

**IMPROVEMENT AGREEMENT
BETWEEN THE CITY OF FRESNO AND UCP, LLC**

THIS AGREEMENT is made this _____ day of _____ 2015 by and between the City of Fresno, a California municipal corporation (hereinafter "City") and UCP, LLC, a Delaware limited liability company, located at 7815 N. Palm Avenue, Suite 101, Fresno, CA 93711 (hereinafter "Developer"), is effective on the date first appearing on the Clerk's Certification of the Public Work's Department official's signature below (hereinafter "Agreement"). The City and the Developer may hereinafter be individually referred to as a "Party" and collectively as the "Parties."

RECITALS

WHEREAS, Developer has filed with City vesting tentative maps proposing the subdivision of five parcels of land owned by Developer, situated in the City of Fresno, County of Fresno, State of California (hereinafter "Subject Properties") dividing the real property described by Fresno County Assessor's Parcels No. 310-210-38, 310-250-08, 310-250-22, 310-052-23, and 310-052-45, which are described more particularly in Exhibit "A" attached hereto and incorporated herein by reference; and

WHEREAS, Vesting Tentative Maps No. 5341, 5424, and 5501, as approved by the City of Fresno (hereinafter "Tentative Maps"), are single family residential subdivisions filed by Developer on the Subject Properties; and

WHEREAS, City requires as a condition precedent to the acceptance and approval of the Final Maps for Tracts No. 5341, 5424, and 5501 (hereinafter "Final Maps"), the dedication of such streets, highways and public places and easements as are delineated and shown on the Final Maps, and deems the same as necessary for the public use, and also requires any and all streets delineated and shown on the Final Maps to be improved by the construction and the installation of the improvements hereinafter specified; and

WHEREAS, City approved the Tentative Maps, subject to certain conditions of approval, which require various public improvements in order to mitigate the impact of the projects upon urban infrastructure and the physical environment; and

WHEREAS, the Tentative Maps are in the same vicinity of Fresno and are subject to overlapping public works conditions of approval, specifically street improvement requirements; and

WHEREAS, a portion of the overlapping street improvement requirements are within boundaries described by the Urban Growth Management (hereinafter "UGM")

Fee Program and the Traffic Signal Mitigation Impact (hereinafter "TSMI") Fee Program; and

WHEREAS, Developer desires to fulfill certain public works conditions of approval prior to approval of the Final Maps by constructing major streets and a traffic signal to earn fee credits to be utilized in connection with the Final Maps; and

WHEREAS, City desires to permit Developer to utilize all earned fee credits for the Final Maps; and

WHEREAS, this Agreement memorializes said construction requirements and fee credits, and performance security requirements.

AGREEMENT

NOW, THEREFORE, the Parties, in consideration of the mutual covenants, representations, and warranties set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, declare, covenant, agree, represent and warrant as follows:

1. The above Recitals are incorporated into and made a part of this Agreement.
2. Construction of improvements specifically shown on the Construction Plans and approved as to scope by the Director of Public Works (hereinafter "Improvements") shall be done in accordance with the construction standards contained in the current edition of the City of Fresno's Standard Specifications and Drawings (City Council of the City of Fresno (hereinafter "City Council") Resolution No. 70-36 and Resolution No. 84-361), and any amendments thereto, which are made a part of this Agreement and incorporated herein by reference (hereinafter "Public Works Standards"), at the sole cost and expense of Developer, including all costs of engineering, inspection and testing.
3. The Improvements include the following:
 - a. Landmarks and monuments required by City shall be set.
 - b. All overhead utility systems along the North Temperance Avenue and East Clinton Avenue frontages of the land described by Fresno County Assessor's Parcel No. 310-052-44T, which is described more particularly in Exhibit "B" attached hereto and incorporated herein by reference, shall be installed underground. Developer's attention is directed to the installation of street lights in accordance with City Council Resolution No. 78-522 and any amendments thereto which may be adopted by the City Council prior to the actual installation of the street lights. Developer shall install underground-serviced street lights as described on the Construction Plans and as approved by the City Engineer prior to final acceptance of

the Improvements. The height, type and spacing of standards and luminaires shall be in accordance with City Council Resolutions No. 78-522 and 88-229 and any amendments thereto which may be adopted by the City Council prior to the actual installation of the street lights.

- c. Water main extensions and services shall be provided in accordance with applicable provisions of Chapter 6, Article 5, of the Fresno Municipal Code, and all applicable charges shall apply.
- d. Construction of an 8-inch-diameter temporary public water main pipeline within the property described by Fresno County Assessor's Parcel No. 310-052-44T, from North Temperance Avenue easterly to North Redda Avenue, shall be subject to the following conditions:
 - i. Dedication of a 30-foot-wide temporary public water main pipeline easement through the property described by Fresno County Assessor's Parcel No. APN 310-052-44T, from North Temperance Avenue easterly to North Redda Avenue (hereinafter "Temporary Water Main Easement"), shall be approved by City prior to the approval of Water Job No. 5573.
 - ii. The Temporary Water Main Easement shall be clear and unobstructed by buildings or other structures, except as approved by City's Director of Public Utilities. Any plan for any fence or wall enclosing, or located above or within, the Temporary Water Main Easement, and any planting plan for any proposed landscaping within the Temporary Water Main Easement, shall be approved by City's Director of Public Utilities. No trees shall be located within eight (8) feet of the temporary public water main pipeline. The location of the temporary public water main pipeline shall be clearly marked with signs approved by City's Director of Public Utilities.
 - iii. In the event City damages any street, sidewalk, landscaping or other improvements in exercising reasonable care, use and enjoyment of the Temporary Water Main Easement, City shall not be obligated to restore any street, sidewalk, landscaping or other improvements so damaged. City shall have the right, without notice and at the property owner's expense, to remove from the Temporary Water Main Easement any building, fence, tree, or other encroachment not approved by City's Director of Public Utilities. The Temporary Water Main Easement shall be maintained by the property owner free of any surface obstructions, except for those that may be approved by City's Director of Public Utilities, so that City may have vehicular access to and through the Temporary Water Main Easement at all times.

