

COUNTY OF SANTA CLARA
LAND DEVELOPMENT AGREEMENT

(Tract Maps)

Tract Number and Tract Name: _____

County File Number: _____

Property Address: _____

Name/Address of Developer: _____

Type(s) of Improvements: _____

Relevant Saylor Material/Labor Index: _____

This is an agreement ("Agreement") between the COUNTY OF SANTA CLARA, a political subdivision of the State of California ("County"), and the Developer named above ("Developer"), setting forth the requirements for construction of certain land development improvements related to the project associated with the County File Number listed above ("Project"). This agreement is not transferable.

1. Approval of Plans, etc.

The County hereby approves the improvement plans and specifications prepared for the aforesaid described project prepared by _____ dated _____, 20____. A true copy of the approved plans and specifications is on file in the Land Development Engineering Office and the same are incorporated herein by reference as though set out in full. Said plans and specifications shall be referenced herein as the "Plans," and the "Work" to be done under the Plans shall be referenced as the "Work." The Work shall include the setting of construction stakes, the adjustments or setting of monument boxes, the setting of survey monuments or resetting of monuments disturbed or removed during the course of construction. All Work performed in connection with setting monuments shall be done by persons legally qualified to perform such Work.

In consideration for review of the Plans, the Developer has paid inspection fees and posted certain financial security described below, based on the Engineer's Estimate of Probable Construction Cost, in the sum of _____ dollars (\$ _____) with the Land Development Engineering Section of the Department of Planning and Development Services Office of the County.

2. Installation of the Work

(a) The Developer shall install and complete the Work prior to occupancy of any new building or additions to existing buildings resulting from County approval of the Project, but not later than two years from the date of this Agreement. The County Building Official may, upon receipt of an application for an extension of time, payment of all applicable fees, and submission of satisfactory evidence that the specified time limits are not appropriate or practical, give written authorization of an extension of time for one year.

Before an extension of time to complete the Work may be granted, the Engineer's Estimate of Probable Construction Cost shall be reviewed to determine whether the posted financial security is still satisfactory to secure completion of all of the Work. If the Building Official determines that financial security warrants adjustment, he may require that additional financial security be posted before granting the extension. If there are any disputes about the amount of adjustment, the parties agree to adjust the financial security by an amount that reflects the original financial security indexed upward based on the relevant Saylor Material/Labor Index identified above.

The Developer shall rectify any deficiencies in the financial security within thirty (30) calendar days from the date of the written notice. No extension of time may be granted until the revised financial security is provided to the County.

If after one hundred and twenty (120) days from the above written notice or in the event the Developer fails or refuses to complete the Work within the specified period of time, the County, at its sole option, shall be authorized to complete the Work in whatever manner the County shall decide. In the event the County completes the Work, the County may recover any and all costs incurred in completing the Work and enforcing this Agreement, including but not limited to permit and inspection fees, staff time and attorneys' fees, from the Developer and/or the Developer's surety. Developer hereby grants County, its employees, contractors and subcontractors right of entry to the property Developer's land to inspect or perform work.

(b) The Developer shall install and complete the Work in a good and workmanlike manner and in accordance with the standards and specifications of the County for such Work. The decision of the County shall be final as to whether any material or workmanship meets the standards and specifications of the County. Any special investigations, tests and reports done by the County, or any retesting of compaction or materials due to failure to comply with plan specifications, shall be paid by Developer prior to final approval of the Work and release of any performance bond. In the event that Work is not proceeding in a good and workmanlike manner, the County Building Official may order suspension of Work pending corrective action.

(c) The Developer hereby certifies that the Plans conform to the tentative map or development plan implementing the map previously approved by the County. Developer agrees to cooperate with other property owners, contractors, the County, and public agencies that may be affected by the Work.

3. Guarantee

Developer hereby guarantees all Work performed hereunder for a period of one year from the date of completion and construction acceptance by County. Developer agrees to

correct all discrepancies in workmanship and materials and damage therefrom appearing within this one-year period at his or her expense.

4. Approval and Maintenance of the Work

The County will not approve the Work unless and until it conforms to the approved plans and the County's standards and specifications. After the County approves the Work, unless the Work is to be maintained by a public agency, the Developer and any subsequent purchaser shall maintain the Work in a manner consistent with the purposes of the County approval. During the term of this agreement, Developer agrees to notify any current or future Property owner of his or her responsibility for continued proper maintenance of the Work.

5. Notice of Commencing the Work

The Developer agrees to notify, or shall require his or her contractor to notify, the County Building Official at least 48 hours prior to the date the construction and installation of the Work will commence.

6. Bonds

(a) Prior to, or concurrent with, the execution of this Agreement, Developer shall execute and deliver to the County Building Official a faithful performance bond and a labor and materialmen's bond, each by one or more duly authorized corporate sureties. The faithful performance and labor and materialmen's bonds each shall be in a form that complies with Chapter 5 of the Subdivision Map Act, Government Code Section 66499 et seq., and the County of Santa Clara Ordinance Code, and shall be in an amount equal to 100% of the total estimated cost of the improvements and an additional amount of 10% of the Total estimated cost to secure the payment of any costs and expenses incurred by County in enforcing this agreement.

