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City of Santa Clara, California

WHEN RECORDED, MAIL TO:
City of Santa Clara
City Clerk's Office
1500 Warburton Avenue
Santa Clara, California 95050

Form per Gov't Code Section 27361.6

SPACE ABOVE THIS LINE FOR RECORDER'S USE ONLY

The undersigned declares that this document is recorded at the request of and for the benefit of the City of Santa Clara and therefore is exempt from the payment of the recording fee pursuant to Government Code §6103 and 27383 and from the payment of the Documentary Transfer Tax pursuant to Revenue and Taxation Code §11922.

PARK MAINTENANCE AGREEMENT

BY AND BETWEEN

THE CITY OF SANTA CLARA,

a chartered California municipal corporation,

AND

CRE-GS FREEDOM CIRCLE PHASE I OWNER, LLC

This Park Maintenance Agreement (“**Agreement**”) is entered into by and between CITY OF SANTA CLARA (“**City**”), a chartered California municipal corporation, and CRE-GS FREEDOM CIRCLE PHASE I OWNER, LLC (“**Contractor**”), (collectively the “**Parties**”) and is effective on the date set forth in Section 3.

RECITALS

City and Contractor enter into this Agreement based on the following facts, understandings and intentions, and the following recitals are a substantive part of this Agreement:

- A. **WHEREAS**, Contractor is developing residential project as part of the project located at 3925 (but also referred to as 3905) Freedom Circle described in File Number PLN2017-12516 in the City (“**Project**”) which includes the approximately 13.4-acre real property identified on **Exhibit A** (“**Project Property**”); and
- B. **WHEREAS**, the Project includes an approximately 2.014-acre public park and Parties have signed that certain agreement termed the Parkland Agreement, wherein Contractor has agreed to dedicate that real property located in the City described as Parcel 4 in that certain Parcel Map recorded on _____, 2025, and more particularly described in **Exhibit B** attached hereto (the “**Park Site**”) and construct public park improvements on the Park Site substantially in accordance with those specified in the Public Park Improvements Site Plan set forth in **Exhibit C** to this Agreement (the “**Park Improvements**”); and
- C. **WHEREAS**, the Project will, in part, meet its parkland dedication requirements through the dedication of a park, and, as a condition of approval of the Project, Contractor has voluntarily agreed to assist with and pay for the maintenance, repair, and/or replacement of the Park Improvements on the Park Site under the terms of this Agreement; and
- D. **WHEREAS**, the Project consists of three multi-family buildings on three separate parcels, referred to as Building A, Building B and Building C, within the Property, which are anticipated to be owned, built and operated over time by up to three separate entities and their assigns, and, therefore, at the point that the Property is owned by more than one legal entity, all common area maintenance, including the parkland maintenance obligations under this Agreement, will then be performed by a duly-formed Property Owners Association (“**POA**”) in accordance with those certain Conditions, Covenants and Restrictions (“**CC&Rs**”) that will allow common area maintenance, including the parkland maintenance obligations under this Agreement, to be shared among the future owners of Buildings A, B and C.
- E. **WHEREAS**, the Parties desire to enter into this Agreement to set forth the roles and responsibilities of the Parties relating to the maintenance of the Park Improvements; and
- F. **WHEREAS**, City’s Director of Parks and Recreation (“**Director**”), including the Director’s designees) is charged with and authorized for the administration of this Agreement.

SECTION 1. AGREEMENT DOCUMENTS.

The documents forming this entire Agreement between City and Contractor shall consist of this Agreement including the following exhibits which are incorporated herein fully by reference:

Exhibit A	Legal Description of Project Property
Exhibit B	Legal Description of Park Parcel
Exhibit C	Public Park Improvements Site Plan
Exhibit D	Scope of Services and Maintenance Specifications for Park Site
Exhibit D.1	City Of Santa Clara's Integrated Pest Management Policy
Exhibit E	Insurance Requirements

The Parties acknowledge their mutual understanding that the terms and conditions in the main body of this Agreement ("Terms and Conditions") and the above-referenced Exhibits are consistent with each other and the Parties agree that the Terms and Conditions and the Exhibits shall be read and interpreted in a manner to maintain the greatest consistency between them and to accomplish, to the greatest practical and legal extent feasible, the mutual intent and goals of the Parties as set forth in this Agreement. In the event there are any discrepancies or inconsistencies between the Terms and Conditions and any of the above-referenced Exhibits, the Terms and Conditions shall prevail.

SECTION 2. CONSTRUCTION AND DEDICATION OF PARK IMPROVEMENTS.

The Parties acknowledge and agree that the design, construction and installation of all improvements and initial landscaping for the Park Site as described in and required by the Parkland Agreement and/or any other separate public improvement agreement between City and Contractor and any and all plans attached thereto or referenced therein or otherwise approved by City in connection therewith ("**Park Improvements**"), the dedication of the Park Site upon completion of the Park Improvements, and the payment of any fees due in lieu of parkland dedication, shall be and remain governed exclusively by the provisions of the Parkland Agreement and any such other public improvement agreement.

SECTION 3. TERM OF AGREEMENT.

This Agreement and Contractor's obligations hereunder shall become effective on the later of: (i) the last date this Agreement is executed by the City and Contractor and (ii) the beginning of the Maintenance Period and shall terminate upon expiration or earlier termination of the Maintenance Term. As used herein, "**Maintenance Term**" shall mean the period of time commencing upon the date that fee title to the Park Site transfers to the City and continuing in perpetuity until terminated upon the first to occur of any of the following: (a) upon mutual written agreement of the Parties; (b) the date, if any, that the Park Site is no longer a publicly owned park, or (c) the Park Site is demolished and is not rebuilt.

