

SOIL STOCKPILING LICENSE AGREEMENT
Former Santa Clara All-Purpose Landfill

This Soil Stockpiling License Agreement (“Agreement”) sets forth the terms and conditions under which the City of Santa Clara (the “City”) will grant to Related Santa Clara, LLC (“Developer”) a temporary license to Developer to engage in certain early site preparation and soil stockpiling activities as more fully described herein, all in the area depicted on Exhibit A attached hereto (the “License Area”).

1. **Background.**

(i) *Purpose of Agreement.* The City and Developer entered into a Development Agreement dated August 9, 2016 (the “**Development Agreement**”) and a Disposition and Development Agreement, dated August 12, 2016 (“**DDA**”), which provides that the City will enter into ground leases with the Developer (each, a “**Ground Lease**”) for airspace parcels of the Landfill on a phase-by-phase basis, including Phase 2, Phase 3 and Phase 4 on Parcel 4 (all as defined in the DDA), for the purpose of Developer developing and operating a mixed-use development (the “**Project**”) on the Landfill and adjacent property (the “**Project Site**”) as more fully described in the DDA. To facilitate efficient implementation of the current development plans for the Project, Developer has determined that site preparation and soil stockpiling activities on Phase 2 need to commence prior to the execution of a Ground Lease on Phase 2, which will also require long-term access to Phase 3 and Phase 4 prior to execution of a Ground Lease for those Phases. Accordingly, Developer has requested a license from the City to conduct certain site preparation, soil stockpiling and other non-intrusive related activities in the License Area prior to the execution of a Ground Lease, all to the extent expressly permitted herein.

(ii) *Temporary Road and Interim 49ers Parking Area.* The License Area as depicted in Exhibit A comprises most of Parcel 4 and excludes the temporary road that is the subject of that certain Temporary Road Maintenance Agreement between the City and Developer dated July 21, 2020 (“**Temporary Road Agreement**”) and a planned interim 49ers parking area (the “**Interim 49ers Parking Area**”) that is the subject of that certain Interim Parking Rights Agreement between the City and Forty Niners SC Stadium Company LLC dated October 29, 2020 (“**Interim Parking Agreement**”); *provided, however*, that until commencement of construction of the Interim 49ers Parking Area, Developer shall perform “Preventive Maintenance” on the 49ers Parking Area in compliance with Section 4(i) hereof. The City shall provide at least thirty (30) days written notice to Developer prior to commencement of construction of the Interim 49ers Parking Area. If the Temporary Road Agreement or Interim Parking Agreement expires or the respective parties to one of those agreements mutually agree to cease use permanently of the temporary road or Interim 49ers Parking Area, then at Developer’s election, the City and Developer shall cooperate to determine appropriate new boundaries for the License Area, that may encompass part or all of the temporary road or the Interim 49ers Parking Area to be depicted on a replacement Exhibit A, which would thereafter define the boundaries of the License Area; *provided, however*, that the foregoing shall not limit Developer’s obligation to perform “Preventive Maintenance” on the Interim 49ers Parking Area prior to commencement of construction of the parking area.

(iii) *Applicability of DDA and Development Agreement Cost Reimbursement Provisions.* Developer acknowledges and agrees that certain costs incurred from time to time by the City with respect to the Project and the Project Site are subject to reimbursement by the Developer, as more fully set forth in: (i) Sections 14.2 and 26 of the DDA and (ii) Section 5.1 of the Development Agreement, each of items (i) and (ii) which shall remain in full force and effect and are not modified by this Agreement.

