

RECORDING REQUESTED
BY CITY OF SAN JOSE:

When Recorded, Return To:
City of San José
200 East Santa Clara Street
San José, CA 95113
Attn: City Clerk, 2nd Floor West Wing

**TURNKEY PARKLAND AND EXCESS CREDIT AGREEMENT
FOR
TENTATIVE MAPS NO.
PT15-067 and PT15-068 (PHASE 3 UNITS)
BETWEEN
THE CITY OF SAN JOSE
AND
S.J. SIERRA GROUP LLC, BGT DEVELOPMENT, LLC
AND KB HOME SOUTH BAY INC.**

(Chapter 19.38 of SJMC)

This Agreement ("Agreement") is made and entered into by and between the CITY OF SAN JOSE, a municipal corporation of the State of California ("City"), and S.J. SIERRA GROUP LLC, a Delaware limited liability company (successor in interest to THE FLEA MARKET, INC., a California corporation and BUMB & ASSOCIATES, a California general partnership); and BGT DEVELOPMENT, LLC, a California limited liability company (collectively "Owner1"), and KB HOME SOUTH BAY INC., a California corporation ("Owner2") as of the date of City's execution ("Effective Date"). Owner1 and Owner2 are collectively referred to in this Agreement as "Owner" or "Developer"; each of City and Owner are sometimes hereinafter referred to as a "Party" and collectively as the "Parties."

RECITALS

- A. THE FLEA MARKET, INC., a California Corporation; BUMB & ASSOCIATES, a California General Partnership; BGT DEVELOPMENT, LLC, a California Limited Liability Company; and KB HOME SOUTH BAY INC., a California Corporation have filed Planned Development Permit PD16-002 and Planned Development Permit Amendment PDA12-031-01 (collectively the "Phase 3 PD Permits") with the City's Planning Department for the development of real property located at the north side of Berryessa Road, between Union Pacific Railroad Right of the Way to the east and the Coyote Creek to the West also known generally as 1590 Berryessa Road and associated with the Flea Market Development ("Project") in the City of San Jose, California (Tract 10160).
- B. In accordance with the provisions of Chapter 19.38 of the San Jose Municipal Code ("Code"), the Tentative Maps described in Recital E, below, contains a condition requiring the payment of fees and/or the dedication of land for park purposes ("Parkland Dedication Obligation").
- C. City Council adopted Ordinance Number 28657, Planned Development Zoning File Number PDC09-006 on October 20, 2009 authorizing the rezoning of the Development Site to allow construction of up to 2,818 residential units and up to 365,622 square feet of commercial uses on a 120.4 gross acre site ("Master Rezoning").
- D. City Council adopted Ordinance Number 29729, Conforming PD Zoning authorizing the rezoning of the Development Site to redistribute the locations of residential and park uses, as well as eliminate the school land use on the approved Land Use Map included

within the Master Rezoning, on a 1.9-acre portion of the larger Flea Market Development Site.

- E. Developer filed Tentative Maps PT15-067 and PT15-068 (collectively the "Phase 3 Tentative Maps") for the subdivision parcels under Tract 10160 to allow up to 162 single family residential condominium units, 551 residential condominiums, and 45 commercial condominiums associated with the Phase 3 PD Permits. These Tentative Maps were approved on May 25, 2016 and April 27, 2016, respectively.
- F. Prior Owner obtained Master Planned Development Permit File Number PD08-025 ("Master PD Permit") on December 3, 2010 for design and construction and phasing of public improvements to support the future Development Site. The Master PD Permit requires Owner to obtain a Planned Development Permit ("PD Permit") and/or Planned Development Permit Amendment ("PD Permit Amendment") for each phase of the project.
- G. On or about March 4th, 2014 the Prior Owner received approval for the Final Map for Tract 10160 ("Master Final Map") which outlined property boundaries for the Project site north of Berryessa Road. A Development Context Map is attached hereto as Exhibit B and incorporated herein by reference.
- H. On May 21st, 2013 the City Council approved the Parkland Agreement ("Original Parkland Agreement" - SCC Doc. No. 22310163) and EIR for Phase 1 of the Flea Market Development (PDC09-006, PD08-025, and PT08-019) associated with Tract 10160. This Parkland Agreement included the dedication of 3.59 acres of parkland as well as the

construction and dedication of public trail improvements. Compliance with the provisions of this Parkland Agreement provide credit to satisfy the parkland obligation for units included in Phase 1 of the Project as well as provide parkland credit for 1.771 acres, which would exceed the Phase 1 Parkland Obligation. Pursuant to terms in the Original Parkland Agreement, this Credit ("Excess Parkland Credit") may be applied to later Phases 2 and 3 under the Master PD Permit or Final Map and associated Tentative and Final Maps.

- I. On October 26th, 2015 the Developer executed another Parkland Agreement with the City for Phase 2 units under Tentative Map PT12-026 associated with Tract 10262. That Agreement set forth terms for the use of Excess Parkland Credits which are anticipated to be provided pursuant to the Original Parkland Agreement for the Project. Pursuant to that Agreement, and satisfying the parkland obligation for 45 Phase 2 units (0.316 acres), the amount of remaining Excess Parkland Credit available from the satisfaction of terms in the Original Parkland Agreement was set to the equivalent of 1.455 acres.

- J. On June 21, 2016 the City Council approved the First Amendment to the Original Parkland Agreement for the Project ("First Amendment"). That First Amendment extended the deadline date by which the Parkland Site ("Phase 1 Park Site") dedicated in the Original Parkland Agreement had to be delivered to the City, from May 31, 2016 to the three (3) year anniversary of that First Amendment, as may be extended at the City's Director's sole discretion to accommodate planned turnkey improvements. This First Amendment also formalized the remaining Excess Parkland Credits of 1.455 acres, as described in Recital I (above).

- K. On October 13, 2016, the City and Owner entered in the Interim Parkland Agreement in order for the Owner to satisfy Owner's Parkland Dedication Obligations for the development of residential units allowed by the Phase 3 Tentative Maps and associated Phase 3 PD Permits through a combination of dedication of two park sites and the payment of \$264,514.15 in fees. The Interim Parkland Agreement contemplates that the parties would enter into this Agreement to memorialize Owner's will voluntarily offer to contribute up to \$5,000,000 worth of park improvements ("Park Improvements") for the Phase 1 Park Site and the Phase 3 Park Site *in exchange for new additional Excess Parkland Credits* to be utilized toward the parkland obligations of additional residential units developed as part of the future development south of Berryessa under the Master Rezoning or subsequent Rezoning thereof. Owner's \$5,000,000 commitment pursuant to this Agreement represents Owner's total expense associated with the Park Improvements, and includes but is not limited to all fees and costs for design, insurance, review, inspection, construction materials and labor, and maintenance incurred by Owner regarding the Park Improvements.
- L. In accordance with Section 2.D.F of that Interim Parkland Agreement, the City and Owner now wish to enter into this Turnkey Parkland Agreement for the Master Planning and Phase 1 Development of both the Phase 1 and Phase 3 Park Sites, as depicted on Exhibit C hereto and as previously dedicated to the City for park purposes. The Parties acknowledge that Developer will exceed its Parkland Dedication Obligation for the residential units identified on the north side of Berryessa Road under the Master Rezoning to the extent that Developer constructs the Park Improvements, and to that extent, excess parkland dedication will be applied to future Parkland Dedication Obligation relating to future construction of residential units on the south side of Berryessa Road *under the additional phases of the Master Rezoning or subsequent Rezoning thereof*. City and Owner of each phase will enter into parkland agreement(s) for future phases of residential construction and will apply any authorized excess

parkland dedication credit to the future phases under the Master Rezoning or subsequent Rezoning thereof.

- M. City's Director of Parks, Recreation and Neighborhood Services ("City's Director") is charged with the administration of this Agreement in conjunction with the Director of Public Works ("Director of PW"). The Director of PW is responsible for the review, inspection, approval, and acceptance of the Park Improvements.

NOW, THEREFORE, in consideration of the mutual covenants set forth in this Agreement and for valuable consideration, receipt and sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

SECTION 1. REPRESENTATIONS AND WARRANTIES OF DEVELOPER.

Developer represents and warrants to City that the following facts are true and correct:

- A. The statements and certificates made on the Phase 3 Tentative Maps and documents filed in conjunction with the Phase 3 Tentative Maps remain true and correct.
- B. Any and all documents provided to City pursuant to the terms of this Agreement, or in connection with the execution of this Agreement, are now in full force and effect and contain no inaccuracies or misstatements of fact. Developer covenants that at such time City notifies Developer of City's intention to accept the Park Improvements, if any of these documents contain inaccuracies, misstatements or have become obsolete, Developer shall notify City and provide City with the information required to render the documents accurate, complete and current.

- C. Developer has the legal ability to enter into this Agreement and Developer's signatory(ies) to this Agreement is (are) duly authorized to sign this Agreement on its behalf.

SECTION 2. DESIGN AND DEVELOPMENT OF PARK IMPROVEMENTS.

- A. Owner's Excess Parkland Credits that will be received from the construction of Turnkey Park Improvements depicted in Exhibit D, is set forth in Exhibit A.
- B. As of the Effective Date of this Agreement and for the purposes of tracking excess credits for the Project, the anticipated remaining Excess Parkland Credits shall be as set forth in Exhibit A and shall be creditable toward the Parkland Obligation of future phases and maps under the Master Rezoning or subsequent Rezoning thereof. With each subsequent phase of the Project, the balance of Excess Parkland Credits shall be adjusted accordingly and restated in the Parkland Agreement for that phase.
- C. To the extent that Owner complies with the obligations of this Agreement, the City shall provide the Owner with New Excess Parkland Credits, in the amount described in Exhibit A. New Excess Parkland Credits may then be utilized toward the parkland obligation of additional residential units developed on Owner's or successor owner's property on the south side of Berryessa Road under the Master Rezoning or subsequent Rezoning thereof.
- D. Developer shall be responsible for the development of plans and specifications for, and the construction of the Park Improvements on the Phase I ('Reunion Park') and Phase 3 ('Mercado Park') Park Sites consistent with the Park Site Plans and as more particularly described in this Agreement. Developer shall develop plans and specifications for the Park Improvements ("Project Specifications") for the review and approval of the Director of PW, as more particularly described in the attached Exhibit E. Subject to Exhibit E of this Agreement, Developer shall construct the Park Improvements in

conformance with the Project Specifications and all applicable standards and specifications in effect on the Effective Date of this Agreement.

- E. Developer has no obligation to construct other improvements on the Park Sites beyond the Park Improvements.
- F. The Parties acknowledge that the exact size, dimensions, and other particular characteristics of the Park Improvements have not been determined as of the Effective Date of this Agreement. The Parties, however, agree that the Park Improvements shall consist of the following specific Park Improvements:
 - a. *Phase 1 Park Site- Active Turf Area, Group Dining, Plaza, Dog Park, Bocce Court, and Coyote Creek Trail Connection, as well as paving, pathways, landscaping, turf, trees, benches, tables, lighting, and irrigation, all as depicted in Exhibit D*
 - b. *Phase 3 Park Site - Active Turf Green, Gathering Plaza, Active Plaza, 2-5 Year Old's Playground, and 5-12 Year Old's Playground, as well as paving, pathways, landscaping, turf, trees, benches, tables, lighting, and irrigation, all as depicted in Exhibit D*
- G. Subject to the estimated \$5,000,000 maximum budget for the Park Improvements, Developer shall be responsible for all costs incurred for planning, design, construction, and supervision of the construction of all Park Improvements, including without limitation, City's plan review and inspection. Developer shall cause all labor and material incorporated in the Park Improvements to be furnished in accordance with the requirements and specifications set forth in this Agreement. City agrees that to the greatest extent feasible, the park design and corresponding construction budget shall not exceed \$5,000,000 in Park Improvements, including but not limited to all fees and costs for design, insurance, review, inspection, construction materials and labor, and maintenance incurred by Developer regarding the Park Improvements, and accordingly City agrees that, notwithstanding anything to the contrary herein, Developer shall not

be required to cover unreasonable costs incurred by the City and not caused by any fault or delay by the Developer.

- H. At such time that 95% construction plans are submitted for the City's review, Developer shall provide the City with a minimum of two competitive and itemized preliminary bids, unless otherwise exempted in writing by the Director of PW. City staff may then review such bids with Developer to ensure that sufficient and appropriate funds are available to complete the Park Improvements as designed. After such review, if the City, in its reasonable discretion, determines that revisions to the design are required to remain within the project budget, the City and Developer shall revise the Turnkey Park Improvement plans to fit within the remaining budget.
- I. Based upon expertise and value shown in the preliminary bids above (Section 2.H), the City may notify the Developer of a preferred contractor and the Developer shall factor the City's preference into their final award decision.
- J. At such time as 75% of the total \$5,000,000 budget has been expended, Developer shall notify the City of all remaining work plan and checklist items for the Park Improvements, at which time the City may review such items with Developer to ensure that sufficient funds are available to complete the Park Improvements. After such review, if the City, in its reasonable discretion, determines that the Turnkey Agreement should be amended to appropriately compensate the Developer for verified and reasonable unforeseen costs above the \$5,000,000 estimated budget, the City Council shall consider such an amendment to the Turnkey Agreement within 6 months of City's Acceptance of the Park Site and Park Improvements.
- K. In the event, that (1) the preliminary bidding process outlined above (Section 2.H) results in a project bid estimate that exceeds the Turnkey Park Improvement Cost Estimate (**Exhibits A and D**); or, (2) the construction costs of the project will exceed the Turnkey Park Improvement Cost Estimate (**Exhibits D**), as evidenced through documented and verified project receipts or the remaining project scope (consistent

with Section 2.J), the Director of PW may, in his/her sole discretion, reimburse the developer with a portion of the Project's Design Review and Inspection Fees sufficient to cover certain Park Improvements as outlined in writing. In no event, shall the City's reimbursement of Design Review and Inspection fees to the Developer exceed Seven Hundred Thousand Dollars (\$700,000) without further City Council authorization.