- iv. No public or private water services, fire hydrants or any other water appurtenance shall be allowed to connect to the temporary public water main pipeline.
 - v. Maintenance and repair costs incurred by City in connection with the operation of the temporary public water main pipeline shall be reimbursed by Developer within thirty (30) days after completion of the work and notification of the reimbursement amount by City to Developer.
 - vi. The temporary public water main pipeline shall be abandoned by City upon completion and acceptance by City of a second point of connection, approved by the City's Director of Public Utilities, to the public water system serving the land described by Vesting Tentative Map No. 5341.
 - vii. An abandonment fee in the amount of TEN THOUSAND FIVE HUNDRED AND NO/100 DOLLARS (\$10,500.00) for abandonment of the temporary public water main pipeline shall be paid to City by Developer at the time of execution of this Agreement.
- e. Sanitary sewer extensions and services shall be provided in accordance with applicable provisions of Chapter 6, Article 3, of the Fresno Municipal Code and all applicable charges shall apply.
 - f. All storm water runoff and other surface drainage shall be discharged in accordance with the California Building Code, as may be amended, and City approval of a storm drainage and grading plan shall be obtained by Developer.
 - g. Any temporary storm drainage basin constructed or enlarged as a part of the Improvements shall be fenced in accordance with Public Works Standards within seven (7) days from the time said basin becomes operational, or as directed by the City Engineer. Developer shall maintain the temporary storm drainage basin or basins so as not to create a nuisance as defined by Section 10-605 of the Fresno Municipal Code, or California law, until such time as the City Engineer provides official notice to Developer, its successors or assigns, that the temporary storm drainage basin or basins are no longer required. The provisions of this subparagraph "g" shall survive the termination or expiration of this Agreement.
 - h. Developer shall install and maintain, consistent with City standards, the fences and walls, landscaping, irrigation system, and related improvements shown on the Construction Plans and located within public rights-of-way, except that any fences and walls, landscaping, irrigation

system, and related improvements located within public rights-of-way adjoining the land described by Fresno County Assessor's Parcel No. 310-052-44T, and any landscaping, irrigation system, and related improvements located within the North Temperance Avenue median, shall be maintained by City upon City's acceptance of the Improvements. The plans for such fences and walls, landscaping, irrigation system, and related improvements shall be prepared by a licensed landscape architect, certified irrigation designer or other person with landscaping and irrigation design expertise acceptable to the City's Development and Resource Management Director and the City Engineer.

- i. Developer shall perform and construct, consistent with the following construction plans and any amendments thereto that are disclosed to Developer, which are incorporated herein by reference and made a part of this Agreement (hereinbefore and hereinafter "Construction Plans") the Improvements shown on the Construction Plans and approved as to scope by the Director of Public Works:
 - i. City Drawings No. 10-C-11105, 10-C-11114 through 10-C-11116, inclusive, and all 10-C drawings within project number J5229 (sewer and water); 15-C-15142 through 15-C-15149, inclusive, 15-C-15150C, 15-C-15150D, 15-C-16504 through 15-C-16508, inclusive, including 15-C-16507A, 15-C-16515, 15-C-16515A, 15-C-16516, through 15-C-16518, inclusive, including 15-C-16518A, through 15-C-16518E, inclusive (street and landscaping); 4-C-1414 (street lighting); and 4-E-2312 and 4-E-2313 (traffic signal).
 - ii. Fresno Metropolitan Flood Control District Drawings No. BS-16-1 through BS-16-7, inclusive.
 - iii. All other street improvements required by Section 12-1012 of the Fresno Municipal Code in accordance with the Public Works Standards and the Construction Plans.
4. It is agreed that City shall inspect all Improvements within forty-eight (48) hours after Developer contacts City by telephone at 559-621-5600 requesting inspection. All Improvements and materials shall be done, performed and installed in strict accordance with the approved Construction Plans for said work on file with the City Engineer and the Public Works Standards. In the event there is not a Public Works Standard for any Improvement, it is agreed that the same shall be done and performed in accordance with the standards and specifications of the State of California, Division of Highways. All Improvements and materials shall be done, performed and installed under the inspection and to the satisfaction of the City Engineer.

5. At the time of execution of this Agreement, Developer shall furnish to City the following performance and payment securities. Bonds shall be by one or more duly authorized corporate sureties licensed to do business in California, subject to the approval of City, and on forms furnished or approved by City. Certificates of deposit shall be made payable only to City and shall be in a form acceptable to the City Attorney.

- a. PERFORMANCE SECURITY. The total amount of Performance Security shall equal one hundred percent (100%) of the final Cost Estimate, the amount of which shall be rounded to the nearest dollar, in the amount of FOUR MILLION TWO HUNDRED SIXTEEN THOUSAND NINE HUNDRED FIFTY-NINE AND NO/100 DOLLARS (\$4,216,959.00), as approved by the City Engineer, to be conditioned upon the faithful performance of this Agreement and secured in the following manner:
 - i. Ninety-five percent (95%), of the final Cost Estimate, the amount of which shall be rounded to the nearest dollar, i.e., the amount of FOUR MILLION SIX THOUSAND ONE HUNDRED ELEVEN AND NO/100 DOLLARS (\$4,006,111.00), shall be in the form of a bond or certificate of deposit made payable only to City; and
 - ii. Five percent (5%) of the final Cost Estimate, the amount of which shall be rounded to the nearest dollar, i.e., the amount of TWO HUNDRED TEN THOUSAND EIGHT HUNDRED FORTY-EIGHT AND NO/100 DOLLARS (\$210,848.00), shall be in the form of cash or a certificate of deposit made payable only to City.
- b. PAYMENT SECURITY. The total amount of Payment Security shall equal fifty percent (50%) of the final Cost Estimate, the amount of which shall be rounded to the nearest dollar, i.e., the amount of TWO MILLION ONE HUNDRED EIGHT THOUSAND FOUR HUNDRED EIGHTY AND NO/100 DOLLARS (\$2,108,480.00), as approved by the City Engineer, to secure payment to all contractors and subcontractors performing work on the Improvements, and all persons furnishing labor, materials or equipment to them for the Improvements. Payment Security shall be in the form of a bond or certificate of deposit made payable only to City.
- c. The Performance Security and the Payment Security shall be released upon final acceptance of the Improvements by the City Engineer, and will be replaced with the warranty security described in paragraph 8 of this Agreement.
- d. Developer shall furnish to City any and all other improvement security as required by Section 12-1016 of the Fresno Municipal Code.

