NOTE: AGREEMENT EXHIBITS MUST BE COPIED IN COLOR

LANDFILL POST-CLOSURE OPERATION AND MANAGEMENT AGREEMENT

This **LANDFILL POST-CLOSURE OPERATION AND MANAGEMENT AGREEMENT** (the "**Agreement**") is made as of May 26, 2020 (the "Effective Date"), by and between the City of Santa Clara, California, a chartered California municipal corporation (the "**City**"), and Related Santa Clara, LLC, a Delaware limited liability company (the "**Master Developer**"). The City and Master Developer are sometimes each individually referred to as a **"Party"** and collectively referred to as the "**Parties**."

RECITALS

A. The City is the owner of the former Santa Clara All-Purpose Landfill (the "**Landfill**") and has been and currently is responsible for all post-closure regulatory obligations of the landfill under Title 27 of the California Code of Regulations (**"Title 27"**). The Landfill is generally located in the North of Bayshore Area in Santa Clara, California, and consists of approximately two hundred thirty acres located between Great America Parkway and Lafayette Street (APNs 097-01-073 and -039, 104-03-037, and 104-01-102) (the "**City Landfill Parcels**"), as more particularly described in Exhibit A hereto. The City Landfill Parcels will later be subdivided into two sets of vertical parcels: (1) the "**Landfill Parcel**" which, in general, constitutes City's fee interest in the Landfill; and (2) multiple parcels immediately above the top of the fill above the clay cap over the Landfill that comprise the "**Airspace Parcels**," which constitute City's fee interest in the airspace above the Landfill Parcel. In this Agreement, **"Developer Airspace Parcels"** shall mean any Airspace Parcels that are subject to a Ground Lease. For purposes of this Agreement, the term Landfill Parcel shall include any airspace above the Landfill that is not the subject of a Ground Lease. A Developer Airspace Parcel, together with any other portion of the Landfill Parcel in the same Phase as the Developer Airspace Parcel, is collectively referred to herein as a "**Project Parcel**."

B. The Landfill has been closed since 1994. The City's post-closure use of the Landfill has been as a golf and tennis club, a restaurant and banquet facility, a fire station, City maintenance operations, the Eastside Retention Basin, a City vehicle washing station, event parking for Levi's Stadium, a BMX racing course, and a methane-to-energy facility (i.e., the Ameresco methane plant).

C. The Parties entered into a Disposition and Development Agreement, dated August 12, 2016 (as amended, amended and restated, modified, supplemented and/or assigned from time to time, the "**DDA**"), by which the City will enter into ground leases (each, as amended, amended and restated, modified, supplemented and/or assigned from time to time, a "**Ground Lease**") for the Developer Airspace Parcels with the Master Developer or its assignee(s) for the purpose of developing and operating a mixed use development described in the DDA, and referred to in this Agreement, as the "**Project**."

D. Section 14.1 of the DDA requires the Parties to execute a "Landfill Operation and Management Agreement" consistent with the Landfill O&M Term Sheet attached as Exhibit M to the DDA to specify the allocation of responsibilities between the City and the Master Developer for operation, maintenance and management of Landfill-related systems and features

(including but not limited to (i) the landfill leachate collection system, (ii) the landfill gas extraction system, (iii) the clay cap and the fill above it, (iv) groundwater monitoring wells installed by the City to conduct required quarterly groundwater monitoring; (v) perimeter air monitoring stations installed by the City to conduct required regular air monitoring; (vi) other improvements within the Landfill Parcels that are required due to the presence of the Landfill; and (vii) the Developer Landfill Systems (collectively, the "**Project Landfill Systems**")), all as required by: (i) the Post-Closure Land Use Plan (the "**PCLUP**") for the Landfill, which was approved on December 22, 2016, by the Santa Clara County Department of Public Health, acting as the Local Enforcement Agency for the state's solid waste management laws, the future Revised Corrective Action Plan and Revised Post-Closure Maintenance Plan, and the future revised Closure Plan, as required of Landfill owners and operators under Sections 21769, 21810, and 22100 et seq. of Title 27 of the California Code of Regulations; (ii) revised Waste Discharge Requirements (the "**WDR**s") for the changed Landfill use contemplated by the Project, issued on May 10, 2017, by the California Regional Water Quality Control Board for the San Francisco Bay Region (the "**Regional Water Board**"); and (iii) five Mitigation Measures that were contained in the final approved Environmental Impact Report and Mitigation Monitoring and Reporting Plan for the Project, for which responsibility is allocated between the City and the Master Developer (the "**Landfill O&M Mitigation Measures**"). The obligations related to operation and management of Project Landfill Systems that are contained in the documents listed in this section are collectively referred to as the "**Landfill O&M Obligations.**"

E. The Parties now wish to enter into this Agreement to effectuate the DDA requirement, and also to allocate responsibilities between the Parties as to design, construction, operations and maintenance requirements set forth in the Landfill O&M Obligations, and to establish insurance requirements for the Project.

AGREEMENT

NOW, **THEREFORE**, in consideration of the mutual covenants and agreements set forth herein and for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Definitions. Defined terms used herein and not elsewhere defined shall have the meanings set forth below.

"Affiliate" means, with respect to any specified Person, any other Person that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with the specified Person. For purposes of this definition, the term "**control**" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through ownership of voting stock, by contract or otherwise. The possession, directly or indirectly, by another Person of a right to approve or consent to (or otherwise restrict) certain business or affairs of the specified Person only through major decision rights or similar protective approval rights shall not, in and of itself, constitute or indicate "control", nor shall a Person be deemed not to have "control" solely because another Person possesses, directly or indirectly, such major decision rights or similar protective approval rights with respect to the specified Person.

"Building" means each physical structure located within a Phase that is intended for human occupancy or the conduct of a business, including hotels, retail and office space and apartments.

"City Landfill Parcels" shall have the meaning set forth in Recital A.

"City Landfill Systems" shall have the definition given in Section 5(a)(ii), below.

"City Party" is defined as City and the commissioners, supervisors, elected and appointed officials, officers, employees, attorneys, contractors and agents of City and, as applicable, the partners, Affiliates, members and owners, and the officers, partners, agents, employees and members of each of them (or of its successors or assigns).

"City Place Park" has the definition given in the Master Community Plan.

"**DAP Procedures**" means the City Place Santa Clara Development Area Plans and Architectural Review Submittal and Approval Procedures attached as Appendix C to the Master Community Plan.

"DDA" shall have the meaning set forth in Recital C.

"Developer Airspace Parcel" shall have the meaning set forth in Recital A.

"Developer Landfill Systems" shall have the definition given in Section 5(a)(i), below.

"Development Agreement" means that certain development agreement dated for reference purposes as of August 12, 2016 by and between City and Developer, as the same may be amended from time to time.

"**Environmental Laws"** means and includes all applicable present and future federal, State and local laws, statutes, rules, regulations, ordinances, standards, directives, and conditions of approval, all administrative or judicial orders or decrees and all permits, license approvals or other entitlements, or rules of common law pertaining to Hazardous Substances, the protection of the environment, natural resources, wildlife, human health or safety, or employee safety or community right-to-know requirements related to the work being performed pursuant to this Agreement, the DDA, or a Ground Lease.

"Ground Lease" shall have the meaning set forth in Recital C.

"**Hazardous Substance"** means any material, waste, chemical, compound, substance, mixture, or byproduct that is identified, defined, designated, listed, restricted or otherwise regulated under Environmental Laws as a "hazardous constituent", "hazardous substance", "hazardous waste constituent", "infectious waste", "medical waste", "biohazardous waste", "extremely hazardous waste", "pollutant", "toxic pollutant", or "contaminant", or any other designation intended to classify substances by reason of properties that are deleterious to the environment, natural resources, wildlife or human health or safety, including, without limitation, ignitability, infectiousness, corrosiveness, radioactivity, carcinogenicity, toxicity and reproductive toxicity. Hazardous Substance includes, without limitation, any form of natural gas,

petroleum products or any fraction thereof, asbestos, asbestos-containing materials, PCBs**,** PCB-containing materials, and any substance that, due to its characteristics or interaction with one or more other materials, wastes, chemicals, compounds, substances, mixtures or byproducts, damages or threatens to damage the environment, natural resources, wildlife or human health or safety.

"**Indemnify**" means reimburse, indemnify, defend and hold harmless. "**Indemnification**" has a correlative meaning.

"**Infrastructure**" means those items identified in the Infrastructure Master Plan including open space improvements (including park improvements and restrooms), streets, rails, sewer and storm drainage systems, water systems, street improvements (including freeway ramps or other demolition), landfill "podium" (also referred to as a "structural slab" in the IMP), traffic signal systems, dry utilities and other improvements, any of which are to be constructed in or for the benefit of the applicable real property or any other matters described in the Infrastructure Master Plan. "Infrastructure" also includes any improvements required to serve the Project that have been imposed as conditions of approval through the Project Approvals. "Infrastructure" does not include Buildings.

"**Infrastructure Master Plan**" or "**IMP**" is a component of the adopted Master Community Plan for the Project, as such document may be amended from time to time.

"Landfill" shall have the meaning set forth in Recital A.

"Landfill O&M Mitigation Measures" shall have the meaning set forth in Recital D.

"Landfill O&M Obligations" shall have the meaning set forth in Recital D.

"Landfill Parcel" shall have the meaning set forth in Recital A.

"**Losses**" means all claims, demands, losses, liabilities, damage, liens, obligations, interest, injuries, penalties, fines, lawsuits or other proceedings, judgments and awards and costs and expenses (including reasonable attorneys' fees and costs, consultant fees and costs and court costs) of whatever kind or nature, known or unknown, contingent or otherwise, including the reasonable costs to the applicable Party of carrying out the terms of any judgment, settlement, consent, decree, stipulated judgment or other partial or complete termination of an action or procedure that requires such Party to take any action.

"**Master Community Plan**" or "**MCP**" is the adopted Master Community Plan for the Project, as such document may be amended from time to time.

"Master Developer Party" means Master Developer, the Phase Developers, their partners, Affiliates and owners, and the officers, partners, agents, employees and members of each of them.

"**Mitigation Measures**" means the mitigation measures identified in the Project EIR that are applicable to the Project and adopted by the City in connection with its approval of the Project, to be implemented as provided in the Project MMRP.

"Party" and **"Parties"** shall have the meanings set forth in the Agreement preamble.

"PCLUP" shall have the meaning set forth in Recital D.

"**Person**" means any natural person or a corporation, partnership, trust, limited liability company, limited liability partnership or other entity.

"**Phase**" means, individually or collectively as the context requires, each Developer Airspace Parcel or Parcels designated as a Phase of development by Master Developer from time to time under this Agreement or a Partial Phase thereof as described in Section 4.2 of the DDA.

"Phase 2A Site" means the parcel specified to be developed as "Phase 2A" as shown on the Phasing Plan attached as Exhibit E to the DDA. The City Place Park will be located on the Phase 2A Site.

"**Phase Developer**" means, with respect to a Phase (or Partial Phase), the developer thereof (which may include Master Developer) and the tenant under the Ground Lease for such Phase, as such Person is designated pursuant to the terms of the DDA or applicable Ground Lease.

"Post-Closure O&M Obligations" means those obligations imposed upon the Project Site pursuant to the PCLUP, the future Revised Corrective Action Plan and Revised Post-Closure Maintenance Plan, and the future revised Closure Plan.

"Project" shall have the meaning set forth in Recital C.

"Project Approvals" include all discretionary approvals for the Project that have been or are issued by the City, including but not limited to the DDA, the Development Agreement, the MCP, and Development Area Plans approved under the DAP Procedures, all as may be amended from time to time.

"Project Landfill Systems" shall have the meaning set forth in Recital D.

"Project Parcel" shall have the meaning set forth in Recital A.

"**Project Site**" has the definition given in Recital C to the DDA.

"Public Improvements" means Infrastructure that is required under Article VII of City's Subdivision Code, plus any other Infrastructure that is required to be dedicated to the City pursuant to the Project Approvals.

"Regional Water Board" has the definition given in Recital D.

"**Release"** means any accidental or intentional spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the air, soil gas, land, surface water, groundwater or environment (including the abandonment or discarding of barrels, containers, and other closed receptacles containing any Hazardous Substance). The term includes a threatened "Release" but does not include any passive migration

of a Hazardous Substance through the air, soil gas, land, surface water or ground water after the Hazardous Substance has been previously spilled, leaked, pumped, poured, emitted, discharged, injected, escaped, leached, dumped or disposed into the air, soil, gas, land, surface water or groundwater.

"Title 27" shall have the meaning set forth in Recital A.

"WDRs" shall have the meaning set forth in Recital D.

2. Apportionment of Costs. The City's obligations as specified in this Agreement are subject to reimbursement by the Master Developer for certain costs as set forth in: (a) Sections 14.2, 15.2.2(a) and 26 of the DDA, which is not modified by this Agreement; and (b) Section 5.1 of the Development Agreement, which is not modified by this Agreement. Notwithstanding anything in the DDA or this Agreement to the contrary, for purposes of calculating the Annual Landfill Costs (as defined in the DDA), the City may, at its election, amortize: (i) the total or any portion of the premium, surplus line taxes and broker commissions contributed by the City hereunder for any Project Insurance Program (as defined in Exhibit D) over the applicable term of such Project Insurance Program, notwithstanding that the entire premium, surplus line taxes and broker commission will be actually paid at binding of the applicable Project Insurance Program; and (ii) capital repairs or replacements of new equipment that cost in excess of $50,000 and are made or purchased by or on behalf of the City after the effective date of this Agreement in connection with the City's operation and maintenance obligations on any Landfill Parcel, which may, at the election of the City, be amortized over the shorter of (x) the useful life of such capital repair or replacement on a straight-line basis or (y) a fifteen (15) year period.

3. Scope of Agreement.

(a) Term. This Agreement shall commence upon the Effective Date. This Agreement shall terminate upon the fifth (5^{th}) anniversary of the termination date for the last Ground Lease to terminate.

(b) Topics Addressed. This Agreement allocates responsibilities between the City and the Master Developer for: (1) the operation, maintenance, and management responsibilities imposed on the Parties in the Landfill O&M Obligations; and (2) the design and construction of the Project Landfill Systems.

(c) Future Application. To the extent that the requirements included in the existing Landfill O&M Obligations are modified by a regulatory agency or included in future Landfill O&M Obligations (for example, the future Revised Corrective Action Plan), it is the intent of the Parties that responsibilities shall be allocated between the City and the Master Developer in the same manner as set forth in this Agreement for the existing Landfill O&M Obligations. To the extent that future Landfill O&M Obligations include new requirements not contemplated by the existing Landfill O&M Obligations, the allocation of responsibility for such requirements shall be guided by the general principle that requirements associated with the Developer Landfill Systems shall be the responsibility of the Master Developer, and requirements associated with the City Landfill Systems shall be the responsibility of the City.

(d) Cooperation and Coordination. The Parties shall cooperate with each other and act in good faith in complying with the provisions of this Agreement, and shall undertake such actions as may be reasonably necessary to minimize the cost and effort required to comply with their responsibilities of this Agreement. Each Party also shall undertake such actions as may be reasonably necessary in order to grant physical access to the other Party for the purposes of undertaking such Party's obligations under this Agreement. The Parties shall respond to each other Party's reasonable inquiries and requests in a timely manner (taking into account the nature of the inquiry/request) in the performance of such Party's obligations under this Agreement.

(e) Providing Timely Data. Upon the other Party's written request, each Party shall promptly provide or cause to be provided all final: engineering reports, environmental reports, and testing results prepared for that Party by third parties, and all formal written correspondence and required notifications to and from regulatory agencies, to the extent such reports, results, correspondence and notifications are: related to the performance of its obligations under this Agreement; in the possession and control of the Party; and are not privileged or attorney work product.

(f) Preparation of Plans and Reports. Notwithstanding anything to the contrary in this Agreement, to the extent that any provision in this Agreement obligates the Master Developer to prepare memoranda, plans, reports, or any other type of documentation that is (1) subject to City review and (2) required to be submitted to a public agency, and the Master Developer fails to timely prepare such document in accordance with this Agreement, the City, after providing the Master Developer with reasonable notice and an opportunity to cure, may, at its reasonable discretion, elect to prepare such documentation itself, provided that the document prepared by the City shall not propose actions or requirements that unreasonably and adversely affect the Master Developer's ability to implement the Project. Any City costs or expenses incurred during the preparation of such documentation shall be reimbursed by the Master Developer as "City Costs," as provided in (a) Section 26 of the DDA, which is not modified by this Agreement, and (b) Section 5.1 of the Development Agreement, which is not modified by this Agreement.

(g) Conflicts with DDA. Except as otherwise expressly set forth in this Agreement, to the extent that the provisions of this Agreement conflict with any provisions in the DDA (including the form of Ground Lease attached thereto as Exhibit B-2), the provisions of this Agreement shall control.

4. Design and Construction of Project Landfill Systems in Project Parcels. The Master Developer has the responsibility to design and construct certain components of the Project Landfill Systems in Project Parcels consistent with the Project Approvals. Notwithstanding anything to the contrary contained herein or in the DDA, it is acknowledged and agreed that if any component of the Project Landfill Systems that Developer is obligated to construct pursuant to the Project Approvals (which components comprise Infrastructure) is not a "Secured Public Improvement" under the DDA, then such component shall be deemed to be a "Secured Phase Improvement" and shall be subject to the requirements for "Adequate Security" applicable thereto under Section 28 of the DDA, except that Developer shall have the option to deliver "Adequate Security" satisfying the "SMA Security Requirements" in lieu of a "Completion Guaranty" (as each such term is defined in the DDA).

5. Ownership, Operation, and Maintenance of Landfill System Components.

(a) Developer Landfill Systems and City Landfill Systems. Once the Project (or applicable phases of it) is built, subject to the terms herein, the Master Developer and the City will own, operate and maintain discrete separate structures and other features beneath and above the Landfill, referred to as the "Developer Landfill Systems" and the "City Landfill Systems," as follows:

(i) Developer Landfill Systems. The Master Developer will own, operate, and maintain all landfill gas mitigation systems built by or on behalf of Master Developer beneath each building, street segment, roadway and common area in the Developer Airspace Parcels, except with respect to any street or other area owned or controlled (e.g., pursuant to an easement) by City, including streets or areas that are initially privately owned or controlled but are later transferred to City, including, without limitation, pursuant to an easement (collectively, the "**Developer Landfill Systems**").

(ii) City Landfill Systems. The City will own, operate, and maintain all of the Project Landfill Systems other than the Developer Landfill Systems ("**City Landfill Systems**").

(b) Visual Depiction of Responsibilities. The cross-section drawings attached hereto as Exhibit B are intended illustratively to show the division of responsibilities for Landfill O&M Obligations between the Master Developer and the City. The Parties recognize that there may be changes in the configuration and location of the City Landfill Systems and the Developer Landfill Systems prior to construction as the design as the Project evolves. For example, the Parties recognize that although there are no current plans for landfill gas mitigation systems beneath public streets or areas retained by or dedicated to the City, it is possible that such systems could be required and this Agreement has therefore allocated responsibility to the City for operation and maintenance of any such systems that are ultimately required. Accordingly, to the extent that there are any conflicts between the terms of this Agreement and the depictions in Exhibit B, the express terms of this Agreement shall control. Neither the Developer Landfill Systems nor the City Landfill Systems include any structures or features that are designated as "public/franchise utility responsibility" on Exhibit B.

6. Allocation of Responsibilities in PCLUP and WDRs.

(a) Post-Closure Land Use Plan. The division of the Post-Closure O&M Obligations between the City and the Master Developer pursuant to the PCLUP (including all costs of compliance) is set forth in Section I of the **"Landfill Responsibility Matrix"** attached hereto as Exhibit C.

(b) WDRs.

(i) Notwithstanding whether the City alone, or instead both Parties, are named as Dischargers for performance of particular tasks or requirements under the WDRs, the

Parties agree the responsibility for performance of such tasks or requirements (including all costs of compliance) shall be as set forth in this Agreement.

(ii) Where Section B (Specifications) in the WDRs or Section C (Provisions) in the WDRs concern requirements or obligations related to operation, maintenance and management of Project Landfill Systems (as opposed to design and/or construction requirements) and both the City and the Master Developer are named as "Dischargers" on the WDRs for such specification or provision, the entity responsible for performance of such specification or provision (including all costs of compliance) is set forth in Section II of the attached Landfill Responsibility Matrix (Exhibit C).

(iii) With respect to the baseline monitoring contemplated in WDR Section C.4, at least four rounds of the baseline monitoring of the completed ground water network that is included as part of the work plan shall be conducted by Master Developer before placement of pilings commences. Such four rounds of monitoring shall be conducted at intervals roughly evenly spaced, at least one month apart, but Master Developer shall endeavor to space the rounds six (6) to eight (8) weeks apart. Potential effects of local dewatering must also be evaluated prior to development to establish baseline (pre-development) hydrological conditions.

(c) Inconsistencies. Where there is an inconsistency in the assignment of responsibilities as between PCLUP requirements and WDR requirements and the terms set forth on Exhibit C (the Landfill Responsibility Matrix), the requirements and allocation of Exhibit C shall govern. Where there is an inconsistency or conflict between the assignment of responsibilities in this Agreement and Exhibit C, the assignment of responsibilities in this Agreement shall govern.

(d) Summary of Requirements. The descriptions of the Landfill O&M Obligations that are included in the Landfill Responsibility Matrix merely summarize the Landfill O&M Obligations specified in each provision of these documents. The Parties shall refer to the specific provision of the WDRs and PCLUP to determine the full scope of the responsibilities under the applicable legal documents.

7. Allocation of Responsibilities in Other Title 27 Regulatory Documents. As various phases of construction are completed, the Landfill owner will be required by the Title 27 regulations to submit and obtain regulatory approval of updated revised Corrective Action Plans, Post-Closure Maintenance Plans, and Closure Plans. Regarding any requirements in such plans (including all costs of compliance), the obligation to prepare, submit and implement such plans shall be the responsibility of the City to the extent they apply to or arise from City Landfill Systems, and shall be the responsibility of the Master Developer to the extent they apply to or arise from Developer Landfill Systems.

8. Allocation of Responsibilities in Landfill O&M Mitigation Measures. The obligations of the City and the Master Developer to comply with the Landfill O&M Mitigation Measures (including all costs of compliance) are assigned as follows:

(a) Mitigation Measure HAZ. 2.1. The Master Developer shall provide to the City a final Waste Management Plan approved by the landfill regulatory agencies. The City will

verify that the final Waste Management Plan includes all required components and all necessary approvals.

(b) Mitigation Measure HAZ-4.1. The Master Developer shall prepare the plans and reports required by Mitigation Measure HAZ-4.1. The plans and reports are subject to review and approval by the City, which subsequently shall submit them to and obtain approval from the regulatory agencies as specified in the measure. The Master Developer shall be responsible for any design work and construction required by such plans and reports. Responsibility for any operation and maintenance measures outlined in such plans and reports is assigned to the City for City Landfill Systems and to the Master Developer for Developer Landfill Systems.

(c) Mitigation Measure HAZ-4.2. The Master Developer shall provide to the City a design for the replacement landfill gas collection, control and extraction system as set forth in Mitigation Measure HAZ-4.2. The specifications are subject to review and approval by the City, which subsequently shall submit them to and obtain approval from the regulatory agencies as specified in the measure. The Master Developer shall be responsible for the construction of the replacement landfill gas collection, control and extraction system. City shall be responsible for the operation and maintenance of such system.

(d) Mitigation Measure HAZ-4.4. The Master Developer shall prepare a landfill gas monitoring and control program as specified in Mitigation Measure HAZ-4.4 with respect to the migration of landfill gas beyond the boundaries of the Landfill, and shall submit the same to the City. The program is subject to review and approval by the City, which subsequently shall submit it to and obtain approval from the regulatory agencies as specified in the measure. The Master Developer shall be responsible for the construction of all gas monitoring and control features and systems. Responsibility for operation and maintenance of the approved program is assigned to the Master Developer except that the City shall be responsible for operation and maintenance of the approved program for any public street that is located on the 40-acre platform to be constructed above Parcel 4 of the Landfill.

(e) Mitigation Measure HAZ-6.1. The Master Developer shall prepare the Leachate Collection and Removal System Technical Memorandum as specified in this measure and submit it to the City. The Technical Memorandum shall be subject to review and approval by the City, which subsequently shall submit it to and obtain approval from the regulatory agencies as specified in the measure. The Master Developer shall be responsible for the construction of any required new components of the leachate collection and removal system. The City shall operate and maintain the leachate collection and removal system in accordance with the approved Technical Memorandum.

9. Phase 2A Site Landfill Protection Measures. The Parties acknowledge that the Ground Lease for the Phase 2A Site must incorporate protections in order to accommodate the City's current and intended uses of the Phase 2A Site (including but not limited to the ultimate use of most or all of the Phase 2A Site as a public park). Therefore, in addition to the modifications to the form of Ground Lease for Phase 2A that are contemplated by Section 4.8.1(b) of the DDA, the Ground Lease for Phase 2A also shall ensure that the Landfill is adequately protected during the lease term so that the Phase 2A Site is returned to the City at the end of the lease term in a condition

that is safe and suitable for the City's purposes. Such modifications may include, but shall not be limited to, additional requirements regarding the amount and location of dirt that can be taken from the Phase 2A Site for use elsewhere in the Project, as well as permitted uses of the Phase 2A Site and operational best practices for activity on the Phase 2A Site during the term of the Ground Lease.

10. Substitution of Master Owners' Association for Master Developer in Waste Discharge Requirements. Upon formation of a Masters Owners' Association under Conditions, Covenants and Restrictions applicable to the Landfill Parcel and Airspace Parcels and consistent with the DDA (the "**Master Owners' Association**"), and subject to the following requirements, the City shall make good faith efforts to support the substitution, in whole or in part, of the Master Owners' Association for the Master Developer in the WDRs:

(a) The Master Owners' Association shall enter into an Assignment, Assumption and Release Agreement in a form reasonably acceptable to the City, pursuant to which the Master Owners' Association assumes the applicable rights and obligations under this Agreement from the Master Developer; and

(b) The Master Owners' Association shall provide to the City financial assurance (including but not limited to annual evidence of the insurance required pursuant to Section 12 of this Agreement, as well as assurance that the Master Owners' Association shall remain in existence, and sufficiently capitalized, until the end of the term of this Agreement as set forth in Section 3(a) hereof, or its earlier termination) that the City reasonably agrees is sufficient to prove that the Master Owners' Association is capable of assuming all of Master Developer's obligations under this Agreement.

