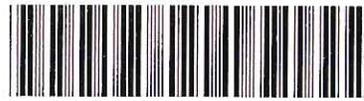


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**DEVELOPMENT AGREEMENT**

**(CITY PLACE SANTA CLARA)**

by and between

**THE CITY OF SANTA CLARA,**  
 a public body, corporate and politic, of the State of California

and

**RELATED SANTA CLARA, LLC,**  
 a Delaware Limited Liability Company

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**DEVELOPMENT AGREEMENT**  
**(CITY PLACE SANTA CLARA)**

**BETWEEN THE CITY OF SANTA CLARA**

**AND**

**RELATED SANTA CLARA, LLC**

THIS DEVELOPMENT AGREEMENT (as amended from time to time, this “**Agreement**”) dated for reference purposes only as of August 12, 2016 (the “**Reference Date**”), is by and between the **CITY OF SANTA CLARA**, a chartered municipal corporation (the “**City**”), and **RELATED SANTA CLARA, LLC**, a Delaware limited liability company and its permitted successors and assigns (the “**Developer**”) pursuant to the authority of Sections 65864 *et seq.* of the California Government Code and Chapter 17.10 of the Santa Clara City Code. City and Developer are also sometimes referred to individually as a “**Party**” and together as the “**Parties.**”

**RECITALS**

This Agreement is made with reference to the following facts, intentions and understandings of the Parties:

A. Purpose. In order to strengthen the public planning process, encourage private participation in comprehensive planning, and reduce the economic risk of development, the Legislature of the State of California adopted Government Code Section 65864 *et seq.* (the “**Development Agreement Statute**”), which authorizes the City to enter into a development agreement with any person having legal or equitable interest in real property regarding the development of such property. Pursuant to Government Code Section 65865, the City has adopted Chapter 17.10 of the Code establishing procedures and requirements for entering into a development agreement with a private developer pursuant to the Development Agreement Statute. This Agreement has been drafted and processed pursuant to the Development Agreement Statute and Chapter 17.10 of the Code.

B. Property Subject to this Agreement. The property that is the subject of this Agreement consists of:

i. the real property generally located in the North of Bayshore Area in Santa Clara, California consisting of approximately two hundred thirty acres located between Great America Parkway and Lafayette Street (APNs 097-01-073 and -039, 104-03-037, and 104-01-102) (the “**City Landfill Parcels**”). The City Landfill Parcels will later be subdivided into two sets of vertical parcels pursuant to the DDA: (1) the “**Landfill Parcel**” which, in general, constitutes City’s fee interest in the Landfill; and (2) multiple parcels comprising the “**Airspace Parcels,**” which constitute City’s fee interest in the airspace parcels above the Landfill Parcel; and

ii. the real property generally located immediately south of the City Landfill Parcels and north of Tasman Drive on the east and west sides of Centennial Boulevard (APNs 104-03-038 and -039) and a portion of another parcel (104-03-036) located immediately northward of those other parcels, consisting of approximately 9.48 acres (the “**Tasman Parcels**”). The City Landfill Parcels and the Tasman Parcels are collectively referred to herein as the “**Project Site**,” which is more particularly described on **Exhibit A** (Legal Description) as shown on **Exhibit B**, both of which are incorporated herein by this reference.

C. Developer’s Interest in the Property. Developer is a party to that certain Disposition and Development Agreement between the City and Developer, dated as of August 12, 2016 approved by the City Council on June 28, 2016 by Resolution No. 16-8340 (the “**DDA**”). Under the DDA, Developer has an equitable interest in the Property with obligations and rights to enter into phased Ground Leases for portions of the Airspace Parcels and the Tasman Parcels for development of the Project described in Recital D below.

D. The Project. The “**Project**” is more particularly described in the DDA. Without limitation, the Project includes the creation of a new mixed-use development on the Project Site that is anchored by a “city center.” The Project furthers the City’s goals for economic and housing development and provides public benefits to the City such as extensive infrastructure improvements, transportation improvements, increased public access and open space, and recreational and entertainment opportunities, while creating jobs and a vibrant, sustainable community. Among the many public benefits provided, the Project will allow the City to develop a new more than 30-acre community park, and a new network of pedestrian and bicycle trails to connect local residents and visitors to multiple kinds of recreation and area-wide activity. Without limitation, the Project includes the following components:

- (i) a total of approximately 9,16,000 square feet in a mixed use project with retail/restaurant/entertainment (up to 1,526,000 square feet); hotel (up to 700 hotel rooms); residential (up to 1,680 units); and office (up to 5,724,400 square feet), to be constructed in up to eight phases (including the Phases numbered 1 through 7 and Phase 2A) across seven parcels as more particularly described in the DDA;
- (ii) both (a) a minimum of 600,000 square feet of office, Retail, hotel and/or residential improvements that includes (x) a 300-room (or larger) hotel and (y) 50,000 square feet of Retail uses in Phase 1, and (b) a minimum of 200 residential units in Phases 1 or 2;
- (iii) a minimum of 700,000 square feet of Buildings in Phase 2 that includes 500,000 square feet of Retail and 200,000 square feet of office and/or a 300-room hotel;
- (iv) a minimum of 50,000 square feet of Retail uses in Phase 1 and 750,000 square feet of Retail uses in Phases 2 and 3 combined; and
- (v) an investment in infrastructure that will permit mixed-use development of the existing landfill, including site remediation, geotechnical and

site stabilization, construction of new streets, landscaping, creation of parks, open space and recreation facilities and construction of new wet and dry utilities.

E. Environmental Review. The City has analyzed potential environmental impacts of the Project and identified mitigation measures in the Environmental Impact Report for the City Place Project EIR (the “**Project EIR**”) and Mitigation Monitoring and Reporting Program attached as Exhibit C to the DDA (the “**Project MMRP**”), in accordance with the requirements of CEQA. On June 28, 2016, the City Council certified the Project EIR and adopted the Project MMRP and CEQA findings in accordance with the requirements of CEQA (City Council Resolution No. 16-8337). City has determined that the development and use of the Project Site under this Agreement are included within the scope of the Project EIR in that the potential environmental impacts of the development and use of the Project Site under the DDA and the Master Community Plan are addressed in the Project EIR.

F. Project Approvals. Following certification of the Project EIR, the City took the following actions (all of the following, collectively, the “**Project Approvals**”):

i. Amendments to the Santa Clara General Plan to create a new “Urban Center Entertainment district” General Plan classification for the Property, amend Figure 2.3-1 (“Areas of Potential Development”) and related minor text amendments, and amend its Climate Action Plan (City Council Resolution No. 16-8338)

ii. adopted Resolution No. 16-8339, rezoning the Project Site to PD-MC, adopting the Master Community Plan for the Project (the “**Master Community Plan**”), which includes the Infrastructure Master Plan (the “**IMP**”);

iii. adopted Resolution No. 16-8340, approving the DDA;

iv. adopted Ordinance No. 1957, establishing procedures for compliance with California Government Code Section 37380 for leasing property for a cumulative term in excess of fifty-five (55) years in connection with the Project;

iv. adopted Overriding Findings Regarding Santa Clara County Airport Land Use Commission’s Determination of Inconsistency for the Project (City Council Resolution No. 16-8341); and

v. adopted Ordinance No. 1956 approving this Agreement and authorizing the City Manager to execute this Agreement on behalf of the City (the “**Enacting Ordinance**”). The Enacting Ordinance took effect on August 11, 2016.

G. Intent of the Parties. Each of the Parties acknowledges that development and construction of the Project is a large-scale undertaking involving major investments by Developer and City. Certainty that the Project can be developed and used in accordance with the Project Approvals will benefit Developer and City, and provide to each of the parties a permanent plan for development of the Project Site. In light of the numerous public benefits provided by the Project, City has determined that the Project is a development for which a Development Agreement is appropriate. A Development Agreement will eliminate uncertainty

in the City's land use planning for the Project Site and secure orderly development of the Project consistent with the DDA and other Development Requirements.

H. Compliance with All Legal Requirements. It is the intent of the Parties that all acts referred to in this Agreement shall be accomplished in such a way as to fully comply with CEQA, the Development Agreement Statute and Chapter 17.10 of the Code, Title 18 of the Code (the "**Zoning Code**"), the Enacting Ordinance (as defined above) and all other applicable laws and regulations.

J. Consistent with General Plan. City has given the required notice of its intention to adopt this Agreement and has conducted public hearings thereon pursuant to Government Code section 65867 and Code Sections 17.10.150 through 17.10.170. As required by Government Code section 65867.5 and Code Section 17.10.180, City has found that the provisions of this Agreement and its purposes are consistent with the goals, policies, standards and land use designations specified in the General Plan (as amended by the Project Approvals).

K. Determination of Public Benefits. The City has determined that as a result of the development of the Project Site in accordance with this Agreement, clear benefits to the public will accrue that could not be obtained through application of existing City ordinances, regulations, and policies. The public benefits are as provided in this Agreement and in the DDA, the applicable portions of which DDA referenced herein are incorporated herein by this reference.

## I. AGREEMENT

### 1. GENERAL PROVISIONS

1.1. Incorporation of Preamble, Recitals and Exhibits. The preamble paragraph, Recitals and Exhibits, and all defined terms contained therein, are hereby incorporated into this Agreement as if set forth in full.

1.2. Definitions. In addition to the definitions set forth in the above preamble paragraph, Recitals and elsewhere in this Agreement, the following definitions shall apply to this Agreement. Capitalized terms not defined herein shall have the definition as set forth in the DDA.

1.2.1. "**80% Notice**" shall have the meaning set forth in Section 5.3.2.

1.2.2. "**AA&R**" means a written consent in the form of Exhibit P to the DDA with only such changes thereto as may be approved by Developer, the applicable Phase Developer and City in accordance with the DDA.

1.2.3. "**Administrative Fee**" shall mean a fee imposed City-Wide or Area-Wide in effect at the time and payable upon the submission of an application for any permit or approval or thereafter, which is intended to cover only the estimated actual costs to City of processing that application and inspecting work undertaken pursuant to that application, and is not a Development Fee or Exaction. The term "**Administrative Fee**" shall not any include City Costs.

1.2.4. **"Affordable Housing Agreement"** shall have the meaning set forth in Section 4.5.3.

1.2.5. **"Affordable Unit"** shall mean a residential unit that is affordable to households with income that does not exceed one hundred twenty percent (120%) of the Area Median Income for Santa Clara County, as adjusted and amended from time to time.

1.2.6. **"Airspace Parcels"** shall have the meaning set forth in Recital B.

1.2.7. **"Annual Review Date"** shall have the meaning set forth in Section 10.2 below.

1.2.8. **"Agreement"** shall have the meaning set forth in the Preamble.

1.2.9. **"Applicable Regulations"** shall mean: (1) the Project Approvals; (2) to the extent consistent with the Project Approvals and not otherwise superseded by the Development Requirements, the Existing City Regulations; (3) Future Changes to Regulations, as and to the extent permitted by the DDA and this Development Agreement, (4) the Development Fees and Exactions, and such new or changed Development Fees and Exactions, to the extent permitted under the DDA and this Development Agreement; (5) the Mitigation Measures; and (6) the Project Documents.

1.2.10. **"Area-Wide"** shall mean all privately-owned property within any designated geographic district of the City (for example, the "North Bayshore Area") that includes, but does not consist solely of, some or all of the Project Site.

1.2.11. **"Buildings"** shall have the meaning set forth in the DDA.

1.2.12. **"Budget Period"** shall have the meaning set forth in Section 5.3.1.

1.2.13. **"CEQA"** shall mean the California Environmental Quality Act, California Public Resources Code section 21000 et seq., and the Guidelines for the California Environmental Quality Act, California Code of Regulations, Title 14 section 15000 et seq., as amended from time to time.

1.2.14. **"City"** shall have the meaning set forth in the Preamble. Unless the context or text specifically provides otherwise, references to the City shall mean the City acting by and through the City Manager or, as necessary, the Planning Commission or the City Council.

1.2.15. **"City Center Phases"** shall have the meaning set forth in the DDA.

1.2.16. **"City Cost Accounting"** shall have the meaning set forth in Section 5.3.3

1.2.17. **"City Costs"** shall mean the actual and reasonable costs incurred by City employees directly, or by third parties hired by City, in performing City's obligations under this Agreement and the other Project Documents, as determined on a time and materials basis, excluding work and fees covered by Administrative Fees. The term "City Costs" shall mean all reasonable and actual costs related to the hiring of third party consultants, attorneys, and/or plan

checkers as needed to assist City in performing its obligations under this Agreement and the other Project Documents in order to ensure efficient Project development, including but not limited to the review and (if applicable) Approval of: (i) Premium Costs and Premium Costs Allocations in accordance with Section 16.1 of the DDA; (ii) financial data and plans submitted as required under the DDA; (iii) environmental review relative to a Subsequent Approval; (iv) compliance with and agreements for implementation of the DDA, Ground Leases, Project Documents, and Project MMRP; and (v) planning, design, building, and/or public works submittals related to the Project. The term “City Costs” shall also include all reasonable and actual costs related to the hiring and ongoing retention of the Priority Project Manager, whether such person is a third party or a City employee.

1.2.18. “**City Council**” or “**Council**” shall mean the City Council of the City of Santa Clara, or any successor governing body of City designated by or under law.

1.2.19. “**City Landfill Parcels**” shall have the meaning set forth in Recital B.

1.2.20. “**City Manager**” shall mean the City Manager of City, or any successor chief executive officer of City designated by or under law.

1.2.21. “**City Park**” shall mean that portion of Parcel 3 (as such parcel is designated on the Phasing Plan) that shall be returned to the City in accordance with Section 4.8 of the DDA, which shall be reserved for park, recreation and open space uses.

1.2.22. “**City Park Amenity and Design Standards**” shall have the meaning set forth in Section 4.3.1.

1.2.23. “**City Regulations**” includes (i) those City land use codes (including, without limitation, the Zoning Code and the City’s General Plan), (ii) those ordinances, rules, regulations and official policies adopted thereunder, and (iii) all those ordinances, rules, regulations, official policies and plans governing zoning, subdivisions and subdivision design, land use, rate of development, density, building size, public improvements and dedications, construction standards, new construction and use, design standards, permit restrictions, terms and conditions of occupancy, or environmental guidelines or review, including those relating to hazardous substances, pertaining to the Project Site, as adopted and amended by the City from time to time.

1.2.24. “**City-Wide**” shall mean all privately-owned property within (1) the territorial limits of the City or (2) any designated use district or use classification of the City so long as (a) any such use district or use classification includes a substantial amount of affected private property other than affected private property within the Project Site, and (b) the use district or use classification includes all private property within the use district or use classification that receives the general or special benefits of, or causes the burdens that occasion the need for, the new City Regulation or Development Fees or Exactions.

1.2.25. “**Code**” shall mean the Santa Clara City Code.

1.2.26. “**DAP**” shall mean a Development Area Plan for a Phase or a Sub-Phase, the application for which shall be submitted pursuant to the DDA and the MCP.

1.2.27. **“DAP Procedures”** shall mean the CityPlace Santa Clara Development Area Plans and Architectural Review Submittal and Approval Procedures attached as Appendix C to the MCP, which are intended to supersede the provisions of Section 18.56.080 through Section 18.56.110 of the Code (or any successor ordinances) in its entirety.

1.2.28. **“DDA”** shall have the meaning set forth in Recital C, as it may be amended from time to time.

1.2.29. **“Developer”** shall have the meaning set forth in the Preamble.

1.2.30. **“Development Agreement Statute”** shall have the meaning set forth in Recital A.

1.2.31. **“Development Fee Vested Period”** shall have the meaning set forth in Section 3.3.1.

1.2.32. **“Development Fees”** shall mean monetary fees or assessments, other than taxes, special assessments, Administrative Fees, and/or City Costs, charged or imposed by the City in connection with any permit, approval, agreement or entitlement for Infrastructure or Vertical Improvements. The term “Development Fee” does not include the requirements of, or fees payable under, Building Codes in effect from time to time generally applicable on a City-Wide or Area-Wide basis to similar land uses, or utility connection fees in effect from time to time generally applicable on a City-Wide or Area-Wide basis to similar land uses. The term “Development Fee” shall refer to any or all of the Development Fees as the context may require.

1.2.33. **“Development Requirements”** shall mean the Project Approvals and the Project Documents, as they may be amended from time to time.

1.2.34. **“DPW”** shall mean the Department of Public Works of City, or any successor public agency designated by or under law.

1.2.35. The **“Dwelling Unit Tax”** is a tax imposed pursuant to Section 3.15.020 of the Code, the purpose of which is for the acquisition, improvement and expansion of public park, playground and/or recreational facilities in the vicinity of dwelling units.

1.2.36. **“Effective Date”** shall have the meaning set forth in Section 1.3.

1.2.37. **“Enacting Ordinance”** shall have the meaning set forth in Recital F.v..

1.2.38. **“Engineering Plan Check Fees”** shall have the meaning set forth in Section 5.1.

1.2.39. **“Event of Default”** is defined in Section 10.6.

1.2.40. **“Exactions”** shall mean any exaction, dedication, or reservation requirement (other than Administrative Fees or Development Fees), including in-kind contributions, imposed by the City in connection with any provision of land for construction of public facilities or Infrastructure and any requirement to provide or contribute to any public

amenity or services. For purposes hereof, Exactions include conditions of approval imposed in connection with the Project Documents, and mitigation measures imposed or adopted pursuant to CEQA in connection with the Project or any Subsequent Project Approvals. The term "Exaction" shall refer to any or all of the Exactions, as the context may require.

1.2.41. "**Existing City Regulations**" shall mean those City Regulations in effect as of the adoption of the Enacting Ordinance.

1.2.42. "**Existing Development Fees**" shall have the meaning set forth in Section 3.2.

1.2.43. "**Federal and State Law Exception**" shall have the meaning set forth in Section 2.3.3.

1.2.44. "**Future Changes to Regulations**" shall have the meaning ascribed to it in Section 2.2.1.

1.2.45. "**Ground Lease**" shall mean a ground lease in the form attached as Exhibit G-1 or Exhibit G-2 to the DDA, as applicable, with only such changes thereto as set forth in Section 6.1 of the DDA and as the applicable Phase Developer and City shall Approve.

1.2.46. "**Improvements**" shall mean all physical improvements required or permitted to be made to the Project Site under the Project Documents, including Infrastructure.

1.2.47. "**In-Lieu Fee**" shall have the meaning set forth in Section 4.5.2.

1.2.48. "**Infrastructure**" shall mean those items identified in the Infrastructure Master Plan including open space improvements (including park improvements and restrooms), streets, rails, sewer and storm drainage systems, water systems, street improvements (including freeway ramps or other demolition), landfill "podium" (also referred to as a "structural slab" in the IMP), traffic signal systems, dry utilities and other improvements any of which are to be constructed in or for the benefit of the applicable real property or any other matters described in the Infrastructure Master Plan. Infrastructure does not include Buildings.

1.2.49. "**Infrastructure Master Plan**" shall mean the Infrastructure Master Plan adopted by the City for the Project.

1.2.50. "**Landfill Parcels**" shall have the meaning set forth in Recital B.

1.2.51. "**Losses**" shall have the meaning set forth in Section 7.4 below.

1.2.52. "**Lot**" shall mean a parcel of land within the Project Site that is a legal lot shown on a Subdivision Map.

1.2.53. "**Master Community Plan**" shall have the meaning set forth in Recital F.ii..

1.2.54. "**Material Breach**" shall have the meaning set forth in the DDA.

4.6. 1.2.55. **“MIP Funding Agreement”** shall have the meaning set forth in Section

4.6.3.3. 1.2.56. **“MIP Funding Source”** shall have the meaning set forth in Section

1.2.57. **“MIP Improvement”** shall have the meaning set forth in Section 4.6.3.2.

1.2.58. **“Mitigation Measures”** shall mean the mitigation measures applicable to the Project as set forth in the Project MMRP.

1.2.59. **“Mortgagee”** shall have the meaning set forth in Section 12.2 below.

1.2.60. **“Multimodal Improvement Plan”** (or **“MIP”**) shall mean the multimodal improvement plan approved by the VTA for the Project, as contemplated in Mitigation Measure TRA-1.3.

1.2.61. **“Net Floor Area”** means the actual occupied residential floor area not including unoccupied accessory areas such as corridors, stairways, toilet rooms (outside of the residential unit), mechanical rooms and closets.

1.2.62. **“Party”** or **“Parties”** shall have the meaning set forth in the Preamble, and their respective successors under this Agreement.

1.2.63. **“Person”** shall mean any natural person or a corporation, partnership, trust, limited liability company, limited liability partnership or other entity.

1.2.64. **“Phase”** shall have the meaning set forth in the DDA.

4.5.1. 1.2.65. **“Phase 1 Affordable Units”** shall have the meaning set forth in Section

1.2.66. **“Phase 1 Parkland”** shall have the meaning set forth in Section 4.3.5.

1.2.67. **“Phase Developer”** shall have the meaning set forth in the DDA.

1.2.68. **“Phase Schedule of Performance”** shall mean the Phase Schedules of Performance entered into pursuant to the DDA.

1.2.69. **“Phasing Plan”** shall mean the Phasing Plan attached as Exhibit E to the DDA, as such Phasing Plan may be amended over time.

1.2.70. **“Planning Commission”** or **“Commission”** shall mean the Planning Commission of City, or any successor commission of City designated by or under law.

1.2.71. **“Planning Director”** shall mean the Director of Planning and Inspection of City, or any successor officer of City designated by or under law.

8.3. 1.2.72. "**Priority Project Manager**" shall have the meaning set forth in Section

1.2.73. "**Project**" shall have the meaning set forth in Recital D.

1.2.74. "**Project Approvals**" shall mean the project approvals described in Recital F.

1.2.75. "**Project Documents**" means collectively, this Agreement, the MCP, the IMP, the Master CC&Rs, the DDA, any effective Ground Leases, the Revised Closure Plan, the Post-Closure Land Use Plan, the Revised Post-Closure Maintenance Plan, the Post-Closure Permit, the Non-Water Corrective Action Plan, the Water Corrective Action Plan, the Waste Discharge Requirements, the Landfill Operation and Management Agreement (once executed), and any other Authorizations received for any portion of the Project and agreements entered into pursuant to this Agreement or the DDA, together with all exhibits thereto, and (4) other necessary transaction documents for the conveyance, management and redevelopment of the Property.

1.2.76. "**Project EIR**" shall have the meaning set forth in Recital E.

1.2.77. "**Project MMRP**" shall have the meaning set forth in Recital E.

1.2.78. "**Project Site**" shall have the meaning set forth in Recital B.

1.2.79. "**Public Health and Safety Exception**" shall have the meaning set forth in Section 2.3.3.

1.2.80. "**Public Park**" is defined in Section 4.3.1.

1.2.81. "**Reference Date**" shall have the meaning set forth in the Preamble.

1.2.82. "**Regional Traffic Fees**" shall have the meaning set forth in Section 3.5.

1.2.83. "**Schedule of Performance**" shall mean the Schedule of Performance attached as Exhibit F to the DDA, as such Schedule of Performance may be amended over time.

1.2.84. "**Semi-Annual Budget**" shall have the meaning set forth in Section 5.3.1.

1.2.85. "**Sub-Phase**" shall have the meaning set forth in the DDA.

1.2.86. "**Subdivision Map**" shall mean a subdivision or parcel map as defined in the Subdivision Map Act.

1.2.87. "**Subdivision Map Act**" shall mean the Subdivision Map Act, section 66410 *et seq.* of the California Government Code.

1.2.88. "**Subsequent Project Approvals**" shall mean any additional discretionary and ministerial project approvals within the purview of the City that are required to implement the Project after the initial Project Approvals, including, without limitation, the Landfill O&M

Agreement, Development Area Plans, site permits and building permits and all Subdivision Maps.

1.2.89. "**Tasman Parcels**" shall have the meaning set forth in Recital B.

1.2.90. "**Tentative Map**" shall have the meaning set forth in Section 6.7.1.

1.2.91. "**Term**" shall have the meaning set forth in Section 1.4.

1.2.92. "**Third-Party Challenge**" shall have the meaning set forth in Section 9.3.1.

1.2.93. "**Traffic Impact Fee Vested Period**" shall have the meaning set forth in Section 3.4.1.

1.2.94. "**Traffic Impact Fees**" shall have the meaning set forth in Section 3.4.1.

1.2.95. "**Transferee Default**" shall have the meaning set forth in Section 12.1.

1.2.96. "**Transferee**" shall mean a transferee pursuant to Article 22 of the DDA.

1.2.97. "**Vertical Improvement**" shall mean an Improvement to be developed under the DDA or any AA&R or Ground Lease that is not Infrastructure.

1.2.98. "**VTA**" shall mean the Santa Clara Valley Transportation Authority.

1.2.99. "**VTA Contribution**" shall have the meaning set forth in Section 3.6.

1.2.100. "**Zoning Code**" shall have the meaning set forth in Recital H.

1.3. **Effective Date.** Pursuant to Section 17.10.160 of the Code, this Agreement shall take effect upon its execution by all Parties following the effective date of the Enacting Ordinance (the "**Effective Date**").

1.4. **Term.** The term of this Agreement shall commence upon the Effective Date and shall continue in full force and effect thereafter until the date that is thirty (30) years from the Effective Date, provided that such ending date shall be extended by the number of days (if any) that the Outside Date for Commencement of Construction of Infrastructure for the last Phase in the Schedule of Performance is extended due to Force Majeure (the "**Term**"). Following expiration of the Term, this Agreement shall be deemed terminated and of no further force and effect.

## 2. APPLICABLE LAW

2.1. **Applicable Regulations.** Except as expressly provided in this Section 2, during the Term, the Project Approvals and any and all Subsequent Project Approvals shall be processed, considered, reviewed and acted upon in accordance with (i) the Applicable Regulations and any permitted Future Changes to Regulations, (ii) applicable laws, including CEQA, and (iii) this Agreement.

## 2.2. Future Changes to Regulations.

2.2.1. Changes that Conflict with this Agreement or the Development Requirements. Future changes to Applicable Regulations, City Regulations and any other ordinances, laws, rules, regulations, plans or policies adopted by the City or adopted by voter initiative after the Effective Date (“**Future Changes to Regulations**”) shall not apply to the Project and the Project Site to the extent that they would conflict with this Agreement or the Development Requirements. In the event of such a conflict, the terms of this Agreement and the Development Requirements shall prevail. Nothing in this Agreement, however, shall preclude the City from applying Future Changes to Regulations to the Project Site for a development project that is not within the definition of the “Project” under this Agreement.

2.2.2. Changes that Do Not Conflict with this Agreement or the Development Requirements. City retains the right to impose Future Changes to Regulations that are not in conflict with this Agreement and the Development Requirements. Without limitation, Future Changes to Regulations shall be deemed to be “in conflict with this Agreement and the Development Requirements” if they:

(a) alter or change any land use, including permitted or conditional uses, of the Project Site from that permitted under this Agreement and the Applicable Regulations;

(b) limit or reduce the height or bulk of the Project, or any portion thereof, or otherwise require any reduction in the height or bulk of individual proposed Buildings or other Improvements from that permitted under this Agreement and the Applicable Regulations;

(c) limit or reduce the density or intensity of the Project, or any portion thereof, or otherwise require any reduction in the square footage or number of proposed Buildings, residential dwelling units, parking or loading spaces, or other Improvements from that permitted under this Agreement and the Applicable Regulations;

(d) materially change the Project site plan as shown in the Phasing Plan or limit the location of building sites, grading or other Improvements on the Project Site in a manner that is inconsistent with or substantially more restrictive than the limitations included in this Agreement or the Applicable Regulations;

(e) impose conditions upon development of the Property other than as permitted by the Applicable Regulations;

(f) materially limit or control the availability of public utilities, services or facilities or any privileges or right to public utilities, services, facilities or Infrastructure for the Project, including but not limited to water rights, water connection, sewage capacity rights, and sewer connections;

(g) except as otherwise provided herein, in any manner control, delay or limit the rate, timing, phasing or sequencing of the approval, development or construction of all or part of the Project as provided in the DDA;

(h) preclude or materially increase the cost of performance of or compliance with any provisions of the applicable Development Requirements;

(i) conflict with or materially increase the obligations of Developer, any Phase Developer, any Subtenant under the Ground Lease, or any of their respective contractors under any provisions addressing contracting and employment in the DDA, AA&R or Ground Lease; or

(j) adversely affect in any material respect the City's ability to satisfy its obligations to Developer under the DDA.

