ORDINANCE NO. 3030-13

AN ORDINANCE OF THE CITY OF SUNNYVALE APPROVING AND ADOPTING A DEVELOPMENT AGREEMENT BETWEEN MOFFETT PLACE LLC AND THE CITY OF SUNNYVALE RELATED TO THE DEVELOPMENT OF PROPERTY COMMONLY KNOWN AS THE MOFFETT PLACE CAMPUS

WHEREAS, to strengthen the public planning process, encourage private participation in comprehensive planning and reduce the economic risk of development, the Legislature of the State of California adopted Government Code Sections 65864 *et seq*. (the Development Agreement Statute) which authorizes cities to enter into agreements for the development of real property in order to establish certain development rights in such property; and

WHEREAS, pursuant to Government Code Section 65865 the City has adopted rules and regulations establishing procedures and requirements for consideration of development agreements as set forth in Resolution No. 371-81; and

WHEREAS, Applicant proposes to construct a commercial development on property located within the Moffett Park Specific Plan area, generally located northeast of the intersection of Moffett Park Drive and Mathilda Avenue, the development of which will require future approvals from the City, potentially including, but not limited to, tentative maps, final subdivision maps, private streets, easement vacations, encroachment permits, demolition permits, grading permits, building permits and certificates of occupancy; and

WHEREAS, the Moffett Place Campus Project ("the Project") is a large multiphase development and includes public service and facilities installations that may require several years to complete, and a development agreement is appropriate for the property to ensure that the Project will be completed in accordance with the City requirements; and

WHEREAS, a copy of the proposed Development Agreement is attached hereto and incorporated herein as Exhibit "A" to this ordinance; and

WHEREAS, as part of its consideration of the Project, the City prepared a Draft and Final Subsequent Environmental Impact Report (collectively, "SEIR") on the Project pursuant to the California Environmental Quality Act (Public Resources Code Sections 21000 et seq., "CEQA"), the Guidelines for Implementation of the California Environmental Quality Act (14 California Code of Regulations, Sections 15000 et seq., the "State EIR Guidelines") and the City's Local Guidelines for Implementing CEQA (the "Local Guidelines"); and

WHEREAS, pursuant to the Development Agreement Statute and City regulations, the planning commission held a duly noticed public hearing on November 11, 2013 on the proposed Project and has found that the proposed Development Agreement is consistent with the objectives of the general plan, compatible with the uses authorized for the project area, in conformity with public convenience and beneficial to the public welfare, and will not adversely impact the orderly development of property; and

WHEREAS, the City Council, after published notice, held a public hearing on December 3, 2013, concerning the proposed Project, and has considered the reports and documents presented by City staff, the planning commission's recommendation, and the written and oral comments presented at the public hearing.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF SUNNYVALE DOES ORDAIN AS FOLLOWS:

SECTION 1. FINDINGS. The City Council hereby finds and declares that the above recitals are true and correct. The City Council finds the provisions of the Development Agreement are consistent with the City's General Plan and the Moffett Park Specific Plan as they will exist on the effective date of this ordinance, and hereby incorporates the findings regarding General Plan and Specific Plan conformity contained in the Planning Commission findings dated November 11, 2103. The City Council finds that the provisions of the Development Agreement are compatible with the uses authorized in the regulations prescribed for the land use district in which the real property is located; are in conformity with public convenience and good land use practice; are not detrimental to the public health, safety and general welfare; are of a beneficial effect on the order development of property and the preservation of property values; and are consistent with the requirement of Resolution 371-81. The City Council finds that the Developer is providing a public benefit to the City by, among other things, contributing a public safety facility and ladder truck, additional payment for pedestrian/bicycle safety, and an additional traffic improvement to the City. The City Council further finds that development of facilities to serve the Project will require several years to complete, and a development agreement is appropriate for the property to ensure that the Project will be completed.

SECTION 2. DEVELOPMENT AGREEMENT ADOPTED. The Development Agreement, as set forth in Exhibit "A", is hereby adopted, subject to such minor, conforming and clarifying changes consistent with the terms thereof as may be approved by the City Manager, in consultation with the City Attorney prior to execution thereof, including completion of references and status of planning approvals, and completion and conformity of all exhibits thereto, and conformity to the General Plan and Moffett Park Specific Plan, and amended and approved by the City Council. The City Manager and the City Clerk of the City of Sunnyvale are hereby authorized and directed to execute and attest, respectively, the Agreement on behalf of the City of Sunnyvale.