Upon the later to occur of (i) approval by the Regional Water Board of a substitution of the Master Owners' Association for the Master Developer in the WDRs and (ii) fulfillment of all conditions set forth in Sections 10(a) and 10(b), above, each task assigned to the Master Developer in this Agreement, including without limitation, Exhibit C attached hereto, shall instead be the responsibility of the Master Owners' Association.

11. Indemnity Obligations. The parties agree that the terms of this Section 11 shall survive the expiration or earlier termination of this Agreement.

(a) City Obligations. City agrees to Indemnify, defend, and hold harmless the Master Developer Parties from and against any and all Losses asserted against or incurred by any Master Developer Party to the extent such Losses are directly related to City's negligence or willful misconduct that results in a failure to perform its obligations under this Agreement, except to the extent that such failure is caused by the breach of this Agreement by Master Developer, any Phase Developer, or any tenant or occupant of a Phase, or any negligence or misconduct by Master Developer, any Phase Developer, or any tenant or occupant of a Phase, and except to the extent that (i) such Loss relates to on-site ground water contamination and (ii) Master Developer has obtained insurance which covers such Loss.

(b) Master Developer's Obligations. Master Developer agrees to Indemnify, defend, and hold harmless the City Parties from and against any and all Losses incurred by or

asserted against any City Party in connection with, arising out of, or in response to, or in any manner relating to:

(i) Master Developer's breach of any obligation of Master Developer under this Agreement;

(ii) Master Developer's violation of any obligation under this Agreement with respect to its compliance with Environmental Laws on or relative to the Project Site by Master Developer; and

(iii) Any Release or threatened Release of a Hazardous Substance, or any condition of pollution, contamination or Hazardous Substance-related nuisance on, under or from real property at the Project Site (including any Public Improvements) to the extent the Release, threatened Release, condition, contamination or nuisance was caused, contributed to, or exacerbated by the negligence of the Master Developer or others for whom Master Developer is responsible (including its contractors and servants) on any portion of the Project Site; provided, that this clause (iii) shall not apply as to a City Party to the extent such violation, Release, threatened Release, condition, contamination or nuisance commenced or was created by or caused by the negligence of a City Party.

In each of (i), (ii), and (iii), above, the term "Master Developer" includes the Master Developer Parties and their agents, servants, employees or contractors, or any other party for which Developer is responsible or which is acting pursuant to the authority of Master Developer with respect to this Agreement or the Project.

(c) The obligations of Master Developer and City under this Section 11 shall: (1) apply regardless of the extent or availability of insurance proceeds; and (2) survive the expiration or other termination of this Agreement. However, if any indemnified matter under this Section 11 is covered by or subject to being defended by a policy of insurance obtained by Master Developer under Exhibit D attached hereto and made a part hereof, then the Indemnified Party shall reasonably cooperate with the Indemnifying Party in asserting a claim or claims under such insurance policy or Indemnity but without waiving any of its rights under this Section 11. The submission and management of claims under such joint insurance programs shall be governed by an insurance administration agreement to be executed by Master Developer and the City on or before the commencement of intrusive work on the Landfill under "Phase 2" of the Project (the "**Insurance Administration Agreement**"). The Insurance Administration Agreement shall, among other things, establish criteria and procedures for allocating and paying self-insured retentions and establish protocols for notification and cooperation in the process of making claims to the insurer. Master Developer and City specifically acknowledge and agree that each has an immediate and independent obligation to defend the Indemnified Parties from any claim that may reasonably fall or is otherwise determined to fall within the Indemnification provision of this Section 11, even if the allegations are or may be groundless, false or fraudulent. The obligation of Master Developer or City to defend under this Section 11 shall arise at the time a claim is tendered to the Master Developer or City and shall continue at all times thereafter. Notwithstanding the foregoing, if the Master Developer and City are both named insureds on an insurance policy neither party will seek Indemnification from the other under this Section 11for a condition or claim that is being covered or defended under such policy (including, without

limitation, pursuant to a reservation of rights) unless it has asserted and used commercially reasonable efforts to pursue a claim for insurance under such policy and pursuant to the terms of the Insurance Administration Agreement and (if successful in the pursuit of such claim) until any limits from the policy are exhausted, provided that nothing in this sentence requires either Master Developer or City to pursue a claim for insurance through litigation prior to seeking Indemnification from the party with the obligation to indemnify. Master Developer and City each agree to a tolling of any and all statutes of limitation relating to the Indemnified Party's right to seek Indemnification under this Section 11 during the pendency of any claim under the applicable joint insurance programs.

(d) Subject to the provisions of subparagraph (c) of Paragraph 11, each Party (as applicable, the **"Indemnified Party"**) agrees to give prompt notice to the other Party (as applicable, the **"Indemnifying Party"**) with respect to any suit filed or claim made against the Indemnified Party (or, upon Indemnified Party's discovery thereof, against any party that the Indemnified Party believes in good faith is covered by any Indemnification given by the Indemnifying Party under this Agreement) no later than the earlier of (a) ten (10) days after valid service of process as to any filed suit or (b) fifteen (15) days after receiving notification of the assertion of such claim, which the Indemnified Party has good reason to believe is likely to give rise to a claim for Indemnification hereunder by the Indemnifying Party. The failure of the Indemnified Party to give such notice within such timeframes shall not affect the rights of the Indemnified Party or obligations of the Indemnifying Party under this Agreement except to the extent that the Indemnifying Party is prejudiced by such failure. The Indemnifying Party shall, at its option but subject to Approval by the Indemnified Party, be entitled to control the defense, compromise or settlement of any such matter through counsel of the Indemnifying Party's choice; provided, that in all cases the Indemnified Party shall be entitled to participate in such defense, compromise or settlement (either at the Indemnified Party's own expense or, if there is a challenge to implementation of this Agreement itself, at the Indemnifying Party's own expense). If the Indemnifying Party shall fail, however, in the Indemnified Party's reasonable judgment, within a reasonable time following notice from the Indemnified Party alleging such failure, to take reasonable and appropriate action to defend, compromise or settle such suit or claim, the Indemnified Party shall have the right promptly to hire counsel to carry out such defense, compromise or settlement, and the reasonable expense of the Indemnified Party in so doing shall be due and payable to the Indemnified Party within fifteen (15) days after receipt by the Indemnifying Party of a properly detailed invoice for such expense.

12. Insurance Obligations. The Master Developer shall obtain and maintain the insurance policies and programs set forth on Exhibit D attached hereto and made a part hereof. Except as otherwise provided in Exhibit D, such policies and programs shall be obtained and maintained at Master Developer's sole cost and expense. Exhibit D sets forth the insurance program for all phases of the Project (including Phase 1, which is not located on the Landfill). The requirements of Exhibit D shall pertain notwithstanding anything to the contrary in the DDA (including the Ground Lease forms in Exhibits G-1 and G-2). Each Ground Lease shall reference and include the requirements of Exhibit D as appropriate.

13. Submittals to Regional Water Board and/or Local Enforcement Agency. All reports, designs, and other documentation related to the Landfill O&M Requirements to be submitted to the Regional Water Board or Local Enforcement Agency by either Party pursuant to its

responsibilities under this Agreement (including without limitation, the Landfill Responsibility Matrix) shall be subject to prior review and approval by the other Party, which approval shall not be unreasonably delayed or withheld, except no prior approval shall be required for reports that summarize data without making recommendations. Wherever either Party's obligation to submit documentation to the Regional Water Board or Local Enforcement Agency pursuant to this Agreement (including without limitation, the Landfill Responsibility Matrix) is predicated upon one Party's submittal of documentation to the other Party, such documentation shall be provided in a timely manner. For the purposes of this Agreement (including the Exhibits and Appendices), "in a timely manner" means, for a first draft (or any subsequent drafts that substantially revise prior drafts), no later than the date that is thirty (30) days prior to the due date of the submittal to the Regional Water Board or Local Enforcement Agency, and for a subsequent draft that does not substantially revise prior drafts, no later than the date that is fifteen (15) days prior to the due date of the submittal. If no comments from the reviewing Party are received in a timely manner, the documentation may be submitted, provided the submitting Party has made reasonable efforts to alert the reviewing Party that it has been provided the document for review, and of the deadline for submitting the document to the Regional Water Board or Local Enforcement Agency. In no event shall the requirements of this provision be construed to prevent either Party from meeting a legal deadline for submittal of documentation to the Regional Water Board or Local Enforcement Agency.

14. Memorandum of Agreement. The Parties shall execute, acknowledge, deliver and record a "short form" memorandum of this Agreement against the City Landfill Parcels in the Official Records of Santa Clara County within ten (10) days after execution here or any amendment thereto, with any costs to be borne by Master Developer, to put such memorandum of record and put third parties on notice of this Agreement.

15. Recitals and Exhibits. The Recitals, as well as the following Exhibits, are hereby incorporated into and made a part of this Agreement:

Exhibit A	Legal Description of City Landfill Parcels
Exhibit B	Project Cross-Section Drawings
Exhibit C	Landfill Responsibility Matrix
Exhibit D	Insurance Obligations
Exhibit E	Miscellaneous Provisions

NOTE: AGREEMENT EXHIBITS MUST BE COPIED IN COLOR

IN WITNESS WHEREOF, the parties have executed this Landfill Post-Closure Operation and Management Agreement as of the date(s) set forth below.

Dated: May 26, 2020

CITY OF SANTA CLARA, CALIFORNIA,
a chartered California municipal corporation

By: _____
Name: Deanna J. Santana
Its: City Manager

or

APPROVED AS TO FORM:
SANTA CLARA CITY ATTORNEY'S OFFICE

_____ for
Brian Doyle, City attorney

Dated: May 18, 2020

RELATED SANTA CLARA, LLC,
a Delaware limited liability company

By: _____
Name: Steve Eimer
Its: Executive Vice President

Exhibit A

City Landfill Parcels

BkF
ENGINEERS / SURVEYORS / PLANNERS

EXHIBIT A

CITY LANDFILL PARCELS

All that real property situate in the City of Santa Clara, County of Santa Clara, State of California, described as follows

BEGINNING at the Southwest corner of that certain parcel designated as, "Remainder 1", on that certain Parcel Map recorded in Book 737 of Maps, at Pages 1 through 4, Santa Clara County Records; thence along the Southeasterly boundary of said Remainder 1, and Parcel 2 as shown on said map

1. North 70º 48' 54" East, 800.92 feet, to the common Southerly corner of Parcels 2 and 4 as shown on said map; thence along the Westerly and Northerly boundaries of said Parcel 4 the following eight courses
2. North 8º 10' 00" West, 1070.36 feet, to an angle point; thence
3. North 5º 35' 14" West, 191.73 feet, to the beginning of a tangent curve to the right; thence
4. Along said curve to the right, having a radius of 109.99 feet, through a central angle of 73º 36' 48", and an arc length of 141.32 feet to the end of said curve; thence
5. North 68º 01' 34" East, 247.17 feet, to the beginning of a tangent curve to the right; thence
6. Along said curve to the right, having a radius of 159.99 feet, through a central angle of 63º 38' 58", and an arc length of 177.73 feet to the end of said curve; thence
7. South 48º 19' 28" East, 120.04 feet, to the beginning of a tangent curve to the left; thence
8. Along said curve to the left, having a radius of 16.00 feet, through a central angle of 65º 46' 18", and an arc length of 18.37 feet to the end of said curve; thence
9. North 65º 54' 14" East, 452.69 feet, to the Northeast corner of said Parcel 4, at a point on the Westerly boundary of the lands of the Union Pacific Railroad Company (UPRR); thence
10. North 62º 36' 04" East, 50.00 feet, to the Easterly boundary of the lands of the UPRR, also being the Southwesterly sideline of Lafayette Street; thence along said common boundary
11. North 27º 23' 56" West, 383.89 feet, to the Southeasterly boundary of an abandoned portion of the former Santa Clara Alviso Road as said abandonment is shown on the Record of Survey filed in Book 613 of Maps, at Pages 16 through 19, Santa Clara County Records; thence along said Southeasterly boundary
12. North 62º 36' 04" East, 60.00 feet, to the Southeast corner of said abandonment as shown on said map, also being a Southerly corner of the lands of the State of California as shown in Parcel 6-First of the Final Order of Condemnation recorded in Book 4820, at Page 641, Santa Clara County Records; thence along the Southerly boundary of said Parcel 6-First the following five courses

13. North 18º 41' 34" West, 324.57 feet to an angle point; thence
14. North 4º 49’ 01" West, 291.65 feet to an angle point; thence
15. North 76º 46’ 00" East, 367.73 feet to the beginning of a tangent curve to the left; thence
16. Along said curve to the left, having a radius of 300.00 feet, through a central angle of 47º 19' 56", and an arc length of 247.83 feet to the end of said curve; thence
17. North 29º 26’ 04" East, 115.92 feet to the Westerly most corner of the land granted to the State of California by Grant Deed recorded in Document No. 13607857, Official Records of Santa Clara County; thence along the Southerly boundary of said lands, along a non-tangent curve to the right, from a tangent that bears North 66º 06' 21" East
18. Along said curve to the right, having a radius of 987.00 feet, through a central angle of 0º 21' 48", and an arc length of 6.26 feet to a tangent compound curve to the right; thence
19. Along said curve to the right, having a radius of 1987.00 feet, through a central angle of 7º 36' 13", and an arc length of 263.69 feet to the end of said curve; thence
20. North 82º 36’ 47" East, 359.94 feet to an angle point; thence
21. North 79º 54’ 20" East, 63.77 feet to a point on the Southwesterly boundary of Parcel 1 of the lands conveyed to the Santa Clara County Flood Control and Water District by Grant Deed recorded in Book 0346, at Page 667, Santa Clara County Records; thence along the Southwesterly boundary of said lands
22. South 12º 32' 21" East, 124.61 feet, to the beginning of a tangent curve to the left; thence
23. Along said curve to the left, having a radius of 1204.94 feet, through a central angle of 22º 10' 15", and an arc length of 466.25 feet to the end of said curve; thence
24. South 34º 42' 36" East, 627.28 feet, more or less, to a Northwesterly boundary of the lands conveyed to Jules Eshner and Margaret Harkins Eshner by Grant Deed recorded in Book 3804, at Page 23 of the Official Records of Santa Clara County; thence along the Northwesterly and Westerly boundaries of said lands the following three courses
25. South 38º 48' 48" West, 2.93 feet, more or less, to an angle point; thence
26. South 22º 11' 12" East, 158.39 feet, to an angle point; thence
27. South 54º 41' 12" East, 108.85 feet, more or less, to the Northerly most corner of Parcel 2 of the lands conveyed to the Santa Clara County Flood Control and Water District by Grant Deed recorded in Book 0346, at Page 667, Official Records of Santa Clara County; thence along the Southwesterly boundary of said Parcel 2
28. South 34º 42' 36" East, 1676.65 feet, more or less, to the Southwest corner of said Parcel 2, also being the Northeast corner of Lot 19 of that certain Parcel Map recorded in Book 368 of Maps, at Pages 14 and 15, Santa Clara County Records; thence along the Northwesterly boundary of said Lot 19 and said Parcel Map the following four courses
29. North 84º 23’ 47" West, 47.65 feet to an angle point; thence
30. South 23º 19’ 21" East, 7.40 feet to an angle point; thence
31. North 84º 25’ 47" West, 139.94 feet to an angle point; thence

32. South 68º 35’ 42" West, 1603.17 feet to the Westerly most corner of said Parcel Map, at the Northeasterly sideline of Lafayette Street; thence perpendicularly across the Right of Way of Lafayette Street and the Union Pacific Railroad (UPRR)

33. South 62º 36’ 04" West, 139.99 feet to the Westerly sideline of the UPRR; thence along said Westerly sideline

34. South 27º 23’ 56" East, 861.77’ feet to a point on an Easterly prolongation of a Northerly sideline of Stars and Stripes Drive; thence leaving the Westerly sideline of the UPRR, and along said Easterly prolongation

35. South 63º 57’ 01" West, 365.15 feet to a point on said Northerly sideline at a point of tangency of said sideline, at the end of a curve, concave to the Southwest, having a radius of 334.28 feet; thence along said sideline

36. South 63º 57’ 01" West, 1053.06 feet to a point on a Northeasterly boundary of Parcel Three as shown in the Lease Agreement recorded in Document No. 18721549, Santa Clara County Records ; thence leaving said Northerly sideline, and along said Northeasterly boundary

37. North 26º 03’ 52" West, 50.19 feet to the Northerly most corner of said Parcel Three; thence along the Northwesterly line of said Parcel Three

38. South 63º 56’ 08" West, 382.83 feet to the Northeasterly boundary of the lands granted to the Santa Clara Valley Water District by Grant Deed recorded in Book I 288, at Page 241, Santa Clara County Records; thence along said Northeasterly boundary and along the Northeasterly boundary of the lands granted to the Santa Clara Valley Water District by Grant Deed recorded in Book B 811, at Page 392, Santa Clara County Records

39. North 30º 38’ 56" West, 530.37 feet to the beginning of a tangent curve to the left; thence

40. Along said curve to the left, having a radius of 686.06 feet, through a central angle of 26º 15' 54", and an arc length of 314.50 feet to the end of said curve; thence

41. North 56º 54’ 50" West, 950.10 feet, to the Easterly sideline of Great America Parkway, as shown on the Record of Survey map recorded in Book 345 of Maps, at Pages 1 through 8, Santa Clara County Records; thence along said Easterly sideline

42. North 1º 58’ 31" East, 340.86 feet to the POINT OF BEGINNING.

EXCEPTING therefrom any portion of the above-described lands that are within the Right of Ways of Lafayette Street, Great America Way or the Union Pacific Railroad.

Containing 227.28 acres, more or less.

The distances as shown in this description are Grid distances. To obtain ground level distances multiply any distance shown above by the factor 1.00005310.

Description prepared by BKF Engineers, in June, 2016.

Signed David Darling 6/16/2016
Date

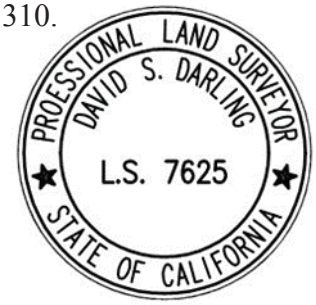
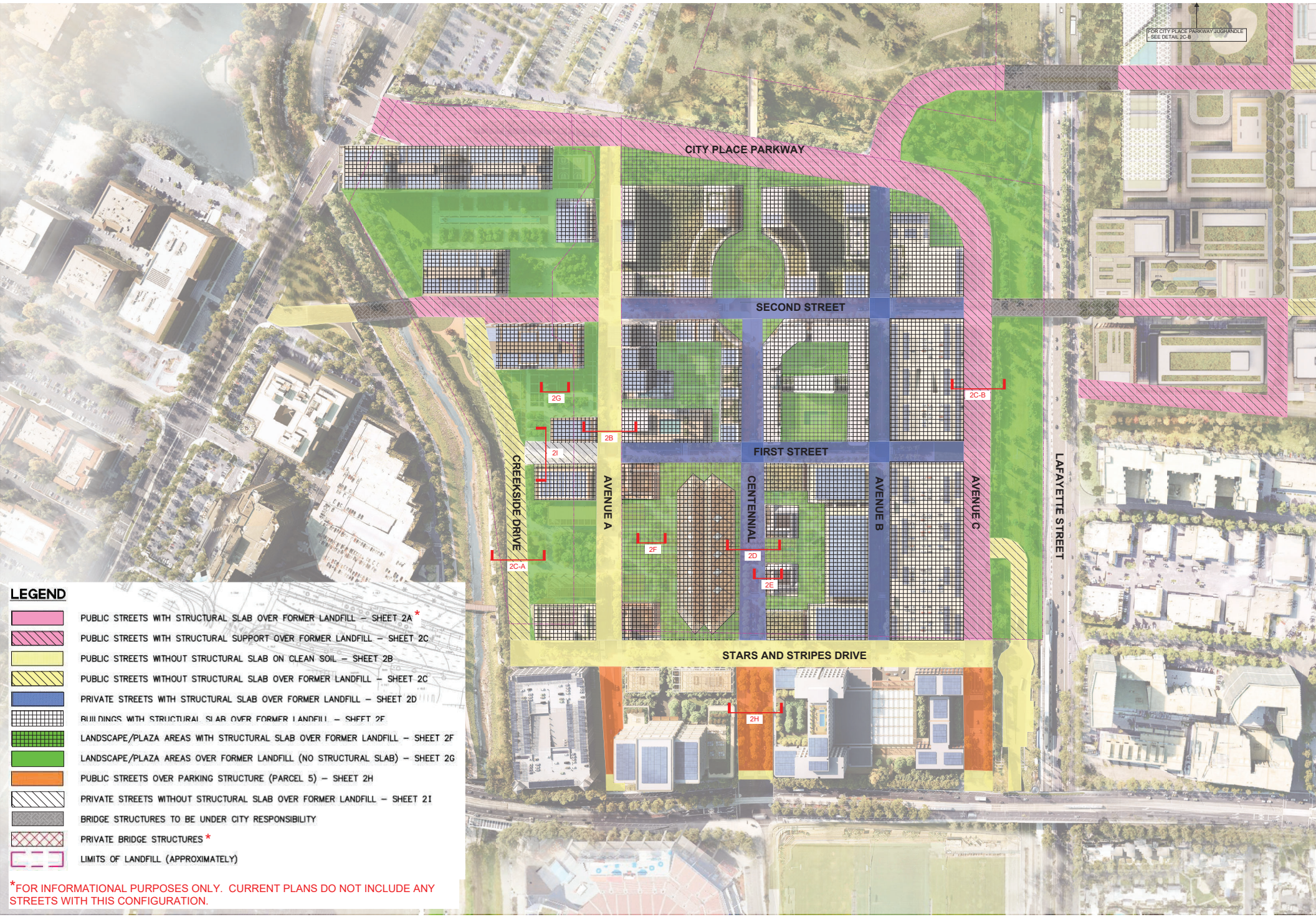