SECTION 4. RIGHT-OF-ENTRY.

At all times during the Maintenance Term, Contractor and its employees, agents, and contractors shall have a non-exclusive license and right for pedestrians, vehicles, machinery and equipment to enter into, over, across, and upon the Park Site as is necessary for access, ingress, egress, and all activities related to the maintenance of the Park Site during the Maintenance Term as set forth in Section **5** and **Exhibit D** of this Agreement. No encroachment permit, consent or approval shall be required to be obtained by Contractor or any of its contractors from City in order to enter upon the Park Site for such purposes, unless an encroachment permit is required under either Santa Clara City Code Section 12.25.030 or Santa Clara City Charter Section 714.1.

SECTION 5. DESCRIPTION AND SCHEDULE OF MAINTENANCE SERVICES.

- A. Contractor shall, at Contractor's sole cost and expense, fully and timely perform and satisfy any and all terms, conditions, and obligations of this Agreement. During the Maintenance Term and subject to the terms and conditions of this Agreement, Contractor shall, at Contractor's sole cost and expense, provide labor, supervision, supplies, materials, equipment, and any and all [Will have this odd gap fixed by word processing] other tools and manpower necessary to maintain and/or repair the Park Site in accordance with this Agreement.
- B. In performing such maintenance and repair services, Contractor shall comply with the general maintenance requirements of the Park Site as described in **Exhibit D** of this Agreement to a level comparable to the level of maintenance and repairs performed by City within similar public parks located elsewhere within the City, and as required by the Director (the "**Maintenance Services**"). All Maintenance Services performed under this Agreement shall be subject to reasonable City review and approval for consistency with the Maintenance Services standards.
- C. Contractor's Maintenance Services must be completed in accordance with the specifications set out in **Exhibit D** of this Agreement or as may be modified in writing between City and Contractor.
- D. Project Owner and/or its contractor, subcontractor, agent, or representative shall not store any equipment, materials, or supplies in, on, or upon the Park Site. unless reasonably necessary to perform any Maintenance Services or for restoration in the event of a casualty.
- E. The Parties acknowledge and agree that, at all times during the Maintenance Term, the Park Site will be and remain a public park operated, controlled, supervised, and policed (including all emergency response services) solely by City, and open to the public during the hours then set by City (currently, 6:00 A.M. until one-half hour after sunset). Notwithstanding any provision herein to the contrary (including but not limited to Section 14), nothing in this Agreement shall create, or be deemed to create, any responsibility or liability on the part of Contractor or any of its respective contractors, employees, affiliates, successors or assigns of any portion of the Property ("**Contractor Parties**"), for the operation, control, supervision, or policing of the Park Site or the public's use of or access to the Park Site. Nothing herein gives Contractor the right to restrict or to exclude any

person or entity from the Park Site during the Maintenance Term, except as provided in this Agreement. If Contractor believes that any area of the Park Site needs to be restricted or closed for public safety purposes, including to perform the Maintenance Services described herein, Contractor may, upon not less than two (2) days prior written notice to City (except in emergency situations in which case only notice that is reasonable under the circumstances shall be required), restrict or close such areas of the Park Site for a reasonable amount of time in order to allow the safety issues to be addressed. Contractor and/or its employees, agents, representatives, contractors, or subcontractors shall not store any equipment, materials, or supplies in, on, or upon the Parklands beyond such time reasonably necessary to perform any particular Maintenance Services for which they are needed and shall take appropriate measures to secure the same and prevent any public access thereto. The Parties acknowledge and agree to comply with the applicable provisions of Section 714.1 of the Santa Clara City Charter requiring that no substantial building, construction, reconstruction or development upon or with respect to the Park shall be made except pursuant to ordinance subject to referendum.

- F. During the Maintenance Term, upon City's request, Contractor's maintenance contractor(s)/facilities manager and the Director or other designated representative of the City shall meet on a periodic basis at the Park Site to inspect the Park Site and review the Maintenance Services provided herein by Contractor.

SECTION 6. INDEPENDENT CONTRACTOR.

Contractor, in the performance of this Agreement, is an independent contractor. Contractor shall maintain complete control over all of its employees, agents, subcontractors, and representatives in the performance of this Agreement. Neither Contractor nor any person retained by Contractor may represent, act, or purport to act as the agent, representative, or employee of City. Neither Contractor nor City is granted any right or authority to assume or create any obligation on behalf of the other.

SECTION 7. COMPLIANCE WITH LAWS.

- A. In performing its obligations under this Agreement, Contractor shall comply with all applicable laws, ordinances, codes and regulations (collectively "laws") of the federal, state and local governments, including without limitation, any and all laws specified elsewhere in this Agreement, subject to the provisions of this Agreement. The Parties acknowledge and agree that neither Contractor nor any of its contractors or subcontractors will be receiving any payment from City for the Maintenance Services. and that there is no requirement for the payment of prevailing wages in connection with the Maintenance Services.
- B. Without limiting the generality of the foregoing provision, all persons retained by Contractor to perform Maintenance Services required under this Agreement shall possess the requisite licenses and necessary permits to perform such Maintenance Services.

SECTION 8. PERSONNEL/IDENTIFICATION.

- A. Any and all personnel employed or retained by Contractor in performance of this Agreement shall be qualified to perform the duties assigned to them by Contractor and

shall be of good moral character. Contractor's personnel shall conduct themselves at all times in a courteous and businesslike manner.