2. **License.**

(i) *Scope of Authorized Activities.* The City agrees to grant a temporary license to Developer (the “**License**”) to access the License Area for the express activities set forth herein. The right to access the License Area shall be exclusive to Developer, except the City, and its contractors and representatives, shall have the right to access the License Area for the purposes set forth in this Agreement, the DDA and/or the Development Agreement and as otherwise required for City’s compliance with any Agency requirements. The License Area may be used from time to time for the purpose of conducting the following activities: (i) importation of soil from offsite to Phase 2, which soil shall be directly compacted in Phase 2 within 10 days of being imported onto the License Area (“**Directly Compacted Soil**”); (ii) importation to, and stockpiling for greater than 10 days, of soil from offsite on Phases 2, 3 and 4 (“**Stockpiled Soil**”), which soil shall ultimately be used for compaction or grading on Phase 2; and (iii) placement of Stockpiled Soil on Phase 2 that has been excavated from Phase 1, which shall ultimately be used for compaction or grading on Phase 1 or Phase 2 (items (i) through (iii) shall be collectively referred to herein as “**Early Site Preparation Activities**”). The Developer may also access the License Area for the purposes of: construction parking necessary for the Early Site Preparation Activities or for other Project construction activities; storage of construction materials and equipment related to the Early Site Preparation Activities; and performing the upkeep, repair and maintenance obligations on the entire License Area required by Section 4(i) below. Upon Imminent Execution of the Phase I Ground Lease (as defined below), Developer may also access the License Area for the purposes of storage of construction materials and equipment related to other Project construction activities. “Imminent Execution of the Phase I Ground Lease” means Developer’s written notice to the City that it reasonably anticipates executing the Phase I Ground Lease within thirty (30) days of such notice. In exchange for the parking rights provided herein, during the License Period, Developer shall instruct its contractors to park within the License Area (and refrain from parking in the Tasman city garage) when carrying out the Early Site Preparation Activities or other Project construction activities, to the extent reasonably practicable.

(ii) *License Period.* The License will commence upon Developer’s delivery of three (3) days’ advance written notice to the City stating that Developer intends to access the License Area for any of the purposes provided herein (such access date, the “**License Commencement Date**”). The License will expire as to a particular Phase in the License Area upon the earlier to occur of the following dates (the “**Expiration Date**”): (1) the effective date of any Ground Lease applicable to such Phase; or (2) ninety (90) days after the “Outside Date” for “Take Down” (all as defined in the DDA) of all Phases within the License Area that are not yet subject to a Ground Lease; *provided, however*, in the event a Ground Lease is not executed for a specific Phase within the License Area by the “Outside Date” for “Take Down” for such

applicable Phase, each of the City or Developer may elect to terminate the portion of the License Area with respect to such Phase by providing ninety (90) days' advance written notice to the other party of such election. For any Phase that is not yet subject to a Ground Lease, Developer shall, at its sole cost and expense, remove all Stockpiled Soil in that Phase prior to the Expiration Date and shall restore the License Area in that Phase to a rough graded and compacted condition, including re-establishing drainage pathways and vegetative cover, in substantially the same manner that existed prior to the commencement of the License. If Directly Compacted Soil has been placed in a Phase for which the License will expire before the Phase is subject to a Ground Lease, the City and Developer shall cooperate to arrange for the issuance of an encroachment permit or similar authorization for the Directly Compacted Soil to remain after the Expiration Date for the Phase. The period between the License Commencement Date and the Expiration Date for each Phase in the License Area shall be referred to herein as the "**License Period**".

3. **Early Site Preparation Requirements.** Developer shall at all times during the License Period for each Phase comply with the following requirements, terms and conditions in that Phase (collectively, the "**Early Site Preparation Requirements**");

(i) *Soil Placement.* Except as otherwise approved by the City upon written request from the Developer, which approval shall be at the City's sole and absolute discretion, the following limitations on soil placement during the License Period shall apply: (a) Stockpiled Soil shall be placed only in the areas outlined in heavy dashed lines on Exhibit A (the "**Stockpile Areas**"); (b) Stockpiled Soil shall not be placed higher than elevation 55 feet (North American Vertical Datum of 1988); (c) the total amount of Stockpiled Soil in Phase 2 shall not exceed 240,000 cubic yards, the total amount of Directly Compacted Soil in Phase 2 shall not exceed 264,000 cubic yards and the total amount of Stockpiled Soil in Phase 3 and Phase 4 combined shall not exceed 26,500 cubic yards; and (d) no Directly Compacted Soil shall be placed in Phase 3 or Phase 4, except for *de minimis* amounts at the borders of Phase 2. The Stockpiled Soil quantities shall be determined based on field surveys performed by a California-licensed land surveyor. The surveys shall take into consideration settlement of the underlying landfill surface caused by the surcharge from the Stockpiled Soil. The field surveys shall be conducted at three stages: (i) the landfill surface and settlement markers before the placement of any Directly Compacted Soil or Stockpiled Soil; (ii) the surface of the Directly Compacted Soil before the placement of any Stockpiled Soil atop such Directly Compacted Soil; and (iii) the final surface of the Stockpiled Soil, and shall be to the nearest one-half of a foot. The Stockpiled Soil quantities shall be calculated using AutoCad Civil 3D or similar software.