SECTION 3. CEQA. The environmental effects of the proposed Development Agreement were analyzed in the Moffett Place Subsequent Environmental Impact Report (the "SEIR"), SCH #2013022025. The City Council reviewed the SEIR and found that it reflects the independent judgment of the City Council and its staff, and is an adequate and extensive assessment of the environmental impacts of the Development Agreement. The City Council certified the SEIR as having been prepared in compliance with the requirements of the California Environmental Quality Act ("CEQA"), made necessary findings, adopted a statement of overriding considerations related to certain impacts on air quality, and adopted a Mitigation Monitoring and Reporting Program (Resolution No. 623-13). The City Council incorporates by this reference the findings and mitigations measures contained in the SEIR as to the environmental effects of the Development Agreement, together with the additional findings contained in this Resolution. The Director of Community Development shall file a Notice of Determination with the County Clerk under Title

14, California Code of Regulations Section 15075.

SECTION 4. RECORDATION. The City Clerk is hereby directed to record the Development Agreement with the county recorder in compliance with the provisions of Government Code Section 65868.5.

SECTION 5. CONSTITUTIONALITY; SEVERABILITY. If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be invalid by a court of competent jurisdiction, such decision or decisions shall not affect the validity of the remaining portions of this ordinance. The City Council hereby declares that it would have adopted this ordinance, and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that any one or more section, subsection, sentence, clause or phrase be declared invalid.

SECTION 6. EFFECTIVE DATE. This ordinance shall be in full force and effect thirty (30) days from and after the date of its adoption.

SECTION 7. POSTING AND PUBLICATION. The City Clerk is directed to cause copies of this ordinance to be posted in three (3) prominent places in the City of Sunnyvale and to cause publication of a notice once in The Sun, the official newspaper for publication of legal notices of the City of Sunnyvale, setting forth the date of adoption, the title of this ordinance, and a list of places where copies of this ordinance are posted, within fifteen (15) days after adoption of this ordinance.

Introduced at a regular meeting of the City Council held on December 3, 2013, and adopted as an ordinance of the City of Sunnyvale at a regular meeting of the City Council held on December __, 2013, by the following vote:

AYES:
NOES:
ABSTAIN:
ABSENT:

ATTEST: APPROVED:

_____ _____

City Clerk Mayor

(SEAL)

APPROVED AS TO FORM:

_____

City Attorney

EXHIBIT "A"

DEVELOPMENT AGREEMENT
by and between

MOFFETT PLACE LLC and CITY OF SUNNYVALE

Project name: Moffett Place

THIS DEVELOPMENT AGREEMENT dated for convenience _____, 2013, at Sunnyvale, California (hereinafter referred to as "Agreement") is entered into by and between MOFFETT PLACE LLC, a Delaware limited liability company, referred to "Moffett Place Landowner" or "Landowner" and the City of Sunnyvale, a Charter city, created and existing under the laws of the State of California (hereinafter referred to as. "the City"), pursuant to the authority of Sections 65864-65869.5 of the Government Code of the State of California and City of Sunnyvale Resolution No. 371-81. The Agreement creates legal obligations pertaining to ten lots within the Moffett Place development.

RECITALS

A. State Authorization. To strengthen the public planning process, encourage private participation in comprehensive planning and reduce the economic risk of development, the Legislature of the State of California adopted Section 65864 et seq. of the Government Code (the "Development Agreement Statute"), which authorizes the City to enter into a binding property development agreement with any person having a legal or equitable interest in real property for the development associated with such property in order to establish certain development rights in the property which is the subject of the development project application.

B. City Procedure and Requirements. The City has implemented the provisions of Government Code Section 65864 *et seq*. and adopted certain development agreement procedures and requirements through the enactment of Resolution No. 371-81, adopted on December 15, 1981 (hereinafter referred to as the "Development Agreement Resolution").

C. Landowner. The Landowner is a limited liability company affiliated with Paul Holdings, Inc., dba Jay Paul Company and is organized under the laws of the State of Delaware.

