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APNs: 110-25-040 and 110-35-031

Address: 1212 Bordeaux Drive and 1265 Borregas Avenue, Sunnyvale, CA 94089

**VOLUNTARY IMPROVEMENT, OPERATION AND MAINTENANCE
AGREEMENT BETWEEN THE CITY OF SUNNYVALE AND GOOGLE LLC FOR
THE BORDEAUX-BORREGAS BRIDGE PROJECT**

This Voluntary Improvement, Operation and Maintenance Agreement (“Agreement”), dated for identification purposes as of _____, ____, is entered into by and between the CITY OF SUNNYVALE, a charter city and municipal corporation of the State of California (herein termed “CITY”), and GOOGLE LLC, a Delaware limited liability company (herein termed “DEVELOPER”).

RECITALS

WHEREAS, the Santa Clara Valley Water District (“DISTRICT” or “SCVWD”) is the owner of certain real property within the City of Sunnyvale adjacent to and on both sides of and including the flood control channel known as the Sunnyvale West Channel (“West Channel”) (collectively, “DISTRICT Property”); and

WHEREAS, DEVELOPER is the owner of certain real property adjacent to and on both sides of the West Channel, Assessor Parcel Nos. 110-25-040 and 110-35-031 (“DEVELOPER Property”); and

WHEREAS, DEVELOPER proposes to construct publicly accessible pedestrian and bicycle paths on DEVELOPER Property and DISTRICT Property (including for DISTRICT and DEVELOPER maintenance vehicles on levee pathways only) and a pedestrian and cyclist only bridge crossing over the West Channel, as depicted in Exhibit A attached hereto (“Project”); and

WHEREAS, the CITY and DISTRICT have entered into the 2023 Amended and Restated Joint Use Agreement, attached hereto as Exhibit B, wherein DISTRICT granted a license to CITY to construct, operate, maintain, repair, replace, and remove improvements on DISTRICT Property along the West Channel including, but not limited to, concrete surfaced pedestrian and bicycle trails, pedestrian and bicycle bridge, pedestrian scale lighting, and fixtures (trash receptacles, benches etc.), for recreational purposes including non-motorized bicycling, walking, jogging and hiking activities (“2023 Joint Use Agreement”); and

WHEREAS, on _____, 2022, the CITY Community Development Director approved a Miscellaneous Plan Permit (MPP) pursuant to Planning Application #2022-7354 for DEVELOPER to construct the Project (“Project MPP”); and

WHEREAS, Project Conditions of Approval requires a separate encroachment permit for relocation of the 12” RCP storm drain main, and requires “approval letter/permit/agreement from SCVWD for all work within the West Channel”; and

WHEREAS, CITY has the authority under the terms of the 2023 Joint Use Agreement with DISTRICT to regulate the terms and conditions for the use and construction of any improvements for recreational purposes on DISTRICT Property along the West Channel including the construction, installation, replacement, repair and maintenance of any bridges and pedestrian and bicycle lanes for public use; and

WHEREAS, the Project is a component of DEVELOPER’s Moffett Park Green Link project, which consists of a series of connected pathways intended for cycling and walking throughout the CITY (“Green Link”), and the Google Trails and Channel Bridge will connect existing Green Link pathways on 1212 Bordeaux Drive and 1265 Borregas Avenue in the CITY; and

WHEREAS, CITY desires to let DEVELOPER construct the Project on DISTRICT Property adjacent to and over the West Channel to promote sustainable transportation, improve Green Link connectivity, and because of the overall positive effect of the improvements on the environment; and

WHEREAS, CITY and DEVELOPER now desire to enter into this Agreement to document the terms and conditions allowing DEVELOPER to construct the Project on the DISTRICT Property adjacent to and over the West Channel in accordance with the requirements described herein and to specify responsibility for the maintenance thereof; and

NOW, THEREFORE, in consideration of the recitals and the mutual promises contained herein, CITY and DEVELOPER agree as follows:

DEFINITIONS

The defined terms in the Recitals section above are incorporated herein by reference. In addition, and for clarification purposes, where applicable, the following definitions shall apply for purposes of this Agreement.