(ii) *Permitting and Regulatory Compliance.* During the License Period, Developer shall comply with all requirements imposed by the Regional Water Quality Control Board (the "**Water Board**"), Santa Clara County Local Enforcement Agency ("**LEA**"), the City (subject to Section 2.2 of the Development Agreement), and any other regulatory or governmental agency with jurisdiction, oversight or authority over the Early Site Preparation Activities (each, an "**Agency**" and collectively, "**Agencies**"), including, without limitation, the Revised Soil Import Plan dated September 25, 2020 prepared by Langan on behalf of Developer ("**Soil Import Plan**") and approved by the Water Board on September 30, 2020 (collectively, "**Regulatory Requirements**").

(iii) *Testing and Permitting.* Prior to conducting Early Site Preparation Activities in any portion of the License Area, Developer shall (a) obtain a building permit from the City authorizing such Early Site Preparation Activities in that area (“**Applicable Building Permit**”) and any other permits and/or approvals required by any Agency; and (b) if the Early Site Preparation Activities involve import of soil from offsite, submit to the City for its review and approval, which shall not be unreasonably withheld or delayed, a data and review package in accordance with the “Evaluation Process for Import Fill” required by the Soil Import Plan, the Submittal Checklist for Soil Import dated January 6, 2021, and the Soil Acceptance Request form, which were approved by the City on February 26, 2021.

(iv) *Maintenance and Inspections.* Developer, at its sole cost and expense, will be required to maintain all Stockpiled Soil and Directly Compacted Soil, including securing the Stockpiled Soil, and to conduct all other Early Site Preparation Activities in compliance with the Regulatory Requirements, including, without limitation, the Applicable Building Permit, construction quality assurance plan and the Stormwater Pollution Prevention Plan approved by the applicable Agencies. Developer shall inspect the Stockpiled Soil and Directly Compacted Soil in accordance with the requirements of the Regulatory Requirements, and shall perform any work, repairs, replacements or modifications necessary to maintain compliance with the Regulatory Requirements. City shall also have the right to review soil data submittals and to inspect and monitor the Stockpiled Soil, the Directly Compacted Soil, the Stockpile Areas and any other Early Site Preparation Activities. To the extent not otherwise funded by the fees for the Applicable Building Permit, City Costs and Administrative Fees (both as defined in Section 1.2.17 of the Development Agreement) incurred with respect to the foregoing review and inspection rights shall be subject to reimbursement pursuant to Section 5.1 of the Development Agreement and Section 26.1 of the DDA, respectively. The City shall provide an invoice to Developer for all such City Costs and Administrative Fees incurred each month within forty-five (45) days of the end of such calendar month.

4. **Developer Obligations.** In addition to complying with the Early Site Preparation Requirements, during the License Period Developer hereby covenants, acknowledges and agrees as follows:

(i) *Maintenance and Upkeep of License Area and Interim 49ers Parking Area.* In consideration for the License, Developer, at its sole cost and expense, shall (a) perform “Preventive Maintenance”, pay any costs incurred by City in performing “Operational Maintenance” (or perform the same if requested by City) and perform “Emergency Provisions”, all as defined and more fully set forth on Exhibit B attached hereto and made a part hereof with respect to the entirety of the License Area and perform “Preventive Maintenance” only on the Interim 49ers Parking Area prior to commencement of construction of the Interim 49ers Parking Area (in accordance with Section 1(ii) above); and (b) install the “Developer Fencing” identified on Exhibit A and maintain all “Developer Fencing” and “Existing City Fencing” identified on Exhibit A for so long as Stockpiled Soil remains in the License Area; provided, that if Stockpiled Soil is reduced and/or relocated, Developer shall have the right, subject to City’s reasonable approval, to modify the fencing shown on Exhibit A. City represents and warrants to Developer that all “Existing City Fencing” shown on Exhibit A belongs to the City and is located on City land and that no third party approvals are required in order for Developer to carry out its

