

RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:

City of Sunnyvale
456 West Olive Avenue
Sunnyvale, CA 94086
Attn: City Attorney's Office

Redevelopment Countywide Oversight
Board of Santa Clara County
70 W. Hedding St, 2nd Floor
San Jose, CA 95110
Attn: County Auditor-Controller

Recorded Without Fee Pursuant to [cite]

COMPENSATION AGREEMENT FOR SUNNYVALE TOWN CENTER PARCELS

This Compensation Agreement (“Agreement”) is made and entered into by and among the Successor Agency of the Redevelopment Agency of the City of Sunnyvale, a public entity established under Health and Safety Code section 34173 (the “Successor Agency”); the City of Sunnyvale, a California municipal corporation (“City”); and each of the undersigned local agencies and school districts, each of which is a taxing entity as defined by Health and Safety Code section 34171(k) (the “Taxing Entities”), with the consent of the Redevelopment Dissolution Countywide Oversight Board of Santa Clara County, established under Health and Safety Code section 34179 (the “Oversight Board”). The Successor Agency, the City, and the Taxing Entities are collectively the “Parties” and each a “Party.” The “Effective Date” of this Agreement is the date on which it has been executed by all Parties.

RECITALS

WHEREAS, the Successor Agency is the owner of three properties located at 325 South Taaffe Street (APN 209-34-021) (“Parcel 1”), 225 South Taaffe Street (APN 209-34-025) (“Parcel 2”), and 379 S. Sunnyvale Ave (APN 209-35-013) (“Parcel 3”), all of which are located in the City of Sunnyvale, Santa Clara County, California, and are more particularly described in Exhibit A attached hereto and incorporated herein by reference (collectively, the “Property” or the “Parcels”); and

WHEREAS, Parcel 1 and Parcel 2 are developed with two multi-level parking structures that are owned by STC Venture LLC, a Delaware limited liability company, (“Owner”), the owner of the Sunnyvale Town Center mixed-use development (the “Town Center”); and

WHEREAS, Parcel 1 and Parcel 2 are currently subject to the Public Parking Ground Lease Sunnyvale Town Center, dated September 28, 2007, as amended by the First Amendment to Public Parking Ground Lease, dated August 2, 2010 and the Second Amendment to Public

Parking Ground Lease, dated September 23, 2016 (as amended, the “Public Parking Ground Lease”); and

WHEREAS, pursuant to the Public Parking Ground Lease, the Owner pays the Successor Agency \$1.00/year in nominal rental payments relating to Parcels 1 and 2 and other property not subject to this Agreement (“Nominal Rent”); and

WHEREAS, the Public Parking Ground Lease has a term of ninety-nine (99) years commencing on September 28, 2007, subject to the obligation for good faith negotiations regarding an extension of at least 10-years if certain conditions are met; and

WHEREAS, Parcel 3 is developed with a parking structure that is owned by the Successor Agency and subject to an Operations and Maintenance Agreement and easement for the benefit of the Owner which operates the parking structure located on Parcel 3; and

WHEREAS, the City expressly acknowledges and understands that environmental contamination affecting Parcel 3 predates the execution of this Agreement; and

WHEREAS, pursuant to Health and Safety Code section 34180(f), the City has requested that the Taxing Entities enter into this Agreement to accomplish the transfer of the Parcels from the Successor Agency to the City; and

WHEREAS, the transfer of the Parcels in accordance with the terms of this Agreement will allow termination of the Successor Agency, and the Parties agree to cooperate to expeditiously achieve such termination; and

WHEREAS, the Parties desire to enter into this Agreement to convey the Property to the City for public use under the terms and conditions of this Agreement; and

WHEREAS, the Redevelopment Dissolution Oversight Board of Santa Clara County approved this Agreement pursuant to Resolution No. _____ adopted on _____ [date].

NOW, THEREFORE, for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Parties hereby agree to all of the following terms and conditions:

TERMS & CONDITIONS

Section 1. Incorporation of Recitals. The Parties agree that all of the above Recitals are true and correct and are incorporated in this Agreement’s terms and conditions.