- B. Contractor represents and warrants to City that any personnel retained by Contractor to perform Maintenance Services shall not have any criminal record for offenses related to the possession or use of controlled substances, sex offenses or any criminal offense involving violence.
- C. All personnel who perform Maintenance Services will wear clothing or a nametag, which bears the Contractor's name, or if an approved subcontractor, the clothing shall bear the subcontractor's name. The clothing worn by Contractor's personnel shall be appropriate for the work assigned and shall give Contractor's staff a neat and professional appearance. Contractor's vehicles that park on the Park Site shall have appropriate identification as approved by the Director (i.e., Contractor's vehicles will not be allowed on the Park Site without the appropriate parking permit displayed on the dashboard).

SECTION 9. NONDISCRIMINATION.

Contractor shall not discriminate, in any way, against any person on the basis of race, sex, color, age, religion, sexual orientation, actual or perceived gender identity, disability, ethnicity, national origin, or any other protected class in connection with or related to the performance of this Agreement.

SECTION 10. TAXES AND CHARGES.

Contractor shall be solely responsible for, and will pay, any excise taxes, fees, contributions, or charges applicable to the conduct of its business or which may be levied on the Maintenance Services hereunder.

SECTION 11. CONFIDENTIAL INFORMATION.

All City data, documents, discussions or other information developed or received by or for the Contractor in performance of this Agreement are confidential and must not be disclosed to any person or entity except as authorized in writing by City, or as required by law or court order or as required to be disclosed to the officers, directors and members of any owners association for the Project ("**Confidential Information**"). Confidential Information shall not include information that (i) is or becomes generally available to the public without breach of this Agreement, (ii) was in the possession of Contractor prior to the disclosure thereof by City, (iii) was or is obtained by Contractor from a third party who, to the knowledge of Contractor, is not subject to any confidentiality agreement in favor of City regarding such information, or (iv) is independently developed by or on behalf of Contractor without reliance on the Confidential Information. Contractor, its respective agents, directors, officers, employees, consultants, contractors, and subcontractors shall hold the Confidential Information in strict confidence and not use on its own behalf or disclose such Confidential Information to any third party, unless required by law.

OWNERSHIP OF MATERIALS. All reports, documents or other materials related to the Park Site developed or discovered by Contractor or any other person engaged directly or indirectly by

Contractor to perform Maintenance Services are City's property without restriction or limitation upon their use by City.

SECTION 12. ASSIGNABILITY.

Subject to the provisions of this Section, Contractor may not assign any rights, duties, or obligations under this Agreement without the prior written consent of City, which shall not be unreasonably withheld, conditioned or delayed; provided, however, that the City acknowledges and agrees that Contractor is authorized to hire, and to delegate to, appropriately qualified contractors and/or subcontractors to perform the Maintenance Services under this Agreement. The assignment of Contractor's rights, duties and obligations hereunder to any of the following entities or persons shall not require approval of City and shall automatically result in the release of the assignor from its obligations hereunder: (i) any entity that is an affiliate of Contractor; (ii) any other party comprising Contractor; (iii) the POA, once duly-formed and subject to recorded CC&Rs that include the obligations hereunder to the reasonable satisfaction of the Director; and (iv) any entity or person that acquires or leases any portion of the Project. As used herein, an **"affiliate of Contractor"** means any entity that directly or indirectly controls or is controlled by or under common control with Contractor (whether through the ownership or control of voting interests, by contract, or otherwise). Any attempt by Contractor to assign or transfer this Agreement in violation of this Section 12 of the Agreement will be voidable at City's sole discretion.

Any contractor and/or subcontractor retained by Contractor to perform and satisfy any terms, conditions or obligations under this Agreement, including insurance requirements, and shall receive a copy of this Agreement and be contractually required to comply with this Agreement. Contractor shall be responsible for all contractors or subcontractors retained by Contractor, or on its behalf, to perform any Maintenance Services under this Agreement.

SECTION 13. ALTERATIONS.

Contractor shall not make, nor be obligated to make, any improvements, alterations, additions, or changes to the Park Site or the Park Improvements other than performing the Maintenance Services. Alterations which involve structural changes to the Park Site. Alterations which are non-structural changes to the Park Site may be approved by Director. Any such Alterations shall be done in compliance with Santa Clara City Charter section 714.1 and shall be solely funded by the City unless expressly requested by the Contractor in its sole and absolute discretion.

SECTION 14. INDEMNIFICATION.

- A. To the extent permitted by law, Contractor agrees to protect, defend, hold harmless and indemnify City, its City Council, commissions, officers, employees, volunteers and agents (collectively, **"City Parties"**) from and against any claim, injury, liability, loss, cost, and/or expense or damage, including all costs and attorney's fees in providing a defense to any such claim or other action, and whether sounding in law, contract, tort, or equity, in any manner to the extent arising from, or alleged to arise in whole or in part from, or in any way connected with the performance of the Maintenance Services by Contractor pursuant to this Agreement, including claims of any kind by Contractor's employees or persons

contracting with Contractor to perform any portion of the initial construction of the Park Improvements, and shall expressly include passive or active negligence by City connected with the Contractor's performance of the initial construction of the Parklands Improvements. However, the obligation to indemnify shall not apply to the proportionate extent such liability is ultimately adjudicated to have arisen in whole or in part from the willful misconduct or grossly negligent acts or omissions of City or the City Parties; the obligation to defend is not similarly limited.