foregoing maintenance obligations. City covenants not to remove, relocate or modify any of the Existing City Fencing during the License Period. Notwithstanding the foregoing, to the extent that any Regulatory Requirements are imposed by any Agency during the License Period, which expand the scope of “Preventive Maintenance” or “Emergency Provisions” as defined in Exhibit B, then Developer shall thereafter be responsible for such additional maintenance obligations within the License Area. In the event any Operational Maintenance is required on, at or under the License Area during the License Period, there shall be a rebuttable presumption that such Operational Maintenance arises out of the License and/or activities performed by Developer under this Agreement. Developer shall have the burden of proof for rebutting such presumption by a preponderance of the evidence. Except with respect to Operational Maintenance, Developer’s maintenance, security and upkeep responsibility set forth herein shall not include operation or management of the Landfill systems, which shall at all times remain the responsibility of the City and shall be subject to reimbursement as set forth in Section 14.2 of the DDA.

(ii) *Avoiding Interference with City Activities.* Developer shall make commercially reasonable efforts to avoid interference with the City’s performance of its obligations to operate and maintain the Landfill systems, except as reasonably necessary for Developer to perform the Early Site Preparation Activities and the maintenance and upkeep obligations under subparagraph 4(i) above and Exhibit B, subject to Developer’s obligations for Operational Maintenance.

(iii) *Additional Consideration.* As additional consideration for the License, Developer shall, at its sole cost and expense, within thirty (30) days after the Effective Date, elect to (x) commence demolition of the existing structures on Parcel 5 except for the golf course storm water pump station (commencement of hazardous material abatement shall constitute commencement of demolition) and thereafter diligently pursue such abatement and demolition to completion (pursuant to building permits 2019-56868 (maintenance building), 2019-56866 (fire station 10), 2019-56865 (banquet hall), 2019-56864 (clubhouse), and 2019-56867 (driving range)) and dispose of all debris and related materials, (y) commence providing manned security on Parcel 5 until all existing structures on Parcel 5 (except for the golf course storm water pump station) are demolished in a manner that is no less than one (1) on-site person at all times (24 hours per day, 7 days a week), or (z) reimburse the City on a monthly basis for the forthcoming costs of maintaining manned security on Parcel 5 at the aforesaid prescribed level until all existing structures on Parcel 5 (except for the golf course storm water pump station) are demolished. For the avoidance of doubt, neither Developer’s provision of manned security nor its reimbursement of the City’s costs for manned security shall be deemed a guarantee of the security of the site or any particular result, nor shall it be deemed an undertaking of any liability for any events occurring on Parcel 5.

(iv) *Books and Records; Required Reports.* Developer shall maintain accurate records of all Early Site Preparation Activities including, without limitation, testing of Stockpiled Soil pursuant to the Soil Import Plan, approved construction quality assurance plans and any other approved work plans, waste manifests and records of all truck trips relating to Stockpiled Soil and all other records required by the Regulatory Requirements, and shall make such records available for review and/or audit by City and its designees, upon written request.

(v) *Timely Responses.* Developer shall respond to City's inquiries and requests in a timely manner (taking into account the nature of the inquiry/request).

5. **City Obligations.**

(i) *Maintenance and Upkeep.* Between the Effective Date (as defined below) and the License Commencement Date, the City shall perform all maintenance and upkeep obligations required under the Post-Closure Maintenance Permit issued by the LEA and the requirements of the Waste Discharge Requirements Order issued by the Water Board and applicable to the City.

(ii) *Timely Responses.* Within ten (10) business days of its receipt of a data and review package in accordance with the "Evaluation Process for Import Fill" required by the Soil Import Plan, City shall provide a response in the form of an approval, a request for more information or a statement of the reasonable basis for a denial. City shall respond to any other Developer request for approval under this License in a timely manner (taking into account the nature of the inquiry/request).