- e. Subject to the requirements of Resolution No. 2008-100, adopted by the City Council on May 6, 2008, Developer may request a one-time partial acceptance, for maintenance only, of the Improvements that Developer has constructed, to reduce the amount of the Performance Security required by this Agreement. At the time of City's partial acceptance, City and Developer shall enter into an amendment to this Agreement reducing the Performance Security to an amount consistent with the requirements of Resolution No. 2008-100. City shall not release any of the original Performance Security or execute an amendment to this Agreement until such time as Developer has provided the Performance Security required by the amendment.
6. Any damage to the Improvements constructed pursuant to this Agreement occurring after installation of the Improvements shall be made good by Developer to the satisfaction of the City Engineer before the Improvements are accepted or any security is released by City.
7. Developer shall remedy any defective work or labor or any defective materials related to the Improvements and pay for any damage to other work or improvements resulting therefrom within a period of one (1) year from the date of final acceptance by City of the Improvements.
8. To insure Developer complies with its obligations set forth in paragraph 7 of this Agreement, upon final acceptance of the Improvements by the City Engineer, warranty security shall be furnished to or existing securities retained by City, in the minimum amount of TWENTY SEVEN THOUSAND FIVE HUNDRED EIGHTY-FIVE AND NO/100 DOLLARS (\$27,585.00), as a guarantee and warranty against any defective work or labor done or defective materials furnished by Developer for a period of one (1) year following final acceptance of the Improvements by City. In accordance with Section 12-1016 of the Fresno Municipal Code, said warranty security shall be in the form of cash or a certificate of deposit. The warranty security shall be released, less any amount required to be used for fulfillment of the warranty, one (1) year after final acceptance of the Improvements by City.
9. Upon execution of this Agreement, Developer shall pay to City all remaining fees and charges, in the total amount of TWO HUNDRED THIRTY-THREE THOUSAND EIGHT HUNDRED TWENTY-TWO AND 50/100 DOLLARS (\$233,822.50), which are described more particularly in Exhibit "C" attached hereto and incorporated herein by reference.
10. This Agreement shall in no way be construed as a grant by City of any right to Developer to trespass upon land rightfully in the possession of, or owned by, another, whether such land be privately or publicly owned.
11. After final acceptance of the Improvements by City, Developer shall submit all paid invoices for cost of Improvements and formally request construction credits for

eligible Improvements (hereinafter "Eligible Construction Credits") to the Director of Public Works. Paid invoices for Improvements shall be submitted only for fully completed Improvements that do not require additional construction to meet City standards and specifications. Eligible Construction Credits are described more particularly in Exhibit "D" attached hereto and incorporated herein by reference. Upon City determination of amounts of Eligible Construction Credits, Developer shall be placed on the City-maintained list of development reimbursement for construction of improvements within the UGM Fee Program and the TSMI Fee Program. Developer shall reserve the right to await full reimbursement of Eligible Construction Credits, or, in its sole discretion, utilize Eligible Construction Credits to offset the Final Maps' impact fee obligations. In the event Developer elects to utilize Eligible Construction Credits to satisfy, in whole or in part, impact mitigation fees related to a Final Map or the Final Maps, Developer shall submit a request to the Director of Public Works for the Director of Public Works to assign and apply Eligible Construction Credits to a Final Map or the Final Maps consistent with Exhibit "D," and the Director of Public Works shall assign and apply Eligible Construction Credits to a Final Map or the Final Maps consistent with Exhibit "D," and shall thereafter provide Developer with confirmation, in writing, of such assignment and application of Eligible Construction Credits.

12. Indemnification:

- a. To the greatest extent allowed by law, Developer shall indemnify, hold harmless and defend City and each of its officers, officials, employees, agents and volunteers from any and all loss, liability, fines, penalties, forfeitures, costs and damages (whether in contract, tort or strict liability, including but not limited to personal injury, death at any time and property damage) incurred by City, Developer or any other person, and from any and all claims, demands and actions in law or equity (including reasonable attorneys' fees, litigation and legal expenses incurred by City or held to be the liability of City, including plaintiff's or petitioner's attorneys' fees, if awarded, in connection with City's defense of its actions in any proceeding), arising or alleged to have arisen directly or indirectly out of performance or in any way connected with: (i) the making of this Agreement; (ii) Developer's performance of this Agreement; (iii) the performance or installation of the work or Improvements by Developer and Developer's employees, officers, agents, contractors or subcontractors; (iv) the design, installation, operation, removal or maintenance of the work and Improvements; or (v) City's granting, issuing or approving use of this Agreement.
- b. Developer's obligations under the preceding subparagraph shall apply regardless of whether City or any of its officers, officials, employees or agents are negligent, but shall not apply to any loss, liability, fines, penalties, forfeitures, costs or damages to the extent caused by the gross negligence, or caused solely by the willful misconduct, of City or any of its officers, officials, employees, agents or authorized volunteers.