- B. Contractor's obligation to protect, defend, indemnify, and hold harmless in full City and City's employees, shall specifically extend to any and all employment-related claims of any type brought by employees, contractors, subcontractors or other agents of Contractor, against City (either alone, or jointly with Contractor), regardless of venue/jurisdiction in which the claim is brought and the manner of relief sought.
- C. To the extent Contractor is obligated to provide health insurance coverage to its employees pursuant to the Affordable Care Act ("**Act**") and/or any other similar federal or state law, Contractor warrants that it is meeting its obligations under the Act and will fully indemnify and hold harmless City for any penalties, fines, adverse rulings, or tax payments associated with Contractor's responsibilities under the Act.
- D. City agrees to protect, defend, hold harmless and indemnify Contractor, its officers, employees, contractors and agents and successors and assigns (collectively, "**Contractor Parties**") from and against any claim, injury, liability, loss, cost, and/or expense or damage, including all costs and attorney's fees in providing a defense to any such claim or other action, and whether sounding in law, contract, tort, or equity, in any manner to the extent arising from, or alleged to arise in whole or in part from, or in any way connected with the active negligence or willful misconduct of City or any City Parties with respect to the City's operation, control, supervision, or policing of the Park Site, including actions by members of the public on the Park Site.
- E. The provisions of this Section 14 shall survive expiration or sooner termination of this Agreement.

SECTION 15. INSURANCE REQUIREMENTS.

Contractor agrees that Contractor or its subcontractor shall have and maintain the policies set forth in the attached **Exhibit E**, entitled "Insurance Requirements" to cover the Contractor's Maintenance Services under this Agreement. All policies, endorsements, certificates, and/or binders shall be subject to approval by the Risk Manager or the Risk Manager's authorized designee ("**Risk Manager**") as to form and content. These requirements are subject to amendment or waiver if so approved in writing by the Risk Manager. Contractor agrees to provide City with a copy of said policies, certificates and/or endorsements before any Maintenance Services commence under this Agreement.

SECTION 16. TERMINATION.

- A. Notwithstanding any other provision in this Agreement, the City, in its sole discretion, may immediately terminate this Agreement, without cause, upon written notice of termination

to the Contractor, whereupon City shall assume, and thereafter be and remain solely responsible, at City's sole cost, for the performance of all Maintenance Services.

- B. City's Director is authorized to terminate this Agreement on City's behalf under this Section 16 or Section 17 of this Agreement.
- C. In the event of termination, Contractor shall immediately deliver to City copies of all reports, documents, and other work performed by Contractor under this Agreement.

SECTION 17. DEFAULT AND TERMINATION.

- A. If Contractor fails to perform any of the material terms, conditions, or obligations required to be performed by Contractor under this Agreement, and such failure continues uncured for a period of thirty (30) days following Contractor's receipt of written notice from City specifying Contractor's breach (or such longer cure period in those instances where the specified breach cannot reasonably be cured within such 30-day period, provided Contractor commences to cure the specified breach within such 30-day period and thereafter diligently pursues such cure to completion), Contractor shall be deemed to be in default under this Agreement (a "Contractor's Default"). In the event of a Contractor's Default, City, as its sole and exclusive remedy, may either (a) take all reasonable steps to cure such Contractor's Default and recover damages from Contractor for the direct costs and expenses incurred by City in such cure of Contractor's Default; or (b) seek specific performance by Contractor of the cure of such Project Owner's Default.

SECTION 18. WAIVER.

Each Party acknowledges and agrees that the other Party's waiver of any provision or breach or violation of any provision of this Agreement shall not be deemed to be a waiver of any other provision or a waiver of any subsequent breach or violation of the same or any other provision. City's acceptance of the performance of any of the Maintenance Services hereunder will not be a waiver of any provision of this Agreement.

SECTION 19. GOVERNING LAW.

This Agreement shall be governed and construed, and its performance enforced, under the statutes and laws of the State of California law.

SECTION 20. VENUE.

In the event that suit is brought by either Party to this Agreement, the Parties agree that venue must be exclusively vested in the state courts of the County of Santa Clara, or if federal jurisdiction is appropriate, exclusively in the United States District Court, Northern District of California, San Jose, California.

SECTION 21. NOTICES.

All notices and other communications required or permitted to be given under this Agreement must be in writing and must be personally served, or mailed, postage prepaid via U.S. mail, or sent via courier service, addressed to the respective Parties as follows:

City of Santa Clara
Attention: Parks & Recreation Department
1500 Warburton Avenue
Santa Clara, CA 95050
and by e-mail at parksandrecreation@santaclaraca.gov,
manager@santaclaraca.gov

And to Contractor addressed as follows:

CRE-GS Freedom Circle Phase I Owner, LLC
c/o Greystar Real Estate Partners, LLC
450 Sansome Street, Suite 500
San Francisco, CA 94111
Attention: Troy Vernon
Email: tvernon@greystar.com
Phone: (415) 527-2857

With a copy to:

Holland & Knight, LLP
560 Mission St., Suite 1900
San Francisco, CA 94105
Attention: Tamsen Plume
Email: tamsen.plume@hklaw.com
Phone: (415) 743-6941

Notice will be effective on the date personally delivered or if sent by courier service, on the date of receipt. If mailed, notice will be effective three (3) days after deposit in the mail. The Parties shall notify each other in writing of changes in either their respective addresses or their representatives subject to notification in accordance with the provisions of this Section 21.

SECTION 22. COMMUNICATION WITH CITY STAFF AND PARKS CONCERNS.

Without limiting or modifying the provisions of Section 5 above, Director shall be notified immediately in the event that an incident relating to the Park Site (i) requiring the filing of a police report, (ii) resulting in the Park Site or related Park Improvements being in an unsafe condition, (iii) otherwise materially affecting the operation of the Park Site, or (iv) non-life-threatening emergency should occur on, in or around the Park Site (collectively “**Park Incidents**”). Communication described in this Section 22 shall be in addition to notices described in Section 21 above. Contractor shall use best efforts to provide communication as follows:

Life threatening emergencies, or crimes in progress.	Contact emergency services: 911
Park Incidents or non-life-threatening Park Site emergencies occurring on weekdays between the hours of 8 a.m. and 5 p.m.	Contact Deputy Parks and Recreation Director Office: Office (408) 615-3770
Park Incidents or non-life-threatening Park Site emergencies occurring on weekdays between the hours of 5 p.m. and 8 a.m., on weekends, or on City holidays.	Contact Non-Emergency Police Department Line: (408) 615-5580
Public's comments, concerns	Refer public to the MySantaClara app (www.santaclaraca.gov/services/make-a-service-request)

SECTION 23. FORCE MAJEURE.