(iii) *Avoiding Interference with Developer Activities.* The City shall make commercially reasonable efforts to avoid interference with the Developer's performance of the Early Site Preparation Activities and its maintenance and upkeep obligations under subparagraph 4(i) above and Exhibit B, except as reasonably necessary for the City to conduct inspection and monitoring activities as provided in subparagraph 3(iv) above and for the City to perform its obligations to operate and maintain the Landfill systems.

6. **Event of Default; Liquidated Damages.**

(i) If a Party breaches any of its obligations under this Agreement (the "Breaching Party"), 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 this Agreement 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 subparagraph 6 (ii) below shall be an "Event of Default" by the Breaching Party under this Agreement. 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 Breaching Party's cure of the matter which was the subject of the notice of breach. If the alleged breach has not been cured or waived within the time permitted for cure in accordance with subparagraph 6 (ii) below, 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.

(ii) *Event of Default.* The Developer's or City's failure to perform any of its respective obligations under the Agreement which failure continues past ten (10) days after

receipt of written notice thereof from the Notifying Party shall constitute an “Event of Default” under the Agreement. If such default or breach relates to a non-monetary obligation and reasonably requires longer than ten (10) days to cure, the Breaching Party shall be permitted additional time to cure such default so long as the Breaching Party commences the cure within such ten (10) day period and diligently and continuously pursues the same to completion; in the case of a breach by Developer shall complete the cure of the breach within ninety (90) days of the date that the cure first commenced, unless otherwise extended in writing by the City; *provided, however*, that no cure period shall be permitted in the event that Developer fails to remove the Stockpiled Soil on or before the Expiration Date.

(iii) *Remedies.* If an Event of Default occurs and is not waived in writing by the Notifying Party, then the Notifying Party shall have the following remedies, which are not exclusive but cumulative, in addition to any other remedies now or later allowed by law or in equity:

(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 Notifying 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 Notifying 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 Notifying 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;

(d) The right to injunctive relief including seeking specific performance of the breached obligation;

(e) The right of the aggrieved party to institute proceedings in a court of proper jurisdiction to compel injunctive relief or specific performance to the extent permitted by law by the Breaching Party of its obligations; and/or

(f) The right of the City to draw upon the Performance Bond (defined below) if the Event of Default pertains to Developer’s failure to remove all Stockpiled Soil in accordance with Section 2 on or before the Expiration Date.

(iv) *Liquidated Damages.* If the Event of Default arises out of Developer’s failure to remove all Stockpiled Soil in the applicable Phase accordance with Section 2 on or before the Expiration Date, Developer shall pay to the City liquidated damages for such breach in an amount equal to \$5,000 for each day that such Event of Default remains uncured.

7. **Indemnity.** Developer shall indemnify and hold the City harmless for all losses (excluding indirect, special, incidental, consequential, or punitive damages other than such damages paid to a third party) caused by the Early Site Preparation Activities and Developer's, its contractors', agents' and licensees' activities on the License Area and the Interim 49ers Parking Area (in accordance with Section 1(ii) above), including first and third-party bodily injury and property damage (including damage to the Project Site and any of its operational systems) and costs associated with: (a) the performance of the Early Site Preparation Requirements and Developer's other obligations under this Agreement and any breach by Developer hereunder; (b) the obligation of Developer to remove the Stockpiled Soil on or before the Expiration Date; (c) any damage to Landfill systems or the property of the City and/or third parties caused by or arising out of Developer's exercise of its rights under this Agreement, including releases of pollutants therefrom that cause injury to persons or to property; (d) any bodily injury occurring on the License Area and the Interim 49ers Parking Area (in accordance with Section 1(ii) above) that does not result directly from the gross negligence or willful misconduct of the City; and (e) any release or threatened release of a hazardous substance or pollutants, or any condition of pollution, contamination or hazardous substance-related nuisance on, under or from real property at the License Area and Interim 49ers Parking Area (in accordance with Section 1(ii) above) to the extent the release, threatened release, condition, contamination or nuisance was caused, contributed to, or exacerbated by the Developer's (including its contractors and servants) activities on the License Area or the Interim 49ers Parking Area (in accordance with Section 1(ii) above); *provided*, that this clause (e) shall not apply as to the extent such violation, release, threatened release, condition, contamination or nuisance was created by or caused by the negligence or willful misconduct of the City. This Section 7 shall survive the expiration or earlier termination of this Agreement, but shall terminate as to each Phase three (3) years after the Expiration Date for such Phase.