DEVELOPER – means Google LLC, a Delaware limited liability company, and its lawful successors or assigns.

CITY – means the City of Sunnyvale, a charter city and municipal corporation of the State of California, and includes the duly elected or appointed officers, agents, employees and volunteers of the City of Sunnyvale, individually or collectively.

DISTRICT – means the Santa Clara Valley Water District, a California Special District created by the California Legislature, and includes the duly elected or appointed officers, agents, employees and volunteers of the District, individually or collectively.

Improvements – means, without limitation, those certain improvements proposed as part of the Project and more particularly described and depicted on Exhibit A attached hereto (and on Exhibits to subsequent amendments or supplements hereto) and incorporated herein by this reference, as such Improvements may be replaced, rebuilt, or otherwise substantially improved.

Premises – means the DISTRICT Property generally located on the east and west banks of the West Channel adjacent to and across from 1212 Bordeaux Drive in the CITY, including the applicable portion of the West Channel, as shown on Exhibit [REDACTED] to the 2023 Joint Use Agreement, upon which CITY has a license to construct, operate, maintain, repair, replace and remove improvements for recreational purposes, including pedestrian trails and pedestrian bridges, and to permit public access, pursuant to the 2023 Joint Use Agreement between the CITY and DISTRICT.

Maintenance, Monitor and Maintain – means, except as used in the "Insurance Provisions" of this Agreement, the inspection, monitoring, and maintenance of the Improvements.

Project – means the Project approved by the CITY pursuant to the Project MPP.

EFFECTIVE DATE AND TERM

The effective date of this Agreement is the effective date of the 2023 Joint Use Agreement between the CITY and the DISTRICT. This Agreement shall remain in effect for the life of the Project, or upon such earlier date of termination as CITY and DEVELOPER may mutually agree, or upon termination or expiration of the 2023 Joint Use Agreement between CITY and DISTRICT, whichever is earlier.

SCOPE OF USE OF THE PREMISES

1. DEVELOPER is not authorized to construct Improvements other than those which are the subject of this Agreement without first obtaining written authorizations and required permits from CITY and DISTRICT. It is anticipated that from time to time, this Agreement may be amended to include additional Improvements in accordance with all applicable requirements.

2. DEVELOPER represents that the CITY has been or will be provided copies of all plats and diagrams, calculations, and record drawings depicting the location of each of the DEVELOPER's Improvements which are the subject of this Agreement.

3. CITY hereby enters into this Agreement with DEVELOPER, subject to the reservations, covenants and conditions herein contained, for DEVELOPER to construct and install the Improvements within the Premises located within the corporate limits of the CITY.

4. The construction and installation of the Improvements shall be accomplished without cost or expense to CITY and shall be subject to the written approval of CITY's Engineer. DEVELOPER's activities with respect to the Improvements shall not endanger personnel or property, or unreasonably obstruct travel on any trail, walkway or other access thereon within said Premises.

5. DEVELOPER can provide and CITY can accept, the construction of the Improvements provided pursuant to this Agreement under applicable laws. The funding and construction of the Improvements provided pursuant to this Agreement is not a gift to CITY or any specific individual. CITY is aware and acknowledges that DEVELOPER may be a vendor and/or lobbyist employer, and DEVELOPER employees may be registered lobbyists. This Agreement shall not prevent DEVELOPER from supplying products or services to the CITY.

6. This Agreement does not authorize use of any property other than the Premises. Any use of any other DISTRICT property shall require a separate agreement.