- A. **“Force Majeure Event”** shall be defined as any matter or condition beyond the reasonable control of a Party, including but not limited to war, public emergency or calamity, fire, earthquake, extraordinary inclement weather, Acts of God, strikes, labor disturbances or actions, civil disturbances or riots, litigation brought by third parties against either City or Contractor or both, epidemic or pandemic (including COVID-19 or any variant), default by the other Party, or any governmental order or law which causes an interruption in the performance of this Agreement or prevents timely delivery of materials or supplies.
- B. Should a Force Majeure Event prevent performance of this Agreement, in whole or in part, the Party affected by the Force Majeure Event shall be excused or performance under this Agreement shall be suspended to the extent commensurate with the Force Majeure Event; provided that the Party availing itself of this Section 23 shall notify the other Party within ten (10) days of the affected Party's knowledge of the commencement of the Force Majeure Event; and provided further that the time of suspension or excuse shall not extend beyond that reasonably necessitated by the Force Majeure Event.
- C. Notwithstanding the foregoing, the following shall not excuse or suspend performance under this Agreement:
1. Performance under this Agreement shall not be suspended or excused for a Force Majeure Event if such event is not defined as a Force Majeure Event.
 2. Negligence or failure of Contractor to perform its obligations under this Agreement shall not constitute a Force Majeure Event.

3. The inability of Contractor for any reason to have access to funds necessary to carry out its obligations under this Agreement or the termination of any contract by any subcontractor or for Contractor's default under such contract shall not constitute a Force Majeure Event.

SECTION 24. ESTOPPEL CERTIFICATES.

Either Party (the "**requesting Party**") may, at any time, and from time to time, deliver written notice to the other Party (the "**certifying Party**") requesting the certifying Party to certify in writing that, to the knowledge of the certifying Party, (a) this Agreement is in full force and effect and is a binding obligation of the Parties, (b) this Agreement has not been amended or modified or, if so amended or modified, identifying the amendments or modifications, and (iii) the requesting Party is not in default in the performance of its obligations under this Agreement, or if in default, to describe the nature of any defaults, and (iv) such other reasonable items as may be requested. The certifying Party receiving a request under this Section 24 shall execute and return its certificate within thirty (30) days following receipt of the request. The Director shall be authorized to execute any certificate requested by Contractor. Contractor and City acknowledge that a certificate hereunder may be relied upon by any transferees, title companies, and lenders. Contractor shall pay the City's reasonable costs involved in providing such estoppel certificate.

SECTION 25. MISCELLANEOUS.

- A. If any part of this Agreement is for any reason found to be unenforceable, all other parts nevertheless remain enforceable.
- B. Subject to the provisions of Section 15, this Agreement binds and inures to the benefit of the Parties and their respective successors, assigns and legal representatives.
- C. The headings of the sections of this Agreement are inserted for convenience only. They do not constitute part of this Agreement and are not to be used in its construction.
- D. Where this Agreement requires or permits City to act and no officer of the City is specified, City's Manager or the designated representative of City's Manager has the authority to act on City's behalf.
- E. This Agreement is personal to Parties hereto, and the rights provided to Company shall not be deemed to be a possessory or any other type of interest or encumbrance in real property nor shall this Agreement be deemed to run with the land.
- F. This Agreement, including all Exhibits attached thereto, represents the entire understanding of the Parties as to those matters contained herein. No prior oral or written understanding shall be of any force or effect with respect to those matters covered hereunder. This Agreement may only be amended by formal written agreement executed by both Parties.
- G. Whenever required by the context of this Agreement, the singular includes the plural and the masculine includes the feminine and vice versa. This Agreement is not to be construed

as if it had been prepared by one of the Parties, but rather as if all the Parties had prepared it.

Except where the context otherwise requires, whenever the term maintenance is used in this agreement it shall also be interpreted to mean and include repair and/or replacement. For purposes of this Agreement, replacement is defined as the substitution of equipment and/or facilities related to the Park Improvements at the Park Site due only to the disrepair, dilapidation, age, or condition of the Park Improvements.

[signatures on following page]

This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but both of which shall constitute one and the same instrument.

The Parties acknowledge and accept the terms and conditions of this Agreement as evidenced by the following signatures of their duly authorized representatives.

CITY OF SANTA CLARA, CALIFORNIA
a chartered California municipal corporation

Approved as to Form:

Dated: -----

GLEN R. GOOGINS
City Attorney

JOVAN D. GROGAN
City Manager
City of Santa Clara
1500 Warburton Avenue
Santa Clara, CA 95050
Telephone: (408) 615-2210
FAX: (408) 241-6771

“CITY”

CRE-GS FREEDOM CIRCLE PHASE I OWNER, LLC
a Delaware limited liability company

Dated: _____

By (Signature): _____

Name: _____

Title: _____

Principal Place of
Business Address: _____

Email Address: _____

Telephone: () _____

Fax: () _____

“CONTRACTOR”

*Proof of authorization for Contractor’s signatures is required to be submitted concurrently with this Agreement.

