission control operations (and for all remedies required

consequently); and for any additional monitoring, troubleshooting, re-engineering, documentation, or compliance reporting activities caused by these damages or remedies, in accordance with the protocols set forth in Appendix B to this Exhibit E. Appendix B also contains a baseline survey describing the condition of the LFG system prior to construction of the Temporary Road, to be used in identifying such damage or other problem.

- \* Final Cover Damage: Any damage to the landfill final cover (foundation layer, clay cap, and/or vegetative soil layer).
- \* Storm Water Damage: Any damage to the landfill or public storm water conveyance system (either downstream or upstream).
- \* Environmental Monitoring System: Any damage to the landfill environmental monitoring systems (including but not limited to groundwater and leachate monitoring wells).
- \* Hazardous Substance Damage: Any damage to public health, property or the environment due to leachate, LFG, or any other hazardous substance release.

Master Developer shall be responsible for any additional City out-of-pocket expense (including without limitation for labor, equipment or materials) required to access and work on LFG and other landfill environmental systems for monitoring, maintenance, adjustment, repair, restoration, compliance with regulatory requirements or any other purpose arising from the presence of the Temporary Road or its construction, use, maintenance, repair or removal.

## **4. EMERGENCY PROVISIONS**

### **a. Accidents / Fire**

Master Developer shall be responsible for damages to the Temporary Road and other improvements installed by Master Developer, the landfill, or landfill environmental systems due to vehicle accidents and/or fire on the Temporary Road.

### **b. Natural Catastrophe (Act of God)**

In the event of a natural catastrophe (including but not limited to earthquake, land movement, lightning, flooding), Master Developer shall be responsible for damages to the Temporary Road, the adjacent land within the Road Zone or the landfill and its environmental systems to the extent arising from effects of such events on the Temporary Road or exacerbated by Master Developer's construction work in the Road Zone.

### **c. Non-performance**

In case of non-performance of inspection, maintenance or repairs as required within the schedule times allotted, the City may independently procure all required labor, services and materials to perform damage repairs, and recover all costs from Master Developer.

## 5. INVESTIGATION AND CAUSATION

Unless the City undertakes action regarding the landfill pursuant to Section 4.d.i of the Road Agreement, Master Developer shall undertake and complete all repairs, maintenance or other work as may be required under the Road Agreement and this Exhibit E, including Appendix B thereto, within the time periods specified, and may consult with the City as may be necessary to verify the nature and extent of damage and work needed. As to such City action regarding the landfill, including its operating LFG and other existing systems, allocation of responsibility and reimbursement of costs shall be determined pursuant to Section 4.d.ii of the Road Agreement.

Baseline conditions are provided in Appendix B below.

## 6. ADMINISTRATIVE DETAILS

### a. Notices

Notices specified in this Exhibit E or otherwise considered routine communications regarding the matters addressed in this Exhibit E shall be provided by email as follows; provided, for circumstances that also require notice pursuant to the terms of the Road Agreement, notice also shall be sent in accordance with Paragraph 6.27 in Exhibit F to the Road Agreement (Miscellaneous Provisions):

Notices to Master Developer shall be sent to [scott.borland@related.com](mailto:scott.borland@related.com).

Notices to the City shall be sent to [street@santaclaraca.gov](mailto:street@santaclaraca.gov), ATTN: Dave Staub.

### b. City Costs

All costs and expenses of the City under this Exhibit E or the Road Agreement that are reimbursable to the City and for which the mechanism for reimbursement is not otherwise specified, including but not limited to those costs the City may incur pursuant to Paragraph 4.c of this Exhibit E or Section 7.b of the Road Agreement, shall be paid by Master Developer within thirty (30) days after receiving a statement from City.

### c. Maintenance Records

Master Developer shall maintain a detailed record of all maintenance and repair work it performs on the Temporary Road and within the Road Zone, in a format suitable for electronic transmission to the City, which the City may request to review from time to time. In addition, Master Developer shall submit the Annual Stormwater Report in the form described in Appendix A.

## 7. REFERENCES

- SCVURPPP
- National Stormwater Management Calculator
- SFB-RWQCB Waste Discharge Requirements R2-2017-0021
- BAAQMD Permit to Operate

**APPENDIX A:**

**SCVURPPP ANNUAL STORMWATER INSPECTION AND MAINTENANCE REPORT**

**Stormwater Treatment Measures Inspection and Maintenance  
Annual Inspection Report to the  
City of Santa Clara, California**

This annual inspection report and attached inspection checklist(s) document inspection and maintenance conducted for the identified stormwater treatment measure(s) subject to the Stormwater Treatment Measures Inspection and Maintenance Agreement between the City of Santa Clara and the Property Owner(s), its administrators, executors, successors, heirs, assigns or any other persons, including any homeowners association (hereinafter referred to as “Property Owner(s)”).

**I. Property Information:**

Property Address or APN:

Property Owner:

**II. Contact Information:**

Name of person to contact regarding this report:

Phone number of contact person:

Email:

Address to which correspondence regarding this report should be directed:

**III. Reporting Period:**

This inspection report, with the attached completed inspection checklists, documents the inspections and maintenance of the identified treatment measures during the time period from  
to .

**IV. Treatment Measure Information:**

The following stormwater treatment measures (identified treatment measures) are located on the property identified above and are subject to the Stormwater Treatment Measures Inspection and Maintenance Agreement: (see table next page)

### Treatment Measure Information

Identifying Number of Treatment Measure	Type of Treatment Measure	Location of Treatment Measure on the Property

**V: Sediment Removal**

Total amount of accumulated sediment removed from the stormwater treatment measure(s) during the reporting period: \_\_\_\_\_ cubic yards.

The sediment was removed and disposed as follows:

**VI. Inspector Information:**

The inspections documented in the attached inspection checklists were conducted by the following inspector(s):

Inspector Name and Title	Inspector's Employer and Address

**VII. Statement of Treatment Measure Condition**

Based on the inspections documented in the attached checklists, is (are) the treatment measure(s) identified in this report present, functional and being maintained as required by the Maintenance Plan? (Check yes or no.)

YES  NO

**If “NO”, describe problem, proposed solution and schedule of correction:**

**VIII. Certification:**

I hereby certify, under penalty of perjury under the laws of the State of California, that the information presented in this report and attachments is true and complete:

Signature of Property Owner or Other Responsible Party:

\_\_\_\_\_

Date: \_\_\_\_\_

Type or Print Name: \_\_\_\_\_

Company Name: \_\_\_\_\_

Address: \_\_\_\_\_

Phone number: \_\_\_\_\_

Email: \_\_\_\_\_

**APPENDIX B:  
PRE-CONDITIONS SURVEY (Baseline)  
AND LANDFILL GAS COLLECTION SYSTEM INVESTIGATION PROTOCOL**



Santa Clara All Purpose Landfill, Parcel 4  
 Related LLC, Early Construction Activities, Package #2: Temporary Road  
 Landfill Gas System Operations Status

LFG Monitoring Date: 10/24 and 28/2019 Objective: Baseline  
 Site Weather: Sunny, breezy  
 Ambient Temperature: 56 °F  
 Instrument: GEM 5000  
 Monitored by: I. Sharkey Rvw'd. by: S. Nguyen Apprv'd. By: A. Wang