Section 2. Purchase of Environmental Insurance Policy. No later than 30 days after the approval by the California Department of Finance of an amendment to the Successor Agency’s 2025-2026 Recognized Obligation Payment Schedule or the approval of the Successor Agency’s 2026-2027 Recognized Obligation Payment Schedule, adding to the costs of the environmental remediation for Parcel 3 the costs of an environmental insurance policy

(“Environment Insurance Policy”) , the Successor Agency shall purchase such Environmental Insurance Policy that meets all of the following criteria:

- (a) Has a term of 10 years;
- (b) Is transferrable to successive property owners;
- (c) Does not cost more than the amount allowed on the Successor Agency’s Recognized Obligation Payment Schedule for the purchase of such Environmental Insurance Policy;
- (d) Contains or includes an endorsement for the following: i) bodily injury (including death), property damage and environmental cleanup costs, both on the Property and off-site; (ii) transportation of any waste, including loading and unloading from the Property to the final disposal location, with all such disposal locations being scheduled or covered as non-owned disposal sites under the Environmental Insurance Policy.
- (e) Has a reverse-retroactive date of policy inception providing coverage for pre-existing pollution conditions;
- (f) Has a minimum limit of \$25,000,000.

Section 3. Conveyance of Property to City.

(a) **Conveyance.** Subject to the terms and conditions of this Agreement, the Successor Agency shall convey its interest in and to the Property to the City at no cost by quitclaim deed no later than 60 days after the Effective Date or the Successor Agency’s purchase of the Environmental Insurance Policy, whichever is later, unless otherwise extended by the Parties for good cause. Any costs of escrow and title associated with the conveyance of the Property to the City shall be borne by the City. The City shall promptly provide the Taxing Entities copies of the recorded quitclaim deed.

(b) **Release.** Except as expressly provided herein, upon the close of escrow and delivery of the quitclaim deed, City hereby waives, releases, acquits, and forever discharges Successor Agency and Taxing Entities, and Successor Agency’s and Taxing Entities’ agents, directors, officers, and employees to the maximum extent permitted by law, of and from any and all claims, actions, causes of action, demands, rights, liabilities, damages, losses, costs, expenses, compensation, attorneys’ fees, consultants’ fees and costs and expert fees (collectively “Claims”) whatsoever, direct or indirect, known or unknown, foreseen or unforeseen, that it now has or that may arise in the future because of or in any way growing out of or connected with the physical condition of the Property, including without limitation, the physical and environmental condition of the Property or any law or regulation applicable thereto, including, without limitation, any Claim or matter (regardless of when it first appeared) relating to or arising from (i) the presence of any environmental problems, or the use, presence, storage, release, discharge, or migration of hazardous materials on, in, under or around the Property regardless of when such hazardous materials were first introduced in, on or about the Property, (ii) any patent or latent defects or

deficiencies with respect to the Property, (iii) any and all matters related to the Property or any portion thereof, including without limitation, the condition and/or operation of the Property and each part thereof, and (iv) the presence, release and/or remediation of asbestos and asbestos containing materials in, on or about the Property regardless of when such asbestos and asbestos containing materials were first introduced in, on or about the Property. City further hereby waives and agrees not to commence any action, legal proceeding, cause of action or suit in law or equity, of whatever kind or nature, including, but not limited to, a private right of action under the federal superfund laws, 42 U.S.C. Section 9601 *et seq.* and California Health and Safety Code section 78000 *et seq.* (as such laws and statutes may be amended, supplemented or replaced from time to time), directly or indirectly, against Successor Agency, any Taxing Entity, or Successor Agency's or Taxing Entities' agents, directors, officers, and employees in connection with the Property, except matters arising from Successor Agency's fraud, intentional misrepresentation, or concealment.