2.2.3. Developer may, in the exercise of its sole discretion, elect to have a Future Change to Regulation that conflicts with this Agreement applied to the Project or the Project Site by giving the City written notice of its election to have a Future Change to Regulation applied, in which case such Future Change to Regulation shall be deemed to be an Applicable Regulation.

### **2.3. Applicable Laws, Including CEQA**

2.3.1. Development Agreement Statute. This Agreement has been entered into in reliance upon the provisions of the Development Agreement Statute as those provisions existed at the Effective Date. No amendment or addition to those provisions, which would materially affect the interpretation or enforceability of this Agreement, shall be applicable to this Agreement unless such amendment or addition is specifically required by the California Legislature, or is mandated by a court of competent jurisdiction. If such amendment or change is permissive rather than mandatory, this Agreement shall not be affected by the same unless the Parties mutually agree in writing to amend the Agreement to permit such applicability. The Parties shall cooperate and shall undertake such actions as may be necessary to implement and reflect the intent of the Parties to allow and encourage development of the Project.

2.3.2. Applicability of Uniform Codes; Infrastructure Standards. Nothing in this Agreement shall preclude the City's application to the Project of any provisions, requirements, rules, or regulations applicable City-Wide or Area-Wide that are contained in the California Building Standards Code, as amended by the City in accordance with the California Health and Safety Code, including requirements of the City's Building Code, Mechanical Code, Electric Code, Plumbing Code, Fire and Environmental Code or other uniform construction codes. Without limiting the foregoing, but subject to the terms of Section 2.3.3 below, the City shall not impose Infrastructure standards for any Phase that are inconsistent with the Infrastructure standards set forth in the MCP and Infrastructure Master Plan.

2.3.3. Protection of Public Health and Safety. Notwithstanding any provision in this Agreement to the contrary, City shall exercise its discretion under this Agreement and the Development Requirements in a manner that is consistent with the public health, safety and welfare. City shall retain, at all times, its authority to take any legally valid action deemed necessary to protect the physical health and safety of the public, including, without limitation, authority to condition or deny a permit, approval or agreement or other entitlement or to change any existing or adopt and apply to the Project any new City Regulation or Development Fee or Exaction, if City determines that such City Regulation or Development Fee or Exaction is

required (a) to protect the physical health or safety of the residents in the Project Site, the adjacent community or the public (“**Public Health and Safety Exception**”), or (b) to comply with applicable federal or state law or regulations including, without limitation, changes in City Regulations or Development Fees or Exactions reasonably calculated to achieve new, more restrictive federal or state attainment standards applicable to the City for water quality, water supply, air quality, hazardous materials or otherwise relating to the physical environment where such City Regulations are generally applicable and proportionally applied to similar land uses on a City-Wide or Area-Wide basis (“**Federal and State Law Exception**”). Any such new or increased City Regulation shall be applied in a manner that is proportional to the impacts caused by the applicable development on the Project Site taking into account the equitable share of the cost of funding reasonable compliance with the applicable Public Health and Safety Exception or Federal and State Law Exception. Any new or increased Development Fee or Exaction that qualifies within the Public Health and Safety Exception or Federal and State Law Exception that is enacted for the protection or benefit of City residents overall (as opposed to the mitigation of Project-related impacts which are addressed by the preceding sentence) shall be applied in a manner that bears a reasonable relationship to the development program and uses of the Project Site and shall be applied consistently City-Wide or Area-Wide. In no event shall any Vertical Improvements be required to pay a new or increased Development Fee or Exaction in connection with compliance with any Public Health and Safety Exception or Federal and State Law Exception which is not applied on a City-Wide or Area-Wide basis to similar land uses. Except for emergency measures, City will meet and confer with Developer in advance of the adoption of such measures to the extent feasible, provided, however, that City shall retain the sole and final discretion with regard to its reliance on the Public Health and Safety Exception as provided in this Section 2.3.4. Developer retains the right to dispute any City reliance on the Public Health and Safety Exception or Federal or State Law Exception. If the Parties are not able to reach agreement on such dispute following a reasonable meet and confer period, then Developer or City can seek judicial relief with respect to the matter.

2.3.4. CEQA. The Parties understand that the EIR is intended to be used not only in connection with the Existing Approvals, but also in connection with necessary Subsequent Project Approvals for the Term of the Agreement. However, the Parties acknowledge that, depending on the scope of the project described in Developer’s application, certain discretionary Subsequent Project Approvals may legally require additional analysis under CEQA. Notwithstanding any other provision of this Agreement, nothing contained herein is intended to limit the City’s ability to comply with CEQA, including imposing any mitigation measures. However, the City shall not undertake additional environmental review or impose new or additional mitigation measures on the Project other than as it deems is required by Public Resources Code section 21166 and CEQA Guidelines 15162 (or any similar statutory provisions enacted in the future). To the extent supplemental or additional review is required in connection with Subsequent Project Approvals, Developer acknowledges that City may require additional mitigation measures necessary to mitigate significant impacts that were not foreseen at the time this Agreement was executed.

### 3. **DEVELOPMENT FEES**

3.1. Development Fees. The Development Fees applicable to the Project shall be governed by the provisions of this Section 3. Notwithstanding anything to the contrary in this

Section 3, however, Developer shall have the right at any time to elect to pay any Development Fee at the rate in effect at the time when due.

**3.2. Existing Development Fees.** Unless otherwise specified in this Agreement, the Development Fees listed in Exhibit C of this Agreement shall be calculated in accordance with that Exhibit; provided, however, that the rates set forth in Exhibit C shall be subject to increase in accordance with Section 3.3, below. As of the Effective Date, the only Development Fees applicable to the Project (the “**Existing Development Fees**”) are those Development Fees listed in Exhibit C and/or discussed in this Section 3.

**3.3. New or Increased Development Fees.**

3.3.1. During the Development Fee Vested Period. Except as otherwise set forth in this Section 3, during the time period between the Effective Date and the date that is seven (7) years after the City’s approval of the first DAP for the Project (such time period, as extended by any delay due to Force Majeure applicable to the development of the City Center Phases, being referred to herein as the “**Development Fee Vested Period**”), there shall be no increase in any Existing Development Fees, and no new Development Fees shall be applicable to any Improvements within the Project Site.

3.3.2. After the Development Fee Vested Period. After the Development Fee Vested Period has expired, all Development Fees (whether existing, new, and/or increased) shall apply to Improvements within the Project Site so long as such Development Fees are (i) generally applicable on a City-Wide or Area-Wide basis for similar land uses and (ii) are not redundant as to the Project of a fee, dedication, program, requirement, or facility that is imposed or required under the applicable Development Requirements, including without any limitation, any fee, dedication, program, requirement, or facility related to: (A) transportation; (B) open space; (C) affordable housing; or (D) the use, operation, or maintenance of the Landfill. To the extent that any increase in any Development Fees or new Development Fees is permitted under this Section 3, any such increased or new Development Fee shall apply only to the extent that such increased or new Development Fee complies with all applicable law, including, without limitation the requirements of the Mitigation Fee Act (Government Code Sections 66000 *et seq.*).

**3.4. Traffic Impact Fees.**

3.4.1. Current Traffic Impact Fees. Beginning on the Effective Date and continuing until the later of (a) the date on which the Development Fee Vested Period expires and (b) the date by which building permits have been issued for at least three million (3,000,000) square feet of office space on the Project Site (such time period being referred to as the “**Traffic Impact Fee Vested Period**”), Developer shall pay traffic impact fees (the “**Traffic Impact Fees**”) pursuant to Section 17.15.330 of the Code in the following amounts per square foot:

(a) Office Uses (as such term is defined in Section 17.15.330(b)(8) of the Code): One Dollar (\$1.00) per square foot; and

(b) Hotel Uses (as such term is defined in Section 17.15.330(b)(5) of the Code): Four Hundred Dollars (\$400.00) per hotel room.

3.4.2. New or Increased Traffic Impact Fees. Commencing upon the expiration of the Traffic Impact Fee Vested Period, all Traffic Impact Fees (whether existing, new, and/or increased) shall apply to Improvements within the Project Site; provided, however, that during the Term of this Agreement, at no time shall the Traffic Impact Fee for office uses (as defined in Section 17.15.330(b)(8) of the Code) on the Project Site exceed Two Dollars and Twenty-Five Cents (\$2.25) per square foot, nor shall the Traffic Impact Fee for hotel uses (as defined in Section 17.15.330(b)(5) of the Code) on the Project Site exceed Nine Hundred Dollars (\$900.00) per hotel room.

3.5. Regional Traffic Fees. Developer agrees to pay the fixed sums of a) One Dollar (\$1.00) per square foot of Office uses (as defined in Section 17.15.330(b)(8) of the Code) and Retail uses (as defined in the DDA), and b) Fifty Cents (\$0.50) per square foot for residential uses (together, the “**Regional Traffic Fees**”). The Regional Traffic Fees shall be payable to the City at the time of issuance of each Building Permit for Vertical Construction that contains office uses, retail uses, and/or residential uses, as applicable, based upon the square footage of such uses. Regional Traffic Fees are non-refundable, and shall not increase over the Term of this Agreement.

3.6. Voluntary VTA Contribution. Developer agrees to make a voluntary contribution of a total of approximately Sixteen Million One Hundred Sixty Four Thousand Two Hundred Dollars (\$16,164,200.00) to the VTA (the “**VTA Contribution**”), payable in increments to the City on a “per trip” basis in accordance with the terms of the MMRP.

3.7. Voluntary Nitrogen Deposition Fee Contribution. Developer agrees to make a voluntary contribution of a nitrogen deposition fee, based on the amount charged by the Santa Clara Valley Habitat Agency under its Voluntary Fee Payments Policy, payable in increments to the City on a “per trip” basis in accordance with the terms of the MMRP.

#### 4. EXACTIONS

4.1. Exactions Generally. Developer and City acknowledge that the Project Approvals authorize and require implementation of Exactions in connection with the development of the Project, and that the specific costs of implementing such Exactions cannot be ascertained with certainty, but notwithstanding such uncertainty, Developer shall be solely responsible for such costs in connection with implementing such Exactions as and when they are required to be implemented. Subject to the terms and conditions of this Agreement, including this Section 4, no new Exactions shall be imposed by City on the Project or Developer, or on any application made by Developer for any City Approval, or in enacting any City Approval, or in connection with the development, construction, use or occupancy of the Project, except to the extent consistent with the Applicable Regulations.

4.2. Mitigation Measures and Conditions of Approval. Developer agrees to contribute to the costs of public facilities and services in the amounts set forth in, or as required pursuant to, the MMRP and conditions of approval to the Project Approvals, as required to mitigate impacts of the development of the Project Site; provided, however, that to the extent this Agreement sets forth the specific types and amounts of such contributions, such provisions of this Agreement shall control. City and Developer recognize and agree that but for Developer’s

contributions to mitigate the impacts arising as a result of the Project Approvals, the City would not and could not approve the development of the Project. The City's approval of development of the Project is in reliance upon, and in consideration of, Developer's agreement to make contributions toward the cost of public improvements and public services as provided to mitigate the impacts of development of the Project. The City shall have the right to impose new conditions of approval in connection with its approval of any DAP provided, however, that such new conditions of approval (i) comply with this Agreement, including, without limitation, Sections 3 and 4 hereof and the terms of the DAP Procedures; and (ii) are not in conflict with matters previously approved by City (including, without limitation, previous conditions of approval), except to the extent expressly agreed-upon by Developer.

#### **4.3. Improvement and Dedication of Open Space and Parks.**

4.3.1. Developer's Obligations. Developer's obligations with respect to the establishment, dedication, and improvement of Public Parks, open space, and trails shall be governed by the Project Approvals. Any required improvements for those publicly dedicated parks described in the MCP as the City Center East Neighborhood Park, the City Center North Neighborhood Park and the City Center West Neighborhood Park (collectively, the "**Public Parks**") that are used to satisfy the requirements of Section 17.35 of the Santa Clara Municipal Code shall be undertaken in accordance with the City Parks & Recreation Department Park Amenity & Design Standards in effect as of the Effective Date, a copy of which is attached hereto and incorporated herein as **Exhibit D** (the "**City Park Amenity & Design Standards**"). Developer must request approval of any deviations from the City Park Amenity & Design Standards, if such deviations would result in any lesser requirements for the Project, during the DAP process. The City Park Amenity & Design Standards shall not apply to the Project and the Project Site to the extent that they would conflict with this Agreement or the Development Requirements.

4.3.2. Existing Park and Recreation Facilities. The City and Developer acknowledge and agree that Developer's improvement (and, if necessary, dedication) of the Public Parks and the City Park in accordance with the terms of the Project Approvals shall satisfy all current and future obligations of Developer with respect to the replacement of recreational facilities existing on the Project Site as of the Effective Date.

#### **4.3.3. Calculation of Parkland Acreage.**

4.3.3.1. All Public Parks shall be given full credit for acreage and included in the calculation of any parkland dedication required pursuant to Chapter 17.35 of the Code.

4.3.4. Dwelling Unit Tax. The Dwelling Unit Tax shall be paid by Developer in accordance with Section 3.15.020 of the Code, subject to the limitation on rate increases as provided in Section 3.3. Because Developer is undertaking construction of public park improvements within the Project above and beyond the requirements of City Code, the City will credit the full amount of the Dwelling Unit Tax actually paid toward any City Costs owing to City in accordance with Article 5, up to the full amount of Dwelling Unit Tax paid in connection with the Project.

4.3.5. Timing of Required Public Parks. Any Public Parks required to be dedicated to serve residential uses on the Project Site pursuant to Chapter 17.35 of the Code must be included in the DAP for the Phase in which such residential uses are located. Notwithstanding the foregoing, Developer shall have the right to defer to Phase 2 the improvement and dedication (or other reservation) of all or any portion of the Public Parks required to be dedicated in connection with the residential units constructed on Phase 1 (the “**Phase 1 Parkland**”), in accordance with the provisions of this Section 4.3. If Developer elects to defer its obligations to provide any or all of the Phase 1 Parkland to Phase 2, Developer shall provide in the DAP for Phase 1 a description of how the applicable portion of the Phase 1 Parkland shall be provided within Phase 2. The first DAP for Phase 2 shall include any portion of the Phase 1 Parkland not improved and dedicated (or otherwise reserved) as part of Phase 1, and such Phase 1 Parkland shall be constructed in accordance with a schedule approved as part of the first DAP for Phase 2.

4.4. Reservation or Dedication of Land for Public Use. Development of the Project Site requires public facilities to support the operations and services and development of the Project. Developer shall make available, reserve or dedicate, as required, land or facilities as provided in the MCP and IMP to support the construction, operations and services on the Project Site in accordance with the terms of the DDA.

4.5. Voluntary Housing Affordability Provisions.

4.5.1. Voluntary Commitment. The Parties acknowledge that the Code does not, as of the Effective Date, include any requirements for the provision of affordable residential units within or in connection with the Project. Nevertheless, Developer voluntarily agrees that at least ten percent (10%) of all residential units constructed on the Project Site shall be Affordable Units. Developer shall have the right to pay an in-lieu fee instead of constructing the Affordable Units that are associated with any market-rate units constructed as part of Phase 1 (the “**Phase 1 Affordable Units**”) under the conditions set forth in Section 4.5.2 below.

4.5.2. Timing of Construction. The Affordable Units must be constructed concurrently with the market-rate units with which they are associated. Notwithstanding the foregoing, the Phase 1 Developer shall have the right not to construct as part of Phase 1 all or any portion of the Phase 1 Affordable Units, in accordance with the provisions of this Section 4.5. If the Phase 1 Developer elects not to include in Phase 1 some or all of the Phase 1 Affordable Units, then the Phase 1 Developer shall either a) provide in the DAP for Phase 1 a description of the number and anticipated location of the remaining Phase 1 Affordable units to be provided within Phase 2, or b) if residential development upon Phases 2 is not permitted by regulatory agencies governing use of the former landfill or is otherwise determined to be financially infeasible due to constraints imposed by regulatory agencies governing use of the former landfill, pay to City an in-lieu fee (the “**In-Lieu Fee**”) as a condition precedent to City’s issuance of any building permits for the construction of residential units on Phase 1. The In-Lieu Fee shall be in the amount of Twenty Dollars (\$20.00) per square foot of Net Floor Area for each Phase 1 Affordable Unit that would otherwise be required to be constructed pursuant to the terms of this Section 4.5 and shall be fixed for the Term of this Agreement.

4.5.3. Affordable Housing Agreements. Prior to the issuance of a building permit for any Building that will contain residential units, City and Developer shall enter into an affordable housing agreement (each, an “**Affordable Housing Agreement**”) that will govern the provision of Affordable Units in connection with the residential units in such Building. Each Affordable Housing Agreement shall be consistent with the terms of this Agreement and the other Project Documents, and shall contain such other provisions as are mutually satisfactory to City and Developer.

4.6. Multimodal Improvement Plan. The City and Developer acknowledge that the Multimodal Improvement Plan is required in order to address various transportation needs in the general area of the Project that are associated with development of the Project.

4.6.1. Elements of MIP. The MIP shall include all of the elements required to be included pursuant to the MMRP. The City will explore the feasibility of, and consider the potential of including within the MIP, enhanced signal priority measures to benefit transit. In addition, to the extent feasible (as reasonably determined by the City), transportation-related improvements or strategies provided or funded (in whole or in part) by Developer and approved by the City that are not otherwise required by the MCP or any Mitigation Measure shall be identified as improvements or strategies in the MIP.

4.6.2. Area-Wide or Project-Specific. The MIP may be specific to the Project in scope, or it may be an “area-wide” plan that includes other development proposals as well as the Project.

4.6.3. MIP Funding Agreement. Within 90 days after final approval of the MIP, the City and Developer will execute an agreement (the “**MIP Funding Agreement**”) concerning the precise mechanisms and timing of funding the Multimodal Improvement Plan, consistent with this Section 4.6. The MIP Agreement shall incorporate the following principles:

4.6.3.1. Developer shall fund the preparation and processing of the Multimodal Improvement Plan in accordance with the Project MMRP.

4.6.3.2. In the event that the MIP is specific to the Project in scope, Developer shall be responsible for 100% of the costs of each improvement or strategy required to be constructed or implemented pursuant to the MIP (each, an “**MIP Improvement**”), subject to the funding limitations set forth in Section 4.6.3.3 below. In the event that the MIP is an “area-wide” plan, Developer shall be responsible for its fair share of the MIP Improvements, subject to the funding limitations set forth in Section 4.6.3.3 below, as more specifically set forth in the MIP.

4.6.3.3. Developer’s funding obligations set forth in Section 4.6.3.2, above, shall be funded by the sources (together, the “**MIP Funding Sources**”) listed below in descending order of priority. For each such funding obligation, the City will seek to fund that obligation with the MIP Funding Source listed as (a), below, and then move down through the list only if the obligation in question cannot be met by that source. The City shall only seek funds from a source of lower priority if the funding obligation in question cannot be met by a MIP Funding Source of higher priority.

- (a) All Regional Traffic Fees to be paid to the City in connection with the Project;
- (b) All Traffic Impact Fees to be paid to the City in connection with the Project;
- (c) Equal monetary contributions by Developer and the City, up to a total lump sum of Eight Million Dollars (\$8,000,000.00) (i.e., a maximum of \$4,000,000 for each Party); and
- (d) City funds.

4.6.3.4. To the extent that the City requires funds from MIP Funding Sources in advance of receiving funds from Developer in order to implement the MIP, the City may require that those fees be paid by Developer in advance of becoming due and payable, and such fees paid in advance shall be credited to Developer, as applicable.

4.6.3.5. Developer shall be obligated to pay all Regional Traffic Fees and Traffic Impact Fees as set forth in this Agreement, even if some or all of such fees are not required to fund the MIP Improvements.

**4.7. Special Facilities Required for Electric Service.** The Parties acknowledge that the Project will require certain increased and/or special electric service facilities that will be provided to the Project by the City's electric utility provider, Silicon Valley Power. Prior to approval of the DAP for Phase 1, Developer shall enter into a separate agreement with the City to address the rights and obligations of the parties with respect to providing interim electrical capacity and service at full build-out. The agreement will address such matters as the construction obligations of the City for additional substation and off-site distribution facilities, electrical service requirements to be provided by the City, construction and payment obligations of Developer, the granting of easements or other property rights and mutual cooperation as reasonably necessary to accommodate the electric service needs of the Project.

## **5. PAYMENT OF COSTS AND FEES**

**5.1. Payment of City Costs and Administrative Fees.** Developer shall timely pay to the City all City Costs and Administrative Fees. Notwithstanding the foregoing, during the Development Fee Vested Period, there shall be no increase in the "per sheet" review fees in the "Public Works" section of the City's Municipal Fee Schedule for 2016-2017 (the "**Engineering Plan Check Fees**"). For reference purposes, the Engineering Plan Check Fees are set forth in **Exhibit E** of this Agreement. After the expiration of the Development Fee Vested Period, Developer shall pay the Engineering Plan Check Fees then in effect, as and when due.

**5.2. City Costs for Environmental Review.** Prior to engaging the services of any consultant to perform environmental review relative to a Subsequent Approval, or authorizing the expenditure of any funds for such consultant, the City shall consult with Developer in an effort to mutually agree to terms regarding (i) the scope of work to be performed, (ii) the projected costs associated with the work, and (iii) the particular consultant that would be engaged to perform the work.

### 5.3. Time and Manner for Payment for City Costs.

5.3.1. Semi-Annual Budget. Within thirty (30) days after the Effective Date of this Agreement and thereafter, no later than December 1 and June 1 of each year during the Term hereof, City shall provide Developer with a single, combined, reasonably detailed budget of anticipated City Costs for the period of January 1-June 30 and July 1-December 30 of each year (each, a "**Semi-Annual Budget**" and each six-month budget period, a "**Budget Period**"). If Developer reasonably objects to the scope of work or anticipated City Costs set forth in the Semi-Annual Budget, it shall provide written notice to the City of its objections and the parties shall then cooperate in good faith to reach agreement on the Semi-Annual Budget for the applicable Budget Period. If the parties have not reached agreement on the applicable Semi-Annual Budget prior to the commencement of the applicable Budget Period, then the Semi-Annual Budget for such Budget Period shall be deemed to be the greater of (i) the Semi-Annual Budget for the immediately prior Budget period, or (ii) the actual City Costs for the immediately prior Budget Period until such time, if any, as the Parties reach agreement on the applicable Semi-Annual Budget. Within twenty (20) days after the commencement of the applicable Budget Period, Developer shall deliver to the City funds equal to the estimated total of the approved Semi-Annual Budget.

5.3.2. Periodic Notification. City shall notify Developer at such time as it reasonably determines that the City Costs actually incurred during the applicable Budget Period are at or around eighty percent (80%) of the approved Semi-Annual Budget for the applicable Budget Period (the "**80% Notice**") and whether City reasonably anticipates that an increase in the Semi-Annual Budget will be required. At any time after its receipt of the 80% Notice, Developer may notify City in writing to stop incurring City Costs, and City may cease work on the Project in excess of the Semi-Annual Budget unless Developer approves such costs and delivers to the City funds equal to the total of any estimated overage. Notwithstanding the foregoing, so long as the Parties are working under an approved or deemed approved Semi-Annual Budget and City provides Developer with the 80% Notice, Developer shall be obligated to pay City for all applicable City Costs incurred or accrued by City prior to City's receipt of any written instruction from Developer to cease activities with respect to the Project, whether or not such amounts exceed the Semi-Annual Budget. If the City provides Developer with the 80% Notice, then ceases work on the Project due either to (a) notification from Developer to cease activities with respect to the Project or (b) Developer's failure to approve an increased Semi-Annual Budget or failure to deliver funds to cover the increased Semi-Annual Budget, such cessation of work shall not constitute an event of Force Majeure in Developer's favor for the purposes of any of the Project Documents.

5.3.3. Payment of City Costs. City shall deliver to Developer an accounting of City Costs (the "**City Cost Accounting**") on a quarterly basis, accompanied by reasonably detailed invoices, including the cost incurred for each of the following: the Priority Project Manager (even if the Priority Project Manager is a City staff member); third party consultants; attorneys; contract planners; and/or plan checkers. The City Cost Accounting shall include hours spent and hourly rates, any additional costs incurred and a brief non-confidential description of the work completed. To the extent that the City Cost Accounting shows a balance due to the City, Developer shall pay such balance due within forty-five (45) days from receipt thereof. Any

remaining unspent funds previously provided by Developer pursuant to Section 5.3.1, above, shall be credited toward the approved Semi-Annual Budget for the next Budget Period.

## **6. DEVELOPMENT OF THE PROJECT SITE**

**6.1. Development Rights.** Developer shall have the vested right to develop the Project Site in accordance with and subject to the provisions of this Agreement, the Development Requirements and any Subsequent Project Approvals, which shall control the overall design, development and construction of the Project and all improvements and appurtenances in connection therewith, including without limitation, the permitted uses on the Project Site, the density and intensity of uses, the maximum height and size of buildings, the number of allowable parking spaces and all Mitigation Measures required in order to minimize or eliminate material adverse environmental impacts of the Project. By stating that the terms and conditions of this Agreement, the Development Requirements and any Subsequent Project Approvals control the overall design, development and construction of the Project, this Agreement is consistent with the requirements of California Government Code Section 65865.2 (requiring a development agreement to state permitted uses of the property, the density or intensity of use, the maximum height and size of proposed buildings and provisions for reservation or dedication of land for public purposes). Developer agrees that all improvements on the Project Site shall be constructed in accordance with this Agreement, the Development Requirements and any Subsequent Project Approvals, and in accordance with all applicable laws.

**6.2. Status of Approvals.** Prior to or concurrently with this Agreement, the City has approved and adopted the Project Approvals.

**6.3. Use and Density.** Pursuant to Section 65865.2 of the Development Agreement Statute, and except as otherwise specifically provided in this Agreement, the Project Approvals and Subsequent Project Approvals shall not prevent development of the Project for the uses and to the density or intensity of the development set forth in the Project Approvals or the Project Documents.

**6.4. Vested Rights: Permitted Uses and Density; Building Envelope.** By approving the Project Approvals, City has made a policy decision that the Project, as currently described and defined in the Project Approvals, is in the best interests of the City and promotes the public health, safety and general welfare. Accordingly, to the extent that the Project is required to obtain any Subsequent Project Approvals from the City, City shall not use its discretionary authority in considering any application for a Subsequent Project Approval to change the policy decisions reflected in the Project Approvals or otherwise to prevent or to delay development of the Project as set forth in the Project Approvals. Instead, the Subsequent Project Approvals (that conform to or implement the Project Approvals) shall be used to implement those policy decisions and shall be issued by the City so long as they comply with this Agreement, the Applicable Regulations and permitted Future Changes to Regulations, if applicable. Nothing herein is intended to limit the discretionary authority of the City Council to consider appeals of Subsequent Project Approvals related to Subdivision Maps pursuant to the provisions of the Subdivision Map Act, provided, however, that in exercising its discretion on any such appeal, the City Council shall not exercise its discretionary authority to change the policy decisions reflected

in the Project Approvals or otherwise to prevent or delay development of the Project as set forth in the Project Approvals.