D. Property. The subject of this Agreement is the development of that certain property commonly known as the Moffett Place Campus consisting of approximately 53.12 acres located in the City of Sunnyvale, County of Santa Clara, as described in Exhibit A-1 and depicted in Exhibit A-2 (hereinafter referred to as "Moffett Place" or "the Property"), attached hereto and incorporated herein by reference. The Landowner either owns, or is the sole member of each of the entities that own, the Property in fee. Subject to the terms of Section 8.15 hereof, all persons holding legal or equitable interests in the Property shall be bound by this Agreement.

E. Moffett Park Specific Plan. The subject Property is located within the area subject to the Moffett Park Specific Plan (the "Specific Plan" or "MPSP"), adopted by the City Council on April 26, 2004.

F. Project. The development of the Property is in accordance with the City's General Plan, the Specific Plan, a Moffett Park Major Design Review and the Development Approvals and shall be referred to herein as the "Project." The Landowner (or an affiliate thereof) intends to develop a Class A office complex to replace 598,144 square feet of existing office space with six new eight-story office buildings, a two-story amenities building, surface parking and two three-level parking structures for a total of 1.78 million square feet of total building area. The current zoning designation for the site is MP-I and the Moffett Place Landowner desires to amend the zoning designation to MP-TOD, which recognizes incentives for transit oriented development by allowing greater intensities of development and floor area ratios (FAR).

The City has determined that improved fire suppression facilities are needed to enable the City to provide fire service to taller 8-story buildings. City fire station No. 5 is currently located on a .75-acre parcel located at 1120 Innovation Way that is adjacent to a 1.03-acre parcel ("Parcel A) previously administered by a federal process to close military bases pursuant to the Base Reuse and Closure Plan, collectively referred to as the "City Parcels" and as further defined in Section 5.1 below. Landowner owns a 2.07-acre parcel (the "Landowner Parcel") which Landowner is willing to exchange with the City so that the Landowner will own the City Parcels and the City will own the Landowner Parcel upon which Landowner will construct, prior to the property transfer, a new Public Safety Facility as defined in Section 4.2 below. The City has engaged an appraiser to appraise the properties. Parcel A is subject to a Public Benefit Conveyance condition ("PBC"), which burden will be removed from the City Parcels and will be transferred to the Landowner Parcel as part of the exchange of land, more particularly described below.

G. Environmental Review. The City examined the environmental effects of this Agreement and the Development Approvals in a Subsequent Environmental Impact Report (the "SEIR") prepared pursuant to the California Environmental Quality Act (CEQA). On December __, 2013, the City Council reviewed and certified as adequate and complete the SEIR by Resolution No. ____-13 and approved the Entitlements.

H. Purposes. The Landowner and City desire to enter into an agreement for the purpose of implementing the plan for development of the Moffett Place Campus as set forth herein and in the Specific Plan, and Development Approvals and for mitigating the environmental impacts of such development as identified in the SEIR. The City has an expressed interest in ensuring the adequacy of public facilities and infrastructure improvements to support well-planned growth, and entering into development agreements is a method whereby a level of assurance can be achieved to meet that interest. The City has determined that the development of the Moffett Place Campus pursuant to the Site Plan, and the Development Approvals is a development for which a development agreement is appropriate. A development agreement will provide certain benefits to the City, as described in Section 2, will eliminate uncertainty in the City's land use planning, will provide orderly development of the Property in accordance with the policies and goals set forth in the City's General Plan, and will otherwise achieve the goals and purposes of Resolution No. 371-81 which was enacted by the City. The Moffett Place Landowner has incurred and will incur substantial costs in order to comply with the conditions of approval and to assure development of the Property in accordance with this Agreement. In exchange for these benefits to the City and the public, the Moffett Place Landowner desires to receive assurance that the City shall grant permits and approvals required

for the development of the Property in accordance with existing city laws, subject to the terms and conditions contained in this Agreement. In order to effectuate these purposes, the Parties desire to enter into this Agreement.

I. Planning Commission Recommendations of Approval. The application for approval of this Agreement and the appropriate California Environmental Quality Act (Public Resource Code Section 21000 *et seq*. "CEQA") documentation required for approval of this Agreement, including the SEIR and all previous environmental documentation for the Moffett Place Campus were considered by the Planning Commission, on November 11, 2013. After conducting a duly noticed public hearing, the Commission recommended the adoption of this Agreement.