- L. To the extent the final documented and verified total cost of the Park Improvements is less than the \$5,000,000 budget, Developer shall pay to City the amount by which the total cost is less than the \$5,000,000 budget, to be used by City for further improvement of the Phase 1 Park Site and/or the Phase 3 Park Site.
- M. Park Improvements to be installed on each individual Park Site shall be completed on or before the date which is one and one half (1.5) years after City's approval of the Project Specifications for the Park Improvements for that Park Site. The Park Improvements shall be deemed completed and accepted by City upon recordation of the Notice of Acceptance by Director of PW as outlined in Exhibit E of this Agreement. If Developer does not commence construction of the Park Improvements on an individual Park Site on or before the date which is one (1) year after City's approval of the Project Specifications for the Park Improvements for that Park Site, this agreement shall automatically expire. The City's Director may, at the City Director's discretion, grant extensions of the completion requirement specified in this subsection. Nothing in this Agreement is intended to excuse Developer from full compliance with the Parkland Dedication Ordinance in the event that the Park Improvements are not completed by the time application is made for the first phase of residential units on the south side of Berryessa Road.
- N. Developer or City shall have the right to terminate this Agreement in writing prior to the commencement of construction of Park Improvements. After commencement of the construction of the Park improvements, neither party shall have the right to terminate the agreement. In the event of termination pursuant to Sections 2.M. and/or 2.N., Developer shall be entitled to parkland credits or reimbursement for costs for

documented and verified services rendered by the Developer or its agents between July 1, 2016 and the date that either party terminates this Agreement, provided, however, that as to any costs in excess of any documented and verified services rendered by the Developer or its agents between July 1, 2016 and the date that either party terminates this Agreement, City shall in no way be obligated to provide parkland credits or reimbursement. The City's Director and the Director of PW are authorized to determine and award the amount of parkland credits for documented and verified services rendered by the Developer as described in this Section.

SECTION 3. REVIEW FEES AND CHARGES RELATED TO PARK IMPROVEMENTS.

- A. Developer shall pay to City a fee for review and approval of the Project Specifications for the Park Improvements and the inspection of the Park Improvements (collectively, "Review Fee"). City's Review Fee shall be based on the Developer's cost estimate for the Park Improvements, as approved by the Director of PW, and shall be calculated based on the fees and charges established for City's review and inspection of like improvements then in effect at the time Developer execute this Agreement. The total Review Fee is \$700,000, including \$435,485.85 due and credited in this agreement and an additional \$264,514.15 payable pursuant to the Interim Parkland Agreement for the Flea Market Project, all of which is included in the cost of the Park Improvements for purposes of the \$5,000,000 estimated budget. The total Review Fee shall be paid directly to City as specified in Exhibit A prior to, or concurrently with, the execution of this Agreement.
- B. In the event the Review Fee paid pursuant to Section 3A above is insufficient for City's review and inspection as set forth herein due to changes made to the proposed Park Improvements by Developer after City's initial review, then the Director of PW, at the Director of PW's sole discretion, shall have the right to escalate the total estimated cost of the Park Improvements, and/or the corresponding Review Fee. The escalation of the total estimated cost of the Park Improvements shall be based on the Engineering News

Record Construction Cost Index, or in the event that the Engineering News Record discontinues publication during the term of this Agreement, an index of similar reputation and reliability as determined and selected by Director of PW

SECTION 4. BONDS AND SECURITY.

Developer shall furnish to City the following security prior to the City's approval of 100% Project Specifications for the Park Improvements, and for the purposes, in the amounts, and under the conditions that follow:

A. Type and Amounts.

1. Performance Security. To assure the Developer's faithful performance of this Agreement to complete the Park Improvements in an amount of One Hundred Percent (100%) of the estimated cost of the Park Improvements (hereinafter "Performance Security"); and
2. Payment Security. To secure Developer's payment to any Contractor, subcontractor, person renting or supplying equipment, or furnishing labor and materials for completion of the Park Improvements in the additional amount of One Hundred Percent (100%) of the estimated cost of the improvements (hereinafter "Payment Security"); and
3. Warranty Security. To warranty the Developer's work for a period of one (1) year following recordation of the Notice of Acceptance against any defective work or labor done or defective materials furnished in the additional amount of Twenty-Five Percent (25%) of the estimated cost of the improvements (hereinafter "Warranty Security"); and
4. Landscaping Security. To secure Developer's installation and maintenance of landscaping as may be required by the Project Specifications, at such time when the drought restrictions have been rescinded as further described in Section F(3) of **Exhibit E** (hereinafter "Landscaping Security").

B. Conditions.

1. Developer shall provide the required security on forms approved by City and from sureties authorized by the California Insurance Commissioner to transact the business of insurance. Any bonds furnished by Developer to satisfy the security requirements in this Section 4 shall be in the forms attached hereto as **Exhibit F**, as may be amended by City from time to time.
2. A condition of the Developer's security is that any changes not exceeding ten percent (10%) of the original estimated cost of the Park Improvements shall not relieve the security. In the event that changes to the Improvement Plans cause an increase of more than ten percent (10%) over the original estimated cost of the Park Improvements, Developer shall provide security as required by Section 4(A) of the Agreement for One Hundred Percent (100%) of the total estimated cost of the Park Improvements as changed.
3. Notwithstanding Section 4(B)(2) above, Developer's security shall compensate City for the actual cost of completing the required Park Improvements in the Event of Default, as defined in Section 5 below, by Developer in the performance of this Agreement, regardless of whether City's cost of completion exceeds the estimated total cost of the Park Improvements.
4. A condition of Developer's security is that any request by Developer for an extension of time for the commencement or completion of the work under this Agreement may be granted by City without notice to Developer's surety and such extensions shall not affect the validity of this Agreement or release the surety or sureties on any security given for this Agreement.
5. As a condition of granting any extension for the commencement or completion of the work under this Agreement, Director of PW may

require Developer to furnish new security guaranteeing performance of this Agreement, as extended, in an increased amount to compensate for any increase in construction costs as determined by Director of PW.

6. If Developer seeks to replace any security with another security, the replacement shall: (1) comply with all the requirements for security in this Agreement; (2) be provided by Developer to Director of PW; and (3) upon its written acceptance by Director of PW, be deemed to be a part of this Agreement. Upon Director of PW's acceptance of a replacement security, the former security may be released by City.

C. Release of Securities.

City shall release the securities required by this Agreement as follows:

1. Performance Security. City shall release the Performance Security upon recordation of the Notice of Acceptance or as may otherwise be authorized in accordance with California Government Code Sections 66499.7(a)-(g).
2. Payment Security. City shall release the Payment Security in accordance with California Government Code Section 66499.7(h).
3. Warranty Security. City shall release the Warranty Security upon expiration of the warranty period and settlement of any claims filed during the warranty period.
4. City may retain from any security released, an amount sufficient to cover costs and reasonable expenses and fees, including reasonable attorney's fees.

D. Injury To Park Improvements, Public Property Or Public Utility Facilities.

Until recordation of the Notice of Acceptance of the Park Improvements, Developer assumes responsibility for the care and maintenance of, and any damage to, the Park

Improvements. Developer shall replace or repair all Park Improvements, public utility facilities, and surveying or subdivision monuments and benchmarks which are destroyed or damaged for any reason, regardless of whether resulting from the acts of the Developer, prior to the recordation of the Notice of Acceptance. Until such recordation, Developer shall bear the entire cost of such replacement or repairs regardless of what entity owns the underlying property. Any repair or replacement shall be to the satisfaction, and subject to the approval, of the Director of PW.

Neither the City, nor any officer or employee thereof, shall be liable or responsible for any accident, loss, or damage, regardless of cause, occurring to the work or Park Improvements prior to recordation of the Notice of Acceptance of the work or improvements, except to the extent directly caused by City, its officers, employees or agents.

SECTION 5. DEFAULT.

- A. Developer shall be in default hereunder upon the occurrence of any one or more of the following events ("Event of Default"):
1. Developer's failure to timely complete construction of the Park Improvements under this Agreement;
 2. Developer's failure to timely cure any defect in the Park Improvements;
 3. Developer's failure to perform substantial construction work for a period of twenty (20) calendar days after commencement of the work;
 4. Developer's insolvency, appointment of receiver, or the filing of any petition in bankruptcy, either voluntary or involuntary, which Developer fails to discharge within thirty (30) days;
 5. Developer assigns this Agreement in violation of Section 8;

6. Developer fails to perform or satisfy any other term, condition, or obligation under this Agreement.

B. If an Event of Default occurs and the Event of Default is not cured by Developer in accordance with Section 5(C) below, City in its sole discretion shall be entitled to terminate Developer's control over the work described herein and hold Developer and its surety liable for all damages suffered by City as a result of the Event of Default. City shall have the right, at its sole discretion, to draw upon or use the appropriate security to mitigate City's damages in the Event of Default by Developer. Developer acknowledges and agrees that City's right to draw upon or use the security is in addition to any other remedies available at law or in equity to City. The Parties acknowledge and agree that the estimated costs and security amounts may not reflect the actual cost of construction of the Park Improvements, and therefore, City's *damages in the Event of Default by Developer shall be measured by the actual cost of completing the required Park Improvements to the satisfaction of City.* City may use the sums provided by the securities for the completion of the Park Improvements in accordance with the Project Specifications.

City may take over the work and complete the Park Improvements, by contract or by any other method City deems appropriate, at the sole cost and expense of Developer. In such event, City, without any liability whatsoever, may complete the Park Improvements using any of Developer's materials, appliances, plans, or other property located at the Park Site and that are necessary to complete the Park Improvements.

C. Unless the City's Director determines that the circumstances warrant immediate enforcement of the provisions of this Section 5 in order to preserve the public health, safety, and welfare, the City's Director shall give twenty (20) working days' prior written notice of termination to Developer ("Notice Period"), which notice shall state in reasonable detail the nature of Developer's default and the manner in which Developer can cure the default. During the Notice Period, Developer shall have the

right to cure any such default; provided, however, if a default is of a nature which cannot reasonably be cured within the Notice Period, Developer shall be deemed to have timely cured such default for purposes of this section if Developer commences to cure the default within the Notice Period, and prosecutes the same to completion within a reasonable time thereafter.

- D. If an Event of Default occurs, Developer agrees to pay any and all costs and expenses incurred by City in securing performance of such terms, conditions, or obligations giving rise to the Event of Default, including but not limited to, fees and charges of architects, engineers, contractors, attorneys, and other professionals, and court costs.
- E. City's rights and remedies specified in this Section 5 shall be deemed cumulative and in addition to any rights or remedies City may have at law or in equity.

SECTION 6. INDEMNITY/HOLD HARMLESS.

City, or any officer, employee, or agent thereof shall not be liable for any loss or injury to persons or property occasioned by reason of the acts or omissions of Developer, its agents, employees, contractors, or subcontractors in the performance of this Agreement. Developer further acknowledges and agrees to protect, indemnify, defend and hold City, its officers, agents and employees harmless from and against any and all liability, loss, cost and obligations on account of or arising out of or resulting from any injury or loss caused directly or indirectly by any cause whatsoever in connection with or incidental to the activities performed by Developer under this Agreement, except to the extent such injury or harm is caused by the active negligence or willful misconduct of City, its officers, agents, or employees. This Section 6 shall survive the recordation of the Notice of Acceptance, acceptance of the Park Site, or sooner termination of this Agreement for a period of one (1) year from the date of such acceptance or termination. Recordation of the Notice of Acceptance by City of the Park Improvements shall not constitute an assumption by City of any responsibility or liability for any loss or damages covered by this Section 6.

RD:JAC:LVP

Developer shall reimburse City for all costs and expenses, including but not limited to fees and charges of architects, engineers, attorneys, and other professionals, and court costs, incurred by City in enforcing this Section 6.

SECTION 7. NOTICES.

Any notice required or permitted to be given under this Agreement shall be in writing and personally served or sent by U.S. mail, postage prepaid, addressed as follows:

To City's Director: City of San José
Department of Parks, Recreation and Neighborhood Services
Attn: PRNS Parks Planning Division Manager
200 East Santa Clara Street, Tower-9th Floor
San José, CA 95113

To Director of PW: City of San José
Department of Public Works
Attn: PW Division Manager
200 East Santa Clara Street, Tower-6th Floor
San José, CA 95113

To Developer: Brian Bumb
S.J. Sierra Group LLC
BGT Development, LLC
1590 Berryessa Road
San Jose, CA 95131

Jeff McMullen
KB Home South Bay Inc.
5000 Executive Parkway, #125
San Ramon, CA 94583

Notice shall be deemed given upon receipt. The Parties shall notify each other of changes in either their respective addresses or their representatives subject to notification in accordance with the provisions of this section.

SECTION 8. ASSIGNMENT.

This Agreement may not be assigned or transferred in part or in whole by Developer without the express written consent of City. Any attempts to assign or transfer any terms, conditions or obligations under this Agreement without the express written consent of City shall be voidable at City's sole discretion.

SECTION 9. BINDING UPON SUCCESSORS.

Subject to Section 8, this Agreement shall be binding upon and shall inure to the benefit of the Parties' respective successors, assignees, transferees, and legal representatives.

SECTION 10. GOVERNING LAW.

This Agreement shall be governed by and construed in accordance with California law.

SECTION 11. ENTIRE AGREEMENT.

This Agreement, including the exhibits, attachments and appendices, contains the entire agreement of the Parties with respect to the Park Improvements" for the Phase 1 Park Site and the Phase 3 Park Site, to be constructed by Developer in exchange for new additional Excess Parkland Credits to be utilized toward the parkland obligations of additional residential units developed as part of the future development south of Berryessa under the Master Rezoning or subsequent Rezoning thereof, and supersedes all prior understandings or representations of the Parties, whether written or oral. Any subsequent modification of this Agreement must be made in writing and signed by all Parties hereto.

SECTION 12. TIME OF ESSENCE.

Time is of the essence in the performance of this Agreement.

SECTION 13. FORCE MAJEURE.

- A. "Force Majeure Event" shall be defined as any matter or condition beyond the reasonable control of a Party, including war, public emergency or calamity, fire,

earthquake, extraordinary inclement weather, Acts of God, strikes, labor disturbances or actions, civil disturbances or riots, litigation brought by third parties against either the City or Developer or both, or any governmental order or law which causes an interruption in the construction of the Park Improvements (the "Work" for purposes of this section) or prevents timely delivery of materials or supplies.

- B. Should a Force Majeure Event prevent performance of this Agreement, in whole or in part, the Party affected by the Force Majeure Event shall be excused or performance under this Agreement shall be suspended to the extent commensurate with the Force Majeure Event; provided that the Party availing itself of this Section shall notify the other Party within ten (10) days of the affected Party's knowledge of the commencement of the Force Majeure Event; and provided further that the time of suspension or excuse shall not extend beyond that reasonably necessitated by the Force Majeure Event.
- C. Notwithstanding the foregoing, the following shall not excuse or suspend performance under this Agreement:
 - 1. Performance under this Agreement shall not be suspended or excused for a Force Majeure Event pertaining to the Work if such event is not defined as a Force Majeure Event under the applicable contract for the Work.
 - 2. Negligence or failure of Developer to perform its obligations under a contract for the Work (other than for a Force Majeure Event as defined under the applicable contract) shall not constitute a Force Majeure Event.
 - 3. The inability of Developer for any reason to have access to funds necessary to carry out its obligations under this Agreement or the termination of any contract for the prosecution of the Work for such

reason or for Developer's default under such contract shall not constitute a Force Majeure Event.