Exhibit B

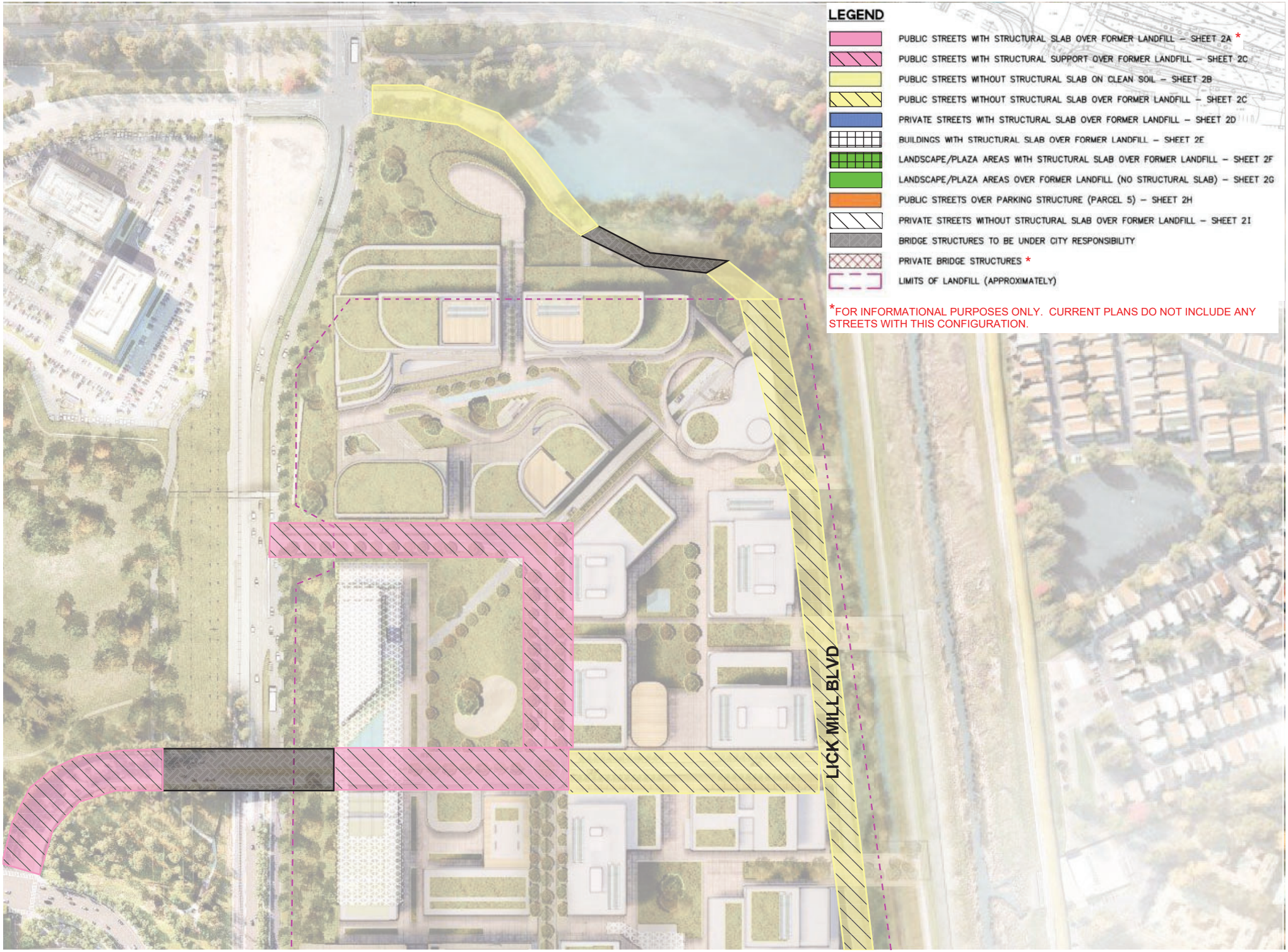
Project Cross Section Drawings

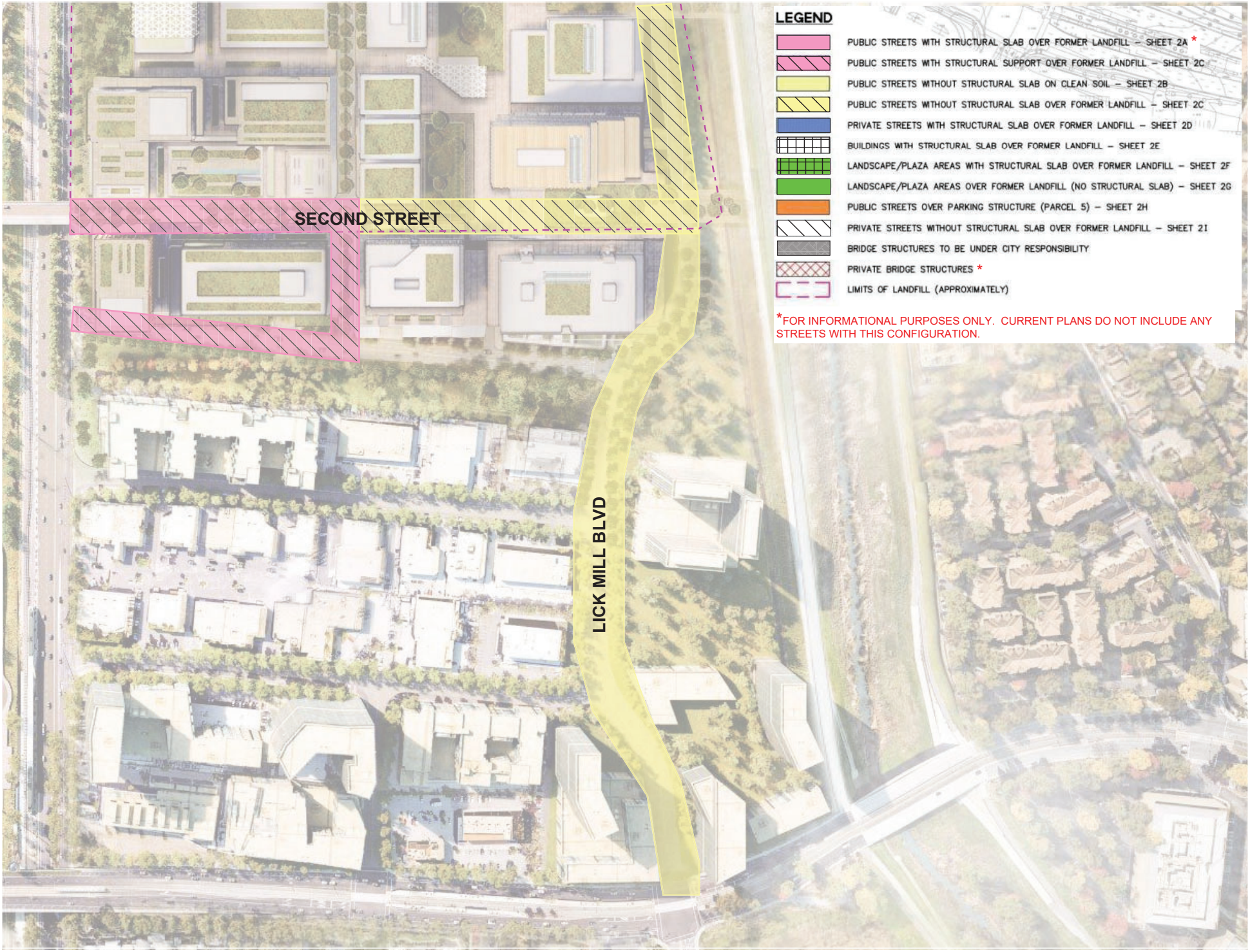


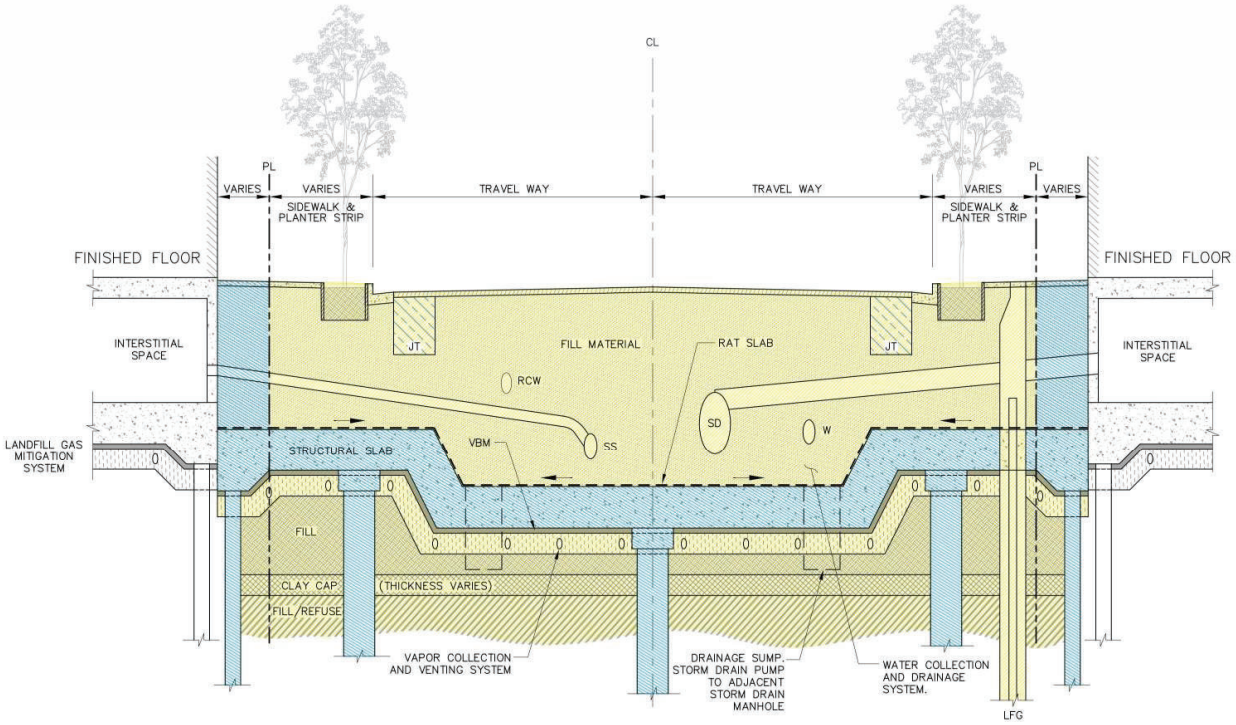
LEGEND

- PUBLIC STREETS WITH STRUCTURAL SLAB OVER FORMER LANDFILL – SHEET 2A *
- PUBLIC STREETS WITH STRUCTURAL SUPPORT OVER FORMER LANDFILL – SHEET 2C
- PUBLIC STREETS WITHOUT STRUCTURAL SLAB ON CLEAN SOIL – SHEET 2B
- PUBLIC STREETS WITHOUT STRUCTURAL SLAB OVER FORMER LANDFILL – SHEET 2C
- PRIVATE STREETS WITH STRUCTURAL SLAB OVER FORMER LANDFILL – SHEET 2D
- BUILDINGS WITH STRUCTURAL SLAB OVER FORMER LANDFILL – SHEET 2F
- LANDSCAPE/PLAZA AREAS WITH STRUCTURAL SLAB OVER FORMER LANDFILL – SHEET 2F
- LANDSCAPE/PLAZA AREAS OVER FORMER LANDFILL (NO STRUCTURAL SLAB) – SHEET 2G
- PUBLIC STREETS OVER PARKING STRUCTURE (PARCEL 5) – SHEET 2H
- PRIVATE STREETS WITHOUT STRUCTURAL SLAB OVER FORMER LANDFILL – SHEET 2I
- BRIDGE STRUCTURES TO BE UNDER CITY RESPONSIBILITY
- PRIVATE BRIDGE STRUCTURES *
- LIMITS OF LANDFILL (APPROXIMATELY)

*FOR INFORMATIONAL PURPOSES ONLY. CURRENT PLANS DO NOT INCLUDE ANY STREETS WITH THIS CONFIGURATION.


LEGEND
PUBLIC STREETS WITH STRUCTURAL SLAB OVER FORMER LANDFILL – SHEET 2A *
PUBLIC STREETS WITH STRUCTURAL SUPPORT OVER FORMER LANDFILL – SHEET 2C
PUBLIC STREETS WITHOUT STRUCTURAL SLAB ON CLEAN SOIL – SHEET 2B
PUBLIC STREETS WITHOUT STRUCTURAL SLAB OVER FORMER LANDFILL – SHEET 2C
PRIVATE STREETS WITH STRUCTURAL SLAB OVER FORMER LANDFILL – SHEET 2D
BUILDINGS WITH STRUCTURAL SLAB OVER FORMER LANDFILL – SHEET 2E
LANDSCAPE/PLAZA AREAS WITH STRUCTURAL SLAB OVER FORMER LANDFILL – SHEET 2F
LANDSCAPE/PLAZA AREAS OVER FORMER LANDFILL (NO STRUCTURAL SLAB) – SHEET 2G
PUBLIC STREETS OVER PARKING STRUCTURE (PARCEL 5) – SHEET 2H
PRIVATE STREETS WITHOUT STRUCTURAL SLAB OVER FORMER LANDFILL – SHEET 2I
BRIDGE STRUCTURES TO BE UNDER CITY RESPONSIBILITY
PRIVATE BRIDGE STRUCTURES *
LIMITS OF LANDFILL (APPROXIMATELY)
*FOR INFORMATIONAL PURPOSES ONLY. CURRENT PLANS DO NOT INCLUDE ANY STREETS WITH THIS CONFIGURATION.
LICK MILL BLVD


SECOND STREET
LICK MILL BLVD
LEGEND
PUBLIC STREETS WITH STRUCTURAL SLAB OVER FORMER LANDFILL – SHEET 2A *
PUBLIC STREETS WITH STRUCTURAL SUPPORT OVER FORMER LANDFILL – SHEET 2C
PUBLIC STREETS WITHOUT STRUCTURAL SLAB ON CLEAN SOIL – SHEET 2B
PUBLIC STREETS WITHOUT STRUCTURAL SLAB OVER FORMER LANDFILL – SHEET 2C
PRIVATE STREETS WITH STRUCTURAL SLAB OVER FORMER LANDFILL – SHEET 2D
BUILDINGS WITH STRUCTURAL SLAB OVER FORMER LANDFILL – SHEET 2E
LANDSCAPE/PLAZA AREAS WITH STRUCTURAL SLAB OVER FORMER LANDFILL – SHEET 2F
LANDSCAPE/PLAZA AREAS OVER FORMER LANDFILL (NO STRUCTURAL SLAB) – SHEET 2G
PUBLIC STREETS OVER PARKING STRUCTURE (PARCEL 5) – SHEET 2H
PRIVATE STREETS WITHOUT STRUCTURAL SLAB OVER FORMER LANDFILL – SHEET 2I
BRIDGE STRUCTURES TO BE UNDER CITY RESPONSIBILITY
PRIVATE BRIDGE STRUCTURES *
LIMITS OF LANDFILL (APPROXIMATELY)
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LEGEND

CITY RESPONSIBILITY:
- CITY UTILITY MAINS
- SILICON VALLEY POWER (SVP)
- SIDEWALK
- CURB & GUTTER
- ROADWAY PAVEMENT
- STREET TREES/LANDSCAPING
- FILL MATERIAL
- LANDFILL GAS EXTRACTION WELL & COLLECTION SYSTEM (LFG)
- CLAY CAP & REFUSE
- VAPOR BARRIER MEMBRANE (VBM)
- VAPOR COLLECTION AND VENTING SYSTEM
- DRAINAGE SUMP
- WATER COLLECTION AND DRAINAGE SYSTEM

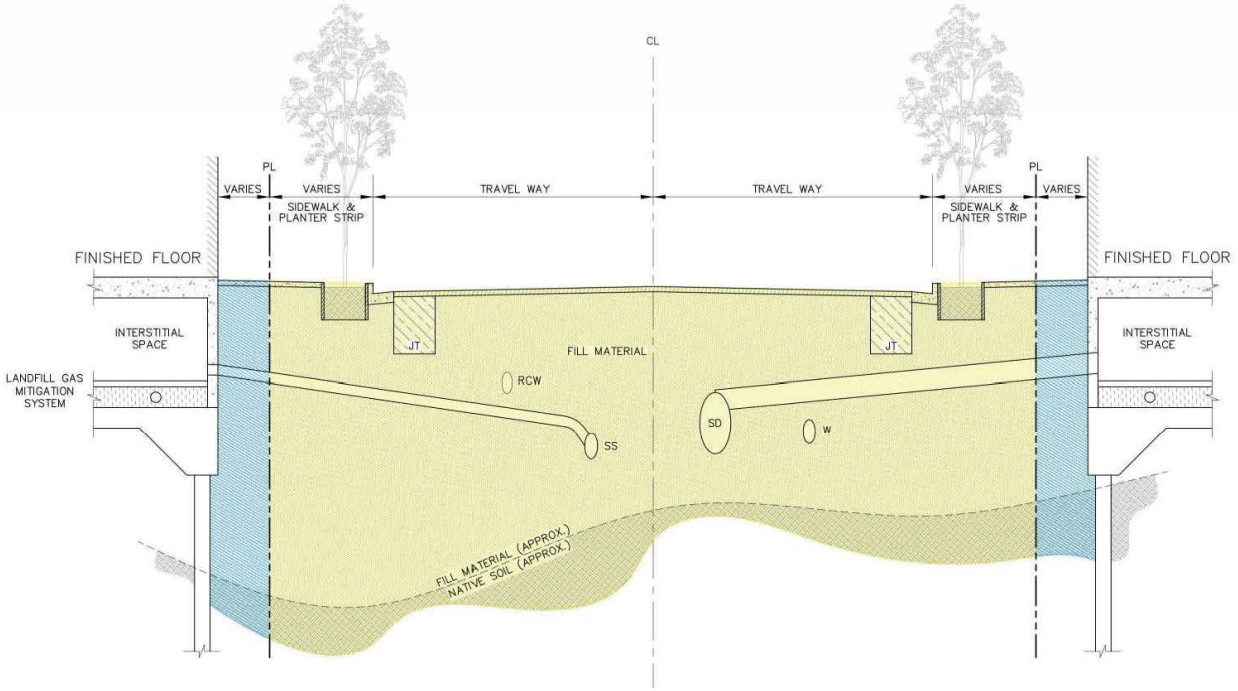
LEASEE RESPONSIBILITY:
- UTILITY SERVICE LATERALS
- SIDEWALK
- FILL MATERIAL
- STRUCTURAL SLAB & PILES

PUBLIC/FRANCHISE UTILITY RESPONSIBILITY:
- GAS
- TELECOMMUNICATIONS
- FIBER OPTIC
- CABLE TV

PUBLIC STREETS W/ STRUCTURAL SLAB OVER FORMER LANDFILL
TYPICAL SECTION

N.T.S.

FOR INFORMATIONAL PURPOSES ONLY. CURRENT PLANS
DO NOT INCLUDE ANY STREETS WITH THIS CONFIGURATION.



LEGEND

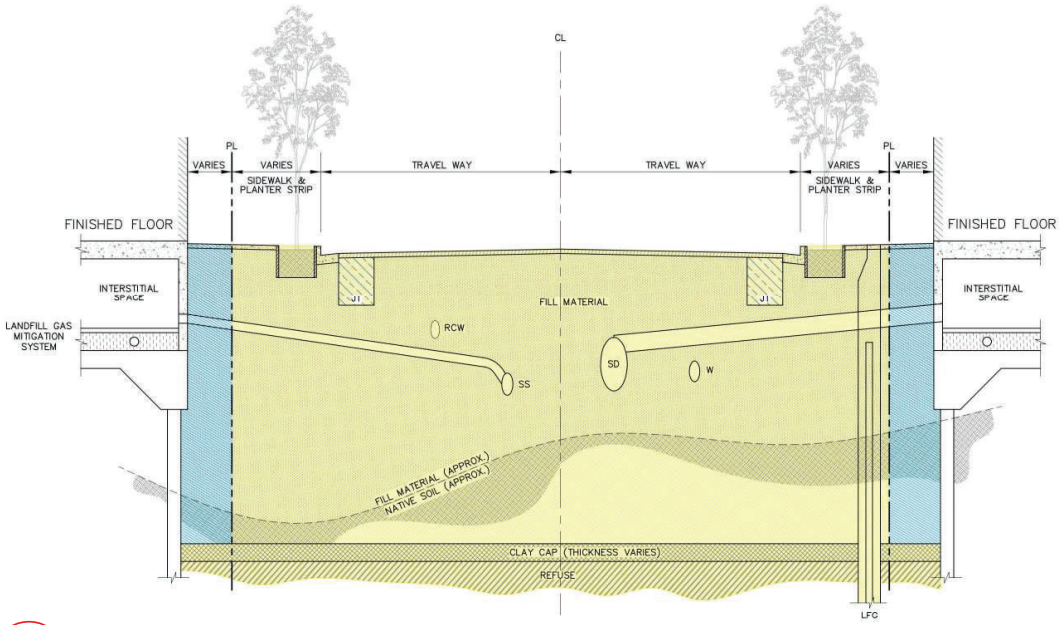
CITY RESPONSIBILITY:
- CITY UTILITY MAINS
- SIDEWALK
- CURB & GUTTER
- ROADWAY PAVEMENT
- STREET TREES/LANDSCAPING
- FILL/NATIVE MATERIAL

LEASEE RESPONSIBILITY:
- UTILITY SERVICE LATERALS
- SIDEWALK
- FILL/NATIVE MATERIAL

PUBLIC/FRANCHISE UTILITY RESPONSIBILITY:
- GAS
- TELECOMMUNICATIONS
- FIBER OPTIC
- CABLE TV
- SILICON VALLEY POWER (SVP)

PUBLIC STREETS W/O STRUCTURAL SLAB ON "CLEAN SOIL"
TYPICAL SECTION

N.T.S.



2C-A

PUBLIC STREETS W/O STRUCTURAL SLAB OVER FORMER LANDFILL
TYPICAL SECTION

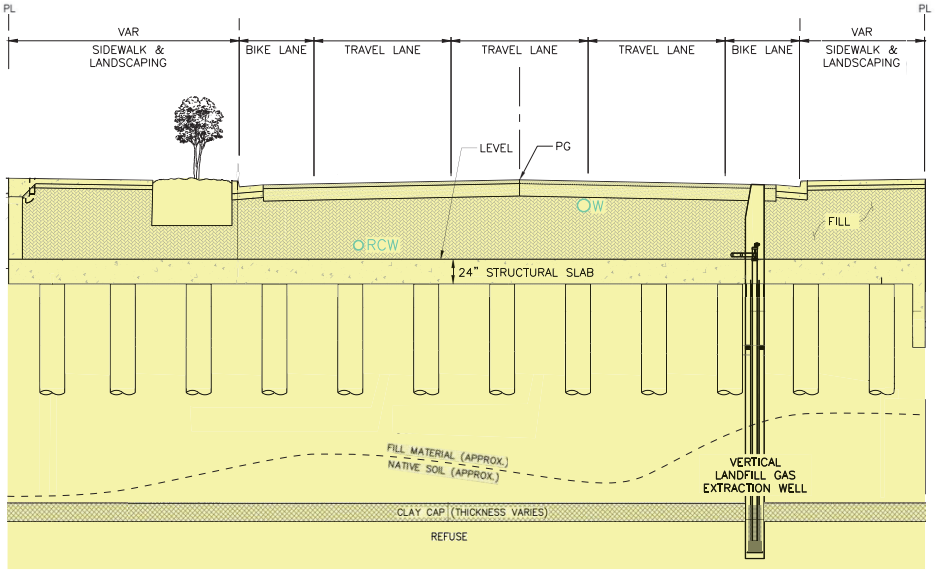
N.T.S.

LEGEND

CITY RESPONSIBILITY:
- CITY UTILITY MAINS
- SIDEWALK
- CURB & GUTTER
- ROADWAY PAVEMENT
- STREET TREES/LANDSCAPING
- FILL/NATIVE MATERIAL
- LANDFILL GAS EXTRACTION WELL & COLLECTION SYSTEM (LFG)
- CLAY CAP & REFUSE

LEASEE RESPONSIBILITY:
- UTILITY SERVICE LATERALS
- SIDEWALK
- FILL MATERIAL
- STRUCTURAL SUPPORT (IF APPLICABLE)

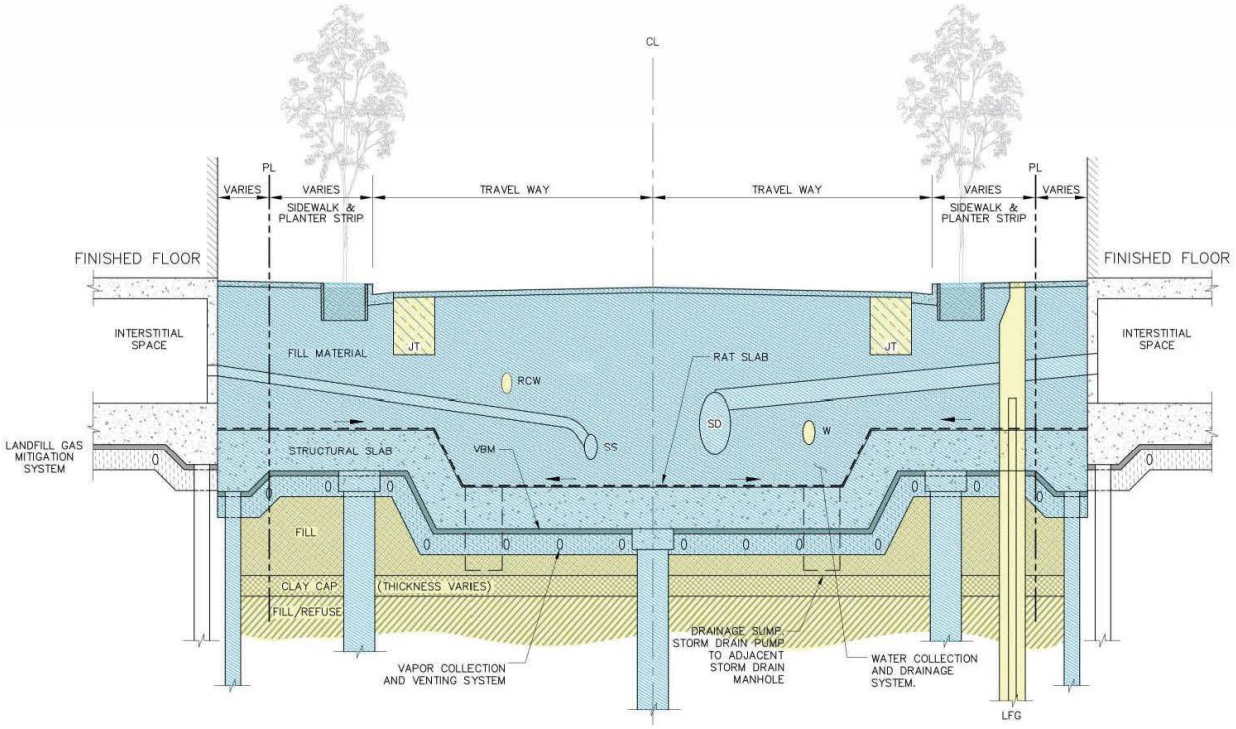
PUBLIC/FRANCHISE UTILITY RESPONSIBILITY:
- GAS
- TELECOMMUNICATIONS
- FIBER OPTIC
- CABLE TV
- SILICON VALLEY POWER (SVP)



2C-B

PUBLIC STREETS W/ STRUCTURAL SUPPORT OVER FORMER LANDFILL
TYPICAL SECTION

N.T.S.



LEGEND

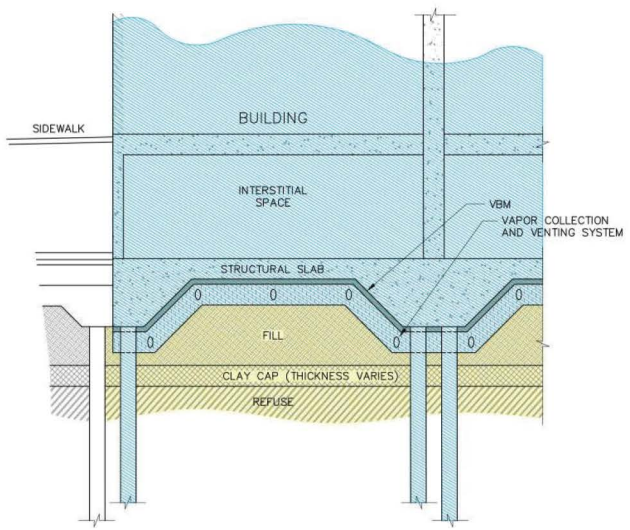
CITY RESPONSIBILITY:
- CITY UTILITY MAINS WITHIN EASEMENTS
- FILL MATERIAL BELOW STRUCTURAL SLAB AND ABOVE CLAY CAP
- LANDFILL GAS EXTRACTION WELL & COLLECTION SYSTEM (LFG)
- CLAY CAP & REFUSE

LEASEE RESPONSIBILITY:
- PRIVATE UTILITY MAINS
- SIDEWALK
- CURB & GUTTER
- ROADWAY PAVEMENT
- STREET TREES/LANDSCAPING
- FILL MATERIAL ABOVE VDM
- UTILITY SERVICE LATERALS
- VAPOR BARRIER MEMBRANE (VBM)
- VAPOR COLLECTION AND VENTING SYSTEM
- STRUCTURAL SLAB & PILES
- DRAINAGE SUMP
- WATER COLLECTION AND DRAINAGE SYSTEM

PUBLIC/FRANCHISE UTILITY RESPONSIBILITY:
- GAS
- TELECOMMUNICATIONS
- FIBER OPTIC
- CABLE TV
- SILICON VALLEY POWER (SVP)

PRIVATE STREETS W/ STRUCTURAL SLAB OVER FORMER LANDFILL
TYPICAL SECTION

N.T.S.