J. Adequacy of CEQA Environmental Documentation. The Sunnyvale City Council certified a program-level Moffett Park Specific Plan Environmental Impact Report (MPSP EIR). In October, 2012, Landowner submitted an application to the City to redevelop a portion of the MPSP referred to as Moffett Place Campus. The application included development of the site at a higher intensity than what is permitted under the MPSP, requiring an amendment to the MPSP and zoning, as well as revision to the previously-certified program level MPSP EIR. The City prepared a Subsequent Environmental Impact Report (SEIR) that discusses the significant environmental effects of the Project that were not previously addressed in the program-level MPSP (State Clearing House SCH# 2013022025.

K. Development Agreement Adoption. After conducting a duly noticed public hearing and making the requisite findings, the City Council by the adoption of Ordinance No. ____-13 on December __, 2013, approved this Agreement and authorized its execution.

L. Consistency with Sunnyvale General Plan and Specific Plan. Development of the Property in accordance with this Agreement will provide for orderly growth and development in accordance with the policies set forth in the City General Plan, the Specific Plan, and the Development Approvals. Having duly examined and considered this Agreement and having held properly noticed public hearings hereon, the City Council finds and declares that this Agreement is consistent with the General Plan of the City and with the Development Approvals.

M. Project Entitlements. This Agreement, together with the Moffett Park Specific Plan, as adopted on April 27, 2004, by Resolution No. 111-04 and Major Design Review for Moffett Place Campus #2012-7854 (Moffett Place Campus), approved December 3, 2013, constitute the project entitlements (the "Entitlements")

M. Development Agreement Resolution. City and Landowner have taken all actions mandated by and fulfilled all requirements set forth in the Development Agreement Resolution.

NOW THEREFORE, pursuant to the authority contained in Government Code Sections 65864-65869.5, and City of Sunnyvale Resolution No. 371-81, and in consideration of the mutual covenants and promises contained herein, the adequacy and sufficiency of which is hereby acknowledged, the Moffett Place Landowner and the City, each individually referred to as a Party and collectively referred to as the Parties ("Parties"), agree as follows.

ARTICLE 1.
RECITALS, DEFINITIONS AND DATES

1.1 Incorporation of Recitals. The Preamble, the Recitals and all the defined terms set forth in both, are hereby incorporated into this Agreement as if set forth herein in full.

1.2 Definitions. In addition to the defined terms in the Preamble and the Recitals, each reference in this Agreement to any of the following terms shall have the meaning set forth below for each such term. Certain other terms shall have the meaning set forth for such term in this Agreement.

1.2.1 Approvals. Any and all permits or approvals of any kind or character required under the City Laws in order to develop the Project, including, but not limited to, design review approvals, building permits, site clearance and demolition permits, grading permits and utility connection permits.

1.2.2 City Laws. The ordinances, resolutions, codes, rules, regulations and official policies of the City, governing the permitted uses of land, density, design, improvements and construction standards and specifications applicable to the development of the Property. Specifically, but without limiting the generality of the foregoing, City Laws shall include the City's General Plan, the Moffett Park Specific Plan, the City's Zoning Ordinance and the City's Subdivision Ordinance.

1.2.3 Conditions. All conditions, exactions, fees or payments, dedication or reservation requirements, obligations for on or off-site improvements, services or other conditions of approval called for in connection with the development of or construction on the Property under the Existing City Laws, whether such conditions of approval constitute public improvements, or mitigation measures in connection with environmental review of any aspect of the Project.

1.2.4 Director. The Director of the Community Development Department.

1.2.5 Enacting Ordinance. Ordinance No. _____-13, introduced by the City Council on December 3, 2013 and adopted by the City Council on December ____, 2013 approving this Agreement.

1.2.6 Applicable Laws. The laws and Constitution of the State of California, the laws and Constitution of the United States and any codes, statutes or executive mandates in any court decision, state or federal, thereunder.

1.2.7 Party. A signatory to this Agreement, or a successor or assign of a signatory to this Agreement.

1.2.8 Property. The Property is that property described and shown on Exhibits A-1, A-2. It is intended and determined that the provisions of this Agreement shall constitute covenants which shall run with the Property and the benefits and burdens hereof shall bind and inure to all successors-in-interest to the parties hereto.

1.2.9 Resolution No. 371-81. Resolution No. 371-81 entitled "Resolution of the City of Sunnyvale Establishing Procedures and Setting a Fee for Processing Development Agreements" adopted by the City Council of the City of Sunnyvale on December 15, 1981.