**6.5. Residential Land Use.** The residential land uses on the Project Site shall be developed in accordance with the Project Documents.

**6.6. Commencement of Construction; Development Timing.** Development of the Project Site is permitted to occur in phases. The Phasing Plan, Schedule of Performance, and Phase Schedules of Performance incorporated into the DDA, as they may be modified from time to time in accordance with the DDA, shall govern the construction phasing and development timing of the Project and its Phases, respectively.

**6.7. Subdivision Maps.**

6.7.1. Review and Approval of Subdivision Maps. Developer may from time to time file Subdivision Map applications with respect to some or all of the Project Site in accordance with the provisions in the DDA. City shall exercise its discretion in reviewing such Subdivision Map applications in accordance with Section 6.4 hereof, and shall approve such Subdivision Map applications so long as they comply with this Agreement, the Project Documents, the Applicable Regulations and permitted Future Changes to Regulations, if applicable. Upon approval of each Tentative Map or Vesting Tentative Map (as those terms are defined in Chapter 17.05 of the Code) to be approved for property within a Phase or Sub-Phase (each, a “**Tentative Map**”), the term of such Tentative Map shall be extended until the termination of this Agreement with respect to the affected property notwithstanding any other City Regulation, provided that approvals obtained in the last five years of the Term shall extend for the greater of (a) the Term of this Agreement or (b) the maximum applicable time provided for under City law. Notwithstanding anything in Section 66474.2 of the Subdivision Map Act to the contrary, it shall be a condition to the approval of any Tentative Map or Vesting Tentative Map that the ordinances, policies and standards applicable to the Vesting Tentative Map shall be the Applicable Regulations and any Future Changes to Regulations permitted hereunder.

6.7.2. Vesting Tentative Maps. The Planning Director shall waive the requirements for a vesting tentative transfer map set forth in Section 17.05.710(a)((2) of the Code, provided the vesting tentative transfer map application is otherwise complete and conforms to and is consistent with the Development Requirements.

6.7.3. Street Vacations. The vacation of Stars & Stripes Drive and any other existing City streets on the Project Site may be accomplished by means of the Subdivision Map process.

**6.8. Financing of Project Improvements.** The financing of improvements relating to the Project, including all infrastructure and utilities, shall be as provided in the DDA, including, without limitation, requirements for providing adequate security for Infrastructure.

## 7. OBLIGATIONS OF DEVELOPER

7.1. **Cooperation by Developer.** Developer shall, in a timely manner, provide all documents, applications, plans and other information necessary for the City to comply with its obligations in accordance with the terms of the DDA.

7.2. **Nondiscrimination.** In the performance of this Agreement, Developer agrees not to discriminate, in any way, against any person on the basis of race, color, national origin, gender, marital status, sexual orientation, age, creed, religion or condition of disability in connection with or related to the performance of this Agreement.

### 7.3. **Payment of Fees and Costs.**

7.3.1. **Payment of Fees and Exactions.** Developer shall timely pay all Development Fees and Exactions applicable to the Project or the Project Site in accordance with applicable law.

7.3.2. **Administrative Fees.** Nothing in this Agreement shall preclude or constrain City from charging and collecting City Costs and/or Administrative Fees, which shall be administered in accordance with Section 5 hereof, or any such fee which may be provided for in the DDA or other Project Document.

7.4. **Hold Harmless and Indemnification of City.** Developer shall indemnify, reimburse and save and hold harmless the City and its officers, agents and employees from and, if requested, shall defend them against any and all loss, cost, damage, injury, liability, and claims (“Losses”) resulting directly or indirectly from this Agreement and Developer’s performance of this Agreement, except to the extent that such indemnity is void or otherwise unenforceable under applicable law in effect on or validly retroactive to the Effective Date, and except to the extent such Losses are the result of the gross negligence or willful misconduct of City. The foregoing indemnity shall include, without limitation, reasonable attorneys’ fees and related costs, and the City’s cost of investigating any claims against the City.

## 8. OBLIGATIONS OF CITY

8.1. **No Action to Impede Project Approvals.** City shall take no action nor impose any condition that would conflict with this Agreement or the Project Approvals. An action taken or condition imposed shall be deemed to be “in conflict with” this Agreement or the Project Approvals if such actions or conditions result in one or more of the circumstances identified in Section 2.2.2 of this Agreement.

8.2. **Expeditious Processing.** The City and Developer agree that Developer must be able to proceed efficiently with the development of the Project Site and that, accordingly, an efficient City review and land development and construction inspection process is necessary. Accordingly, the City agrees that upon submission by Developer of all appropriate applications and processing fees, City shall, to the full extent allowed by law, promptly and diligently, subject to applicable law, commence and complete all steps necessary to act on Developer’s currently pending applications for Subsequent Project Approvals, including (i) if legally required, providing notice and holding public hearings; and (ii) acting on any such pending application.

### **8.3. Priority Project Manager.**

8.3.1. Responsibilities. Upon the request of Developer, the City shall designate an individual (the “**Priority Project Manager**”) to act as a facilitator for all Subsequent Project Approvals. The Priority Project Manager shall function as an intermediary between the City and Developer to facilitate the expeditious processing of Subsequent Project Approvals; to address challenges, issues, and concerns during development of the Project; and to promote accessibility, predictability, and consistency across City agencies and departments.

8.3.2. Qualifications. At a minimum, the Priority Project Manager must have: (a) extensive knowledge of the principles and practices of land development, construction, and master planning (i.e., transportation needs, resource protection, and public facilities) and current issues affecting building and land regulation and development; (b) extensive knowledge of infrastructure matters related to development projects, including financing, permitting, and capital project schedules; and (c) a minimum of seven (7) years of progressively responsible experience involving development review, permitting, zoning, economic development, community planning, and land use planning processes, monitoring and tracking.

8.3.3. Selection and Payment. Prior to engaging the services of the Priority Project Manager, the City shall consult with Developer in an effort to mutually agree to terms regarding the particular individual that would be engaged to perform the work. At the City’s election, the Priority Project Manager may be a member of City staff, so long as such individual has sufficient available capacity to undertake the tasks enumerated in this Section 8.3. Whether or not the Priority Project Manager is a City staff member, the costs associated with the hiring and employment of the Priority Project Manager shall constitute “City Costs” and shall be reimbursed to City in accordance with Section 5.3, above.

8.4. Processing During Third Party Litigation. The filing of any third party lawsuit(s) against the City or Developer relating to this Agreement, the Project Approvals, the Subsequent Project Approvals, or other development issues affecting the Project or the Project Site, shall not delay or stop the development, processing or construction of the Project or the issuance of Subsequent Project Approvals unless the third party obtains a court order preventing the activity.

8.5. Public Art In Adjacent Rights of Way. The City shall not place any public art in the public right of way that is directly adjacent to the boundaries of the Project without first meeting with Developer to solicit non-binding input from Developer as to the consistency of such art with the design principles set forth in the MCP.

## **9. MUTUAL OBLIGATIONS**

9.1. Notice of Completion or Revocation. Upon the Parties’ completion of performance or revocation of this Agreement, a written statement acknowledging such completion or revocation, signed by the appropriate agents of City and Developer, shall be recorded in the Office of the Assessor of the County of Santa Clara, California.

9.2. Estoppel Certificate.

9.2.1. Request for Estoppel Certificate. Either Party may, at any time, and from time to time, deliver written notice to the other Party requesting such Party to certify in writing that to the best of the knowledge of the certifying Party: (i) this Agreement is in full force and effect and a binding obligation of the Parties, (ii) this Agreement has not been amended or modified either orally or in writing, and if so amended or modified, identifying the amendments or modifications and stating their date and nature, (iii) the requesting Party is not in default in the performance of its obligations under this Agreement, or if in default, to describe therein the nature and amount of any such defaults, and (iv) the findings of the City with respect to the most recent Annual Review performed pursuant to Section 7 below.

9.2.2. Execution and Return of Estoppel Certificate. A Party receiving a request under this Section 9.2 shall execute and return such certificate within thirty (30) days following receipt of the request. Failure by a Party within such thirty (30) days to either execute and return such certificate or provide a detailed written explanation of why the Party has failed to do so shall be deemed to be an Event of Default following notice and cure as set forth in Section 10 of this Agreement.

9.2.3. Reliance Upon Estoppel Certificate. Each Party acknowledges that third parties with a property interest in the Project Site, including any mortgagee, acting in good faith may rely upon such a certificate. A certificate provided by the City establishing the status of this Agreement with respect to any lot or parcel shall be in recordable form and may be recorded with respect to the affected lot or parcel at the expense of the recording party.

### **9.3. Cooperation in the Event of Third-Party Challenge.**

9.3.1. Third Party Challenge. In the event any legal action or proceeding is instituted challenging the validity of any provision of this Agreement, the Project, the Project Approvals or Subsequent Approvals or the MIP, the adoption or certification of the Project EIR, other actions taken pursuant to CEQA, or other approvals under state or City codes, statutes, codes, regulations, or requirements, and any combination thereof relating to the Project or any portion thereof (each, a “**Third-Party Challenge**”), the Parties shall cooperate in defending against such challenge. The City shall promptly notify Developer of any Third-Party Challenge instituted against the City.

9.3.2. Developer Cooperation. Developer shall assist and cooperate with the City at its own expense in connection with any Third-Party Challenge. The City Attorney’s Office may use its own legal staff or outside counsel in connection with defense of the Third-Party Challenge, at the City Attorney’s sole discretion. Developer shall reimburse the City for its actual costs in defense of the action or proceeding, including but not limited to the time and expenses of the City Attorney’s Office and any consultants, which costs shall be included as City Costs and reimbursed to City in accordance with Section 5.3, above; *provided, however*, that Developer may elect to terminate this Agreement, and upon any such termination, Developer’s and City’s obligations to defend the Third-Party Challenge shall cease and Developer shall have no responsibility to reimburse any City defense costs incurred after such termination date. Developer shall indemnify the City from any other liability incurred by the City, its officers, and its employees as the result of any Third-Party Challenge, including any award to opposing counsel of attorneys’ fees or costs, except where such award is the result of the willful

misconduct of the City or its officers or employees. This section shall survive any judgment invalidating all or any part of this Agreement.

**9.4. Good Faith and Fair Dealing.** The Parties shall cooperate with each other and act in good faith in complying with the provisions of this Agreement. In their course of performance under this Agreement, the Parties shall cooperate and shall undertake such actions as may be reasonably necessary to implement the Project as contemplated by this Agreement.

**9.5. Other Necessary Acts.** Each Party shall execute, acknowledge and deliver to the other all further instruments and documents and shall take such further actions as may be reasonably necessary to carry out this Agreement in order to provide and secure to each Party the full and complete enjoyment of its rights and privileges hereunder.

## **10. PERIODIC REVIEW OF DEVELOPER'S COMPLIANCE**

**10.1. Purpose.** Pursuant to Section 65865.1 of the Development Agreement Statute and Sections 17.10.220–17.10.280 of the Code, the City and Developer shall conduct an annual review of this Agreement and all actions taken pursuant to the terms of this Agreement. The provisions of this Section 10 are intended to establish the review process under this Agreement for purposes of Section 17.10.220 of the Code.

**10.2. Review Procedure.** In conducting the required initial and annual reviews of Developer's compliance with this Agreement, the Planning Director shall follow the process set forth in this section as of the Effective Date. By March 1<sup>st</sup> of each year (the "**Annual Review Date**"), Developer shall provide a letter to the Planning Director containing evidence to show compliance with this Agreement. The Planning Director's review shall be limited to compliance with Developer's obligations under this Agreement. The letter from Developer shall set forth in reasonable detail Developer's compliance with its obligations under this Agreement. If the Planning Director determines that such evidence is insufficient for the Planning Director's regular periodic review, or if Developer fails to submit any evidence, then prior to seventy-five (75) days of the Annual Review Date, the Planning Director shall deliver or mail written notice to Developer of Developer's failure to submit any evidence or specifying the additional information reasonably required by the Planning Director in order to review Developer's good faith compliance with the Agreement. Developer shall have thirty (30) days after mailing or delivery of such written notice by the Planning Director in which to respond to the Planning Director. If Developer fails to provide such information to the Planning Director within the thirty (30) day period, the Planning Director shall not find that Developer has complied in good faith with the terms of the Agreement.

**10.3. Finding of Compliance.** Within forty (40) days after Developer submits its letter, the Planning Director shall review the information submitted by Developer and all other available evidence on Developer's compliance with this Agreement. All such available evidence shall, upon receipt of the City, be made available as soon as possible to Developer. The Planning Director shall notify Developer in writing whether Developer has complied with the terms of this Agreement. If Planning Director finds Developer in compliance, then the Planning Director, upon request of developer, shall issue a certificate of compliance for such period reviewed, which shall be in recordable form and may be recorded by the developer in the official records of

Santa Clara County. The issuance of a certificate of compliance by the Planning Director shall conclude the review for the applicable period for which the finding was made and such determination shall be final in the absence of fraud.

**10.4. Failure to Find Good Faith Compliance.** If Planning Director finds Developer is not in compliance, then the Planning Director shall proceed in the manner provided in Section 17.10.240 of the Code as that Section is in effect as of the Effective Date, attached hereto as **Exhibit E**, subject further to the procedures set forth in Section 10.6 hereof. The City's failure to timely complete the annual review is not deemed to be a waiver of the right to do so at a later date.

**10.5. Effect on Transferees.** If Developer has effected a transfer of a Phase under the DDA, then the annual review hereunder shall be conducted separately with respect to each Party holding such Phase, and the Planning Director, and if appealed, the City Council shall make its determinations and take its actions separately with respect to each Party pursuant to Chapter 17.10 of the Code as that Chapter is in effect as of the Effective Date, as modified by Section 7.5 hereof. If the City Council terminates, modifies or takes such other actions as may be specified in Chapter 17.10 of the Code and this Agreement in connection with a determination that such Party has not complied with the terms and conditions of this Agreement, such action by the Planning Director or City Council shall be effective only as to the Party to whom the determination is made and the portions of the Project Site in which such Party has an interest.

**10.6. Notice and Cure Rights.** Notwithstanding anything in Chapter 17.10 of the Code, if the Planning Director makes a finding of non-compliance, or if the City Council overrules a Planning Director finding of compliance, then before any proceedings may be undertaken to modify or terminate this Agreement under Sections 17.10.270 of the Code as those sections are in effect as of the Effective Date, attached hereto as **Exhibit F**, the City Council shall first specify to Developer the respects in which Developer has failed to comply, and shall also specify a reasonable time for Developer to meet the terms of compliance, which time shall be not less than thirty (30) days and shall be reasonably related to the time necessary for Developer to adequately bring its performance into good faith compliance with the terms of this Agreement. If the areas of noncompliance specified by the City Council are not perfected within such reasonable time limits herein prescribed, then such non-performance shall constitute an "**Event of Default**" hereunder and, subject to the rights of Mortgagees provided under Section 12.2 hereunder, the City Council may then by noticed hearing, terminate, modify or take such other actions as may be specified in Chapter 17.10 of the Code as that Chapter is in effect as of the Effective Date.

## **11. AMENDMENT; TERMINATION**

**11.1. Amendment or Termination.** Except as otherwise provided herein, this Agreement may only be amended or terminated with the mutual written consent of the Parties. The amendment or termination, and any required notice thereof, shall be accomplished in the manner provided in the Development Agreement Statute and Chapter 17.10 of the Code as of the Effective Date as modified by Section 10.6 hereof. Notwithstanding anything to the contrary in this Agreement, this Agreement may be terminated by the City in the event of a termination of the DDA under Section 13.1.5 thereof; as to any portion of the Project Site that Developer fails

to "Take Down" in accordance with and as defined in the DDA; or as to any portion of the Project Site for which the Ground Lease applicable thereto has terminated.

**11.2. Amendment Exemptions.** No amendment of a Project Approval or Subsequent Project Approval, or the approval of a Subsequent Project Approval, shall require an amendment to this Agreement. Upon approval, any such matter shall be deemed to be incorporated automatically into the Project and vested under this Agreement (subject to any conditions set forth in the amendment or Subsequent Project Approval). Notwithstanding the foregoing, in the event of any direct conflict between the terms of this Agreement and a Subsequent Approval, or between this Agreement and any amendment to a Project Approval or Subsequent Project Approval, the terms of this Agreement shall prevail.

**12. TRANSFER OF ASSIGNMENT; RELEASE; RIGHTS OF MORTGAGEES; CONSTRUCTIVE NOTICE**

**12.1. Permitted Transfer of this Agreement.** Developer shall have the right to assign or transfer all or any portion of its interest, rights or obligations under this Agreement to a Transferee or a Phase Developer in accordance with the terms and conditions set forth in the DDA, provided that the Transferee shall have entered into a binding AA&R of this Development Agreement acknowledging the Transferee's rights and obligations hereunder. Developer shall remain liable for all obligations and requirements under this Agreement after the effective date of the transfer as to the transferred property only to the same extent that Developer retains liability under the terms of the DDA and as set forth in the AA&R. Notwithstanding anything to the contrary contained in this Agreement, a default under this Agreement or any AA&R or Ground Lease, as applicable, by any Transferee or Phase Developer (collectively, a "**Transferee Default**") shall not constitute a default by Developer with respect to any other portion of the Project Site that is not owned or controlled by the Person that is in default and such Transferee Default shall not entitle City to terminate or modify this Agreement with respect to such other portion of the Project Site. The City is entitled to enforce each and every such obligation assumed by the Transferee directly against the Transferee as if the Transferee were an original signatory to this Agreement with respect to such obligation. Accordingly, in any action by the City against a Transferee to enforce an obligation assumed by the Transferee, the Transferee shall not assert any defense against the City's enforcement of performance of such obligation that is attributable to Developer's breach of any duty or obligation to the Transferee arising out of the transfer or assignment, the Development Assignment and Assumption Agreement, the purchase and sale agreement, or any other agreement or transaction between Developer and the Transferee.

**12.2. Rights of Mortgagees; Not Obligated to Construct; Right to Cure Default.**

Notwithstanding anything to the contrary contained in this Agreement (including without limitation those provisions that are or are intended to be covenants running with the land), the rights and obligations of a mortgagee, including any mortgagee who obtains title to the Project Site or any portion thereof as a result of foreclosure proceedings or conveyance or other action in lieu thereof, or other remedial action ("**Mortgagee**") or a lender under a Mezzanine Loan

("Mezzanine Lender") shall be identical to the rights and obligations provided to such Mortgagee under the terms and conditions of Article 23 of the DDA, which provisions are attached hereto as **Exhibit G** and incorporated by reference herein, except that reference to an "Event of Default" thereunder shall mean an Event of Default occurring hereunder, references to "Agreement" thereunder shall mean this Agreement and all other defined terms therein not defined in this Agreement shall be as defined in the DDA.

12.2.1. Delivery of Notices of Default. If City receives a written notice from a Mortgagee or from Developer requesting a copy of any notice of default delivered to Developer hereunder and specifying the address for service thereof, then City shall deliver to such Mortgagee at such Mortgagee's cost (or Developer's cost), concurrently with service thereon to Developer, any notice of default delivered to Developer under this Agreement, including, without limitation, under Section 10.6 hereof. In accordance with Section 2924 of the California Civil Code, City hereby requests that a copy of any notice of default and a copy of any notice of sale under any mortgage or deed of trust be mailed to City at the address shown on the first page of this Agreement for recording.

12.2.2. Cure of Default or Breach. A Mortgagee shall have the right, at its option, to cure any default or breach by Developer under this Agreement (including, without limitation, a noticed default under Section 10 hereunder) within the same time period as afforded a Mortgagee under the DDA and such rights and obligations shall in all respects be identical to the rights and obligations afforded it under the DDA.

**12.3. Constructive Notice.** Every person or entity who now or hereafter owns or acquires any right, title or interest in or to any portion of the Project or the Project Site and undertakes any development activities at the Project Site is, and shall be, constructively deemed to have consented and agreed to, and is obligated by, all of the terms and conditions of this Agreement, whether or not any reference to this Agreement is contained in the instrument by which such person acquired an interest in the Project or the Project Site.

### **13. ENFORCEMENT OF AGREEMENT; MATERIAL BREACH; DISPUTE RESOLUTION**

**13.1. Enforcement.** The only parties to this Agreement are the City and Developer. This Agreement is not intended, and shall not be construed, to benefit or be enforceable by any other person or entity whatsoever.

**13.2. Material Breach.** For purposes of this Agreement, a Material Breach by Developer under the DDA shall be considered a default under this Agreement. Notwithstanding anything to the contrary contained in this Agreement, if a Transferee defaults under this Agreement or any AA&R or Ground Lease, as applicable, such default shall not constitute a default by Developer with respect to any other portion of the Project Site hereunder and shall not entitle City to terminate or modify this Agreement with respect to such other portion of the Project Site except to the extent that termination is allowed under the DDA.

#### **13.3. Remedies.**

##### 13.3.1. Remedies.

13.3.1.1. Specific Performance. In addition to the provisions relating to periodic review and Events of Default as set forth in Section 10 hereof, upon a default by either Party hereunder, the aggrieved Party may institute proceedings to compel injunctive relief or specific performance to the extent permitted by law (except as otherwise limited by or provided in this Agreement) by the Party in breach of its obligations, including without limitation, seeking an order to compel payment of amounts due under this Agreement. Nothing in this Section 13.3.1 shall require a Party to postpone instituting any injunctive proceeding if it believes in good faith that such postponement will cause irreparable harm to such Party.

13.3.1.2. Limited Damages. The Parties have determined that except as set forth in this Section 13.3.1.2: (i) monetary damages are generally inappropriate, (ii) it would be extremely difficult and impractical to fix or determine the actual damages suffered by any Party as a result of a breach hereunder and (iii) equitable remedies and remedies at law not including damages are particularly appropriate remedies for enforcement of this Agreement. Except as otherwise expressly provided below to the contrary (and then only to the extent of actual damages and not consequential, punitive or special damages, each of which is hereby waived by the Parties), no Party would have entered into or become a Party to this Agreement if it were to be liable in damages under this Agreement. Consequently, the Parties agree that no Party shall be liable in damages to any other Party by reason of the provisions of this Agreement, and each covenants not to sue the other for or claim any damages under this Agreement and expressly waives its right to recover damages under this Agreement, except as follows: actual damages only shall be available as to breaches that arise out of (a) the failure to pay sums as and when due under this Agreement, but subject to any express conditions for such payment set forth in this Agreement, (b) the failure to make payment due under any indemnity in this Agreement, or (c) the requirement to pay attorneys' fees and costs as set forth in Section 13.3.2 or when required by an arbitrator or a court with jurisdiction. For purposes of the foregoing, "actual damages" shall mean the actual amount of the sum due and owing under this Agreement, with interest as provided by law, together with such judgment collection activities as may be ordered by the judgment, and no additional sums.

13.3.1.3. Certain Exclusive Remedies/Termination. The exclusive remedies for any Material Breach that does not result in a termination of the DDA shall be those remedies exercisable by the Parties in Section 21.3.3 of the DDA. For any Material Breach that results in the termination of the DDA or a partial termination of the DDA, the City's remedy hereunder shall be the right to terminate this Agreement concurrent with the termination of the DDA, but only as to that portion of the Property for which the City terminated the DDA.

13.3.2. Attorneys' Fees. Should legal action be brought by either Party against the other for default under this Agreement or to enforce any provision herein, the prevailing party in such action shall be entitled to recover its reasonable attorneys' fees and costs.

**13.4. No Waiver.** Failure or delay in giving notice of default shall not constitute a waiver of default, nor shall it change the time of default. Except as otherwise expressly provided in this Agreement, any failure or delay by a Party in asserting any of its rights or remedies as to any default shall not operate as a waiver of any default or of any such rights or remedies; nor shall it deprive any such Party of its right to institute and maintain any actions or proceedings that it may deem necessary to protect, assert, or enforce any such rights or remedies.

**13.5. Future Changes to Regulations.** Pursuant to Section 65865.4 of the Development Agreement Statute, unless this Agreement is cancelled by mutual agreement of the Parties as provided for under Section 11.1, above, or terminated pursuant to Section 11.1 or 13.3, above, either party may enforce this Agreement notwithstanding any Future Changes to Regulations.

**13.6. Joint and Several Liability.** If Developer consists of more than one person or entity with respect to a legal parcel within the Project Site, then the obligations of each person and/or entity shall be joint and several.

#### **14. MISCELLANEOUS PROVISIONS**

**14.1. Entire Agreement.** This Agreement, including the preamble paragraph, Recitals and Exhibits, constitutes the entire understanding and agreement between the Parties with respect to the subject matter contained herein.

**14.2. Binding Covenants; Run With the Land.** From and after recordation of this Agreement, all of the provisions, agreements, rights, powers, standards, terms, covenants and obligations contained in this Agreement shall be binding upon the Parties and, subject to Section 9 above, their respective heirs, successors (by merger, consolidation, or otherwise) and assigns, and all persons or entities acquiring the Project Site, any lot, parcel or any portion thereof, or any interest therein, whether by sale, operation of law, or in any manner whatsoever, and shall inure to the benefit of the Parties and their respective heirs, successors (by merger, consolidation or otherwise) and assigns. Subject to the limitations on transfers set forth in Section 12 above, all provisions of this Agreement shall be enforceable during the term hereof as equitable servitudes and constitute covenants and benefits running with the land pursuant to applicable law, including but not limited to California Civil Code Section 1468.

**14.3. Applicable Law and Venue.** This Agreement has been executed and delivered in and shall be interpreted, construed, and enforced in accordance with the laws of the State of California. All rights and obligations of the Parties under this Agreement are to be performed in the City of Santa Clara, and the County of Santa Clara shall be the venue for any legal action or proceeding that may be brought, or arise out of, in connection with or by reason of this Agreement. All references in this Agreement to the Code, or California or federal laws or statutes, shall mean such laws, regulations and statutes as they may be amended from time to time, except to the extent a contrary intent is stated.

**14.4. Construction of Agreement.** The Parties have mutually negotiated the terms and conditions of this Agreement and its terms and provisions have been reviewed and revised by legal counsel for both City and Developer. Accordingly, no presumption or rule that ambiguities shall be construed against the drafting Party shall apply to the interpretation or enforcement of this Agreement. Language in this Agreement shall be construed as a whole and in accordance with its true meaning. The captions of the paragraphs and subparagraphs of this Agreement are for convenience only and shall not be considered or referred to in resolving questions of construction. Each reference in this Agreement to this Agreement or the DDA shall be deemed to refer to this Agreement or the DDA as amended from time to time pursuant to the provisions

of this Agreement or the DDA, as applicable, whether or not the particular reference refers to such possible amendment.

**14.5. Project Is a Private Undertaking; No Joint Venture or Partnership.**

14.5.1. Private Development. The development proposed to be undertaken by Developer on the Project Site is a private development, except for that portion to be devoted to public improvements to be constructed by Developer in accordance with the DDA and the Project Documents. City has no interest in, responsibility for, or duty to third persons concerning any of said improvements. Developer shall exercise full dominion and control over the Project Site, subject only to the limitations and obligations of Developer contained in this Agreement or in the DDA, Development Requirements, or other Project Documents.