SECTION 14. BOOKS AND RECORDS.

- A. Developer shall be solely responsible to implement internal controls and record keeping procedures in order to comply with this Agreement and all applicable laws. Developer shall maintain any and all ledgers, books of account, invoices, vouchers, bids, cancelled checks, and other records or documents evidencing or relating to the activities performed by Developer under this Agreement, including without limitation those relating to the construction of the Park Improvements, for a minimum period of three (3) years, or for any longer period required by law, from the date of termination of this Agreement or the date of the City's acceptance of the Park Improvements, whichever is longer. Notwithstanding this previous sentence, Developer shall retain such records beyond three (3) years so long as any litigation, audit, dispute, or claim is pending.
- B. Any records or documents required to be maintained pursuant to this Agreement shall be made available for inspection or audit at no cost to City, at any time during regular business hours, upon written request by the City Attorney, City Auditor, City Manager, or a designated representative of any of these officers. Copies of such documents shall be provided to City for inspection at City Hall when it is practical to do so. Otherwise, unless an alternative is mutually agreed upon, the records shall be available at Developer's address indicated for receipt of notices in this Agreement.
- C. Where City has reason to believe that such records or documents may be lost or discarded due to dissolution, disbandment or termination of Developer's business, City may, by written request by any of the above-named officers, require that custody of the records be given to City and that the records and documents be maintained in City Hall. Access to such records and documents shall be granted to any party authorized by Developer, Developer's representatives, or Developer's successor-in-interest.

- D. Developer's obligations under this Section shall be in addition to Developer's obligations specified in Exhibit E, Section 2(B).

SECTION 15. MISCELLANEOUS PROVISIONS.

- A. Captions. Captions and Sections of this Agreement are for convenience only and shall not be considered in resolving any questions of interpretation or construction.
- B. Incorporation of Recitals. The Recitals in this Agreement are hereby incorporated into the terms of this Agreement.
- C. Jurisdiction. In the event that suit shall be brought by any of the Parties, the Parties agree that venue shall be exclusively vested in the state courts of the County of Santa Clara, or if federal jurisdiction is appropriate, exclusively in the United States District Court, Northern District of California, San José, California.
- D. Waiver. Developer agrees that waiver by City of any breach or violation or any term, condition, or obligation of this Agreement shall not be deemed to be a waiver of any other term, condition, or obligation contained herein or a waiver of any subsequent breach or violation of the same term, condition, or obligation.
- E. Plurality. As used in this Agreement and when required by the context, each number (singular and plural) shall include all numbers.
- F. Compliance with Laws. Developer, its employees, agents, representatives, contractors, and subcontractors shall comply with all local, state and federal laws in the performance of this Agreement.
- G. Nondiscrimination. Developer, its employees, agents, representatives, contractors, and subcontractors shall not discriminate, in any way, against any person on the basis of age, sex, race, color, religion, sexual orientation, actual or perceived gender identity, disability, ethnicity, national origin, or any other

recognized or protected class in connection with or related to the performance of this Agreement. Developer shall expressly require compliance with the provisions of this Section 15(G) in all agreements with contractors and subcontractors for the performance of the improvements hereunder.

- H. Developer has read each and every part of this Agreement, including without limitation, its exhibits, and Developer freely and voluntarily has entered into this Agreement. This Agreement is a negotiated document and shall not be interpreted for or against any party by reason of the fact that such Party may have drafted this Agreement or any of its provisions.
- I. Whenever in this Agreement words of obligation or duty are used, such words shall have the force and effect of covenants. Any obligation imposed by either Party shall include the imposition on such Party of the obligation to pay all costs and expenses necessary to perform such obligation, except as otherwise provided herein.
- J. Severability. If any provisions or portions of this Agreement are held to be invalid by a court of competent jurisdiction, the remaining provisions or portions of this Agreement shall remain in full force and effect unless amended or modified by mutual written consent of the Parties.
- K. This Agreement is entered into pursuant to and shall be governed by the Parkland Dedication Ordinance. If not otherwise defined in this Agreement, capitalized terms shall have the meanings set forth in Chapter 19.38 of the San José Municipal Code.

SECTION 16. AGREEMENT'S ATTACHMENTS.

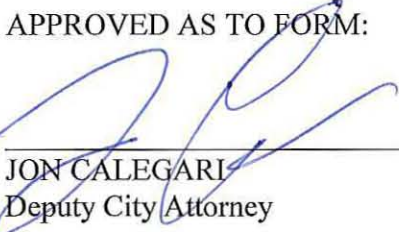
This Agreement includes the following attachments:

Exhibit A	Fees and Credits Summary
Exhibit B	Development Context Map

Exhibit C	Park Sites
Exhibit D	Baseline Turnkey Park Improvement Plan ("Park Improvements")
Exhibit E	Design and Construction Requirements
Exhibit F	Bond Forms

WITNESS THE EXECUTION HEREOF the day and year hereinafter written by City.

APPROVED AS TO FORM:



JON CALEGARI
Deputy City Attorney

CITY OF SAN JOSE,
a municipal corporation

MATT CANO
Director of Public Works

Date

200 East Santa Clara Street
San Jose, CA 95113

"OWNER1"

S.J. Sierra Group LLC,
a Delaware limited liability company

By: T&B Management Group LLC,
a Delaware limited liability company,
Manager

By: 

Timothy Bumb, Manager

By: 

Brian Bumb, Manager

1590 Berryessa Road
San Jose, CA 95131

"OWNER1"

BGT DEVELOPMENT, LLC,
a California limited liability company

By: 

Brian Bumb, Managing Member

1590 Berryessa Road
San Jose, CA 95131

RD:JAC:LVP

"OWNER2"

KB HOME SOUTH BAY INC.

By:  11-9-13

Name: Jeffrey B. McMullen

Title: Senior Vice President

Address: 5000 Executive Parkway, #125
San Ramon, CA 94583

* All Developer/Owner's signatures must be accompanied by an attached notary acknowledgement.

* Proof of authorization for Developer's/Owner's signatures is required to be submitted concurrently with this Agreement.

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 Santa Clara)

On November 12, 2018 before me, Justine M Sampson, Notary Public
(insert name and title of the officer)

personally appeared Brian Bumb,
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.

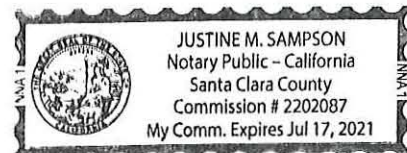
I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing
paragraph is true and correct.

WITNESS my hand and official seal.

Signature



(Seal)



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 Santa Clara)

On November 12, 2018 before me, Justine M Sampson, Notary Public
(insert name and title of the officer)

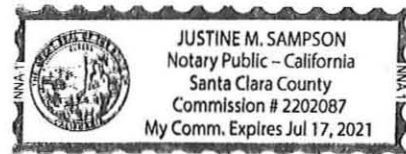
personally appeared Timothy Bumb,
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are
subscribed to the within instrument and acknowledged to me that he/she/they executed the same in
his/her/their authorized capacity(ies), and that by his/her/their signature(s) 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)



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

STATE OF California)SS
COUNTY OF Contra Costa)

On Nov. 9, 2018 before me, Dee S. Bumanlag, Notary Public, personally appeared Jeff McMullen, 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.

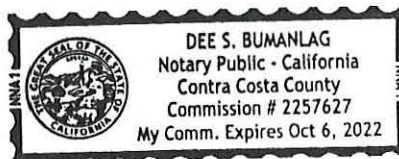
WITNESS my hand and official seal.

Signature

Dee S. Bumanlag

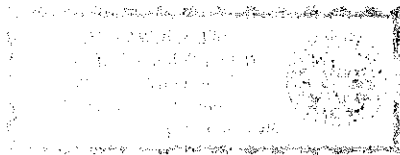
My Commission Expires: 10/6/2018

Notary Name: Dee S. Bumanlag
Notary Registration Number: 2085167



This area for official notarial seal

Notary Phone: 925-983-4528
County of Principal Place of Business: Contra Costa



STATE OF CALIFORNIA)
)
COUNTY OF SANTA CLARA) SS

On _____ before me _____,
(Name, Title of officer – e.g. Jane Doe, 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 *see attachment* under the laws of the State of California that the
foregoing paragraph is true and correct.

WITNESS my hand and official seal.

(Signature of Notary)

(Seal)

T-7825.014.003/1572764

CERTIFICATE OF SECRETARY

I, Timothy Bumb, do hereby certify that I am the duly elected, qualified and acting Secretary of BGT DEVELOPMENT LLC, a California limited liability company (this "LLC").

I further certify that the resolutions attached hereto as Exhibit "A" are true and complete representation of such resolutions duly adopted by a unanimous written consent of the Co-Managers of this LLC as of April 11, 2018, and that such resolutions have not been amended, modified or rescinded and remain in full force and effect as of the date hereof.

WITNESS MY HAND this 12th day of November, 2018.



Timothy Bumb
Secretary

EXHIBIT "A"
BGT DEVELOPMENT LLC
RESOLUTIONS ADOPTED BY THE MEMBERS
AS OF APRIL 11, 2018

Signing Authority

BE IT RESOLVED . . . , that the following resolutions shall supersede and replace any and all resolutions previously adopted with respect to the powers and authority herein granted, and any such prior authority is hereby revoked and restated in its entirety as follows:

RESOLVED FURTHER, that the following officers and/or employees of this LLC be, and each hereby is, authorized to act on behalf of this LLC; provided, however, that such authority shall be limited to such authority as may be provided herein below to other Ordinary course of business transactions relating to the operations of this LLC as indicated hereinbelow:

T&B Management Group
Brian Bumb
Timothy Bumb

Co-Manager
Co-Manager

RESOLVED FURTHER, that the following persons be, and each hereby is, authorized and empowered on behalf and in the name of the LLC and any affiliated entity (which for these purposes is (a) any limited liability company in which this LLC is the sole member and (b) any partnership in which this LLC is the general partner) to execute, acknowledge and deliver any and all documents deemed by such person to be necessary or appropriate in connection with the acquisition, disposition, and development of bulk parcels of real property by this LLC, and any LLC Entity, including, but not limited to, land purchase and sale agreements, amendments, assignments, escrow instructions, grant deeds, promissory notes, deeds of trust, maps, and related agreements and documents:

Any one of:

Brian Bumb
Timothy Bumb

RESOLVED FURTHER, that the following persons, acting alone, be, and each hereby, is, authorized and empowered to act on behalf of this LLC in its capacity as a member of any limited liability company or as a partner of any partnership in which this LLC owns an interest:

Brian Bumb
Timothy Bumb

RESOLVED FURTHER, that the following persons, acting alone, be, and each hereby is authorized and empowered on behalf and in the name of this LLC and any LLC Entity to execute, acknowledge and deliver any and all master subcontract agreements, material purchase agreements, subcontract work agreements, and related documents with respect to the construction of improvements on real property;

Brian Bumb
Timothy Bumb

RESOLVED FURTHER, that the following persons, acting alone, be, and each hereby is, authorized and empowered on behalf and in the name of this LLC in its capacity as a member of any limited liability company or as a partner of any partnership in which this LLC owns an interest:

Brian Bumb
Timothy Bumb

RESOLVED FURTHER, that Co-Managers, Brian Bumb, and Timothy Bumb of this LLC, is authorized, empowered and directed, for and on behalf of this LLC and any LLC Entity, to take such further actions and to do all such further things which he may deem necessary and appropriate to accomplish the purpose and effectuate the intent of any of the foregoing resolutions with respect to this LLC and any LLC Entity.

RESOLVED FURTHER, that any and all documents executed or actions undertaken by any officers, or employees listed in the foregoing resolutions between date of formation and the date hereof substantively within the scope of their authority as designated above be, and they hereby are, *ratified, confirmed and approved.*

EXHIBIT "A"
TENTATIVE MAP NO. PT15-067 and PT15-068
Calculation of Fees and Credits

Parkland Dedication Requirements

This is a voluntary agreement between the Developer and City for Turnkey Development of two parks at the Flea Market North Site. Currently a residential project requirement for compliance with the Parkland Dedication or Park Impact Ordinances (SJMC 19.38 and 14.25).

There is not

See Section 2 and Section 3 of this Agreement for terms on Excess Parkland Credits and Payment of Design Review Fees.

Calculation of Private Recreation Credits

This project has not requested credit and associated covenants for any Private Recreational Amenities that may have been eligible.

Calculation of In-Lieu Fees

Fee Schedule (100% of 2013 - 2014 Land Values)

	Credits	Obligation
Total Dedication Required (acres)		0.000
Total Public Parkland being dedicated (acres)	0.000	
Eligible Private Recreation Credits (acres)	0.000	
Turnkey Eligible Credits		
MLS Value (ft2)		
Mercado + Bruzzone Park*	\$45.00	
Improv. Value		\$4,735,486
(Impr. Value / MLS Value)		2.416
43560 ft2 (per acre)		
Total Credits	2.416	
Percentage of Dedication Requirement Met (Total Credits divided by Total Dedication Required)		0.00%
Percentage of Dedication Requirement Remaining		0.00%
*Includes City's Design Review and inspection fee of \$435,486		
** Supplemental Design Review and Inspection funds of \$264,514, to be paid per Interim Parkland Agreement for Tract 10264.		
Net Parkland Dedication		
Total Credit	2.416	\$4,735,485.85
Required	0.000	\$0.00
Excess**	2.416	\$4,735,486
Acreage		Cash Value
**Excess credits may be allowable for future phases of residential development under the Master Rezoning (PDC09-006), or subsequent rezoning thereof.		

MLS Zone #	SFD	SFA
1,2,12	\$14,700	\$14,700
3	\$18,600	\$18,600
4,11	\$13,000	\$13,000
5,6	\$19,500	\$19,500
(Alviso) 7A	\$11,200	\$11,200
(North SJ) 7B	\$58,800	\$58,800
8 / 14,16	\$16,000 / \$15,100	\$16,000 / \$15,100
9	\$32,000	\$32,000
10	\$29,400	\$29,400
13	\$17,300	\$17,300
15,17,18	\$27,300	\$27,300
Multi Family		
	2-4	5+ High Rise
1,2,12	\$13,200	\$10,400 -
3	\$16,600	\$13,100 -
4,11	\$11,600	\$9,200 -
5,6	\$17,400	\$13,800 -
(Alviso) 7A	\$10,100	\$8,000 -
(North SJ) 7B	\$52,600	\$41,600 -
8 / 14,16	\$14,300 / \$13,500	\$11,300 / \$10,700 -
9	\$28,600	\$22,600 \$14,600
10	\$26,300	\$20,800 -
13	\$15,500	\$12,200 -
15,17,18	\$24,400	\$19,300 -

Net In Lieu Fees	Total Number of Units	MLS Zone	Low Income Units*	Fee Per Unit (From chart B)	Total Fee Before Credit	
Single Family Detached	0	5		\$19,500.00	\$0.00	Total Fees: \$0.00
Single Family Attached	0	5		\$19,500.00	\$0.00	
Multi-Family 2-4	0	5		\$17,400.00	\$0.00	Percent of Parkland Dedication Met: 0.0000000%
Multi-Family 5 or more units	0	5		\$13,800.00	\$0.00	
High Rise (12+ Stories)	0	5		\$0.00	\$0.00	Total Credits: \$4,735,485.85
SRO Units	0	5		\$5,900.00	\$0.00	

* Low income units are 50% of the standard Fee Per Unit. Total Fees: \$0.00

Total Fees After Credits: \$0.00
Design Review Fees Due (this Agreement): \$435,486.00
Design Review Fees Due (per Interim Parkland Agreement Agreement): \$264,514.00

EXHIBIT A-1
PAYMENT INSTRUCTIONS

The City's Review Fees and Parkland Fees shall be paid directly to: City of San Jose, Department of Parks, Recreation and Neighborhood Services, 200 E. Santa Clara Street, Tower-9th Floor, San Jose, CA, 95113.