Locations	Date	Time	Well Side Vacuum (in.w.c.)	Header Side Vacuum (in.w.c.)	Wellhead LFG Temperature (°F)	Barometric Pressure (in.Hg)	Flow Rate (scfm)	LFG Composition					Comments
								Methane (%)	Oxygen (%)	Carbon dioxide (%)	Balance (%)	Carbon monoxide (ppmv)	
<b>Parcel 2 Conveyance Pipeline:</b>													
Flare Station Inlet	10/24/2019	6:45	NA	-0.47	Stack: 1511	30.0	290	41.3	1.3	33.4	23.7	2	Flare on line only
Flare Station Inlet	10/28/2019	7:00	NA	-0.75	Stack: 1505	30.1	193	41.2	33.3	0.6	24.9	2	Flare and 1 microturbine online
A-Line Main Control Valve	10/24/2019	7:00	NA	-0.47	NA	30.0	NA	37.9	2.2	30.8	29.1	3	
A-Line at E-Line Control Valve	10/24/2019	7:30	NA	-0.46	NA	30.0	NA	45.6	0	34.2	20.2	4	
A-Line at F-Line Control Valve	10/24/2019	8:00	NA	-0.46	NA	30.0	NA	51.1	0.3	36.3	12.2	4	
A-Line at G-Line Control Valve	10/24/2019	9:45	NA	-0.46	NA	30.0	NA	44.2	1	33.8	21	2	
<b>Parcel 4 Pipelines and Wells:</b>													
A-Line at West Control Valve	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	Underground sample tubing damaged
H-Line Control Valve	10/24/2019	10:35	NA	-0.25	NA	30.0	NA	41.7	0.2	34.8	23.3	3	
H2	10/24/2019	11:33	-0.09	-0.19	78	30.0	NA	23.7	0.2	30.2	46	2	
H3	10/24/2019	11:24	-0.07	-0.19	78	30.0	NA	46.5	0.1	35.7	17.8	3	
I-Line Control Valve ("South Valve")	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	Underground sample tubing damaged
I2	10/24/2019	11:55	-0.11	-0.13	80	30.0	NA	37.5	0.6	33.4	28.4	2	
I3	10/24/2019	11:45	-0.09	-0.15	74	30.0	NA	42	0.2	34.6	23.1	2	
K-Line Control Valve	10/28/2019	8:20	NA	-0.46	NA	30.1	NA	49.9	0.1	36.8	13.1	2	
K1	10/28/2019	8:36	-0.35	-0.40	70	30.1	NA	58.9	0.1	41	0	2	
K2	10/28/2019	8:44	-0.36	-0.44	64	30.1	NA	57.1	0.3	37.5	5.1	1	
K4	10/28/2019	8:52	-0.28	-0.37	105	30.1	NA	49.8	0	35.2	15.1	2	
K6	10/28/2019	9:00	-0.19	-0.25	70	30.1	NA	47.2	0.1	38.4	14.3	2	
L-Line Control Valve	10/28/2019	9:06	NA	-0.46	NA	30.1	NA	38.7	3.8	32	25.4	1	
L2A	10/28/2019	9:12	-0.34	-0.43	68	30.1	NA	51.1	0	39.7	9.2	1	
M-Line Control Valve	10/28/2019	9:20	NA	-0.36	NA	30.1	NA	34	0.5	33.2	32.3	1	
M2	10/28/2019	9:27	-0.29	-0.36	60	30.1	NA	57.6	0.1	42.2	0	2	
M5	10/28/2019	9:34	-0.20	-0.29	60	30.1	NA	38.6	0	36.5	24.8	1	
N-Line Control Valve	10/28/2019	9:40	NA	-0.34	NA	30.1	NA	22	0.8	27.3	49.9	1	
N1	10/28/2019	9:46	-0.21	-0.33	64	30.1	NA	45.2	0.1	36.9	17.8	1	
N2	10/28/2019	9:53	-0.12	-0.25	66	30.1	NA	19.3	0.2	27.8	52.7	1	
N4	10/28/2019	10:06	-0.13	-0.26	72	30.1	NA	19.2	0	25.8	55	0	
N5	10/28/2019	10:12	-0.07	-0.18	60	30.1	NA	22.5	0	28.9	48.6	1	
T-Line Sample Port	10/28/2019	10:20	NA	-0.28	NA	30.1	NA	41.4	1.5	32.6	24.4	3	

Notes:

1. All active LFG extraction wells are monitored and reported monthly for compliance parameters. Red locations requested by Langan/WSP (10/16/2019)
2. Vacuum monitoring of the pipeline control valve sample ports shall be performed on the downstream (header side) sample ports (for maximum negative value).
3. Vacuum monitoring of the LFG wells on the downstream (header side) sample port is supplemental to normal compliance monitoring.
4. If LFG extraction well(s) are offline for over 14 days, monitoring for methane in adjacent LFG migration probes shall be increased to monthly.
5. LFG extraction monitoring data may vary, depending on the site conditions during the monitoring event.

**Table 2**  
**Proposed Landfill Gas Collection System Monitoring Program**  
**City Place Santa Clara**  
 Santa Clara, CA  
 Langan Project No. 770611605  
 November 2019

**Objective: To layout a proposed monitoring program to determine the actions required for potential irregular incidents related to the LFG collection system that might occur during the construction and operation of the proposed temporary road on Parcel 4.**

Landfill Gas Collection System Monitoring Program			
Location	Investigation Protocol		
	Parameter	Irregular Incident Classification	Change from Pre-Baseline and Baseline Readings (%)
A-Line Valve, H-Line Valve, J-Line Valve, K-Line Valve, L-Line Valve, M-Line Valve, N-Line Valve	Vacuum (inH <sub>2</sub> O)	Minor	Less than 20
		Significant	Between 20 and 50
		Major	Greater than 50
	Temperature (°F)	Minor	Less than 20
		Significant	Between 20 and 40
		Major	Greater than 40
	Flow (scfm)	Minor	Less than 20
		Significant	Between 20 and 50
		Major	Greater than 50
	Gas Composition (CH <sub>4</sub> , O <sub>2</sub> , CO, CO <sub>2</sub> )	Minor	Less than 25
		Significant	Between 25 and 50
		Major	Greater than 50
H2, H3, J2, J3, K1, K2, K4, K6, L2A, M2, M5, N1, N2, N4, N5	Vacuum (inH <sub>2</sub> O)	Minor	Less than 10
		Significant	Between 10 and 25
		Major	Greater than 25
	Temperature (°F)	Minor	Less than 10
		Significant	Between 15 and 30
		Major	Greater than 30
	Flow (scfm)	Minor	Less than 20
		Significant	Between 20 and 45
		Major	Greater than 45
	Gas Composition (CH <sub>4</sub> , O <sub>2</sub> , CO, CO <sub>2</sub> )	Minor	Less than 15
		Significant	Between 15 and 50
		Major	Greater than 50

**Notes:**

- LFG Landfill Gas
- inH<sub>2</sub>O Inches of Water Column
- (°F) Degrees Fahrenheit
- scfm Standard Cubic Feet per Minute
- CH<sub>4</sub> Methane gas measured in percent by Volume
- O<sub>2</sub> Oxygen gas measured in percent by Volume
- CO Carbon Monoxide measured in ppm
- CO<sub>2</sub> Carbon Dioxide measured in ppm

<b>Irregular Incident Required Actions</b>
Minor - No Action Required - Continue monitoring
Significant - Investigate and attempt to correct the discrepancy - Continue monitoring
Major - Investigate and attempt to correct discrepancy. If required, conduct corrective action and notify the appropriate regulatory agencies. Continue monitoring

The above mentioned comparison from the baseline readings are for illustration purposes only, and will likely vary for each field parameter (i.e., LFG composition, and physical parameters) due to various factors and environmental conditions (i.e., seasonal changes, and atmospheric conditions).

**EXHIBIT F**  
**Miscellaneous Provisions**

Reference is made to that certain Disposition and Development Agreement dated for reference purposes as of August 12, 2016, and recorded October 7, 2016, as Document No. 23456796 in the Official Records of Santa Clara County, California, as it may be amended from time to time (the “**DDA**”).

The term “**this Agreement**” as used in this Exhibit, shall mean the Temporary Road Maintenance Agreement, to which this Exhibit is attached. The use of the term “**Developer**” as used in this Exhibit, shall have the same meaning as “Master Developer” as defined in the introductory paragraph of this Agreement. The term “**Section**” as used in this Exhibit shall refer to a numbered provision in this Agreement, and the term “**Paragraph**” as used in this Exhibit shall mean a numbered provision in this Exhibit. Defined terms not otherwise set forth in this Agreement shall have the meanings set forth in Exhibit A to the DDA.