(b) In lieu of the requirements of subdivision (a) of this paragraph, Developer may deposit with the Building Official cash, a certificate of deposit or an instrument of credit pledging that the funds necessary to carry out the terms of this agreement are on deposit and guaranteed for payment directly to the County pursuant to this agreement. Deposits made pursuant to this subdivision shall be in an amount of 100% of the total estimated cost of the improvements and an additional amount of 10% of the total estimated cost to secure the payment of any costs and expenses incurred by County in enforcing this agreement. The total amount deposited shall represent security for the faithful performance of the Work hereunder and security for payment to the contractor, his or her subcontractors and to persons furnishing labor, materials or equipment to them. Certificates of deposit and instruments of credit shall be in a form that complies with Chapter 5 of the Subdivision Map Act and the County of the Santa Clara Ordinance Code and shall be issued by one or more state or federally regulated financial institutions.

(c) In addition to the requirements of subdivisions (a) and (b), Developer shall provide security to County guaranteeing the payment of the cost of setting all monuments shown on the final map. Such security may be in the form of a cash bond or other form acceptable to the County Building Official.

7. Release of Bonds

(a) Corporate Surety. In the event that performance and labor and materialmen's bonds are provided by Developer pursuant to the provisions of paragraph 6(a), said bonds may be released as follows:

(i) Security given for faithful performance may be released by the County Surveyor upon completion and acceptance of the Work to be performed hereunder, in whole or in part; provided that a partial release shall not be in an amount less than 25% of the total security amount and that no more than 75% of the total security amount shall be released prior to final completion and acceptance of the Work hereunder.

(ii) Security for the payment to the contractor, his or her subcontractors and to persons furnishing labor, materials or equipment to them may, ninety (90) days after completion and acceptance of the Work, be reduced to an amount not less than the total of all claims on which an action has been filed and notice thereof given in writing to the County Board of Supervisors, and if no such actions have been filed, the security may be released by the County Building Official.

(b) Cash or Other Deposit. In the event that security is deposited pursuant to the provisions of paragraph 6(b), an amount securing faithful performance may be released by the County Building Official upon completion and acceptance of the Work. The amount allocated to secure faithful performance shall not be more than 50% of the total amount deposited. The County Building Official may authorize partial releases of the amount securing faithful performance in increments of 25%. (For example, if a total deposit of \$100,000 were made pursuant to paragraph 6(b), the County Building Official may designate \$50,000 as the amount securing faithful performance. In that case, partial releases could be made in 25% increments of \$12,500.)

The remaining security, securing payment to the contractor, his or her subcontractors, and to persons furnishing labor, materials, and equipment, shall be retained for ninety (90) days after completion and acceptance of the Work. The amount of said remaining security shall not be less than 50% of the total amount deposited. After the ninety (90) day period, the County Building Official may reduce the remaining security to an amount not less than the total of all claims in which an action has been filed and notice thereof given in writing to the County Board of Supervisors, if no such actions have been filed, the remaining security may be released in full.

(c) Security for the setting of monuments may be released after notice of the final setting of monuments has been given by the engineer or the surveyor who performed the work and evidence is submitted that the engineer or surveyor has been paid.

8. Indemnity and Insurance

(a) Developer shall indemnify and hold harmless the County, its officers, agents and employees, from any and all liabilities and claims for damages and/or suits for or by reason of any death or deaths of or any injury or injuries to any person or persons or damages to property of any kind whatsoever arising out of or occasioned by the Work, except for liabilities or claims arising out of the sole negligence of County, its officers, agents or employees. Indemnification

hereunder shall include all costs and expenses including attorney fees incurred in defending against any claim or suit or in enforcing the terms of this Agreement.

(b) Throughout the term of this Agreement Developer shall maintain public liability and property damage insurance providing coverage for all of the Work. The County of Santa Clara and its officers and employees shall be named as additional insureds. Such insurance shall provide coverage in the following minimum amounts: for bodily injury, \$1,000,000 for each occurrence; for property damage, \$1,000,000 for each occurrence and a general aggregate limit of \$2,000,000. Evidence of such insurance may be required at any time during the term of this Agreement.

9. Acceptance or Approval

Nothing contained in this Agreement shall be construed as acceptance by County of any offer of dedication of any interest in real property.

10. Annexation

Upon annexation into any city, such city shall have the same rights as County and Developer agrees to fulfill all terms of this Agreement upon demand by such city as though Developer had contracted with such city originally. Any annexing city shall have the same rights as County under this Agreement.

11. Term of Agreement

This Agreement shall remain in effect until all of the Work has been completed and the County has approved the Work.

IN WITNESS WHEREOF, the parties hereto have executed this agreement on

_____.

COUNTY OF SANTA CLARA

_____, President
Board of Supervisors

ATTEST:

Maria Marinos, Clerk of the Board of Supervisors

APPROVED AS TO FORM AND LEGALITY

Lizanne Reynolds, Deputy County Counsel

DEVELOPER

Signature

Name /Company

Title