AS IS CONDITION OF PROPERTY. EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, IT IS UNDERSTOOD AND AGREED THAT THE SUCCESSOR AGENCY IS NOT MAKING AND HAS NOT AT ANY TIME MADE ANY WARRANTIES OR REPRESENTATIONS OF ANY KIND OR CHARACTER, EXPRESS OR IMPLIED, WITH RESPECT TO THE PROPERTY. THE CITY ACKNOWLEDGES AND AGREES THAT UPON THE CLOSING DATE THE SUCCESSOR AGENCY SHALL SELL AND CONVEY THE PROPERTY TO THE CITY "IN ITS THEN EXISTING CONDITION AS IS, WHERE IS, WITH ALL FAULTS" EXCEPT TO THE EXTENT EXPRESSLY PROVIDED OTHERWISE IN THIS AGREEMENT, THE CITY HAS NOT RELIED AND WILL NOT RELY ON, AND THE SUCCESSOR AGENCY IS NOT LIABLE FOR OR BOUND BY, ANY EXPRESS OR IMPLIED WARRANTIES, GUARANTIES, STATEMENTS, REPRESENTATIONS OR INFORMATION PERTAINING TO THE PROPERTY OR RELATING THERETO MADE OR FURNISHED BY THE SUCCESSOR AGENCY OR ANY AGENT PURPORTING TO REPRESENT THE SUCCESSOR AGENCY, UNLESS SPECIFICALLY SET FORTH IN THIS AGREEMENT.

THE CITY REPRESENTS TO THE SUCCESSOR AGENCY THAT CITY HAS CONDUCTED, OR WILL CONDUCT PRIOR TO CLOSING, SUCH INVESTIGATIONS OF THE PROPERTY, INCLUDING BUT NOT LIMITED TO, THE PHYSICAL AND ENVIRONMENTAL CONDITIONS THEREOF, AS THE CITY

DEEMS NECESSARY OR DESIRABLE TO SATISFY ITSELF AS TO THE CONDITION OF THE PROPERTY AND THE EXISTENCE OR NONEXISTENCE OR CURATIVE ACTION TO BE TAKEN WITH RESPECT TO ANY HAZARDOUS MATERIALS ON OR DISCHARGED FROM THE PROPERTY, AND WILL RELY SOLELY UPON SAME AND NOT UPON ANY INFORMATION PROVIDED BY OR ON BEHALF OF SUCCESSOR AGENCY OR ITS AGENTS, OTHER THAN SUCH REPRESENTATIONS AND WARRANTIES OF SUCCESSOR AGENCY AS ARE EXPRESSLY SET FORTH IN THIS AGREEMENT. UPON CLOSING, SUBJECT TO SUCH REPRESENTATIONS AND WARRANTIES OF THE SUCCESSOR AGENCY AS ARE EXPRESSLY SET FORTH IN THIS AGREEMENT, THE CITY SHALL ASSUME THE RISK THAT ADVERSE MATTERS, INCLUDING BUT NOT LIMITED TO, ADVERSE PHYSICAL AND ENVIRONMENTAL CONDITIONS, MAY NOT HAVE BEEN REVEALED BY THE CITY'S INVESTIGATIONS.

IN CONNECTION WITH THE RELEASE PROVIDED FOR IN THIS AGREEMENT, CITY EXPRESSLY WAIVES ALL RIGHTS UNDER CALIFORNIA CIVIL CODE SECTION 1542, WHICH PROVIDES THAT:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY;

THE COVENANTS SET FORTH IN THIS SECTION SHALL SURVIVE CLOSE OF ESCROW AND DELIVERY OF THE QUIT CLAIM DEED(S).

Section 4. Recordation of this Agreement. Upon full execution of this Agreement the City shall cause this Agreement to be recorded against the Property in the Santa Clara County Office of the Clerk-Recorder. The City shall promptly provide the Taxing Entities with a recorded copy of this Agreement. Upon the transfer of the Property to the City pursuant to Section 3(a) above, the Parties agree that the County and the City can execute and record a release of this Agreement to be recorded in the Official Records and the County's execution of

such release shall be conclusive evidence that the Agreement has been fully performed and none of the Taxing Entities shall have any further rights or obligations under this Agreement after recordation of such a release, except that the covenants set forth in Section 3(b) shall survive.

Section 5. Miscellaneous Provisions.

(a) **Non-Waiver.** No waiver of a breach, failure of any condition, or any right or remedy contained in or granted by the provisions of this Agreement will be effective unless it is in writing and signed by the waiving Parties.

(b) **No Partnership.** Nothing contained in this Agreement shall be construed to constitute any Party as a partner, employee, joint venturer, or agent of any other Party.