1. Arbitration Option. Any matter mutually agreed upon by the Parties may be submitted to Expedited Arbitration in accordance with the following provisions; provided, the Parties at any time may by mutual agreement supplement or revise such provisions. The date on which both Parties agree in writing to Expedited Arbitration shall be referred to herein as the “**Arbitration Initiation Date.**”

1.1 Arbitration Procedures.

1.1.1 Arbiters. The arbitrator (“**Arbiter**”) will be selected by mutual agreement of the parties. The Arbiter will hear all disputes under this Agreement. The Arbiter appointed must meet the Arbiters’ Qualifications. The “**Arbiter’s Qualifications**” shall be defined as a retired judge or an attorney with at least ten (10) years’ experience in complex real estate transactions, including without limitation, projects involving matters related to landfills and use of land within a landfill in the California area. If the Parties cannot mutually agree on an Arbiter within seven (7) days after the Arbitration Initiation Date, then an Arbiter meeting the Arbiter’s Qualifications shall be appointed by the Presiding Judge of the Superior Court of Santa Clara County.

1.1.2 Expedited Arbitration Process. The Parties each shall submit a brief with all supporting evidence to the Arbiter with copies to the other Parties no later than the date (the “**Arbitration Briefing Date**”) that is the later to occur of (a) the fifteenth (15th) Business Day after the Arbitration Initiation Date or (b) the fifth (5th) Business Day after the Arbiter is selected by the Parties or appointed by the Presiding Judge of the Superior Court of Santa Clara County. Evidence may include, but is not limited to, expert or consultant opinions, any form of graphic evidence, including photos, maps or graphs and any other evidence the Parties may choose to submit in their discretion to assist the Arbiter in resolving the dispute. In either case, any interested Party may submit an additional brief within five (5) Business Days after distribution of the initial brief. The Arbiter thereafter shall hold a telephonic hearing and issue a decision in the matter promptly, but in any event within ten (10) Business Days after the Arbitration Briefing Date, unless the Arbiter determines that further briefing is necessary, in which case the additional brief(s) addressing only those items or issues identified by the Arbiter

shall be submitted to the Arbiter (with copies to all Parties) within ten (10) Business Days after the Arbiter's request, and thereafter the Arbiter shall hold a telephonic hearing and issue a decision promptly but in any event within ten (10) Business Days after submission of such additional briefs, and no later than thirty (30) Business Days after the Arbitration Briefing Date. The decision of the Arbiter will be final, binding on the Parties and non-appealable. Nothing in this Paragraph 1.1 shall require a Party to postpone instituting any injunctive proceeding if it believes in good faith that such postponement will cause irreparable harm to such Party.

## 1.2 Additional Provisions Governing Arbitration of Disputes.

1.2.1 No Ex Parte Communications. No Party or anyone acting on its behalf shall have any ex parte communication with the Arbiter with regard to any matters in issue. Communications concerning procedural matters such as scheduling shall not be included in this prohibition.

1.2.2 Submission. Unless otherwise directed by the Arbiter or agreed by the Parties to a given dispute, the Parties involved in the dispute shall strive to make joint submissions to the Arbiter. The Arbiter shall determine the schedule for the Parties' submissions, the page and form limitations for the submissions, and the schedule and form of any hearing(s).

## 2. Event of Default; Remedies

2.1 Maintenance and Repair Obligations. Master Developer's failure to satisfy its Road Maintenance Obligations, Landfill Obligations, or other maintenance, repair or replacement obligations under this Agreement, shall be addressed pursuant to **Section 7** of this Agreement. For the avoidance of doubt, any matter covered by **Section 7** of this Agreement shall not constitute an Event of Default (as defined below), and the provisions of Paragraphs 2.2-2.6 below shall not apply to such matter.

2.2 Other Obligations. If a Party breaches any of its obligations under this Agreement other than an obligation covered by **Section 6** of this Agreement (the "**Breaching Party**"), and such breach, if not cured, would constitute an Event of Default under Paragraph 2.3 hereof, the Party to whom the obligation was owed (the "**Notifying Party**") may notify the Breaching Party of such breach. The notice shall state with reasonable specificity the nature of the alleged breach, the particular provision of Paragraph 2.3 under which the breach is claimed to arise and the manner in which the failure of performance may be satisfactorily cured. Failure to cure such breach within the time period specified in Paragraph 2.3 shall be an "**Event of Default**" by the Breaching Party under this Agreement.

2.2.1 Upon delivery of a notice of breach, the Notifying Party and the Breaching Party shall promptly meet to discuss the breach and the manner in which the Breaching Party can cure the same. If before the end of the applicable cure period the breach has been cured to the reasonable satisfaction of the Notifying Party, the Notifying Party shall issue a written acknowledgement of the other Party's cure of the matter which was the subject of the notice of breach.

2.2.2 If the alleged breach has not been cured or waived within the time permitted for cure in accordance with Paragraph 2.3 hereof, the Notifying Party may

(i) extend the applicable cure period or (ii) institute such proceedings and/or take such action as is permitted in this Agreement with reference to such breach.

### 2.3 Particular Breaches by the Parties.

2.3.1 Event of Default by Developer. The Parties agree that each of the following shall be deemed to be an Event of Default by Developer under this Agreement:

(a) Developer causes or allows to occur, as to itself, an Assignment not permitted under this Agreement, and the Assignment is not reversed or voided within thirty (30) days following Developer's receipt of notice thereof from City;

(b) Developer fails to pay any amount required to be paid to City under this Agreement, and such failure continues for thirty (30) days following Developer's receipt of notice thereof from City; provided, that if Developer is disputing in good faith its obligation to pay such amount, such thirty (30) day period shall not begin to run until the dispute is resolved;

(c) Developer fails to comply with any other provision set forth in this Agreement or perform any obligation to be performed by Developer under this Agreement or any of the Exhibits hereto, other than a matter covered by **Section 7** of this Agreement, and such failure continues past any cure period specified in this Agreement, or if no such cure period is specified, then within sixty (60) days after receipt by Developer of notice thereof from City (and, for a failure that is not reasonably susceptible of cure within sixty (60) days, if Developer fails to promptly commence such cure within thirty (30) days after its receipt of such notice and thereafter diligently prosecute the same to completion within a reasonable time, but in no event to exceed one hundred and fifty (150) days from the receipt of such notice).

2.3.2 Event of Default by City. The Parties agree that if City fails to perform any obligation to be performed by City under this Agreement, such failure shall be deemed an Event of Default by City under this Agreement (i) if it continues past any cure period specified in this Agreement, or (ii) if no such cure period is specified, then if it continues past sixty (60) days after receipt by City of notice thereof from Developer (and, for a failure that is not reasonably susceptible of cure within sixty (60) days, if City fails to promptly commence such cure within thirty (30) days after its receipt of such notice and thereafter diligently prosecute the same to completion within a reasonable time, but in no event to exceed one hundred and fifty (150) days from the receipt of such notice).

### 2.4 Remedies.

2.4.1 General. If an Event of Default occurs and is not waived in writing by the non-breaching Party, then the non-breaching Party shall have the following remedies:

(a) The right to cure, at the Breaching Party's cost and expense, any Event of Default and recover such costs, together with interest thereon and reasonable attorneys' fees and costs of court, in which case the Breaching Party shall reimburse the non-breaching

Party for the costs incurred by the non-breaching Party in curing the default within fifteen (15) days after receipt of an invoice therefor from the non-breaching Party;

(b) The right to sue to collect any sums not paid when due, together with interest accrued thereon and reasonable attorneys' fees and costs of court incurred in collecting the same;

(c) The right to sue to collect damages suffered by the non-breaching Party by reason of the occurrence of an Event of Default other than breach in the payment of money, together with reasonable attorneys' fees and costs of court incurred in such proceedings; or

2.4.2 Specific Performance. Upon an Event of Default, the aggrieved Party may institute proceedings in a court of proper jurisdiction to compel injunctive relief or specific performance to the extent permitted by law (except as otherwise limited by or provided in this Agreement) by the Party in breach of its obligations, together with seeking reasonable attorneys' fees and costs of court incurred in such proceedings. Nothing in this Paragraph 2.4.2 shall require a Party to postpone instituting any injunctive proceeding if it believes in good faith that such postponement will cause irreparable harm to such Party.