- c. If Developer should subcontract all or any portion of the work to be performed under this Agreement, Developer shall require each subcontractor to indemnify, hold harmless and defend City and each of its officers, officials, employees, agents and volunteers in accordance with the terms of subparagraphs "a" and "b" of paragraph 12 of this Agreement. Notwithstanding the preceding sentence, any subcontractor who is a "design professional" as defined in Section 2782.8 of the California Civil Code shall, in lieu of indemnity requirements set forth in subparagraphs "a" and "b" of paragraph 12 of this Agreement, be required to indemnify, hold harmless and defend City and each of its officers, officials, employees, agents and volunteers to the greatest extent allowed by law, from any and all loss, liability, fines, penalties, forfeitures, costs and damages (whether in contract, tort or strict liability, including but not limited to personal injury, death at any time and property damage), and from any and all claims, demands and actions in law or equity (including reasonable attorneys' fees and litigation expenses) that arise out of, pertain to, or relate to the negligence, recklessness or willful misconduct of the design professional, its principals, officers, employees, agents or volunteers in the performance of this Agreement.
- d. Developer further agrees that the use for any purpose and by any person of any and all of the streets and improvements hereinbefore specified, shall be at the sole and exclusive risk of Developer at all times prior to final acceptance by City of the completed street and other improvements thereon and therein.
- e. The provisions of paragraph 12 of this Agreement shall survive termination or expiration of this Agreement.

13. Insurance:

- a. Throughout the life of this Agreement, Developer shall pay for and maintain in full force and effect all insurance as required herein with an insurance company or companies either (i) admitted by the California Insurance Commissioner to do business in the State of California and rated no less than "A-VII" in the Best's Insurance Rating Guide, or (ii) as may be authorized in writing by City's Risk Manager or his/her designee at any time and in his/her sole discretion. The required policies of insurance as stated herein shall maintain limits of liability of not less than those amounts stated therein. However, the insurance limits available to City, its officers, officials, employees, agents and volunteers as additional insureds, shall be the greater of the minimum limits specified therein or the full limit of any insurance proceeds to the named insured.

- b. If at any time during the life of this Agreement or any extension thereof, Developer or any of its subcontractors fails to maintain any required insurance in full force and effect, all services and work under this Agreement shall be discontinued immediately, and all payments due or that become due to Developer shall be withheld until notice is received by City that the required insurance has been restored to full force and effect and that the premiums therefore have been paid for a period reasonably satisfactory to City. Any failure to maintain the required insurance that is not cured within five (5) days after Developer receives notice of such failure shall be sufficient cause for City to terminate this Agreement. No action taken by City pursuant to this subparagraph "b" shall in any way relieve Developer of its responsibilities under this Agreement. The phrase "fail to maintain any required insurance" shall include, without limitation, notification received by City that an insurer has commenced proceedings, or has had proceedings commenced against it, indicating that the insurer is insolvent.
- c. The fact that insurance is obtained by Developer shall not be deemed to release or diminish the liability of Developer, including, without limitation, liability under the indemnity provisions of this Agreement. The duty to indemnify City shall apply to all claims and liability regardless of whether any insurance policies are applicable. The policy limits do not act as a limitation upon the amount of indemnification to be provided by Developer. Approval or purchase of any insurance contracts or policies shall in no way relieve from liability nor limit the liability of Developer, vendors, suppliers, invitees, contractors, sub-contractors, subcontractors or anyone employed directly or indirectly by any of them.
- d. Coverage shall be at least as broad as:
 - i. The current version of Insurance Services Office (ISO) Commercial General Liability Coverage Form CG 00 01, providing liability coverage arising out of your business operations. The Commercial General Liability policy shall be written on an occurrence form and shall provide coverage for "bodily injury," "property damage" and "personal and advertising injury" with coverage for premises and operations (including the use of owned and non-owned equipment), products and completed operations, and contractual liability (including, without limitation, indemnity obligations under this Agreement) with limits of liability not less than those set forth below under "Minimum Limits of Insurance."
 - ii. The current version of ISO Commercial Auto Coverage Form CA 00 01, providing liability coverage arising out of the ownership, maintenance or use of automobiles in the course of your business operations. The Automobile Policy shall be written on an

occurrence form and shall provide coverage for all owned, hired, and non-owned automobiles or other licensed vehicles (Code 1-Any Auto). If personal automobile coverage is used, City, its officers, officials, employees, agents and volunteers are to be listed as additional insureds.

- iii. Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance.

e. Minimum Limits of Insurance:

Developer, or any party with which Developer subcontracts, shall maintain limits of liability not less than those set forth below. However, insurance limits available to City, its officers, officials, employees, agents and volunteers as additional insureds, shall be the greater of the minimum limits specified herein or the full limit of any insurance proceeds available to the named insured:

- i. Commercial General Liability (hereinafter "CGL") insurance with limits of liability not less than:
 - (1) \$1,000,000 per occurrence for bodily injury and property damage;
 - (2) \$1,000,000 per occurrence for personal and advertising injury;
 - (3) \$2,000,000 aggregate for products and completed operations; and
 - (4) \$2,000,000 general aggregate applying separately to the work performed under this Agreement.
- ii. Commercial Automobile Liability (hereinafter "CAL") insurance with limits of liability not less than:
 - (1) \$1,000,000 per accident for bodily injury and property damage.
- iii. As an alternative to the insurance required by the provisions of subparagraph 13.e.ii. above, Personal Automobile Liability insurance may be provided, with the approval of City's Risk Manager, with limits of liability not less than:
 - (1) \$100,000 per person;