14.5.2. No Joint Venture or Partnership. Nothing contained in this Agreement, or in any document executed in connection with this Agreement, shall be construed as creating a joint venture or partnership between City and Developer. Neither Party is acting as the agent of the other Party in any respect hereunder. Developer is not a state or governmental actor with respect to any activity conducted by Developer hereunder.

**14.6. Recordation.** Pursuant to Section 65868.5 of the Development Agreement Statute and Section 17.10.390 of the Code as of the Effective Date, the City Clerk shall have a copy of this Agreement recorded with the County Recorder of Santa Clara County within ten (10) days after execution of the Agreement or any amendment thereto, with costs to be borne by Developer. It is understood and agreed by Developer and the City that the recordation of this Agreement shall affect only Developer's interest in the Project Site (including any real property acquired by either of them after the Effective Date).

**14.7. Signature in Counterparts.** This Agreement may be executed in duplicate counterpart originals, each of which is deemed to be an original, and all of which when taken together shall constitute one and the same instrument.

**14.8. Time of the Essence.** Time is of the essence in the performance of each and every covenant and obligation to be performed by the Parties under this Agreement.

**14.9. Notices.** Any notice or communication required or authorized by this Agreement shall be in writing and shall not be effective for any purpose unless it is in writing and given or served in the same manner and subject to the same terms as set forth in Section 29.33 of the DDA.

**14.10. Limitations on Actions.** Any decision of the City Council made pursuant to Chapter 17.10 of the Code shall be final. Any court action or proceeding to attack, review, set aside, void, or annul any final decision or determination by the City Council shall be commenced within ninety (90) days after such decision or determination is final and effective. Any court action or proceeding to attack, review, set aside, void or annul any decision of the City taken pursuant to Chapter 17.10 of the Code shall be commenced within ninety (90) days after said decision is final, pursuant to Section 17.10.420(b) of the Code.

**14.11. Severability.** If any term, provision, covenant, or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions of this Agreement shall continue in full force and effect unless enforcement of the remaining portions of the Agreement would be unreasonable or grossly inequitable under all the circumstances or would frustrate the purposes of this Agreement.

**14.12. Public Records Law.** Developer understands and agrees that under the State Public Records Law (Government Code Section 6250 *et seq.*), this Agreement and any and all records, information, and materials submitted to the City hereunder are public records subject to public disclosure. To the extent that Developer in good faith believes that any financial materials reasonably requested by City constitutes a trade secret or confidential proprietary information protected from disclosure under the Public Records Law and other applicable laws, Developer shall mark any such materials as such, and City will attempt to maintain the confidentiality to the extent permitted by law.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the last day and year written below.

CITY

CITY OF SANTA CLARA, a municipal corporation

By: Rajeev Batra  
Name: Rajeev Batra  
Title: Interim City Manager

Date: August 12, 2016

ATTEST:

Approved as to form:

RT  
City Clerk

RICHARD E. NOSKY, JR.,  
City Attorney

By: Richard Nosky  
Name: Richard Nosky  
Title: City Atty

Approved on July 12, 2016

City Council Ordinance No. 1956

[SIGNATURES CONTINUED ON FOLLOWING PAGE]

California All-Purpose Acknowledgment

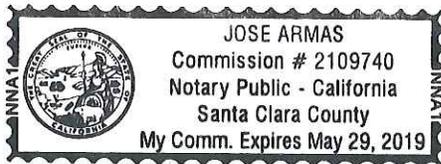
CIVIL CODE § 1189

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  
COUNTY OF SANTA CLARA } SS

On August 12, 2016, before me, Jose Armas, a Notary Public, personally appeared Rajeev Batra 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.



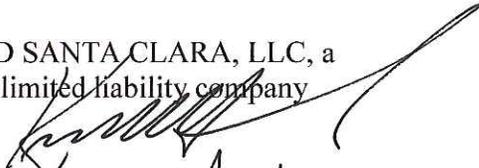
WITNESS my hand and official seal.

*Jose Armas*  
SIGNATURE OF NOTARY PUBLIC

THIS CERTIFICATE MUST BE ATTACHED TO THE DOCUMENT DESCRIBED BELOW:  
Development Agreement  
City Place  
Related Santa Clara

**DEVELOPER**

RELATED SANTA CLARA, LLC, a  
Delaware limited liability company

By: 

Name:

Kenneth A. Hummel

Title:

Executive Vice President

Date:

August 9th, 2016

ACKNOWLEDGMENT

State of New York )  
County of NEW YORK ) ss.

On the 9<sup>th</sup> day of AUGUST in the year 2016 before me, the undersigned, a Notary Public in and for said State, personally appeared KENNETH A. HINWICK personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

(Notarial Seal)

Yvette Schlesinger  
Notary Public

**YVETTE SCHLESINGER**  
**Notary Public, State of New York**  
**No. 01SC6175100**  
**Qualified in New York County**  
**Commission Expires October 1, 2019**

EXHIBIT A  
PROJECT SITE

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

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

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

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

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

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

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

Containing 238.57 acres, more or less.

Description prepared by BKF Engineers, in June, 2016.

Signed David Darling 6/08/2016  
Date



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

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

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

**BASIS OF BEARINGS**

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

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



**EXHIBIT B  
CITY PLACE  
PROJECT SITE**

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



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

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

## EXHIBIT C

### Development Fees

In accordance with Section 3 of the Development Agreement, the only Development Fees currently applicable to the Project are the Development Fees listed in this Exhibit C (the "Existing Development Fees").<sup>1</sup> The Existing Development Fees shall be payable at the rates set forth in this Exhibit C, and unless otherwise specified herein, any future increase in Existing Development Fees and any new Development Fees set forth in this Exhibit C shall be subject to the limitations set forth in Section 3.3 of the Development Agreement. In addition to the Development Fees set forth in this Exhibit C, Developer shall be responsible for the Exactions as more particularly set forth in Section 4 of the Development Agreement.

Fee Description	Section Reference	Fee Calculation	Implementation
Local Traffic Impact Fee	SCCC 17.15.330 Development Agreement Section 3.4	<u>Residential</u> : \$0	To be paid in accordance with Section 3.4 of the Development Agreement.
		<u>Office</u> : \$1.00 per s.f.	
		<u>Hotel</u> : \$400 per hotel room.	
		<u>Retail</u> : \$0	
Regional Traffic Fees	Development Agreement Section 3.5	<u>Residential</u> : \$.50	To be paid in accordance with Section 3.5 of the Development Agreement; fixed for Term of Development Agreement.
		<u>Office</u> : \$1.00 per s.f.	
		<u>Hotel</u> : \$0 per hotel room.	
		<u>Retail</u> : \$0	
Dwelling Unit Tax	Revenue and Finance Code Section 3.15.020	\$15.00 for each dwelling unit containing not more than one bedroom, plus \$5.00 for each additional	To be paid by or on behalf of Developer in accordance with

<sup>1</sup> Development Fees do not include fees charged by government agencies other than the City, such as the school facilities impact fee pursuant to Government Code Section 65995, et seq.

Fee Description	Section Reference	Fee Calculation	Implementation
	Development Agreement Section 4.3.4	bedroom contained therein (up to \$50.00 per unit).	SCCC Code Section 3.15.020, to be credited toward City Costs in accordance with Section 4.3.4.
Electric Utility Improvement Fees	17.15.210(b); Table II-A Development Agreement Section 3.2	<u>Electric Utility Improvements – Residential Underground</u> : \$1,234.08/unit  <u>Electric Utility Improvements – Commercial Underground</u> : [see Load Development Fee]  <u>Meters</u> : \$0  <u>Load Development Fee</u> : \$111.73/KVA	To be paid in accordance with the requirements of Section 17.15.210(b).
Street Lighting Fee	17.15.210(d) Development Agreement Section 3.2	\$21.23 per front foot (if applicable)	As part of the Project, Developer is obligated to install certain overhead and underground street lighting poles and luminaires (“street lights”) serving the Project. In recognition that Developer, and not City, will be installing or replacing most street lights within and fronting the Project, the Street Lighting Fee shall only apply to each linear foot of frontage that retains (and does not replace) existing street lights previously installed by the City.

Fee Description	Section Reference	Fee Calculation	Implementation
Water Utility Fee (New Facilities)	17.15.210; Table II(k) Development Agreement Section 3.2	\$80.00 per front foot (if applicable)	As part of the Project, Developer is obligated to install certain water utility facilities serving the Project that will replace existing water mains and/or would otherwise be the City's obligation to construct under Section 17.15.210 (collectively, "Water Utility Facilities"). In recognition that Developer, and not City, will be installing or replacing most of the Water Utility Facilities as part of the Project, the Water Utility Fee shall only apply to each linear foot of frontage that will either retain (and not replace) existing Water Utility Facilities previously installed by the City, or that will be served by new Water Utility Facilities installed by the City.
Existing Water Mains Charge	17.15.260; Table IV(h) Development Agreement Section 3.2	\$80.00 per front foot.	As part of the Project, Developer will be replacing certain existing off-site water utility facilities (the "Replacement Water Mains"). In recognition thereof, the Existing Water Mains Charge under Table IV(h) shall only apply to each linear foot of

Fee Description	Section Reference	Fee Calculation	Implementation
Existing Storm Drains and Sanitary Sewers	17.15.260; Table IV(i)(j)	Sanitary Sewers: \$0.00 Storm Drains: \$0.00	frontage that utilizes the existing water mains previously installed by the City. However, because Developer may also be replacing and/or upgrading certain off-site water mains previously installed by the City (or funding those costs), Developer shall receive a credit against any future Existing Water Mains Charges due and payable (to be memorialized in a letter from City to Developer) in an amount equal to the cost paid by Developer for the replacement or upgrade of such off-site water mains.
Street Improvement Fees	17.15.130 Development Agreement Section 3.2	<u>Street Improvements:</u> \$186.20 per frontage foot (commercial) \$87.70 per frontage foot (residential) <u>Sidewalk Improvements:</u> \$12.80 per square foot <u>Street Curbing Improvements:</u> \$32.00 per front foot	The fees for existing storm drains and sanitary sewers shown on Table IV are covered under the Storm Drain Outlet Charge and the Sanitary Sewer Outlet Charge; therefore, no fee is due under Table IV(i) or (j). As part of the Project, Developer is obligated to install certain street improvements that would otherwise be the subject of street improvement fees under Section 17.15.130 (collectively, "Street Improvements"). In

Fee Description	Section Reference	Fee Calculation	Implementation
Sanitary Sewer Connection Charge (Sewage Treatment Plant Expansion Connection Charge)	17.15.220(e)(f); Table V.A Development Agreement Section 3.2	<p><u>Residential</u>: \$1,140 per dwelling unit.</p> <p><u>Nonresidential (and Residential if an On-Site Treatment Facility is provided)</u>: \$4.30 per gallon per day of sanitary sewer discharge (as calculated by the City using the Santa Clara Water Pollution Control Plant – Specific Use Codes and Sewage Coefficient Table)</p>	<p>recognition that Developer, and not City, will be installing or replacing most Street Improvements fronting the Project, the Street Improvement Fees shall only apply to each linear foot of frontage that retains (and does not replace) existing street improvements previously installed by the City.</p>
			<p>Subject to an agreement with the San Jose/Santa Clara Water Pollution Control Plant, the per-gallon, per-day charge specified for nonresidential land uses shall also apply for residential development within a Phase if, at the time the charge is due, there exists an onsite recycled water treatment facility (any such facility, an “On-Site Treatment Facility”) to serve the Phase or the City has issued a building permit for the construction thereof. The Sanitary Sewer Connection Charge shall be calculated using the Santa Clara Water Pollution Control Plant – Specific Use Codes and Sewage Coefficient Table</p>

Fee Description	Section Reference	Fee Calculation	Implementation
			<p>(based on gallons per day per square foot of land use) <u>less</u> the estimated number of gallons of sewer flow projected to be diverted from the Santa Clara Water Pollution Control Plant by the On-Site Treatment Facility (such calculation being the "Assigned Capacity"). Assigned Capacity may be adjusted from time to time in accordance with SCCC Section 17.15.220(f) except that Developer will be entitled to receive a credit against future Sanitary Sewer Connection Charges if the adjustment shows that discharge volumes are less than the Assigned Capacity. City and Developer shall work cooperatively with the San Jose/Santa Clara Water Pollution Control Plant to memorialize and implement the Sanitary Sewer Connection Charge for the Project consistent with the foregoing principles.</p>
Sanitary Sewer Outlet Charge (for Sewer Conveyance)	17.15.220(c)(f); Table II(m) Development	<u>Residential</u> : \$4,218 per dwelling unit.  <u>Nonresidential (and Residential if an On-Site Treatment Facility is provided)</u> : \$8.60 per gallon per	The applicable fees would apply unless a reduction is determined appropriate by the City in accordance with this

<b>Fee Description</b>	<b>Section Reference</b>	<b>Fee Calculation</b>	<b>Implementation</b>
	Agreement Section 3.2	day of sanitary sewer discharge (as calculated by the City using the Santa Clara Water Pollution Control Plant – Specific Use Codes and Sewage Coefficient Table)	section. If, at the time the charge is due, there exists an On-Site Treatment Facility to serve the Phase or the City has issued a building permit for the construction thereof, the City, working cooperatively with Developer, will make a determination as to whether and to what extent the On-Site Treatment Facility would reduce the need for sewer conveyance facilities that would otherwise be installed by the City. Based upon such determination, the fee may be equitably reduced as reasonably determined by the City, working cooperatively with the Developer.
Storm Drainage Outlet Charge	17.15.220(b); Table II(o)  Development Agreement Section 3.2	\$6,246 per net acre	As part of the Project, Developer may install (or fund the City's installation of) certain offsite storm drainage improvements serving the Project. In recognition thereof, Developer shall receive a credit against any future Storm Drainage Outlet Charges due and payable (to be memorialized in a letter from City to Developer) in an

Fee Description	Section Reference	Fee Calculation	Implementation
Sanitary Sewer Outlet Charge	17.15.220(c); Table II(m) Development Agreement Section 3.2	Residential: the greater of \$367.00 per unit or \$6,246 per net acre  <u>Nonresidential</u> : \$6,246 per net acre	amount equal to the cost paid by Developer for such offsite storm drainage improvements, not to exceed the amount of the Storm Drainage Outlet Charges that would otherwise be due.
			The applicable fees would apply unless a reduction is determined appropriate by the City in accordance with this section. If, at the time the charge is due, there exists an On-Site Treatment Facility to serve the Phase or the City has issued a building permit for the construction thereof, the City, working cooperatively with Developer, will make a determination as to whether and to what extent the On-Site Treatment Facility would reduce the need for sanitary sewer outlet facilities that would otherwise be installed by the City. Based upon such determination, the fee may be equitably reduced as reasonably determined by the City, working cooperatively with the Developer.

**EXHIBIT D**

**PARK AMENITY AND DESIGN STANDARDS**

**[attached]**

**City of Santa Clara**  
**Parks & Recreation Department**  
**Park Amenity & Design Standards**

The City of Santa Clara Parks & Recreation design standards were developed by the Department of Parks & Recreation. The goal of the design standards is to identify the elements that are consistently found in the City of Santa Clara park system and to provide standard guidance to landscape architects, grounds maintenance staff and others as to what is acceptable. These standards will cover a wide range of park elements, identifying specific product types, materials and installation practices.

It is understood that City park sites should be easily accessible to the public by various modes of transportation: vehicular, bicycle, and pedestrian. Current Federal ADA accessibility guidelines must be incorporated into the design of parks, park facilities and amenities. ADA accessibility should be accommodated at all sites to the fullest extent practical. It is also understood that all new park facilities, elements and components must conform to the most recent uniform building codes, California laws, regulations and safety guidelines. Finally, where applicable, all current City ordinances, Public Works standards and Utilities standards will be followed. Such guidelines are published elsewhere.

The production of the City Park standards meets the following three objectives:

- The use of easily maintained, safe and consistent components implemented city wide.
- A document that clearly represents the City's standard parks components.
- Park facilities and amenities that incorporate the City's branding initiative.

Each section (chapter) may include text, images, and detail to clearly communicate the City's Park standards. Information in this document is not intended to replace or function as project specifications, construction documents, or contract documents. Construction plans and contract scope of service shall include all necessary details and specifications.

The design standards include:

- Chapter 1—Standard Park Amenities
- Chapter 2—Irrigation
- Chapter 3—Plant Palette
- Chapter 4—Ball Fields
- Chapter 5—Playgrounds
- Chapter 6—Play Courts (In progress)
- Chapter 7—Miscellaneous (In progress)
- Chapter 8—New Public Park Design, Review & Approval Process

These standards may be superseded at any time by publication of new standards.

For further information or guidance, please contact:

City of Santa Clara  
Parks & Recreation Department  
1500 Warburton Avenue  
Santa Clara CA 95050  
(408) 615-2260

## Chapter 1 – Standard Park Amenities

### Section 1—BARBEQUE GRILLS

1. DEFINITION
  - A. The purpose of this guideline is to establish minimum standards for barbeque grills and their installation.
  
2. STANDARD
  - A. One individual barbecue is required per two picnic tables.
  - B. A group size barbecue can be shared by four picnic tables.
  
3. ACCESSIBILITY
  - A. All barbecues shall be accessible to persons with disabilities.
  
4. APPLICATION
  - A. This section includes the following:
    - 1) Barbeque Grill Type
    - 2) Manufacturer
    - 3) Installation
  
5. SMALL BARBEQUE GRILL – NEIGHBORHOOD PARKS
  - A. The manufacturer: Kay Park Recreation Corporation.
  - B. Pedestal Grill—product number SB16NP. No substitutions are allowed.
  - C. Installation—poured in place concrete footing. The Pedestal Grill has a 20 x 15 inch grill surface. The depth of the hole must be 30 inches and the diameter 10 inches. Installation method and technique shall be according to the manufacturer’s guidelines.
  
6. LARGE BARBEQUE GRILL – NEIGHBORHOOD PARKS
  - A. The manufacturer: Kay Park Recreation Corporation.
  - B. Surface Mount Grill—Product number SPD450IG. The Surface Mount Grill has a 38 x 36 inch grill surface. No substitutions may be allowed upon approval by the Director of Parks & Recreation or his/her designee.
  - C. Installation—poured in place concrete footing. The depth of the hole must be 24 inches with an 18 inch diameter. Installation method and technique shall be according to the manufacturer’s guidelines.

## Section 2 – DRINKING FOUNTAINS

### 1. DEFINITION

- A. The purpose of this guideline is to establish minimum standards for drinking fountains and their installation.

### 2. APPLICATION

- A. This section includes the following:
  - 1) Manufacturer
  - 2) Water Fountain Type
  - 3) Installation
- B. Wall Mounted Drinking Fountain
- C. The manufacturer:
  - 1) Haws Corporation
  - 2) Dual height wall mounted, 14-gauge stainless steel drinking fountain with No. 4 satin finish. Product Number: 1119.14. Substitutions may be allowed upon approval by the Director of Parks & Recreation or his/her designee.
  - 3) Installation method and technique shall be according to the manufacturer's guidelines.
- D. Barrier Free Pedestal Drinking Fountain
  - 1) The manufacturer: Haws Corporation
  - 2) Barrier free pedestal drinking fountain with satin finish stainless steel bowl and green powder coated galvanized steel pedestal. Product Number: 3380. Substitutions may be allowed upon approval by the Director of Parks & Recreation or his/her designee.
  - 3) Installation method and technique shall be according to the manufacturer's guidelines.

### 3. FEATURES

- A. ADA accessible
- B. Dual height

## Section 3 - PARK BENCHES & PICNIC TABLES

1. DEFINITION
  - A. The purpose of this guideline is to establish minimum standards for park benches, picnic tables, and their installation.
  
2. STANDARD
  - A. Benches are required at playgrounds to person with disabilities.
  
3. ACCESSIBILITY
  - A. All benches shall be accessible to person with disabilities.
  
4. APPLICATION
  - A. This section includes the following:
    - 1) Manufacturer
    - 2) Park Bench Type
    - 3) Installation
  - B. Park Bench—with back support
    - 1) The manufacturer: Dumor Incorporated
    - 2) Heavy duty bench with back support and two arm rests. Product Number: Bench 58. Substitutions may be allowed upon approval by the Director of Parks & Recreation or his/her designee.
    - 3) Installation method and technique shall be according to the manufacturer's guidelines.
  - C. Park Bench—backless
    - 1) The manufacturer: Dumor Incorporated
    - 2) Heavy duty bench without back support or arm rests. Product Number: Bench 92. Substitutions may be allowed upon approval by the Director of Parks & Recreation or his/her designee.
    - 3) Installation method and technique shall be according to the manufacturer's guidelines.
  - D. Picnic Tables (Round)—ADA Accessible and with Game Board Option
    - 1) The manufacturer: Quick Crete Products Corp.
    - 2) Round Precast concrete picnic tables with beveled edges. Tables are ADA accessible. Product Number: examples include, QR42FC, QR42FC3. Substitutions may be allowed upon approval by the Director of Parks & Recreation or his/her designee.
    - 3) Installation method and technique shall be according to the manufacturer's guidelines.
  - E. Picnic Tables (Square or Rectangular)—ADA Accessible with Game Board Option
    - 1) The manufacturer: Quick Crete Products Corp.
    - 2) Rectangular Precast concrete picnic tables with beveled edges. Tables are ADA accessible. Product Number: examples include, QLBT72PT, QS42FC3. Substitutions may be allowed upon approval by the Director of Parks & Recreation or his/her designee.
    - 3) Installation method and technique shall be according to the manufacturer's guidelines.

## Section 4 – PARK RESTROOMS

### 1. DEFINITION

- A. The purpose of this guideline is to establish minimum standards for park restrooms. The Restroom building shall be custom designed and built at the designated park site to serve the specific program needs of the particular site.

### 2. STANDARD

- A. Restrooms are required serve to person with disabilities.
- B. The number of fixtures will typically follow the plumbing code once an occupant load of the park and programmed facilities has been calculated; this may be required at plan check. If a formal occupancy load has not been calculated for the park, or for programmed and informal areas of a park, such as unspecified multi-use or general use athletic fields, then a minimum of three toilets/urinals per gender for up to two (2) athletic fields is necessary. If the facility is a multi-field sports complex with 3 or more fields, then the number required may be increased to fully serve the intended load/capacity of the facility.
- C. Restroom Standard Loads/Fixtures

Male Occupancy	Quantity of water closet(s) & urinal(s)	Female Occupancy	Quantity of water closet(s)
1-100	1+1	1-25	1
		26-50	2
		51-100	3
101-200	2+2	101-200	4
201-400	3+3	201-300	6
		301-400	8
400+	1 fixture each per 500 additional	400+	Add 1 fixture per 125 additional

### 3. APPLICATION

- A. This section includes the following by fixture:
- 1) Manufacturer
  - 2) Fixture type
  - 3) Installation

- B. Toilet
  - 1) The manufacturer: American Standard Inc.
  - 2) AFWALL FloWise Elongated Flushometer Toilet. Product Number: 2257.001. High efficiency low consumption toilet. Operated from 1.1gpf to 1.6gpf. Substitutions may be allowed upon approval by the Director of Parks & Recreation or his/her designee.
  - 3) Installation method and technique shall be according to the manufacturer's guidelines.
- C. Flushometer
  - 1) The manufacturer: Sloan
  - 2) Flush valve for AFWALL FloWise Elongated Flushometer Toilet. Product Number: G2 Optima Plus. Substitutions may be allowed if flush valve is fully compatible with the specified toilet and upon approval by the Director of Parks & Recreation or his/her designee.
  - 3) Installation method and technique shall be according to the manufacturer's guidelines.
- D. Urinal
  - 1) The manufacturer: American Standard Inc.
  - 2) WASHBROOK FloWise Universal Urinal. Product Number: 6590.001. Ultra high efficiency low consumption urinal. Operated from 0.125gpf to 1.0gpf. Substitutions may be allowed upon approval by the Director of Parks & Recreation or his/her designee.
  - 3) Installation method and technique shall be according to the manufacturer's guidelines.
- E. Urinal Flushometer.
  - 1) The manufacturer: Sloan.
  - 2) ECOS Single Flush and Dual Flush Flushometer. Substitutions may be allowed if flush valve is fully compatible with the specified toilet and upon approval by the Director of Parks & Recreation or his/her designee.
  - 3) Installation method and technique shall be according to the manufacturer's guidelines.
- F. Faucet
  - 1) The manufacturer: Chicago Faucets Inc.
  - 2) HyTronic Contemporary Sink Faucet with Dual Beam Infrared Sensor. Product Number: 116.212.AB.1. Single-hole contemporary electronic integral spout 0.5gpm. Substitutions may be allowed upon approval by the Director of Parks & Recreation or his/her designee.
  - 3) Installation method and technique shall be according to the manufacturer's guidelines.
- G. Sink/Lavatory
  - 1) The manufacturer: American Standard.
  - 2) Lucerne Wall Hung Lavatory. Product Number: 0356.041. Single Center faucet hole. D shaped bowl, wall hung sink. Substitutions may be allowed upon approval by the Director of Parks & Recreation or his/her designee.
  - 3) Installation method and technique shall be according to the manufacturer's guidelines.
- H. Partitions
  - 1) The manufacturer: Bradley Corporation.
  - 2) Floor Mounted Overhead Braced Restroom Partitions. Product Number: Series 400 Sentinel. Options include stainless steel wrap around gravity hinge, stainless steel concealed slide latch, and continuous steel brackets. Substitutions may be allowed upon approval by the Director of Parks & Recreation or his/her designee.
  - 3) Installation method and technique shall be according to the manufacturer's guidelines.

I. Grab Bar

- 1) The manufacturer: BOBRICK Washroom Equipment.
- 2) 1.5 inch Diameter Stainless Steel Grab Bar with Snap Flange. Product Number: Series B-6806 Satin Finish. Placement and angle to be determined by Architect. Substitutions may be allowed upon approval by the Director of Parks & Recreation or his/her designee.
- 3) Installation method and technique shall be according to the manufacturer's guidelines.

J. Mirrors

- 1) The manufacturer: BOBRICK Washroom Equipment.
- 2) Mirror with Stainless Steel Channel Frame. Product Number: Series B-1656. Tempered Glass 24 x 36 inch mirror. Substitutions may be allowed upon approval by the Director of Parks & Recreation or his/her designee.
- 3) Installation method and technique shall be according to the manufacturer's guidelines.

## **Section 5 – TRASH CANS**

### **1. FEATURES**

- A. All trash receptacles shall be accessible to persons with disabilities and located immediately adjacent to an accessible path of travel.

### **2. STANDARD**

- A. Sufficient number of trash receptacles shall be provided to serve the users of the park along the path of travel and/or a convenient distance from a major park amenity, but no less than one for each park.

### **3. INSTALLATION**

- A. At least one trash receptacle shall be located within convenient proximity of each:
  - 1) Park building including community center and/or restroom.
  - 2) Picnic area
  - 3) Playground area
  - 4) Athletic fields and sports courts
  - 5) Entry into the park from the parking area

## Section 6 – SIGNAGE

### 1. DEFINITION

- A. The purpose of this guideline is to establish minimum standards for park signage which includes way-finding.
- B. All signs used in public park areas should have a cohesive design theme consistent with City standards and which incorporate current City branding.