The City's Review Fees and Parkland Fees due from the Interim Parkland Agreement, as will be applied to total Review Fees, shall be paid by separate checks made payable to the City for each amount.

T-7825.014.003/1572764



☐ CASH
☐ CHECK
☐ MONEY ORDER
☐ CREDIT CARD
☐ OTHER

PAYMENT RECEIPT

CITY OF SAN JOSE

No. **A** 1042157

DEPARTMENT	PRNS	DATE	11/13/18
RECEIVED FROM	SJ Sierra Group LLC		
ADDRESS	1590 Berryessa Rd, San Jose, CA 95133		
THE SUM OF	Four hundred thirty five thousand ^{four hundred} ^{eighty six} 00 / 100 DOLLARS		
PURPOSE	AMOUNT		435,486.00
Design Review Fess - Parks			
Tract 10264 November 2018			

FORM 142-13

CITY OF SAN JOSE

ORIGINAL TO PAYOR

BY SJR



☐ CASH
☐ CHECK
☐ MONEY ORDER
☐ CREDIT CARD
☐ OTHER

PAYMENT RECEIPT

CITY OF SAN JOSE

No. **A** 1042158

DEPARTMENT	PRNS	DATE	11/13/18
RECEIVED FROM	SJ Sierra Group LLC		
ADDRESS	1590 Berryessa Rd, San Jose CA 95133		
THE SUM OF	Two hundred sixty four thousand five hundred and ^{fourteen} 00 / 100 DOLLARS		
PURPOSE	AMOUNT		264514.00
Design Review - Parks -			
Tract 10264 - NOV 2018			

FORM 142-13

CITY OF SAN JOSE

S.J. SIERRA GROUP LLC1590 BERRYESSA ROAD
SAN JOSE, CA 95133**BridgeBank**
55 ALMADEN BOULEVARD
SAN JOSE, CA 95113
BridgeBank.com

90-4326/1211

001197

11/13/2018

PAY TO THE
ORDER OF

City of San Jose

\$ **264,514.00

Two Hundred Sixty-Four Thousand Five Hundred Fourteen and 00/100*****

DOLLARS

City of San Jose
200 East Santa Clara Street
San Jose, CA 95113-1905

MEMO

Design Review - Parks - Tract 10264 - Nov 2018

*Forrest Vucelja*

MP

AUTHORIZED SIGNATURE

⑈001197⑈ ⑆121143260⑆

0101392009⑈

S.J. SIERRA GROUP LLC

001197

City of San Jose

11/13/2018

Date	Type	Reference	Original Amt.	Balance Due	Discount	Payment
11/13/2018	Bill	Design Review -Parks	264,514.00	264,514.00		264,514.00
					Check Amount	264,514.00

Bridge Bank - Checkin Design Review - Parks - Tract 10264 - Nov 2018

264,514.00

S.J. SIERRA GROUP LLC1590 BERRYESSA ROAD
SAN JOSE, CA 95133BridgeBank
55 ALMADEN BOULEVARD
SAN JOSE, CA 95113
BridgeBank.com

90-4326/1211

001196

11/13/2018

PAY TO THE
ORDER OF

City of San Jose

\$ **435,486.00

Four Hundred Thirty-Five Thousand Four Hundred Eighty-Six and 00/100*****

DOLLARS

City of San Jose
200 East Santa Clara Street
San Jose, CA 95113-1905

MEMO

Design Review Fess - Parks - Tract 10264 Nov 2018



A handwritten signature in black ink, appearing to read "Michael Vucelja".

AUTHORIZED SIGNATURE

⑈001196⑈ ⑆121143260⑆

0101392009⑈

S.J. SIERRA GROUP LLC

001196

City of San Jose

Date	Type	Reference
11/13/2018	Bill	Design Review - Park

Original Amt.
435,486.00

Balance Due
435,486.00

11/13/2018

Discount

Payment

435,486.00

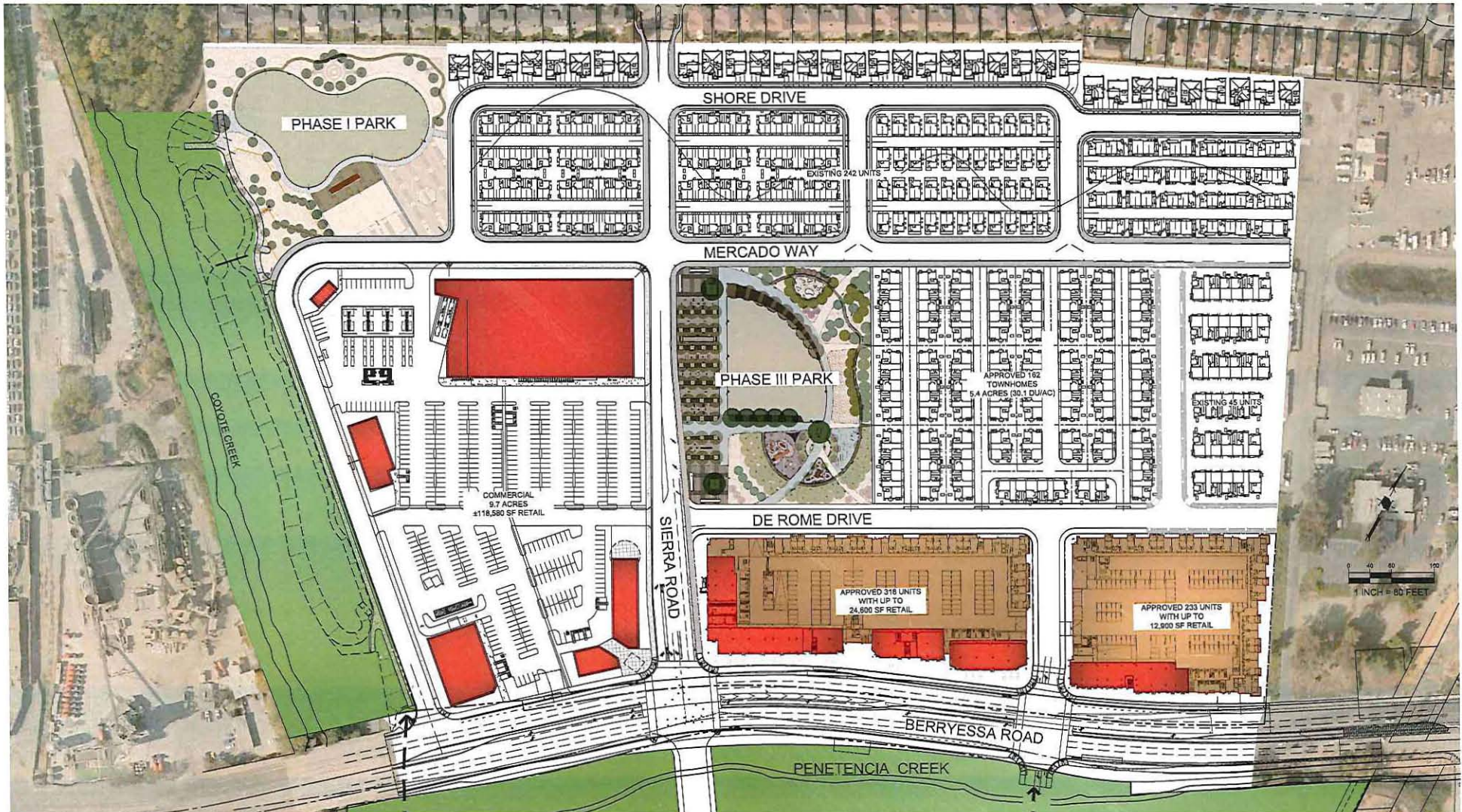
Check Amount

435,486.00

Bridge Bank - Checkin Design Review Fess - Parks - Tract 10264 Nov 2

435,486.00

FLEA MARKET PARKS
SAN JOSE, CA



FLEA MARKET PARKS
SAN JOSE, CA



EXHIBIT C
Phase I - Park Site
"Bruzzone Way Park"

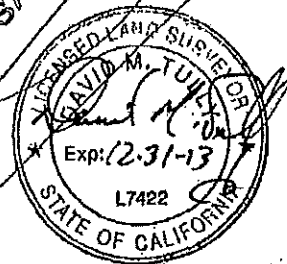
TRACT 8247
802-M-17

**LANDS OF
THE FLEA
MARKET, et al.**
DOC.NO.22063961

**LANDS OF
THE FLEA
MARKET, et al.**
DOC.NO.22063963

**LANDS OF
THE FLEA
MARKET, et al.**
DOC.NO.22063962

BERRYESSA ROAD



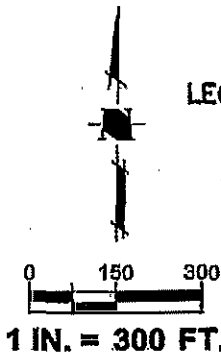
LINE	BEARING	DISTANCE
L1	S48°50'52"W	82.14'
L2	S48°54'25"W	281.88'
L3	S48°54'25"W	459.55'
L4	S49°45'55"E	131.19'
L5	S49°45'55"E	36.56'
L6	S58°03'30"E	34.43'
L7	N28°54'07"E	21.18'
L8	N62°51'40"E (R)	-
L9	N48°50'52"E	206.47'
L10	N41°09'08"W	341.29'

CURVE	RADIUS	DELTA	LENGTH
C1	280.00'	29°05'28"	142.17'
C2	99.00'	53°53'51"	93.13'
C3	62.00'	33°05'58"	35.82'
C4	109.00'	75°59'13"	144.56'
C5	20.00'	90°00'00"	31.42'

LEGEND

(R)
POC
TPOB

RADIAL BEARING
POINT OF COMMENCEMENT
TRUE POINT OF BEGINNING



SHEET 1 OF 1

Date: 05-01-2013
Scale: 1" = 300'
Designed: TV
Drawn: DT
Checked: TG
Proj Engr: TV
090814PL13



1670 Oakland Road (408) 487-2200
San Jose, CA 95131 HMMca.com

**PLAT TO ACCOMPANY DESCRIPTION:
PARK AGREEMENT**

SAN JOSE

CALIFORNIA

T7656/971843_2

Ex B-1

DRAFT--Contact the Office of the City Clerk at (408) 535-1260 or CityClerk@sanjoseca.gov for final document.

EXHIBIT C
Phase 3 - Park Site
"Mercado Way Park"

RECORDED WITHOUT FEE UNDER
SECTION 6103 GOVERNMENT CODE
OF THE STATE OF CALIFORNIA

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:
AND MAIL TAX STATEMENT TO:

City of San Jose – Public Works
200 East Santa Clara Street, 3rd Floor
San Jose, CA 95113-1905

Deed No: N/A
3 Dash No: 3-16680
APN: 241-04-033

Doc. 23464673

Space above this line for Recorder's use

The Undersigned Grantee(s) Declare(s): DOCUMENTARY TRANSFER TAX \$0; CITY TRANSFER TAX \$0; Recorded for the benefit of the City of San Jose and is exempt from fee per Government Code Sections 27383 and 6103.

☐ computed on the consideration or full value of property conveyed, OR

☐ computed on the consideration or full value less value of liens and/or encumbrances remaining at time of sale,

☐ unincorporated area; ☒ City of San Jose, and

☐ Steller, CTC as agent
Signature of Declarant

IRREVOCABLE OFFER OF DEDICATION

S.J. Sierra Group LLC, a Delaware limited liability company, hereinafter ("GRANTOR"), does hereby IRREVOCABLY OFFER TO DEDICATE to the CITY OF SAN JOSE, a municipal corporation of the State of California, ("CITY") or its successor agencies, assigns, and transferees, real property as described in the attached **Exhibit A and Exhibit B** for park purposes (the "Park Property"). Such dedication of the Park Property shall be accepted by CITY upon recordation of a Grant Deed in the Santa Clara County, Office of the County-Recorder. The Grant Deed for the Park Property will be recorded by CITY in the Santa Clara County, Office of the County-Recorder, only upon the following event:

1. GRANTOR(s) performs and satisfies any and all terms, conditions, and obligations set forth in the Parkland Agreement between GRANTOR and CITY entitled "*PARKLAND AGREEMENT TENTATIVE MAP NO. PT15-067 (Chapter 19.38 of SJMC)*", executed simultaneously with this Irrevocable Offer of Dedication.

Until such Grant Deed is recorded, CITY shall not be responsible for and shall incur no liability with respect to the Park Property. GRANTOR, with respect to such offer of dedication, retains

the right to control the Park Property until this offer of dedication is accepted and the Grant Deed is recorded as outlined herein.

The provisions hereof shall inure to the benefit and be binding upon the heirs, successors, assigns and personal representatives of the respective parties hereto.

Such real property is described as follows:

See Exhibits "A and B" attached hereto and made a part hereof.

Dated September 29, 2016

S.J. Sierra Group LLC,
a Delaware limited liability company

By: T&B Management Group LLC,
a Delaware limited liability company,
Manager

By: Timothy Bumb
Timothy Bumb, Manager

By: Brian Bumb
Brian Bumb, Manager

Address: 1590 Berryessa Road
San Jose, CA 95131

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

*All Subdivider's signatures must be accompanied by an attached notary acknowledgement.

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 Santa Clara

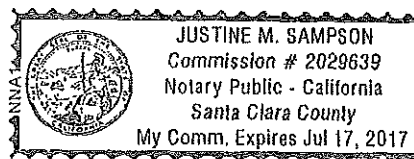
On September 29, 2016 before me, Justine M. Sampson, Notary Public
(insert name and title of the officer)

personally appeared Brian Bumb
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 Justine M. Sampson (Seal)



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 Santa Clara

On September 29, 2016 before me, Justine M. Sampson, Notary Public
(insert name and title of the officer)

personally appeared Timothy Bumb
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.