7. This Agreement is not a grant by CITY of any property interest and is made subject and subordinate to the prior and continuing right of CITY and DISTRICT and their assigns to use all the Premises in the performance of their duties, including, but not limited to, public use as a recreational trail, flood protection, water resource management, and stream stewardship, together with appurtenances thereof, and with right of ingress and egress, along, over, across and in said Premises; and DEVELOPER shall have a duty to remove and/or relocate the Improvements, as applicable, within the Reasonable Timeframe set forth in Section 19 of this Agreement, and at DEVELOPER's own expense (except as otherwise provided herein), in order to accommodate such uses. The grant of rights in this Agreement is made subject to all easements, restrictions, conditions, covenants, encumbrances and claims of title which may affect the Premises, and it is understood that DEVELOPER, at its own cost and expense, shall obtain such permission as may be necessary and consistent with any other existing rights. Notwithstanding the foregoing, CITY shall immediately notify DEVELOPER of any other existing rights which would interfere with or impede DEVELOPER's construction and installation of the Improvements when this information becomes available.

8. DEVELOPER shall pay a one-time agreement fee in the amount of \$1,504. DEVELOPER shall pay any other required fees for permit review and construction inspection at the time of issuance of any permit in accordance with CITY's then current Master Fee Schedule.

9. The construction and installation, of the Improvements by DEVELOPER shall be performed in accordance with all applicable federal, state and local laws, including, without limitation (i) zoning laws, construction codes and CITY's and DISTRICT's Standard Specifications and Details, as the same may exist now, or be hereafter amended or revised, (ii) any supplements to or revisions of this Agreement, and (iii) any requirements imposed by DISTRICT for the protection of their resources and facilities. Nothing in this Agreement prevents CITY from establishing additional or stricter conditions (even with respect to the matters specified in those

sections), and requiring DEVELOPER to comply with the same, provided that such conditions do not require the removal or relocation of the Improvements upon less time than the Reasonable Timeframe set forth in Section 19 of this Agreement, except for emergency and safety conditions that require immediate response. In the event of a conflict among applicable codes and standards, the most stringent code or standard, as determined in the reasonable judgment of the CITY Engineer, shall apply.

CONSTRUCTION STANDARDS

10. DEVELOPER shall construct and install the Improvements so as not to endanger or interfere with improvements CITY or DISTRICT shall deem appropriate to make, or to interfere in any manner with the Premises or legal rights of any adjacent property owner or to unnecessarily hinder or obstruct pedestrian or bicycle traffic. DEVELOPER shall install all the Improvements in strict conformance with the plans and drawings approved in writing by CITY and shall not install the Improvements, equipment or fixtures where they will interfere with any existing gas, electric, telephone, telecommunications, water, sewer or other utility facilities or obstruct or hinder in any manner any other entity's authorized use of the Premises. Any and all public property or private property that is disturbed or damaged by DEVELOPER during the construction and installation of the Improvements shall be promptly repaired by DEVELOPER to a condition equal to or better than that which existed prior to the damage.

11. Any contractor or subcontractor used for the construction or installation of the Improvements shall be properly licensed under the laws of the State of California and all applicable local ordinances and each contractor or subcontractor shall have the same obligations with respect to its work as DEVELOPER would have under this Agreement and applicable law as if the work were performed by DEVELOPER. DEVELOPER shall be responsible for ensuring that the work of contractors and subcontractors is performed consistent with this Agreement and applicable law, shall be responsible for all acts or omissions of contractors or subcontractors and shall implement a quality control program to ensure that the work is properly performed. This Section 11 is not meant to alter tort liability of DEVELOPER to third parties, if any, under applicable law.

MAINTENANCE AND OPERATION

12. DEVELOPER agrees to maintain, replace and/or repair the Improvements so as to keep them in a good and safe condition, normal wear and tear excepted, and free from any nuisance from the date of CITY's acceptance in writing of the completion of the construction and installation of the Improvements, which acceptance shall not be unreasonably delayed or denied, and for the Term of this Agreement.

13. Except as otherwise modified below, DEVELOPER agrees to perform the following CITY maintenance and operation obligations under the 2023 Joint Use Agreement between CITY and DISTRICT related to operation and maintenance of the Premises:

- a. Section (4), Prohibited Uses of Trail.
- b. Section (5), Trash and Litter Removal.
- c. Section (6), Vegetation Management.