### 2. DESIGN STANDARD

- A. Park signage includes:
  - 1) Directional signs to the public park (way-finding)
  - 2) Entry monument signs that designate the park name. Two alternatives are available:
    - a. Rectangular concrete sign with City seal and inset letters.
    - b. The traditional City Park Sign with brown wood plank with yellow inset letters
  - 3) Directory or way finding sign with map(s)
  - 4) Intra-park directional signage
  - 5) Park amenity signs

### 3. APPLICATION

- A. The Park name sign and/or monument sign should be visible from multiple angles and associated with public access from public right of way near a major intersection or point of access and have visual prominence.
- B. The park name sign must not be obscured by plants or utility boxes.
- C. The City seal is required to be on the park name sign and/or the entry monument sign.
- D. Any use of the City seal must be approved in advance by the City Manager's Office.
- E. Coordinate an inspection date & time with Deputy Parks & Recreation Director. Inspection to be conducted by Deputy Parks & Recreation Director, or designee.
  - 1) Review accuracy of construction
  - 2) Do not proceed with the work until unsatisfactory conditions have been corrected.

### 4. QUALITY ASSURANCE

- A. Information herein contained indicates the types of materials and the quality of workmanship full compliance with the established City signage standard.
- B. The work covered under this section includes supplying and installing all materials and equipment required for park signage.

### 5. MATERIALS

- A. Concrete sign (see Attachment 1.0)
- B. Beveled on all eight (8) edges above monument base.
  - 1) 30"h, 96"w, 6"d

- 2) Emblem 11" diameter affixed with vandal proof screw in center.
  - a. Park sign letters 6"h recessed 1/2"
  - b. City letters 3.25"h recessed 1/4"
  - c. Recessed field area 1/2" deep
  - d. Border top, right side, bottom 2"
  - e. Border at city emblem 20"w, 16" h
  - f. Two holes @ 56" oc equally spaced (28" from center) with threaded acme nut embedded into concrete top and bottom for lifting eye on top and anchor rod on bottom.
  - g. Finish smooth top, sides and bottom, sign field is a light exposed aggregate.
  - h. Back of sign is sanded finish.
  - i. All edges are have a finished radius 3/8"
  - j. Contact City for current fonts to match current City branding and logos.
  - k. Sign base 12" h, 84"w, 12"d
  - l. Mow band 36"d, 108"w
- C. Wood Sign
  - a. Sign board 2x12x96 (1.5x11 nominal)
  - b. Rot resistant wood (cedar, redwood, etc.)
  - c. Corners radius 6"
  - d. Letters all caps 5.5"h
  - e. Posts 6x6x50" (5.5x5.5x60 nominal)
  - f. Top of post chamfered 1" all four edges
  - g. Upper sign mounted 5" from top of post to top edge of sign
  - h. Lower sign mounted 20" from top of post to top edge of sign
  - i. Posts added depth of one inch to accept sign
  - j. Edges of signs radius 1/2" front and back
  - k. Mow band 30" d, 120"w
  - l. Sign surface mounted to H-bracket embedded into concrete
  - m. H-bracket 4"x24"x1/4"
  - n. Sign boards mounted to posts using 4 carriage bolts (3/8" x 5") and the nut is at the back of the post.
  - o. Nut recessed into the post to avoid injuries.
  - p. Bolts should be flush with back of post.
  - q. Posts should be 6' apart and evenly spaced off the center line of the mow band
  - r. Paint Color—Entire sign has to be primed.
  - s. Color of letters—Olympic (a yellow).
  - t. Color of the stain—(Oxford Brown).



## Chapter 2 – Irrigation

### Section 1—GENERAL IRRIGATION

#### 1. DEFINITION

- A. The purpose of this guideline is to establish minimum standards for general irrigation in parks and park facilities with athletic fields.

#### 2. SCOPE: The Work of this Section shall consist of furnishing all labor, materials, equipment, appliances and services necessary for the execution and completion of all **Irrigation Work** as shown on the Plans and as described in the Standards including, but not necessarily limited to, the following:

- A. Provide complete operating irrigation systems;
- B. Installation of new and refurbishment of existing irrigation systems as necessary to provide complete operating irrigation systems for all planting areas within the Work Limits.
- C. 120 volt electrical service for and connection to the controller.
- D. Irrigation Controller within lockable Controller Enclosure as designated on the Approved Plans.
  - 1. Controller Enclosure Shall be stainless steel, sized to fit the controller and the other electrical components, irrigation controller electrical pedestal shall be stainless steel enclosure, or City approved equal where applicable.
- E. Coordination with Work of other Sections and/or City Inspectors,
- F. Sleeving.
- G. Testing.
- H. Clean-up.
- I. As-Builts by means of Global Positioning System (GPS).
- J. Replacements, Repairs, Guarantees and Warranty Work.

#### 3. STANDARDS

- A. The irrigation design must include a holistic approach to landscape maintenance and management with the aim of conserving water and applying drought control techniques. The preference of irrigation water source should be in the following priority order:
  - 1. Recycled Water (whenever connection to recycled water supply line is available and/or feasible)
  - 2. Potable Water
- B. Drip irrigation should be included in the irrigation design wherever and whenever applicable.
- C. The irrigation design must provide for the separation of irrigation zones and sprinkler type based on the water requirements of the plants.
- D. The work covered under this section includes supplying and installing all materials and equipment required for a complete operational automatic irrigation system.

- E. The information herein contained indicates the types of materials and the quality of workmanship to ensure maximum efficacy of the irrigation system.
- F. Completion of work shall mean the full and exact compliance and conformity with all the provisions of the Contract Documents.

4. SUBMITTALS

- A. Provide manufacturer's product data sheets for each item specified.
- B. Due to maintenance and repair issues, there shall be no substitutions for the materials listed in Parks and Recreation Specifications unless specifically authorized by the Director of Parks and Recreation or a designee.
- C. Product certificates shall be required by manufacturers for products not specifically named on plans, or Parks & Recreation Specifications certifying that each product furnished meets this specification, specifications shown on drawings.
- D. Materials List: Contractor shall submit a complete materials list for approval by the Public Works Landscape Inspector prior to performing any Work. Catalog data and full descriptive literature must be submitted whenever the use of items different than those specified is requested. Notarized certificate must be submitted by plastic pipe and fitting manufacturer indicating that material complies with the Project Specifications, unless material has been previously approved, and used on other projects by City. Material list shall be submitted using the following format:

<u>Item</u>	<u>Description</u>	<u>Manufacturer</u>	<u>Model No.</u>
1	Pressure Supply Line	Lasco	Sch. 40
2	Lawn Head	Rainbird	2400

- E. Provide a one year warranty from the date of Substantial Completion to cover all defective material and workmanship.

5. QUALITY ASSURANCE

- A. Landscape irrigation system installation shall only be performed by a firm that has a minimum of five (5) years full time experience with similar projects in the successful installation of underground landscape irrigation systems. The firm shall be state certified or a licensed subcontractor or a locally registered subcontractor in California. Crews shall be controlled and directed by a foreman who is thoroughly familiar with the type of materials being installed and the manufacturer's recommended methods of installation.
- B. Manufacturer's Qualifications:
  - 1. Employ only manufacturers with at least five (5) years' experience making the specified materials as a current catalog and regular production item.

6. DESIGN MODIFICATIONS

- A. Slight layout modifications may be made only as necessary to meet field conditions and only as acceptable to the Landscape Architect or the Architect. Piping shown on drawings is diagrammatically routed for clarity -route to avoid conflict with specimen plants and adjust as necessary to landscape construction.

B. Design Criteria:

1. The Architect or Landscape Architect shall have the right, at any stage of the operations, to reject any and all work and materials, which, in their opinion, do not comply with the requirements of the Contract Documents. Such rejected work or material shall be immediately removed from the site and acceptable work or material substituted in its place.
2. Contractor shall be responsible for verification at the site of all conditions and dimensions shown on the drawings prior to commencement of work.

7. AS-BUILT DRAWING/CLOSEOUT SUBMITTALS

- A. After completion of piping installation, the Contractor shall furnish to the Architect a reproducible "AS-BUILT" drawing showing all sprinkler heads, valves, and pipelines to reasonable scale, and provide a minimum of two dimensions taken from fixed obvious objects to point of connection, directional turns of all mainline piping, each automatic and manual control valve, and quick coupling valve. The plans shall be provided on or before the date of work review for provisional acceptance. GPS coordinates for each item listed below, shall be noted on the plans and recorded on Compact Disk (CD) in WR format, on an Excel spread sheet to City for approval.
- B. The Contractor shall also furnish a drawing showing a graphic representation of sprinkler zones and recommendations for controller time settings for each valve.
  1. Instruction sheets and parts lists covering all operating equipment shall be bound into folders and furnished to the Architect.
  2. Backflow preventer test report (passing).
- C. Show locations and depths of the following items:
  1. Point of connection, Water Meter and Backflow Assembly. (GPS)
  2. Routing of irrigation pressure lines (dimension maximum 100 feet along routing).
  3. Irrigation remote control valves, master valves filters, etc. (GPS)
  4. Quick coupling valves. (GPS)
  5. Routing of control wires.
  6. Controllers. (GPS)
  7. Flow Meters. (GPS)
  8. Related equipment (as may be directed).

8. INSPECTIONS

- A. Inspections will be required for:
  1. Pressure test of irrigation main line.
  2. System layout.
  3. Coverage test.
  4. Final inspection/start of maintenance.
  5. Final acceptance.
- B. Inspection Requests: Contractor shall notify the Public Works Landscape Inspector a minimum of 48 hours (two working days) in advance for all inspections including the following:
  1. Pressure supply line installation and testing
  2. System layout
  3. Coverage tests
  4. Final Inspection

- C. Evidence of Inspection by Others: When inspections have been conducted by other than the Planning Inspector and the respective Parks Division Supervisor, Contractor shall show evidence of when and by whom these inspections were made.
- D. Requirements for Inspection: No inspection is to commence without "record" prints available on the site. In the event Contractor calls for an inspection without up to date "record" prints, without completing previously noted corrections, or without preparing the system for inspection, the inspection may be canceled.
- E. Closing in Un-inspected Work: Do not allow or cause any of the Work of this Section to be covered up or enclosed until it has been inspected, tested and approved by the Public Works Landscape Inspector.
- F. Coverage test: When the irrigation system is completed, Contractor shall perform a coverage test in the presence of the Public Works Landscape Inspector to determine if the water coverage for planting areas is complete and adequate. The Public Works Landscape Inspector and the Parks Division Supervisor must accept this test before planting may commence.
- G. Hydrostatic test:
  - 1. Prior to the installation of any valves, all pressure lines shall be tested under a hydrostatic pressure of 150 psi for a period of not less than two hours. Ball valves and pressure gauges shall be installed at all terminating ends of the mainline and the remainder of all points in between shall be capped and the line fully charged with water after all air has been expelled from the line.
  - 2. All hydrostatic tests shall be made in the presence of the Public Works Landscape Inspector or Inspector's designated representative. No pressure line shall be backfilled until it has been inspected, tested, approved in writing, and the mainline and valve locations have been noted on the "record" prints.
  - 3. Contractor shall furnish the necessary force pump and all other test equipment, and shall perform the test.

## 9. UTILITIES

- A. Prior to excavation, verify in the field the location and depth of all new and existing utilities including potable and/or recycled water mains, existing irrigation, existing pathway lighting wiring, sewer lines, storm drainage and other work that may be damaged by the Contractor's construction.

## 10. GUARANTEES

- A. The entire irrigation system, including all Work done under this Contract, shall be guaranteed against all defects and fault of material and workmanship. The Contractor shall furnish warranties, in writing, certifying that the quality and workmanship of all materials and installation furnished is in accordance with the Contract Documents, in accordance with the original manufacturer's warranties.
  - 1. The Contractor shall be responsible for the fulfillment of all manufacturers' warranties.
  - 2. The Contractor shall guarantee materials and workmanship for a period of one year from date of granting Substantial Completion by the City.
  - 3. The Contractor is responsible for protection of the work until the date of Final Completion.

4. Should any problem with the irrigation system be discovered within the guarantee period, it shall be corrected by Contractor at no additional expense to City within fourteen (14) calendar days of receipt of written notice from City.

## 11. MATERIALS

- A. Materials and equipment shall be new and shall operate at the manufacturer's published capacities.
- B. PIPE—Comply with the following unless otherwise indicated:
  1. Pressure supply lines 2 inches in diameter and up to 8 inches in diameter shall be either Class 315 solvent weld PVC.
  2. Pressure supply lines 1-1/2 inches in diameter and smaller shall be minimum schedule 40 PVC ASTM D-1785.
  3. All PVC lateral pipe shall be Schedule 40 ASTM D-1785 Polyvinyl Chloride, Type 1, NSF approved.
  4. All irrigation pipes shall be purple in color to prevent potential of cross contamination (potable & recycled waterlines).
  5. All crossings (sleeves) under paved areas shall be Schedule 40 PVC, ASTM D-1785.
  6. PVC socket fittings shall comply with ASTM D 1785, type 2, IPS, Schedule 40 NSF as manufactured by Sloan Manufacturing Co., or Lasco.

## 12. TURNOVER ITEMS

- A. Controller Charts
  1. "Record" prints must be approved by the Public Works Landscape Inspector before charts are prepared.
  2. Provide one controller chart for each automatic controller. The chart shall show the entire area covered by the controller, preferably in a single sheet. The chart shall be a reduced copy of the approved "record" print. Reduce the print to a size that is the maximum dimensions that will fit within the controller door without folding. If the controller sequence is illegible at this reduction scale, the chart may be provided as a "multi-sheet" chart to provide adequate legibility.
  3. Each control station on the Chart shall be marked with a different color to show its area of coverage.
  4. When completed and approved, the chart shall be hermetically sealed between two pieces of plastic, each piece being minimum 20 mils in thickness. The chart shall be installed in the controller enclosure using Velcro fasteners, and three different color grease pencils (red, black and blue) shall be provided in the enclosure for maintenance notations on the chart.
  5. Controller charts shall be completed prior to the final acceptance inspection.
- B. Operation and Maintenance Manuals: Within a minimum of 14 calendar days prior to acceptance of construction, prepare and deliver to the Public Work Landscape Inspector all required descriptive materials, properly prepared in two individually bound copies of the operation and maintenance manual. The manual shall describe the material installed and shall be in sufficient detail to permit operating personnel to identify, operate, and maintain all equipment. Spare parts lists and related manufacturer's information shall be included for each equipment item installed. Each complete, bound manual shall include the following information.

**City of Santa Clara Parks & Recreation Department - Park Amenity & Design Standards**

*Draft Updated: 03-31-16*

1. Index sheet stating Contractor's address and telephone number, including names and addresses and telephone numbers of local manufacturer's representatives.
2. Complete operating and maintenance instructions on all major equipment.
- C. Materials to be furnished: The following items shall be supplied as part of this Contract and shall be turned over to the Public Works Landscape Inspector at the conclusion of the Project at the Final Acceptance Inspection.
  1. Two (2) special tools/wrenches for disassembly and adjustment of each type of irrigation equipment/heads installed that require such special tools/wrenches.
  2. Two keys for each type of automatic controller.
  3. One valve box cover key.
  4. "Record" prints, CD's and "As-Built" Plans at Final Acceptance.
  5. Documentation of Water Department's inspection and acceptance of backflow device.

## **Section 2—PLANTING IRRIGATION**

### **1. DEFINITION**

- A. The purpose of this guideline is to establish minimum standards for planting area irrigation in parks.

### **2. CONTROLLER WITH REMOTES**

- A. Minimum of 2 remotes.
- B. The Contractor shall furnish Rain Bird electric controller for up to 48 zones, Rain Bird ESP-LXMEF electric controller for more than 48 zones or equivalent that is completely compatible and much completely integrate with the IQ v2.0 Modular Multi-site Central Control system as indicated on the drawings and as specified herein.
- C. The controller(s) shall be installed in the area(s) shown on the drawings.
- D. All electrical connections are the responsibility of the Contractor. Materials for electrical service shall comply with the standard specifications, governing utility agency standards, and requirements of all applicable codes. All controllers serving landscape areas that will not be turned over to the City for maintenance shall be powered through a metered electrical service.
- E. A typewritten plastic laminated legend shall be attached inside the controller(s) door stating the areas covered by each remote control valve.
- F. Pressure regulator
  - 1) Wilken
  - 2) Febco
  - 3) Shall be installed on all irrigation lines.
  - 4) Shall have an operating range of 25 PSI to 75 PSI.
- G. Master valve
  - 1) Normally open
  - 2) Rainbird PEB valve
- H. Flow meter
  - 1) Rainbird FS200 B or equivalent
- I. Wiring Installation
  - 1) Four (4) 14-1 wires shall be installed in rigid conduit from the P.O.C to the irrigation controller for a Flow Sensor and Master Valve. The wires shall be a continuous run without any junction boxes or splices. They shall be installed in the controller and terminated in a valve box at the P.O.C. There shall be sufficient length of wire to allow easy installation.
  - 2) The wires shall be:
    - One (1) black wire and one (1) red wire, label "Flow Sensor" at the P.O.C. and the controller.
    - One (1) yellow wire and one (1) blue wire, label "Master Valve" at the P.O.C. and controller.

### **3. SPRINKLER HEADS**

- A. Pressure regulating sprinkler heads should be incorporated into irrigation design to maximize water conservation and to reduce output variation between heads.
- B. A minimum of two bubblers shall be placed at each tree location.
- C. Recommended manufacturer: Rainbird.

4. RISERS AND SWING JOINTS
  - A. Risers shall be schedule 40 pipe, 36", or at anticipated height of plantings. Poly-pipe shall not be used in swing joints.
  - B. Swing joints shall be schedule 80 threaded risers with three threaded Marlex fittings.
  
5. BALL VALVES
  - A. Shall be all brass body, or approved equal.
  
6. ISOLATION VALVE
  - A. Valve shall be a ball valve to be placed before valve manifold.
  
7. REMOTE CONTROL VALVES
  - A. Valves shall be Rainbird PEB valves. Use Teflon tape only on threaded connections. Only one valve shall be placed in a single valve box.
  - B. Valve shall be installed with threaded elbow or union on mainline side and a union on the lateral side.
  - C. Valves shall be installed in shrub areas whenever possible. No valves or valve boxes other than quick coupler valves shall be installed within a designated turf area.
  
8. QUICK-COUPLING VALVES
  - A. Quick coupling valves shall have locking vinyl cover and shall be 1" in size.
  - B. Install quick couplers within valve boxes per the Parks & Recreation Department's standards at maximum 75' o.c., and maximum 50' from ends of all planting areas.
  
9. VALVE BOXES AND TAGS
  - A. Valve boxes (bodies and covers) shall be purple in color and shall be 12" x 17" rectangular box installed flush with finish grade. Valve boxes shall be marked "IRRIGATION". Each valve shall have a Christy zone tag inside the valve box.
  
10. CONTROL WIRING
  - A. All wiring to automatic circuit valves shall be UF-14 (14 gauge) UL approved, direct burial wire of a different color than the black and white wires used on the 115 volt AC power. 18 gauge multi-strand wire shall be used from the controller to a wall mounted junction box below the controller and shall be connected to the 14 gauge zone wires.
  - B. Wiring from the controller to the valves shall be installed in same trench as the mainline where possible. Where wires are not placed in the trench with the mainline, install in schedule 40 PVC conduit, minimum of 18" below grade.
  - C. All wire shall be furnished in minimum 2,500' reels and spliced only at valve or tee locations.
  - D. Each valve shall have a second wire to serve as a backup in the event that the first wire becomes comprised.

11. BACKFLOW PREVENTER

- A. Backflow preventer: A backflow preventer shall be installed on all irrigation sprinkler systems. The assembly shall be the same size as the meter and shall be a Watts 909 Reduced Principal Zone (RPZ) mounted on Schedule 80 PVC for 2-inch and less. For larger than 2-inch, the assembly shall be mounted on cemented ductile iron pipe or as required by the Purveyor. The location shall comply with regulatory agencies.

12. SOLVENT CEMENT/SOLVENT & CLEANER

- A. Solvent Cleaner shall meet ASTM A 2546 standards and be all purpose plastic pipe cleaner.

## **Section 3 –EXECUTION**

### **1. INSPECTION**

- A. Contractor must examine the areas and conditions under which landscape irrigation system is to be installed and notify the City of Santa Clara in writing of conditions detrimental to the proper and timely completion of the work.
- B. Coordinate an inspection date & time with Deputy Parks & Recreation Director. Inspection to be conducted by Deputy Parks & Recreation Director, or designee.
  - 1) Review accuracy of construction
  - 2) Do not proceed with the work until unsatisfactory conditions have been corrected.

### **2. IRRIGATION SYSTEM DESIGN & WATER SUPPLY**

- A. The irrigation system design is based upon an available water pressure of p.s.i. at a flow rate of g.p.m. Individual stations are designed to this minimum p.s.i. The system is also designed to withstand a maximum pressure of p.s.i. Contractor shall verify the size of the existing water supply/meter and the existing operating water pressure at the water supply location shown on the Plans prior to starting construction. Contractor shall notify the Public Works Landscape Inspector in writing of any discrepancies noted. Failure to provide such written notification may cause Contractor to provide for modifications to the irrigation system as necessary to provide for a fully operational system providing 100% coverage at the operating pressure available, all at no additional cost to City.
- B. Connection to, or the installation of, the water supply shall be at the location shown on the Plans. Minor changes caused by actual site conditions shall be made at no additional cost to City.

### **3. COORDINATION**

- A. Crossings (sleeves) under paved areas (such as sidewalks, roadways and parking lots) as indicated, shall be installed by the Contractor.
- B. Crossings shall be installed prior to construction of paving.
- C. The Contractor shall be responsible for coordinating work with all other parties involved with the project, and shall coordinate the supply of electrical power to the Timing Device (controller) and tie-in into grounding system.
- D. The Contractor shall be responsible for full and complete coverage of all irrigated areas and shall make any necessary minor adjustments at no additional cost to the City of Santa Clara.

### **4. EXCAVATING AND TRENCHING**

- A. Perform all excavations as required for the installation of the work included under this section, including shoring of earth banks to prevent cave-ins. Where major root systems of large existing trees are encountered, including roots 4" diameter or larger, tunnel to avoid cutting the roots. Underground Service Alert (USA) shall be done prior to excavation and trenching. Contractor is responsible for all damage due to improper work safety techniques or no USA.
- B. Restore all surfaces, existing underground installations, damaged or cut as a result of the excavations to their original conditions.
- C. Trenches for pipelines shall be made of sufficient depth to provide the minimum cover from finish grade as follows.

- 1) 24" minimum cover over main lines.
  - 2) 24" minimum cover over control wires.
  - 3) 18" minimum cover over lateral lines to heads.
- D. Make all necessary measurements in the field to ensure precise fit of items in accordance with the original design. Contractor shall coordinate the installation of all irrigation materials with all other Work. Special attention shall be given to coordination of piping locations versus tree and shrub locations and sleeve locations versus pavement installation to avoid conflicts.
- E. Keep trenches free of obstruction and debris. Remove excess soil from the site and leave grade as it was prior to irrigation system installation.
- F. Piping shall be routed around shrubs, trees and other permanent obstacles.
- G. Permanent Resurfacing shall be all surface improvements damaged or removed as a result of Contractor's operations shall be reconstructed by Contractor to the same dimensions, except for pavement thickness, and with the same type materials used in the original Work. Trench resurfacing shall be 1 inch greater in thickness than existing pavement. Concrete pavement shall be removed and replaced in "full panels" with no horizontal dimension less than five (5) feet. Contractor shall review the planned limits and lines of concrete removal and replacement with the Parks & Recreation designee prior to saw cutting for Removal Work.

#### 5. GRADES

- A. Contractor is to keep within the specified material depths with respect to finish grade. Failure to obtain specified material depths may subject Contractor to adjusting the grades or depth of lines until acceptable depths of cover are achieved, all as directed by the Parks & Recreation designee and at no additional cost to City.

#### 6. PIPE LINE ASSEMBLY

- A. Install plastic pipe as recommended by the manufacturer and provide for expansion and contraction. Cut plastic pipe square. Remove burrs at cut ends prior to installation so that a smooth unobstructed flow will be obtained. Provide continuous support of the pipe using an unobstructed even trench bottom that is free of debris.
- B. Install remote control valves at locations no closer than 12" to weld edges, buildings, and walls.
- C. Plastic pipe fittings shall be solvent welded using solvents and methods as recommended by manufacturer of the pipe, except where screwed connections are required. Pipe and fittings shall be thoroughly cleaned of dirt, dust and moisture before applying solvent with a non-synthetic bristle brush. Care should be taken not to use an excess amount of solvent, thereby causing a burr or obstruction to form on the inside of the pipe. Allow the joints to set at least 24 hours before applying pressure on PVC pipe. Flush main and lateral piping on irrigation system to clean out all debris and sediment prior to the installation of heads and nozzles.
- D. Pressure test the mains minimum 2 hours at 150 PSI. Center-load all plastic pipe prior to pressure testing. The entire system shall be operating properly before any planting operations commence.
- E. Sprinkler heads shall be installed so that the top is slightly above finish grade. If finish grade has not been established, set the top of the sprinkler head 4" above grade and lower the sprinkler head when finish grade has been established and sod/mulch has been installed. Heads along curbs and walks shall be set flush to within 1/8" and 6" away from curb or walk. Heads and piping adjacent to buildings shall be a minimum of 12" off face of building. No application of

water shall be made within 12" of the exterior building walls. Sprinkler heads adjacent to bus loop shall be located 48" from back of curb or as shown/noted on irrigation plan. Adjust heads having an adjustment stem, for the proper radius and throw for the area involved. Do not allow over-spray on buildings, walkways or on motor vehicles.

- F. Irrigation heads shall be installed as designated on the Plans and per the Parks & Recreation Department's standard details. Upon coverage testing of the system if 100% coverage is not afforded by the system as designed, additional heads shall be added as necessary to achieve 100% coverage.
- G. All control wires shall be installed in a neat and orderly fashion underneath the main and lateral pipes, if possible. 10" loops shall be provided at each valve where control wires are connected.
- H. All piping and wiring passing under existing or future paving, construction, etc., shall be encased in sleeve(s) as specified, extending at least 12" beyond edges of paving base or construction.
- I. Install warning tape directly above pressure piping, 12 inches below finish grade except under paving or slabs or where depth shall be 6 inches.

#### 7. BACKFILLING AND COMPACTING

- A. After pressure testing is complete and systems are approved, or sections thereof, backfill excavations and trenches with clean soil, free of rubbish. Dress off all areas to finish grades. Repeat backfilling as required due to settlement.
- B. Balance and adjust the irrigation system components for efficient, proper operation. This includes controller synchronization as well as individual controller stations, valves and sprinkler head adjustments. Do not allow over-spray on buildings, walkways or other paving or on automobiles.
- C. Backfill shall be uniformly tamped in 4-inch layers under and around the pipe for the full width of the trench and the full length of the pipe. Materials shall be sufficiently damp to permit thorough compaction, free of voids. Backfill shall be compacted to dry density equal to adjacent undisturbed soil and shall conform to adjacent grades.
- D. Flooding in lieu of tamping is not allowed without specific prior written approval of the Parks & Recreation Department.

#### 8. RAIN SENSOR

- A. Install rain sensor on exposed surface that is unobstructed from rainfall. Install rain sensor control wiring in rigid conduit as detailed. Preferred location of the rain sensor is within 20 feet of the controller.

#### 9. LABELS

- A. Number each zone valve box on inside of valve box with a Christy zone tag. Numbers shall match the zone numbers on the drawings.
- B. Number each zone valve control wire at the controller with a waterproof marker and tags. Numbers shall match the zone numbers on the drawings.

#### 10. PRESSURE TESTING/SYSTEM DEMONSTRATION

- A. All piping, connectors and valves shall be hydrostatically pressure tested. The mainline test shall last for a minimum of six (6) hours at 100 PSI. All leak areas and equipment shall be replaced and

the system shall be re-tested until no leaks are found. All testing shall be done before backfilling trenches.