1.3 Effective Date; Recordation. The Enacting Ordinance became effective on _____, 2014, which shall be the Effective Date of this Agreement. The obligations of the Parties under this Agreement shall be effective as of the effective date of the Enacting Ordinance (the "Effective Date"), pursuant to Government Code Section 36937. Not later than ten (10) days after the Effective Date, the Parties shall cause this Agreement to be recorded in the Official Records of the County of Santa Clara, State of California, as provided for in Government Code Section 65868.5 and Resolution No. 371-81. However, failure to record this Agreement within ten (10) days shall not affect its validity or enforceability by and between the Parties.

1.4 Term. Except as provided herein, the term of this Agreement shall commence on the Effective Date and terminate fifteen (15) years thereafter ("Term"); provided, however, that if the parties have not completed their obligations pursuant to Section 4 hereto by the expiration of such term or at the end of the first extension term, the term of this Agreement may be extended upon written modification executed by both Parties, however, the extended term may not exceed 5 years and must for good cause supported by substantial evidence. Following the expiration of the term, this Agreement shall be deemed terminated and of no further force and effect; provided, however, said termination of the Agreement shall not affect any right or duty emanating from City entitlements on the Property approved concurrently with or subsequent to the approval of this Agreement.

ARTICLE 2.
BENEFITS TO THE CITY

2.1 New Public Safety Facility, Ladder Truck and equipment to address cumulative public safety needs in Moffett Park for mid-rise office building.

2.2 Innovation Way extension to Borregas Avenue to alleviate traffic at Mathilda/237/101 and intersection maintenance by Landowner.

2.3 Additional transportation improvements to facilitate pedestrian and bicycle access in Moffett Park area.

ARTICLE 3.
GENERAL DEVELOPMENT

3. Project; Vested Entitlements.

3.1 The Landowner has certain vested entitlements including the amended zoning designation from MP-I to MP-TOD, Major Moffett Park Design Review, certified SEIR, and approval of this Agreement.

3.1.1 The City has adopted certain approvals in connection with the Property, including the Site Plan, Entitlements and the SEIR Certification. To the extent the provisions of this Agreement or the Development Approvals conflict with the applicable zoning provisions or the Site Plan, the Moffett Park Specific Plan shall take precedence.

3.1.2 Except, as provided herein, development of the Property shall be governed by this Agreement, the Development Approvals, the Site Plan, the Moffett Park Specific Plan, and the other Development Approvals. This Agreement does not impose affirmative obligations on the Moffett Place Landowner to commence development of the Project, or any phase thereof, in advance of its decision to do so.

3.1.3 The permitted uses of the Property, the density and intensity of use, including, but not limited to, minimum landscape areas, maximum lot coverage, minimum and maximum number of parking spaces, and the allowable floor area ratios, and provisions for public improvements and all mitigation measures and conditions required or imposed in order to minimize or eliminate environmental impacts or any impacts of the Property applicable to development of the Property, are as set forth herein or in the Development Approvals and in ordinances, policies, and standards in effect as of the Effective Date. City agrees that it will accept, in good faith, for processing, review and action, all applications for development permits or other Approvals for use of the Property in accordance with this Agreement, the Site Plan, as amended hereby, the Moffett Park Specific Plan ("Specific Plan" or "MPSP"), and the Development Approvals and shall act upon such applications in a diligent and timely manner.

3.1.4 City shall inform the Moffett Place Landowner, upon request, of the necessary submission requirements for each application for an Approval in advance and shall schedule the application for review by the appropriate authority in a diligent and timely manner.

3.1.5 As set forth in Recitals G and J above, the environmental effects of the Site Plan, the Specific Plan, Development Approvals (including, but not limited to, the land use and development standards, the design guidelines and the infrastructure and public utility requirements contained therein) and this Agreement (including, but not limited to, the development rights and obligations vested hereby) have been thoroughly and fully examined in the SEIR.

3.2 Project Phasing. The Moffett Place Landowner and City acknowledge and agree that the Project is designed to be developed in phases. The Site Plan, this Agreement and the Entitlements make explicit provision for such phased development. The Parties also acknowledge and agree that presently the Moffett Place Landowner cannot predict the timing of the Project phasing. Because the California Supreme Court held in *Pardee Construction Co. v. City of Camarillo* (1984) 37 Cal.3d 465, that failure of the Parties therein to provide for the timing of development resulted in a later-adopted initiative restricting the timing of development to prevail over the Parties' agreement, it is the Parties' intent to cure that deficiency by acknowledging and providing that the Moffett Place Landowner shall have the right to develop the building components of the Project in phases in accordance with the Site Plan, as amended by this Agreement, and the Development Approvals and at such times as the Moffett Place Landowner deems appropriate within the exercise of its subjective business judgment and the provisions of this Agreement.