BUILDINGS W/ STRUCTURAL SLAB OVER FORMER LANDFILL
TYPICAL SECTION

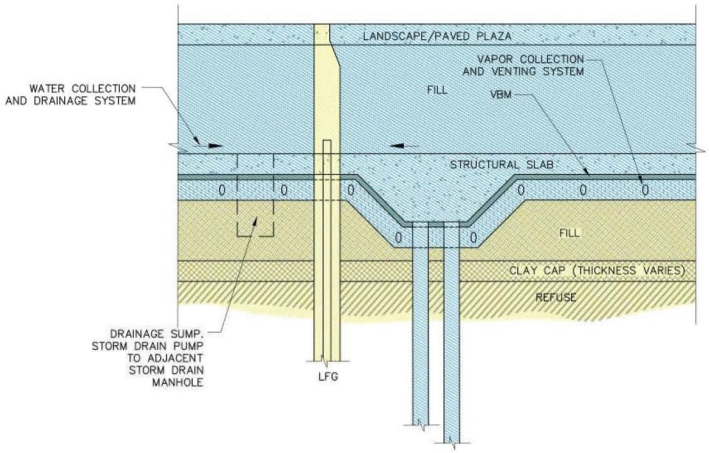
N.T.S.

LEGEND

CITY RESPONSIBILITY:
- FILL MATERIAL BELOW STRUCTURAL SLAB AND ABOVE CLAY CAP
- CLAY CAP & REFUSE

LEASEE RESPONSIBILITY:
- VAPOR BARRIER MEMBRANE (VBM)
- VAPOR COLLECTION AND VENTING SYSTEM
- STRUCTURAL SLAB & PILES

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ENGINEERS . SURVEYORS . PLANNERS
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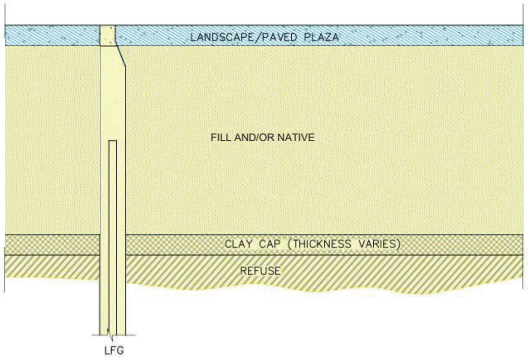
LANDSCAPE/PLAZA AREAS W/ STRUCTURAL SLAB OVER FORMER LANDFILL
TYPICAL SECTION

N.T.S.

LEGEND

CITY RESPONSIBILITY:
- FILL MATERIAL ABOVE CLAY CAP AND BELOW STRUCTURAL SLAB
- CLAY CAP & REFUSE
- LANDFILL GAS EXTRACTION WELL & COLLECTION SYSTEM (LFG)

LEASEE RESPONSIBILITY:
- LANDSCAPE AND/OR PAVED PLAZA AREAS
- FILL MATERIAL ABOVE VBM
- PRIVATE UTILITIES IN FILL (IF APPLICABLE)
- VAPOR BARRIER MEMBRANE (VBM)
- VAPOR COLLECTION AND VENTING SYSTEM
- STRUCTURAL SLAB & PILES
- DRAINAGE SUMP
- WATER COLLECTION AND DRAINAGE SYSTEM



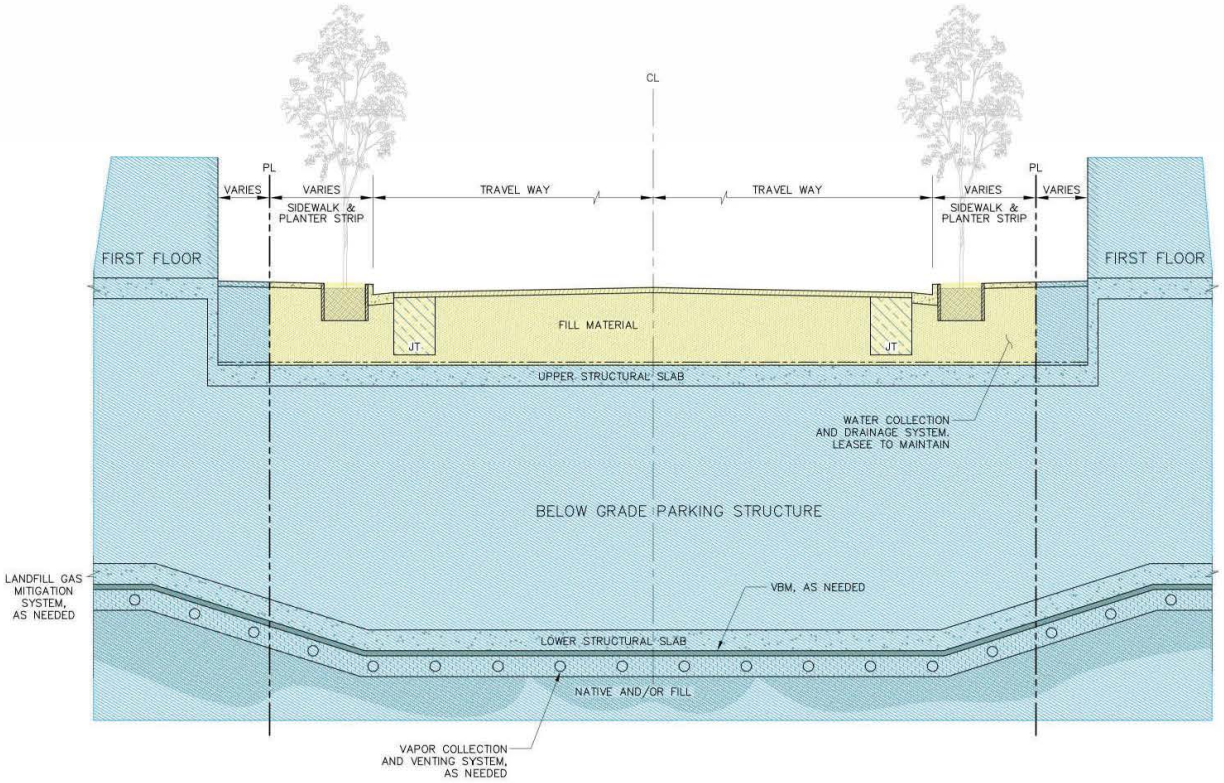
LEGEND

CITY RESPONSIBILITY:
- CLAY CAP & REFUSE
- LANDFILL GAS EXTRACTION WELL & COLLECTION SYSTEM (LFG)
- FILL/NATIVE MATERIAL ABOVE CLAY CAP

LEASEE RESPONSIBILITY:
- LANDSCAPE/PAVED PLAZA AREAS
- PRIVATE UTILITIES IN FILL (IF APPLICABLE)

LANDSCAPE/PLAZA AREAS OVER FORMER LANDFILL (NO STRUCTURAL SLAB)
TYPICAL SECTION

N.T.S.



PUBLIC STREETS OVER PARKING STRUCTURE (PARCEL 5)
TYPICAL SECTION

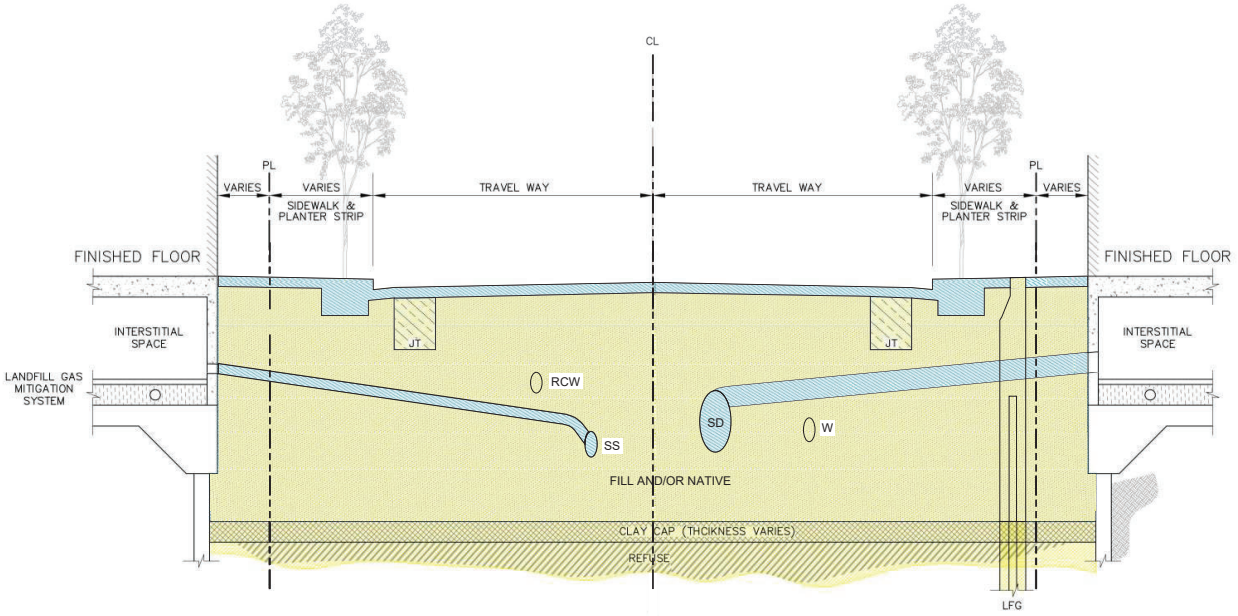
N.T.S.

LEGEND

CITY RESPONSIBILITY:
- CITY UTILITY MAINS
- SILICON VALLEY POWER (SVP)
- CURB & GUTTER
- ROADWAY PAVEMENT
- STREET TREES/LANDSCAPING
- FILL MATERIAL ABOVE UPPER STRUCTURAL SLAB

LEASEE RESPONSIBILITY:
- SIDEWALK
- FILL MATERIAL
- PARKING STRUCTURE
- LOWER STRUCTURAL SLAB
- UPPER STRUCTURAL SLAB
- VAPOR BARRIER MEMBRANE (VBM)
- VAPOR COLLECTION AND VENTING SYSTEM
- NATIVE AND/OR FILL SOIL BELOW LOWER STRUCTURAL SLAB

PUBLIC/FRANCHISE UTILITY RESPONSIBILITY:
- GAS
- TELECOMMUNICATIONS
- FIBER OPTIC
- CABLE TV



LEGEND

CITY RESPONSIBILITY:
- CITY UTILITY MAINS
- SILICON VALLEY POWER (SVP)
- LANDFILL GAS EXTRACTION WELL & COLLECTION SYSTEM (LFG)
- CLAY CAP & REFUSE
- FILL/NATIVE MATERIAL ABOVE CLAY CAP

LEASEE RESPONSIBILITY:
- PRIVATE UTILITY MAINS
- SIDEWALK
- CURB & GUTTER
- ROADWAY PAVEMENT
- STREET TREES/LANDSCAPING
- UTILITY SERVICE LATERALS
- STRUCTURAL SUPPORT (IF APPLICABLE)

PUBLIC/FRANCHISE UTILITY RESPONSIBILITY:
- GAS
- TELECOMMUNICATIONS
- FIBER OPTIC
- CABLE TV

PRIVATE STREETS W/O STRUCTURAL SLAB OVER FORMER LANDFILL
TYPICAL SECTION

N.T.S.

Exhibit C

Landfill O&M Responsibility Matrix

EXHIBIT C
LANDFILL RESPONSIBILITY MATRIX

NOTE 1: All requirements below are summarized for reference purposes only. The complete, detailed requirements applicable to each row in this matrix are as set forth in the PCLUP and WDRs, as applicable.

NOTE 2: Nothing in this Responsibility Matrix or the Agreement shall be construed to allocate any responsibility to Master Developer for a task related to any portion of the Landfill Parcel which is not a Project Parcel, except in the case of documents related to a particular Project Parcel required to be submitted in advance of the commencement of development activity on that Project Parcel.

REQUIREMENT	SOURCE	REFERENCE	RESPONSIBLE PARTY
Conduct periodic monitoring and testing activities in as required by BAAQMD Regulation 8, Rule 34, CCR Title 27, and Synthetic Minor Operating Permit (SMOP) condition 2935, Part 14. Compile results and include in an annual report along with system and individual wellhead operation and downtime.	PCLUP	Sec. 9.7.4	City, except with respect to the MD's obligations to prepare the O&M plan for the construction period, the pre-startup inspection and the system shakedown and start-up. (PCLUP Sec 9.7.1, 9.7.2)
Develop detailed OM&M plan with required maintenance and monitoring details during the Design Document Phase for review and authorization by the regulatory agencies prior to implementation.	PCLUP	Sec. 9.7.	Master Developer

EXHIBIT C: LANDFILL O&M RESPONSIBILITY MATRIX

REQUIREMENT	SOURCE	REFERENCE	RESPONSIBLE PARTY
Conduct system pre-startup inspection after completion of the placement of new LFG system process equipment and installation of the new LFG extraction wells prior to the LFG collection system operation.	PCLUP	Sec 9.7.1	Master Developer
Perform equipment shakedown and dry run testing following completion of the system construction and pre-startup inspection to ensure proper rotation of the motors, and individual automation and safety controls are functional.	PCLUP	Sec. 9.7.2	Master Developer
Check LCR system as scheduled or required for potential damages from seismic activities, corrosion, etc. Extract leachate and discharge to the sanitary sewer (pending permit approval).	PCLUP	Sec. 11.5	City
Monitor groundwater and surface waters at and adjacent to the Project Site on a semi-annual basis. Compile sampling results and include in semi-annual report.	PCLUP	Sec. 12.0	City
Maintain automatic methane monitoring system within the first floor of the buildings, set within certain alarm levels. In the event of an emergency, Building Engineering Manager to coordinate with the City's Fire Department appropriate actions and steps necessary to protect public health and safety and the environment, and immediately notify the LEA. Verify validity and record description of LFG sensor alarm for submission to LEA. During an evacuation, reoccupation prohibited until confirmed and approved by the City's Fire Department that: (1) concentrations of methane meet the applicable compliance requirements and that (2) the landfill gas mitigation system ("LFGMS") is operating in a manner that ensures adequate control of methane/vapor intrusion.	PCLUP	Sec. 13.1	Master Developer

EXHIBIT C: LANDFILL O&M RESPONSIBILITY MATRIX

REQUIREMENT	SOURCE	REFERENCE	RESPONSIBLE PARTY
Contact emergency services in the event of an emergency such as a fire or earthquake. During an evacuation, reoccupation prohibited until confirmed and approved by the City's Fire Department that: (1) concentrations of methane meet the applicable compliance requirements; and that (2) the LFGMS systems are operating in a manner that ensures adequate control of methane/vapor intrusion. After risk of immediate danger has subsided, inspect Project Site-wide systems for damage and evaluate for necessary repair, and notify LEA accordingly. After damages assessed, record a description of damages, steps to protect public health and safety and environment, and description of further corrective actions and submit to LEA.	PCLUP	Sec. 13.3	Master Developer as to emergencies within Project Parcels. City as to emergencies on portions of the Landfill Parcel outside any Project Parcel.

EXHIBIT C: LANDFILL O&M RESPONSIBILITY MATRIX

REQUIREMENT	SOURCE	REFERENCE	RESPONSIBLE PARTY
Conduct post-construction maintenance activities to maintain site features (pavement, foundation, landscaping) which compose the landfill cap, including inspection of landfill cover integrity and repair of landfill cover as needed. In landscaped areas, monitor condition of vegetation quarterly and monthly during wet-weather season; identify areas of irregular color or growth deficiency and note spread of conditions during future inspections. Fill and then reseed areas that have ponded water or have settled to reestablish the proper grade. Close off areas where slope failures have occurred to prevent damage to equipment or harm to individuals, and implement specific corrective action depending on the extent, nature, and location of the failure. Maintain record of final cover maintenance activities. Notify regulatory agencies if required.	PCLUP	Sec. 14.1	Master Developer as to site features within a Project Parcel during construction, and within Airspace Parcels after completion of construction. City as to City Landfill Systems and Landfill Parcels after completion of construction.
Inspect Project Site quarterly and monthly during the wet-weather season for evidence of ponding or degradation of the Project Site's drainage control system. Remedy ponding on the lower portions of the Project Site by either backfilling the area to provide positive drainage, or providing an acceptable downstream slope to an appropriate discharge point. Inspect property perimeter for failure and make temporary repairs if necessary.	PCLUP	Sec. 14.2	Master Developer

EXHIBIT C: LANDFILL O&M RESPONSIBILITY MATRIX

REQUIREMENT	SOURCE	REFERENCE	RESPONSIBLE PARTY
Examine accessible portions of LFG system piping for potential system failures on a monthly basis. Address system failures which would reduce system efficiency and/or effectiveness within 24 hours of detection. Perform preventative maintenance will be performed at manufacturer recommended intervals. Prepare LFG system operation and maintenance (O&M) manual following construction of the system and completion of record drawings.	PCLUP	Sec. 14.3	City
Ongoing operation and maintenance of the LFGMS. Repair or replace system components for operational reliability as needed during routine maintenance periods. If building improvement plans (e.g., tenant improvements) impact LFGMS components, portions of the LFGMS will be properly repaired. Prepare LFGMS O&M manual following construction of the LFGMS and completion of record drawings.	PCLUP	Sec. 14.4	Master Developer; City for LFGMS under any public street or other public area (although none are currently anticipated)
Ongoing operation and maintenance of the LCR system. Conduct system inspections whenever leachate is sampled. Prepare LCR system O&M manual following construction of the LCR system and completion of record drawings.	PCLUP	Sec. 14.5	City
Inspect groundwater monitoring wells for signs of failure or deterioration during each sampling event. If damage discovered, replace or repair well. If replaced, decommission existing, damaged well according to the California Well Standards guidelines for well destruction. Install new wells in accordance with California Well Standards guidelines.	PCLUP	Sec. 14.6	City

EXHIBIT C: LANDFILL O&M RESPONSIBILITY MATRIX

REQUIREMENT	SOURCE	REFERENCE	RESPONSIBLE PARTY
Compile results of periodic inspections and a summary of maintenance performed to the systems discussed in PCLUP Sections 14.1 through 14.6 and include in quarterly monitoring reports.	PCLUP	Sec. 14.7	City as to City responsibilities identified herein related to PCLUP Sections 14.1-14.6; Master Developer as to Master Developer responsibilities identified herein related to PCLUP Sections 14.1-14.6.
Waste management for future, planned or emergency, subsurface activities. Inspect and maintain the integrity of the cap and provide notification of activities that disturb the cap and measures performed to mitigate the disturbance.	PCLUP	Sec. 14.8	Master Developer as to Project Parcels. City as to portions of the Landfill Parcel outside of Project Parcels.
Implement a Detection Monitoring Plan (DMP) designed to demonstrate compliance with the Water Quality Protection Standard (WQPS). The WQPS must include: (i) Constituents of Concern (COCs); (ii) Monitoring Parameters for certain COCs; (iii) Concentration Limits; and (iv) Monitoring Points. Conduct monitoring activities in accordance with the SMP to verify effectiveness of the Landfill's systems for monitoring, containment, collection, treatment, and removal of groundwater, surface water, leachate, and landfill gas.	WDRs	Sec. B.1	City

EXHIBIT C: LANDFILL O&M RESPONSIBILITY MATRIX

REQUIREMENT	SOURCE	REFERENCE	RESPONSIBLE PARTY
Monitoring wells must be constructed in a manner that maintains the integrity of the drill hole, prevents cross-contamination of saturated zones, and produces representative groundwater samples from discrete zones within the aquifer unit each well is intended to monitor. All wells and borings at the Site that are no longer being used must be destroyed.	WDRs	Sec. B.2	City as to wells and borings it installs; Master Developer as to wells and borings it installs
Install additional groundwater and leachate monitoring devices as required pursuant to the operative SMP.	WDRs	Sec. B.3	City to install additional groundwater and leachate monitoring devices required as part of the Detection Monitoring Program; however, any additional groundwater or leachate monitoring devices required by or as a result of an investigation required by the WDRs which is performed by Master Developer, or as a result of Master Developer's activities to be the responsibility of Master Developer

EXHIBIT C: LANDFILL O&M RESPONSIBILITY MATRIX

REQUIREMENT	SOURCE	REFERENCE	RESPONSIBLE PARTY
All analyses must be conducted at a laboratory certified for such analyses by the California Department of Public Health, unless analyses can only be reasonably performed onsite (e.g., pH). Samples must be analyzed using approved U.S. EPA methods for the type of analysis to be performed. All laboratories must maintain quality assurance/quality control records for Regional Water Board review.	WDRs	Sec. B.4	City as to analyses performed by or on behalf of the City; Master Developer as to analyses performed by or on behalf of Master Developer
When necessary, file a written request with the Executive Officer proposing modifications to the SMP.	WDRs	Sec. B.5	City
Maintain the Landfill so as to prevent a measurably significant increase in water quality parameters at points of compliance.	WDRs	Sec. B.6	City as to monitoring for increases in water quality parameters at the "points of compliance". City for maintenance of City Landfill Systems and any portion of the Landfill Parcel outside the Project Parcels; Master Developer for all project features in the Developer Airspace Parcels or owned by Master Developer in the Project Parcels.

EXHIBIT C: LANDFILL O&M RESPONSIBILITY MATRIX

REQUIREMENT	SOURCE	REFERENCE	RESPONSIBLE PARTY
Whenever there is "measurably significant" geochemical evidence of an exceedance of concentration limits or significant physical evidence of a release, an Evaluation Monitoring Program (EMP) must be implemented at the direction of the Executive Officer.	WDRs	Sec. B.7	City to implement the Evaluation Monitoring Program; however, if it is determined that the source of the impact is caused or exacerbated from Master Developer's activities, then Master Developer to be responsible for (1) the cost of determining the source of the impact and (2) the cost of the Evaluation Monitoring Program.
All reports submitted pursuant to the WDRs must be prepared under the supervision of and signed by appropriately licensed professionals, as acceptable to the Executive Officer.	WDRs	Sec. B.8	City as to reports prepared by the City; Master Developer as to reports prepared by Master Developer.
Landfill piles or piers must be constructed so as not to impact water quality, serve as conduits for leachate or landfill gas/VOC, and be able to withstand stresses caused by settlement and seismic activity. Monitoring ports must be installed through the platform structure to observe and measure settlement around the piles or columns.	WDRs	Sec. B.9	Master Developer

EXHIBIT C: LANDFILL O&M RESPONSIBILITY MATRIX

REQUIREMENT	SOURCE	REFERENCE	RESPONSIBLE PARTY
Incorporate a contingency plan into all work plans for drilling through the refuse, whether for investigation purposes or for installation of wells, structural piles, or any excavation that may encounter waste.	WDRs	Sec. B.10	Master Developer as to any activity performed by or on behalf of Master Developer on the Project Parcels. City as to any drilling or well installation conducted by City.
Operate the landfill gas collection system and landfill gas mitigation system uninterrupted, except as required and permitted for maintenance and/or repairs.	WDRs	Sec. B.11	City for City Landfill Systems; Master Developer for Developer Landfill Systems
Prevent downwater migration of water and upward migration of landfill gas through cracks in the landfill cap that cannot be fully captured in the landfill gas mitigation systems.	WDRs	Sec. B.12	Master Developer as to Developer Airspace Parcels, and pilings and any Developer-maintained parks in a Project Parcel. City as to other portions of the Landfill Parcel outside the Developer Airspace Parcels.

EXHIBIT C: LANDFILL O&M RESPONSIBILITY MATRIX

REQUIREMENT	SOURCE	REFERENCE	RESPONSIBLE PARTY
Design and construct project features above the waste and within the development that are critical to the protection of all occupants and/or water quality to withstand stresses caused by landfill settlement and seismic activity.	WDRs	Sec. B.13	Master Developer for project features Master Developer designs and constructs. City for project features City designs and constructs (i.e. certain features in Parcel 3).
Ensure that access is available for inspection and repair of critical features within the development that are related to the protection of occupants, water quality and the structural features of the development.	WDRs	Sec. B.14	City for City Landfill Systems; Master Developer for all other project features.
Prior to the construction of each phase of development on top of the Landfill cap, certify that there is a continuous clay liner/cap at least one foot thick with permeability of less than 10-6 cm/sec above the Landfill in the parcel included in the area of phased construction.	WDRs	Sec. B.15	Master Developer
Design and maintain podium structures constructed over or adjacent to refuse to prevent infiltration of any fluids from migrating into the final cover of the Landfill.	WDRs	Sec. B.16	Master Developer

EXHIBIT C: LANDFILL O&M RESPONSIBILITY MATRIX

REQUIREMENT	SOURCE	REFERENCE	RESPONSIBLE PARTY
Notify the Regional Water Board of any failure occurring in the Landfill that threatens the integrity of containment or control features or structures at the Landfill.	WDRs	Sec. B.17	City to notify Regional Water Board of any failure; Master Developer must notify City of the failure of any project feature except for City Landfill Systems as soon as feasible but in no case later than twelve (12) hours after discovery of any such failure.

EXHIBIT C: LANDFILL O&M RESPONSIBILITY MATRIX

REQUIREMENT	SOURCE	REFERENCE	RESPONSIBLE PARTY
Grade and construct final cover systems for waste management units to promote lateral runoff and prevent ponding and infiltration of water.	WDRs	Sec. B.18	Master Developer as to grading and construction of final cover systems; City as to ordinary maintenance of public streets. Master Developer to be responsible for addressing any settlement/grading issues that arise on the Project Parcels.
Protect the Landfill from washout or erosion of wastes from inundation, which could occur as a result of a 100-year, 24-hour storm event or as the result of flooding with a return frequency of 100 years.	WDRs	Sec. B.19	City as to City Landfill Systems; Master Developer for all other project features.