- (2) \$300,000 per accident for bodily injury; and
 - (3) \$50,000 per accident for property damage.
- iv. Workers' Compensation insurance as required by the State of California with statutory limits, and Employer's Liability insurance with limits of liability not less than:
 - (1) \$1,000,000 each accident for bodily injury;
 - (2) \$1,000,000 disease each employee; and
 - (3) \$1,000,000 disease policy limit.
- v. Builder's Risk (Course of Construction) insurance in an amount equal to the completed value of the project with no coinsurance penalty provisions. This insurance coverage is required only if the project includes new construction of a building, or the renovation of, or an addition to, an existing building.
- f. In the event Developer purchases an umbrella or excess insurance policy or policies to meet the "Minimum Limits of Insurance," the insurance policy or policies shall "follow form" and afford no less coverage than the primary insurance policy or policies. In addition, such umbrella or excess insurance policy or policies shall also apply on a primary and non-contributory basis for the benefit of City, its officers, officials, employees, agents and volunteers.
- g. Developer shall be responsible for payment of any deductibles contained in any insurance policy or policies required herein, and Developer shall also be responsible for payment of any self-insured retentions. Any deductible or self-insured retention must be declared on the certificate of insurance, and be approved by City's Risk Manager or his/her designee. At the option of the City's Risk Manager or his/her designee, either:
 - i. The insurer shall reduce or eliminate such deductibles or self-insured retentions as respects City, its officers, officials, employees, agents and volunteers; or
 - ii. Developer shall provide a financial guarantee, satisfactory to City's Risk Manager or his/her designee, guaranteeing payment of losses and related investigations, claim administration and defense expenses. At no time shall City be responsible for the payment of any deductibles or self-insured retentions.
- h. Other insurance provisions and/or endorsements:

- i. All policies of insurance required herein shall be endorsed to provide that the coverage shall not be cancelled, non-renewed, reduced in coverage or in limits except after thirty (30) calendar days written notice has been given to City, except ten (10) days for nonpayment of premium. Developer is also responsible for providing written notice to City under the same terms and conditions. Upon issuance by the insurer, broker or agent of a notice of cancellation, non-renewal, or reduction in coverage or in limits, Developer shall furnish City with a new certificate of insurance, and applicable endorsements, for such policy or policies. In the event any policy is due to expire during the work to be performed for City, Developer shall provide a new certificate of insurance, and applicable endorsements, evidencing renewal of such policy not less than fifteen (15) calendar days prior to the expiration date of the expiring policy.
- ii. The CGL and CAL policies of insurance shall be endorsed to name City, its officers, officials, agents, employees and volunteers as additional insureds. Developer shall establish additional insured status for City and for all ongoing and completed operations by use of ISO Form CG 20 10 11 85 or both CG 20 10 10 01 and CG 20 37 10 01 or by an executed manuscript insurance company endorsement providing additional insured status as broad as that contained in ISO Form CG 20 10 11 85.
- iii. For any claims related to this Agreement, Developer's insurance coverage shall be primary insurance with respect to City, its officers, officials, agents, employees and volunteers. Any insurance or self-insurance maintained by City, its officers, officials, agents, employees and volunteers shall be excess of the Developer's insurance and shall not contribute with it. Developer and any subcontractor shall establish primary and noncontributory status by use of ISO Form CG 20 01 04 13 or by an executed manuscript insurance company endorsement that provides primary and noncontributory status as broad as that contained in ISO Form CG 20 01 04 13.
- iv. The coverage shall contain no special limitations on the scope of protection afforded to City, its officers, officials, employees, agents and volunteers. Any available insurance proceeds in excess of the specified minimum limits and coverage shall be available to the additional insured.

- v. The Workers' Compensation insurance policy shall contain, or be endorsed to contain, a waiver of subrogation as to City, its officers, officials, agents, employees and volunteers.
- i. Developer shall furnish City with a certificate or certificates of insurance, and applicable endorsements, evidencing the coverages required herein. All certificates of insurance and applicable endorsements are to be received and approved by City's Risk Manager or his/her designee prior to City's execution of this Agreement and before work commences. All non-ISO endorsements amending policy coverage shall be executed by a licensed and authorized agent or broker. Upon request of City, Developer shall immediately furnish City with a complete copy of any insurance policy required under this Agreement, including all endorsements, with said copy certified by the underwriter to be a true and correct copy of the original policy. This requirement shall survive expiration or termination of this Agreement. All subcontractors working under the direction of Developer shall also be required to provide all documents noted herein.
- j. If any coverage required herein is written on a claims-made coverage form:
 - i. The retroactive date must be shown, and must be before the effective date of this Agreement or the commencement of work by Developer.
 - ii. Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of the work or termination of this Agreement, whichever first occurs.
 - iii. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a retroactive date to the effective date of this Agreement, or work commencement date, Developer must purchase "extended reporting" period coverage for a minimum of five (5) years after completion of the work or termination of this Agreement, whichever first occurs.
 - iv. A copy of the claims reporting requirements must be submitted to City for review.
 - v. The requirements of subparagraph 13.j. of this Agreement shall survive expiration or termination of this Agreement.
- k. If at any time during the life of this Agreement or any extension thereof, Developer or any of its subcontractors fail to maintain any required insurance in full force and effect, all work under this Agreement shall be discontinued immediately until notice is received by City that the required

insurance has been restored to full force and effect and that the premiums therefore have been paid for a period satisfactory to City. Any failure to maintain the required insurance that is not cured within five (5) days after Developer receives notice of such failure shall be sufficient cause for City to terminate this Agreement. No action taken by City hereunder shall in any way relieve Developer of its responsibilities under this Agreement. The phrase "fail to maintain any required insurance" shall include, without limitation, notification received by City that an insurer has commenced proceedings, or has had proceedings commenced against it, indicating that the insurer is insolvent. The fact that insurance is obtained by Developer shall not be deemed to release or diminish the liability of Developer, including, without limitation, liability under the indemnity provisions of this Agreement. The duty to indemnify City shall apply to all claims and liability regardless of whether any insurance policies are applicable. The policy limits do not act as a limitation upon the amount of indemnification to be provided by Developer. Approval or purchase of any insurance contracts or policies shall in no way relieve from liability nor limit the liability of Developer, its principals, officers, agents, employees, persons under the supervision of Developer, vendors, suppliers, invitees, consultants, sub-consultants, subcontractors, or anyone employed directly or indirectly by any of them.

- I. If Developer should subcontract all or any portion of the services to be performed under this Agreement, Developer shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein, and Developer shall ensure that City, its officers, officials, employees, agents and volunteers are additional insureds. The subcontractors' certificates of insurance and endorsements shall be on file with Developer and City prior to the commencement of any work by the subcontractor.