2.5 Rights and Remedies Cumulative; No Indirect, Consequential, Punitive, or Special Damages. Neither Party shall have any remedies for a breach of this Agreement by the other Party except to the extent that such remedy is expressly provided for in this Agreement, provided, however, that except as expressly limited by this Agreement, the rights and remedies of the Parties contained in this Agreement shall be cumulative, and the exercise by any Party of any one or more of such remedies shall not preclude the exercise by it, at the same or different times, of any other remedies contained in this Agreement for the same breach by the applicable Party. In addition, the remedies provided in this Agreement do not limit the remedies provided in other agreements and documents. Notwithstanding anything to the contrary herein, to the fullest extent permitted by law, neither Party shall be liable for any indirect, consequential, punitive, or special damages in any way from or associated with this Agreement, and each Party expressly waives any claims against the other Party, and covenants not to sue the other, for indirect, consequential, punitive, or special damages under this Agreement.

2.6 No Implied Waiver. No waiver made by a Party for the performance or manner or time of performance (including an extension of time for performance) of any obligations of the other Party or any condition to its obligations under this Agreement shall be considered a waiver of the rights of the Party making the waiver for a particular obligation of the other Party or condition to its own obligation beyond those expressly waived in writing.

### 3. Assignment.

3.1 Assignment Defined. Except as otherwise specifically provided in this Article 3, Developer shall not without the Approval of City (each, subject to the exclusions set forth herein, an “**Assignment**”):

3.1.1 sell, assign, pledge, mortgage or otherwise encumber its interest in this Agreement; or

3.1.2 sell, assign, transfer, pledge, mortgage or otherwise grant a security interest in any interest of Developer in this Agreement, whether by operation of law or otherwise, nor shall any sale, Assignment, transfer, pledge, mortgage, or grant of a security interest be effected of all or any part of the issued or outstanding capital stock of a corporation that is Developer or of its Controlling Owner, whether held directly or indirectly, and whether made voluntarily, involuntarily, by operation of law or otherwise, if the same shall result in a Change of Control of Developer, nor shall there be any merger or consolidation of Developer or of such Controlling Owner into or with another corporation, nor shall any of the same be effected with respect to any interest in a partnership that is Developer or in a partnership that is its Controlling Owner, whether directly or indirectly, and whether made voluntarily, involuntarily, by operation of law or otherwise, if the same will result in a Change of Control of Developer, nor shall any of the same be effected with respect to any managing member's interest in a limited liability company that is Developer or in a limited liability company that is its Controlling Owner, whether directly or indirectly, and whether made voluntarily, involuntarily, by operation of law or otherwise, if the same will result in a Change of Control of Developer.

3.1.3 For the avoidance of doubt, the delegation of rights and obligations under this Agreement to an Affiliate of Developer (as defined in the DDA) shall not require the approval of City so long as Developer remains primarily obligated under this Agreement.

Notwithstanding any provision of this Agreement to the contrary, nothing contained in this Article 3 shall restrict in any manner, prohibit, require notice to, or require the Approval of City for (a) any Assignment or any form of transfer in or of the equity interests in any Person whose common stock is quoted on a recognized securities exchange such as the New York Stock Exchange or NASDAQ or (b) an Assignment or any form of other transfer of any equity interests in Developer or any other Person that does not, directly or indirectly, result in a Change of Control of Developer or such other Person.

3.2 Assignment to Successor Entity. Notwithstanding anything to the contrary in this Article 3, so long as Developer is not in default of this Agreement pursuant to Article 2 hereof, Developer shall have the right at any time to effect an Assignment of this Agreement to any entity (each, a “**Successor Entity**”) to which Master Developer has assigned its entire interest in the DDA. Such Assignment shall become effective only upon full execution of an Assignment and Assumption Agreement in a form reasonably acceptable to the City, pursuant to which the Successor Entity assumes all rights and obligations under this Agreement from the Developer.

3.3 Other Assignments. Any other Assignment of this Agreement shall be subject to the approval of City, which approval shall be given or withheld in City's sole discretion.

3.4 Release. If, as and when Developer assigns and the transferee assumes all or any of Developer's obligations under this Agreement as set forth above, then from and after the date of such assignment, the Developer assigning this Agreement (and all prior Developers) shall automatically and conclusively be released from the assigned obligations under this Agreement, other than (i) any obligations that arose and were to be performed prior to the



effective date of such assignment (unless also assumed in writing by the transferee) and (ii) any obligations retained by Developer in accordance with the applicable Assignment, Assumption and Release Agreement. Promptly after request by Developer, City shall confirm the foregoing release by a writing in form and substance reasonably satisfactory to City and Developer.

#### 4. Representations and Warranties

4.1 Developer's Representations. Developer hereby represents and warrants to City as of the date of full execution of this Agreement that:

4.1.1 Developer is a limited liability company duly organized and existing in good standing under the laws of the State of Delaware, and qualified to do business in the State of California;

4.1.2 Developer has the full right, power, authority and legal capacity to execute and deliver this Agreement, to execute and deliver the instruments referred to herein, and to enter into and fully perform the transactions contemplated hereby, or thereby;

4.1.3 All actions and consents required by Developer to authorize the transactions contemplated by this Agreement have been duly performed and obtained;

4.1.4 All Persons who execute this Agreement and the instruments contemplated by this Agreement on behalf of Developer will be duly authorized and empowered on behalf of Developer to do so and to enter into all transactions contemplated by this Agreement, and by such instruments; and

4.1.5 The execution, delivery and consummation of the transactions contemplated hereby and performance of this Agreement have not and will not conflict with any provisions of any federal, state laws or regulations to which Developer is subject, or conflict with, result in any breach of, or constitute a default under, any mortgage, deed of trust, lease, bank loan or credit agreement, corporate charter, bylaws or other instrument to which Developer is a party or by which Developer or its assets may be bound or affected.

4.2 City's Representations. City hereby represents and warrants to Developer as of the date of full execution of this Agreement that:

4.2.1 City is a municipal corporation duly organized and validly existing under the laws of the State of California and has the full right, power, authority and legal capacity to execute and deliver this Agreement, to execute and deliver the instruments referred to herein, and to enter into and fully perform the transactions contemplated hereby, or thereby;

4.2.2 All actions and consents required by City to authorize the transactions contemplated by this Agreement have been duly performed and obtained;

4.2.3 All Persons who execute this Agreement and the instruments contemplated by this Agreement on behalf of City will be duly authorized and empowered on behalf of City to do so and to enter into all transactions contemplated by this Agreement, and by such instruments; and

4.2.4 The execution, delivery and consummation of the transactions contemplated hereby and performance of this Agreement have not and will not conflict with any provisions of any federal, state laws or regulations to which City is subject, or conflict with, result in any breach of, or constitute a default under, any mortgage, deed of trust, lease, bank loan or credit agreement, corporate charter, bylaws or other instrument to which City is a party or by which City or its assets may be bound or affected.

5. Developer Indemnification.

5.1 Developer Indemnification. Developer shall Indemnify City and its elected and appointed officials, officers, employees, attorneys, contractors and agents of City and, as applicable, the partners, Affiliates, members and owners, and the officers, partners, agents, employees and members of each of them (or of its successors or assigns) (each, a “**City Party**” and collectively, the “**City Parties**”) from and against all claims, demands, losses, liabilities, damage, liens, obligations, interest, injuries, penalties, fines, lawsuits or other proceedings, judgments and awards and costs and expenses (including reasonable attorneys’ fees and costs, consultant fees and costs and court costs) of whatever kind or nature, known or unknown, contingent or otherwise, including the reasonable costs to City or a City Party of carrying out the terms of any judgment, settlement, consent, decree, stipulated judgment or other partial or complete termination of an action or proceeding that requires City or a City Party to take any action (collectively “**Losses**”) arising from or as a result of, (a) the adoption, Approval, or implementation of this Agreement, or (b) any action taken or failure to take any action by Developer or its agents, servants, employees, contractors or subcontractors, now or in the future, related to the adoption, Approval, or implementation of this Agreement. Developer’s Indemnification and defense obligations under this Article 5 shall survive expiration or termination of this Agreement.