8. **Financial Security.** Developer shall obtain and maintain one or more performance bonds in form and substance reasonably acceptable to the City (each, a "**Performance Bond**") and naming the City as beneficiary, which Performance Bond shall secure the removal of the Stockpiled Soil in accordance with the terms of this Agreement and shall have a penal sum equal to: (i) \$2,500,000 commencing when soil is first imported to the License Area; and (ii) 5,000,000 at the time that the cumulative amount of Stockpiled Soil on the License Area exceeds 133,000 cubic yards in the aggregate. All outstanding Performance Bonds may be cancelled and terminated upon the execution of the Ground Lease for Phase 2.

9. **Insurance.** During the term of the License, Developer shall obtain and maintain the following insurance programs:

(i) *Contractor's Pollution Liability.* Developer shall (i) obtain and maintain contractor's pollution liability insurance with a dedicated \$5,000,000 limit of liability per occurrence and in the aggregate with respect to all activities and operations under this Agreement, including without limitation, pollution incidents caused by the Early Site Preparation Activities; or (ii) maintain its existing Contractor's Environmental Legal Liability Policy, No. 004130100 (the "**Existing CPL**") with at least \$10,000,000 limit of liability per occurrence and in the aggregate provided that the Existing CPL is endorsed to include all activities and operations under this Agreement as covered operations. In the event Developer satisfies the

requirements hereunder through its Existing CPL, Developer shall either endorse the Existing CPL to reflect the dedicated \$5,000,000 limit in item (i) above or, in lieu thereof, purchase additional limits of liability from a third-party insurer to reinstate the aggregate \$10,000,000 limit of liability at any time that the aggregate limit of the Existing CPL has been eroded to less than \$5,000,000. The City shall be an additional named insured under the policies set forth herein.

(ii) *Other Insurance.* Developer shall maintain commercial general liability insurance with limits of \$5,000,000 per occurrence and in the aggregate, which can be provided through a combination of primary and excess insurance policies. The general liability insurance shall provide coverage in favor of the City for (i) damage to City property caused by or otherwise arising out of the Stockpiled Soil, including coverage for damage caused by subsidence; and (ii) any bodily injury occurring on the Landfill that does not result directly from the gross negligence or willful misconduct of the City.

10. **Effective Date.** This Agreement shall become effective upon execution by both parties (the “**Effective Date**”), but the License shall not commence and the obligations of Developer set forth herein (except the additional consideration set forth in Paragraph 4 (iii) to the extent that obligation is triggered prior to the License Commencement Date) shall not be effective until the License Commencement Date specified in Section 2 above.

11. **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.

12. **Notices.** 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 an electronic mail with a confirmatory copy to be delivered thereafter by duplicate notice in accordance with either clause (a) or (b) of this Section 12); in each case to the parties at the following addresses:

If to Developer:

Related Santa Clara
5201 Great America Parkway, Suite 532
Santa Clara, CA 95054
Attn: Steve Eimer
Email: SEimer@related.com

Related Santa Clara
5201 Great America Parkway, Suite 532
Santa Clara, CA 95054
Attn: Jennifer Jiang, Esq.
Email: JJiang@related.com

The Related Companies
30 Hudson Yards, 72nd Floor
New York, NY 10001
Attn: Richard O'Toole, Esq.
Email: ROToole@related.com

With a copy to:

Paul Hastings LLP
101 California Street, 48th Floor
San Francisco, CA 94111
Attn: Gordon Hart, Esq.

If to City:

City of Santa Clara
1500 Warburton Avenue
Santa Clara, CA 95050
Attn: City Manager

With a copy to:

City of Santa Clara
1500 Warburton Avenue
Santa Clara, CA 95050
Attn: City Attorney

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 Section 12. The attorney for any party may send Notices on that party's behalf.