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA)
) ss:
COUNTY OF _____)

On _____, 2025, before me, _____, Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA)
) ss:
COUNTY OF _____)

On _____, 2025, before me, _____, Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature

EXHIBIT A

LEGAL DESCRIPTION OF PROJECT PROPERTY



[Placeholder to show entire property; replace with legal description of Parcels 1, 2 and 3 after Parcel Map recorded]

LEGAL DESCRIPTION OF PARK PARCEL

[Insert reference to recorded Parcel Map Parcel No. 4 prior to recording]

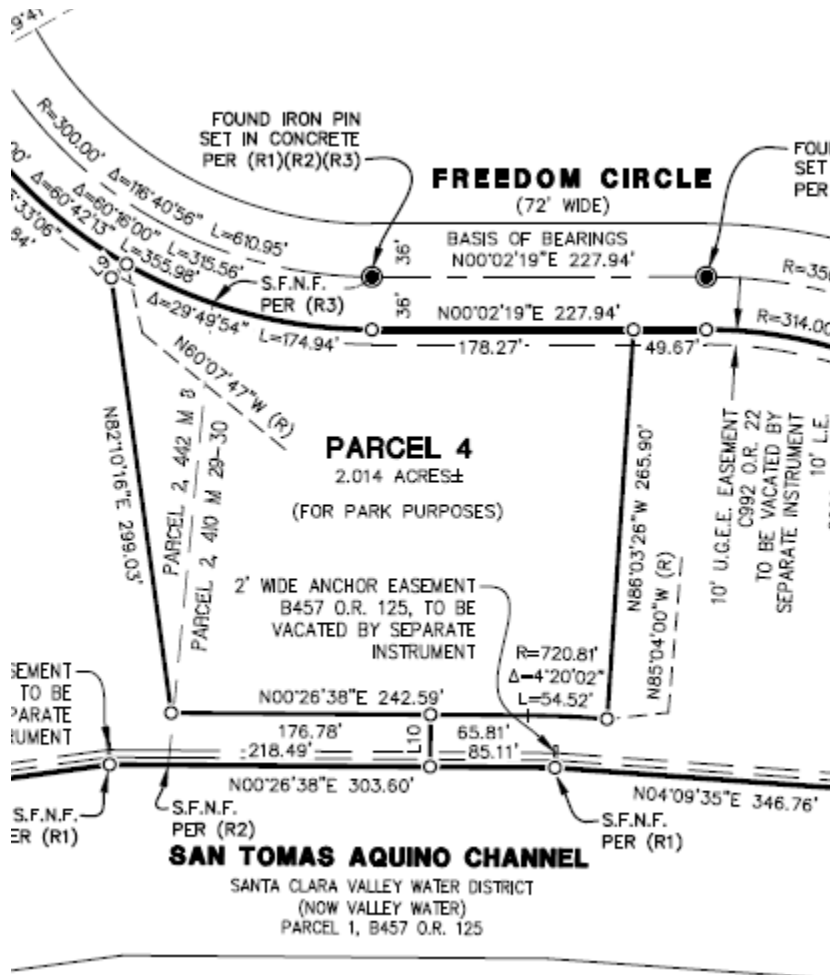


EXHIBIT C

PUBLIC PARK IMPROVEMENTS SITE PLAN



EXHIBIT D

SCOPE OF SERVICES AND MAINTENANCE SPECIFICATIONS

Turf Care

1. Mowing to be performed at a uniform height in alternating patterns on a weekly basis. Mulching mowers are allowed. Turf to be clean of debris upon completion.
2. Edging along sidewalks and curbs with power edger, weekly.
3. A 6" - 12" buffer zone to be maintained around all obstacles including buildings, fencing, light fixtures, signs, trees, etc., weekly.
4. Mechanical aeration to be performed two times per year.
5. Overseeding of turf, weekly due to pet damage.
6. Annual fall overseeding included as part of the overall maintenance program.
7. Fertilize turf 4x per year, not to exceed 6lb of Nitrogen per 1000 sq. ft. annually.
8. Spray broadleaf weeds quarterly.

Ground Cover, Shrubs And Vine Care

1. Pruning shall be performed to maintain neat, clean and well defined appearance within all general boundaries including sidewalks and structures.
2. A 6" - 12" buffer zone to be maintained around all obstacles including buildings, fencing, light fixtures, signs, trees, etc.
3. Fertilize 3x per year.
4. Mulch all bare planter areas quarterly with approved Recology arbor mulch.

Tree Care

1. Pruning shall be performed to develop trunk caliper and scaffolding branches and includes the removal of dead and damaged branches, which can be reached from the ground with an extension pole pruner.
2. Prune for 8' clearance over walkways and 15' over parking areas and streets.
3. Labor and materials for tree staking, ties and guying requirements are included.

Plant Health

1. Control diseases, pests and weeds mechanically and via product material per approved guidelines and requirements.

2. Apply fertilization product material to provide lush, green and healthy appearance, to maintain all plant material in a state of perpetual growth. After application process, clean up any overspray of product material, immediately.
3. Provide any tests and reports as required once per year, to investigate soil chemistry, disease and insects and other factors to maintain the landscape in a healthy state.

Disease, Pest and Weed Control

1. Control all plant material diseases, pests, weeds and rodents mechanically and via approved product material per Department of Pesticide Regulation, County of Santa Clara Agriculture Commissioner and City of Santa Clara Integrated Pest Management guidelines and requirements.
2. Spray or manually remove weeds in all hardscape on a monthly basis.

Irrigation Management

1. Manage controller units for scheduled operation during evening hours. Provide system adjustments, cleaning, modifications and minor repairs to meet plant requirements, resulting in maximizing water usage, while minimizing runoff and overspray.
2. Provide monthly system inspections. Complete thorough irrigation inspections in February and September and report via Irrigation Tracking Sheets.
3. Repairs per unit pricing rates.
4. Hand watering is included, to maintain plant material in a healthy state, which has inadequate irrigation coverage.