5.2 Other Remedies. The agreements to Indemnify set forth in Paragraph 5.1 are in addition to, and in no way shall be construed to limit or replace, any other obligations or liabilities that Developer may have to City under this Agreement.

5.3 Defense of Claims. City agrees to give prompt notice to Developer with respect to any suit filed or claim made against City (or, upon City’s discovery thereof, against any City Party that City believes in good faith is covered by any Indemnification given by Developer under this Agreement) no later than the earlier of (a) ten (10) days after valid service of process as to any filed suit or (b) fifteen (15) days after receiving written notification of the assertion of such claim, which City has good reason to believe is likely to give rise to a claim for Indemnification hereunder by Developer. The failure of City to give such notice within such timeframes shall not affect the rights of City or obligations of Developer under this Agreement except to the extent that Developer is prejudiced by such failure. Developer shall, at its option but subject to reasonable Approval by City, be entitled to control the defense, compromise or settlement of any such matter through counsel of Developer’s choice; provided, that in all cases City shall be entitled to participate in such defense, compromise or settlement (either at City’s own expense or, if there is a challenge to implementation of this Agreement itself, at Developer’s own expense). If Developer shall fail, however, in City’s reasonable judgment, within a reasonable time following notice from City alleging such failure, to take reasonable and appropriate action to defend, compromise or settle such suit or claim, City shall have the right

promptly to hire counsel to carry out such defense, compromise or settlement, and the reasonable expense of City in so doing shall be due and payable to City within fifteen (15) days after receipt by Developer of a properly detailed invoice for such expense.

5.4 Limitations of Liability. It is understood and agreed that no City Party shall be personally liable to Developer, nor shall any direct or indirect partners, members or shareholders of Developer or its or their respective officers, directors, agents or employees (or their successors or assigns) be personally liable to City, in the event of any default or breach of this Agreement by City or Developer or for any amount that may become due to Developer or City or any obligations under the terms of this Agreement; provided, that the foregoing shall not release obligations of a Person that otherwise has liability for such obligations, such as (i) the general partner of a partnership that, itself, has liability for the obligation or (ii) the obligor under any security covering such obligation.

6. Additional Provisions.

6.1 Entire Agreement; Amendment. This Agreement and its exhibits, terms, and conditions, embodies the entire agreement between the Parties relative to the matters set forth herein. No other understanding, agreements, or conversations with any officer, agent, or employee of City shall affect or modify any of the terms or obligations contained in any documents comprising this Agreement. It is mutually understood and agreed that no amendment to this Agreement shall be valid unless made in writing and signed by the Parties.

6.2 Waiver. Any waiver of any provision of this Agreement by a Party must be in writing and signed by a Person having authority to do so on behalf of such Party. No waiver made by a Party for the performance or manner or time of performance (including an extension of time for performance) of any obligations of any other Party or any condition to its obligations under this Agreement shall be considered a waiver of the rights of the Party making the waiver for a particular obligation of the other Party or condition to its own obligation beyond those expressly waived in writing.

6.3 Captions and Table of Contents. The captions of and names of defined terms in this Agreement are for convenience of reference only and are not intended to define, limit or describe the scope or intent of this Agreement or otherwise affect the interpretation of this Agreement. The Table of Contents (if any) is for the purpose of convenience of reference only and is not intended to be a part of this Agreement or to be used in interpreting this Agreement.

6.4 Extensions of Time.

6.4.1 Any Party may in its sole discretion extend the time for the performance of any term, covenant or condition of this Agreement by a Party owing performance to the extending party, or permit the curing of any related default, upon such terms and conditions as it determines appropriate; provided, however, any such extension or permissive curing of any particular default shall not operate to release any of the obligations of the Party receiving the extension or cure rights or constitute a waiver of the granting Party's rights with

respect to any other term, covenant or condition of this Agreement or any other default in, or breach of, this Agreement.

6.4.2 In addition to matters set forth in Paragraph 6.4.1, the Parties may in their sole discretion extend the time for performance by any of them of any term, covenant or condition of this Agreement by a written instrument signed by authorized representatives of such Parties without the execution of a formal recorded amendment to this Agreement, and any such written instrument shall have the same force and effect and (once recorded) impart the same notice to third parties as a formal recorded amendment to this Agreement. For the purposes of this Paragraph 6.4, City's authorized representative shall be the City Manager.

6.5 Interpretation. Wherever in this Agreement the context requires, the use of a verb in any tense shall be construed as the use of the verb in all other tenses, references to the masculine shall be deemed to include the feminine and the neuter and vice-versa, and references to the singular shall be deemed to include the plural and vice versa. Unless otherwise specified, whenever in this Agreement, including its Exhibits, reference is made to the Table of Contents (if any), any Section, Paragraph, Exhibit or any defined term, the reference shall be deemed to refer to the Table of Contents (if any), Section, Paragraph, Exhibit or defined term of this Agreement. Any reference to a Section or Paragraph includes all subsections and subparagraphs of that Section or Paragraph. The use in this Agreement of the words "including", "such as" or words of similar import when following any general term, statement or matter shall not be construed to limit such statement, term or matter to the specific statements, terms or matters, whether or not language of non-limitation, such as "without limitation" or "but not limited to", or words of similar import, is used with reference thereto. In the event of a conflict between the Recitals and the remaining provisions of this Agreement, the remaining provisions shall prevail.

6.6 More than One Person. If Developer's obligations under this Agreement are assumed by more than one Person (including but not limited to a new Developer), City may require the signatures of each such Person on any notice given by Developer, except to the extent that any such Person shall designate to any other such Person the right to act as such Person's attorney in fact to act on its behalf, which designation shall be effective until receipt by City of notice of its revocation. Nothing herein shall be construed as conferring on any such Person any rights or obligations to or against any other such Person. Without limiting the other provisions of this Agreement, each Person named as or that becomes Developer under this Agreement shall be fully, and jointly and severally, liable for all of Developer's obligations hereunder.

6.7 Time of Performance.

6.7.1 All performance (including cure) dates expire at 5:00 p.m. Pacific Time on the applicable date for performance (including cure), as such date may be extended pursuant to the effect of any extension of time permitted in this Agreement.

6.7.2 Where a date set forth in this Agreement is a calendar month without reference to a specific day in such month, or a year without reference to a specific month in such year, the date in question shall be the last day in such month or year, as applicable.

6.7.3 If the last day of any period to give notice, reply to a notice, meet a deadline, or undertake any other action occurs on a day that is not a Business Day, then the last day for undertaking the action or giving or replying to the notice shall be the next succeeding Business Day.

6.7.4 Time is of the essence in the performance of all the terms and conditions of this Agreement for which a time for performance is specified.

6.8 No Third Party Beneficiaries. This Agreement is made and entered into only for the protection and benefit of the Parties and their successors and assigns. No other Person shall have or acquire any right or action of any kind based upon the provisions of this Agreement except as explicitly provided to the contrary in this Agreement.

6.9 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California. All references in this Agreement to California or federal laws and statutes shall mean such laws, regulations and statutes as they may be amended from time to time, except to the extent a contrary intent is stated.

6.10 Successors and Assigns. The agreements, terms, covenants and conditions herein shall be binding upon, and shall inure to the benefit of, the Parties and their respective successors and (to the extent permitted hereunder) assigns.

6.11 Relationship of the Parties. None of the provisions in this Agreement shall be deemed to render any of the Parties a partner in any other Party's business, or a joint venturer or member in any joint enterprise with any other Party. No Party shall have the right to act as the agent of any other Party in any respect hereunder.