14. Developer and his subcontractors shall pay for any materials, provisions, and other supplies used in, upon, for or about the performance of the Improvements contracted to be done, and for any work or labor thereon of any kind, and for amounts due under the Unemployment Insurance Act of the State of California, with respect to such work or labor.

15. Compaction and other materials testing performed for determination of compliance with Public Works Standards shall conform to Section 2-11, entitled "Materials Acceptance Testing," of City's Standard Specifications. Materials testing shall at all times remain under the review of the City Engineer who may reasonably determine additional test procedures, and additional locations to be tested. All materials testing for improvement work within public easements and rights-of-way shall be ordered and paid for by Developer.

16. Developer shall comply with Street, Plumbing, Building, Electrical, and Zoning Codes and any other code or any ordinance of City.

17. It shall be the responsibility of Developer to coordinate all work done by his contractors and subcontractors, such as scheduling the sequence of operations and the determination of liability if one operation delays another. In no case shall representatives of City be placed in the position of making decisions that are the responsibility of Developer. It shall further be the responsibility of Developer to give the City Engineer written notice not less than two (2) working days in advance of the actual date on which work is to be started. Failure on the part of Developer to notify the City Engineer may cause delay for which Developer shall be solely responsible.

18. Whenever Developer varies the period during which work is carried on each day, it shall give due notice to the City Engineer so that proper inspection may be provided. If Developer fails to duly notify City as herein required, any work done in the absence of the City Engineer will be subject to rejection. The inspection of the Improvements shall not relieve Developer of any obligation to fulfill the Agreement as prescribed. Defective work shall be made good, and unsuitable materials may be rejected, notwithstanding the fact that such defective work and unsuitable materials have been previously overlooked by the City Engineer or City Inspector and accepted.

19. Adequate dust control shall be maintained by Developer on all streets on which work is required to be done under this Agreement from the time work is first commenced until the paving of the streets is completed. "Adequate dust control" as used herein shall mean the sprinkling of the streets with water or the laying of an approved dust palliative thereon with sufficient frequency to prevent the scattering of dust by wind or the activity of vehicles and equipment onto any street area or private property adjacent to the area of the Improvements in strict compliance with all rules and regulations established by the San Joaquin Valley Air Pollution Control District. Whenever, in the opinion of the City Engineer, adequate dust control is not being maintained on any street or streets as required by this paragraph, the City Engineer shall give notice to Developer to comply (hereinafter "Notice to Comply") with the provisions of this paragraph forthwith. If, in the opinion of the City Engineer, Developer's failure to comply with the provisions of this paragraph is having an immediate and significant impact on the public's health, safety and welfare, the City Engineer may immediately issue a stop work order until the City receives reasonable assurances that Developer shall comply with the provisions of this paragraph forthwith. Such notices and stop-work orders may be personally served upon Developer or, if Developer is not an individual, upon any person who has signed this Agreement on behalf of Developer or, at the election of the City Engineer, such notices and stop-work orders may be mailed to Developer at his address on file with the City Engineer. If the City Engineer has issued a Notice to Comply and within twenty-four (24) hours after such personal service of such notice or within forty-eight (48) hours after the mailing thereof as herein provided, Developer shall not have commenced to maintain adequate dust control or shall at any time thereafter fail to maintain adequate dust control, the City Engineer may, without further notice of any kind, cause any such street or streets to be

sprinkled or oiled, as he may deem advisable to eliminate the scattering of dust, by equipment and personnel of City or by contract as the City Engineer shall determine, and Developer agrees to pay to City forthwith, upon receipt of billing therefore, the entire cost to City of such sprinkling or treating. When the surfacing on any existing street is disturbed, this surfacing shall be replaced with temporary or permanent surfacing within fourteen (14) calendar days, and the roadway shall be maintained in a safe and passable condition at all times between the commencement and final completion, and adequate dust control shall be maintained during these operations.

20. Concrete curbs and gutters, the sanitary sewer system and house connections, together with water mains, gas mains, and their respective service connections, and all other facilities required to be installed underground shall be completed in the streets before starting the street surfacing.

21. Time is of the essence of this Agreement, and the same shall bind and inure to the benefit of the Parties hereto, their successors and assigns.

22. No assignment of this Agreement or of any duty or obligation of performance hereunder shall be made in whole or in part by Developer without the written consent of City, which consent shall not be unreasonably withheld. Notwithstanding the foregoing, Developer shall have the right to assign to any affiliate of Developer or any unrelated third party all or any portion of the Eligible Construction Credits it receives pursuant to this Agreement.

23. In performing its obligations set forth in this Agreement, Developer shall comply with all applicable laws, regulations, and rules of the governmental agencies having jurisdiction including, without limitation, applicable federal and state labor standards and environmental laws and regulations. Developer, not City, is responsible for determining applicability of and compliance with all local, state, and federal laws including, without limitation, the California Labor Code, the California Public Contract Code, the California Public Resources Code, the California Health & Safety Code, the California Government Code, the Fresno City Charter, and the Fresno Municipal Code. City makes no representations regarding the applicability of any such laws to this Agreement, the project, or the Parties' respective rights or obligations hereunder including, without limitation, payment of prevailing wages, competitive bidding, subcontractor listing, or other matters. City shall not be liable or responsible, in law or equity, to any person for Developer's failure to comply with any such laws, whether City knew or should have known of the need for Developer to comply, or whether City failed to notify Developer of the need to comply. Developer is referred to City's Department of Public Works, Construction Management Division, to obtain the current prevailing wage rates, to the extent said rates are applicable to the construction of any of the Improvements.

24. If either Party is required to commence any proceeding or legal action to enforce or interpret any term or condition of this Agreement, the prevailing Party in such proceeding or action shall be entitled to recover from the other Party its reasonable

attorneys' fees and legal expenses. For the purposes of this Agreement, "attorneys' fees" and "legal expenses" include, without limitation, attorneys' and paralegals' fees and expenses, consultants' fees and expenses, expert witnesses' fees and expenses, and all other fees and expenses incurred by the prevailing Party's attorneys in the course of the representation of the prevailing Party in anticipation of and/or during the course of litigation, whether or not otherwise recoverable as "attorneys' fees" or as "costs" under California law, and the same may be sought and awarded in accordance with California procedure as pertaining to an award of contractual attorneys' fees.