Extra Work

1. Sod replacement and shrub replacement as needed to maintain a full and lush appearance.
2. Plant and irrigation replacements required due to damage by others.
3. In-fill and installation of decomposed granite pathway material.

General

1. Daily: Site review and trash clean up to be performed first thing each morning. Walkways to be swept or blown for pedestrian access. Equipment commencement after 8:00a.m.
2. Rake and groom decomposed granite pathways weekly.

Graffiti Abatement

1. Damaged Signs and Park Elements:
2. Within one (1) week of identification
3. In Instances of Objectionable Content: Within twenty-four (24) hours of identification

Playground Maintenance/Routine

1. Follow all safety precautions and wear all appropriate personal protective equipment
2. Check overall assessment of equipment.
3. inspect all components to ensure parts are not missing
4. Check equipment for unsafe conditions. No missing guards or rails
5. Check equipment for proper function, make adjustments if needed
6. Check painted surfaces for a consistent painted finish
7. Painted surfaces show a consistent painted finish. Is repainting needed?
8. Ensure equipment anchored and secured correctly
9. Tighten any loose parts that need adjustment
10. Check for any signs of corrosion or rust

Dog Park Maintenance

1. Daily: Maintenance activities will include trash pickup and removal, restock dog waste bag, inspect grounds and dispose of any old water, toys, or food items. Check that security features are in working condition including gates, locks, fences, lighting, or video monitoring (when installed).
2. Monthly: Pressure washing of high use areas including walkways, benches, tables, railings, gates, turf, and water features.
3. Annual: No pesticides of any kind will be used in or near a dog park. All chemicals used for cleaning will be specifically labeled as safe to use in dog parks. Once per year the dog park will be pro-actively evaluated for any maintenance/repair needs or safety/regulatory upgrades.

Lubricate moving parts as necessary

EXHIBIT D-1

CITY OF SANTA CLARA'S INTEGRATED PEST MANAGEMENT (IPM) POLICY

(To be signed and returned to the City)

CITY OF SANTA CLARA POLICY TO REQUIRE AN INTEGRATED PEST MANAGEMENT APPROACH TO PEST CONTROL AT ALL CITY OWNED PROPERTIES

The City of Santa Clara will carry out its pest management operations, at city-owned facilities, and on property where the City is responsible to provide facility and landscape maintenance, using Integrated Pest Management (IPM) techniques. The City will use best management practices for pest prevention to limit the amount of chemical applications needed for pest suppression. The City, recognizing that some pesticides may be potentially hazardous to human health and the environment, shall give preference to reasonably available non-pesticide alternatives, and reduced-risk pesticides, when performing pest control activities. The least toxic solution shall be selected whenever possible.

No products containing Clopyralid, Diazinon, Chlorpyrifos (Dursban), Chloradane, DDT, Dieldrin or other organophosphates may be used on City property. Fipronil and pyrethroids including, but not limited to Deltamethrin and Bifenthrin, may be used by City staff or a City contractor on City property or property maintained by the City only after all other IPM methods have been attempted and with the written approval of the designated City staff person.

Staff in departments that are responsible for implementing pest management techniques using City staff and/or contractors, or manage construction projects on City property that may need to implement pest management techniques, will be trained using the "Integrated Pest Management Guide for Facility Managers, Understanding IPM for Facilities, Landscape and Grounds Management", authored by the County of Santa Clara. Parks Department Maintenance Division, Parkways & Boulevards Division, Building Maintenance Division, and Public Works Inspection Division staff must attend annual IPM training and shall implement IPM techniques.

Pesticide applications must have a written recommendation by a Pest Control Advisor (PCA). City personnel and contractors must possess a Qualified Applicator Certificate (QAC) to apply pesticides. Annual pesticide usage reports shall be prepared by all departments responsible for managing City properties where pesticides are used. The quantities and types of pesticides used by both City personnel and contractors shall be tracked and summarized in a report covering July 1 - June 30. Annual reports shall be submitted to the Director by July 31st each year.

Contracting Pesticide Applicators for the City of Santa Clara will sign this form to acknowledge that they have been advised of the City's Integrated Pest Management policy and agree to abide by it. Contracting Pesticide Applicators also agree to provide the City with summaries of quantities and types of chemicals applied for reporting purposes.

Contracting City Department Name: _____	
Contracting City Department Contact Person: _____	
Contractor Name: _____	
Contractor Representative Name/Title: _____	
Address: _____	
Signature: _____	Date: _____

EXHIBIT E

INSURANCE REQUIREMENTS

Without limiting the Contractor's indemnification of the City, and prior to commencing any of the Services required under this Agreement, the Contractor shall provide and maintain in full force and effect, at its sole cost and expense, the following insurance policies with at least the indicated coverages, provisions and endorsements:

A. COMMERCIAL GENERAL LIABILITY INSURANCE

1. Commercial General Liability Insurance policy which provides coverage at least as broad as Insurance Services Office form CG 00 01. Policy limits are subject to review, but shall in no event be less than, the following:
 - \$2,000,000 each occurrence
 - \$4,000,000 general aggregate
 - \$2,000,000 products/completed operations aggregate**
 - \$2,000,000 personal injury
2. Limits may be satisfied in combination with excess/umbrella policies on a following form basis.
3. The following provisions shall apply to the Commercial Liability policy as well as any umbrella policy maintained by the Contractor to comply with the insurance requirements of this Agreement:
 - a. Coverage shall be on a "pay on behalf" basis with defense costs payable in addition to policy limits;
 - b. There shall be no cross liability exclusion which precludes coverage for claims or suits by one insured against another; and
 - c. Coverage shall apply separately to each insured against whom a claim is made or a suit is brought, except with respect to the limits of liability.