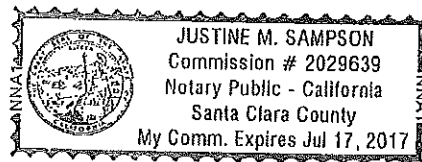
I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing
paragraph is true and correct.

WITNESS my hand and official seal.

Signature

Justine M. Sampson

(Seal)



**ACTION BY WRITTEN CONSENT OF THE MANAGER
OF BGT DEVELOPMENT, LLC**

Effective as of October 3, 2016

The undersigned, being the managing member (the "Manager") of BGT DEVELOPMENT, LLC, a California Limited Liability Company (the "Company"), hereby takes the following actions and adopts the following resolutions by written consent pursuant to the applicable state laws, and the Operating Agreement of the Company.

WHEREAS, THE FLEA MARKET, INC., a California Corporation; BUMB & ASSOCIATES, a California General Partnership; BGT DEVELOPMENT, LLC, a California Limited Liability Company; and KB HOME SOUTH BAY INC., a California Corporation have entered into an Interim Parkland Agreement (the "Agreement") concerning the dedication of two parcels of land, one at 3.59 acres and another at 3.60 acres, as parkland to the City of San Jose, in exchange for, among other negotiated items, parkland credits for the development of lands on both sides of Berryessa Road that belonged to The Flea Market, Inc., Bumb & Associates, and BGT Development, LLC.

AND WHEREAS, the Agreement requires the authorized signature on behalf of BGT DEVELOPMENT, LLC, a California limited liability company.

NOW, THEREFORE, BE IT RESOLVED, that:

BRIAN BUMB, as managing member of BGT DEVELOPMENT, LLC, a California limited liability company, may sign the Agreement on behalf of, and bind, BGT DEVELOPMENT, LLC.

IN WITNESS WHEREOF, the undersigned has executed this Action by Written Consent as of the date first set forth above.

BGT DEVELOPMENT, LLC,

a California Limited Liability Company

By: Brian Bumb
Brian Bumb, Managing Member

**ACTION BY WRITTEN CONSENT
OF THE MANAGERS
OF
T&B MANAGEMENT GROUP, LLC**

Effective as of October 3, 2016

The undersigned, being the managers (the "Managers") of T&B Management Group LLC, a Delaware limited liability company (the "Company"), hereby take the following actions and adopt the following resolutions by written consent pursuant to the Delaware Limited Liability Company Act and the Operating Agreement of the Company.

The Company is the sole manager of S.J. Sierra Group LLC, a Delaware limited liability company ("S.J. Sierra Group"), and as such is authorized to take the following Action with respect to the Interim Parkland Agreement, executed concurrently with this Action.

WHEREAS, THE FLEA MARKET, INC., a California Corporation; BUMB & ASSOCIATES, a California General Partnership; BGT DEVELOPMENT, LLC, a California Limited Liability Company; and KB HOME SOUTH BAY INC., a California Corporation have entered into an Interim Parkland Agreement (the "Agreement") concerning the dedication of two parcels of land, one at 3.59 acres and another at 3.60 acres, as parkland to the City of San Jose, in exchange for, among other negotiated items, parkland credits for the development of lands on both sides of Berryessa Road that belonged to The Flea Market, Inc., Bumb & Associates, and BGT Development, LLC.

AND WHEREAS, effective September 28, 2016, The Flea Market, Inc. and Bumb & Associates, a California General Partnership, transferred their interests in land on the north side of Berryessa Road to its affiliated entity, S.J. Sierra Group, LLC.

AND WHEREAS, the Agreement requires the authorized signature on behalf of S.J. Sierra Group, LLC, a Delaware limited liability company.

NOW, THEREFORE, BE IT RESOLVED, that:

TIMOTHY BUMB and BRIAN BUMB, as managers of T&B Management Group, LLC, the managing company of S.J. Sierra Group, LLC, a Delaware limited liability company, may sign the Agreement on behalf of, and bind, S.J. Sierra Group, LLC.

IN WITNESS WHEREOF, the undersigned has executed this Action by Written Consent as of the date first set forth above.

S.J. Sierra Group LLC,

a Delaware Limited Liability Company

By: T&B Management Group, LLC
a Delaware Limited Liability Company,
Manager

By: Timothy Bumb
Timothy Bumb, Manager

By: Brian Bumb
Brian Bumb, Manager



October 3, 2016
HMH 0908.14.870
Page 1 of 1

EXHIBIT "A"
FOR A FUTURE PUBLIC PARK OFFER OF DEDICATION

REAL PROPERTY in the City of San Jose, County of Santa Clara, State of California, being all of Parcel A as shown on that certain Parcel Map filed for record on September 19, 2016, in Book 896 of Maps, page 51, Santa Clara County Records.

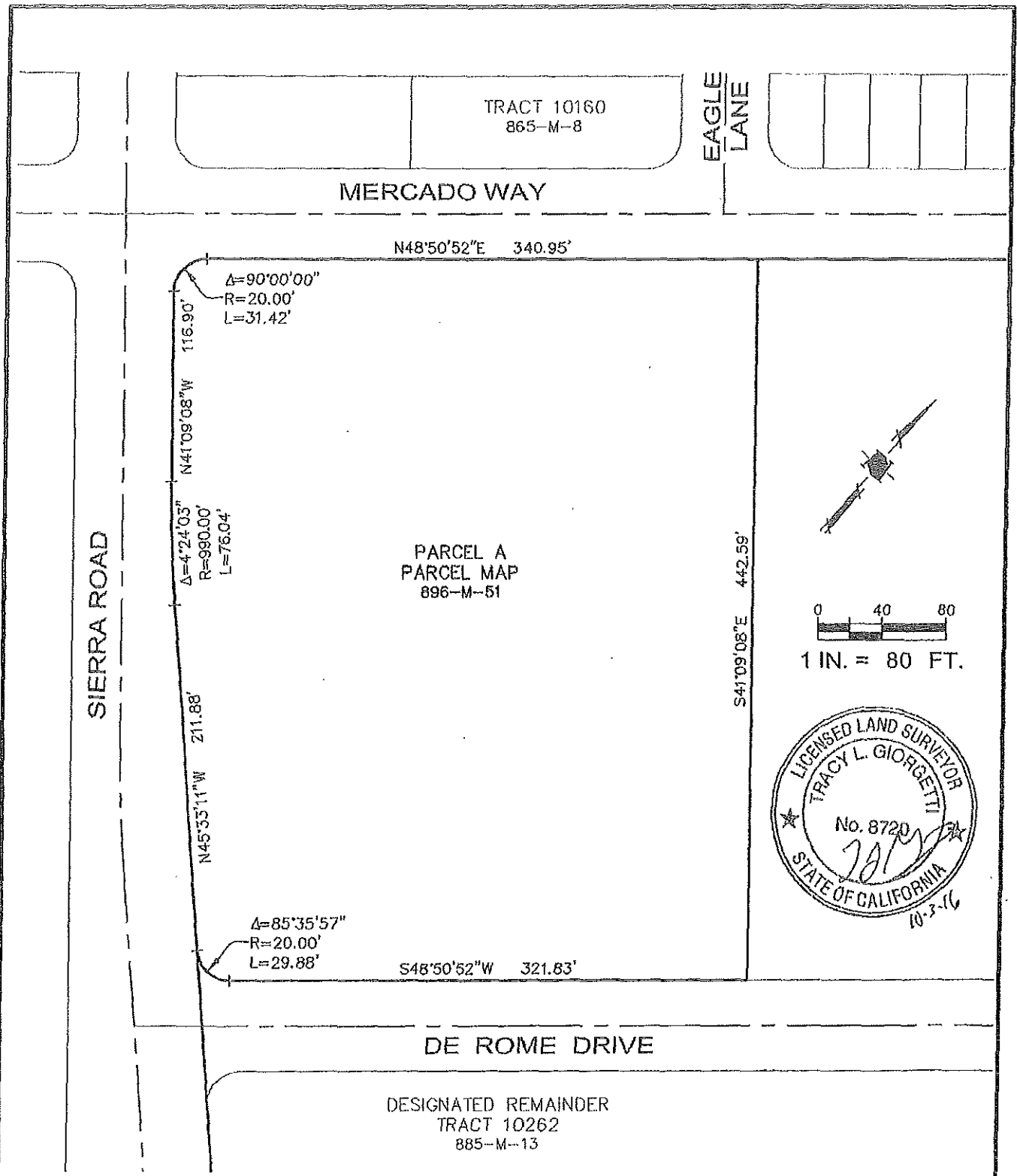
Containing 3.60 acres, more or less.

Excepting therefrom the underground water rights without rights of surface entry as granted to San Jose Water Company, a California corporation by document recorded December 6, 2013 as Instrument No. 22465601 of Official Records.



090841LD07.docx

1570 Oakland Road | San Jose, California 95131 | (408) 487-2200 | (408) 487-2222 Fax | www.HMHca.com



LEGEND

POB

POINT OF BEGINNING

SHEET 1 OF 1

Date:	2016-10-03
Designed:	—
Drawn:	RF
Checked:	TG
Proj. Engr.:	RM
	090841PL07

HMH

1570 Oakland Road
San Jose, CA 95131

(408) 487-2200
HMHca.com

EXHIBIT "B"
PLAT TO ACCOMPANY DESCRIPTION:
FOR A FUTURE PUBLIC PARK OFFER OF DEDICATION
SAN JOSE CALIFORNIA

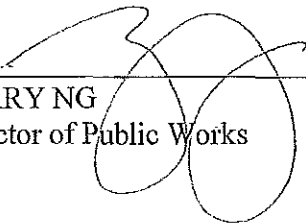
Consent to Irrevocable Offer
APN: 241-04-033

CONSENT TO IRREVOCABLE OFFER

This is to certify that the Irrevocable Offer of Dedication to which this Consent is attached, from S.J. Sierra Group LLC, a Delaware Limited Liability Company, dated September 29, 2016, to the City of San Jose, a municipal corporation of the State of California, is hereby consented to by the undersigned officer of said City pursuant to authority conferred by the Council of the City of San Jose, Section 4.04.020B of Chapter 4 of the San Jose Municipal Code and City Manager's Delegation of Authority memorandum dated January 10, 2008.

CITY OF SAN JOSE, A Municipal Corporation
of the State of California

10/13/16
Dated


BARRY NG
Director of Public Works

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

CIVIL CODE § 1189

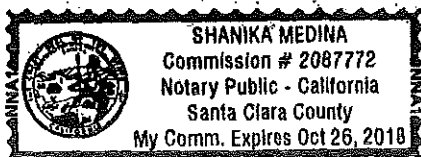
A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
 County of Santa Clara)
 On 10/13/10 before me, Shanika Medina, Notary Public,
 Date Here Insert Name and Title of the Officer
 personally appeared Barry Ng
 Name(s) of Signer(s)

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 _____
 Signature of Notary Public

Place Notary Seal Above

OPTIONAL

Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached Document

Title or Type of Document: _____ Document Date: _____

Number of Pages: _____ Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____

☐ Corporate Officer — Title(s): _____

☐ Partner — ☐ Limited ☐ General

☐ Individual ☐ Attorney in Fact

☐ Trustee ☐ Guardian or Conservator

☐ Other: _____

Signer Is Representing: _____

Signer's Name: _____

☐ Corporate Officer — Title(s): _____

☐ Partner — ☐ Limited ☐ General

☐ Individual ☐ Attorney in Fact

☐ Trustee ☐ Guardian or Conservator

☐ Other: _____

Signer Is Representing: _____

FLEA MARKET PARKS | BRUZZONE WAY PARK

SAN JOSE, CALIFORNIA

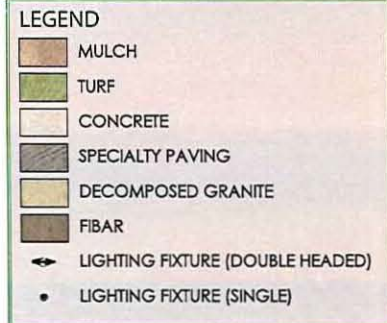


LANDSCAPE ARCHITECTURE

MAINTENANCE ACCESS

WILDFLOWER MEADOW

ACTIVE SPORT GREEN



GROUP DINING

LARGE TABLES

PLAZA

CORNHOLE

BENCHES

PICNIC TABLES

BBQ

TRASH RECEPTACLES

BOCCE COURT

SCORE DEVICE

BIKE RACKS

DOG PARK

FOUNTAIN

BENCHES

RECEPTACLES

GATE SYSTEM

FENCING

FIBAR

COYOTE CREEK TRAIL CONNECTION



EXHIBIT D

ATTACHMENT #2 | BASELINE TURNKEY PARK IMPROVEMENT PLAN

AUGUST 17TH 2018

JN: 0908.53

FLEA MARKET PARKS | MERCADO WAY PARK

SAN JOSE, CALIFORNIA



LANDSCAPE ARCHITECTURE



EXISTING FENCE

ACTIVE GREEN

GATHERING PLAZA
PARK SIGNAGE

ACTIVE PLAZA
PICNIC TABLES
CORNHOLE
TABLE TENNIS
TRASH RECEPTACLE

HISTORY NODE
BENCHES

2-5 YR OLD PLAYGROUND
BENCHES
FENCING
PLAY EQUIPMENT

5-12 YR OLD PLAYGROUND
BENCHES
FENCING
PLAY EQUIPMENT
BBQ
TABLES

LEGEND

	MULCH
	TURF
	CONCRETE
	SPECIALTY PAVING
	PLAY SURFACING
	DECOMPOSED GRANITE
	LIGHTING FIXTURE (DOUBLE HEADED)
	LIGHTING FIXTURE (SINGLE)

GATHERING PLAZA
PARK SIGNAGE



EXHIBIT D

ATTACHMENT #2 | BASELINE TURNKEY PARK IMPROVEMENT PLANS

AUGUST 17TH 2018

JN: 0908.53

Flea Market Parks

Preliminary Opinion of Probable Construction Cost

Prepared at the Request of:
City of San Jose
August 17, 2018

This estimate was prepared as an order of magnitude guide for construction costs and related City fees. Based on the limited project definition at this time, it is considered a class 4 estimate as defined by ASTM E 2516-11. It is based on the conceptual plan dated 7/16/2018 attached for reference.