EXHIBIT C: LANDFILL O&M RESPONSIBILITY MATRIX

REQUIREMENT	SOURCE	REFERENCE	RESPONSIBLE PARTY
Review of SMP after each phase of development and proposal of any improvements that may be necessary to identify water quality impacts from the Landfill that may be caused by development.	WDRs	Sec. B.20	City to review SMP; Master Developer to install any such improvements necessary
Install new monitoring stations to replace any monitoring wells designated as monitoring stations that are destroyed or lost during Landfill development or maintenances, so as to provide equivalent or better monitoring capacity.	WDRs	Sec. B.21	Master Developer to be responsible for replacement of monitoring wells/stations that are required due to Master Developer's activities; City to be responsible for replacement of monitoring wells/systems destroyed or lost during maintenance.

EXHIBIT C: LANDFILL O&M RESPONSIBILITY MATRIX

REQUIREMENT	SOURCE	REFERENCE	RESPONSIBLE PARTY
Maintain devices or designed features installed pursuant to the WDRs, such that they continue to operate as intended without interruption, except as required or permitted for scheduled maintenance or repairs.	WDRs	Sec. B.22	Master Developer for devices or features in Project Parcels during construction. After completion of construction, City for City Landfill Systems, Master Developer for Developer Landfill Systems.
Provide and maintain a sufficient number of permanent survey monuments near the landfill from which the location and change in elevation of wastes, structures placed above the waste, waste containment features, and monitoring facilities can be evaluated for settlement throughout landfill redevelopment, landfill closure, and landfill post-closure maintenance period.	WDRs	Sec B.23	City

EXHIBIT C: LANDFILL O&M RESPONSIBILITY MATRIX

REQUIREMENT	SOURCE	REFERENCE	RESPONSIBLE PARTY
Maintain and operate containment, collection, drainage, and monitoring systems for surface water, irrigation water, and stormwater. Maintain and operate containment, collection, drainage, and monitoring systems for groundwater and leachate.	WDRs	Sec. B.24	City with respect to LCR system, groundwater, and portions of the Landfill Parcel outside Project Parcels. Master Developer shall maintain and operate all other containment, collection, drainage, and monitoring systems in Project Parcels.
Monitor, vent, extract, and control landfill gases from the Landfill to prevent gas buildup in the Landfill or structures to minimize the danger of explosion, adverse health effects, nuisance conditions, or the impairment of beneficial uses of water.	WDRs	Sec. B.25	Master Developer as to LFGMS (except for any LFGMS on public streets or other public areas (although none are currently anticipated)); City as to City Landfill Systems.

EXHIBIT C: LANDFILL O&M RESPONSIBILITY MATRIX

REQUIREMENT	SOURCE	REFERENCE	RESPONSIBLE PARTY
Construct and maintain structures that control leachate, surface drainage, erosion and landfill gases to assure they can withstand conditions generated during the maximum probable earthquake (MPE) and are accessible for inspection and repair of damage caused by a seismic event.	WDRs	Sec. B.26	Master Developer as to construction of systems. Master Developer as to operation and maintenance obligations for Developer Landfill Systems; City for operation and maintenance of City Landfill Systems
Provide reasonable access to any property owned or leased at the Landfill to allow for installation, sampling, monitoring, inspection, etc., of all devices and equipment necessary for compliance with the requirements of the WDRs.	WDRs	Sec. B.27	City as to City Landfill Systems and City Landfill Parcels; Master Developer as to Developer Landfill Systems and Developer Airspace Parcels.
When there are multiple landowners or lease holders involved, ensure continued reasonable access to any property owned or leased at the Landfill to allow for inspection, sampling, monitoring, inspection of all devices and equipment necessary for compliance with the WDRs.	WDRs	Sec. B.28	City as to City Landfill Systems and City Landfill Parcels; Master Developer as to Developer Landfill Systems and Developer Airspace Parcels.
Comply with any other applicable provisions of Title 27 that are not specifically referenced in the WDRs.	WDRs	Sec. B.29	City and Master Developer, as applicable

EXHIBIT C: LANDFILL O&M RESPONSIBILITY MATRIX

REQUIREMENT	SOURCE	REFERENCE	RESPONSIBLE PARTY
Applicability of WDR Specifications (Section B)	WDRs	Sec. B.30	Applicability shall be as set forth in this Agreement
Comply with all conditions, Prohibitions, Specifications, and Provisions of the WDRs.	WDRs	Sec. C.1	City for its activities; Master Developer for its activities
Failure to submit reports in accordance with schedules established in the WDRs or failure to submit a report of sufficient quality may subject the Parties to enforcement action pursuant to Water Code § 13268.	WDRs	Sec. C.2	City as to reports to be submitted by the City; Master Developer as to reports to be submitted by Master Developer
Complete a Jurisdictional Delineation; obtain Water Quality Certification and WDRs. Water Quality Certification/WDRs must include specific mitigation measures. The mitigation plan must include a Monitoring and Maintenance Plan (MMP) sufficient to confirm the success of wetland mitigation projects. WDRs specify minimum components of MMP. Complete a jurisdictional delineation of wetlands and other water of the State that may be impacted by the project implementation before any development takes place. Obtain a Water Quality Certification pursuant to Clean Water Act § 401 and Waste Discharge Requirements pursuant to the California Water Code prior to impacting wetlands or other waters of the State. Any mitigation plan must include a monitoring and maintenance plan (MMP). Submit a cost estimate for funding the mitigation program. COMPLIANCE DEADLINE: 180 days prior to commencement of	WDRs	Sec. C.3	Master Developer. Any documentation submitted to a governmental agency pursuant to this requirement must first be reviewed and approved by City.

EXHIBIT C: LANDFILL O&M RESPONSIBILITY MATRIX

REQUIREMENT	SOURCE	REFERENCE	RESPONSIBLE PARTY
development activities on any portion of the property above the Landfill identified as a potential water of the State.			

EXHIBIT C: LANDFILL O&M RESPONSIBILITY MATRIX

REQUIREMENT	SOURCE	REFERENCE	RESPONSIBLE PARTY
Submit a Work Plan and Technical Report evaluating remaining data gaps for leachate/groundwater and select suitable locations for addition of monitoring wells to the SMP. Executive Officer may require a Corrective Action Plan if ongoing leachate monitoring indicates a buildup of leachate or a release of CVOCs or other monitoring parameters that may negatively impact beneficial uses of groundwater.	WDRs	Sec. C.4	Master Developer to submit work plan and technical report (after review and approval by City); City to conduct monitoring of wells that are added to the SMP; City to conduct any corrective action resulting from buildup of leachate or a release of CVOCs or other monitoring parameters that may negatively impact beneficial uses of groundwater provided that any corrective action required as a result of Master Developer activities shall be at the cost of Master Developer.

EXHIBIT C: LANDFILL O&M RESPONSIBILITY MATRIX

REQUIREMENT	SOURCE	REFERENCE	RESPONSIBLE PARTY
Monitor groundwater and landfill gas at test pile locations and possibly other locations where test piles are installed prior to the commencement of development, to evaluate the potential for the migration of landfill leachate into underlying groundwater, migration of landfill gases upward through the cap, and migration of atmospheric oxygen downward through the cap into the refuse. Submit Work Plan proposing methodology to be used and Technical Report summarizing the results of the evaluation.	WDRs	Sec. C.5	Master Developer to conduct monitoring and submit work plan and technical report (after review and approval by City).
Submit Post-Closure Maintenance Plan.	WDRs	Sec. C.6	Master Developer to prepare Post-Closure Maintenance Plan for each Phase, subject to City review and approval.
Prior to each phase of development over the Landfill, evaluate need for changes to ensure adequacy of Landfill's Detection Monitoring Plan (DMP) to promptly detect releases to groundwater or surface water from the Landfill or any changes in water quality that may have been caused by post-closure development activities. Propose to the Executive Officer any improvements needed to identify water quality impacts and demonstrate compliance.	WDRs	Sec. C.7	City; however, Master Developer shall be responsible for any additional improvements that may be necessary due to changes to the Detection Monitoring Program resulting from a phase of Project construction.

EXHIBIT C: LANDFILL O&M RESPONSIBILITY MATRIX

REQUIREMENT	SOURCE	REFERENCE	RESPONSIBLE PARTY
Submit a Technical Report that provides well construction details, geologic boring logs, and well development logs for all new wells installed or destroyed as part of the Detection Monitoring Plan (DMP) or other provisions of the WDRs.	WDRs	Sec. C.8	City to submit well construction reports for all new wells; however, Master Developer must submit to City well construction reports for wells required by or as a result of an investigation required by the WDRs which is performed by Master Developer, or as a result of Master Developer's activities
Prior to each phase of development over the Landfill, submit technical documents that include: (i) Landfill Cap Certification; (ii) Geotechnical Investigation Report and soil interaction evaluation; (iii) design details showing critical project features in accordance with WDR Section C.9.c; (iv) certification that all other required agency permits and approvals have been obtained; (v) certification that the proposed development is consistent with the April 2016 final EIR and November 17, 2016 final PCLUP.	WDRs	Sec. C.9	Master Developer

EXHIBIT C: LANDFILL O&M RESPONSIBILITY MATRIX

REQUIREMENT	SOURCE	REFERENCE	RESPONSIBLE PARTY
Prior to proposed grading or development greater than 1 acre in size, submit a Notice of Intent (NOI) to the State Water Board, submit a Stormwater Pollution Prevention Plan (SWPPP), and implement Best Management Practices (BMPs) for the control of stormwater in accordance with the State Water Board's General Permit for Stormwater Discharges Associated with Construction Activities (Order No. 2010-0014-DWQ, NPDES Permit No. CAS000002). Specifically, comply with the following requirements: (i) Prior to the start of the rainy season, ensure effective erosion control measures have been implemented; and (ii) Use appropriate sediment and silt control measures where areas of bare soil are exposed during the rainy season.	WDRs	Sec. C.10	Master Developer
Submit treatment plans for runoff generated from impervious surfaces to the Executive Officer for review; these treatment plans shall include the operation and maintenance manual for the treatment measures, identify the responsible party for implementing operation and maintenance of the treatment measures, and identify the funding source for operation and maintenance of the treatment measures.	WDRs	Sec. C.11	Master Developer as to stormwater runoff from Project Parcels, both during construction and after completion of construction. City responsible for NPDES related to groundwater and LCR system and for monitoring off-site water bodies.
Submit technical reports that describe design features and methods to access, inspect, and repair critical features above the landfill clay cap and within the development that are related to the protection of occupants, water quality, and the structural integrity of development features.	WDRs	Sec. C.12	Master Developer subject to City review and approval.

EXHIBIT C: LANDFILL O&M RESPONSIBILITY MATRIX

REQUIREMENT	SOURCE	REFERENCE	RESPONSIBLE PARTY
Submit semi-annual summary reports that certify that the landfill gas vapor system has operated uninterrupted during the reporting period and remains protective of human health and the environment.	WDRs	Sec. C.13	City for City Landfill Systems; Master Developer for Developer Landfill Systems.
Submit a technical report to the Regional Water Board detailing repair and maintenance activities that need to be completed prior to the commencement of the next rainy season, along with a schedule for repair, maintenance, and monitoring during the next 12 months.	WDRs	Sec. C.14	City; Master Developer to provide in a timely manner information regarding repair and maintenance activities to City for inclusion in report.
Submit an Emergency Response Contingency Plan acceptable to the Executive Officer outlining measures necessary in order to stop and contain the migration of pollutants to receiving waters as the result of any earthquake generating ground shaking, excessive rainfall, damaging tidal action, or other significant events. An Evacuation Plan must be implemented in the event that hazardous conditions pose a risk to the health and safety of occupants, visitor, or workers at the site.	WDRs	Sec. C.15	City responsible for Emergency Response Contingency Plan; Master Developer to provide to City in a timely manner all information necessary for the plan as it relates to the Developer Project features. Master Developer also to submit any evacuation plan needed.

EXHIBIT C: LANDFILL O&M RESPONSIBILITY MATRIX

REQUIREMENT	SOURCE	REFERENCE	RESPONSIBLE PARTY
Submit a Post-Earthquake Inspection Report acceptable to the Executive Officer in the event of an earthquake generating ground shaking of Moment Magnitude 5.5 or greater, at or within 30 miles of the Landfill, or any other earthquake that results in potentially damaging effects.	WDRs	Sec. C.16	City; Master Developer to provide to City in a timely manner all information necessary for the report as it relates to the Developer Project features
Upon discovery of water quality impacts or damage to the landfill cap or to structures that contain waste or control leachate, surface drainage, and landfill gases, submit a Corrective Action Plan.	WDRs	Sec. C.17	City. Master Developer will be responsible for the cost of investigating/ remediating conditions caused or exacerbated by the Master Developer or tenants or occupants of the Airspace Parcels.
Provide financial assurance for post-closure maintenance in accordance with Title 27. Provide evidence to the Executive Officer that the financial assurance mechanism is acceptable to CalRecycle.	WDRs	Sec. C.18	City
Provide financial assurance for corrective action in accordance with Title 27. Provide evidence to the Executive Officer that the financial assurance mechanism is acceptable to CalRecycle.	WDRs	Sec. C.19	City. Master Developer will be responsible for reimbursing the City for financial assurance required as a result of a corrective action required as a result of Master Developer activities.

EXHIBIT C: LANDFILL O&M RESPONSIBILITY MATRIX

REQUIREMENT	SOURCE	REFERENCE	RESPONSIBLE PARTY
Immediately notify the Regional Board of any flooding, ponding, settlement, equipment failure, or other change in landfill conditions that could impair the integrity of the landfill cap, building protection system, waste or leachate containment facilities, and/or drainage control structures and immediately make repairs. Submit a technical report documenting corrective measures taken.	WDRs	Sec. C.20	City to notify Regional Water Board of any such change in Landfill conditions; Master Developer must notify City of the failure of any change resulting on the Project Parcels as soon as feasible but in no case later than twelve (12) hours after discovery of any such failure.
Submit a report for long-term flood protection of the Landfill. Update the report every 5 years throughout the post-closure maintenance period of the Landfill.	WDRs	Sec. C.21	City
Maintain a copy of the WDRs and make available to all employees or contractors performing work at the Landfill.	WDRs	Sec. C.22	City and Master Developer
Provide notification of any proposed transfer of responsibility under the WDRs to a new discharger.	WDRs	Sec. C.23	City to notify the Executive Officer; however, Master Developer to notify City at least 90 days prior to any such proposed transfer of the WDR responsibilities, and include the required written agreement.
Correct Report of Waste Discharge if missing facts or includes incorrect information.	WDRs	Sec. C.24	City to submit any corrections; Master

EXHIBIT C: LANDFILL O&M RESPONSIBILITY MATRIX

REQUIREMENT	SOURCE	REFERENCE	RESPONSIBLE PARTY
			Developer to provide to City in a timely manner all facts or information necessary to submit such corrections as they relate to the Project Parcels.
Order subject to revision by RWQCB	WDRs	Sec. C.25	N/A
Order does not convey any property rights or exclusive privileges.	WDRs	Sec. C.26	N/A
Provisions of the Order are severable.	WDRs	Sec. C.27	N/A
Properly operate and maintain all facilities and systems of treatment and control installed or used to achieve compliance with the conditions of the WDRs.	WDRs	Sec. C.28	City for City Landfill Systems; Master Developer for Developer Landfill Systems
Report discharge of hazardous substance in or on any water of the State. Submit written report describing discharge and corrective actions taken or planned.	WDRs	Sec. C.29	City to report any discharge to the Regional Water Board; Master Developer to provide to City in a timely manner all any facts or information necessary for such a report to the extent that such discharge is caused by Developer, or emanates from the

EXHIBIT C: LANDFILL O&M RESPONSIBILITY MATRIX

REQUIREMENT	SOURCE	REFERENCE	RESPONSIBLE PARTY
			Project Parcels.
Allow the Regional Water Board access to premises for inspection.	WDRs	Sec. C.30	City as to the City Landfill Parcels; Master Developer as to the Developer Airspace Parcels
All analyses shall be conducted at a laboratory-certified for such analyses by the California Department of Public Health.	WDRs	Sec. C.31	City as to analyses performed by or on behalf of City; Master Developer as to analyses performed by or on behalf of Master Developer

EXHIBIT C: LANDFILL O&M RESPONSIBILITY MATRIX

REQUIREMENT	SOURCE	REFERENCE	RESPONSIBLE PARTY
Apply for NPDES permit for any point source discharges.	WDRs	Sec. C.32	Master Developer to prepare NPDES application for any new point source discharges; City to file the NPDES permit application; prior to issuance of a certificate of occupancy for any part of the Project, City and Master Developer to execute Project-specific agreement to ensure allocation of responsibilities under NPDES permit (including inspection and maintenance) consistent with the terms of this Agreement.
Report any event of noncompliance within 24 hours of being made aware of the circumstances. Submit a written report describing noncompliance and steps taken.	WDRs	Sec. C.33	City as to noncompliance it causes or which arises from City Landfill Systems; Master Developer for noncompliance it causes or which arises from Master Developer or tenants or occupants of the Airspace Parcels

EXHIBIT C: LANDFILL O&M RESPONSIBILITY MATRIX

REQUIREMENT	SOURCE	REFERENCE	RESPONSIBLE PARTY
Provide copies of all correspondence, technical reports, and other documents pertaining to compliance with the WDRs to (i) Regional Water Board; (ii) Santa Clara County Department of Environmental Health; (iii) CalRecycle; (iv) Santa Clara Valley Water District; and (v) City of Santa Clara, Water and Utilities.	WDRs	Sec. C.34	City as to technical reports submitted by City and City correspondence; Master Developer as to technical reports submitted by Master Developer and Developer correspondence
Hard copies of technical reports and plans should include: (i) Identification of any obstacles that may threaten compliance with the schedule; (ii) in the event of noncompliance with any Prohibition, Specification, or Provision of the WDRs, written notification that clarifies the reasons for non-compliance and proposes specific measures to achieve compliance; (iii) in the SMP, an evaluation of the current groundwater, surface water, and leachate monitoring systems and a proposal for modifications as appropriate; (iv) a signed transmittal letter and professional certification by a California-licensed civil engineer or a professional geologist.	WDRs	Sec. C.35.a.i	City as to technical reports submitted by the City; Master Developer as to technical reports submitted by Master Developer
The following information must be submitted electronically: (i) Groundwater, surface water, and leachate analytical data; (ii) Surveyed locations of monitoring wells; (iii) Boring logs describing monitoring well construction; (iv) PDF copies of all reports; and (v) any additional submittal to GeoTracker the Executive Officer requires.	WDRs	Sec. C.35.b	City as to technical reports submitted by the City; Master Developer as to technical reports submitted by Master Developer

Exhibit D

Insurance Requirements

EXHIBIT D

INSURANCE REQUIREMENTS

Master Developer shall maintain, with unaffiliated insurers, the policies of insurance described in this Exhibit D in form and substance reasonably satisfactory to the City (collectively, the "**Project Insurance Programs**"). Notwithstanding anything to the contrary herein, the parties acknowledge and agree that the intent of this Exhibit D is to provide anticipated minimum limits, baseline coverage parameters and material terms for the Project Insurance Programs based on information available at the time of execution of the O&M Agreement about what is reasonably commercially available and appropriate in light of the risks associated with the Parties' obligations under the Agreement. If coverage meeting the limits, parameters and terms set forth in this Agreement is not reasonably commercially available for any particular Project Insurance Program at the time such policy is required to be in place under this Exhibit, Master Developer and City shall meet and confer in good faith to determine what alternative coverage is reasonably commercially available and Master Developer shall be required to obtain and maintain policies providing such coverage.

Section I describes the Project Insurance Programs required during the performance of Pre-Phase Approved Activities (as defined on Schedule 1 attached hereto). **Section II** describes the Project Insurance Programs required upon execution of the Ground Lease for the Tasman Parcels (as defined in the DDA) (the "**Phase 1 Activities**"). **Section III** describes the Project Insurance Programs required upon the earlier of (i) execution of a Ground Lease for any real property that includes any portion of any Landfill Parcel; or (ii) commencement of physical work on, at, above or under any portion of any Landfill Parcel (except in connection with Pre-Phase Approved Activities) ("**Landfill Phase Activities**"). **Section IV** describes the operational Project Insurance Programs required after completion of Infrastructure, Developer Improvements (including Developer Landfill Systems), City Landfill Systems and/or Buildings (collectively, "**Improvements**"), as applicable, as evidenced by either (i) a temporary or permanent Certificate of Occupancy for such Developer Improvement and/or Building (or portion thereof); or (ii) the placement of any Infrastructure, Developer Improvement (including Developer Landfill Systems), City Landfill System and/or Building (or portion thereof) into its intended use in accordance with the terms of the Project Insurance Programs ("**Substantial Completion**")[1].

Capitalized terms used in this Exhibit D not otherwise defined herein shall have the same meaning as such terms in the Landfill Post-Closure Operation and Management Agreement (the "**O&M Agreement**") or as are commonly and presently defined in the insurance industry. For purposes of this Exhibit G, the term "**Project Parcel**" shall include the Tasman Parcels that will be ground leased to Master Developer in accordance with the terms of the DDA.

[1] Master Developer shall prepare and maintain a matrix detailing the specific coverages applicable to specific Improvements (the "Improvements Coverage Summary") including, without limitation, the status of Substantial Completion on the Improvements within any Phase or Partial Phase. The Improvements Coverage Summary shall be updated regularly during the term of the Project and Master Developer shall work in good faith with the City to maintain monthly status calls to discuss the Improvements Coverage Summary (or at such other reasonable intervals as requested by the City).

I. PRE-PHASE APPROVED ACTIVITIES. The Project Insurance Programs for any Pre-Phase Approved Activities shall be governed by the insurance terms set forth on the applicable Permit to Enter or other document authorizing such Pre-Phase Approved Activity as approved in writing by the City.

II. PHASE 1 ACTIVITIES. Prior to execution of the Ground Lease for the Tasman Parcels and at all times during Phase 1 Activities, the Master Developer shall obtain and maintain, or cause to be maintained, the following Project Insurance Programs until Substantial Completion has been achieved for the applicable Improvements on the Tasman Parcels or until commencement of Landfill Phase Activities, as specified herein.

(a) Builder's Risk Insurance. Master Developer shall obtain and maintain site-specific[2] builder's risk insurance with respect to Phase 1 Activities and otherwise consistent with the Builder's Risk Program described in Section III(a) below.

(b) Terrorism Insurance. The insurance required in this Section II, subsections (a), (d), (g) and (h) shall include, or the Master Developer shall obtain on a stand-alone basis, terrorism coverage for the Tasman Parcels on terms (including amounts) consistent with those required under those subsections.

(c) Flood Insurance. Master Developer shall obtain and maintain flood insurance on the Tasman Parcels consistent with the flood insurance requirements described in Section III(c) below.

(d) Owner's Interest Liability Insurance. Master Developer shall obtain and maintain commercial general liability insurance and umbrella and/or excess liability insurance (the "**Owner's Interest GL Program**"), including coverage for personal injury, bodily injury, death, accident and property damage, which insurance shall: (1) be on a site-specific "occurrence" form; (2) be the primary insurance for third-party bodily injury and property damage at, on or under the Tasman Parcels; and (3) collectively provide minimum coverage limits of at least (A) $25,000,000 per occurrence, (B) $25,000,000 general aggregate, and (C) $25,000,000 products completed operations aggregate over the term of the policy; provided, however, that upon commencement of vertical construction on the Tasman Parcels, Master Developer shall satisfy the foregoing requirements by obtaining and maintaining (including reinstatement of limits as set forth in Section III(d) below) an Owner or Contractor Controlled Insurance Program ("**OCIP/CCIP**") with limits of liability of at least $100,000,000 per occurrence and in the aggregate. The products and completed operations coverage shall be maintained for the entire statute of repose for construction defect claims in California. Master Developer shall exercise commercially reasonable efforts to avoid an exclusion for earth movement or subsidence under the Owner's Interest GL Program. The City will be scheduled as an additional insured under the Owner's Interest GL Program.

(e) Commercial Auto Liability Insurance. Master Developer shall obtain and maintain commercial auto liability insurance covering liability arising out of the ownership,

[2] Except as otherwise expressly provided hereunder the term "site-specific" shall refer to a policy specifying that the covered location is the Project Parcel for which the coverage is required and for no other property, *i.e.*, for the insurance required by this Section II, the term "site specific" means the covered location must be only the Tasman Parcels.

maintenance or use of any owned, hired, borrowed and non-owned vehicle, if any, with minimum limits of not less than $1,000,000 combined single limit for bodily injury and property damage, together with umbrella and/or excess liability insurance which is at least as broad as the commercial automobile liability insurance, with limits of not less than $25,000,000.

(f) Professional Liability Insurance. Master Developer shall cause any party involved in the design of Improvements on the Tasman Parcels to obtain and maintain Professional Liability Insurance consistent with the requirements described in Section III(f) below.

(g) Contractor's Pollution Liability. Master Developer shall continue to maintain the Contractor's Environmental Legal Liability Policy, No. 004130100 delivered to the City for the Pre-Phase Approved Activities provided that the insured "contracted operations" thereunder will be expanded to include all construction related activities on, at or under the Tasman Parcels.

(h) Pollution Legal Liability Insurance. Master Developer shall maintain site-specific Pollution Legal Liability insurance with respect to the Tasman Parcels with limits of liability equal to at least $10,000,000 per incident and in the aggregate and a self-insured retention of no more than $250,000 per incident, until the Pollution Legal Liability Insurance required under Section III(i) below is obtained. The City and the Master Developer (and their respective affiliates) will be named insureds thereunder. The City shall have the right to review quotes, policy forms and endorsements for the Pollution Legal Liability insurance.