- d. Section (7), Graffiti Removal.
- e. Section (10), Removal or Relocation of City Improvements.
- f. Section (11), Water Level Fluctuations.
- g. Section (12), Signage.
- h. Section (13), Bird Nesting Season.
- i. Section (14), Maintenance and Repair.

14. Pursuant to Section (15) of the 2023 Joint Use Agreement, DISTRICT is not responsible for any damages to the Improvements caused by DISTRICT's maintenance, construction, or reconstruction activities, or from its water management or flood protection facilities on or near the Premises, including without limitation any flood flows or inundation of the West Channel onto the Premises. DEVELOPER shall be responsible for any damage to DISTRICT's, CITY's, or DEVELOPER's improvements or structures resulting from the public's use of the Premises.

15. DEVELOPER acknowledges that DISTRICT has a right under Section (17) of the 2023 Joint Use Agreement to terminate the 2023 Joint Use Agreement after providing CITY with at least 180 days prior written notice of its intent to terminate the 2023 Joint Use Agreement. If DISTRICT provides notice of such intent to terminate, DEVELOPER shall, at the request of DISTRICT, be responsible for removal of the Improvements within the Reasonable Timeframe set forth in Section 19.

16. DEVELOPER acknowledges that, as provided in Section (18) of the 2023 Joint Use Agreement, CITY retains full control and authority to restrict, control, regulate, and/or supervise the use of the Premises for public recreation purposes, and to take any measure that CITY deems appropriate for the health and safety of users of the Premises, subject to the conditions and restrictions in the 2023 Joint Use Agreement, including without limitation DISTRICT's right to regulate public access to perform DISTRICT activities in connection with its flood protection obligations, pursuant to Section (10) of the 2023 Joint Use Agreement, that reasonably necessitates full or partial temporary closure of the pedestrian trails and pedestrian bridges within the Premises. DEVELOPER acknowledges the nature of DISTRICT's and CITY's respective rights in Section (19) and (20) of the 2023 Joint Use Agreement.

17. Should DEVELOPER fail to maintain the Premises as required by this Agreement, CITY may give DEVELOPER notice of such failure. If DEVELOPER fails to commence cure of such failure within ten (10) business days of CITY's notice, and thereafter diligently prosecute such cure to completion, CITY may perform such work and shall be reimbursed by DEVELOPER within thirty (30) calendar days after demand therefor; provided, however, that if such failure by DEVELOPER creates or could create an emergency, CITY may immediately commence cure of such failure and shall thereafter be entitled to recover the costs of such cure from DEVELOPER.

NO OWNERSHIP INTEREST CREATED

18. No use of the Premises under this Agreement shall create or vest in DEVELOPER any ownership or other interest in Premises, streets or any other property or interest of CITY or DISTRICT.

REMOVAL AND RELOCATION

19. If DISTRICT requires any of the Improvements to be removed or relocated pursuant to a separate agreement by and between DEVELOPER and DISTRICT, DEVELOPER shall notify CITY and remove or relocate, as applicable, the Improvement(s) at its own expense within the commercially reasonable timeframe prescribed in writing by DISTRICT, factoring in the time required to obtain final approval for any such removal or relocation from DISTRICT, CITY and state/federal agencies, as applicable, including but not limited to any required environmental review under the California Environmental Quality Act (“**Reasonable Timeframe**”). If removal or relocation of the Improvements, including vegetation installed by DEVELOPER, requires mitigation under the California Environmental Quality Act, DEVELOPER will be responsible for all costs required to fulfill any required mitigation responsibilities.

OTHER AGENCY PERMITS

20. DEVELOPER shall be responsible for securing and paying for, any necessary permits, licenses, or approvals required for the Improvements from third parties, including DISTRICT, the Regional Water Quality Control Board, and/or the California Department of Fish and Wildlife, as applicable.