Job Number : 0908.53

Table of Contents

Description	Sheet No.
Probable Construction Cost Summary	3
Preliminary Opinion of Probable Construction Cost	4-7
Site Plan dated August 17th, 2018	8-9
General Notes	10



Preliminary Opinion of Probable Construction Cost

PHASE I Reunion Park	
Project Start Up	\$55,000
Irrigation	\$180,000
Planting	\$139,000
Trees	\$26,000
Hardscape	\$349,000
Site Furnishing and Fencing	\$214,000
Grading and Drainage	\$166,000
Public Improvements	\$109,000
Maintenance	\$5,000

Subtotal	\$1,243,000
10% Contingency	\$124,000
Pulgas Park Total	\$1,367,000

PHASE III Mercado Park	
Project Start Up	\$60,000
Irrigation	\$168,000
Planting	\$127,000
Trees	\$62,000
Hardscape	\$630,000
Site Furnishing and Fencing	\$504,000
Grading and Drainage	\$227,000
Public Improvements	\$153,000
Maintenance	\$5,000

Subtotal	\$1,936,000
10% Contingency	\$290,000
Mercado Park Total	\$2,226,000

CONSTRUCTION COST SUBTOTAL **\$3,593,000**

ALT ITEM TOTAL **\$62,022**

Additional fees and soft costs

HMH soft costs contract as of 1/10/2018	\$500,440
City Design Review and Inspection 22%	\$700,000
KB project management cost 5%	\$205,000

TOTAL **\$5,000,000**

NOTE: All totals on this sheet are rounded to nearest \$1000. For detailed totals refer to the subsequent sheets.

Bid Schedule		Project Name:		Flea Market- Reunion Park Phase I Construction Phase 1 Improvements		
		Project Number:		0908.53		
		Location:		San Jose, CA		
		Name of Client:		City of San Jose		
		Name of Contractor:		N/A		
		Date of Estimate:		25-Jun-18		
Item	Quantity	Unit	Item Description	Unit Price	Extensions	Subtotal
Project Start-up						
1	1	LS	Mobilization	\$20,000.00	\$20,000	
2	1	LS	Traffic Control	\$15,000.00	\$15,000	
3	6	DAY	Construction Staking	\$2,500.00	\$15,000	
4	1,600	LF	Temporary Construction Fence (6 Months)	\$3.00	\$4,800	
						\$54,800
Irrigation						
1	45,448	SF	Irrigation (Turf & Trees)	\$3.25	\$147,706	
2	1	EA	Controller	\$12,000.00	\$12,000	
3	1	EA	Flow Sensor, Master Valve, and Backflow	\$10,000.00	\$10,000	
4	35,738	SF	Irrigation extras for future (valve boxes/stub)	\$0.30	\$10,721	
						\$180,427
Planting						
1	43,898	SF	Turf Area - Hydroseed	\$1.00	\$43,898	
2	2,000	SF	Planting Area (TREE UNDERSTORY)	\$3.50	\$7,000	
3	11,388	SF	Mulch (future hardscape, non PA)	\$1.00	\$11,388	
4	27,900	SF	Mulch	\$1.00	\$27,900	
5	48,500	SF	Soil Prep and Amendments	\$1.00	\$48,500	
6	0	EA	24" Deep Root Barriers	\$40.00		
7	1	EA	10 LB Bag Wild Flower Mix		\$300	
						\$138,986
Trees						
1	56	EA	15 Gallon	\$225.00	\$12,600	
2	1	EA	48" Oak Trees	\$3,500.00	\$3,500	
3	31	EA	15 Gallon Orchard Trees	\$225.00	\$6,975	
4	13	EA	15 Gallon Street Trees	\$225.00	\$2,925	
						\$26,000
Hardscape \ Surface						
1	13,500	SF	Decomposed Granite	\$7.00	\$94,500	
2	0	SF	Decomposed Granite (Plaza)	\$6.00		
3	12,000	SF	Concrete Pavement (Walkways)	\$12.00	\$144,000	
4	0	SF	Stained Concrete Pavement (Plaza)	\$15.25		
5	0	SF	Linear Pavers	\$20.00		
6	5,680	SF	Specialty Paving	\$15.25	\$86,620	
7	0	SF	Sports Court Paving	\$10.50		
7	400	LF	Concrete Header	\$14.00	\$5,600	
8	18,114	SF	Dog Park (Fibar)	\$1.00	\$18,114	
ALT 8	15,714	SF	Turf (Dog Park)	\$3.00	\$47,142	
						\$348,834
Site Furnishings and Fencing						
1	8	EA	Bench	\$3,000.00	\$24,000	
2	0	EA	Back to Back Bench	\$5,880.00		
3	4	EA	Accessible Picnic Table	\$3,700.00	\$14,800	
4	8	EA	Round Table	\$5,200.00	\$41,600	
5	0	EA	George SR, 20' Long Custom Table	\$20,000.00		
6	0	EA	George JR, 7' Dia, Rnd, Custom Table	\$10,000.00		
7	0	EA	Shade Structure	\$30,000.00		
8	0	EA	Light Bollards	\$1,500.00		
9	0	EA	Light Poles	\$2,500.00		
10	6	EA	Double Headed Light Poles	\$3,000.00	\$18,000	
11	2	EA	BBQ	\$1,600.00	\$3,200	
12	2	EA	Trash Receptacles	\$2,790.00	\$5,580	
13	2	EA	Recycle Receptacles	\$2,790.00	\$5,580	
14	0	EA	Dog Waste Station	\$650.00		
15	2	EA	Drinking Fountain	\$5,500.00	\$11,000	
16	2	EA	Bike Racks	\$980.00	\$1,960	
17	2	EA	Corn Hole Set	\$500.00	\$1,000	
18	1	EA	Bocce Box	\$14,000.00	\$14,000	
19	1	EA	Bocce Scoreboard	\$1,400.00	\$1,400	

20	0	EA	Soccer Goals		\$1,250.00		
21	6	EA	Exercise Equipment		\$2,480.00	\$14,880	
22	0	LF	Spilt Rail Fencing		\$55.00		
23	963	LF	Dog Park Fence & Hardware		\$35.00	\$33,705	
24	0	LS	Sport Court Net and Accessories		\$650.00		
25	2	EA	12' Maintenance Gates @ Dog Park		\$800.00	\$1,600	
26	1	EA	Signage Allowance		\$22,000.00	\$22,000	
ALT 21	6	EA	Exercise Equipment		\$2,480.00	\$14,880	
							\$214,305
Grading and Drainage							
1	12	EA	12"x12" Area Drain		\$750.00	\$9,000	
2	1	EA	18"x18" Catch Basin		\$2,150.00	\$2,150	
3	2,287	CY	ROUGH GRADING		\$3.75	\$8,576	
4	1,357	CY	EXPORT (including 10% shrinkage)		\$30.00	\$40,710	
5	120	LF	12" PVC, SDR-35		\$105.00	\$12,600	
6	1,080	LF	8" PVC, SDR-35		\$60.00	\$64,800	
7	5	EA	8" SD Cleanout		\$600.00	\$3,000	
8	160	LF	1" Potable Water Line		\$40.00	\$6,400	
9	4	EA	6" SS Cleanout		\$500.00	\$2,000	
10	380	LF	6" SS Pipe		\$45.00	\$17,100	
							\$166,336
Public Improvements							
1	0	SF	Remove Sidewalk		\$4.00		
2	14	LF	Remove Curb		\$11.00	\$154	
3	0	SF	Monolithic Sidewalk		\$10.50		
4	60	CY	Driveway		\$12.50	\$750	
5	2	EA	Water Meters 5/8" Dom & 1.5" Irrigation		\$15,000.00	\$30,000	
6	20	LF	Water Lateral		\$175.00	\$3,500	
7	20	LF	Sanitary Sewer Lateral		\$180.00	\$3,600	
8	1	EA	Electric Meter		\$5,000.00	\$5,000	
9	1	EA	Electric Pedestal		\$3,250.00	\$2,000	
10	1	EA	Storm Connection		\$5,660.00	\$5,660	
11	1,318	LF	Wires Conduit & Trench		\$38.00	\$50,084	
12	1	EA	PG&E Electric Contract		\$7,000.00	\$7,000	
13	12	CY	Concrete Lighting Footing		\$90.00	\$1,080	
							\$108,828
Maintenance							
1	1	LS	Site Furnishings		\$5,000	\$5,000	
2	0	LS	365 day maintenance (post-acceptance)		\$45,000		
							\$5,000
TOTAL ESTIMATED COST							\$1,305,539
Note: Quantities are based on plans prepared by HMH dated 08/18/17.							

Bid Schedule		Project Name: Flea Market- Mercado Park Phase III Construction Phase 1 Improvements Project Number: 0908.53 Location: San Jose, CA Name of Client: City of San Jose Name of Contractor: N/A Date of Estimate: 25-Jun-18				
Item	Quantity	Unit	Item Description	Unit Price	Extensions	Subtotal
Project Start-up						
1	1	LS	Mobilization	\$20,000.00	\$20,000	
2	1	LS	Traffic Control	\$15,000.00	\$15,000	
3	8	DAY	Construction Staking	\$2,500.00	\$20,000	
4	1,600	LF	Temporary Construction Fence (6 Months)	\$3.00	\$4,800	
						\$59,800
Irrigation						
1	40,000	SF	Irrigation	\$3.25	\$130,000	
2	41,000	SF	Irrigation extras for future (valve boxes/stub)	\$0.40	\$16,400	
3	1	EA	Controller	\$12,000.00	\$12,000	
4	1	EA	Flow Sensor, Master Valve, and Backflow	\$10,000.00	\$10,000	
5	-	LS	Pump Package	\$50,000.00		
						\$168,400
Planting						
1	33,812	SF	Turf	\$1.00	\$33,812	
2	1,912	SF	Planting Area (Node Area & Signage)	\$3.50	\$6,692	
3	48,418	SF	Mulch (Future PA & Under Trees)	\$1.00	\$48,418	
4	37,912	SF	Soil Prep and Amendments (Mulch & Turf)	\$1.00	\$37,912	
5	0	EA	24" Deep Root Barriers	\$40.00		
						\$126,834
Trees						
1	114	EA	15 Gallon Trees	\$225.00	\$25,650	
2	7	EA	15 Evergreen Conifer Trees	\$275.00	\$1,925	
3	3	EA	48" Specimen Trees	\$5,000.00	\$15,000	
4	32	EA	24" Box Orchard Trees	\$550.00	\$17,600	
5	9	EA	15 Gallon Street Trees	\$225.00	\$2,025	
						\$62,200
Hardscape						
1	24,792	SF	Decomposed Granite	\$6.00	\$148,752	
2	14,000	SF	Concrete Pavement (Walkways)	\$12.00	\$168,000	
3	15,636	SF	Concrete Pavement (Plaza)	\$12.00	\$187,632	
4	2,096	SF	Specialty Paving (Color Concrete)	\$15.00	\$31,440	
5	2,828	SF	Rubber Play Surface (fall zones)	\$25.00	\$70,700	
6	3,432	SF	Fibar (play ground)	\$1.00	\$3,432	
7	1,400	LF	Concrete Header	\$14.00	\$19,600	
						\$629,556
Site Furnishings and Fencing						
1	6	EA	Bench	\$3,000.00	\$18,000	
2	2	EA	Accessible Picnic Table	\$5,000.00	\$10,000	
3	6	EA	Round Table	\$5,300.00	\$31,800	
4	0	EA	Specialty Round Table	\$10,000.00		
5	2	EA	Extra Long Picnic Table	\$5,000.00	\$10,000	
6	0	EA	Stepping Stones	\$25.00		
7	0	EA	Boulders	\$1,000.00		
8	0	EA	Flea Market Artifact	\$25,000.00		
9	0	EA	Historical Marker	\$4,500.00		
10	0	EA	Shade Structure	\$29,000.00		
11	8	EA	Single Headed Light	\$2,500.00	\$20,000	
12	9	EA	Double Headed Light	\$3,000.00	\$27,000	
13	11	EA	Light Bollards	\$1,600.00	\$17,600	
14	4	EA	BBQ	\$1,600.00	\$6,400	

15	3	EA	Trash Receptacles		\$2,790.00	\$8,370	
16	2	EA	Bike Rack		\$980.00	\$1,960	
17	3	EA	Recycle Receptacles		\$2,790.00	\$8,370	
18	0	EA	Raised Planter With Entry Signage		\$30,000.00		
19	1	EA	Concrete Corn Hole Set		\$500.00	\$500	
20	0	EA	Bocce Box		\$14,000.00		
21	0	EA	Bocce Scoreboard		\$1,400.00		
22	0	EA	Game Table		\$2,500.00		
23	1	EA	Table Tennis		\$7,480.00	\$7,480	
24	1	EA	2-5 Play Equipment		\$105,000.00	\$105,000	
25	1	EA	5-12 Play Equipment		\$150,000.00	\$150,000	
26	0	EA	All Ages Obstacle Course		\$100,000.00		
27	192	LF	Playground Wall		\$190.00	\$36,480	
28	1	EA	Water Fountain w/ Bottle Filler		\$6,200.00	\$6,200	
29	285	LF	Steel Fencing (Around Playground)		\$60.00	\$17,100	
30	1	EA	Signage Allowance		\$22,000.00	\$22,000	
							\$504,260
Grading and Drainage							
1	41	EA	6" Area Drain		\$530.00	\$21,730	
2	11	EA	8" Area Drain		\$600.00	\$6,600	
3	1	EA	8" X 8" Catch Basin		\$1,000.00	\$1,000	
4	1,000	LF	8" PVC, SDR-35		\$60.00	\$60,000	
5	1,700	LF	6" PVC, SDR-35		\$40.00	\$68,000	
6	5	EA	6" SD Cleanout		\$500.00	\$2,500	
7	830	LF	1" Potable Waterline		\$40.00	\$33,200	
8	5	EA	6" SS Cleanout		\$500.00	\$2,500	
9	610	LF	6" SS Pipe		\$45.00	\$27,450	
10	100	CY	Earthwork (Fill)		\$45.00	\$4,500	
							\$227,480
Public Improvements							
1	2	EA	Water Meters 5/8" Dom & 1.5" Irrigation		\$15,000.00	\$30,000	
2	30	LF	Water Lateral		\$175.00	\$5,250	
3	30	LF	Sanitary Sewer Lateral		\$180.00	\$5,400	
4	1	EA	PG&E EL Contract		\$7,000.00	\$7,000	
5	1	EA	Storm Connection		\$5,660.00	\$5,660	
6	1	EA	Electric Meter		\$5,000.00	\$5,000	
7	1	EA	Electric Pedestal		\$3,250.00	\$3,250	
8	2,350	LF	Wires Conduit & Trench		\$38.00	\$89,300	
9	22	CY	Concrete Foundations		\$90.00	\$1,980	
10	25	CY	Driveway		\$12.50	\$313	
							\$153,153
Maintenance							
1	1	LS	90 day maintenance (pre-acceptance)		\$5,000	\$5,000	
2	0	LS	365 day maintenance (post-acceptance)		\$45,000		
							\$5,000
TOTAL ESTIMATED COST							\$1,936,683
Note: Quantities are based on plans prepared by HMM dated 8/18/17.							