III. LANDFILL PHASE ACTIVITIES. Upon the earlier of (i) execution of a Ground Lease for any real property that includes any portion of any Landfill Parcel; or (ii) commencement of Landfill Phase Activities and at all times during Landfill Phase Activities, the Master Developer shall obtain and maintain the following Project Insurance Programs until Substantial Completion has been achieved for the applicable Improvements in that particular Project Parcel (except as otherwise expressly provided hereunder):

(a) Builder's Risk Insurance. Master Developer shall maintain site-specific[3] builder's risk insurance (the "**Builder's Risk Program**") for each Project Parcel that includes a Landfill Parcel for not less than 100% of the completed project insurable replacement cost value of the Improvements and Earth Movement with a sublimit no less than the Probable Maximum Loss ("**PML**") as determined by an independent third-party professional (inclusive of property damage and soft costs/business interruption), which PML is reasonably acceptable to the City. In no event shall the earthquake coverage under the Builder's Risk Program have a limit of liability of less than the 250-year return period of the PML. The Builder's Risk Program shall include endorsements providing replacement cost coverage, agreed amount and/or coinsurance waiver. The Builder's Risk Program shall grant permission to occupy prior to any occupancy of a given building and the Builder's Risk Program shall cover:

[3] Consistent with footnote 2 and except as expressly provided hereunder, for the insurance required by this Section III, the term "site specific" means the covered location must include the specific Project Parcel that encompasses some or all of the applicable Landfill Parcel until such time that Substantial Completion has been achieved for such specific Project Parcel, and no other property.

(i) any Improvements on the property, including 100% of the insurable replacement cost value of all tenant improvements and City Landfill Systems and betterments that any agreement requires Master Developer to insure, against risks of loss to the Improvements customarily covered by "Cause of Loss - Special Form" policies as available in the insurance market on the date hereof (and against such additional risks of loss as may be customarily covered by such policies after the date hereof);

(ii) loss of materials, furniture, fixtures and equipment, machinery, and supplies which become part of the completed project whether on-site, as part of the City Landfill Systems, in transit, or stored off-site, or loss of any temporary structures, sidewalks, retaining walls, and underground property (including the systems comprising the City Landfill Systems);

(iii) soft costs, including coverage for interest expense during the period of the construction, and coverage for recurring expenses and delayed completion business income/rental interruption (if any) on an actual loss sustained basis subject to policy limits; and

(iv) loss of the value of the undamaged portion of the Improvements, additional expense of demolition, and increased cost of construction arising from operation of building laws or other legal requirements at the time of restoration, subject to a limit reasonably satisfactory to the City.

The Builder's Risk Program shall automatically reinstate limits upon the occurrence of any loss thereunder. The Builder's Risk Program shall be primary with respect to all property damage at, on or under the property at each applicable Project Parcel until Substantial Completion for the applicable Improvements in that Project Parcel occurs. The Builder's Risk Program shall also include affirmative LEG-3 coverage with respect to repair of physical damage to City Landfill Systems arising out of a loss. The City will be named as a "loss payee" on the Builder's Risk Program and the Master Developer shall have an affirmative obligation to promptly elect whether to commence and diligently pursue re-construction of the City Landfill Systems in the event of any loss thereunder, the terms of which election shall be described in the Insurance Administration Agreement.

(b) Terrorism Insurance. The insurance required in this Section III, subsections (a), (d), (g) and (h) shall include, or the Master Developer shall obtain on a stand-alone basis, terrorism coverage on terms (including amounts) consistent with those required under those subsections. For so long as the Terrorism Risk Insurance Program Reauthorization Act 2019 or any replacement, reauthorization or extension thereof ("TRIPRA") is in effect, coverage against acts which are "certified" within the meaning of TRIPRA shall satisfy this requirement. In the event TRIPRA is no longer in effect, Master Developer shall obtain and maintain such terrorism insurance to the extent such coverage is commercially available and reasonable cost.

(c) Flood Insurance. Flood insurance if any portion of the Project Site or personal property is currently or at any time in the future located in an area designated by the Federal Emergency Management Agency as a special flood hazard area ("SFHA") and in which flood insurance has been made available under the National Flood Insurance Act of 1968 (and any successor act thereto), but in no event no less than the amount sufficient to meet the

requirements of applicable law and governmental regulation. Flood insurance may be included in the Builder's Risk Program prior to Substantial Completion as an alternative to NFIP.

(d) Liability Insurance. Master Developer shall sponsor, administer and maintain a commercial general liability insurance and umbrella and/or excess liability insurance (the "**GL Insurance**") including coverage for personal injury, bodily injury, death, accident and property damage. The GL Insurance shall: (1) be on a site-specific "occurrence" form for each Project Parcel (except as otherwise provided herein); (2) be the primary insurance for third-party bodily injury and property damage at or on any Project Parcel at all times during Landfill Phase Activities at that Project Parcel; and (3) collectively provide minimum coverage limits of at least (A) $50,000,000 per occurrence, (B) $50,000,000 general aggregate, and (C) $50,000,000 products completed operations aggregate over the term of the policy for each Project Parcel. The products and completed operations coverage shall be maintained for the entire statute of repose for construction defect claims in California. Master Developer shall exercise commercially reasonable efforts: (i) to avoid an exclusion for earth movement or subsidence under the GL Insurance; and (ii) to include manuscript changes to the "pollution exclusion endorsement" providing affirmative coverage for concussive risk associated with the installation of piles and the other Landfill Phase Activities. Notwithstanding the foregoing, during the period of construction of improvements on Phase 2 and Phase 3 (each as defined in the DDA), Master Developer shall (and for subsequent phases, Master Developer may), satisfy these coverage requirements by implementing an OCIP/CCIP with limits of liability of at least $100,000,000 per occurrence and in the aggregate for each of Phase 2 and Phase 3. Master Developer may elect to obtain a single OCIP/CCIP for Phase 1 (as defined in the DDA), Phase 2 and Phase 3, in which event the limits of liability for such OCIP/CCIP program shall be at least $200,000,000 per occurrence and in the aggregate. The GL Insurance shall schedule the City as an additional insured, including with respect to both ongoing and completed operations, by endorsements satisfactory to the City. Such insurance shall be primary and any other insurance maintained by the City shall be excess only and not contributing with this insurance. Except for completed operations (which shall be an aggregate limit over the term of the general liability program), the Master Developer shall purchase additional limits of an amount equal to at least forty percent (40%) of the applicable per occurrence and aggregate limits of the GL Insurance for any Phase (or series of Phases to the extent covered under a single OCIP/CCIP) at any time that the applicable aggregate GL Insurance limit for such Phase (or series of Phases, as applicable) has been eroded by eighty percent (80%) or greater.

(e) Commercial Auto Liability Insurance. Commercial auto liability insurance covering liability arising out of the ownership, maintenance or use of any owned, hired, borrowed and non-owned vehicle, if any, with minimum limits of not less than $1,000,000 combined single limit for bodily injury and property damage, together with umbrella and/or excess liability insurance which is at least as broad as the commercial automobile liability insurance, with limits of not less than the applicable GL Insurance limits for such Project Parcel.

(f) Professional Liability Insurance. Master Developer shall cause any party involved in the design of Improvements to obtain and maintain Professional Liability Insurance during the period commencing on the date of such party's agreement and continuously renewing for or having an extended reporting period of not less than the statute of repose for design defects in California, with limits of insurance not less than: (1) $10,000,000 per claim and $20,000,000

in the aggregate for designers of record (which shall include any designer of piles penetrating any Landfill Parcel); (2) $5,000,000 per claim and in the aggregate for any designers of record for any components of the City Landfill Systems; (3) $2,000,000 per claim and in the aggregate for any other design professionals for any components of the City Landfill Systems; and (4) $1,000,000 per claim and in the aggregate for all other design professionals. Master Developer shall provide the City with certificates evidencing such insurance as each designer is contracted and thereafter, annually on a going forward basis or as otherwise requested by the City. The parties agree that the Insurance Administration Agreement shall describe the process of claims administration against design professionals between the City and Master Developer.

(g) Owner's Protective Professional Indemnity Insurance. At all times that any Landfill Phase Activity is ongoing in a particular Project Parcel, Master Developer shall obtain and maintain an Owner's Protective Professional Indemnity (Design Team Errors and Omissions) Policy ("**OPPI**") having a limit of liability of not less than $20,000,000 per claim and in the annual aggregate for Phases 1, Phase 2 and Phase 3; provided, however, Master Developer may, at its discretion, elect to implement a single OPPI program for Phase 1, Phase 2 and Phase 3 collectively, in which event the limits of liability for such OPPI program shall be at least $40,000,000 per occurrence and in the aggregate. City reserves the right to establish minimum OPPI limits for any real property that is not part of Phase 1, Phase 2 or Phase 3 prior to the execution of any Ground Lease on such real property. The OPPI shall provide the City (as owner of the City Landfill Systems) with affirmative coverage for defense and payment of loss for third-party claims resulting from design errors and omissions relating to the City Landfill Systems. Each OPPI program shall have a retro-active date coinciding with the execution of the earliest design agreement with respect to such Project Parcel and shall extend to cover the statute of repose for design defects in California for all Improvements on such Project Parcel. The parties agree that the Insurance Administration Agreement shall describe the process of claims administration for any professional liability losses at the Project Site. The City shall have the right to review, quotes, policy forms and endorsements (but not underwriting submissions) for the OPPI.

(h) Contractor's Pollution Liability Insurance. Master Developer shall maintain a Contractor's Pollution Liability ("**CPL**") insurance program covering cleanup costs and bodily injury and property damage claims through and including Substantial Completion for the applicable Improvements in that particular Project Parcel. The City shall have the right to review underwriting submissions, quotes, policy forms and endorsements for the CPL.

(i) The CPL shall have a limit of liability of at least $50,000,000 per incident and in the aggregate and coverage under the CPL shall be extended to third-party contractors performing work at the Project, including, without limitation, contractors performing operation and maintenance of the City Landfill Systems until Substantial Completion of all City Landfill Systems being constructed by Master Developer on any Project Parcel. The City will be a named insured under the CPL.

(ii) *Coverage Parameters.* The CPL shall: (a) provide site specific coverage for pollution conditions resulting from any contracted operations at any Project Parcel (whether on, at, under or above any Landfill Parcel), the definition(s) for which contracted operations shall include the realignment and reconstruction of City Landfill Systems by Master

Developer, the construction of foundation systems and building protection systems/vapor mitigation systems, and operation and maintenance activities associated with the City Landfill Systems to be performed by the City on such Project Parcel; (b) provide site specific coverage[4] for operation and maintenance activities associated with City Landfill Systems to be performed by the City on any portion of a Landfill Parcel that is not part of a Project Parcel (the "**City Non-Project Parcel O&M**") until Substantial Completion of all of the City Landfill Systems being constructed by Master Developer on all Landfill Parcels, subject to Section III (h)(iii) below; (c) provide coverage for cleanup of groundwater pollution conditions existing as of the date hereof to the extent such pollution conditions are exacerbated by Project contractors, Master Developer activities or City Non-Project Parcel O&M; (d) have no retroactive or reverse retroactive date; (e) have ten (10) years of "completed operations" coverage; and (f) be subject to a maximum self-insured retention of no more than $250,000 per incident. There shall be no exclusion or limitation of coverage to the City or Master Developer with respect to claims made against each other, notwithstanding the insured status of the parties. Issues related to the primacy of the CPL shall be addressed in the Insurance Administration Agreement.

(iii) *City Non-Phase O&M Sublimit.* The parties agree that the CPL shall be subject to a sublimit of $5,000,000 with respect to all losses arising out of the City Non-Phase O&M. Issues related to the implementation of such sublimit will be addressed in the Insurance Administration Agreement.

(iv) *City Reimbursement Obligation.* Within sixty (60) days of the binding of the CPL and any endorsements thereafter, the City shall reimburse Master Developer for ten percent (10%) of the total premium, surplus lines taxes and applicable brokerage fees required to purchase the CPL up to a maximum reimbursement amount of $200,000.

(i) Pollution Legal Liability Insurance. Master Developer shall maintain site-specific[5] Pollution Legal Liability insurance ("**PLL**") for the entire Project Site (including all Landfill Parcels and the Tasman Parcels) with limits of liability equal to at least $75,000,000 per incident and in the aggregate, a self-insured retention of no more than $250,000 per incident and an initial term of at least ten (10) years. Upon the expiration of the term of the PLL or such earlier date as Master Developer may elect, Master Developer shall exercise commercially reasonable efforts to obtain (subject to pollution insurance market conditions), a new policy of pollution legal liability insurance (the "**PLL Renewal**") having substantially the same coverage terms as the PLL with limits of liability of at least $75,000,000 per incident and in the aggregate, a self-insured retention no greater than $250,000 and a term of five (5) years or such longer term as would be necessary to ensure that the PLL Renewal remains in place until a date that is fifteen (15) years from the inception date of the initial PLL policy The City shall have the right to review underwriting submissions, quotes, policy forms and endorsements for the PLL and the PLL Renewal programs.

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[4] Notwithstanding footnotes 2 and 3, for this portion of the CPL coverage, "site specific" shall mean the entire Project Site except for the Tasman Parcels, including all Project Parcels and Landfill Parcels that are not yet a Project Parcel except for the Tasman Parcels.

[5] Notwithstanding footnotes 2 and 3, "site specific" for the PLL coverage required by this Section III(h) shall mean the entire Project Site is the covered location, including each Project Parcel, any Landfill Parcel that is not yet subject to a Ground Lease and the Tasman Parcels.

(i) *No Cancellation.* No insured may cancel or terminate the PLL or the PLL Renewal before the expiration of its term without the consent of both Master Developer and the City; provided, however, that the Master Developer may cancel and re-write the PLL and/or the PLL Renewal at Master Developer's discretion with materially the same terms upon commencement of any new Phase or Partial Phase.

(ii) *Coverage Parameters.* Subject to market availability and Project Site conditions, the PLL and the PLL Renewal shall include affirmative coverage for known and unknown pre-existing conditions regulatory re-openers and new pollution conditions. The PLL and the PLL Renewal shall provide affirmative coverage for third-party bodily injury and property damage claims (including natural resource damages). The Master Developer shall use commercially reasonable efforts to obtain coverage under the PLL and the PLL Renewal for: (x) off-site cleanup costs related to the known groundwater plume; (y) losses and on-site cleanup costs relating to a governmental order or directive requiring the City or Master Developer to perform active remedial measures for pollution conditions which have migrated into groundwater from the landfill including, without limitation, related site investigations, which coverage may contain a higher self-insured retention than $250,000 per incident. The PLL and the PLL Renewal shall be primary and non-contributory to any other insurance carried by the City and the "insured vs. insured" exclusion shall not be applicable to claims between the Master Developer and the City. Issues related to the primacy of the PLL shall be addressed in the Insurance Administration Agreement. The City and Master Developer (and their respective affiliates) shall be included as named insureds on the PLL and the PLL Renewal with the ability to directly make claims to the insurance carrier thereunder and no third-parties other than affiliates of the City and Master Developer, or a Master Association which has executed an Assignment, Assumption and Release Agreement pursuant to Section 10 of the O&M Agreement or a Successor Entity or Mortgagee deemed to be a Successor Entity for purposes of Section 3 of Exhibit E of this Agreement, shall be a named insured under the PLL.

(iii) *City Reimbursement Obligation.* Within sixty (60) days of the binding of the PLL and PLL Renewal, as applicable, the City shall reimburse Master Developer for twenty percent (20%) of the total premium, surplus lines taxes and applicable brokerage fees for the PLL and PLL Renewal, as applicable, up to a maximum reimbursement of $250,000 for each of the PLL and PLL Renewal.

IV. FOLLOWING SUBSTANTIAL COMPLETION. Following Substantial Completion for any Improvement, Partial Phase or Phase, as applicable, and, except as expressly provided to the contrary, while any Ground Lease remains in effect, Master Developer shall maintain, or cause to be maintained:

(a) Property Insurance. Property insurance covering against risks of loss customarily covered by "Cause of Loss – Special Form" policies together with coverage for earthquake as may be commercially available in the insurance market at the completion date (and against such additional risks of loss as may be customarily covered by such policies after the completion date) ("**Property Insurance**"). Such insurance shall include:

(i) 100% of the insurable replacement cost value of the Improvements which for purposes of this Exhibit shall mean actual replacement value (exclusive of costs of

excavations, foundations, underground utilities and footings) with an agreed amount endorsement without margin clause except as may be reasonably agreed by the City, and/or a coinsurance waiver endorsement and a replacement cost value endorsement without reduction for depreciation;

(ii) 100% of the insurable replacement cost value of all tenant improvements and betterments that any agreement requires Master Developer to insure;

(iii) loss of the value of the undamaged portion of the Improvements, additional expense of demolition, and increased cost of construction arising from operation of building laws or other legal requirements at the time of restoration; and

(iv) "Cause of Loss – Special Form" insurance policy which shall cover at least the following perils: building collapse; fire; flood; back-up of sewers and drains; water damage; windstorm, earthquake, landslide, mudslide and subsidence, inclusive of property damage and soft costs/business interruption with a maximum deductible of 5% of the loss and flood may have a sublimit of such amount not less than the replacement cost of the replacement value of the improvements and contents of the two floors above grade. Such insurance policy(ies) shall name Master Developer as the Insured and shall also name the City as an additional named insured with the unrestricted ability to make a claim thereunder.

(b) Terrorism Insurance. The insurance required in this Section IV, subsections (a), (f) and (j) shall include, or the Master Developer shall obtain on a stand-alone basis, terrorism coverage on terms (including amounts) consistent with those required under those subsections. For so long as TRIPRA is in effect, coverage against acts which are "certified" within the meaning of TRIPRA shall satisfy this requirement. In the event TRIPRA is no longer in effect, Master Developer shall obtain and maintain such terrorism insurance to the extent such coverage is commercially available and reasonable cost.

(c) Flood Insurance. Flood insurance if any portion of the Property or personal property is currently or at any time in the future located in an area designated by the Federal Emergency Management Agency as a SFHA and in which flood insurance has been made available under the National Flood Insurance Act of 1968 (and any successor act thereto) in an amount no less than the amount sufficient to meet the requirements of applicable law and governmental regulation.

(d) Equipment Breakdown Insurance. If not included in the Property Insurance policy retained in accordance with Section IV (a), Master Developer shall maintain equipment breakdown insurance covering all mechanical and electrical equipment, including pressure vessels and piping, against physical damage, and loss of income or rents (if any), extra expense, and expediting expense. Master Developer shall provide Equipment Breakdown Insurance on a replacement cost value basis in an amount consistent with insurance maintained by owners of similarly situated commercial real estate.

(e) Business Income and Rent Loss Insurance. As an extension to its Property Insurance, Earth Movement Insurance, Flood Insurance, Terrorism Insurance, Boiler and Machinery Insurance, and any other required property insurance policy, Master Developer shall

maintain, or cause to be maintained, business income and rent loss insurance in an amount equal to one hundred percent (100%) of the net rental income together with continuing expenses and containing an unlimited indemnity period pertaining to the time to repair or rebuild (subject to the policy limit). In addition, Business Income and Rent Loss Insurance shall be endorsed to include an extended period of indemnity of three hundred sixty five (365) days.

(f) Commercial General Liability Insurance. Commercial general liability insurance on an "occurrence" form including coverage for personal injury, bodily injury, death, and property damage on a per location basis, if available, with limits of not less than $1,000,000 per occurrence and in the aggregate.

(g) Commercial Auto Liability Insurance. Commercial auto liability insurance covering liability arising out of the ownership, maintenance or use of any owned, hired, borrowed and non-owned vehicle, if any, with minimum limits of not less than $1,000,000 combined single limit for bodily injury and property damage.

(h) Workers' Compensation Insurance. Workers' compensation as required by applicable law and employer's liability insurance.

(i) Umbrella/Excess Liability Insurance. Umbrella/excess liability insurance with limits of at least $200,000,000 per occurrence and in the annual aggregate sitting excess of the commercial general liability, commercial auto liability and employer's liability insurance. The commercial general liability, commercial auto liability and umbrella/excess liability insurance shall name the City as an additional insured. Such insurance shall be primary and any other insurance maintained by the City shall be excess only and not contributing with this insurance.

(j) Pollution Legal Liability Insurance. City and Master Developer agree to meet in good faith at the expiration of the PLL Renewal to discuss obtaining additional pollution legal liability programs.

V. GENERAL.

(a) Insurer Ratings. Master Developer shall obtain all required insurance (and reinsurance) from insurers authorized to do business in the State where the Property is located with an "A-: VIII" rating by A.M. Best or an alternative insurance company rating bureau acceptable to the City. The City may in its discretion permit Master Developer to maintain required insurance policies with insurance companies which do not meet the foregoing requirements.

(b) Documentation. For the types of insurance where this Exhibit provides the City with a right to review quotes, policy forms or endorsements, Master Developer agrees to provide the City with a reasonable opportunity to review and to consider in good faith the City's comments. Master Developer shall provide certificates of insurance as may be requested by the City, in a form reasonably acceptable to the City for all required insurance, certified as true and complete by the carrier or its authorized representative.

(c) Site-Specific Programs. Except where this Exhibit expressly provides that a type of insurance must be site-specific, as defined in footnotes 2, 3, 4 and 5 above, the requirements of this Exhibit (including without limitation the requirements for first-party terrorism, commercial auto liability insurance, worker's compensation insurance and all of the Project Insurance Programs described in Section IV hereof) may be satisfied through coverage applicable to both the Project Site and other properties insured by Master Developer.

(d) Captive. Master Developer shall have the right to satisfy all or part of its insurance obligations with respect to first-party terrorism and any self-insured retention for the GL OCIP by means of a policy or policies placed with its captive insurance company Relsure Vermont Inc. (the "**Captive**") provided that the use of the Captive is in compliance with all laws and regulations applicable to the Project.

(e) Severability. All Project Insurance Programs shall provide that coverage under each Project Insurance Program shall apply as if each insured were the only insured and separately to each insured so that any misrepresentation, act or omission that is in violation of a term, duty or condition or results in the application of an exclusion under any program by or on behalf of one insured shall not prejudice the coverage rights of another insured under such program.

(f) Waiver of Subrogation. The CPL, PLL and PLL Renewal shall each include a waiver of subrogation in favor of the City so that the insurance company waives its rights of subrogation with regard to all claims covered by such programs.

(g) Minimum Limits. Notwithstanding anything to the contrary herein, the limits of coverage for all types of Project Insurance Programs required under this Exhibit D shall be the greater of (i) the minimum limits set forth in this Exhibit D or (ii) the limits provided to Master Developer under all primary, excess, umbrella and blanket policies covering operations under the O&M Agreement on a site-specific basis.

(h) Audit. The City shall have the right: (i) at least once per year; (ii) at any time that the City has a reasonable basis of actual or suspected non-compliance by Master Developer of the O&M Agreement; or (iii) during the pendency or administration of any claim under the Project Insurance Programs, to conduct an audit of some or all policies and certificates of insurance to confirm the Master Developer's compliance with the terms hereof. If any audit reveals discrepancies or non-compliance with the terms hereof, the cost of such audit shall be at Master Developer's expense.

Schedule 1

Pre-Phase Approved Activities

"Pre-Phase Approved Activities" shall mean the following:

1. Construction of the "Public Improvements" as approved by the City under that Permit to Enter between the City and Master Developer dated July 5, 2019, effective July 8, 2019 to May 31, 2020.

2. Construction of the "Fire Station Improvements" as approved by the City under that Permit to Enter between the City and Master Developer dated July 5, 2019, effective July 8, 2019 to March 1, 2020.

3. Any other activities expressly approved by the City in writing and evidenced by one or more Permits to Enter.

Exhibit E

Miscellaneous Provisions

EXHIBIT E

MISCELLANEOUS PROVISIONS

Reference is made to that certain Disposition and Development Agreement dated for reference purposes as of August 12, 2016, and recorded October 7, 2016, as Document No. 23456796 in the Official Records of Santa Clara County, California, as it may be amended from time to time (the "**DDA**").

The term "**this Agreement**" as used in this Exhibit, shall mean the Landfill Post-Closure Operation and Management Agreement, to which this Exhibit is attached. The use of the term "**Developer**," as used in this Exhibit, shall have the same meaning as the "Master Developer," as defined in the introductory paragraph of this Agreement. Defined terms not otherwise set forth in this Agreement shall have the meanings set forth in Exhibit A to the DDA.

1. Arbitration.

1.1 Arbitration Matters. All disputes arising from, or related to the subject matter of, this Agreement (each, an "**Arbitration Matter**") shall be resolved by binding arbitration in accordance with the binding arbitration procedures provided herein. The Parties agree that, to the extent there are disputes under this Agreement, such disputes are likely to relate to matters of an urgent nature; therefore, the Parties have agreed that such disputes should be resolved in an expedited matter as set forth in Section 1.3 below.

1.2 Good Faith Meet and Confer Requirement.

1.2.1 The Parties agree that they share an interest in preventing misunderstandings that could become claims against one another under this Agreement. The Parties agree to attempt to identify and discuss in advance in good faith any areas of potential misunderstanding that could lead to a dispute. If either Party identifies an issue of disagreement, the Parties agree to engage in a face-to-face or immediate telephonic discussion of the matter within five (5) days of the initial request. Notwithstanding the foregoing, the failure of any Party to meet and confer as provided herein shall not impair the exercise of remedies available for any Event of Default.

1.2.2 With respect to any dispute regarding an Arbitration Matter, the Parties shall attempt in good faith to resolve the dispute for a period of ten (10) days after this Article 1 is invoked. If the dispute remains unresolved at the end of the ten (10) day period, then the Parties shall have the right to pursue the dispute resolution process set forth in Section 1.3.2 (the date on which one Party notifies another of its intent to pursue the dispute resolution process shall be referred to herein as the "**Arbitration Initiation Date**"). Nothing in this Section 1.2 shall require a Party to postpone instituting

any injunctive proceeding or to pursue resolution under this Section 1.2 if it believes in good faith that such postponement will cause irreparable harm to such Party.

1.3 Dispute Resolution Procedures.

1.3.1 Arbiters. The arbitrator ("**Arbiter**") of Arbitration Matters will be selected by mutual agreement of the Parties. The Arbiter will hear all disputes under this Agreement. The Arbiter appointed must meet the Arbiters' Qualifications. The "**Arbiter's Qualifications**" shall be defined as a retired judge or an attorney with at least ten (10) years' experience in complex real estate transactions, including without limitation, projects involving matters related to environmental remediation and the operation of remedial systems similar to the Project Landfill Systems in the California area. If the Parties cannot mutually agree on an Arbiter within seven (7) days after the Arbitration Initiation Date, then an Arbiter meeting the Arbiter's Qualifications shall be appointed by the Presiding Judge of the Superior Court of Santa Clara County.