PERFORMANCE BOND

21. Prior to the issuance of an encroachment permit by DISTRICT, DEVELOPER shall provide CITY with a performance bond naming CITY as obligee in an amount equal to one hundred percent (100%) of the value of the work to be performed by or on behalf of DEVELOPER within and affecting the Premises to guarantee and assure the faithful performance of DEVELOPER’s obligations under this Agreement. After expiration of the notice and cure period set forth in Section 17 of this Agreement, CITY shall have the right to draw against the performance bond in the event of a default by DEVELOPER or in the event that DEVELOPER fails to meet and fully perform any of its obligations. The form of the performance bond shall be reasonably approved by the CITY. The performance bond shall remain in full force until the work to be performed is complete, inspected and accepted by the CITY Engineer and is released by CITY.

DAMAGE TO IMPROVEMENTS ON PUBLIC PROPERTY

22. DEVELOPER shall be responsible for any damage to DISTRICT or CITY facilities, street pavements, existing utilities, curbs, gutters, sidewalks and all other public or private improvements due to DEVELOPER’s construction and installation of the Improvements and shall repair, replace and restore, in kind, said damaged improvements at its sole expense. Any premature deterioration of surface and subsurface improvements caused directly by the construction or installation of the Improvements by DEVELOPER which results from DEVELOPER’s negligent acts or omissions, shall be the responsibility of DEVELOPER.

DEVELOPER shall complete all necessary repairs within thirty (30) calendar days of notification by the CITY Engineer, or later if reasonably required in coordination with DISTRICT and/or the CITY Engineer. If DEVELOPER fails to make repairs within such timeframe, CITY may have repairs made with the cost being billed to DEVELOPER. This obligation shall remain for a period of ten (10) years following the end of the term of this Agreement.

RECORDS AND FIELD LOCATIONS

23. DEVELOPER shall maintain accurate plans and specifications of the Improvements. DEVELOPER shall, upon demand of the CITY Engineer, deliver to the office of the CITY Public Works Department and DISTRICT, free of charge, within fifteen (15) calendar days after such demand, such maps and plans as may be required to show in detail the exact location, size, depth and description of all the Improvements.

24. DEVELOPER shall also submit the plan to CITY in digital electronic format to the extent available. DEVELOPER shall at its sole cost and expense, expose by potholing to a depth of one foot (1') below the bottom of its subsurface Improvements, within thirty (30) calendar days of receipt of a written request from CITY to do so.

HOLD HARMLESS AND INDEMNIFICATION

25. DEVELOPER shall indemnify, defend (with reasonable notice to DEVELOPER and with counsel reasonably acceptable to CITY) and hold harmless CITY, its officers, employees and agents and any successors to CITY's interest from and against any and all claims, demands, losses, damages, liabilities, fines, penalties, charges, administrative and judicial proceedings and orders, judgments, remedial actions of any kind, and all reasonable costs and cleanup actions of any kind, all reasonable costs and expenses incurred in connection therewith, including, without limitation, reasonable attorney's fees and reasonable costs of defense (collectively, the "Losses") arising directly or indirectly out of the activities of DEVELOPER described in this Agreement and/or the installation, construction or any relocation or removal undertaken by DEVELOPER of the Improvements. However, DEVELOPER shall not indemnify CITY, its officers, employees and agents and any successors to CITY's interest for Losses arising directly or indirectly, from the CITY's gross negligence or willful misconduct. The defense and indemnification obligations of this agreement are undertaken in addition to, and shall not in any way be limited by, the insurance obligations contained in this agreement. DEVELOPER'S responsibility for such defense and indemnity obligations shall survive the termination or completion of this agreement.