25. The waiver by either Party of a breach by the other of any provision of this Agreement shall not constitute a continuing waiver or a waiver of any subsequent breach of either the same or a different provision of this Agreement. No provision of this Agreement may be waived unless in writing and signed by all Parties to this Agreement. Waiver of any one provision herein shall not be deemed to be a waiver of any other provision herein.

26. The provisions of this Agreement are severable. The invalidity or unenforceability of any one provision of this Agreement shall not affect the validity or enforceability of the other provisions, which shall remain in full force and effect.

27. This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of California, excluding, however, any conflict of laws rule which would apply the law of another jurisdiction. Venue for purposes of the filing of any action regarding the enforcement or interpretation of this Agreement and any right or duty hereunder shall be Fresno County, California.

28. Each Party acknowledges that it has read and fully understands the contents of this Agreement. This Agreement represents the entire and integrated agreement between the Parties with respect to the subject matter hereof and supersedes all prior negotiations, representations or agreements, both written and oral. This Agreement may be modified only by written instrument duly authorized and executed by both City and Developer.

(Signatures appear on the following page.)

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IN WITNESS WHEREOF, the Parties have executed this Agreement at Fresno, California, on the day and year first above written.

CITY

DEVELOPER

CITY OF FRESNO,
a California municipal corporation

UCP, LLC,
a Delaware limited liability company

Public Works Department
Scott Mozier, P.E., Director

By: _____
James E. Jimison
President, Central Valley Division

By: _____

Name: _____

Title: _____

ATTEST:
YVONNE SPENCE, CMC
City Clerk

By: _____
Deputy

APPROVED AS TO FORM:
DOUGLAS T. SLOAN
City Attorney

By: _____
Talia Kolluri-Barbick Date
Senior Deputy City Attorney

EXHIBIT "A"

APN 310-210-38

Lot B of Lot Line Adjustment No. 04-51, as described in that Grant Deed, recorded November 2, 2005, as Document No. 2005-0259387, Official Records of Fresno County, more particularly described as follows:

Parcel 3 of Parcel Map No. 4426, in the County of Fresno, State of California, according to the map thereof recorded in Book 29 of Parcel Maps at Page 2, Fresno County Records:

EXCEPTING THEREFROM that portion of said Parcel 3 described as follows:

Beginning at the Southwest corner of said Parcel 2; thence North 0°00'00" West along the west line of said Parcel 2 a distance of 10.00 feet to the Southeast corner of Parcel 1 of said Parcel Map No. 4426; thence North 89°59'51" West along the south line of said Parcel 1 a distance of 225.00 feet to the Northwest corner of the most westerly portion of said Parcel 3; thence South 0°00'00" East along the west line of said Parcel 3 a distance of 297.19 feet; thence South 89°59'51" East a distance of 460.00 feet; thence North 0°00'00" East a distance of 307.18 feet to the Southeast corner of said Parcel 2; thence North 89°59'51" West along the south line of said Parcel 2 a distance of 115.00 feet; thence South 0°00'00" East a distance of 20.00 feet to the south line of said Parcel 2; thence North 89°59'51" West along the south line of said Parcel 2 a distance of 120.00 feet to the Point of Beginning.

EXCEPTING THEREFROM that portion of the Southeast Quarter of Section 27, Township 13 South, Range 21 East, Mount Diablo Base and Meridian, according to the Official United States Township Plat Map thereof, as granted by a Grant Deed to the City of Fresno recorded February 12, 2009, as Document No. 2009-0020495, Official Records of Fresno County, and more particularly described as follows:

The South 120.00 feet of the West 147.00 feet of Lot B of Lot Line Adjustment No. 04-51, as described in that Grant Deed, recorded November 2, 2005, as Document No. 2005-0259387, Official Records of Fresno County.

APN 310-250-22

Parcels 1 and 2 of Parcel Map No. 2469, according to the map thereof recorded in Book 21 Page 76 of Parcel Maps, Fresno County Records.

EXCEPTING THEREFROM:

Commencing at the southwest corner of said Parcel 1, which lies 20.00 feet North of the South line of the Northeast one quarter of Section 27, Township 13 South, Range 21 East, Mount Diablo Base and Meridian: thence continuing North 00° 00' 07" West, along the West line of said Parcel 1, a distance of 288.00 feet; thence South 89° 59' 45" East, parallel with said South line of the Northeast one quarter, a distance of 165.00 feet; thence South 00° 00' 07" East, parallel with said West line of Parcel 1, a distance of 288.00 feet; thence North 89° 59' 45" West, parallel with said South line of the Northeast one quarter, a distance of 165.00 feet to the true point of beginning.

Together with the underlying fee interest, if any, adjacent to the above described property, in and to the adjoining public right of way.

APN 310-250-08S

Parcel A of Parcel Map No. 2140, according to the map thereof recorded in Book 12 Page 100 of Parcel Maps, Fresno County Records.

EXCEPTING THEREFROM all oil, gas, other hydrocarbon substances and minerals of any kind or character, in, on, or thereunder, as reserved in deeds of record.

APN 310-052-45

Lot 17 as shown on the Map of Section 26, Township 13 South, Range 21 East, Mount Diablo Base and Meridian, according to the map thereof recorded July 21, 1888 in Book 2 of Plats at Page 40, Fresno County Records, being in the Southwest quarter of said Section 26, in the City of Fresno, County of Fresno State of California, described as follows:

EXCEPTING THEREFROM the West 774.00 feet of said Lot 17.

ALSO EXCEPTING THEREFROM the South 25.00 feet thereof.

ALSO EXCEPTING THEREFROM the East 30.00 feet of the West 804.00 feet of the North 385.00 feet of the South 410.00 feet of said Lot 17.