General Notes:

- 1) This opinion of probable cost is a professional opinion, and is prepared for a guide only. It is based upon incomplete information and is subject to change. HMH makes no warranty, either express or implied, that actual costs will not vary from these estimated costs and assumes no liability for such variances.
- 2) This estimate assumes the existing grade at the time of construction will be equivalent to the proposed grade of projects currently under construction.
- 3) Unit prices are based on Saylor's 2017 "Current Construction Costs". Items not in Saylor's are based on the past experience of HMH for similar construction items, or from discussion with other consultants, contractors or agency staff.
- 4) This estimate does not account for escalation or inflation.

5) This estimate is not intended to be all-inclusive. The following excluded items are listed to provide additional clarity:

Environmental studies or reports
Traffic reports and analysis
Planning related costs and fees
Building Department or building permit related fees
In-lieu park impact fees
Geological hazard clearance fees
Geotechnical Engineering and testing
Hazardous soils testing, remediation, or removal
Civil Engineering, Planning, and surveying services
Reimbursable Agreements or Refundable Deposits
Building related costs and fees
On-lot fine grading
Fencing
Acquisition of property, rights of way, or easements

EXHIBIT E

DESIGN AND CONSTRUCTION REQUIREMENTS

SECTION 1. DESIGN AND CONSTRUCTION REQUIREMENTS.

A. Plans And Specifications.

The design for the Park Improvements must be consistent with the conceptual design for the Park Improvements as depicted in Exhibit A. Developer shall design and construct the Park Improvements in accordance with the following:

1. City's Standard Specifications and Standard Details, dated July 1992 ("City's Specifications"), as may be amended from time to time, and on file with City's Department of Public Works, Architectural Division. Section 1 and the Technical Provisions of City's Standard Specifications (Section 10 through and including Section 1501) shall be applicable to this Agreement. References in the Standard Specifications to "Developer" shall be deemed to mean "Developer."
2. City's Turnkey Park Standards for Park Design & Construction, dated 2001 ("Turnkey Standards"), as may be amended from time to time, and on file with City's Department of Public Works, Architectural Division. In the event that Developer does not submit the ninety percent (90%) Project Specifications (as specified in the Turnkey Standards) for City's review and approval within eighteen (18) months of the Effective Date of this Agreement and the Turnkey Standards are then revised, Developer shall design and construct the Park Improvements in accordance with the revised Turnkey Standards.
3. Public Works Standard Specifications- Section 329100 Planting Preparation. Soil specifications, survey requirements, and resulting soil amendment procedures prescribed in the above guidelines, shall be applicable to this agreement. Prior to construction of the park, this document will be made available to the Developer through Public Works.
4. City shall review the Plans, including materials, infrastructure, and design elements, for consistency with the conceptual design of Turnkey Park Improvements as contained in Exhibit D and the specifications and guidelines outlined above and throughout this Agreement. Pursuant to this design review process and with reasonable consideration of the cost estimates contained or referenced herein, the Plans shall be refined to the satisfaction of the Director of Parks, Recreation, and Neighborhood Services and the Director of Public Works pursuant to all terms in this Agreement.

B. Application Of Plans And Specifications.

1. City's Specifications, Turnkey Standards and the Project Specifications shall be collectively referred to as the "Plans." The Park Improvements shall be constructed in accordance with the Plans.
2. In the event of a conflict between the Turnkey Standards and the City's Specifications, the Turnkey Standards shall prevail.
3. The provisions of this Agreement supersede anything to the contrary in either the City's Specifications or the Turnkey Standards.

C. Project Specification Approval Process.

1. The Project Specifications shall be submitted in a timely manner in order to insure that the Developer completes the Park Improvements on or before the completion date specified in this Agreement. Developer shall not construct any Park Improvements unless and until the City's Director of Public Works ("Director of PW") has approved the Project Specifications in writing. The approval process for the Project Specifications is more particularly set forth in the Turnkey Standards.
2. Prior to acceptance of the Plans and/or construction of the Park, the Developer shall provide the City with original copies of all soil surveys along with recommended soil amendments. The City, may at its sole discretion, require inspection of the Park Site for construction debris before construction may commence.
3. City's approval of the Plans shall not release Developer of the responsibility for the correction of mistakes, errors, or omissions contained in the Plans, including any mistakes, errors or omissions which may be the result of circumstances unforeseen at the time the Plans were developed or approved. If, during the course of construction of the Park Improvements, the Director of PW determines in the Director of PW's reasonable discretion that the public safety requires modification of, or the departure from, the Plans, the Director of PW shall have the authority to require such modification or departure and to specify the manner in which the same may be made. The Parties acknowledge that the Plans, once approved by the Director of PW, shall be final and that, except as expressly provided in this subsection, no revisions to the Plans shall be permitted for any reason whatsoever.
3. For reference and public information purposes, Developer will provide the City with a tentative schedule of construction prior to the commencement of development for any of the Turnkey Park Improvements. Such schedule may be

amended at the Developer's discretion provided that all Improvements are completed by the completion dates specified in this Agreement. At the City's request the Developer shall provide the City with an updated schedule that reflects amended milestones and anticipated completion dates.

SECTION 2. PARTICULAR CONSTRUCTION REQUIREMENTS.

A. Developer Selection.

Developer may hire and contract with one or more contractor or subcontractor, licensed to perform such work in the State of California.

B. Prevailing Wage Requirement.

1. General Requirement: For all construction work on the Park Improvements, Developer agrees to comply with the prevailing wage requirements set forth in Sections 7-1.01A(2) through 7-1.01A(3) of the City of San Jose, Department of Public Works, Standard Specifications, dated July 1992 ("Prevailing Wage Requirement"), as may be amended from time to time. The Prevailing Wage Requirement is incorporated into this Agreement by reference as though set forth herein in their entirety. Developer acknowledges that it has reviewed the Prevailing Wage Requirement and is familiar with its requirements.
2. Contractors and Subcontractors: Developer shall expressly require compliance with the Prevailing Wage Requirement in all agreements it enters into with contractors and subcontractors for construction work on the Park Improvements. Developer acknowledges and agrees that it is responsible for compliance by its contractors and subcontractors of the Prevailing Wage Requirement.
3. Reporting Obligations: Notwithstanding anything to the contrary contained herein, Developer is not obligated to submit to City copies of payroll records, or any other records required to be maintained pursuant to the Prevailing Wage Requirement, until City requests such records. Developer shall provide to City, at no cost to City, a copy of any and all such records within ten (10) working days of City's Office of Equality Assurance request for such records. In responding to a request by the Office of Equality Assurance, Developer agrees that it is responsible for submitting the records of any and all of its contractors and subcontractors.
4. Indemnity: Developer shall indemnify the City for any claims, costs or expenses which City incurs as a result of Developer's failure to pay, or cause to be paid, prevailing wages.

C. Remedies For Developer's Breach Of Prevailing Wage Requirements.

1. General: Developer acknowledges City has determined that the Prevailing Wage Requirement promotes each of the following (collectively "Goals"):
 - a. It protects City job opportunities and stimulates City's economy by reducing the incentive to recruit and pay a substandard wage to labor from distant, cheap-labor areas.
 - b. It benefits the public through the superior efficiency of well-paid employees, whereas the payment of inadequate compensation tends to negatively affect the quality of services to City by fostering high turnover and instability in the workplace.
 - c. Pay workers a wage that enables them not to live in poverty is beneficial to the health and welfare of all citizens of San Jose because it increases the ability of such workers to attain sustenance, decreases the amount of poverty and reduces the amount of taxpayer funded social services in San Jose.
 - d. It increases competition by promoting a more level playing field among contractors with regard to the wages paid to workers.
2. Remedies: City and Developer recognize that Developer's breach of the Prevailing Wage Requirement set forth above will cause damage to the City by undermining City's goals in assuring timely payment of prevailing wages, and will cause City additional expenses in obtaining compliance and conducting audits, and that such damage would not be remedied by Developer's payment of restitution to the worker paid less than the prevailing wage. Developer and City agree that such damage would increase the greater the number of employees not paid the applicable prevailing wage and the longer the amount of time over which such wages were not paid. City and Developer further recognize the delays, expense and difficulty involved in proving City's actual losses in a legal proceeding, and mutually agree that making a precise determination of the amount of City's damages as a result of Developer's breach of the Wage Provision would be impracticable and/or extremely difficult. Accordingly, City and Developer agree that:
 - a. For each day after ten (10) working days that Developer fails to completely respond to a request by City to provide records as required under Section 2.B.3, of this **Exhibit E** of this Agreement, Developer shall pay to City as liquidated damages the sum of TWO HUNDRED FIFTY DOLLARS (\$250.00); and

- b. For each instance where City has determined that the Prevailing Wage Requirements were not met, Developer shall pay to City as liquidated damages the sum of three (3) times the difference between the actual amount of wages paid and the prevailing wages which should have been paid.
3. Audit Rights. All records or documents required to be kept pursuant to this Agreement to verify compliance with the Prevailing Wage Requirement shall be made available for audit at no cost to City, at any time during regular business hours, upon written request by City Attorney, City Auditor, City Manager, or a designated representative of any of these officers. Copies of such records or documents shall be provided to City for audit at City Hall when it is practical to do so. Otherwise, unless an alternative is mutually agreed upon, the records or documents shall be available at Developer's address indicated for receipt of notices in this Agreement.
4. Remedies Cumulative: The remedies set forth in this provision of the Agreement are cumulative and in addition to any other remedies set forth in the Prevailing Wage Requirements or otherwise permitted by law.

Developer Initial: TB. BB

City Initial: _____

D. Conduct Of Work.

1. Appearance. Developer shall maintain a neat and clean appearance to the work at the Park Site. When practicable, broken concrete and debris developed during clearing and grubbing shall be disposed of concurrently with its removal. If stockpiling of disposable material is necessary, the material shall be retained in an area not readily visible to the public in a manner meeting the reasonable satisfaction of the Director of PW.
2. Condition. Developer shall maintain the Park Site in a neat, clean, and good condition prior to City's acceptance of the Park Improvements. Developer shall not dispose or cause the disposal of any Hazardous Substances on any of the Park Site. Additionally, Developer shall take reasonable precautions to prevent the disposal of Hazardous Substances by third parties on any of the Site. The term "Hazardous Substances" is defined in Section 3 (A)(2) of this Exhibit.
3. Emergencies. In an emergency affecting the safety of persons or property, Developer shall act reasonably to prevent threatened damage, injury, or loss. Developer shall immediately notify the City by telephone at the telephone number as directed by the Director of PW and in writing of such actions.

E. Access For Inspection.

1. Access. The Director of PW and the Director of PW's designated representatives, including without limitation, staff from other City departments, shall at all times

during the progress of work on the Park Improvements have free access to such improvements for inspection purposes. If the Director of PW determines that all or any portion of the work done on the Park Improvements is not in compliance with the Plans, the Director of PW shall notify Developer of the same and Developer shall promptly cure such defect to the Director of PW's reasonable satisfaction. Such notifications shall be made to the Developer and his on-site representatives to not unduly interfere with ongoing construction work.

2. Representatives.

- a. Prior to commencement of work on the Park Improvements, Developer shall designate in writing an authorized representative who shall have the authority to represent and act for Developer. When work is not in progress and during periods when work is suspended, arrangements acceptable to the Director of PW shall be made for any emergency work which may be required. In addition, Developer shall provide Director of PW with the names and telephone numbers of at least two (2) individuals in charge of or responsible for the work who can be reached personally in case of emergency twenty-four (24) hours a day, seven (7) days a week.
- b. The Director of PW shall also designate one or more authorized representative who shall have the authority to represent the Director of PW. Developer's authorized representative shall be present at the site of the work at such reasonable times as designated by the Director of PW. Prior to commencement of the work, the Parties shall mutually agree to an inspection schedule, which schedule may be adjusted from time to time by mutual agreement.
- c. Whenever the Developer or its authorized representative is not present on any particular part of the work where it becomes necessary to give direction for safety reasons, the Director of PW shall have the right to give such orders which shall be received and obeyed by the superintendent or foreman who may have charge of the particular work in reference to which the orders are given. Any order given by the Director of PW will on request of the Developer be given or confirmed by the Director of PW in writing.
- d. City's rights under this Agreement shall not make the Developer an agent of the City, and the liability of the Developer for all damages to persons or to public or private property arising from Developer's execution of the work, shall not be lessened because of the exercise by City of its rights.

F. Acceptance of Park Improvements.

The Park Improvements shall be completed in accordance with the provisions of this Agreement to the satisfaction of the Director of PW.

1. City agrees to inspect and prepare a punchlist for the Park Improvements within ten (10) business days of notification by Developer that the Developer considers the construction of the Park Improvements to be complete. City further agrees to perform its final inspection within ten (10) business days of notification by Developer that all punchlist work has been completed.
2. City will process acceptance documentation (Notice of Acceptance) within ten (10) business days of the date of City's final inspection or the date upon which the Developer returns to City the appropriate signed acceptance documentation, whichever is later, provided that:
 - a. City finds that all punchlist work has been satisfactorily completed; and
 - b. Developer has performed and satisfied any and all terms, conditions, and obligations required under this Agreement prior to acceptance of the Park Improvements, including but not limited to, the requirements for dedication of the Park Sites as outlined in Section 2(G) of this Exhibit below; and
 - c. Developer has provided the Director of PW with three (3) sets of the Plans ("record plans") corresponding copies of any and all warranties, and the like (such warranties shall be in the name of the City), and corresponding copies of any and all operating manuals for equipment installed as part of the Park Improvements. The aforementioned documents shall also be provided by Developer in an appropriate electronic format (.dwg, .pdf, etc.) as requested by the Director of Public Works or Parks, Recreation, and Neighborhood Services.
3. The Parties acknowledge that City's restrictions on the installation of landscaping because of future drought conditions may delay Developer's installation of the landscaping contemplated by this Agreement. If, due to drought restrictions, Developer is unable to install the landscaping in time to be inspected by the Director of PW for the purposes of accepting the completed Park Improvements, Developer shall post a bond or other form of security as set forth in Section 5 (A)(4) of this Agreement.
4. At the discretion of the Director of PW, City may accept a designated portion of the Park Improvements. Acceptance of a designated portion will be as provided by Section 7-1.166 of the City's Specifications.

G. Park Site. Upon the Director of PW's acceptance of the Park Improvements, Developer shall have no further obligations in connection with the Park Improvements except for the terms, conditions, or obligations of this Agreement that explicitly survives acceptance or termination.