26. DEVELOPER shall indemnify, defend (with reasonable notice to DEVELOPER and with counsel reasonably acceptable to DISTRICT) and hold harmless DISTRICT, its officers, employees and agents and any successors to DISTRICT's interest from and against any and all claims, demands, losses, damages, liabilities, fines, penalties, charges, administrative and judicial proceedings and orders, judgments, remedial actions of any kind, and all reasonable costs and cleanup actions of any kind, all reasonable costs and expenses incurred in connection therewith, including, without limitation, reasonable attorney's fees and reasonable costs of defense (collectively, the "Losses") arising directly or indirectly out of the activities of DEVELOPER described in this Agreement and/or the installation, construction or replacement undertaken by DEVELOPER of the Improvements. However, DEVELOPER shall not indemnify DISTRICT, its

officers, employees and agents and any successors to DISTRICT's interest for Losses arising directly or indirectly, from the DISTRICT's gross negligence or willful misconduct.

27. DEVELOPER, for itself and its successors and assigns, hereby waives all claims and causes of action, whether now existing or hereafter arising, against CITY or DISTRICT or their officers, agents or employees, for damages, physical or otherwise, to any of the Improvements covered by this Agreement from any cause whatsoever excluding those arising as a result of the CITY's or DISTRICT's gross negligence or willful misconduct. Under no circumstances shall either party be liable to the other party or otherwise be responsible for any loss of service downtime, lost revenue or profits, or third-party damages.

INSURANCE

28. DEVELOPER shall procure and maintain insurance during the entire term of this Agreement against claims for injuries to persons or damages to property which in any way relate to, arise from, or are connected with the installation, operation, or maintenance of the Improvements by DEVELOPER, or any entity acting on its behalf, and shall keep insurance in effect in accordance with the minimum insurance scope the CITY may set from time to time. DEVELOPER initially shall maintain in full force and effect the insurance policies set forth in Exhibit C attached hereto and incorporated herein. DEVELOPER may meet the insurance requirements of this Section 28 through a combination of self-insurance, primary and excess/umbrella policies which can be substantiated by issuance of a certificate of self-insurance or certificate of insurance.

ASSIGNMENT

29. DEVELOPER shall not assign, sublet or transfer any interest in this Agreement nor the performance of any DEVELOPER'S obligations hereunder, without the prior written consent of CITY, which shall not be unreasonably withheld, and any attempt by DEVELOPER to so assign this Agreement or any rights, duties or obligations arising hereunder shall be void and of no effect. Notwithstanding the foregoing, the prior written consent of CITY shall not be required for an assignment to a DEVELOPER Affiliate, which means any entity that, directly or indirectly, controls DEVELOPER, is under common control with DEVELOPER, or is wholly-owned or controlled by DEVELOPER.

NOTICE

30. All notices to be given in connection with this Agreement must be in writing and shall be sufficient if personally delivered or sent by certified or registered mail, postage prepaid, or national overnight delivery service addressed to the party entitled to receive such notice at the address designated in this Section or changed by written notice in accordance with this Section. Notice shall be effective as follows: (a) when personally delivered to the recipient, notice is effective on delivery; (b) when mailed by certified or registered mail with return receipt requested, notice is effective on receipt if delivery is confirmed by a return receipt; or (c) when delivered by overnight delivery with charges prepaid or charged to the sender's account, notice is effective on delivery if delivery is confirmed by the delivery service:

To CITY at:
City of Sunnyvale
P.O. Box 3707
City Hall, 456 W. Olive Avenue
Sunnyvale, CA 94088-3707
Attn: City Engineer

To DEVELOPER at:
Google LLC
1600 Amphitheatre Parkway
Mountain View, CA 94303
Attn: REWS Dept/Lease Administration
Parham Khoshkbari
(650) 880-4495
parhamk@google.com

with a copy to:

Google LLC
1600 Amphitheatre Parkway
Mountain View, CA 94043
Attn: Legal Department/RE Matters

ENTIRE UNDERSTANDING OF THE PARTIES

31. This Agreement contains the entire understanding between the parties with respect to the subject matter herein. There are no representations, agreements or understanding (whether oral or written) between or among the parties relating to the subject matter of this Agreement that are not fully expressed herein. This Agreement may not be amended except pursuant to a written instruction signed by all parties.