3.3 Compliance with Requirements of Other Government Entities.

3.3.1 The Moffett Place Landowner or City (whichever is appropriate) shall apply for such other permits and approvals from other governmental or quasi-governmental agencies having jurisdiction over the Project (such as public utility districts, the Army Corps of Engineers or Caltrans) as may be required for the development of, or provision of services to, the Project. The City shall promptly and diligently cooperate, at no cost to the City, with the Moffett Place Landowner in its endeavors to obtain such permits and approvals and, from time-to-time at the request of the Moffett Place Landowner, shall attempt with due diligence and in good faith to enter into binding agreements with any such entity in order to assure the availability of such permits and approvals of services. To the extent allowed by law, the Moffett Place Landowner shall be a party or third-party beneficiary to any such agreement and shall be entitled to enforce the rights of the Moffett Place Landowner or City thereunder or the duties and obligations of the parties thereto. The Moffett Place Landowner shall reimburse the City for all its expenses, including, but not limited to, legal fees and staff time (as such costs are normally charged applicants at the time of imposition) incurred in entering such agreements.

3.3.2 As provided in California Government Code Section 65869.5, this Agreement shall not preclude the application to the Property of changes in laws, regulations, plans, or policies, to the extent that such changes are specifically mandated and required by changes in State or Federal laws or regulations. In the event changes in State or Federal law prevent or preclude compliance with one or more provisions of this Agreement, this Agreement shall be modified or suspended as may be necessary to comply with such State or Federal laws or regulations. The Parties shall meet and confer in good faith in order to determine whether such provisions of this Agreement shall be modified or suspended as may be necessary to comply with changes in the law and City and Landowner shall agree to such action as may be reasonably required. It is the intent of the Parties that any such modification or suspension be limited to that which is necessary and to preserve to the extent possible the original intent of the Parties in entering into this Agreement. This Agreement shall remain in full force and effect to the extent it is not inconsistent with such laws or regulations. Nothing in this Agreement shall preclude the City or Landowner from contesting by any available means (including administrative or judicial proceedings) the applicability to the Property of any such State or Federal laws or regulations.

3.4 Reservations of Authority. Notwithstanding any other provision of this Agreement, at the time Approvals are applied for, the following regulations and provisions shall apply to those Approvals:

3.4.1 Standard processing fees and charges of every kind and nature imposed by the City, including application, inspection, and monitoring fees, which are in force and effect within the jurisdiction of the City for the class of Approvals being applied for.

3.4.2 All taxes, assessments, impact fees of any type, inclusionary housing in-lieu fees, other fees, or other monetary and non-monetary exactions imposed by the City which are in force and effect within the jurisdiction of the City for other similarly situated projects in the City on a City wide or area wide basis, discretionary or ministerial approvals, or taxpayers, as applicable, on which they are imposed, existing as of the Effective Date. For a five year period commencing on the Effective Date and ending on the fifth anniversary thereof, the

City shall not impose any new taxes, assessments, impact fees or other fees, or other monetary and non-monetary exactions, which were not in effect within the jurisdiction and applicable to the Project on the Effective Date (this does not include increases or adjustments to existing fees, taxes, etc.). After the 5 year period has run, the City may impose all taxes, assessments, impact fees of any type, inclusionary housing in-lieu fees, other fees, or other monetary and non-monetary exactions which are in force and effect within the jurisdiction of the City for a broadly based class of land, projects, discretionary or ministerial approvals, or taxpayers, as applicable, on which they are imposed, regardless of when they were first adopted.

3.4.3 If the City forms an assessment district including the Property and the assessment district is City-wide or area-wide, as defined below, the Property may be legally assessed through such district based on the benefit to the Property, which assessment shall be consistent with the assessment of other property in the district similarly situated. In no event, however, shall the Landowner's obligation to pay such assessment result in a cessation or postponement of construction of the Project or affect in any way the development rights for the Project.