H. Compliance With Laws/Permits.

1. Developer shall keep fully informed of all existing and future local, state, and federal laws and county and municipal ordinances and regulations which in any manner affect those engaged or employed in the work on the Park Improvements, or the materials used in the Park Improvements, or which in any way affect the conduct of the work on the Park Improvements, and of all such orders and decrees of bodies or tribunals having any jurisdiction or authority over the same. In the performance of any work pursuant to this Agreement, Developer shall at all times observe and comply with, and shall cause all Developer's employees, agents, representatives, contractors and subcontractors to observe and comply with all such existing and future laws, ordinances, regulations, orders and decrees of bodies or tribunals having any jurisdiction or authority over the work. If any discrepancy or inconsistency is discovered in the plans, drawings, specifications, or contract for the work in relation to any such law, ordinance, regulation, order, or decree, Developer shall promptly report the same to the Director of PW.
2. Developer shall, at its sole cost and expense, obtain all governmental reviews and approvals, licenses, and permits which are, or may be, required and necessary to construct and complete the Park Improvements in accordance with the provisions of this Agreement, including, but not limited to, site development reviews, development permits and environmental review. Developer shall comply with all conditions, restrictions or contingencies imposed upon, or attached to, such governmental approvals, licenses, and permits. If Developer for any reason fails to comply with any of City's requirements, or any other legal requirement concerning Developer's construction of the Park Improvements, then City shall have the right to require Developer to alter, repair, or replace any improvements or perform any other action to the satisfaction of the Director of PW as reasonably required to correct any non-compliance of the Park Improvements with legal requirements or this Agreement and at no cost to City. Developer's failure to effect the cure as required by the Director of PW shall constitute an Event of Default in accordance with Section 6 of this Agreement.

SECTION 3. INSURANCE REQUIREMENTS.

Developer and/or its contractors and consultants shall procure and maintain for the duration of the Agreement insurance against claims for injuries to persons or damages to property which may arise from, or in connection with, the performance of the Development hereunder by the Developer, its agents, representative employees, contractors, or subcontractors.

A. Minimum Scope of Insurance.

Coverage shall be at least as broad as:

1. The coverage provided by Insurance Services Office Commercial General Liability coverage ("occurrence") Form Number CG 0001; and
2. The coverage provided by Insurance Services Office Form Number CA 0001 covering Automobile Liability. Coverage shall also be included for all owned, non-owned and hired autos; and
3. Workers' Compensation insurance as required by the California Labor Code and Employers Liability insurance; and
4. Professional Liability Errors and Omissions insurance for all professional services; and
5. Builder's Risk insurance providing coverage for "all risks" of loss; and
6. Pollution Liability insurance, including coverage for all operations, completed operations and professional services (without exclusion for asbestos or lead).

There shall be no endorsement reducing the scope of coverage required above unless approved by the City's Risk Manager in writing.

B. Minimum Limits of Insurance.

Developer shall maintain limits no less than:

1. Commercial General Liability: Five Million Dollars (\$5,000,000) per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit; and
2. Automobile Liability: One Million Dollars (\$1,000,000) combined single limit per accident for bodily injury and property damage; and
3. Workers' Compensation and Employers' Liability: Workers' Compensation limits as required by the California Labor Code and Employers Liability limits of One Million Dollars (\$1,000,000) per accident; coverage shall be endorsed to state carrier waives its rights of

subrogation against the City, its officers, employees, agents, and contractors; and

4. Professional Liability Errors and Omissions: One Million Dollars (\$1,000,000) per claim/One Million Dollars (\$1,000,000) aggregate limit; and
5. Builders' Risk: Completed value of Project; and
6. Pollution Liability: Two Million Dollars (\$2,000,000) per occurrence/Two Million Dollars (\$2,000,000) aggregate limit.

C. Deductibles and Self-Insured Retentions.

Any deductibles or self-insured retentions must be declared to, and approved by City's Risk Manager in writing. At the option of City, either, the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects City, its officials, employees, agents, and contractors, or Developer shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses in an amount specified by City.

D. Provisions Of Policies.

The insurance policies are to contain, or be endorsed to contain, the following provisions:

1. Regarding Commercial General Liability, Automobile Liability and Pollution Liability Coverages.
 - a. City, its officials, employees, agents and contractors are to be covered as an additional insured as respects: liability arising out of activities performed by, or on behalf of, the Developer; products and completed operations of the Developer; premises owned, leased or used by the Developer; or automobiles owned, leased, hired or borrowed by Developer. The coverage shall contain no special limitations on the scope of protection afforded to the City, its officials, employees, agents and contractors; and
 - b. The Developer's insurance coverage shall be primary insurance as respects the City, its officials, employees, agents and contractors. Any insurance or self-insurance maintained by City, its officials, employees, agents and contractors shall be excess of the Developer's insurance and shall not contribute with it; and
 - c. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the City and the City, its officials, employees, agents and contractors; and

- d. Coverage shall state that 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; and
 - e. Coverage shall contain a waiver of subrogation in favor of City, its officials, employees, agents and contractors.
- 2. Workers' Compensation and Employers Liability Coverages shall contain a waiver of subrogation in favor of City, its officials, employees, agents, and contractors.
- 3. Builders' Risk policies shall contain the following provisions:
 - a. City shall be named as loss payee.
 - b. Coverage shall contain a waiver of subrogation in favor of City, its officials, employees, agents and contractors.
- 4. All Coverages.

Each insurance policy required by this Agreement shall be endorsed to state that coverage shall not be suspended, voided, cancelled, or reduced in limits except after thirty (30) days' prior written notice has been given to the City's Risk Manager, except that ten (10) days' prior written notice shall apply in the event of cancellation for non-payment of premium.

E. Duration.

- 1. Commercial General Liability (including, without limitation, products and completed operations coverage), Professional Liability and Pollution Liability coverages shall be maintained continuously for a minimum of five (5) years after completion of the work under this Agreement.
- 2. If any of such coverages are written on a claims-made basis, the following requirements apply:
 - a. The policy retroactive date must precede the date the work commenced under this Agreement.
 - b. If the policy is cancelled or non-renewed and coverage cannot be procured with the original retroactive date, Developer must purchase an extended reporting period equal to or greater than five (5) years after completion of the work under this Agreement.

F. Acceptability of Insurers.

Insurance is to be placed with insurers acceptable to the City's Risk Manager.

G. Verification of Coverages.

Developer shall furnish City (in the manner provided below) with certificates of insurance and with original endorsements affecting coverage required by this Agreement. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.

Proof of insurance shall be either emailed in pdf format to: Riskmgt@sanjoseca.gov, or mailed to the following postal address or any subsequent email or postal address as may be directed in writing by the City's Risk Manager:

The City of San Jose – Department of Finance
Risk Management
200 East Santa Clara Street, 14th Floor Tower
San Jose, CA 95113-1905

H. Developer or its contractors shall include all subcontractors as insureds under its policies or shall obtain separate certificates and endorsements for each subcontractor.

EXHIBIT F
BOND FORMS

Bond No. _____

Premium _____

FAITHFUL PERFORMANCE BOND

WHEREAS, the CITY OF SAN JOSE, a municipal corporation of the State of California ("City"), and *[insert name of Developer or Contractor, type of entity, and state of incorporation if applicable]* as principal ("Principal") have entered into an agreement entitled *[insert title of turnkey agreement and identifying development permit number, tract map or tentative map number or some other identifier unique to this project]*, incorporated herein by reference and referred to as the "Contract," which requires Principal to dedicate real property for neighborhood and community parks, construct park or recreational improvements and/or pay parkland in-lieu fees; and,

WHEREAS, under the terms of the Contract and prior to commencing any work under the Contract, Principal is required to furnish a bond to City for faithful performance of the Contract;

NOW, THEREFORE, we the Principal and *[insert full name of Surety]*, a corporation duly authorized and admitted to transact business and issue surety bonds in the State of California ("Surety"), are held firmly bound unto the City in the sum of *[insert bond amount]*, for the payment of which sum well and truly to be made, we the Principal and Surety bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally.

The condition of this obligation is such that, if the Principal, Principal's heirs, executors, administrators, successors, or assigns shall in all things stand to and abide by, and well and truly keep and perform all covenants, conditions, and agreements required to be kept and performed by Principal in the Contract and any changes, additions, or alterations made thereto, to be kept and performed at the time and in the manner therein specified, and in all respects according to their true intent and meanings, and shall indemnify and save harmless City, its officers, employees, and agents, as therein provided, then this obligation shall be null and void; otherwise, it shall be and remain in full force and effect.

As a part of the obligation secured hereby and in addition to the sum specified above, there shall be included all costs, expenses, and fees, including attorney's fees, reasonably incurred by City in successfully enforcing such obligation, all to be taxed as costs and included in any judgment rendered.

The Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration, or addition to the terms of the Contract or to the work to be performed thereunder or to the specifications accompanying the same shall in any way affect its obligations on this bond, and it does hereby waive notice of any such change, extension, alteration, or addition.

IN WITNESS WHEREOF, this instrument has been duly executed by authorized representatives of the Principal and Surety. SIGNED AND SEALED on _____, 20____.

PRINCIPAL:

SURETY:

(Principal name)

(Seal)

(Surety name)

(Seal)

BY: _____
(Signature)

BY: _____
Signature)

(Print name and title)

(Print name and title)

Principal address and telephone:

Surety address and telephone:

Affix Corporate Seals

Attach Notary Acknowledgments for All Signatures

Attach Power-of-Attorney if executed by Attorney-in-Fact

Bond No. _____

Premium _____

PAYMENT (LABOR AND MATERIALS) BOND

WHEREAS, the CITY OF SAN JOSE, a municipal corporation of the State of California ("City"), and [insert name of Developer or Contractor, type of entity, and state of incorporation if applicable], as principal ("Principal") have entered into an agreement entitled [insert title of turnkey agreement and identifying development permit number, tract map or tentative map number or some other identifier unique to this project], incorporated herein by reference and referred to as the "Contract," which requires Principal to dedicate real property for neighborhood and community parks, construct park or recreational improvements and/or pay parkland in-lieu fees; and,

WHEREAS, under the terms of the Contract and prior to commencing any work under the Contract, Principal is required to furnish a good and sufficient payment bond to the City to secure the claims to which reference is made in Title 15 (commencing with Section 3082) of Part 4 of Division 3 of the California Civil Code.

NOW, THEREFORE, we the Principal and [insert full name of Surety], a corporation duly authorized and admitted to transact business and issue surety bonds in the State of California ("Surety"), are held firmly bound unto the City, and unto all contractors, subcontractors, suppliers, laborers, materialmen and other persons employed in the performance of the Contract and referred to in the aforesaid Civil Code, as obligees, in the sum of [insert bond amount], on the condition that if Principal shall fail to pay for any materials or equipment furnished or used or for any work or labor thereon of any kind, or for amounts due under the Unemployment Insurance Act with respect to such work or labor, or for any amounts required to be deducted, withheld, and paid over to the Employment Development Department from the wages of employees of the Principal and all subcontractors with respect to such work or labor, then the Surety shall pay the same in an amount not exceeding the sum specified above. If suit is brought upon this bond, Surety shall pay, in addition to the above sum, all costs, expenses, and fees, including attorney's fees, reasonably incurred by any obligee in successfully enforcing the obligation secured hereby, all to be taxed as costs and included in the judgment rendered. Should the condition of this bond be fully performed, then this obligation shall become null and void; otherwise, it shall be and remain in full force and effect, and shall bind Principal, Surety, their heirs, executors, administrators, successors, and assigns, jointly and severally.

IT IS HEREBY EXPRESSLY STIPULATED AND AGREED that this bond shall inure to the benefit of all persons, companies, corporations, political subdivisions, and State agencies entitled to file claims under Title 15 (commencing with Section 3082) of Part 4 of Division 3 of the Civil Code, so as to give a right of action to them or their assigns in any suit brought upon this bond. The Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Contract or to the work to be

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performed thereunder or the specifications accompanying the same shall in any way affect its obligations on this bond, and it does hereby waive notice of any such change, extension, alteration or addition.

IN WITNESS WHEREOF, this instrument has been duly executed by authorized representatives of the Principal and Surety. SIGNED AND SEALED on _____, 20____.

PRINCIPAL:

SURETY:

Principal name)

(Seal)

(Surety name)

(Seal)

BY: _____

(Signature)

BY: _____

(Signature)

Print name and title)

Principal address and telephone:

Print name and title)

Surety address and telephone:

Affix Corporate Seals
Attach Notary Acknowledgments for All Signatures
Attach Power-of-Attorney if executed by Attorney-in-Fact

Bond No. _____

Premium _____

WARRANTY BOND

WHEREAS, the City of San Jose, a municipal corporation of the State of California (“City”) and *[insert name of Developer/Contractor, type of entity, and state of incorporation if applicable]* as principal (“Principal”) have entered into an agreement entitled *[insert title of turnkey agreement and identifying development permit number, tract map or tentative map number or some other identifier unique to this project]*, incorporated herein by reference and referred to as the “Contract,” which requires Principal to dedicate real property for neighborhood and community parks, construct park or recreational improvements and/or pay parkland in-lieu fees; and,

WHEREAS, under the terms of the Contract, Principal is required to furnish a bond to City to make good and protect the City against the results of any work or labor done or materials or equipment furnished which are defective or not in accordance with the terms of the Contract having been used or incorporated in any part of the work so contracted for, which shall have appeared or been discovered, within the period of one (1) year from and after the completion and final acceptance of the work done under the Contract.

NOW, THEREFORE, we the Principal and *[insert full name of Surety]*, a corporation duly authorized and admitted to transact business and issue surety bonds in the State of California (“Surety”), are held firmly bound unto the City in the sum of *[insert bond amount – 25% of Faithful Performance Bond]*, for the payment of which sum well and truly to be made, we the Principal and Surety bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally.

The condition of this obligation is such that, if the Principal shall well and truly make good and protect the City against the results of any work or labor done or materials or equipment furnished which are defective or not in accordance with the terms of the Contract having been used or incorporated in any part of the work performed under the Contract, which shall have appeared or been discovered within said one-year period from and after completion of all work under the Contract and final acceptance by City of said work, then this obligation shall be null and void; otherwise, it shall be and remain in full force and effect.

The Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Contract or to the work to be performed thereunder

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or the specifications accompanying the same shall in any way affect its obligations on this bond, and it does hereby waive notice of any change, extension of time, alteration or addition.

IN WITNESS WHEREOF, this instrument has been duly executed by authorized representatives of the Principal and Surety. SIGNED AND SEALED on _____, 20____.

PRINCIPAL:

SURETY:

(Principal name)

(Seal)

(Surety name)

(Seal)

BY: _____
(Signature)

BY: _____
(Signature)

(Print name and title)

(Print name and title)

Principal address and telephone:

Surety address and telephone:

Affix Corporate Seals

Attach Notary Acknowledgments for All Signatures

Attach Power-of-Attorney if executed by Attorney-in-Fact