- B. Provide a complete demonstration to the City of Santa Clara's Authorized Representative of the operation of all components of the irrigation system as part of Close Out procedures.
- C. Provide complete typewritten instructions for operation including recommended watering times, duration and preventative maintenance.

11. MAINTENANCE

- A. Maintain the irrigation system until the date of Final Completion.
- B. Maintenance shall include work, materials and replacements necessary to insure a complete properly operating system.

12. CITY'S RESPONSIBILITY FOR MAINTENANCE

- A. It is the City's responsibility to maintain the system in working order during the guarantee period, performing necessary minor maintenance, keeping grass from obstructing the sprinkler heads and preventing vandalism and damage during the landscape maintenance operation.

13. CLEAN-UP

- A. Upon completion and prior to inspection of the work, clear the site of debris, superfluous materials and equipment.

## Chapter 3 – Plant Palette

### Section 1 – GENERAL PLANT PALETTE

1. DEFINITION
  - A. The purpose of this guideline is to establish minimum standards for the landscape design and planting of trees, shrubs and groundcovers.
  
2. APPLICATION
  - A. This section includes the following:
    - 1) Trees
    - 2) Shrubs, Groundcovers and Vines
    - 3) Outdoor Classroom and Garden Planting
    - 4) Aquatic Plants
  
3. SELECTION CRITERIA
  - A. Industry Standards
    - 1) American Standard for Nursery Stock
    - 2) Baileys Hortus Third
    - 3) ASTM Standards
  
4. SUBMITTALS
  - A. Samples for Verification
    - 1) Each species of tree, shrub, vine and groundcover shall be tagged, submitted and approved before installation.
  - B. Contractors Qualifications
    - 1) Contractor shall be licensed to do business in the State of California and shall possess a City of Santa Clara business license.
  - C. Soils Testing
    - 1) Provide a complete soil test/analysis showing soil texture, drainage characteristics, water holding capacity, nutrient levels and organic matter content with indication of any and all potentially harmful soil characteristics that would inhibit or prevent plant growth.
  
5. QUALITY ASSURANCE
  - A. Tree and Shrub Measurements.
    - 1) Measure according to Grades and Standards for Nursery Plants with branches and trunks in their normal position. Do not prune to obtain required sizes. Take measurements 6 inches above ground for trees up to 4-inch and 12-inches above ground for larger sizes.

6. DELIVERY STORAGE AND HANDLING

- A. Deliver exterior plants in nursery containers or properly prepared with root ball protected against damage.
- B. Root system shall be kept moist until planting.
- C. Do not prune trees and shrubs before delivery. Protect bark, branches and root system from sun scald, drying, sweating, whipping and tying damage. Do not bend or bind-tie trees or shrubs or destroy their natural shape.
- D. Deliver exterior plants after preparations for planting have been completed and install immediately. If planting is delayed more than 6 hours after delivery, set exterior plants in shade, protect from weather and mechanical damage and keep root system moist.
- E. Do not stage plants on hot pavement before planting.

7. WARRANTY

- A. Warrant the exterior plants for the warranty period indicated against defects including death and unsatisfactory growth.
  - 1) Warranty period for trees, shrubs, and groundcover: One year from date of substantial completion.
  - 2) Contractor shall be responsible for complete and proper planting supports installation layout, watering, fertilizing, and plant insecticides during warranty period.

## Section 2 – PRODUCTS

1. TREE AND SHRUB MATERIAL
  - A. Furnish nursery container grown trees and shrubs complying with Grades and Standards for Nursery Plants, with healthy root systems. All other trees shall be approved by Landscape Architect prior to planting. Provide well shaped, fully branched, healthy, vigorous stock free of disease, insects, eggs, larvae, and defects such as knots, sun scald, injuries, abrasions, and disfigurement.
  - B. Provide trees and shrubs of sizes and grades complying with ANSI Z60.1 for type of trees and shrubs required.
  - C. Label one exterior plant of each variety with a securely attached waterproof label with common name, scientific name, frequency of fertilization and frequency of watering.
  
2. TREES
  - A. Provide single stem trees with straight trunk, well-balanced crown and intact leader, of height and caliper indicated, complying with Grades and Standards for Nursery Plants for type of trees required.
    - 1) Provide container grown trees.
    - 2) Branching height shall be as specified.
    - 3) Multi-stem trees shall be branched or pruned naturally to retain the natural form of the tree, with relationship of caliper, height, and branching according to Grades and Standards for Nursery Plants.
  
3. GROUNDCOVER AND VINES
  - A. Provide groundcover of species indicated, established and well rooted in containers and complying with Grades and Standards for Nursery Plants.
  - B. Provide vines of species indicated complying with Grades and Standards for Nursery Plants. Vines shall be two – year plants with heavy well branched tops, with not less than three runners 18 – inches or more in length with a well-developed root system.
  
4. TOPSOIL
  - A. Topsoil shall be as described in ASTM D 5268, with pH range of 5.5 to 6.5, a minimum of 4 percent organic material content, free of stones and organic materials that are harmful to plant growth.
  - B. Reuse surface soil stockpiled on site. Clean surface soil of roots, stones, clay lumps, construction spoils, and materials that are harmful to plant growth.
  - C. Supplement with imported topsoil from offsite sources when quantities are insufficient. Obtain topsoil displaced from naturally well drained sites where topsoil occurs at least 4 inches deep. Do not obtain topsoil from bogs or marshes.
  
5. ORGANIC SOIL AMENDMENTS
  - A. Compost: Well composted, stable, weed free organic matter, pH range of 5.5 to 6.5; moisture content 35 to 55 percent by weight, 100 percent passing through ½ inch sieve.

- B. Peat: Finely divided or granular texture, with a pH range of 5.5 to 6.5, containing partially decomposed peat, native peat, or reed sedge peat having a water absorbing capacity of 1100 to 2000 percent.
6. FERTILIZER
    - A. Commercial grade complete fertilizer of neutral character consisting of slow release nitrogen, 50 percent derived from natural organic sources of urea formaldehyde, phosphorous and potassium. Fertilizer shall correspond to results of soils test and shall include minor elements.
  7. MULCHES
    - A. Mulch shall be native materials and 100 percent organic.
  8. STAKES AND GUYS
    - A. Upright stakes and guys, rough sawn, sound, new hardwood, redwood, free of knots, holes, cross grain, 2 inches by length shown.
    - B. Pre-manufactured staking systems.
    - C. Hose chafing guard, reinforced rubber or plastic hose at least ½ inch in diameter, black, cut to lengths required to protect tree trunks from damage.
  9. MISCELLANEOUS PRODUCTS
    - A. Anti-desiccant, water – insoluble emulsion, permeable moisture retarder, film forming for trees and shrubs.
    - B. Deliver in original, sealed, and fully labeled containers and mix according to manufacturer's written instructions.
  10. THE CITY OF SANTA CLARA PARKS DEPARTMENT STANDARDS PLANT PALETTE.

**Common Name**

**Scientific Name**

**Trees**

African sumac	Rhus lancea
Aleppo Pine	Pinus halepensis
American elm	Ulmus americana
American sweet gum	Liquidambar styraciflua
Aristocrat pear	Pyrus calleryana 'Aristocrat'
Ash	Fraxinus spp.
Australian Tea Tree	Leptospermum laevigatum
Australian willow	Geijera parviflora
Blackwood Acacia	Acacia melanoxylon
Bradford pear	Pyrus c. 'Bradford'
Brazilian pepper tree	Schinus terebinthifolius

Brisbane box	Lophostemon confertus
Bronze loquat	Eriobotrya deflexia
Cajeput tree	Melaleuca quinquenervia
California buckeye	Aesculus californica
California Pepper Tree	Schinus molle
California sycamore	Platanus racemosa
Camphor Tree	Cinnamomum camphora
Canary Island Pine	Pinus canariensis
Carob	Ceratonia siliqua
Carrot wood	Cupaniopsis anacardioides
Chinese elm	Ulmus parvifolia
Chinese Hackberry	Celtis sinensis
Chinese Pistache	Pistacia chinensis
Chinese tallow	Sapium sebiferum
Coast live oak	Quercus agrifolia
Coast Redwood	Sequoia sempervirens
Compact Blue Gum	Eucalyptus globulus 'Compacta'
Cork oak	Quercus suber
Crape Myrtle	Lagerstroemia fauriei 'Tuscorora'
Crape Myrtle	Lagerstroemia indica (various)
Deodar Cedar	Cedrus deodara
Drooping She-Oak	Casuarina stricta
Eastern dogwood	Cornus florida
Eastern redbud	Cercis Canadensis
English hawthorn	Crataegus laevigata
Eucalyptus	Eucalypyus spp.
European fan palm	Chamaerops humilis
European Hackberry	Celtis australis
European White Birch	Betula pendula
Evergreen Ash	Fraxinus uhdei
Evergreen elm	Ulmus parvifora
Evergreen Pear	Pyrus kawakamii
Fern pine	Podocarpus gracilitor
Flooded Gum	Eucalyptus rudis
Flowering cherry, plum	Prunus spp.
Flowering dogwood	Cornus florida
Flowering locust	Robinia spp.
Fruitless mulberry	Morus alba 'Fruitless'
Glossy privet	Ligustrum lucidum
Gray pine	Pinus sabiniana
Grecian laurel	Laurus nobilis
Holly oak	Quercus ilex

Hollyleaf Cherry	Prunus ilicifolia
Honey locust	Gleditsia spp.
Italian Alder	Alnus cordata
Italian Cypress	Cupressus sempervirens
Italian stone pine	Pinus pinea
Jacaranda	Jacaranda mimosifolia
Japanese black pine	Pinus thunbergii
Japanese Maple	Acer palmatum
Japanese pagoda tree	Sophora japonica
Laurel leaf box	Tristaniopsis laurina
Lemon bottlebrush	Callistemon citrinus
Little leaf fig	Ficus microcarpa 'Nitida'
Little leaf linden	Tilia cordata
Lombardy Poplar	Populus nigra 'Italica'
London Plane Tree	Platanus acerfolia 'Bloodgood'
Loquat	Eriobotrya japonica
Maples	Acer spp.
Magnolia	Magnolia grandiflora
Maidenhair tree	Ginkgo biloba
Mayten	Maytenus boaria
Modesto Ash	Fraxinus velutina 'Modesto'
Swiss mountain pine	Pinus mugo
Monterey Pine	Pinus radiata
Myoporum	Myoporum laetum
New Zealand Christmas	Metrosideros excelsus
Oak	Quercus spp. - Native to Santa Clara Valley
Oleander	Nerium oleander
Olive	Olea europea 'Manzanillo'
Olive (Fruitless)	Olea europea "Bonita"
Ornamental Pear	Pyrus calleryana 'Aristocrat'
Paper birch	Betula Papyrifera
Pepper tree	Schinus molle
Peppermint tree	Agonis Flexuosa
Phoenix palm	Palm spp.
Pittosporum	Pittosporum eugenioides
Ponderosa pine	Pinus ponderosa
Purple Leaf Plum	Prunus cerasifera 'Krauter Vesuvius'
Queensland pittosporum	Pittosporum rhombifolium
Kousa dogwood	Cornus kousa
Raywood Ash	Fraxinus angustifolia 'Raywood'
Red Gum	Eucalyptus camaldulensis
Red Ironbark	Eucalyptus sideroxylon

Red mapple  
Red oak  
River Birch  
Sawtooth zelkova  
Scotch pine  
Scarlet oak  
Shademaster Honeylocust  
Sidney golden wattle  
Silk Tree  
Southern magnolia  
Strawberry Tree  
Valley oak  
Victorian box  
Weeping bottlebrush  
Weeping Willow  
Western dogwood  
Western catalpa  
White Alder  
White Ironbark  
White Mulberry  
Yew pine  
Yoshino Flowering Cherry

Acer rubrum  
Quercus rubra  
Betula nigra  
Zelkova serrata  
Pinus sylvestris  
Quercus coccinea  
Gleditsia tricanthos inermis  
Acacia longifolia  
Albizia julibrissin  
Magnolia grandiflora  
Arbutus unedo  
Quercus lobata  
Pittosporum undulatum  
Callistemon viminalis  
Salix babylonica  
Cornus nuttallii  
Catalpa speciosa  
Alnus rhombifolia  
Eucalyptus leucoxydon 'Rosea'  
Morus alba  
Podocarpus macrophyllus  
Prunus yedoensis 'Akebono'

#### **Groundcovers**

Aaron's Beard/Creeping St Johnswart  
Rock Cotoneaster  
Algerian Ivy  
Coprosma  
Lantana  
Myoporum  
Star Jasmine  
Trailing African Daisy

Hypericum calycinum  
Contoneaster horizontalis  
Hedera canariensis  
Coprosma kirkii  
Lantana montevidensis 'Carnaval'  
Myoporum parvifolium 'Putah Creek'  
Trachelospermum jasminoides  
Osteospermum fruticosum

#### **Vines**

Cat's Claw  
Chinese Wisteria  
Evergreen Clematis  
Jasmine

Macfadyena unguis-cati  
Wisteria sinensis  
Clematis armandii  
Jasminum

#### **Perennials**

Dwarf Lily of the Nile  
Fortnight Lily

Agapanthus africana 'Peter Pan'  
Dietes and cultivars

Lily of the Nile  
Lily of the Nile  
Society Garlic  
Trailing Lantana  
Yellow Sage

Agapanthus 'Queen Ann'  
Agapanthus africana  
Tulbaghia violacea  
Lantana montevidensis  
Lantana camara

**Shrubs**

Camellia  
Dwarf Myrtle  
Escallonia  
Firethorn  
Glossy Abelia  
Gold Flower  
Grevillia  
Heavenly Bamboo  
Hollyleaf Cherry  
Hollywood Juniper  
Hoopseed Bush  
India Hawthorn  
Laurustinus  
Lavender  
New Zealand Flax  
Oleander  
Oregon Grape  
Photinia  
Pride of Madeira  
Prostrate Rosemary  
Rockrose  
Salvia  
Sandankwa Viburnum  
Shiny Xylosma  
Sweet-scented Hakea  
Tobira  
Toyon  
Wax-Leaf Privet  
Wild Lilac  
Wooly Grevillia

Camellia japonica cultivars  
Myrtus communis 'Compacta'  
Escallonia exoniensis 'Frades'  
Pyracantha 'Santa Cruz'  
Abelia grandiflora  
Hypericum moserianum  
Grevillea 'Noelii'  
Nandina domestica  
Prunus ilicifolia  
Juniperus chinensis 'Torulosa'  
Dodonaea viscosa  
Raphiolepis indica & cultivars  
Viburnum tinus 'Spring Boquet'  
Lavandula species  
Phormium tenax  
Nerium oleander & cultivars  
Mahonia aquifolium  
Photinia fraseri  
Echium fastuosum  
Rosmarinus officinalis 'Collingwood Ingram'  
Cistus 'Doris Hibberson'  
Salvia spp.  
Viburnum suspensum  
Xylosma congestum  
Hakea suaveolens  
Pittosporum tobira and cultivars  
Heteromeles arbutifolia  
Ligustrum japonicum 'Texanum'  
Ceanothus griseum horizontalis  
Grevillea lanigera

**Wetland Plants**

Alkali bulrush  
Arroyo willow  
California bulrush

Bolboschoenus  
Salix lasiolepis  
Schoenoplectus californicus

Red willow

Salix laevigata

**Native Grasses**

Blue Wildrye

Elymus glaucus

California Brome

Bromus carinatus

California fescue

Salvia clevelandii

California Tufted Hairgrass

Deschampsia caespitosa

Coast Range Melic

Milica imperfecta

Creeping Wildrye

Elymus triticoides

Deer Grass

Muhlenbergia rigns

Hard Fescue

Festuca longifolia

Idaho Fescue

Festuca idahoensis

Meadow Barley

Hordeum brachyantherus

Molate Blue Fescue

Festuca rubra 'Molate Blue'

Molate Fescue

Festuca rubra

Nodding Needle Grass

Stipa cernua

Pacific Reed Grass

Calamagrotis nutkaensis

Purple Needle Grass

Stipa pulchra

Western Fescue

Festuca californica

11. INVASIVE, NON-NATIVE PLANTS PROHIBITED

- A. No plant listed on the UC IPM Invasive Plants List may be used.

## **PART 3 - EXECUTION**

### **1. EXAMINATION**

- A. Landscape Architect shall approve all plant material for compliance with product requirements and shall review site conditions affecting installation and performance. Proceed with installation after unsatisfactory conditions have been corrected.

### **2. PREPARATION**

- A. Protect structures and the work of other trades from damage caused from planting operations.
- B. Provide erosion control measures to prevent erosion or displacement of soils and discharge of soil bearing water runoff or airborne dust to adjacent properties and walkways.
- C. Layout individual tree and shrub locations by staking. Obtain Landscape Architect's acceptance of layout before planting.

### **3. TREE AND SHRUB PLANTING**

- A. Set balled, potted or boxed stock plumb and in the center of pit with top of root ball slightly above the adjacent finish grade.
- B. Remove burlap and wire baskets from upper one third of root balls and sides. Do not remove burlap from under root ball. No non-biodegradable material shall be left on the root ball.
- C. Place soil around root ball in layers, tamping to settle mix and eliminate voids. When pit is one – half backfilled, water thoroughly before placing remainder of backfill. Repeat watering until no more water is absorbed. Water again after placing and tamping final layer of soil.
- D. Apply mulch at specified thickness around exterior plantings. Extend mulch 12 inches beyond edge of planting pit and as shown on the drawings. Do not place mulch within 3 inches of trunks or stems.
- E. Place fertilizer tablets per manufacturer's recommendation. Apply granular fertilizer after planting and before mulching.

### **4. GUYING AND STAYING**

- A. Stake and guy trees across the root ball.

### **5. TREE AND SHRUB PRUNING**

- A. Prune trees to remove dead and damaged branches and to provide specified clear trunk. Do not cut tree leaders. Prune shrubs to retain natural character. Pruning shall be done with the direction and supervision of the Landscape Architect.
- B. Add a saucer around trees to hold water per landscape drawings.

### **6. PLANTERS**

- A. Planter soil mix shall be as follows: equal parts top soil and coarse sand, 4%, and 10% perlite.

7. GROUNDCOVER PLANTING

- A. Refer to the drawings for the spacing and locations for groundcover and plants.
- B. Dig holes large enough to allow spreading of roots and backfill with planting soil.
- C. Work soil around roots to eliminate voids. Add a saucer indentation around entire groundcover bed to hold water.
- D. Water thoroughly after planting.

## Chapter 4—Ball Fields

### Section 1 – Baseball Fields

#### 1. DEFINITION

- A. The work covered under this section includes designing and constructing a regulation size baseball field.
- B. This section will cover the field, the dugouts and the spectator area.

#### 2. DIMENSIONS

- A. Base length: 90 feet
- B. Mound size: 18 feet diameter; 10 inch height; to be constructed by the City after facility acceptance
- C. Infield radius: 95 feet from center of mound
- D. Pitching rubber: 60 feet 6 inches from back point of home plate to front of pitching rubber
- E. Home plate to foul line: minimum: 320 feet; Idea: 320-340 feet
- F. Home plate to centerfield: minimum: 380 feet; Ideal: 380 - 400 feet
- G. Backstop to home plate: 30 feet
- H. Minimum setback: 125 feet from home plate; 100 feet from base to street, parking areas or other park amenities and/or structures
- I. Distance around field: 25 feet minimum flat area wide and clear of any obstructions provided around the outfield limit, except if there is a permanent outfield fence

#### 3. INFIELD SURFACE

- A. Turf
  - 1) Shall be established by sod.
  - 2) The grass type will be determined by the soil type and specific programmed use of the field.
  - 3) Upon installation, all netting at the back of the sod shall be removed.
- B. In field mix shall be candlestick mix or approved equivalent.
- C. Calcined clay may be added to mix per manufacturer's specifications.
- D. The infield mix shall be six inches deep.
- E. The finished grade shall be laser graded by a laser grader.

#### 4. INFIELD EQUIPMENT

- A. Home plates, bases, base ground anchors, and pitching rubbers shall be provided at the time of construction, but shall be installed by the city.
- B. For ball diamonds with turf infields, a pitcher's mound cover and a home plate cover shall be provided.

5. INFIELD WATERING

- A. All infields shall have a manual irrigation watering system that is capable of watering all infield brick dust areas.
- B. Sufficient number of valves shall be provided depending on the available pressure and the size of the main line at the site.
- C. Sprinklers shall be installed along the perimeter of the infield area, 3/4 inch to 1 inch above the brick dust surface.
- D. The sprinkler heads shall be Rain Bird 6504 high speed stainless steel.
- E. Valves and valve boxes shall be installed at the end of the dugout fence, on the spectator side of the fence out of the path of travel and not blocking any views, Valves shall be Rain Bird GB series valves with the solenoid not wired, Valves shall be installed in rectangular valve boxes at least 14 inches by 20 inches, manufactured by Ametek, Carson, or an approved equal, and installed.
- F. Reclaimed water shall be used for all infield watering.

6. FIELD DRAINAGE

- A. A sub-grade infield drainage system that meets current regulations shall be installed for all regulation fields.

7. BACKSTOP

- A. Permanent backstop required.
- B. The back of backstop shall be centered behind the home plate and shall be 30 feet from home plate.
- C. Backstops and wings shall be 30 feet in height with a 10 foot cantilever (35 feet total height) behind home plate and extend 60 feet parallel to the first and third base-paths.
- D. Wings shall extend an additional 30 feet at a fence height of 30 feet high without a cantilever.
- E. The wings shall extend an additional 30 feet at a fence height of 20 feet without a cantilever.
- F. Backstop and wing fences shall be constructed with 6 gauge chain link.

8. CONCRETE PADS

- A. The area behind the backstop and wings, from first base to third base, shall be poured concrete; the minimum width of the concrete pad shall be 24 feet, including the bleachers and the access area.

9. BULLPENS

- A. As space permits on lighted fields, 75 feet by 10 feet fenced area with access from the dugouts shall be provided. The fence shall be 8 feet high on all sides. Bullpen shall be located outside the field of play. Alternative bullpen designs may be considered by staff on 80' and 90' fields.

10. WARM UP AREA

- A. As space permits on lighted fields, a flat and unobstructed space shall be provided near the field for two teams to warm up. This area should not be provided if there is an impact on other park activities or facilities.

#### 11. SCOREBOARDS

- A. This is an optional item for ball diamonds.
- B. However, all ball diamonds shall have conduit and wiring installed from the electrical panel to one outfield light pole. Light pole shall be designed with brackets to support future installation of scoreboard.

#### 12. LIGHTING

- A. The goal is that all fields at community parks are lighted for night-time use; however, each community park site shall be evaluated for appropriateness for lighting, Lighting will be included at neighborhood park sites with athletic fields whenever possible and appropriate, when lights are provided, access for boom trucks must be provided to facilitate lamp maintenance.
- B. Lighting levels shall be per standards specified for each type of field in the sections that follow.
- C. Minimum maintained lighting levels shall be 50 foot-candles over the infield and 30 foot-candles over the outfield.

#### 13. DUGOUTS

- A. Dugouts shall be located along the first and third baselines, behind the backstop fence.
- B. They shall consist of concrete pads at field grade that are sloped away from the field, and surrounded by an 8 foot high 6 gauge chain link with black windscreen fabric on three sides and the top of the dugout.
- C. The windscreen fabric on top of the dugout shall be attached at a 9-foot height to the backstop wing, and at the top of the 8-foot high dugout fence, forming a "roof."
- D. The windscreen fabric on back and sides of dugout shall be attached from 18" from ground to 8' in height.
- E. The dugouts shall be 30 feet long, 10 feet wide, and equipped with a 25 foot long aluminum bench, a bat rack (on the home plate side of the dugout), latching gates to the infield swinging into the dugout and gates at each end of the dugout which swing into the dugout.

#### 14. SEATING

- A. Spectator seating, when provided, shall consist of tiered concrete structures or portable bleachers containing five (5) rows of seating placed in an area approximately 28 feet by 14 feet.
- B. Bleachers are required on each side of the spectator area.
- C. An accessible path of travel to each spectator area is required.
- D. An unobstructed area minimum 4 feet wide in front of and on each side of the bleachers and minimum 6 feet wide at the rear of the bleachers shall be provided for accessibility.
- E. Concrete walkways shall be provided for access to the area.
- F. Companion seating for wheelchair users shall be provided within or immediately adjacent to each bleacher.
- G. All concrete shall drain away from the playing field.

#### 15. SHADE

- A. Fifty percent (50%) of the spectator area shall be shaded by a shade structure(s) or trees within 5 years of planting.
- B. Shade provided by trees shall not interfere with field lights or player safety.

**City of Santa Clara Parks & Recreation Department - Park Amenity & Design Standards**

*Draft Updated: 03-31-16*

## Section 2 – SOFTBALL FIELDS

### 1. DIMENSIONS

- A. Base length - 60 or 65 feet
- B. Infield radius - 65 feet from center of pitching rubber
- C. Pitching rubber - 50 feet from back point of home plate to front of pitching rubber
- D. Foul line to home plate - Minimum: 300 feet
- E. Centerfield to home plate - Minimum: 325 feet; Ideal: 350 feet
- F. Backstop to home plate - 25 feet
- G. Minimum setback - 75 feet from home plate; 75 feet from base to street, parking areas or other park amenities and/or structures
- H. Distance around field - 25 feet minimum flat area wide and clear of any obstructions provided around the outfield limit, except if there is a permanent outfield fence

### 2. INFIELD SURFACE

- A. Candlestick infield mix/Brick dust.
- B. Calcined clay may be added to mix per manufactures specifications.
- C. The infield mix shall be six inches deep.
- D. The finished grade shall be laser graded by a laser grader.

### 3. INFIELD EQUIPMENT

- A. Home plates, bases, base ground anchors, and pitching rubbers shall be provided at the time of construction, but shall be installed by the city.
- B. For ball diamonds with turf infields, a pitcher's mound cover and a home plate cover shall be provided.

### 4. INFIELD WATERING

- A. All infields shall have a manual irrigation watering system that is capable of watering all infield brick dust areas.
- B. Sufficient number of valves shall be provided depending on the available pressure and the size of the main line at the site.
- C. Sprinklers shall be installed along the perimeter of the infield area, 3/4 inch to 1 inch above the brick dust surface.
- D. The sprinkler heads shall be Rain Bird 6504 high speed stainless steel.
- E. Valves and valve boxes shall be installed at the end of the dugout fence, on the spectator side of the fence out of the path of travel and not blocking any views, Valves shall be Rain Bird GB series valves with the solenoid not wired, Valves shall be installed in rectangular valve boxes at least 14 inches by 20 inches, manufactured by Ametek, Carson, or an approved equal, and installed.
- F. Reclaimed water shall be used for all infield watering.

5. FIELD DRAINAGE
  - A. A sub-grade infield drainage system that meets current regulations shall be installed for all regulation fields.
  
6. BACKSTOP
  - A. Permanent backstop required.
  - B. The back of backstop shall be centered behind the home plate and shall be 25 feet from home plate.
  - C. Backstops and wings shall be 30 feet in height behind home plate and extend 90 feet parallel to the first and third base-paths, including the front of the dugouts.
  - D. Backstop and wing fences shall be constructed with 6 gauge chain link.
  
7. CONCRETE PAD
  - A. The area behind the backstop and wings, from first base to third base, shall be poured concrete as shown in the diagram below.
  - B. The minimum width of the concrete pad shall be 24 feet.
  