1.3.2 Arbitration Process. The Party(ies) disputing any Arbitration Matter shall submit a brief with all supporting evidence to the Arbiter with copies to all Parties no later than the date (the "**Arbitration Briefing Date**") that is the later to occur of (a) the fifteenth (15th) Business Day after the Arbitration Initiation Date or (b) the fifth (5th) Business Day after the Arbiter is selected by the Parties or appointed by the Presiding Judge of the Superior Court of Santa Clara County. Evidence may include, but is not limited to, expert or consultant opinions, any form of graphic evidence, including photos, maps or graphs and any other evidence the Parties may choose to submit in their discretion to assist the Arbiter in resolving the dispute. In either case, any interested Party may submit an additional brief within five (5) Business Days after distribution of the initial brief. The Arbiter thereafter shall hold a telephonic hearing and issue a decision in the matter promptly, but in any event within ten (10) Business Days after the Arbitration Briefing Date, unless the Arbiter determines that further briefing is necessary, in which case the additional brief(s) addressing only those items or issues identified by the Arbiter shall be submitted to the Arbiter (with copies to all Parties) within ten (10) Business Days after the Arbiter's request, and thereafter the Arbiter shall hold a telephonic hearing and issue a decision promptly, but in any event within ten (10) Business Days after submission of such additional briefs, and no later than thirty (30) Business Days after the Arbitration Briefing Date. The decision of the Arbiter will be final, binding on the Parties and non-appealable. Nothing in this Section 1.3 shall require a Party to postpone instituting any injunctive proceeding if it believes in good faith that such postponement will cause irreparable harm to such Party.

(a) Time Period to Complete Arbitration. The arbitration shall be completed within sixty (60) calendar days of the preliminary hearing, unless the Parties to the dispute mutually agree to extend the date or the Arbiter extends the date.

1.3.3 Additional Provisions Governing Arbitration of Disputes.

(a) Disputes Involving Arbitrability of Disputes. The Arbiter shall decide any dispute involving the right to have a disputed matter submitted to binding arbitration pursuant to Section 1.3 in accordance with this Section 1.3. The Parties to such dispute shall provide notice of the dispute and submit in writing their respective positions regarding the dispute to the Arbiter. No such submission shall exceed ten (10) double-spaced pages. The Arbiter shall make his or her decision within five (5) days of the last submission.

(b) No Ex Parte Communications. No Party or anyone acting on its behalf shall have any ex parte communication with the Arbiter with regard to any matters in issue. Communications concerning procedural matters such as scheduling shall not be included in this prohibition.

(c) Submission. Unless otherwise directed by the Arbiter or agreed by the Parties to a given dispute, the Parties involved in the dispute shall strive to make joint submissions to the Arbiter. The Arbiter shall determine the schedule for the Parties' submissions, the page and form limitations for the submissions, and the schedule and form of any hearing(s).

(d) Rules and Procedures. The Arbitration shall be conducted by JAMS pursuant to the JAMS Rules & Procedures, except as modified herein.

(e) Confidentiality. The entire Arbitration proceedings, including~~:~~ any filings in the Arbitration; documents exchanged by the parties and/or their counsel in connection with the Arbitration; testimony or evidence produced therein; and any decision and award, shall be confidential and not disclosed to any third party (other than a party's professional consultants only to the extent necessary for them to perform their services) unless under compulsory process of law or state or federal law or regulation.

2. Event of Default; Remedies.

2.1 General. If a Party breaches any of its obligations under this Agreement (the "**Breaching Party**"), the Party to whom the obligation was owed (the "**Notifying Party**") may notify the Breaching Party of such breach. The notice shall state with reasonable specificity the nature of the alleged breach, the particular provision of Section 2.2 under which the breach is claimed to arise and the manner in which the failure of performance may be satisfactorily cured. Failure to cure such breach within the time period specified in Section 2.2 shall be an "**Event of Default**" by the Breaching Party under this Agreement.

2.1.1 Upon delivery of a notice of breach, the Notifying Party and the Breaching Party shall promptly meet to discuss the breach and the manner in which the Breaching Party can cure the same. If before the end of the applicable cure period the breach has been cured to the reasonable satisfaction of the Notifying Party, the Notifying Party shall issue a written acknowledgement of the Breaching Party's cure of the matter which was the subject of the notice of breach.

2.1.2 If the alleged breach has not been cured or waived within the time permitted for cure in accordance with Section 2.2 hereof, the Notifying Party may (i) extend the applicable cure period or (ii) institute such proceedings and/or take such action as is permitted in this Agreement with reference to such breach.

2.2 Particular Breaches by the Parties.

2.2.1 Event of Default by Developer. The Parties agree that each of the following shall be deemed to be an Event of Default by Developer under this Agreement:

(a) Developer causes or allows to occur, as to itself, an Assignment not permitted under this Agreement, and the Assignment is not reversed or voided within thirty (30) days following Developer's receipt of notice thereof from City; or

(b) Developer fails to perform any obligation under this Agreement, and such failure continues past ten (10) days after receipt of written notice thereof from City, provided that (i) if such default or breach relates to a non-monetary obligation and reasonably requires longer than ten (10) days to cure, Developer shall be permitted additional time to cure such default so long as Developer commences the cure within such ten (10) day period and diligently and continuously pursues the same to completion within ninety (90) days of the date that the cure first commenced, unless otherwise extended in writing by the City; and (ii) such ten (10) day cure period shall be extended at all times during which Developer is pursuing recovery for such default or breach under the Project Insurance Programs as provided in the Insurance Administration Agreement.

2.2.2 Event of Default by City. The Parties agree that if City fails to perform any obligation under this Agreement, and such failure continues past ten (10) days after receipt of written notice thereof from Developer (or, if such default is not reasonably susceptible of cure within ten (10) days, and City fails to commence the cure within such ten (10) day period and diligently pursue the same to completion), then such failure shall be deemed to be an Event of Default by City under this Agreement.

2.3 Remedies.

2.3.1 General. If an Event of Default occurs and is not waived in writing by the non-breaching Party, then the non-breaching Party shall have the

following remedies, which are not exclusive but cumulative, in addition to any other remedies now or later allowed by law or in equity:

(a) The right to cure, at the Breaching Party's cost and expense, any Event of Default and recover such costs, together with interest thereon and reasonable attorneys' fees and costs of court, in which case the defaulting Party shall reimburse the non-defaulting Party for the costs incurred by the non-defaulting Party in curing the default within fifteen (15) days after receipt of an invoice therefor from the non-defaulting Party;

(b) The right to sue to collect any sums not paid when due, together with interest accrued thereon and reasonable attorneys' fees and costs of court incurred in collecting the same;

(c) The right to sue to collect damages suffered by the non-breaching party by reason of the occurrence of an Event of Default other than breach in the payment of money, together with reasonable attorneys' fees and costs of court incurred in such proceedings; or

(d) The right to injunctive relief including seeking specific performance of the breached obligation, together with reasonable attorneys' fees and costs of court incurred in such proceedings.

2.3.2 Specific Performance. Upon an Event of Default, the aggrieved Party may institute proceedings in a court of proper jurisdiction to compel injunctive relief or specific performance to the extent permitted by law (except as otherwise limited by or provided in this Agreement) by the Party in breach of its obligations. Nothing in this Section 2.3.2 shall require a Party to postpone instituting any injunctive proceeding if it believes in good faith that such postponement will cause irreparable harm to such Party.

2.4 Rights and Remedies Cumulative; No Consequential, Punitive, or Special Damages. The rights and remedies of the Parties contained in this Agreement shall be cumulative, and the exercise by any Party of any one or more of such remedies shall not preclude the exercise by it, at the same or different times, of any other remedies contained in this Agreement for the same breach by the applicable Party. In addition, the remedies provided in this Agreement do not limit the remedies provided in other agreements and documents. Notwithstanding anything to the contrary herein, to the fullest extent permitted by law, neither Party shall be liable for any indirect, consequential, punitive, or special damages in any way from or associated with this Agreement, and each Party expressly waives any claims against the other Party, and covenants not to sue the other, for indirect, consequential, punitive, or special damages under this Agreement.

2.5 No Implied Waiver. No waiver made by a Party for the performance or manner or time of performance (including an extension of time for performance) of any

obligations of the other Party or any condition to its obligations under this Agreement shall be considered a waiver of the rights of the Party making the waiver for a particular obligation of the other Party or condition to its own obligation beyond those expressly waived in writing

3. Assignment.

3.1 Assignment Defined. Except as otherwise specifically provided in this Article 3 or Article 7, Developer shall not without the approval of City (each, subject to the exclusions set forth herein, an "**Assignment**"):

3.1.1 sell, assign, pledge, mortgage or otherwise encumber its interest in this Agreement; or

3.1.2 sell, assign, transfer, pledge, mortgage or otherwise grant a security interest in any interest of Developer in this Agreement, whether by operation of law or otherwise, nor shall any sale, Assignment, transfer, pledge, mortgage, or grant of a security interest be effected of all or any part of the issued or outstanding capital stock of a corporation that is Developer or of its Controlling Owner, whether held directly or indirectly, and whether made voluntarily, involuntarily, by operation of law or otherwise, if the same shall result in a Change of Control of Developer, nor shall there be any merger or consolidation of Developer or of such Controlling Owner into or with another corporation, nor shall any of the same be effected with respect to any interest in a partnership that is Developer or in a partnership that is its Controlling Owner, whether directly or indirectly, and whether made voluntarily, involuntarily, by operation of law or otherwise, if the same will result in a Change of Control of Developer, nor shall any of the same be effected with respect to any managing member's interest in a limited liability company that is Developer or in a limited liability company that is its Controlling Owner, whether directly or indirectly, and whether made voluntarily, involuntarily, by operation of law or otherwise, if the same will result in a Change of Control of Developer.

3.1.3 For the avoidance of doubt, the delegation of rights and obligations under this Agreement to an Affiliate of Developer shall not require the approval of City so long as Developer remains primarily obligated under this Agreement.

Notwithstanding any provision of this Agreement to the contrary, nothing contained in this Article 3 shall restrict in any manner, prohibit, require notice to, or require the Approval of City for (a) any Assignment or any form of transfer in or of the equity interests in any Person whose common stock is quoted on a recognized securities exchange such as the New York Stock Exchange or NASDAQ or (b) an Assignment or any form of other transfer of any equity interests in Developer or any other Person that does not, directly or indirectly, result in a Change of Control of Developer or such other Person.

3.2 Assignment to Master Owners' Association. Notwithstanding anything to the contrary in this Article 3, Developer shall have the right to transfer its rights

and obligations under this Agreement to a Master Owners' Association in accordance with Section 10 of this Agreement.

3.3 Assignment to Successor Entity. Notwithstanding anything to the contrary in this Article 3, so long as Developer is not in default of this Agreement pursuant to Article 2 hereof, Developer shall have the right at any time to effect an Assignment (x) of this Agreement to any entity to which Developer has assigned its interest in the DDA or (y) of the obligations under this Agreement to design and/or construct the Project Landfill Systems on all or any portion of Parcel 1 or Parcel 2 (as more particularly identified on Exhibit B-4 (Map of Project Site) to the DDA) to a Phase Developer of the subject portion of such Project Parcels (each, a "Successor Entity"). Such Assignment shall become effective only upon full execution of an Assignment, Assumption and Release Agreement in a form reasonably acceptable to the City, pursuant to which the Successor Entity assumes all applicable rights and obligations under this Agreement from the Developer and Developer is released of all such obligations and liabilities hereunder. In connection with any such Assignment, the City shall make good faith efforts to support the substitution, in whole or in part, of a Successor Entity for the Developer in the WDRs.

3.4 Other Assignments. Any other Assignment of this Agreement shall be subject to the approval of City, which approval shall be given or withheld in City's sole discretion.

3.5 Release. If, as and when Developer assigns and the transferee assumes all or any of Developer's obligations under this Agreement as set forth above, then from and after the date of such assignment, the Developer assigning this Agreement (and all prior Developers) shall automatically and conclusively be released from the assigned obligations under this Agreement, other than (i) any obligations that arose and were to be performed prior to the effective date of such assignment (unless also assumed in writing by the transferee) and (ii) any obligations retained by Developer in accordance with the applicable Assignment, Assumption and Release Agreement. Promptly after request by Developer, City shall confirm the foregoing release by a writing in form and substance reasonably satisfactory to City and Developer.

3.6 Liability for Default. No transferee shall be liable for any default by Developer or another transferee in the performance of its respective obligations under this Agreement, and Developer shall not be liable for the default by any transferee in the performance of its respective obligations; provided, that the foregoing provision shall not be applicable to either a transferee or Developer to the extent either has expressly assumed or expressly remains liable for such obligation under the terms of the applicable Assignment, Assumption and Release Agreement. Except as provided in this Section 3.7, an Event of Default by Developer or a transferee shall not entitle City to exercise any remedy, or otherwise affect any rights, under this Agreement against any Person other than the Person that is in default.

4. Representations and Warranties.

4.1 Developer's Representations. Developer hereby represents and warrants to City as of the date of full execution of this Agreement that:

4.1.1 Developer is a limited liability company duly organized and existing in good standing under the laws of the State of Delaware, and qualified to do business in the State of California;

4.1.2 Developer has the full right, power, authority and legal capacity to execute and deliver this Agreement, to execute and deliver the instruments referred to herein, and to enter into and fully perform the transactions contemplated hereby, or thereby;

4.1.3 All actions and consents required by Developer to authorize the transactions contemplated by this Agreement have been duly performed and obtained;

4.1.4 All Persons who execute this Agreement and the instruments contemplated by this Agreement on behalf of Developer will be duly authorized and empowered on behalf of Developer to do so and to enter into all transactions contemplated by this Agreement, and by such instruments; and

4.1.5 The execution, delivery and consummation of the transactions contemplated hereby and performance of this Agreement have not and will not conflict with any provisions of any federal, state laws or regulations to which Developer is subject, or conflict with, result in any breach of, or constitute a default under, any mortgage, deed of trust, lease, bank loan or credit agreement, corporate charter, bylaws or other instrument to which Developer is a party or by which Developer or its assets may be bound or affected.

4.2 City's Representations. City hereby represents and warrants to Developer as of the date of full execution of this Agreement that:

4.2.1 City is a municipal corporation duly organized and validly existing under the laws of the State of California and has the full right, power, authority and legal capacity to execute and deliver this Agreement, to execute and deliver the instruments referred to herein, and to enter into and fully perform the transactions contemplated hereby, or thereby;

4.2.2 All actions and consents required by City to authorize the transactions contemplated by this Agreement have been duly performed and obtained;

4.2.3 All Persons who execute this Agreement and the instruments contemplated by this Agreement on behalf of City will be duly authorized and

empowered on behalf of City to do so and to enter into all transactions contemplated by this Agreement, and by such instruments; and

4.2.4 The execution, delivery and consummation of the transactions contemplated hereby and performance of this Agreement have not and will not conflict with any provisions of any federal, state laws or regulations to which City is subject, or conflict with, result in any breach of, or constitute a default under, any mortgage, deed of trust, lease, bank loan or credit agreement, corporate charter, bylaws or other instrument to which City is a party or by which City or its assets may be bound or affected.

5. Limitations on Liability. It is understood and agreed that no City Party shall be personally liable to Developer, nor shall any direct or indirect partners, members or shareholders of Developer or its or their respective officers, directors, agents or employees (or their successors or assigns) be personally liable to City, in the event of any default or breach of this Agreement by City or Developer or for any amount that may become due to Developer or City or any obligations under the terms of this Agreement; provided, that the foregoing shall not release obligations of a Person that otherwise has liability for such obligations, such as (i) the general partner of a partnership that, itself, has liability for the obligation or (ii) the obligor under any security covering such obligation.

6. Additional Provisions.

6.1 Entire Agreement; Amendment. This Agreement, and its attachments, terms, and conditions, embodies the entire agreement between the Parties relative to the matters set forth herein. No other understanding, agreements, or conversations with any officer, agent, or employee of City shall affect or modify any of the terms or obligations contained in any documents comprising this Agreement. It is mutually understood and agreed that no amendment to this Agreement shall be valid unless made in writing and signed by the Parties.

6.2 Waiver. Any waiver of any provision of this Agreement by a Party must be in writing and signed by a Person having authority to do so on behalf of such Party. No waiver made by a Party for the performance or manner or time of performance (including an extension of time for performance) of any obligations of any other Party or any condition to its obligations under this Agreement shall be considered a waiver of the rights of the Party making the waiver for a particular obligation of the other Party or condition to its own obligation beyond those expressly waived in writing.

6.3 Captions and Table of Contents. The captions of and names of defined terms in this Agreement are for convenience of reference only and are not intended to define, limit or describe the scope or intent of this Agreement or otherwise affect the interpretation of this Agreement. The Table of Contents (if any) is for the purpose of convenience of reference only and is not intended to be a part of this Agreement or to be used in interpreting this Agreement.

6.4 Extensions of Time.

6.4.1 Any Party may in its sole discretion extend the time for the performance of any term, covenant or condition of this Agreement by a Party owing performance to the extending Party, or permit the curing of any related default, upon such terms and conditions as it determines appropriate; provided, however, any such extension or permissive curing of any particular default shall not operate to release any of the obligations of the Party receiving the extension or cure rights or constitute a waiver of the granting Party's rights with respect to any other term, covenant or condition of this Agreement or any other default in, or breach of, this Agreement.

6.4.2 In addition to matters set forth in Section 6.4.1, the Parties may in their sole discretion extend the time for performance by any of them of any term, covenant or condition of this Agreement by a written instrument signed by authorized representatives of such Parties without the execution of a formal recorded amendment to this Agreement, and any such written instrument shall have the same force and effect and (once recorded) impart the same notice to third parties as a formal recorded amendment to this Agreement. For the purposes of this Section 6.4, City's authorized representative shall be the City Manager.

6.5 Interpretation. Wherever in this Agreement the context requires, the use of a verb in any tense shall be construed as the use of the verb in all other tenses, references to the masculine shall be deemed to include the feminine and the neuter and vice-versa, and references to the singular shall be deemed to include the plural and vice versa. Unless otherwise specified, whenever in this Agreement, including its attachments, reference is made to the Table of Contents (if any), any Section, Exhibit or any defined term, the reference shall be deemed to refer to the Table of Contents (if any), Section, Exhibit or defined term of this Agreement. Any reference to a Section includes all subsections and subparagraphs of that Section. The use in this Agreement of the words "including", "such as" or words of similar import when following any general term, statement or matter shall not be construed to limit such statement, term or matter to the specific statements, terms or matters, whether or not language of non-limitation, such as "without limitation" or "but not limited to", or words of similar import, is used with reference thereto. In the event of a conflict between the Recitals and the remaining provisions of this Agreement, the remaining provisions shall prevail, except as to definitions provided in the Recitals.

6.6 More than One Person. If Developer's obligations under this Agreement are assumed by more than one Person (including but not limited to a new Developer), City may require the signatures of each such Person on any notice given by Developer, except to the extent that any such Person shall designate to any other such Person the right to act as such Person's attorney in fact to act on its behalf, which designation shall be effective until receipt by City of notice of its revocation. Nothing herein shall be construed as conferring on any such Person any rights or obligations to or

against any other such Person. Without limiting the other provisions of this Agreement, each Person named as or that becomes Developer under this Agreement shall be fully, and jointly and severally, liable for all of Developer's obligations hereunder.

6.7 Time of Performance.

6.7.1 All performance (including cure) dates expire at 5:00 p.m. Pacific Time on the applicable date for performance (including cure), as such date may be extended pursuant to the effect of any extension of time permitted in this Agreement.

6.7.2 Where a date set forth in this Agreement is a calendar month without reference to a specific day in such month, or a year without reference to a specific month in such year, the date in question shall be the last day in such month or year, as applicable.

6.7.3 If the last day of any period to give notice, reply to a notice, meet a deadline, or undertake any other action occurs on a day that is not a Business Day, then the last day for undertaking the action or giving or replying to the notice shall be the next succeeding Business Day.

6.7.4 Time is of the essence in the performance of all the terms and conditions of this Agreement for which a time for performance is specified.

6.8 No Third Party Beneficiaries. This Agreement is made and entered into only for the protection and benefit of the Parties and their successors and assigns. No other Person shall have or acquire any right or action of any kind based upon the provisions of this Agreement except as explicitly provided to the contrary in this Agreement.

6.9 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California. All references in this Agreement to California or federal laws and statutes shall mean such laws, regulations and statues as they may be amended from time to time, except to the extent a contrary intent is stated.

6.10 Successors and Assigns. The agreements, terms, covenants and conditions herein shall be binding upon, and shall inure to the benefit of, the Parties and their respective successors and (to the extent permitted hereunder) assigns.

6.11 Relationship of the Parties. None of the provisions in this Agreement shall be deemed to render any of the Parties a partner in any other Party's business, or a joint venturer or member in any joint enterprise with any other Party. No Party shall have the right to act as the agent of any other Party in any respect hereunder.

6.12 Construction. This Agreement shall be construed without regard to any presumption or other rule requiring construction against the Party causing this Agreement to be drafted. In the event of any action, suit, arbitration, dispute or proceeding affecting the terms of this Agreement, no weight shall be given to any deletions or striking out of any of the terms of this Agreement contained in any draft of this Agreement and no such deletion or strike out shall be entered into evidence in any such action, suit, arbitration, dispute or proceeding nor given any weight therein.

6.13 Further Assurances. Each Party shall execute and deliver such further documents, and perform such further acts, as may be reasonably necessary or desirable to achieve the Parties' intent in entering into this Agreement.

6.14 Numbers.

6.14.1 Generally. For purposes of calculating a number under this Agreement where a whole number is required, any fraction equal to or greater than one half (1/2) shall be rounded up to the nearest whole number and any fraction less than one half (1/2) shall be rounded down to the nearest whole number.

6.14.2 Number of Days. References in this Agreement to days shall be to calendar days unless otherwise specified.

6.15 No Gift or Dedication. Except as otherwise specified in this Agreement, this Agreement shall not be deemed to be a gift or dedication of any portion of the Project to the general public, for the general public, or for any public use or purpose whatsoever.

6.16 Correction of Technical Errors. If by reason of inadvertence, and contrary to the intention of Developer and City, errors are made in this Agreement in a legal description or the reference to or within any Exhibit with respect to a legal description, in the boundaries of any parcel (provided such boundary adjustments are relatively minor and do not result in a material change), in any map or drawing that is an Exhibit, or in the typing of this Agreement or any of its Exhibits, Developer and City by mutual agreement may correct such error by memorandum executed by both of them and replacing the appropriate pages of this Agreement, and no such memorandum or page replacement shall be deemed an amendment of this Agreement. The memorandum may be signed by the City Manager on behalf of the City, without formal approval by the City Council and, if required, the memorandum shall be recorded in the Official Records of Santa Clara County to provide notice of such correction to third parties.

6.17 Severability. If any term or provision of this Agreement or the application thereof to any Person or circumstances shall, to any extent, be invalid or unenforceable (an "**Excluded Term**"), the remainder of this Agreement, or the application of such Excluded Term to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this

Agreement shall be valid and be enforced to the fullest extent permitted by law. Notwithstanding the foregoing, if either Party considers an Excluded Term material to this Agreement, the Parties shall negotiate in good faith to adopt alternative terms or provisions that will achieve the objectives of the Excluded Term as closely as possible while avoiding the problem causing the Excluded Term to be invalid or unenforceable, and if unable to agree the matter shall be resolved through Arbitration.

6.18 Legal Representation. Each Party acknowledges, warrants and represents to each other Party that it has been fully informed with respect to, and represented by counsel of its choice in connection with, the rights and remedies of and waivers by it contained in this Agreement and after such advice and consultation has presently and actually intended, with full knowledge of its rights and remedies otherwise available at law or in equity, to waive and relinquish those rights and remedies to the extent specified in this Agreement, and to rely solely on the remedies provided for in this Agreement with respect to any breach of this Agreement by any other Party.

6.19 Counterparts. This Agreement may be executed in any number of counterparts, each of which, when so executed and delivered, shall be deemed an original, and all of which together shall constitute one and the same instrument. This Agreement shall become effective when the Parties have duly executed and delivered signature pages to this Agreement to each other. Delivery of this Agreement may be effectuated by hand delivery, mail, overnight courier or electronic communication (including by PDF sent by electronic mail, facsimile or similar means of electronic communication). Any signatures (including electronic signatures) delivered by electronic communication shall have the same legal effect as physically delivered original signatures.

6.20 Survival. Termination of this Agreement shall not affect (i) the right of any Party to enforce any and all rights and obligations under this Agreement to the extent they relate to the period before termination, or (ii) any provision of this Agreement that, by its express terms, is intended to survive the expiration or termination of this Agreement.

6.21 Estoppel Certificates.

6.21.1 Developer Estoppels. At any time, and from time to time, upon not less than fifteen (15) days' notice by City, Developer shall execute, acknowledge and deliver to City and to any other Person reasonably requested by City a statement certifying: (a) that this Agreement is unmodified and in full force and effect (or, if there have been modifications, that the same, as modified, is in full force and effect and stating the modifications), (b) whether or not any amounts due and owing by Developer to City under this Agreement have been paid, (c) whether or not, to Developer's actual knowledge, City is in default in performance of any covenant, agreement or condition contained in this Agreement, and, if so, specifying each such default of which Developer has actual knowledge, and (d) as to any other matter with respect to this Agreement as City may reasonably request.

6.21.2 City Estoppels. At any time, and from time to time, upon not less than fifteen (15) days' notice by Developer, City shall execute, acknowledge and deliver to Developer and to any other Person reasonably requested by Developer a statement certifying: (a) that this Agreement is unmodified and in full force and effect (or, if there have been modifications, that the same, as modified, is in full force and effect and stating the modifications), (b) whether or not any amounts due and owing by Developer to City under this Agreement have been paid, (c) whether or not, to City's actual knowledge, Developer is in default in performance of any covenant, agreement or condition contained in this Agreement and, if so, specifying each such default of which City has actual knowledge, and (d) as to any other matter with respect to this Agreement as Developer may reasonably request.