6.12 Construction. This Agreement shall be construed without regard to any presumption or other rule requiring construction against the Party causing this Agreement to be drafted. In the event of any action, suit, arbitration, dispute or proceeding affecting the terms of this Agreement, no weight shall be given to any deletions or striking out of any of the terms of this Agreement contained in any draft of this Agreement and no such deletion or strike out shall be entered into evidence in any such action, suit, arbitration, dispute or proceeding nor given any weight therein.

6.13 Further Assurances. Each Party shall execute and deliver such further documents, and perform such further acts, as may be reasonably necessary or desirable to achieve the Parties' intent in entering into this Agreement.

6.14 Numbers.

6.14.1 Generally. For purposes of calculating a number under this Agreement where a whole number is required, any fraction equal to or greater than one half (1/2) shall be rounded up to the nearest whole number and any fraction less than one half (1/2) shall be rounded down to the nearest whole number.

6.14.2 Number of Days. References in this Agreement to days shall be to calendar days unless otherwise specified.

6.15 No Gift or Dedication. Except as otherwise specified in this Agreement, this Agreement shall not be deemed to be a gift or dedication of any portion of the Project to the general public, for the general public, or for any public use or purpose whatsoever.

6.16 Correction of Technical Errors. If by reason of inadvertence, and contrary to the intention of Developer and City, errors are made in this Agreement in the identification or characterization of any title exception, in a legal description or the reference to or within any Exhibit with respect to a legal description, in the boundaries of any parcel (provided such boundary adjustments are relatively minor and do not result in a material change), in any map or drawing that is an Exhibit, or in the typing of this Agreement or any of its Exhibits, Developer and City by mutual agreement may correct such error by memorandum executed by both of them and replacing the appropriate pages of this Agreement, and no such memorandum or page replacement shall be deemed an amendment of this Agreement. The memorandum may be signed by the City Manager on behalf of the City, without formal approval by the City Council or Planning Commission, and then shall be recorded in the Official Records of Santa Clara County to provide notice of such correction to third parties.

6.17 Severability. If any term or provision of this Agreement or the application thereof to any Person or circumstances shall, to any extent, be invalid or unenforceable (an “**Excluded Term**”), the remainder of this Agreement, or the application of such Excluded Term to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law. Notwithstanding the foregoing, if either Party considers an Excluded Term material to this Agreement, the Parties shall negotiate in good faith to adopt alternative terms or provisions that will achieve the objectives of the Excluded Term as closely as possible while avoiding the problem causing the Excluded Term to be invalid or unenforceable, and if unable to agree the matter shall be resolved through Expedited Arbitration.

6.18 Legal Representation. Each Party acknowledges, warrants and represents to each other Party that it has been fully informed with respect to, and represented by counsel of its choice in connection with, the rights and remedies of and waivers by it contained in this Agreement and after such advice and consultation has presently and actually intended, with full knowledge of its rights and remedies otherwise available at law or in equity, to waive and relinquish those rights and remedies to the extent specified in this Agreement, and to rely solely on the remedies provided for in this Agreement with respect to any breach of this Agreement by any other Party.

6.19 Counterparts. This Agreement may be executed in any number of counterparts, each of which, when so executed and delivered, shall be deemed an original, and all of which together shall constitute one and the same instrument. This Agreement shall become effective when the Parties have duly executed and delivered signature pages to this Agreement to each other. Delivery of this Agreement may be effectuated by hand delivery, mail, overnight courier or electronic communication (including by PDF sent by electronic mail, facsimile or similar means of electronic communication). Any signatures (including electronic signatures) delivered by electronic communication shall have the same legal effect as physically delivered original signatures.

6.20 Survival. Termination of this Agreement shall not affect (i) the right of any Party to enforce any and all rights and obligations under this Agreement to the extent they relate to the period before termination, or (ii) any provision of this Agreement that, by its express terms, is intended to survive the expiration or termination of this Agreement.

6.21 Estoppel Certificates.

6.21.1 Developer Estoppels. At any time, and from time to time, upon not less than fifteen (15) days' notice by City, Developer shall execute, acknowledge and deliver to City and to any other Person reasonably requested by City a statement certifying: (a) that this Agreement is unmodified and in full force and effect (or, if there have been modifications, that the same, as modified, is in full force and effect and stating the modifications), (b) whether or not any amounts due and owing by Developer to City under this Agreement have been paid, (c) whether or not, to Developer's actual knowledge, City is in default in performance of any covenant, agreement or condition contained in this Agreement, and, if so, specifying each such default of which Developer has actual knowledge, and (d) as to any other matter with respect to this Agreement as City may reasonably request.

6.21.2 City Estoppels. At any time, and from time to time, upon not less than fifteen (15) days' notice by Developer, City shall execute, acknowledge and deliver to Developer and to any other Person reasonably requested by Developer a statement certifying: (a) that this Agreement is unmodified and in full force and effect (or, if there have been modifications, that the same, as modified, is in full force and effect and stating the modifications), (b) whether or not any other amounts due and owing by Developer to City under this Agreement have been paid, (c) whether or not, to City's actual knowledge, Developer is in default in performance of any covenant, agreement or condition contained in this Agreement and, if so, specifying each such default of which City has actual knowledge, and (d) as to any other matter with respect to this Agreement as Developer may reasonably request.

6.22 Approvals.

6.22.1 As used herein, "Approval" and any variation thereof (such as "Approved" or "Approve") refer to the prior written consent of the applicable Party or other Person. When used with reference to a Governmental Authority, such terms are intended to refer to the particular form of consent or approval required from such Governmental Authority in order to obtain the Authorization being sought.

6.22.2 Whenever Approval is required or permitted to be given by any Party under this Agreement, it shall not be unreasonably withheld, conditioned or delayed unless the Approval is explicitly stated in this Agreement to be within the "sole discretion" (or words of similar import) of the Party whose Approval is sought. A Party that denies an Approval under this Agreement, or that gives a conditional Approval, shall in giving such denial or conditional Approval state the reasons therefor in reasonable detail, unless such Approval is explicitly stated in this Agreement to be within the "sole discretion" (or words of similar import) of the Party whose Approval is sought. It is understood and agreed that the granting of any consent or approval by a Party to another Party under this Agreement to perform any act of requiring such Party's consent or approval under this Agreement, or the failure by a Party to

object to any such action taken by any other Party without the former Party's consent or approval, shall not be deemed a waiver by the former Party of its right to require such consent or approval for any further similar act by any other Party. In determining whether to give an Approval, City shall not require changes from or impose conditions inconsistent with the Project Documents, except to the extent that City reasonably determines that such changes or conditions are necessary for important reasons of public health or safety.

6.22.3 Notwithstanding the foregoing, it is specifically acknowledged by all Parties that Paragraph 6.22.2 shall not apply to any Approval given by a public entity in its regulatory capacity. Such Approvals shall be governed by the standards of review generally accorded by the state courts of California.

### 6.23 Nondiscrimination.

6.23.1 There shall be no discrimination against or segregation of any person or group of persons on any basis listed in subdivision (a) or (d) of section 12955 of the California Government Code, as those bases are defined in sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of section 12955, and section 12955.2 of the California Government Code, or on the basis of age, race, color, creed, sex, sexual orientation, gender identity, marital or domestic partner status, disabilities (including AIDS or HIV status), religion, national origin or ancestry by Developer or any occupant or user of the Project in the sale, lease, rental, sublease, transfer, use, occupancy, tenure or enjoyment of the Project, or any portion thereof. Neither Developer itself (nor any person or entity claiming under or through it), nor any occupant or user of the Project or any transferee, successor, assign or holder of any interest in the Project or any person or entity claiming under or through such transferee, successor, assign or holder, shall establish or permit any such practice or practices of discrimination or segregation in connection with the Project, including with reference to the selection, location, number, use or occupancy of buyers, tenants, vendees or others. Notwithstanding the foregoing, no Person shall be in default of its obligations under this Paragraph 6.23 where there is a judicial action or arbitration involving a bona fide dispute over whether such person is engaged in discriminatory practices and such person promptly acts to satisfy any judgment or award against such person.