(c) **Notices.** All deliveries, notices, requests, demands or other communications provided for or required by this Agreement shall be in writing and shall be deemed to have been given when sent by registered or certified mail, return receipt requested; when sent by overnight carrier; or upon email confirmation to sender of receipt of a facsimile communication which is followed by a mailed hard copy from sender. Notices shall be addressed as specified in each Party's signature block.

(d) **Severability.** In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions of this Agreement, but this Agreement shall be construed as if such invalid, illegal, or unenforceable provisions had not been contained herein.

(e) **Time is of the Essence.** Time is of the essence regarding each and all of the agreements, covenants, and conditions of this Agreement.

(f) **Ambiguities.** Any rule of construction to the effect that ambiguities are to be resolved against the drafting party does not apply in interpreting this Agreement.

(g) **Integration.** This instrument constitutes the entire agreement between the Parties with respect to the subject matter hereof and supersedes all prior offers and negotiations, oral or written.

(h) **Amendment.** This Agreement may be modified only in writing and only if signed by the Taxing Entities and the City at the time of the modification. Following the execution of this Agreement, the Successor Agency's consent shall not be required for any modification of the Agreement.

(i) **Governing Law.** This Agreement shall be construed and interpreted according to the laws of the State of California, excluding its conflict of law principles. Proper venue for legal actions will be exclusively vested in a state court in the County of Santa Clara. The Parties agree that subject matter and personal jurisdiction are proper in state court in the County of Santa Clara and waive all venue objections.

(j) **Counterparts.** This Agreement may be executed in one or more counterparts, each of which will be considered an original, but all of which together will constitute one and the same instrument.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

**SUCCESSOR AGENCY TO THE
REDEVELOPMENT AGENCY OF THE
CITY OF SUNNYVALE**

Approved as to form:

Rebecca Moon
Agency General Counsel

By: _____
Name: Tim Kirby
Title: Executive Director
Address: 456 West Olive Ave.
Sunnyvale, CA 94088-3707

CITY OF SUNNYVALE

Approved as to form:

Rebecca Moon
City Attorney

By: _____
Name: Tim Kirby
Title: City Manager
Address: 456 West Olive Ave.
Sunnyvale, CA 94088-3707

**SANTA CLARA COUNTY
AUDITOR-CONTROLLER**

Approved as to form and legality:

Deputy County Counsel

By: _____
Name: Margaret Olaiya
Title: Director, Finance Agency
70 W. Hedding Street
East Wing, 2nd Floor
San Jose, CA 95110

/

TAXING ENTITIES

Approved as to form and legality:

Deputy County Counsel

COUNTY OF SANTA CLARA

By: _____
Name: Otto Lee _____
Title: President, Board of Supervisors
70 W. Hedding Street
East Wing, 10th Floor
San Jose, CA 95110

Signed and certified that a copy of this document has been delivered by electronic or other means to the President, Board of Supervisors.

ATTEST:

CURTIS BOONE
Acting Clerk of the Board of Supervisors

FREMONT UNION HIGH SCHOOL DISTRICT

By: _____
Name: _____
Title: _____
Address: _____

SUNNYVALE ELEMENTARY SCHOOL DISTRICT

By: _____
Name: _____
Title: _____
Address: _____

SANTA CLARA COUNTY OFFICE OF EDUCATION

By: _____
Name: _____
Title: _____
Address: _____

//

//

FOOTHILL-DeANZA COMMUNITY COLLEGE DISTRICT

By: _____
Name: _____
Title: _____
Address: _____

EL CAMINO HEALTHCARE DISTRICT

By: _____
Name: _____
Title: _____
Address: _____

MIDPENINSULA REGIONAL OPEN SPACE DISTRICT

By: _____
Name: _____
Title: _____
Address: _____

BAY AREA AIR QUALITY MANAGEMENT DISTRICT

By: _____
Name: _____
Title: _____
Address: _____

SANTA CLARA VALLEY WATER DISTRICT

By: _____
Name: _____
Title: _____
Address: _____

Exhibits:

A – Legal Description and Map of Property

EXHIBIT A
LEGAL DESCRIPTION AND MAP OF PROPERTY