SEVERABILITY

37. If any one or more of the covenants or agreements or portions thereof provided in this Agreement shall be determined to be invalid or otherwise ineffective, the remaining provisions of this Agreement will remain in full force and effect. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, then such term or provision will be interpreted, construed or reformed to the extent reasonably required to render the same valid, enforceable and consistent with the original intent underlying such provision.

AGREEMENT RUNS WITH THE LAND

38. The rights, duties, and obligations in this Agreement shall bind all future owners and future possessors of the DEVELOPER Property and shall run with the land.

COUNTERPARTS

This Agreement may be executed in counterparts, all of which executed counterparts shall together constitute a single document.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed in duplicate.

<p>APPROVED AS TO FORM:</p> <p>_____</p> <p>Rebecca Moon Sr. Asst. City Attorney</p>	<p>"CITY"</p> <p>CITY OF SUNNYVALE, a California charter city and municipal corporation</p> <p>By:_____ Charles Taylor Public Works Director</p>
	<p>"DEVELOPER"</p> <p>GOOGLE LLC, a Delaware limited liability company</p> <p>By:_____ Name:</p> <p>Its:_____ Title</p>

NOTE: ALL SIGNATURES MUST BE NOTARIZED.

Exhibits:

A - Project Area and Project Improvements

B - 2023 Amended and Restated Joint Use Agreement

C - Insurance Requirements

ACKNOWLEDGMENT

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 _____)

On _____, before me, _____,
(insert name of notary)

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

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

WITNESS my hand and official seal.

Signature_____

(Seal)

Exhibit A

Project Area and Project Improvements

Exhibit B

2023 Amended and Restated Joint Use Agreement

Exhibit C

INSURANCE REQUIREMENTS

DEVELOPER shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work by the DEVELOPER, their agents, representatives, or employees.

Minimum Scope and Limits of Insurance. DEVELOPER shall maintain limits not less than:

1. **Commercial General Liability:** coverage written on an occurrence basis with limits not less than \$1,000,000 per occurrence and \$2,000,000 aggregate for bodily injury, personal injury and property damage. ISO Occurrence Form shall be at least as broad as CG 0001.
2. **Automobile Liability:** coverage with a combined single limit of not less than \$1,000,000 per occurrence applying to all owned, non-owned, or hired vehicles used in conjunction with this contract for bodily injury and property damage. ISO Form shall be at least as broad as CA 0001.
3. **Workers' Compensation:** Statutory Limits and **Employer's Liability:** \$1,000,000 per accident for bodily injury or disease.

Industry Specific Coverages. If checked below, the following insurance is also required:

- ☐ **Pollution Liability coverage** with limits not less than \$2,000,000 per occurrence.
- ☐ **MCS-90 Endorsement** to Business Automobile insurance for transportation of hazardous materials and pollutants.

Deductibles, Self-Insured Retentions and Other Coverages:

Any deductibles or self-insured retentions must be declared and approved by the City of Sunnyvale, Risk Manager. The DEVELOPER shall guarantee payment of any losses and related investigations, claim administration and defense expenses within the deductible or self-insured retention.

The aforementioned insurance requirements can be met through any combination of self-insured, primary and excess/umbrella policies that fulfill the stipulated coverage as cited above.

Other Insurance Provisions:

1. During the term of the contract, the City of Sunnyvale, its officers, officials, employees, agents, and volunteers are to be covered as an additional insured in the DEVELOPER's commercial general liability policy (and if industry specific coverage box is checked above, pollution liability policy) with respects to liability arising out of activities performed by or on behalf of the DEVELOPER; products and completed operations of the DEVELOPER;

premises owned, occupied or used by the DEVELOPER. The coverage shall contain no special limitations on the scope of protection afforded to the City of Sunnyvale, its officers, officials, employees, agents, or volunteers.