6.23.2 Any transferee, successor, assign, or holder of any interest in the Project, or any occupant or user thereof, whether by contract, lease, rental, sublease, license, deed, deed of trust, Mortgage or otherwise, and whether or not any written instrument or oral agreement contains the above prohibitions against discrimination, shall be bound by, and shall not violate in whole or in part, directly or indirectly, the nondiscrimination requirements set forth above. The covenants in this Paragraph 6.23 shall be covenants running with the land and shall be: (i) binding for the benefit and in favor of City, as beneficiary and the owner of any other land or of any interest in any land in the Project, as beneficiary, and their respective successors and assigns; and (ii) binding against Developer, its successors and assigns to or of the Project and any improvements thereon or any portion thereof or any interest therein, and any party in possession or occupancy of the Project or the improvements thereon or any portion thereof.

6.24 Notice of Termination. In the event of any termination of this Agreement in whole or in part in accordance with the terms of this Agreement, the terminating Party shall provide the other Parties with a copy of any proposed Notice of Termination at least fifteen (15)



days before recording the same. After the expiration of such fifteen days, the terminating Party may cause the Title Company to record such Notice of Termination in the Official Records. Any such “Notice of Termination” shall be in recordable form and describe the portion of the Project Site to which such termination pertains. Following the recordation of any Notice of Termination, the terminating Party shall promptly provide a conformed copy of such recorded Notice of Termination to City, Developer, and any applicable Mortgagee. The recordation of a Notice of Termination shall not affect in any manner the rights of City, Developer, or any applicable Mortgagee to contest the terminating Party’s right to cause such recordation.

6.25 Attorneys’ Fees.

6.25.1 Should any Party institute any action or proceeding in court or other dispute resolution mechanism permitted or required under this Agreement, the prevailing party shall be entitled to receive from the losing party the prevailing party’s reasonable costs and expenses incurred including expert witness fees, document copying expenses, exhibit preparation costs, carrier expenses and postage and communication expenses, and such amount as may be awarded to be reasonable attorneys’ fees and costs for the services rendered the prevailing party in such action or proceeding. Attorneys’ fees under this Paragraph 6.25 shall include attorneys’ fees on any appeal.

6.25.2 For purposes of this Agreement, reasonable fees of attorneys and any in-house counsel shall be based on the average fees regularly charged by private attorneys with an equivalent number of years of professional experience in the subject matter area of the law for which the in-house counsel’s services were rendered who practice in the City in law firms with approximately the same number of attorneys as employed by the City.

6.26 Notices.

6.26.1 Notice Methods and Addresses. Whenever this Agreement permits or requires that a notice, demand, request, consent, approval or other communication to be given by a Party (each, a “Notice”), and whenever either Party desires to give or serve a Notice, such Notice must be in writing and shall not be effective for any purpose unless it is in writing and given or served as follows: (a) by personal delivery (including by same day commercial courier or messenger service) with receipt acknowledged; (b) delivered by reputable, national overnight delivery service (with its confirmatory receipt therefor), next Business Day delivery specified; or (c) sent by electronic mail, with a confirmatory copy to be delivered thereafter by duplicate notice in accordance with either clause (a) or (b) of this Paragraph 6.26); in each case to the Parties at the following addresses:

If to Developer:

Related Santa Clara, LLC  
c/o the Related Companies  
60 Columbus Circle  
New York, NY 10023  
Attn: Joshua Young  
Email: [joshua.young@related.com](mailto:joshua.young@related.com)

and

Related Santa Clara  
5201 Great America Parkway, Suite 532  
Santa Clara, California 95054  
Attn: Chief Legal Officer  
Email: [jjiang@related.com](mailto:jjiang@related.com)

With a copy to:

Paul Hastings LLP  
101 California Street, 48<sup>th</sup> Floor  
San Francisco, CA 94111  
Attn: Gordon Hart Esq.  
Email: [gordonhart@paulhastings.com](mailto:gordonhart@paulhastings.com)

If to City:

City of Santa Clara  
1500 Warburton Avenue  
Santa Clara, CA 95050  
Attn: City Manager  
Email: [Manager@santaclara.gov](mailto:Manager@santaclara.gov)

With a copy to:

City of Santa Clara  
1500 Warburton Avenue  
Santa Clara, CA 95050  
Attn: City Attorney  
Email: [CityAttorney@santaclara.gov](mailto:CityAttorney@santaclara.gov)

A Party may change the address(es) to which any Notice is to be delivered to such Party by furnishing ten (10) days' written notice of such change(s) to the other Parties in accordance with the provisions of this Paragraph 6.26. The attorney for any Party may send Notices on that Party's behalf.

To be effective, every notice given to a Party under the terms of this Agreement must be in writing and must state (or must be accompanied by a cover letter that states) substantially the following: (a) the Section of this Agreement or Paragraph of this **Exhibit F** under which the notice is given; (b) if applicable, the action or response required; (c) if applicable, the period of time within which the recipient of the notice must respond thereto; (d) if applicable, the period of time within which the recipient of the notice must cure an alleged breach; (e) if Approval is being requested, shall be clearly marked "Request for Approval"; and (f) if a notice of a disapproval or an objection that requires reasonableness, shall specify with particularity the reasons for the disapproval or objection.

6.26.2 When Notices Deemed Given. Every Notice shall be deemed to have been given or served (a) if given by hand or overnight delivery service, upon delivery thereof, or (b) if given by electronic mail, upon delivery by such means to the addressee if delivered before 5:00 pm (in the recipient's time zone) on a Business Day, otherwise on the next Business Day, regardless of the timing of receipt of any confirmatory copy, in each case with failure to accept delivery to constitute delivery for such purpose and with inability to deliver because of changed address of which no Notice was given under this Paragraph 6.26 to constitute delivery for such purpose (provided, that, the sending Party shall use good faith efforts to deliver to any other address of the intended recipient known to the sending Party).

6.26.3 Maintenance Obligation Notices. Notwithstanding the above provisions of this Paragraph 6.26, where the provisions in **Exhibit E** to this Agreement specify alternative methods for notices given regarding maintenance obligations, the provisions in **Exhibit E** shall govern.

6.27 Hiring Efforts. Developer and its Contractors and Consultants shall make good faith efforts to (i) recruit, employ, and contract with qualified individuals and businesses that are part of the work force and business community in the City of Santa Clara, and (ii) provide employment, contracting, and business participation opportunities to residents of the City of Santa Clara, including women, minorities, and economically disadvantaged Individuals.

6.27.1 For the purposes of this Paragraph 6.27.1, "good faith efforts" shall be deemed to be satisfied if written notification is provided to community-based organizations with experience in the administration of diversity programs and any other organizations identified for the Developer, Contractor, or Consultant (as applicable) by City when employment opportunities are available, and a record is maintained of each such written notification and the organizations' responses thereto.

6.27.2 Developer, its Contractors, and its Consultants may participate in voluntary associations which assist in fulfilling their diversity obligations under this Paragraph 6.27.2. The efforts of a contractor association, joint contractor-union, contractor-community, or other similar group of which the Developer, Contractor, or Consultant (as relevant) is a member and participant, may be asserted as fulfilling this obligation provided that the Developer, Contractor, or Consultant (as relevant) actively participates in the group, makes good faith efforts to assure that the group has a positive impact on the employment of minority group persons and women in the industry, ensures that the concrete benefits of the program are reflected in the work force composition of Developer, Contractor, or Consultant (as relevant). The obligation to comply, however, is that of Developer, Contractor, or Consultant (as relevant) and failure of such a group to fulfill an obligation shall not be a defense for the noncompliance of Developer, Contractor, or Consultant (as relevant).