3.4.4 Procedural regulations relating to hearing bodies, petitions, applications, notices, findings, records, hearings, reports, recommendations, appeals and any other matter of procedure, which are in force and effect within the jurisdiction of the City for the class of Approvals being applied for.

3.4.5 Regulations governing construction standards and specifications including, without limitation, the City's building code, plumbing code, mechanical code, electrical code, fire code and grading code, and all provisions of the Sunnyvale Municipal Code, and all other uniform construction codes which are in force and effect within the jurisdiction of the City for the class of Approvals being applied at the time the building permit in question is applied for.

3.4.6 For purposes of this Agreement, "area wide" shall cover not only the Property, but also at least all parcels zoned and/or developed in a manner similar to the Property and located in the combined area of the Specific Plan. The Parties acknowledge that the provisions contained in this Section are intended to implement the intent of the Parties that the Moffett Place Landowner has the right to develop the Project pursuant to specified and known criteria and rules, and that the City receives the benefits which will be conferred as a result of such development without abridging the right of the City to act in accordance with its powers, duties and obligations.

3.5 Subsequently Enacted Rules and Regulations. The City may, during the term of this Agreement, apply such newer City Laws that are in force and effect within the jurisdiction of the City for the class of Approvals being applied for and which are not in conflict with the terms of this Agreement. To the extent any changed City Law is in conflict with the terms of this Agreement, the terms of this Agreement shall prevail.

3.6 Moratorium, Quotas, Restrictions or Other Limitations. Without limiting the generality of any of the foregoing, no moratorium or other limitation (whether relating to the rate, timing, phasing or sequencing of development) affecting subdivision maps, building permits

or other Approvals shall apply to the Property. Landowner agrees and understands that the City does not have authority or jurisdiction over another public agency's authority to grant a moratorium or impose any other limitation that may affect the Property.

ARTICLE 4.
SPECIFIC CRITERIA OF THE PROJECT

4.1 Permitted Floor Area Ratio. Notwithstanding anything to the contrary herein or in the Development Approvals, the Landowner is hereby allowed a total development of no more than 1,780,000 square feet for Moffett Place Campus, conditioned upon Moffett Place Developer meeting the requirements of the MPSP and the provisions of this Agreement. The MPSP and City's Zoning Code allow development of up to 70% FAR and up to 80% FAR with an incentive for Green Building techniques. In consideration of the obligations of the Moffett Place Landowner and the benefits to the City for the development of the Property, the City agrees that Moffett Place Campus Landowner or any affiliate, assignee or successor thereto is allowed up to 70% FAR and up to 80% FAR with Green Building incentives as allowed for under the MPSP and the City's Zoning Code.

4.2 Landowner Obligations. As a material consideration for the long term assurances, vested rights and other City obligations provided by this Agreement, and as a material inducement to City to enter into this Agreement, Landowner has offered and agreed to provide the public benefits to the City listed in this Section 4.2, and has further agreed to comply with all of its obligations under this Agreement, including in particular the obligations set forth in this Section 4.2.

4.2.1 New Public Safety Facility and Ladder Truck Funding/Construction. In the event the land exchange described in Article 5, below, is approved by FEMA, Landowner shall construct for City a new "Public Safety Facility" consisting of a fire station, a shooting range, on-site parking and associated site improvements, as further described in Section 4.2.2 below. In addition, Landowner shall provide funds to purchase a Ladder Truck, as further defined in Section 4.2.3 below, capable of providing fire services to high rise buildings. Landowner shall pay a total not-to-exceed amount of $13.7 million to fund the construction of the Public Safety Facility and purchase of the Ladder Truck. To the degree there are any excess funds remaining from the $13.7 million contribution after provision of the Public Safety Facility and Ladder Truck, such excess funds shall be paid to the City in consideration of this Agreement to be used to purchase additional equipment for delivery of fire services. In the event the land exchange described in Article 5, below, is not approved by FEMA, Landowner shall pay to the City a total of $13.7 million to be used for the construction of a new Public Safety Facility and purchase of a new ladder truck, consistent with Section 5.10 of this Agreement.