B. BUSINESS AUTOMOBILE LIABILITY INSURANCE

Business automobile liability insurance policy which provides coverage at least as broad as ISO form CA 00 OJ, with minimum policy limits of not less than one million dollars (\$1,000,000) each accident using, or providing coverage at least as broad as, Insurance Services Office form CA 00 01. Liability coverage shall apply to all owned, non-owned and hired autos.

C. WORKERS' COMPENSATION

1. Workers' Compensation Insurance Policy as required by statute and employer's liability with the following limits: at least one million dollars (\$1,000,000) policy

limit Illness/Injury by disease, and one million dollars (\$1,000,000) for each Accident/Bodily Injury.

2. The indemnification and hold harmless obligations of Contractor included in this Agreement shall not be limited in any way by any limitation on the amount or type of damage, compensation or benefit payable by or for Contractor or any subcontractor under any Workers' Compensation Act(s), Disability Benefits Act(s) or other employee benefits act(s).
3. This policy must include a Waiver of Subrogation in favor of the City of Santa Clara, its City Council, commissions, officers, employees, volunteers and agents.

D. POLLUTION LIABILITY

Pollution Liability insurance covering liability for third-party bodily injury, property damage and cleanup costs resulting from a pollution incident with a limit not less than \$2,000,000 per occurrence.

E. COMPLIANCE WITH REQUIREMENTS

All of the following clauses and/or endorsements, or similar provisions, must be part of each commercial general liability policy, and each umbrella or excess policy.

1. Additional Insureds. City of Santa Clara, its City Council, commissions, officers, employees, volunteers and agents are hereby added as additional insureds in respect to liability arising out of Contractor's work for City, using Insurance Services Office (ISO) Endorsement CG 20 10 11 85 or the combination of CG 20 10 03 97 and CG 20 37 10 01, or its equivalent.
2. Primary and non-contributing. Each insurance policy procured by Contractor shall contain language or be endorsed to contain wording making it primary insurance as respects to, and not requiring contribution from, any other applicable insurance which the indemnities may possess, including any self-insurance or self-insured retention they may have. Any other applicable insurance indemnities may possess shall be considered excess insurance only and shall not be called upon to contribute with Contractor's insurance.
3. Cancellation.
 - a. Each insurance policy shall contain language or be endorsed to reflect that no cancellation or modification of the coverage provided due to non-payment of premiums shall be effective until written notice has been given to City at least ten (10) days prior to the effective date of such modification or cancellation. In the event of non-renewal, written notice shall be given at least ten (10) days prior to the effective date of non- renewal.
 - b. Each insurance policy shall contain language or be endorsed to reflect that no cancellation or modification of the coverage provided for any cause save

and except non-payment of premiums shall be effective until written notice has been given to City at least thirty (30) days prior to the effective date of such modification or cancellation. In the event of non-renewal, written notice shall be given at least thirty (30) days prior to the effective date of non-renewal.

4. Other Endorsements. Other endorsements may be required for policies other than the commercial general liability policy if specified in the description of required insurance set forth in Sections A through D of this Exhibit E, above.

F. ADDITIONAL INSURANCE RELATED PROVISIONS

Contractor and City agree as follows:

1. Contractor agrees to ensure that subcontractors, and any other party involved with the Services, who is brought onto or involved in the performance of the Services by Contractor, provide the same minimum insurance coverage required of Contractor, except as with respect to limits. Contractor agrees to monitor and review all such coverage and assumes all responsibility for ensuring that such coverage is provided in conformity with the requirements of this Agreement including additional insured status for the City of Santa Clara, its City Council, commissions, officers, employees, volunteers and agents through a Designated Personal or Organization endorsement. Contractor agrees that upon request by City, all agreements with, and insurance compliance documents provided by, such subcontractors and others engaged in the project will be submitted to City for review.
2. Contractor agrees to be responsible for ensuring that no contract used by any party involved in any way with the project reserves the right to charge City or Contractor for the cost of additional insurance coverage required by this Agreement. Any such provisions are to be deleted with reference to City. It is not the intent of City to reimburse any third party for the cost of complying with these requirements. There shall be no recourse against City for payment of premiums or other amounts with respect thereto.
3. The City reserves the right to withhold payments from the Contractor in the event of material noncompliance with the insurance requirements set forth in this Agreement.

G. EVIDENCE OF COVERAGE

Prior to commencement of any Services under this Agreement, Contractor, and each and every subcontractor (of every tier) shall, at their respective sole cost and expense, provide and maintain not less than the minimum insurance coverage with the endorsements and deductibles indicated in this Agreement. Such insurance coverage shall be maintained with insurers, and under forms of policies, reasonably satisfactory to City and as described in this Agreement. Contractor shall file with the City all certificates and endorsements for the required insurance policies for City's approval as to adequacy of the insurance protection.

H. EVIDENCE OF COMPLIANCE

Contractor or its insurance broker shall provide the required proof of insurance compliance, consisting of Insurance Services Office (ISO) endorsement forms or their equivalent and the ACORD form 25-S certificate of insurance (or its equivalent), evidencing all required coverage 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 mailed to:

EBIX Inc.

City of Santa Clara Parks & Recreation Department

P.O. Box 100085 – 52 or

Duluth, GA 30096

1 Ebix Way
John's Creek, GA
30097

Telephone number: 951-766-2280

Fax number: 770-325-0409

Fax number: 770-325-0409

I. QUALIFYING INSURERS

All of the insurance companies providing insurance for Contractor shall have, and provide written proof of, an A. M. Best rating of at least A minus 6 (A- VI) or shall be an insurance Contractor of equal financial stability that is approved by the City or its insurance compliance representatives.