Additional Insured Endorsement for ongoing operations at least as broad as ISO CG 20 10 Scheduled, or automatic CG 20 38 and completed operations shall be at least as broad as ISO CG 20 37 scheduled or automatic ISO CG 20 40.

2. During the term of the contract, the DEVELOPER's Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the City of Sunnyvale.
3. For any claims related to this project, the DEVELOPER's insurance shall be primary. Any insurance or self-insurance maintained by the City of Sunnyvale, its officers, officials, employees, agents and volunteers shall be excess of the DEVELOPER's insurance and shall not contribute with it and shall be at least as broad as ISO CG 20 01 04 13.
4. Any failure to comply with reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to the City of Sunnyvale, its officers, officials, employees, agents or volunteers.
5. The DEVELOPER's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
6. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, cancelled by either party, reduced in coverage or in limits except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the City of Sunnyvale.
7. Any umbrella or excess Insurance Liability policies shall be true "following form" of the underlying policy coverage, terms, conditions, and provisions and shall meet all of the insurance requirements stated in this document, including the additional insured, SIR, and primary and non-contributory insurance requirements for the benefit of City (if agreed to in a written contract or agreement) until all coverage carried by or available to the DEVELOPER's primary and excess liability policies are exhausted and before the City's own Insurance or self-insurance shall be called upon to contribute to a loss.
8. The policy limits of coverage shall be made available to the full limits of the policy. The minimum limits stated above shall not serve to reduce the DEVELOPER's policy limits of coverage. Therefore, the requirements for coverage and limits shall be (1) the minimum coverage and limits specified in this agreement, or (2) the broader coverage and maximum limits of coverage of any insurance policy or proceeds available to the named insured, whichever is greater.

Acceptability of Insurers:

Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A: VII, and who are admitted and authorized to do business and in good standing in California unless otherwise acceptable to the City of Sunnyvale's Risk Manager.

Verification of Coverage:

The City of Sunnyvale utilizes PINSAdvantage.com (PINS) to track and verify all insurance related documents. The City is no longer accepting Certificates of Insurance by mail and requires the use of PINS. The City will email the DEVELOPER requesting proof of insurance for this Contract through the PINS platform (no-reply@pinsadvantage.com), which include instructions on how to upload insurance documents electronically. DEVELOPER shall furnish the City of Sunnyvale with an original Certificate of Insurance effecting the coverage required. The certificates are to be signed by a person authorized by that insurer to bind coverage on its behalf. All certificates are to be received and approved by the City of Sunnyvale, Risk Manager prior to commencement of work.

The DEVELOPER shall provide certificate(s) evidencing renewals of all insurance required herein prior to the expiration date of any such insurance. DEVELOPER shall submit insurance certificates reflecting the policy renewals through PINS. The City reserves the right to require complete, certified copies of all required insurance policies, at any time.

DEVELOPER shall require and verify that all subcontractors or other parties hired for this Work, purchase and maintain coverage for indemnity and insurance requirements as least as broad as specified in Sections 25 through 28 herein, to the extent they apply to the scope of the subcontractor's work with the same Certificate of Insurance requirements and naming as additional insureds all parties to this Contract. Failure of DEVELOPER to verify existence of subcontractor's insurance shall not relieve DEVELOPER from any claim arising from subcontractors work on behalf of DEVELOPER.

DEVELOPER shall include the following language in their agreement with Subcontractors: "Subcontractors hired by DEVELOPER agree to be bound to DEVELOPER and City in the same manner and to the same extent as DEVELOPER is bound to City under the Agreement Documents and provide a valid certificate of insurance and the required endorsements included in the Agreement as proof of compliance prior to commencement of any work and to include this same requirement for any subcontractors they hire for this work. A copy of the Owner Contract Document Indemnity and Insurance provisions will be furnished to the Subcontractor upon request." DEVELOPER shall provide proof of such compliance and verification to the City upon request.