13. **Entire Agreement; Amendment.** This Agreement, and its attachments, terms, and conditions, embodies the entire agreement between the parties relative to the matters set forth herein unless otherwise expressly 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.

14. **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.

15. **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,

[Signature Page Follows]

IN WITNESS WHEREOF, the parties have executed this Agreement to indicate their agreement to be legally bound by the terms and conditions set forth herein.

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

By: _____
Name: _____
Its: _____

Dated: _____

RELATED SANTA CLARA, LLC,
a Delaware limited liability company


By:  _____
Name: **Steve Eimer**
Its: **EVP**

EXHIBIT A

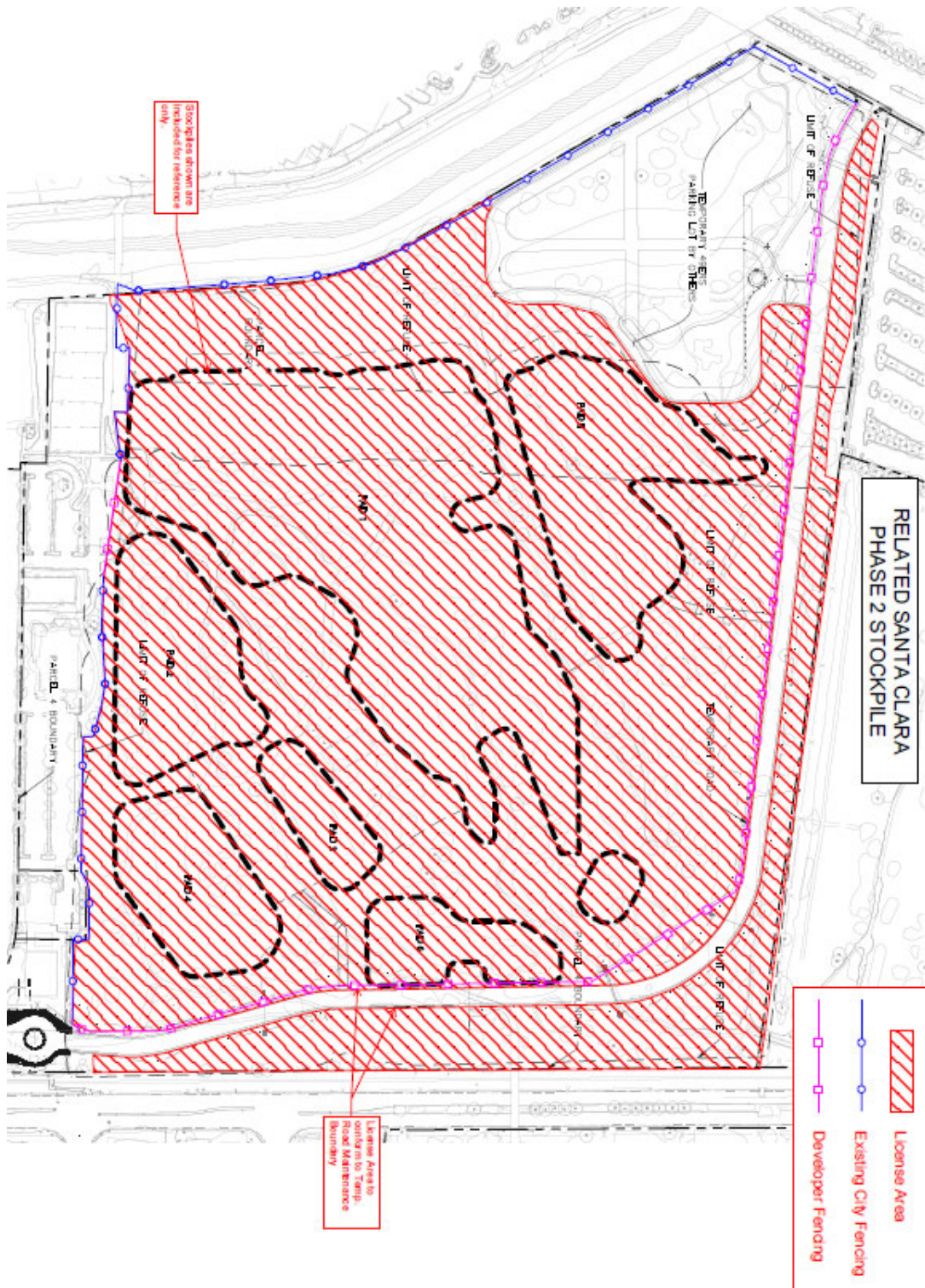


EXHIBIT B

Maintenance Obligations

1. INTRODUCTION

Capitalized terms not defined in this exhibit shall have the meaning given in the Soil Stockpiling License Agreement (the “Agreement”). In accordance with Section 4(i) of the Agreement, this Exhibit B sets forth the Developer’s maintenance obligations for the License Area. It is divided into three categories: preventive maintenance, operational maintenance and emergency provisions. Notwithstanding anything to the contrary herein, the Developer acknowledges and agrees that the items set forth in this Exhibit are not meant to be an exhaustive or exclusive list. At all times Developer shall be responsible for compliance with all Regulatory Requirements in accordance with the Agreement and applicable law.

2. PREVENTIVE MAINTENANCE

Developer shall, at its sole cost and expense, conduct the following preventive maintenance activities with respect to the entirety of the License Area in compliance with all Regulatory Requirements (collectively, “Preventive Maintenance”):

a. Ponding management

- (i) Inspect the License Area for ponding or standing water per landfill cover Regulatory Requirements;
- (ii) Address all applicable Waste Discharge Requirements, including landfill cover inspection and damage repair requirements for the License Area;
- (iii) Notify the City within 24 hours of the presence of standing water in the License Area; and
- (iv) Abate standing water or ponding within thirty (30) business days, if feasible, or a ponding remedial plan shall be submitted to the City with a schedule for repair.

b. Construction Storm Water Controls

- (i) Inspect integrity of erosion control measures and other storm water Best Management Practices;
- (ii) Restore or repair as required pursuant to the approved stormwater pollution prevention plan (“SWPPP”); and