6.22 Approvals.

6.22.1 As used herein, "Approval" and any variation thereof (such as "Approved" or "Approve") refer to the prior written consent of the applicable Party or other Person. When used with reference to a Governmental Authority, such terms are intended to refer to the particular form of consent or approval required from such Governmental Authority in order to obtain the Authorization being sought.

6.22.2 Whenever Approval is required or permitted to be given by any Party under this Agreement, it shall not be unreasonably withheld, conditioned or delayed unless the Approval is explicitly stated in this Agreement to be within the "sole discretion" (or words of similar import) of the Party whose Approval is sought. A Party that denies an Approval under this Agreement, or that gives a conditional Approval, shall in giving such denial or conditional Approval state the reasons therefor in reasonable detail, unless such Approval is explicitly stated in this Agreement to be within the "sole discretion" (or words of similar import) of the Party whose Approval is sought. It is understood and agreed that the granting of any consent or approval by a Party to another Party under this Agreement to perform any act of requiring such Party's consent or approval under this Agreement, or the failure by a Party to object to any such action taken by any other Party without the former Party's consent or approval, shall not be deemed a waiver by the former Party of its right to require such consent or approval for any further similar act by any other Party. In determining whether to give an Approval, City shall not require changes from or impose conditions inconsistent with the Project Documents, except to the extent that City reasonably determines that such changes or conditions are necessary for important reasons of public health or safety.

6.22.3 Notwithstanding the foregoing, it is specifically acknowledged by all Parties that Section 6.22.2 shall not apply to any Approval given by a public entity in its regulatory capacity. Such Approvals shall be governed by the standards of review generally accorded by the state courts of California.

6.23 Nondiscrimination.

6.23.1 There shall be no discrimination against or segregation of any person or group of persons on any basis listed in subdivision (a) or (d) of section 12955 of the California Government Code, as those bases are defined in sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of section 12955, and section 12955.2 of the California Government Code, or on the basis of age, race, color, creed, sex, sexual orientation, gender identity, marital or domestic partner status, disabilities (including AIDS or HIV status), religion, national origin or ancestry by Developer or any occupant or user of the Project in the sale, lease, rental, sublease, transfer, use, occupancy, tenure or enjoyment of the Project, or any portion thereof. Neither Developer itself (nor any person or entity claiming under or through it), nor any occupant or user of the Project or any transferee, successor, assign or holder of any interest in the Project or any person or entity claiming under or through such transferee, successor, assign or holder, shall establish or permit any such practice or practices of discrimination or segregation in connection with the Project, including with reference to the selection, location, number, use or occupancy of buyers, tenants, vendees or others. Notwithstanding the foregoing, no Person shall be in default of its obligations under this Section 6.23 where there is a judicial action or arbitration involving a bona fide dispute over whether such person is engaged in discriminatory practices and such person promptly acts to satisfy any judgment or award against such person.

Any transferee, successor, assign, or holder of any interest in the Project, or any occupant or user thereof, whether by contract, lease, rental, sublease, license, deed, deed of trust, Mortgage or otherwise, and whether or not any written instrument or oral agreement contains the above prohibitions against discrimination, shall be bound by, and shall not violate in whole or in part, directly or indirectly, the nondiscrimination requirements set forth above. The covenants in this Section 6.23 shall be covenants running with the land and they shall be: (i) binding for the benefit and in favor of City, as beneficiary and the owner of any other land or of any interest in any land in the Project, as beneficiary, and their respective successors and assigns; and (ii) binding against Developer, its successors and assigns to or of the Project and any improvements thereon or any portion thereof or any interest therein, and any party in possession or occupancy of the Project or the improvements thereon or any portion thereof.

6.24 Notice of Termination. In the event of any termination of this Agreement in whole or in part in accordance with the terms of this Agreement, the terminating Party shall provide the other Parties with a copy of any proposed Notice of Termination at least fifteen (15) days before recording the same. After the expiration of such fifteen days, the terminating Party may cause the Title Company to record such Notice of Termination in the Official Records. Any such "Notice of Termination" shall be in recordable form and describe the portion of the Project Site to which such termination pertains. Following the recordation of any Notice of Termination, the terminating Party shall promptly provide a conformed copy of such recorded Notice of Termination to City, Developer, and any applicable Mortgagee. The recordation of a Notice of Termination

shall not affect in any manner the rights of City, Developer, or any applicable Mortgagee to contest the terminating Party's right to cause such recordation.

6.25 Attorneys' Fees.

6.25.1 Should any Party institute any action or proceeding in court or other dispute resolution mechanism permitted or required under this Agreement, the prevailing party shall be entitled to receive from the losing party the prevailing party's reasonable costs and expenses incurred including expert witness fees, document copying expenses, exhibit preparation costs, carrier expenses and postage and communication expenses, and such amount as may be awarded to be reasonable attorneys' fees and costs for the services rendered the prevailing party in such action or proceeding. Attorneys' fees under this Section 6.25 shall include attorneys' fees on any appeal.

6.25.2 For purposes of this Agreement, reasonable fees of attorneys and any in-house counsel shall be based on the average fees regularly charged by private attorneys with an equivalent number of years of professional experience in the subject matter area of the law for which the in-house counsel's services were rendered who practice in the City in law firms with approximately the same number of attorneys as employed by the City.

6.26 Notices.

6.26.1 Notice Addresses. Whenever this Agreement permits or requires that a notice, demand, request, consent, approval or other communication to be given by a Party (each, a "Notice"), and whenever either Party desires to give or serve a Notice, such Notice must be in writing and shall not be effective for any purpose unless it is in writing and given or served as follows: (a) by personal delivery (including by same day commercial courier or messenger service) with receipt acknowledged; (b) delivered by reputable, national overnight delivery service (with its confirmatory receipt therefor), next Business Day delivery specified; or (c) sent by an electronic mail with a confirmatory copy to be delivered thereafter by duplicate notice in accordance with either clause (a) or (b) of this Section 6.26); in each case to the Parties at the following addresses:

If to Developer:

Related Santa Clara, LLC
c/o the Related Companies
60 Columbus Circle
New York, NY 10023
Attn: Joshua Young

and

Related Santa Clara
5201 Great America Parkway, Suite 532
Santa Clara, California 95054
Attn: Chief Legal Officer

With a copy to:

Paul Hastings LLP
101 California Street, 48th Floor
San Francisco, CA 94111
Attn: Gordon Hart, Esq.

If to City:

City of Santa Clara
1500 Warburton Avenue
Santa Clara, CA 95050
Attn: City Manager

With a copy to:

City of Santa Clara
1500 Warburton Avenue
Santa Clara, CA 95050
Attn: City Attorney

A Party may change the address(es) to which any Notice is to be delivered to such Party by furnishing ten (10) days' written notice of such change(s) to the other Parties in accordance with the provisions of this Section 6.26. The attorney for any Party may send Notices on that Party's behalf.

To be effective, every notice given to a Party under the terms of this Agreement must be in writing and must state (or must be accompanied by a cover letter that states) substantially the following: (a) the Section of this Agreement under which the notice is given; (b) if applicable, the action or response required; (c) if applicable, the period of time within which the recipient of the notice must respond thereto; (d) if applicable, the period of time within which the recipient of the notice must cure an alleged breach; (e) if Approval is being requested, shall be clearly marked "Request for Approval"; and (f) if a notice of a disapproval or an objection that requires reasonableness, shall specify with particularity the reasons for the disapproval or objection.

6.26.2 When Notices Deemed Given. Every Notice shall be deemed to have been given or served (a) if given by hand or overnight delivery service, upon delivery thereof, or (b) if given by electronic mail, upon delivery by such means to

the addressee if delivered before 5:00 pm (in the recipient's time zone) on a Business Day, otherwise on the next Business Day, regardless of the timing of receipt of any confirmatory copy, in each case with failure to accept delivery to constitute delivery for such purpose and with inability to deliver because of changed address of which no Notice was given under this Section 6.26 to constitute delivery for such purpose (provided, that, the sending Party shall use good faith efforts to deliver to any other address of the intended recipient known to the sending Party).

6.27 Hiring Efforts. Developer and its Contractors and Consultants shall make good faith efforts to (i) recruit, employ, and contract with qualified individuals and businesses that are part of the work force and business community in the City of Santa Clara, and (ii) provide employment, contracting, and business participation opportunities to residents of the City of Santa Clara, including women, minorities, and economically disadvantaged Individuals.

6.27.1 For the purposes of this Section 6.27.1, "good faith efforts" shall be deemed to be satisfied if written notification is provided to community-based organizations with experience in the administration of diversity programs and any other organizations identified for the Developer, Contractor, or Consultant (as applicable) by City when employment opportunities are available, and a record is maintained of each such written notification and the organizations' responses thereto.

6.27.2 Developer, its Contractors, and its Consultants may participate in voluntary associations which assist in fulfilling their diversity obligations under this Section 6.27.2. The efforts of a contractor association, joint contractor-union, contractor-community, or other similar group of which the Developer, Contractor, or Consultant (as relevant) is a member and participant, may be asserted as fulfilling this obligation provided that the Developer, Contractor, or Consultant (as relevant) actively participates in the group, makes good faith efforts to assure that the group has a positive impact on the employment of minority group persons and women in the industry, ensures that the concrete benefits of the program are reflected in the work force composition of Developer, Contractor, or Consultant (as relevant). The obligation to comply, however, is that of Developer, Contractor, or Consultant (as relevant) and failure of such a group to fulfill an obligation shall not be a defense for the noncompliance of Developer, Contractor, or Consultant (as relevant).

7. Financing; Rights of Mortgagees.

7.1 Right to Mortgage; Conditions. Notwithstanding any provision of this Agreement to the contrary, Developer shall have the right to mortgage or pledge its interest in the Development Parcels to one or more Mortgagees and/or to permit the direct or indirect interest in Developer to be pledged to a Mezzanine Lender and/or to collaterally assign this Agreement to a Mortgagee or Mezzanine Lender (and, in such event, any reference herein to a "Mortgage" or "Mezzanine Loan" shall include such collateral

assignment), in each case without City's consent, at any time and from time to time during the Term; provided, that no holder of any Mortgage or Mezzanine Loan, nor anyone claiming by, through or under any such Mortgage or Mezzanine Loan, shall by virtue thereof acquire any greater rights hereunder than Developer has, except the right to cure or remedy Developer's defaults as more fully set forth below in this Section 7 and such other rights as are expressly granted to Mortgagees or Mezzanine Lenders hereunder. Notwithstanding the foregoing, however, no Mortgage or Mezzanine Loan shall be effective, unless:

7.1.1 At the time such Mortgage or Mezzanine Loan becomes effective, there are no existing Events of Default on the part of Developer; and provided that, unless otherwise notified in writing by City that there is an existing Event of Default, any actual or prospective Mortgagee and Mezzanine Lender may conclusively rely on a statement to the effect that there is no existing Event of Default on the part of Developer given by City with respect to Developer under this Agreement for a period of thirty (30) days after the delivery thereof;

7.1.2 Such Mortgage shall be subject to all the agreements, terms, covenants and conditions of this Agreement;

7.1.3 Such Mortgage shall contain in substance the following provision (and no provisions inconsistent therewith in any material respect): "This instrument and all rights of the mortgagee hereunder are, without the necessity for the execution of any further documents, subject and subordinate to the rights of City under the Agreement hereby mortgaged or collaterally assigned, as said Agreement may have been previously modified, amended or renewed, or may hereafter be modified, amended or renewed with the consent of the mortgagee, which consent may not be unreasonably withheld, conditioned or delayed. Nevertheless, the holder of this mortgage agrees from time to time upon request and without charge to execute, acknowledge and deliver any instruments reasonably requested by City to evidence the foregoing subordination."

7.2 Notice of Mortgages. Developer or the Mortgagee or Mezzanine Lender shall give to City written notice of the making of any Mortgage or Mezzanine Loan (which notice shall contain the name and office address of the Mortgagee or Mezzanine Lender and shall contain information in reasonable detail demonstrating that the Mortgagee or Mezzanine Lender is a Mortgagee or Mezzanine Lender as defined in this Agreement) no later than ten (10) days after the execution and delivery of such Mortgage or Mezzanine Loan and a duplicate original or certified copy thereof after the recording of any Mortgage executed by Developer and upon the written request of City, Developer shall, at Developer's own cost and expense, record in the Official Records a written request, executed and acknowledged by City, for a copy of any notice of default and a copy of any notice of sale under such Mortgage to be mailed to City at the address specified in the request by City.

7.3 Mortgagee Right to Notices. City shall give to each Mortgagee or

Mezzanine Lender, at the address of such Mortgagee or Mezzanine Lender set forth in a written notice from such Mortgagee or Mezzanine Lender or from Developer delivered in the manner provided by Section 6.26 of this Agreement, a copy of each notice given by City to Developer under Section 2 of this Exhibit E at the same time as and whenever any such notice shall thereafter be given by City to Developer, and, without affecting or extending the commencement of any grace or cure period available to Developer as provided in this Agreement, no such notice by City shall be deemed to have been duly given to such Mortgagee or Mezzanine Lender (and no grace or cure period in favor of such Mortgagee or Mezzanine Lender shall be deemed to have commenced) unless and until a copy thereof shall have been given to each such Mortgagee and Mezzanine Lender. Subject to City's simultaneous right to cure any Major Event of Default as more particularly set forth in Section 7.13, each Mortgagee and Mezzanine Lender (i) shall thereupon have a period of ten (10) days more in the case of a default by Developer in the payment of any fees due under this Agreement (a "**Monetary Event of Default**") and thirty (30) days more in the case of any other default by Developer (each, a "**Non-Monetary Event of Default**"), after the applicable period afforded Developer for remedying the default or causing the same to be remedied has expired and (ii) shall, within such period and otherwise as herein provided, have the right (but not the obligation) to remedy such default or cause the same to be remedied. City shall accept performance by or on behalf of a Mortgagee or Mezzanine Lender of any covenant, condition or agreement on Developer's part to be performed hereunder with the same force and effect as though performed by Developer, so long as such performance is made in accordance with the terms and provisions of this Agreement. City shall not object to and shall cooperate with any entry onto the Project Site by or on behalf of a Mortgagee or a Mezzanine Lender to the extent necessary to effect such Mortgagee's or Mezzanine Lender's cure rights, provided such entry is in compliance with Applicable Law.

7.4 Mortgagee Right to Cure. No Non-Monetary Event of Default shall be deemed to exist as long as a Mortgagee or Mezzanine Lender, in good faith, (i) shall have commenced to cure (or caused to be commenced such cure) such Non-Monetary Event of Default within thirty (30) days after the expiration of the applicable period afforded to Developer for remedying such Non-Monetary Event of Default, and continuously prosecutes or causes to be prosecuted the same to completion with reasonable diligence (subject to Force Majeure) or (ii) if possession or control of Developer's interest in the Project Site or any part thereof (collectively, "**Developer's Interests**") is required in order to cure such Non-Monetary Event of Default, and Mortgagee or Mezzanine Lender shall have notified City within thirty (30) days after the expiration of the applicable period afforded to Developer for remedying the Non-Monetary Event of Default of its intention to institute foreclosure proceedings to obtain possession or control directly or through a receiver, and thereafter promptly commences such foreclosure proceedings, prosecutes such proceedings with all reasonable diligence and continuity (subject to Force Majeure) and, upon obtaining possession, ownership and/or control of Developer's Interest, commences or causes its designee to commence promptly to cure the Non-Monetary Event of Default and prosecutes the same to completion with all reasonable diligence and

continuity (subject to Force Majeure); provided that the Mortgagee or Mezzanine Lender or its designee shall have delivered to City, in writing, within the time periods set forth in subclause (i) or (ii) herein, its agreement, subject to the last sentence of this Section 7.4, to cause the party obtaining possession, ownership and/or control of Developer's Interest to agree to take the action described in subclause (i) or (ii) herein (the "**Lender Notice of Cure**"); and provided, further, that during the period in which the actions comprising the Lender Notice of Cure are being performed, all of the other obligations of Developer under this Agreement (other than those that require possession or control of Developer's Interests in order to cure) are being duly performed within any applicable notice and cure periods (including any applicable notice and cure rights of Mortgagees and Mezzanine Lenders hereunder); and provided, further, that nothing in this Section 7.4 shall be deemed to prohibit City from exercising its simultaneous right to cure any Major Event of Default as more particularly set forth in Section 7.13. In the event that at any time after the delivery of the Lender Notice of Cure, the Mortgagee or Mezzanine Lender notifies City, in writing, that it has relinquished possession or control of the Developer's Interests or that it will not institute foreclosure proceedings or, if such proceedings have been commenced, that it has discontinued them, thereupon, City shall have the unrestricted right to pursue its remedies under this Agreement by reason of any Event of Default by Developer (and to take any other action it deems appropriate by reason of any Event of Default by Developer).

7.5 Obligation to Construct After Foreclosure. A Mortgagee, Mezzanine Lender, assignee or transferee gaining possession, ownership and/or control of Developer's Interests under a foreclosure or transfer in lieu of foreclosure shall not be bound by any deadline for completion of any construction or alterations required of Developer under this Agreement; provided, however, that such Person gaining possession, ownership, and/or control of Developer's Interests pursuant to a foreclosure or transfer in lieu of foreclosure shall with all reasonable diligence and continuity prosecute completion of same. Notwithstanding anything in this Section 7.5 to the contrary, a Mortgagee, Mezzanine Lender, assignee or transferee gaining possession, ownership and/or control of Developer's Interests pursuant to a foreclosure or transfer in lieu of foreclosure shall not be required to cure any Events of Default arising from obligations of Developer that are not capable of being cured (e.g., an Event of Default that is personal to Developer), and if any Mortgagee, Mezzanine Lender, successor leasehold owner, assignee or transferee shall acquire the Developer's Interests pursuant to a foreclosure or transfer in lieu of foreclosure, then any such Non-Monetary Events of Default arising from an obligation by Developer that is not capable of being cured shall no longer be deemed an Event of Default or Non-Monetary Event of Default.

7.6 Restrictions on City During Mortgagee or Mezzanine Lender Cure Period. With respect to an Event of Default by Developer, so long as a Mortgagee or Mezzanine Lender shall be diligently exercising its cure rights under this Agreement, City shall not exercise its remedies hereunder except as and to the extent set forth in Section 7.13. Nothing in the protections to Mortgagees or Mezzanine Lenders provided in this Agreement shall be construed to require such Mortgagee or Mezzanine Lender to cure any

Event of Default by Developer that is not capable of being cured as a condition to preserving this Agreement.

7.7 Foreclosure Not a Default; Successor Entity. The exercise of any rights or remedies of a Mortgagee under a Mortgage or a Mezzanine Lender under a Mezzanine Loan, including the consummation of any foreclosure or transfer in lieu of foreclosure, shall not constitute a default under this Agreement or require the consent of City. In the event of any such foreclosure or transfer in lieu of foreclosure, the Mortgagee, Mezzanine Lender, assignee or transferee gaining possession, ownership and/or control of Developer's Interests shall be deemed to be a Successor Entity for purposes of Section 3.3 of this Exhibit E and, upon request of City, shall execute an Assignment, Assumption and Release Agreement in form acceptable to City and such Successor Entity pursuant to which such Successor Entity assumes all applicable rights and obligations under this Agreement from Developer and City releases Developer from all such obligations and liabilities accruing after the date thereof, and shall be endorsed as a Named Insured on the insurance policies obtained pursuant to Exhibit D. In connection with the foregoing, City shall make good faith efforts to support the substitution, in whole or in part, of such Successor Entity for Developer in the WDRs.

7.8 Limitation on Liability of Mortgagee. No Mortgagee or Mezzanine Lender shall become liable under this Agreement unless and until such time as it becomes, and then only for so long as it remains, the owner of, or has control over, the Developer's Interests, and no performance by or on behalf of a Mortgagee or Mezzanine Lender of Developer's obligations hereunder shall cause such Mortgagee or Mezzanine Lender to be deemed to be a "mortgagee in possession" unless and until such Mortgagee shall take possession, ownership and/or control of the Project Site, or such Mezzanine Lender shall take possession or control of Developer, as applicable.

7.9 More Than One Mortgagee. If there is more than one Mortgagee, the rights and obligations afforded by this Section 7 to a Mortgagee shall be exercisable only by the party whose collateral interest in the Developer's Interests is senior in lien (or that has obtained the consent of any Mortgagees whose Mortgage is senior to the Mortgage of such Mortgagee).

7.10 Bankruptcy. This section shall apply in the event of any proceeding by Developer under the United States Bankruptcy Code (Title 11 U.S.C.) as now or hereafter in effect. If this Agreement is rejected or deemed rejected by Developer or its trustee in bankruptcy, and provided, that, the Mortgagee or Mezzanine Lender cures or causes to be cured all outstanding Developer defaults in accordance herewith, Mortgagee or Mezzanine Lender shall have thirty (30) days following such rejection or deemed rejection to, at Mortgagee or Mezzanine Lender's discretion and to the extent permitted by Applicable Law, enter into an assignment and assumption instrument in form and substance reasonably satisfactory to City and such Mortgagee or Mezzanine Lender pursuant to which Developer shall assign to the Mortgagee or Mezzanine Lender, and the

Mortgagee or Mezzanine Lender shall assume, all of Developer's interest and obligations under this Agreement whether arising or accruing before or after the date of such assignment and assumption, and this Agreement shall not terminate and the Mortgagee or Mezzanine Lender shall have all rights of the Mortgagee or Mezzanine Lender under this Section 7 as if such bankruptcy proceeding had not occurred. If any court of competent jurisdiction shall determine that this Agreement shall have been terminated notwithstanding the terms of the preceding sentence as a result of rejection by Developer or the trustee in connection with any such proceeding, the rights of Mortgagee or Mezzanine Lender to a New Agreement from City pursuant to the applicable provisions of Section 7.11 shall not be affected thereby.

7.11 New Agreement. In the event of the termination of this Agreement, including, without limitation, the rejection of this Agreement by a trustee of Developer in bankruptcy, City shall serve upon the Mortgagee or Mezzanine Lender written notice that this Agreement has been terminated, together with a statement of any and all sums which would at that time be due under this Agreement but for such termination, and of all other defaults, if any, under this Agreement then known to City. The Mortgagee or Mezzanine Lender shall thereupon have the option to accept the assignment of all of Developer's rights and obligations hereunder, in accordance with and upon the following terms and conditions:

(i) Upon the written request of the Mortgagee or Mezzanine Lender, within thirty (30) days after service of such notice that this Agreement has been terminated, City shall enter into a new Agreement with the most senior Mortgagee or Mezzanine Lender giving notice within such period or its designee; and

(ii) Such new Agreement shall be entered into at the reasonable cost of the Mortgagee or Mezzanine Lender thereunder, shall be effective as of the date of termination of this Agreement, and shall be for the remainder of the term hereof and upon all the agreements, terms, covenants and conditions hereof. Such new Agreement shall have the same priority as this Agreement, including priority over any mortgage or other lien, charge or encumbrance on the title to the Project Site. Such new agreement shall require the Mortgagee or Mezzanine Lender to perform any unfulfilled monetary obligation of Developer under this Agreement that would, at the time of the execution of the new Agreement, be due under this Agreement if this Agreement had not been terminated and to perform as soon as reasonably practicable any unfulfilled non-monetary obligation which is reasonably susceptible of being performed by such Mortgagee or Mezzanine Lender other than the obligations of Developer under this Agreement with respect to construction of the Initial Improvements that constitute Project Landfill Systems, which obligations shall be performed by the Mortgagee or Mezzanine Lender in accordance with Section 13.1 (Initial Improvements) and Section 11.7.5 (Leasehold Mortgages and Mezzanine Loans) of the applicable Ground Lease. Upon the execution of such new agreement, the Mortgagee or Mezzanine Lender shall pay any and all sums which would at the time of the execution thereof be due under this Agreement but for such termination, and shall pay all

expenses incurred by City in connection with such defaults and termination and the preparation, execution and delivery of such new agreement. The provisions of this Section 7.11 shall survive any termination of this Agreement, and shall constitute a separate agreement by the City for the benefit of and enforceable by the Mortgagee or Mezzanine Lender.

7.12 Additional Mortgagee Protections. In addition to the other rights, notices and cure periods afforded to Mortgagees, City further agrees that:

7.12.1 without the prior consent of each Mortgagee (which consent is not to be unreasonably withheld, conditioned or delayed), to the extent required in the Mortgage, City will neither agree to any modification or amendment of this Agreement (other than an immaterial modification or amendment), nor accept a surrender or cancellation of this Agreement;

7.12.2 City shall consider in good faith any modification to this Agreement requested by a Mortgagee as a condition or term of granting financing to Developer, so long as the same does not materially increase City's obligations, diminish Developer's obligations, or diminish City's rights and immunities hereunder;

7.12.3 the Mortgagee whose Mortgage is most senior in lien (or that has obtained the consent of any Mortgagees whose Mortgage is senior to the Mortgage of such Mortgagee) shall have the right to participate in any arbitration proceedings under Section 1 of this Exhibit E, although only one Mortgagee shall have such participation rights at any given time;

7.12.4 at the request of Developer from time to time, City shall execute and deliver an instrument addressed to the holder of any Mortgage or Mezzanine Loan confirming that such holder is a Mortgagee or Mezzanine Lender (provided, that City may require such Mortgagee or Mezzanine Lender to provide such reasonably detailed information as is necessary for City to make such determination) and entitled to the benefit of all provisions contained in this Agreement which are expressly stated to be for the benefit of Mortgagees or Mezzanine Lenders.

7.13 City Right to Cure. Notwithstanding anything herein to the contrary, if a Non-Monetary Event of Default by Developer is reasonably likely to result in imminent harm to human health or the environment and/or a violation of the WDRs, PCLUP or other legal requirement applicable to design, construction, or operation and maintenance of the Project Landfill Systems (a "**Major Event of Default**"), then City may (but shall have no obligation to) exercise its right to cure such Major Event of Default at Developer's cost as set forth in Section 2.3.1(a) of this Exhibit E notwithstanding the pendency of any cure period afforded to Mortgagee and Mezzanine Lender hereunder. For the avoidance of doubt, any failure by Developer to pay such costs to City within the time periods set forth in Section 2.3.1(a) shall constitute a Monetary Event of Default subject to the provisions of this Section 7.