8. WARM UP AREA
  - A. As space permits on lighted fields, a flat and unobstructed space shall be provided near the field for two teams to warm up.
  
9. SCOREBOARDS
  - A. This is an optional item for ball diamonds.
  - B. However, all ball diamonds shall have conduit and wiring installed from the electrical panel to one outfield light pole. Light pole shall be designed with brackets to support future installation of scoreboard.
  
10. LIGHTING
  - A. The goal is that all fields at community parks are lighted for night-time use; however, each community park site shall be evaluated for appropriateness for lighting, Lighting will be included at neighborhood park sites with athletic fields whenever possible and appropriate, when lights are provided, access for boom trucks must be provided to facilitate lamp maintenance.
  - B. Lighting levels shall be per standards specified for each type of field in the sections that follow.
  - C. Minimum maintained lighting levels shall be 30 foot-candles over the Infield and 20 foot-candles over the outfield.
  
11. DUGOUTS
  - A. Dugouts shall be located along the first and third baselines, behind the backstop fence.
  - B. They shall consist of concrete pads at field grade that are sloped away from the field, and surrounded by an 8 foot high 6 gauge chain link with black windscreen fabric on three sides and the top of the dugout.

- D. The windscreen fabric on top of the dugout shall be attached at a 9-foot height to the backstop wing, and at the top of the 8-foot high dugout fence, forming a "roof."
- E. The windscreen fabric on back and sides of dugout shall be attached from 18" from ground to 8' in height.
- F. The dugouts shall be 30 feet long, 10 feet wide, and equipped with a 25 foot long aluminum bench, a bat rack (on the home plate side of the dugout), latching gates to the infield swinging into the dugout and gates at each end of the dugout which swing into the dugout.

#### 12. SEATING

- A. Spectator seating, when provided, shall consist of tiered concrete structures or portable bleachers containing five (5) rows of seating placed in an area approximately 28 feet with 14 feet.
- B. Bleachers are required on each side of the spectator area.
- C. An accessible path of travel to each spectator area is required.
- D. An unobstructed area minimum 4 feet wide in front of and on each side of the bleachers and minimum 6 feet wide at the rear of the bleachers shall be provided for accessibility.
- E. Concrete walkways shall be provided for access to the area.

#### 13. SHADE

- A. Fifty percent (50%) of the spectator area shall be shaded by a shade structure(s) or trees within 5 years of planting.
- B. Shade provided by trees shall not interfere with field lights or player safety.

#### 14. TRASH RECEPTACLES

- A. All trash receptacles shall be accessible to persons with disabilities and located immediately adjacent to an accessible path of travel.
- B. A sufficient number of trash receptacles shall be provided to serve the users of the park along the path of travel and/or a convenient distance from a major park amenity, but no less than one for each park.
- C. At least one trash receptacle shall be located within convenient proximity of each:
  - 1) Park building including community center and/or restroom.
  - 2) Picnic area
  - 3) Playground area
  - 4) Athletic fields and sports courts
  - 5) Entry into the park from the parking area

## Chapter 5 – Playgrounds

### Section 1—PLAYGROUNDS

#### 1. DEFINITION

- A. Safety is a high priority for design of children's playgrounds in the City of Santa Clara. The utmost attention should be devoted to providing safe equipment for children.
- B. Playground design must include a minimum of five (5) of the six (6) + 1 elements of play in the overall design and layout of the playground. The six (6) + 1 elements of play include: climbing, balancing, spinning, brachiating, swinging, sliding and running/free play/imagination.
- C. The minimum size of a playground should be at least 3500 square feet. Playgrounds shall be age-separated when space allows, with playgrounds for ages 2 to 5 years separated from playgrounds for ages 5 to 12 years.

#### 2. STATE AND FEDERAL STANDARDS

- A. Conform to California Health and Safety Code Sections 115725 through 115735. All new playgrounds open to the public are required to:
  - 1) Conform to the current playground standards set by the American Society on Testing and Materials (ASTM).
  - 2) Conform to the current playground guidelines published by the United States Consumer Product Safety Commission (CPSC).
  - 3) Comply with the current California Building Code with errata (Title 24, California Code of Regulations) and the U.S. Access Board's Accessibility Guidelines for Play Areas.
  - 4) Meet Americans with Disabilities Act (ADA) standards.
  - 5) Comply with all Federal, State and local guidelines.

#### 3. PLAYGROUND PLANS

- A. Playground plans shall be submitted to the City for review and approval. An approved Playground Plan is required prior to the issuance of building permits prior to start of construction of the playground, if building permits.
- B. The playground plan submittal shall include:
  - 1) To scale diagram of playground layout, no smaller than 1" ~ 20'
  - 2) Dimensioned safety use zones around each piece of equipment, per manufacturer's specifications
  - 3) Deck, platform and step heights for each component.
  - 4) Play type for each component.
  - 5) Manufacturers and model numbers of each piece of equipment and each type of surfacing (specifications for play equipment may be requested).
  - 6) Age group that the play equipment is designed to serve.
  - 7) Detailed contact information for the manufacturer.

- 8) Location of ADA accessible path(s) of travel and access point(s) to the equipment (transfer platform).
- 9) A chart comparing the required number of accessible play components and the number of proposed accessible play components shall be provided.
- 10) Details on installation of safety surfacing, including section view with minimum depth of safety surfacing and type of surfacing.
- 11) Method of drainage of safety surfacing.

#### 4. CERTIFICATION OF PLAYGROUND

- A. Prior to issuance of Certificate of Use and Occupancy for the playground, the Contactor shall submit to the City, a letter stating that the play equipment has been inspected by a person authorized by the manufacturer, that the equipment has been installed according to the manufacturer's specifications, and that it complies with the minimum playground safety regulations adopted by the State of California Health and Safety Code Sections 115725 through 115735).
- B. The City reserves the right to have a Certified Playground Safety Inspector review the playground site for safety, compliance and proper fit within the designated playground area.

#### 5. ADDITIONAL PLAYGROUND STANDARDS

- A. In addition to State and Federal requirements, all playgrounds shall be subject to the following standards:
  - 1) When two or more playgrounds are provided on one site, there should be a distinct separation between preschool age playgrounds (2-5 years) and school age playgrounds (5-12 years) using walkways, seating areas or landscaped buffers to separate the two distinct areas.
  - 2) Metal slides or merry-go rounds are not allowed.
  - 3) A variety of play experiences and graduated play challenges should be provided. A matrix showing body movement opportunities is included in Table 2.0. It is a goal that as many movement opportunities be provided within the available space as possible.
  - 4) The edge of the playground safety surfacing should be located a minimum of 50 feet in all directions from any hazards such as streets, parking lots bike paths, barbecue grills and tripping hazards. A minimum 3-foot high fence, wall, solid hedge or other barrier deemed acceptable by the City staff may serve as protection if the distance required cannot be met.
  - 5) The playground shall be visible from the street or parking lot for surveillance.
  - 6) A minimum of one shaded seating area shall be provided nearby to foster adult supervision of children. Preference should be given to natural shade by trees.
  - 7) All playground equipment shall be certified by the International Playground Equipment Manufacturers Association (IPEMA).

#### 6. MAINTENANCE RELATED DESIGN STANDARDS

In addition to the above design standards for all playgrounds, playgrounds in public parks shall be subject to these additional standards which reduce maintenance, costs, while improving the sustainability and longevity of the playground and providing added value.

- A. Play equipment shall not be composed of wood materials. Materials resembling the look of wood, such as recycled plastic lumber, are allowed.
- B. Impact attenuation surfacing for playground surfacing shall be incorporated into the playground design based on the following order of preference.
  - 1) Engineered wood fiber safety surfacing
  - 2) Poured in place rubberized safety surfacing
  - 3) Wash silica type sand
- C. The poured in place surfaces should be designed to:
  - 1) Minimize the amount of poured-in-place surfaces except for areas required by ADA accessibility and safety fall zone compliance,
  - 2) Adjust the depth of the subsurface and softness of the poured-in-place to the needs of the play equipment.
  - 3) Minimize the depth/softness outside of the fall zones in order to minimize wear and tear of the surface.
  - 4) Avoid narrow areas of sand (under 6 feet wide) and sand areas with angles under 90 degrees, to allow the sand to be roto-tilled on a regular basis without damaging the adjacent poured-in-place.
  - 5) Use a combination of standardized colors (such as 25% black, 25% green, and 50% tan), rather than a single solid color, so that color mixtures can be adjusted to match faded colors in the future for patching and repairs.
  - 6) If the surface has shapes or patterns, use simple geometric shapes that are easy to patch.
  - 7) Avoid any patterns or shapes under high-traffic areas like swings and the base of slides since these areas are patched frequently.
- D. All new public parks should have swings within the playground area whenever practical. When replacing or rehabilitating existing playgrounds, the goal is to provide swings unless space limitations exist. It is preferred that both belt swings for the 5-12 year age group, and tot swings (swings to be used with adult assistance) for the 4 years and under age group be provided, if space allows.
- E. Tube slides or structures are discouraged because of potential public safety issues
- F. All drinking fountains shall be located at least 50 feet from the edge of any sand play areas
- G. All playgrounds shall have nighttime security lighting to prevent vandalism
- H. All public play equipment shall be of high quality materials designed to be vandal resistant, and shall have a demonstrated record of durability and availability of parts. All equipment shall have a minimum warranty of 5 years.
- I. A sand area should be provided within the 2-5 year playground, if possible, to allow for unstructured sand play.
- J. Playground sand shall be washed silica type white sand (or equivalent), uniform in grain size and designed for use in children's play areas. Contractor shall provide a minimum of three samples from varied sources that best meet these guidelines for review and approval prior to purchase and placement of any sand in the playground areas as indicated in construction plans. Sand shall meet the following ASTM C136-84a test for fine white sand as shown in Table 1.0 below:

Table 1.0

Screen Size	Percent Passing Through
#16	100%
#30	98%
#50	62%
#100	17%
#200	0-1%

Table 2.0

Activities	Vestibular	Climbing	Balance	Upper Body	Push/Pull	Crawling/ Bilateral	Fantasy/ Social
Balance Beams			*				
Balance Ropes			*		*		
Binoculars/Telescope							*
Bridge (Moving)	*		*				*
Chinning Bars	*			*	*		
Fire Poles	*	*		*			
Game Panels							*
Horizontal Bars						*	
Jumping Boards	*		*		*		
Ladders		*	*		*	*	
Nets		*	*	*		*	
Parallel Bars				*	*		
Platforms		*					*
Playhouses, etc.							*
Rings	*				*	*	
See Saws	*						
Sensory Gardens							*
Slides	*						
Sound Tubes							*
Spring Riders	*		*	*			
Stairs		*					
Steering Wheels							*
Swings	*				*		
Theme Design							*
Track Ride	*	*			*		
Tunnels						*	*
Turning Bars	*	*			*		

## Chapter 6—Play Courts (In progress)

### Section 1 – OUTDOOR BASKETBALL COURT

#### 1. DIMENSIONS

- A. Playing area - 84 feet by 50 feet for full court; 47 feet by 50 feet for half court.
- B. Setback - Court surface shall extend a minimum of 5 feet around the entire playing field and a minimum of 10 feet between 2 courts that are placed side -by-side.
- C. Court Gradient - 1.0 to 1.5 percent along the width (shortest dimension) of the court.
- D. Parks & Recreation may also go with a nonstandard court to be determined by type of Parks & Recreation activities planned for that specific park.

#### 2. SURFACE

- A. Courts (including the 5' safety zone) shall have a poured concrete surface with a medium broom finish to prevent slipping.

#### 3. PLACEMENT

- A. A minimum distance of 10 feet shall be provided between courts that are placed side-by-side or end-to-end
- B. When there is a light pole between the courts, the minimum distance shall be 17'1" (which includes 13" for the width of the pole and 8' clear on each side between the light pole and the court).
- C. Where two or more courts are provided at one site, the courts should be configured for multi-purpose use, per Basketball Court Placement Diagram on page 15.

#### 4. MARKINGS

- A. All markings on the playing surface shall be applied as shown below, using a wear-resistant, colored substance.
- B. All lines shall be a minimum of 2 inches wide, unless otherwise noted.
- C. The color of the markings shall be determined during the final design.

#### 5. GOALS

- A. Permanent installation
  - 1) Bison Mega Duty Basketball Unit
    - a. Steel rectangular backboard 42" x 60"
- B. Removable installation
  - 1) Captain Internal Acrylic HD Breakaway
    - a. Backboard 32" x 60" breakaway rim

## Section 2 – TENNIS COURTS

1. DIMENSIONS
  - A. Playing Area: 36 feet by 78 feet
  - B. Safety Zone Clearance
    - 1) 12 foot side clearance on each side and 21 feet between each baseline and the fence.
    - 2) For public parks, the concrete shall extend 18 inches out beyond the fence around each court (or courts if more than one) to reduce court maintenance.
  - C. Court Gradient: acceptable gradient range for tennis courts is 0.5 to 1.0 percent, with a cross slope.
  
2. ACCESSIBILITY
  - A. Tennis court gates or fence openings shall have a minimum 36 inch clearance.
  
3. GATES
  - A. Courts in public parks shall have a double gate at the end of each court for maintenance access.
  
4. ORIENTATION
  - A. Courts should be laid out on a north-south axis line.
  
5. COURT PLACEMENT
  - A. When two or more courts are placed side-by-side, the minimum distance between adjacent sidelines of the courts shall be 12 feet.
  - B. A fence, 42 inches high, shall be placed midway between each two adjacent courts, beginning at a 46-inch gate opening at each end.
  - C. The minimum distance between the end of each court and the fence shall be 21 feet.
  
6. COURT SURFACE
  - A. Hot Mix Asphalt Tennis Courts
    - 1) Materials
      - a. A base course of bituminous concrete mixture; crushed aggregate; processed/recycled asphalt or processed/recycled concrete should be installed over the subgrade.
      - b. The specified material should meet applicable ASTM specifications.
      - c. Compacted thickness will depend on local soil and climatic conditions, but in no case should the thickness be less than the equivalent of 4" of thoroughly compacted crushed stone.
    - 2) Spreading and Compacting
      - a. The material should be spread by methods and in a manner that produces a uniform density and thickness.
      - b. The materials thus spread should be compacted to 95% minimum Proctor Test with equipment that provides uniform density.

- 3) Tolerances
    - a. Surface of the base course as compacted should not vary more than 1/2" from the true plane of the court.
  - B. Intermediate Pavement Course
    - 1) A leveling course of a hot plant mix having a maximum aggregate size of 3/8" to 3/4" in accordance with specifications of the state's Department of Transportation and/or the Asphalt Institute should be constructed over the base course to a compacted thickness of not less than 1 1/2".
    - 2) This hot plant mix should be spread and compacted by methods and in a manner that produces a uniform density and thickness.
    - 3) The finished intermediate course should not vary more than 1/4" in 10', when measured in any direction.
  - C. Asphaltic Surface Course
    - 1) General Description
      - a. A surface course of a hot plant mix having a maximum aggregate size of 3/8" and a minimum aggregate size of 1/4" should be constructed over the hot mix intermediate course to a compacted thickness of not less than 1".
  - D. Epoxy-bonded colored surface.
    - 1) To current USTA standard court colors.
7. MARKINGS
- A. The courts shall have markings for singles, doubles and 10-and-under play.
  - B. Baseline shall be painted 4 inches wide.
  - C. All other lines shall be painted 2 inches wide.
8. FENCING
- A. 12 foot high 6-gauge chain link fence shall enclose the entire court.
  - B. Fence material shall be galvanized.
  - C. The courts shall be shielded with an open mesh windscreen of black seamless polypropylene 9 feet high with center tabs.
9. BENCHES
- A. Two benches for players shall be located adjacent to each court.
  - B. A bench for patrons waiting to use the courts shall be placed adjacent to the perimeter gate.
10. TRASH CANS
- A. One trash can to be located outside the perimeter gate & adjacent to each court.
11. LIGHTING
- A. Lighting to be determined by location of courts and planned recreational activities.
  - B. The minimum maintained lighting levels shall be 50 foot-candles at the net line and 30 foot-candles at the end lines.

12. HOSE BIB

- A. One hose bib shall be provided for every two courts.
- B. Hose bibs shall be located so that water flows away from the hose bibs when hosing down the courts (on the high side of the slope).
- C. Hose bibs shall be of a larger sufficient size with pressure to allow washing courts.
- D. Preference to use recycled water if available.

## Chapter 7—Miscellaneous (In progress)

## Chapter 8 – New Public Park Design, Review & Approval Process

### Section 1 – BACKGROUND

#### 1. SANTA CLARA CITY GENERAL PLAN

- A. Goals: The City General Plan identifies various parks, open space and recreation goals that apply to developments such as 5.9.1-G1 through 5.9.1-G4 that recommends new parks (land) and recreational opportunities be provided with the new development.
- B. Policies: The City General Plan identifies various parks, open space and recreation policies that also apply to developments such as 5.9.1-P1 through 5.9.1-P21 that indicate new parks should serve the needs of the surrounding neighborhood and overall community.

#### 2. SANTA CLARA CITY CODE CHAPTER 17.35

Effective September 13, 2014, Santa Clara City Code Chapter 17.35 requires every person who constructs or causes to be constructed a dwelling unit or dwelling units or who subdivides residential property to provide adequate park and recreational facilities, and/or pay a fee in-lieu of parkland dedication (at the discretion of the City) pursuant to the Quimby Act (Quimby) and/or Mitigation Fee Act (MFA) provisions.

According to City Code 17.35, projects may submit a request for credit for eligible on-site private parkland and recreation amenities dedicated to active community recreational use and can satisfy up to half of its total parkland obligation as approved by the City. *Read Santa Clara City Code Chapter 17.35 in its entirety for all of the requirements.*

- A. 17.35.070(a), the calculation of private open space shall not include features required to be included by zoning and building codes and other applicable laws, including but not limited to existing easements for other public purpose, yards, patios, paseos, court areas, setbacks, sidewalks, decorative landscape areas required with residential site design and other open areas. Per the building code and fire safety, there is a setback requirement of at least 4 feet from a building. A buffer strip/setback of at least 4 feet between private amenities and public parkland should also be deducted from the area calculation.
- B. 17.35.070(b), the private open space shall be devoted to “**Active Recreational Use**”. The private ownership and maintenance of the open space shall be restricted for such use by a recorded written agreement, conveyance, covenant or restrictions. Such document shall be subject to the prior review and approval of the City Attorney, and any future proposed amendments must be first submitted to the City Attorney for approval prior to adoption.
- C. 17.35.070(c), Developer must propose and agree to design and construct the necessary recreational and park facilities and improvement associated with each element of the private open space set forth. The space shall be reasonably adapted for use for recreational purposes, taking into consideration such factors as size, shape, topography, geology, access and location.

- D. 17.35.070(d), facilities proposed for the open space shall be in substantial compliance with the provisions of the Parks, Open Space, and Recreation Goals and Policies of the General Plan.
- E. 17.35.070(e), the developer shall supply a covenant to maintain the open space to the City Attorney prior to approval of the final subdivision map for review and approval.
- F. 17.35.070(f), to qualify for credit, the private open space in a new development must contain at least four (4) of the following eight (8) elements:
  - 1) Minimum one-half (0.50) acre of play field – open, natural turf area, comprised of a single unit of land, which is generally free of physical barriers which would inhibit group play activities, with a minimum contiguous area of one-half (0.50) acres;
  - 2) Children’s play apparatus - separate play areas for ages 2-5 & ages 5-12 with the inclusion of the 6+1 key elements of play and physical activity: balancing, sliding, swinging, brachiating, spinning, climbing and running/free play/imagination;
  - 3) Landscaped and furnished, park-like quiet area;
  - 4) Recreational community gardens;
  - 5) Family picnic area;
  - 6) Game, fitness or sport court area;
  - 7) Accessible swimming pool (minimum size 42’ x 75’) with adjacent deck and lawn areas;
  - 8) Recreation center buildings and grounds.
- G. 17.35.070(g)(1), these elements must equal a minimum of 0.75 acres, or 32,670sf, of private open space.
- H. 17.35.070(g)(2), Developer must attest that every resident has equal access to every feature in every building and not be restricted to the recreational elements and amenities in the building they reside. If limited access is proposed, the credit value can only be applied against the park fee obligation generated by those residents with access to the said recreation area.
- I. 17.35.070(g)(3), irregularly shaped pieces of property of less than optimum utility or burdened by topographic consideration that render them unsuitable for “**Active Recreational Use**” shall not be eligible for credit.
- J. 17.35.070(h), housing developments in which 100% of the units are affordable to low- and/or moderate-income households, and senior housing developments are eligible for an additional 15% credit toward the parkland dedication requirement.

## Section 2 – REQUIREMENT TO PROVIDE PARK AND RECREATIONAL FACILITIES

### 1. PUBLIC PARKLAND DEDICATION

- A. Focus: “Neighborhood and Community parkland” and “**Active Recreational Use**” as required by Chapter 17.35.
  - 1) Neighborhood parks are 1 – 15 acres in size.
  - 2) Community parks are over 15 acres in size.
  - 3) “**Active Recreational Use**” is the activity that requires the use of organized play areas, including, but not limited to, softball, baseball, football and soccer fields, tennis and basketball courts, fitness stations and various forms of children’s play equipment.
- B. Types
  - 1) Fee Title – preferred.
  - 2) Public Easement – less preferable, only when it serves public interest. Requires findings.
- C. Parkland Dedication Standard shall mean:
  - 1) The acreage of park and recreational facilities to be provided per 1,000 City residents from any person who constructs or causes to be constructed a new residential development or who subdivides residential property.
    - a. The parkland dedication standard per Quimby provisions is 3.0 acres per 1,000 City residents.
    - b. The parkland dedication standard per MFA provisions is 2.53 acres per 1,000 City residents.
- D. All features and amenities in the public parkland must be in substantial compliance with The Americans with Disabilities Act, Federal, State and Local Regulations, as well as Park Standards, where the Department’s determination is final.
- E. Development of specific language in a Planning document and Project “condition of approval” describing the parcel(s), the park(s) and the Elements to be dedicated to the City which will be included in a legally binding document recorded with the County Clerk-Recorder’s Office;
- F. Development of specific language for a legally binding document(s) that is applicable to each Project describing the parcel(s), the park(s) and the Elements (per Ch. 17.35) such as:
  - 1) Development Agreement
  - 2) Maintenance Agreement – public parkland to be maintained to the City’s standards as a minimum and should include the specified timeframe (i.e. 40 years)
  - 3) Insurance Agreement - to cover the City’s interest
  - 4) Covenants, Conditions & Restrictions (CC&Rs)
  - 5) Homeowner’s Association Documents (HOA)
- G. Public Parkland Dedication (Fee Title & Public Easement):
  - 1) Description of the parcel(s), park name(s) and square footage will be described and identified on the final map and recorded with the County Clerk-Recorder’s Office.
- H. Area calculation:
  - 1) shall not include features required to be included by zoning and building codes and other applicable laws, including but not limited to existing easements for other public purpose, yards, patios, paseos, court areas, setbacks, sidewalks, decorative landscape areas required with residential site design, etc.
  - 2) Per the building code and fire safety, there is a setback requirement of at least 4 feet from the building that should be deducted from the area calculation. In addition, a buffer

strip/setback of at least 4 feet between private amenities and the public park/parkland is to be deducted from the area calculation.

I. City Park Standard Practice

- 1) Wayfinding signs.
- 2) Public access from a public right of way to all public parks.
- 3) Parking for park visitors.
- 4) Restroom facilities if there is more than 1 hour of play value.

2. PRIVATE ON-SITE PARKLAND AND RECREATIONAL AMENITIES

A. Must contain at least four (4) of the eight (8) specified community and neighborhood park elements:

- 1) Open, natural turf area, comprised of a single unit of land, which is generally free of physical barriers which would inhibit group play activities, with a minimum contiguous area of one-half (0.50) acres.
- 2) Children's play apparatus – separate play areas for ages 2-5 and ages 5-12 with the inclusion of the 6+1 key elements of play and physical activity: balancing sliding, swinging, brachiating, spinning, climbing and running/free play/imagination.
- 3) Landscaped and furnished park-like quiet area.
- 4) Recreational community gardens.
- 5) Family picnic area.
- 6) Game, fitness or sport court area.
- 7) Accessible swimming pool (minimum size 42' x 75') with adjacent deck and lawn areas.
- 8) Recreation center buildings and grounds.

B. Size, shape and location

- 1) The combined area of "**Active Recreational Use**" for a facility to qualify for credit is a minimum of three quarters (0.75) acres, or 32,670sf.
- 2) The area for "**Active Recreational Use**" shall take into consideration such factors as size, shape, topography, geology, access and location, and the developer must propose and agree to design and construct the necessary recreational and park facilities and improvements associated with each Element per Chapter 17.35.
- 3) The shape and location shall provide the greatest utility possible to the greatest number of residents of the development. Limited access areas are not recommended and will be calculated accordingly.
- 4) Irregularly shaped pieces of property of less than optimum utility or burdened by topographic considerations that render them unsuitable for "**Active Recreational Use**" will not be accepted.

C. Area calculation:

- 1) shall not include features required to be included by zoning and building codes and other applicable laws, including but not limited to existing easements for other public purpose, yards, patios, paseos, court areas, setbacks, sidewalks, decorative landscape areas required with residential site design, etc.
- 2) Per the building code and fire safety, there is a setback requirement of at least 4 feet from a building.

D. Compliance:

- 1) Must be in compliance with the provisions of the Parks, Open Space and Recreation Goals and Policies of the City General Plan.
- 2) All features and amenities must be in substantial compliance with The Americans with Disabilities Act, Federal, State and Local Regulations, as well as Park Standards, where the Department's determination is final.

E. Maintenance:

- 1) Developer shall supply a covenant to maintain the private on-site parkland and recreational amenities to the City Attorney.
- 2) All furnished areas must remain furnished.
- 3) Maintenance and replacement of items should be contained in the CC&Rs.

## **Section 3 – INTERNAL (STAFF) REVIEW AND APPROVAL PROCESS**

### **1. PARK & RECREATION DEPARTMENT STAFF REVIEW**

#### **A. Landscape design details**

- 1) Provide Landscape sheets that indicate the standard specifications and typical details for various park items according to the City of Santa Clara Parks & Recreation Park Amenity & Design Standards, included but not limited to:
  - a. adequate parking;
  - b. electrical/lighting details, light post design;
  - c. fencing design, bollards, attachments & types;
  - d. grading/drainage;
  - e. handicapped access location(s), path of travel;
  - f. irrigation detail-typical pipe schedule plan & profiles, bubblers/shrub/spray heads/timers/remote control system, backflow prevention, recycled/potable water (drinking fountain);
  - g. park signage/rules and entry sign;
  - h. recommended planting list and typical tree planting detail;
  - i. soil profile and turf type recommendations;
  - j. typical pathway dimensions, materials, compaction/composition recommendations, mow band dimensions;
  - k. typical park amenities/product recommendations for picnic benches, BBQ, park bench, playground apparatus;
  - l. utility access and vault locations;
  - m. other (i.e. trail connections).

#### **B. Conditions**

- 1) Upon receiving a complete application for a residential development or subdivision, the Director of Parks & Recreation shall determine the conditions necessary to comply with the requirements of parkland dedication as set forth in Chapter 17.35.
- 2) Said conditions shall be proposed to the Approving Authority as conditions of approval for the project.
- 3) All furnished areas included in the private and public park and recreational land must remain furnished and the maintenance & replacement of such items will be contained in an appropriate legally binding document that will run in perpetuity with the land.