6.28 Sales and Use Tax. Master Developer shall use commercially reasonable efforts to adopt sales and use tax reporting procedures allowable under Applicable Law (as defined in the DDA) regarding maintenance of the Temporary Road that will provide City (in its capacity as a Governmental Authority (as defined in the DDA)) the greatest allocation of California sales and use tax revenues feasible, and shall cause its general contractors and vendors to use commercially reasonable efforts to adopt these procedures, including by

designating the Project Site as the place of sale and place of use of materials, goods, and services to be used in connection with work on the Temporary Road under this Agreement. Master Developer shall propose to City for its Approval a process that will designate the Project Site as the place of sale of maintenance materials used in connection with the Temporary Road. Notwithstanding the foregoing, the failure of such general contractors and vendors to allocate sales and use tax revenues to any location other than City shall not constitute a breach by Master Developer under this Agreement. Master Developer shall bear all costs associated with their obligations under this Paragraph 6.28. Master Developer shall comply with the Provisions Relating to Construction Sales and Use Tax Allocations in Exhibit U to the DDA incorporated herein by this reference.

6.29 Wages and Working Conditions. Pursuant to Section 29.36 of the DDA, the City Council has concluded that development of the Project does not trigger California's Prevailing Wage Law, and that conclusion applies to construction and maintenance of the Temporary Road under this Agreement. Master Developer shall reimburse, indemnify, defend and hold harmless City and the City Parties from and against all claims, demands, losses, liabilities, damage, liens, obligations, interest, injuries, penalties, fines, lawsuits or other proceedings, judgments and awards and costs and expenses (including reasonable attorneys' fees and costs, consultant fees and costs and court costs) of whatever kind and nature, known or unknown, contingent or otherwise, including the reasonable costs to City of carrying out the terms of any judgment, settlement, consent, decree, stipulated judgment or other partial or complete termination of an action or procedure that requires City to take any action arising from or as a result of, Master Developer's actual or alleged failure to comply with all State Labor Code requirements pertaining to public works and payment of prevailing wages.

**EXHIBIT G**  
**Insurance Requirements**

Master Developer (and its contractors and subcontractors, if required pursuant to Section 8 of this Agreement) shall purchase and maintain the insurance policies set forth below on all of its operations under this Agreement at its/their sole cost and expense. Such policies shall be maintained for the full term of this Agreement and the related warranty period (if applicable). For purposes of the insurance policies required under this Agreement, the term “City” shall include the duly elected or appointed council members, commissioners, officers, agents, employees, and volunteers of the City of Santa Clara, California, individually or collectively.

1. **MINIMUM SCOPE AND LIMITS OF REQUIRED INSURANCE POLICIES.**

The following policies shall be maintained with insurers authorized to do business in the State of California and shall be issued under forms of policies satisfactory to the City:

a. **COMMERCIAL GENERAL LIABILITY INSURANCE POLICY (“CGL”).**

Policy shall include coverage at least as broad as set forth in Insurance Services Office (herein “ISO”) Commercial General Liability coverage (Occurrence Form CG 0001) with policy limits not less than the following:

\$5,000,000 each occurrence;  
\$5,000,000 for personal injury liability;  
\$5,000,000 aggregate for products-completed operations; and,  
\$5,000,000 general aggregate.

Exact structure and layering of the coverage shall be left to the discretion of Master Developer; however, any excess or umbrella policies used to meet the required limits shall be at least as broad as the underlying coverage and shall otherwise follow form.

b. **BUSINESS AUTOMOBILE LIABILITY POLICY (“BAL”).**

Policy shall include coverage at least as broad as set forth in Insurance Services Office Business Automobile Liability coverage, Symbol 1 “Any Auto” (Form CA 0001). This policy shall include a minimum combined single limit of not less than two million (\$2,000,000) dollars for each accident, for bodily injury and/or property damage.

- c. **WORKERS' COMPENSATION AND EMPLOYER'S LIABILITY INSURANCE POLICY ("WC/EL")**. (A Workers' Compensation Policy or adequate levels of self-insurance are required only if Master Developer has employees or volunteers.)

These policies shall include at least the following coverages and policy limits:

1. Workers' Compensation insurance as required by the laws of the State of California; and
2. Employer's Liability insurance with coverage amounts not less than one million (\$1,000,000) dollars each accident/Bodily Injury (herein "BI"); one million (\$1,000,000) dollars policy limit BI by disease; and, one million (\$1,000,000) dollars each employee BI by disease.

- d. **POLLUTION LIABILITY**

Master Developer shall provide evidence that the products/completed operations coverage under its existing Contractor's Environmental Legal Liability Policy, No. 004130100 (the "Existing CPL") is extended for a minimum of 10 years after completion of the activities permitted by this agreement. Notwithstanding anything to the contrary herein, Master Developer shall require that all of its contractors and subcontractors performing any subsurface work under this Agreement (whether through operation, use, maintenance removal or otherwise) and not otherwise included as insureds under the Existing CPL maintain contractor's pollution liability insurance with at least \$2,000,000 limits of liability per incident and in the aggregate.

2. **DEDUCTIBLES AND SELF-INSURANCE RETENTIONS.**

Any deductibles and/or self-insured retentions which apply to any of the insurance policies referred to above shall be declared in writing by Master Developer at or prior to execution of this Agreement. At the option of the City, Master Developer shall provide a financial guarantee satisfactory to the City guaranteeing payment of losses and related investigations, claim administration, and/or defense expenses.

3. **ENDORSEMENTS.**

All of the following clauses and endorsements, or similar provisions, are required to be made a part of the required insurance policies indicated in parentheses below:

- a. Additional Insureds. The City Parties as defined in Section 8 of this Agreement are hereby included as additional insureds as respect to liability arising out of Master Developer's work for the City, providing coverage at least as broad as Insurance Services Office (ISO) Endorsement CG 2010, or insurer's equivalent (CGL);
- b. Primary Insurance. This policy shall be considered primary insurance with respect to any other valid and collectible insurance City may possess, including any self-insured retention City may have, and any other insurance City does possess shall be considered excess insurance only and shall not be called upon to contribute with this insurance (CGL & BAL); and
- c. Notice of Cancellation. Written notice of cancellation shall be provided at least thirty (30) days prior to the effective date of such cancellation to City at the address set forth below, except the insurer may give ten (10) days' notice for non-payment of premium (CGL, BAL, WC/EL & PL).

4. **ABSENCE OF INSURANCE COVERAGE.**

City may direct Master Developer to immediately cease all activities with respect to this Agreement if the City determines that Master Developer fails to carry, in full force and effect, all insurance policies or self-insurance with coverages at or above the limits specified in this Agreement. Any delays or expense caused due to stopping of work and change of insurance shall be considered Master Developer's delay and expense. At the City's discretion, under conditions of lapse, City may upon ten (10) days prior written notice to Master Developer, purchase appropriate insurance and charge all costs related to such policy to Master Developer.

5. **PROOF OF INSURANCE COVERAGE AND COVERAGE VERIFICATION.**

A Certificate of Insurance and endorsements shall be provided to City as evidence of the stipulated coverages prior to commencement of work under this Agreement if not provided earlier pursuant to the following paragraph, and annually thereafter prior to termination of existing coverage for the term of this Agreement. Notwithstanding the foregoing, with respect to Existing CPL, the complete copy of the “contracted operations” endorsement shall be provided to City for review and approval, which shall not be unreasonably withheld or delayed. All of the insurance companies providing insurance for Master Developer shall have an AM Best Rating of “A VI” or better.

Master Developer or its insurance broker shall provide the required proof of insurance compliance, consisting of endorsements and the certificate of insurance (or its equivalent), evidencing all required coverages which shall be delivered to City, or its representative as set forth below, at or prior to execution of this Agreement. Unless otherwise required by the terms of this Agreement, all certificates, endorsements, coverage verifications and other items required to be delivered to City pursuant to this Agreement shall be emailed to:

Email address: [ctsantaclara@ebix.com](mailto:ctsantaclara@ebix.com)

Or, can be mailed to:

City of Santa Clara, Department of Public Works  
c/o Insurance Data Services – Insurance Compliance  
P.O. Box 100085 – S2  
Duluth, GA 30096

Telephone number: 951-766-2280

Fax number: 770-325-0409