For the purposes of this description, the West line of said Lot 17 is taken to be the West line of the Southwest quarter of said Section 26, as shown on said Map of Section 26 recorded July 21, 1888.

APN 310-052-23

Lot 16 in Section 26, Township 13 South, Range 21 East, Mount Diablo Base and Meridian, according to the map thereof recorded in Book 2 Page 40 of Plats, Fresno County Records.

EXCEPTING THEREFROM that portion of Lot 16, described as follows:

BEGINNING at the point of intersection of the east line of the southwest quarter of said Section 26, with the centerline of Mill Ditch, said point bearing South 0° 01' 00" West 711.25 feet from the northeast corner of the southwest quarter of said Section 26; thence, along the centerline of Mill Ditch, South 81° 41' 13" West 114.53 feet, North 89° 04' 15" West 185.02 feet, North 79° 20' 23" West 259.48 feet, South 75° 57' 50" West 74.22 feet, South 55° 01' 31" West 272.15 feet, South 42° 55' 03" West 77.83 feet, South 29° 52' 14" West 395.55 feet and South 39° 18' 37" West 86.72 feet to the point of intersection thereof with the south line of said Lot 16; thence leaving the centerline of Mill Ditch, North 89° 38' 57" West along the south line of said Lot 16 a distance of 170.66 feet to the southwest corner of said Lot 16; thence North 0° 00' 10" East along the west line of said Lot 16 a distance of 23.70 feet; thence North 72° 35' 22" East a distance of 152.90 feet; thence North 28° 12' 11" East a distance of 65.32 feet; thence North 32° 15' 41" East a distance of 242.84 feet; thence North 82° 16' 24" East a distance of 6.25 feet; thence North 32° 58' 07" East a distance of 132.63 feet; thence North 46° 54' 16" East a distance of 78.57 feet; thence North 55° 01' 13" East a distance of 102.30 feet; thence North 72° 20' 51" East a distance of 9.60 feet; thence North 56° 42' 03" East a distance of 281.51 feet; thence North 69° 24' 07" East a distance of 51.44 feet; thence South 79° 04' 54" East a distance of 337.52 feet; thence South 88° 37' 54" East a distance of 73.34 feet; thence North 81° 49' 06" East a distance of 101.72 feet to a point on the east line of the southwest quarter of said Section 26; thence South 0° 01' 01" West along the east line of the southwest quarter of said Section 26 a distance of 75.55 feet to the POINT OF BEGINNING.

For the purposes of this legal description, the east line of said Lot 16 is assumed to be along the east line of the southwest quarter of said Section 26 and the west line of said Lot 16 is assumed to be along the west line of the northeast quarter of the southwest quarter of said Section 26.

EXHIBIT "B"

APN 310-052-44T

That portion of Lot 17 as shown on the Map of Section 26, Township 13 South, Range 21 East, Mount Diablo Base and Meridian, according to the map thereof recorded July 21, 1888, in Book 2 of Plats at Page 40, Fresno County Records, being in the Southwest quarter of said Section 26, in the City of Fresno, County of Fresno State of California, described as follows:

The West 774.00 feet of said Lot 17.

EXCEPTING THEREFROM the South 25.00 feet thereof.

TOGETHER WITH the East 30.00 feet of the West 804.00 feet of the North 385.00 feet of the South 410.00 feet of said Lot 17.

For the purposes of this description, the West line of said Lot 17 is taken to be the West line of the Southwest quarter of said Section 26, as shown on said Map of Section 26 recorded July 21, 1888.

EXHIBIT "C"

PLAN REVIEW AND INSPECTION FEES, TEMPORARY PUBLIC WATER MAIN PIPELINE ABANDONMENT FEE, AND WATER SYSTEM WET TIE CONNECTION CHARGES

Fee or Charge	Amount
Remaining sewer plan review fee (J5229)	\$8,171.00
Remaining water plan review fee (J5229)	\$5,687.00
Remaining street plan review fee	\$6,743.00
Temporary public water main pipeline abandonment fee pursuant to subparagraph 3.d.vii. of this Agreement (J5573)	\$10,500.00
Water system wet tie connection charges (J5229)	\$51,500.00
Sewer and water inspection fees (J5229)	\$51,546.52
Streets, signal, lighting, and landscape inspection fees	\$99,674.98
Total	\$233,822.50

EXHIBIT "D"

ELIGIBLE CONSTRUCTION CREDITS

No.	Improvements	Fee Program	Eligible Improvements	Final Map(s) Eligible to Utilize Construction Credits to Offset Impact Mitigation Fees	Comments
1	East Clinton Avenue street construction west of a point 1,335 feet west of the intersection of North Temperance and East Clinton Avenues.	UGM	Ultimate curb to ultimate curb width, less 40 feet. Ultimate curb to ultimate curb width is planned for 72 feet, which leaves the center 32 feet as eligible street construction. Where development will build a greater curb-to-curb width, the eligible street construction width will increase as appropriate.	Tracts No. 5424 and 5501	UGM fees shall be paid by Developer in connection with Final Maps.
2	East Clinton Avenue street construction east of a point 1,335 feet west of the intersection of North Temperance and East Clinton Avenues.	UGM	Ultimate curb to ultimate curb, less 40 feet. Ultimate curb to ultimate curb is planned for 72 feet, which leaves the center 32 feet as eligible street construction. Where development will build a greater curb-to-curb width, the eligible street construction width will increase as appropriate.	Tract No. 5341	UGM fees shall be paid by Developer in connection with Final Map.
3	North Temperance Avenue street construction.	UGM	Inside No. 1 and No. 2 travel lanes, i.e., travel lanes closest to the median, in each direction; a total of twenty-four (24) feet in each direction, median curb, and maintenance band.	Tract No.5341	UGM fees shall be paid by Developer in connection with Final Map.
4	Traffic signal at the intersection of North Temperance and East Clinton Avenues.	TSMI	Ultimate and permanent traffic signal facilities.	Tract No. 5341	TSMI fee shall be paid by Developer in connection with Final Map.