#### **C. Additional Steps in the "process":**

- 1) Construction oversight usually provided by Public Works Department engineering staff;
- 2) A punch list development & project review;
- 3) Maintenance/warranty period;
- 4) Title/dedication of parcel to City;
- 5) Acceptance of Project by the City;
- 6) Park dedication ceremony.

## **Section 4 – PUBLIC DESIGN REVIEW AND APPROVAL PROCESS**

1. PUBLIC MEETING #1 – Scaled Drawing and Story Board Submission for Park & Recreation Commission
  - A. Submit three park conceptual options. These should provide preliminary draft “Concept A”, “Concept B” and “Concept C” (or more) and include the words on each of the sheets *“Preliminary Conceptual Design for discussion purposes only.”*
  - B. Plans should be 24 x 36 (D-Size paper) and follow City preferred format: “D-Size Project Title Sheet” and “D-Size Project Title Block”. Request these documents if needed.
  - C. These will be needed two weeks prior to the meeting date to be reviewed internally and potentially also with the City Manager’s Office. To help the discussion and anticipate questions of what, where, dimensions, setbacks, and materials contemplated, the sheets and/or presentation (power point is an option) should include design elements in “call out boxes” (line from the location in the design to the picture/example of what is contemplated), and the relative size(s) and square footage of the features.
  - D. The Commission will ask questions and make comments, followed by public comment.
  
2. PUBLIC MEETING #2 – Scaled Drawing and Story Board Submission for Park & Recreation Commission (potentially a community meeting)
  - A. Present further design improvements and show how design solutions were incorporated to address comments and priority concerns.
  - B. May address construction and maintenance costs. Commission makes recommendation regarding preferred design option to City Council.
  
3. PUBLIC MEETING #3 – Scaled Drawings & Story Board Submission for City Council
  - A. Tight presentation of 3-5 slides covering project background, initial design criteria, Conceptual Renderings, public input process and request for Council Input/Approval.
  - B. Will work with staff to incorporate into City Council report format and timelines.
  
4. Construction Design Plans Required:  
Plans should be 24 x 36 (D-Size paper) and follow City preferred format: “D-Size Project Title Sheet” and “D-Size Project Title Block”. Request these documents if needed.
  
5. As-Built Plans – official record drawings that document what was actually constructed - to be submitted to Parks & Recreation Department upon final sign-off.

**EXHIBIT E**

**ENGINEERING PLAN CHECK FEES**

**[as of the Effective Date]**

**[Attached]**

# CITY OF SANTA CLARA MUNICIPAL FEE SCHEDULE

SUBMITTED BY DEPARTMENT / DIVISION:  
ENGINEERING/LPD; DESIGN; TRAFFIC

RESOLUTION NUMBER:

APPROVED:

DESCRIPTION OF FEE, RATE or CHARGE	CURRENT FEE and PERIOD	CHARGING DEPT / DIV COLLECTING DEPT / DIV	DATE FEE LAST CHANGED		FEE DETAIL OBJECTIVE PROP 26 EXCEPTION (SEE READER'S GUIDE) FULL COST FACTOR	COMMENTS	PROPOSED NEW OR REVISED FEE 2016-17	Percent Change
			ORDINANCE NUMBER & DATE (if applicable)					
Encroachment Permit: Engineering & Inspection Fee	\$ 8.00% of construction cost, or \$20.00 minimum	Charged By: Engineering/LPD	Date: 04/21/15	Objective: Recover Cost	See note 3 for justification			
Encroachment Permit: Engineering Plan Check for Projects up to \$15K (per plan set)-Includes 3 checks	\$	Collected By: Finance	O. No.: O. Date:	Prop. 26 Exception: 1,2,3			\$ 339.00	REVISED
Engineering Plan Check for Projects over to \$15K (per plan sheet)-Includes 3 checks	\$			Full Cost: Varies 242.00			\$ 1,187.00	REVISED
Engineering Plan Check (per plan set for Projects up to \$15K and per sheet for Projects over \$15K)-4th and subsequent review	\$						\$ 113.00	REVISED
Encroachment Permit: Engineering Inspection	\$						\$ 339.00	REVISED
\$0-\$15K	\$						\$ 1,357.00	REVISED
\$15,001-\$25K	\$						\$ 3,392.00	REVISED
\$25,001-\$50K	\$						\$ 5,663.00	REVISED
\$50,001-\$100K	\$						\$ 9,044.00	REVISED
\$101K-\$200K	\$						\$ 19,219.00	REVISED
\$201K-\$500K	\$						\$ 38,439.00	REVISED
\$501K-\$1M	\$						\$ 12,436.00	REVISED
>-\$1M; plus each additional \$500K or fraction thereof	\$							

**EXHIBIT F**  
**SELECTED SANTA CLARA CITY CODE SECTIONS**

[ATTACHED]

**17.10.220 Time for and initiation of review.**

(a) Regular Periodic Review. The City shall review the performance of the developer under a development agreement periodically on a regular basis as determined in the development agreement or by this subsection at least once every twelve (12) months for the term of the development agreement. Ninety (90) days prior to the "established date or dates for regular periodic review" which shall be the anniversary of the effective date of the development agreement, or such other substitute date or dates, mutually agreed to by the qualified applicant or developer and City in writing for such regular periodic reviews, the developer shall submit to the Planning Director evidence of the good faith compliance with the development agreement. If the Planning Director determines that such evidence is insufficient for the Planning Director's regular periodic review, or if the developer fails to submit any evidence, then prior to seventy-five (75) days of the established date or dates for regular periodic review the Planning Director shall deliver or mail written notice to the developer of the developer's failure to submit any evidence or specifying the additional information reasonably required by the Planning Director in order to review the developer's good faith compliance with the development agreement. The developer shall have thirty (30) days after mailing or delivery of such written notice by the Planning Director in which to respond to the Planning Director. If the developer fails to provide such information to the Planning Director within the thirty (30) day period, the Planning Director shall not find that the developer has complied in good faith with the terms of the development agreement.

(b) Special Review.

(1) Initiation of Review. Reviews which are other than the regular periodic reviews provided for in subsection (a) of this section are defined as special reviews and may be had either by agreement between the developer and City or by initiation of the City by the affirmative vote of the City Council, but in any event shall not be held more frequently than three times a year.

(2) Notice of Special Review. The Planning Director shall begin the special review proceeding by mailing or delivering written notice to the developer that the City intends to undertake a special review for the good faith compliance of developer with the development agreement. He shall mail or deliver to the developer a thirty (30) day notice of intent to undertake such a special review within which thirty (30) days developer shall provide to the Planning Director evidence of good faith compliance with the terms of the development agreement. If the Planning Director determines that such evidence is insufficient for the Planning Director's review, or if the developer fails to submit any evidence within the thirty (30) day period, then within forty-five (45) days of giving the notice of intent to undertake a special review, the Planning Director shall deliver or mail written notice to the developer of the developer's failure to submit any evidence or additional information reasonably required by the Planning Director in order to review the developer's good faith compliance with the development agreement. As with the regular periodic review, the developer shall have thirty (30) days after mailing or delivering of such written notice by the Planning Director in which to respond to the Planning Director. If the developer fails to provide such information to the Planning Director within the thirty (30) day period,

developer shall not be found by the Planning Director to have complied in good faith with the terms of the development agreement. (Ord. 1589 § 1, 7-5-88. Formerly § 8B-22).

**17.10.230 Finding of compliance.**

With respect to either a regular periodic review or a special review, if the Planning Director finds good faith compliance by the developer with the terms of the development agreement for the period reviewed, the Planning Director, upon request of developer, shall issue a certificate of compliance for such period reviewed, which shall be in recordable form and may be recorded by the developer in the official records of Santa Clara County. The issuance of a certificate of compliance by the Planning Director shall conclude the review for the applicable period for which the finding was made and such determination shall be final in the absence of fraud. (Ord. 1589 § 1, 7-5-88. Formerly § 8B-23).

**17.10.240 Failure to find good faith compliance.**

If the Planning Director does not find, on the basis of substantial evidence, that the developer has complied in good faith with the terms of the development agreement, he shall so notify the City Council and the developer. The Planning Director shall specify the reasons for the Planning Director's determination, the information relied upon in making such decision and any findings made with respect thereto. At the next regularly scheduled meeting of the City Council on which the matter is agendized, or to which it is continued, the City Council shall take one of the following actions:

(a) Compliance. Determine on the basis of evidence presented that there has been good faith compliance by the developer with the terms of the development agreement, in which event the Planning Director, upon request of the developer, shall issue a certificate of compliance in accordance with SCCC 17.10.230.

(b) Failure to Find Good Faith Compliance. If the City Council is unable to determine on the basis of the evidence presented that there has been good faith compliance by the developer with the terms of the development agreement, the City Council shall do one or more of the following:

(1) Additional Time. Upon receipt of sufficient justification to City Council, grant the developer additional time in which to establish good faith compliance with the terms of the development agreement at a subsequent duly called Council meeting; or

(2) Hearing. Set a date for a public hearing on the issue of compliance by the developer with the terms of the development agreement and the possible conditioning and/or termination or modification of the development agreement in accordance with California Government Code Section 65865.1, which public hearing shall be conducted in accordance with SCCC 17.10.250. (Ord. 1589 § 1, 7-5-88. Formerly § 8B-24).

**17.10.250 Public hearing.**

The City Council shall, within ninety (90) days of the City Council's setting a date for a public hearing in SCCC 17.10.240(b)(2), conduct a public hearing at which the developer shall have the opportunity to demonstrate good faith compliance with the terms of the development agreement on the basis of substantial evidence presented to the City Council. The burden of proof of this issue is upon the developer. (Ord. 1589 § 1, 7-5-88. Formerly § 8B-25).

#### **17.10.260 Findings upon public hearing.**

The City Council shall determine upon the basis of substantial evidence whether or not the developer has complied in good faith with the terms and conditions of the development agreement. (Ord. 1589 § 1, 7-5-88. Formerly § 8B-26).

#### **17.10.270 Procedure upon findings.**

(a) Compliance. If the City Council finds and determines on the basis of substantial evidence that the developer has complied in good faith with the terms and conditions of the development agreement during the period under review, the review for that period is concluded and such determination is final in absence of fraud.

(b) Noncompliance. If the City Council finds and determines on the basis of substantial evidence that the developer has not complied in good faith with the terms and conditions of the development agreement during the period under review, the City Council may allow the development agreement to be continued by imposition of new terms and conditions intended to remedy such noncompliance or to be otherwise modified, by the mutual consent of the developer and the City or the City Council may unilaterally terminate the development agreement or take other action authorized by Government Code Section 65865.1. The City Council may impose such terms and conditions to the action it takes as it considers necessary to protect the interests of the City. The decision of the City Council shall be final. The rights of the parties after termination shall be as set forth in SCCC 17.10.370.

(c) Ordinance. Any termination, modification or imposition of new terms and conditions pursuant to this section shall be by ordinance. The ordinance shall recite the facts, findings, information relied on and/or the lack thereof, and the reasons which, in the opinion of the City Council, make the termination or modifications or imposition of new terms and conditions of the development agreement necessary. The enactment of such an ordinance by the City Council shall be final and conclusive as to its effect on the subject development agreement. Not later than ten days following the adoption of the ordinance, one copy thereof shall be forwarded to the developer. The development agreement shall be terminated, or the amendments to the development agreement shall become effective, on the effective date of the ordinance or as otherwise provided in such ordinance. (Ord. 1589 § 1, 7-5-88. Formerly § 8B-27).

#### **17.10.280 Certificate of compliance.**

If the City Council finds good faith compliance by the developer with the terms of the development agreement, the Planning Director upon request of the developer shall issue a certificate of compliance, which shall be in recordable form and may be recorded by the developer in the official records of the County of Santa Clara. (Ord. 1589 § 1, 7-5-88. Formerly § 8B-28).

**EXHIBIT G**

**MORTGAGEE PROVISIONS FROM DDA**

**23. Financing; Rights Of Mortgagees.**

23.1 Right to Mortgage; Conditions. Notwithstanding any provision of this Agreement to the contrary, Developer shall have the right to mortgage or pledge its interest in this Agreement and its interest in the Development Parcels to one or more Mortgagees and/or to permit the direct or indirect interest in Developer to be pledged to a Mezzanine Lender, in each case without City's consent, at any time and from time to time during the Term; provided, that no holder of any Mortgage or Mezzanine Loan, nor anyone claiming by, through or under any such Mortgage or Mezzanine Loan, shall by virtue thereof acquire any greater rights hereunder than Developer has, except the right to cure or remedy Developer's defaults as more fully set forth below in this Article 23 and such other rights as are expressly granted to Mortgagees or Mezzanine Lenders hereunder. Notwithstanding the foregoing, however, no Mortgage or Mezzanine Loan shall be effective, unless:

23.1.1 At the time such Mortgage or Mezzanine Loan becomes effective, there are no existing Events of Default; and provided that, unless otherwise notified in writing by City that there is an existing Event of Default, any actual or prospective Mortgagee and Mezzanine Lender may conclusively rely on a statement to the effect that there is no existing Event of Default on the part of Developer given by City with respect to Developer under this Agreement for a period of thirty days after the delivery thereof;

23.1.2 Such Mortgage shall be subject to all the agreements, terms, covenants and conditions of this Agreement;

23.1.3 Such Mortgage shall contain in substance the following provision (and no provisions inconsistent therewith in any material respect): "This instrument and all rights of the mortgagee hereunder are, without the necessity for the execution of any further documents, subject and subordinate to the rights of City under the Agreement hereby mortgaged, as said Agreement may have been previously modified, amended or renewed, or may hereafter be modified, amended or renewed with the consent of the mortgagee, which consent may not be unreasonably withheld, conditioned or delayed. Nevertheless, the holder of this mortgage agrees from time to time upon request and without charge to execute, acknowledge and deliver any instruments reasonably requested by City to evidence the foregoing subordination."

23.2 Notice of Mortgages. Tenant or the Leasehold Mortgagee or Mezzanine Lender shall give to City written notice of the making of any Leasehold Mortgage or Mezzanine Loan (which notice shall contain the name and office address of the Leasehold Mortgagee or Mezzanine Lender and shall contain information in reasonable detail demonstrating that the Leasehold Mortgagee or Mezzanine Lender is a Leasehold Mortgagee or Mezzanine Lender as defined in this Lease) no later than ten (10) days after the execution and delivery of such Leasehold Mortgage or Mezzanine Loan and a duplicate original or certified copy thereof after the recording of any Leasehold Mortgage executed by Tenant and upon the written request of City, Tenant shall, at Tenant's own cost and expense, record in the Official Records a written request, executed and acknowledged by City, for a copy of any notice of default and a copy of any notice of sale under such Leasehold Mortgage to be mailed to City at the address specified in the request by City.

23.3 Mortgagee Right to Notices. City shall give to each Mortgagee or Mezzanine Lender, at the address of such Mortgagee or Mezzanine Lender set forth in a written notice from such Mortgagee or Mezzanine Lender or from Developer delivered in the manner provided by Section 29.33, a copy of each notice given by City to Developer under Section 21.2 at the same time as and whenever any such notice shall thereafter be given by City to Developer, and, without affecting or extending the commencement of any grace or cure period available to Developer as provided in this Agreement, no such notice by City shall be deemed to have been duly given to such Mortgagee or Mezzanine Lender (and no grace or cure period in favor of such Mortgagee or Mezzanine Lender shall be deemed to have commenced) unless and until a copy thereof shall have been given to each such Mortgagee and Mezzanine Lender. Each Mortgagee and Mezzanine Lender (i) shall thereupon have a period of ten (10) days more in the case of a default in the payment of any fees due under this Agreement (a "**Monetary Event of Default**") and thirty (30) days more in the case of any other default (each, a "**Non-Monetary Event of Default**"), after the applicable period afforded Developer for remedying the default or causing the same to be remedied has expired and (ii) shall, within such period and otherwise as herein provided, have the right (but not the obligation) to remedy such default or cause the same to be remedied. City shall accept performance by or on behalf of a Mortgagee or Mezzanine Lender of any covenant, condition or agreement on Developer's part to be performed hereunder with the same force and effect as though performed by Developer, so long as such performance is made in accordance with the terms and provisions of this Agreement. City shall not object to and shall cooperate with any entry onto the Project Site by or on behalf of a Mortgagee or a Mezzanine Lender to the extent necessary to effect such Mortgagee's or Mezzanine Lender's cure rights, provided such entry is in compliance with Applicable Law.

23.4 Mortgagee Right to Cure. No Non-Monetary Event of Default shall be deemed to exist as long as a Mortgagee or Mezzanine Lender, in good faith, (i) shall have commenced to cure (or caused to be commenced such cure) such Non-Monetary Event of Default within thirty days after the expiration of the applicable period afforded to Developer for remedying such Non-Monetary Default, and continuously prosecutes or causes to be prosecuted the same to completion with reasonable diligence (subject to Force Majeure) or (ii) if possession or control of the Project Site or any part thereof is required in order to cure such Non-Monetary Event of Default, and Mortgagee or Mezzanine Lender shall have notified City within thirty days after the expiration of the applicable period afforded to Developer for remedying the Non-Monetary Event of Default of its intention to institute foreclosure proceedings to obtain possession or control directly or through a receiver, and thereafter promptly commences such foreclosure proceedings, prosecutes such proceedings with all reasonable diligence and continuity (subject to Force Majeure) and, upon obtaining possession, ownership and/or control of Developer's interest hereunder, commences or causes its designee to commence promptly to cure the Non-Monetary Event of Default and prosecutes the same to completion with all reasonable diligence and continuity (subject to Force Majeure); provided that the Mortgagee or Mezzanine Lender or its designee shall have delivered to City, in writing, within the time periods set forth in subclause (i) or (ii) herein, its agreement, subject to the last sentence of this Section 23.4, to cause the party obtaining possession, ownership and/or control of Developer's estate hereunder to agree to take the action described in subclause (i) or (ii) herein (the "**Lender Notice of Cure**"); and provided, further, that during the period in which the actions comprising the Lender Notice of Cure are being performed, all of the other obligations of Developer under this Agreement (other than those that require possession or control of the Project Site in order to

cure) are being duly performed within any applicable notice and cure periods (including any applicable notice and cure rights of Mortgagees and Mezzanine Lenders hereunder). In the event that at any time after the delivery of the Lender Notice of Cure, the Mortgagee or Mezzanine Lender notifies City, in writing, that it has relinquished possession or control of the Project Site or that it will not institute foreclosure proceedings or, if such proceedings have been commenced, that it has discontinued them, thereupon, City shall have the unrestricted right to terminate this Agreement by reason of any Event of Default (and to take any other action it deems appropriate by reason of any Event of Default by Developer).

23.5 Obligation to Construct After Foreclosure. A Mortgagee, Mezzanine Lender, assignee or transferee gaining possession, ownership and/or control of the Project Site under a foreclosure or transfer in lieu of foreclosure shall not be bound by any deadline for completion of any construction or alterations required of Developer under this Agreement; provided, however, that such Person gaining possession, ownership, and/or control of Developer's estate hereunder pursuant to a foreclosure or transfer in lieu of foreclosure shall with all reasonable diligence and continuity prosecute completion of same. Notwithstanding anything in this Article 23.5 to the contrary, a Mortgagee, Mezzanine Lender, assignee or transferee gaining possession, ownership and/or control of the Project Site pursuant to a foreclosure or transfer in lieu of foreclosure shall not be required to cure any Events of Default arising from obligations of Developer that are not capable of being cured, and if any Mortgagee, Mezzanine Lender, successor leasehold owner, assignee or transferee shall acquire the Project Site pursuant to a foreclosure or transfer in lieu of foreclosure, then any such Non-Monetary Events of Default arising from an obligation by Developer that is not capable of being cured shall no longer be deemed an Event of Default or Non-Monetary Event of Default.

23.6 Restrictions on City During Mortgagee Cure Period. With respect to an Event of Default, so long as a Mortgagee or Mezzanine Lender shall be diligently exercising its cure rights under this Agreement, City shall not: (i) re-enter the Project Site; (ii) serve a termination notice; or (iii) bring a proceeding on account of such default to (x) dispossess Developer and/or other occupants of the Project Site, (y) re-enter the Project Site, or (z) terminate this Agreement (such rights described in clauses (i), (ii) and (iii), "**City's Termination Rights**"). In addition, with respect to a Monetary Event of Default, City shall not exercise any of City's Termination Rights so long as a Mortgagee or a Mezzanine Lender shall be diligently exercising its cure rights under this Section 23 within the time periods set forth in this Section 23; provided, however, that (A) nothing contained in this Section 23.6 shall in any way impair the right of City to exercise any of City's Termination Rights or to enforce any other remedy in the event of any other Event of Default by Developer in the performance of its obligations hereunder, subject to a Mortgagees or Mezzanine Lender's rights hereunder with respect to any such Event of Default, and (B) upon any cessation of a Mortgagee or Mezzanine Lender so exercising such rights and undertaking such activities, City may exercise any of City's Termination Rights hereunder. Nothing in the protections to Mortgagees or Mezzanine Lenders provided in this Agreement shall be construed to either (I) extend the Term, or (II) require such Mortgagee or Mezzanine Lender to cure any Event of Default by Developer that is not capable of being cured as a condition to preserving this Agreement.

23.7 Foreclosure Not a Default. The exercise of any rights or remedies of a Mortgagee under a Mortgage or a Mezzanine Lender under a Mezzanine Loan, including the

consummation of any foreclosure or transfer in lieu of foreclosure, shall not constitute a default under this Agreement or require the consent of City.

23.8 Limitation on Liability of Mortgagee. No Mortgagee or Mezzanine Lender shall become liable under this Agreement unless and until such time as it becomes, and then only for so long as it remains, the owner of, or has control over, the interest in the Project Site created hereby, and no performance by or on behalf of a Mortgagee or Mezzanine Lender of Developer's obligations hereunder shall cause such Mortgagee or Mezzanine Lender to be deemed to be a "mortgagee in possession" unless and until such Mortgagee shall take possession, ownership and/or control of the Project Site, or such Mezzanine Lender shall take possession or control of Developer, as applicable.

23.9 More Than One Mortgagee. If there is more than one Mortgagee, the rights and obligations afforded by this Article 23 to a Mortgagee shall be exercisable only by the party whose collateral interest in the Project Site is senior in lien (or that has obtained the consent of any Mortgagees whose Mortgage is senior to the Mortgage of such Mortgagee).

23.10 Bankruptcy. This section shall apply in the event of any proceeding by Developer under the United States Bankruptcy Code (Title 11 U.S.C.) as now or hereafter in effect. If this Agreement is rejected or deemed rejected by Developer or its trustee in bankruptcy, and provided, that, the Mortgagee or Mezzanine Lender cures or causes to be cured all outstanding Developer defaults in accordance herewith, Mortgagee or Mezzanine Lender shall have thirty (30) days following such rejection or deemed rejection to, at Mortgagee or Mezzanine Lender's discretion and to the extent permitted by Applicable Law, enter into an assignment and assumption instrument in form and substance reasonably satisfactory to City and such Mortgagee or Mezzanine Lender pursuant to which Developer shall assign to the Mortgagee or Mezzanine Lender, and the Mortgagee or Mezzanine Lender shall assume, all of Developer's interest and obligations under this Agreement whether arising or accruing before or after the date of such assignment and assumption, and this Agreement shall not terminate and the Mortgagee or Mezzanine Lender shall have all rights of the Mortgagee or Mezzanine Lender under this Section 10 as if such bankruptcy proceeding had not occurred. If any court of competent jurisdiction shall determine that this Agreement shall have been terminated notwithstanding the terms of the preceding sentence as a result of rejection by Developer or the trustee in connection with any such proceeding, the rights of Mortgagee or Mezzanine Lender to a New Agreement from City pursuant to the applicable provisions of Section 23.11 shall not be affected thereby.

23.11 New Agreement. In the event of the termination of this Agreement before the expiration of the Term, including, without limitation, the termination of this Agreement by the City on account of an Event of Default or the rejection of this Agreement by a trustee of Developer in bankruptcy, City shall serve upon the Mortgagee or Mezzanine Lender written notice that this Agreement has been terminated, together with a statement of any and all sums which would at that time be due under this Agreement but for such termination, and of all other defaults, if any, under this Agreement then known to City. The Mortgagee or Mezzanine Lender shall thereupon have the option to the assignment of all of Developer's rights and obligations hereunder, in accordance with and upon the following terms and conditions:

(i) Upon the written request of the Mortgagee or Mezzanine Lender, within thirty (30) days after service of such notice that this Agreement has been terminated, City shall enter into a new Agreement with the most senior Mortgagee or Mezzanine Lender giving notice within such period or its designee; and

(ii) Such new Agreement shall be entered into at the reasonable cost of the Mortgagee or Mezzanine Lender thereunder, shall be effective as of the date of termination of this Agreement, and shall be for the remainder of the Term hereof and upon all the agreements, terms, covenants and conditions hereof. Such new Agreement shall have the same priority as this Agreement, including priority over any mortgage or other lien, charge or encumbrance on the title to the Project Site. Such new Agreement shall require the Mortgagee or Mezzanine Lender to perform any unfulfilled monetary obligation of Developer under this Agreement that would, at the time of the execution of the new Agreement, be due under this Agreement if this Agreement had not been terminated and to perform as soon as reasonably practicable any unfulfilled non-monetary obligation which is reasonably susceptible of being performed by such Mortgagee or Mezzanine Lender other than obligations of Developer with respect to construction of the Initial Improvements, which obligations shall be performed by Mortgagee or Mezzanine Lender in accordance with the terms of the applicable Ground Lease. Upon the execution of such new Lease, the Mortgagee or Mezzanine Lender shall pay any and all sums which would at the time of the execution thereof be due under this Agreement but for such termination, and shall pay all expenses incurred by City in connection with such defaults and termination and the preparation, execution and delivery of such new Agreement. The provisions of this Section 23.11 shall survive any termination of this Agreement (except as otherwise expressly set out in the first sentence of Section 22.11), and shall constitute a separate agreement by the City for the benefit of and enforceable by the Mortgagee or Mezzanine Lender.

23.12 Additional Mortgagee Protections. In addition to the other rights, notices and cure periods afforded to Mortgagees, City further agrees that:

23.12.1 without the prior consent of each Mortgagee (which consent is not to be unreasonably withheld, conditioned or delayed), to the extent required in the Mortgage, City will neither agree to any modification or amendment of this Agreement (other than an immaterial modification or amendment), nor accept a surrender or cancellation of this Agreement;

23.12.2 City shall consider in good faith any modification to this Agreement requested by a Mortgagee as a condition or term of granting financing to Developer, so long as the same does not materially increase City's obligations, diminish Developer's or the Phase Developer's obligations, or diminish City's rights and immunities hereunder;

23.12.3 the Mortgagee whose Mortgage is most senior in lien (or that has obtained the consent of any Mortgagees whose Mortgage is senior to the Mortgage of such Mortgagee) shall have the right to participate in any arbitration proceedings under Article 20, although only one Mortgagee shall have such participation rights at any given time;

23.12.4 at the request of Developer from time to time, City shall execute and deliver an instrument addressed to the holder of any Mortgage or Mezzanine Loan

confirming that such holder is a Mortgagee or Mezzanine Lender (provided, that City may require such Mortgagee or Mezzanine Lender to provide such reasonably detailed information as is necessary for City to make such determination) and entitled to the benefit of all provisions contained in this Agreement which are expressly stated to be for the benefit of Mortgagees or Mezzanine Lenders.

23.13 Rights of Phase Developers. The rights of and restrictions on Phase Developers with respect to the subject matter of this Article 23 are governed by the Ground Lease.