- (iii) Treat all material, including storm water, as specified in the approved SWPPP.

c. Vegetation Control and Site Maintenance

- (i) Maintain all vegetation as needed to preserve the condition of the License Area and prevent an unsightly appearance, including but not limited to removing debris, litter and weeds as needed and mowing; and
- (ii) Conform any use of pesticides, herbicides, fertilizer or other treatments to City practice in the City's public open spaces (unless City requests otherwise and Developer agrees).

3. OPERATIONAL MAINTENANCE (LFG AND OTHER LANDFILL ENVIRONMENTAL SYSTEMS)

Developer shall pay any costs incurred by City for damage and/or repairs to the landfill, the landfill gas ("LFG") system, internal roadways within the Project Site or any other 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 out of the License and/or activities performed by Developer under the Agreement, whether from construction, maintenance, repair, removal, fill, settlement, traffic, liquid accumulation or other cause (collectively, "Operational Maintenance"). Without limiting the foregoing and as illustration only, Developer shall be responsible for City's costs incurred for the following damage:

- * 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.
- * 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.

Notwithstanding the foregoing, Developer agrees that it shall promptly perform any required Operational Maintenance, at its sole cost and expense, if requested by the City. Developer shall immediately notify the City upon the discovery of any required Operational Maintenance.

4. EMERGENCY PROVISIONS

Developer shall, at its sole cost and expense, perform the following emergency provisions with respect to the entirety of the License Area in compliance with all Regulatory Requirements (collectively, “Emergency Provisions”):

a. Natural Catastrophe (Act of God)

In the event of a natural catastrophe (including but not limited to earthquake, land movement, lightning, flooding, fire), Developer shall be responsible for damages to the License Area to the extent arising out of or exacerbated by the License and/or activities performed by Developer under the Agreement. Developer shall coordinate with City on notification to responsible regulatory agencies as required by applicable permits and/or approvals.

5. TIMELY PERFORMANCE

Developer shall undertake , perform and complete all of its obligations required hereunder within the time periods specified herein, the Agreement or the Regulatory Requirements, as applicable, and may consult with the City as may be necessary to verify the nature and extent of damage and work needed.