4.2.2 Design and Construction of Public Safety Facility.

(a) The Public Safety Facility shall include an approximately 10,938 square-foot fire station and approximately 6,303 square-foot shooting range with additional building program requirements described in attached Exhibit "B". The size of the facility and the program requirements will be finalized during the design stage with adjustments as necessary

upon mutual consent of the City and Landowner. The Parties agree to work together in good faith to expedite design approval and permitting. The Public Safety Facility shall be constructed to minimum LEED Silver standards or equivalent, and a LEED AP architect obtained by the Moffett Place Landowner shall submit written documentation to verify attainment of this standard. Design and permitting of the Public Safety Facility shall be completed within 12 months of the expiration of the Due Diligence Period, as defined in Section 5.3, subject to extension for the permitted delays described in Section 7.5 below and City Delays.

(b) The City shall review and approve design plans and specifications prepared by the Landowner and issue all required permits after its review and approval of construction documents for the Public Safety Facility to ensure that the Public Safety Facility meets requirements of functionality of an operating fire station and shooting range prior to commencement of construction (the "Approved Plan"). Landowner shall provide an engineer's cost estimate of the costs of construction of the Public Safety Facility at the time that design plans are submitted to the City for review and approval. City shall have 45 days to review the engineer's cost estimate and may engage a third party consultant to review the engineer's cost estimates at the Landowner's expense. The parties shall provide an "agreed upon engineer's cost estimate" and if they cannot agree, shall meet and confer on any items where the Landowner's cost estimate and the City's cost estimate are in conflict to reach an "agreed upon engineer's cost estimate."

(c) Landowner agrees to construct the Public Safety Facility in conformance with the Approved Plan. Landowner further agrees to timely perform its obligations to ensure the construction complies with the requirements specified in the Approved Plan. Construction of the Public Safety Facility shall commence within 45 days of Landowner receiving the Approved Plan, and shall be completed within 12 months of commencement, subject to extension for the permitted delays described in Section 7.5 below and City Delays (the "Completion Date").

(d) As used herein, the term "City Delays" shall mean any delay in the design or construction of the Public Safety Facility as a result of either: (i) the City's failure to fulfill its obligation with respect to either documents or approvals within the time periods therefor specifically set forth herein or, in the absence thereof, within ten (10) business days of request therefor, (ii) any change orders to the Public Safety Facility requested by the City, or (iii) a willful or negligent act or omission of the City or the City's agents, employees or representatives which interferes with the progress of construction of the Public Safety Facility and which is not cured within three (3) business days after the City receives written notice thereof from Landowner (or if such interference cannot be cured within such three (3) business day period, then within whatever time period [but in no event more than ten (10) business days after the City receives written notice therefor from Landowner] is necessary to cure such interference, so long as the City commences to cure the interference within such three (3) business day period and is proceeding diligently to complete the same); provided, further, however, that if the matter giving rise to such City Delay is not cured within the relevant period, then for the purposes hereof, such City Delay shall be deemed to have commenced upon the date of actual commencement of such City Delay.

(e) The Completion Date shall be extended by any delay caused by the lead time required for any City-specified furniture, fixtures and equipment, as well as any other City Delays. If Landowner determines that it is necessary to modify the Approved Plan due to any changed conditions, it shall promptly inform City in writing ("Modification Notice") as soon as possible about the possible modification and provide City with full information about the nature and scope of the proposed modification, the reasons for it, and the expected impact on the Public Safety Facility construction timing. Unless City determines that a proposed modification would adversely affect the safety, maintainability or functionality of the Public Safety Facility, or is fundamentally inconsistent with the Approved Plan, it shall approve the proposed modification. If City determines that the proposed modification would adversely affect the safety, maintainability or functionality of the Public Safety Facility, or is fundamentally inconsistent with the Approved Plan, City shall provide Landowner with an explanation of the basis for its determination no later than 7 calendar days after receipt of the Modification Notice ("Objection Notice"). The Parties shall work diligently and in good faith to resolve the matter. If the Parties are unable to reach a mutually satisfactory resolution within 7 calendar days after Landowner's receipt of the Objection Notice, the Parties shall engage the dispute resolution process set forth in paragraph (i) below. The Completion Date under this Agreement shall be extended by the number of days measured from 7 calendar days after Objection Notice to date of resolution.

(f) In addition to its regulatory role, City shall have the right to otherwise inspect the progress and condition of the Public Safety Facility work, provided that City coordinates such inspection with Landowner and, provided further, that City shall not take any actions that unreasonably interferes with Landowner's performance, direct the Landowner's performance in the field, nor authorize any additional work.

(g) Upon completion of the work, subject to punch list items which are minor in nature and will not affect the use or operation of the Public Safety Facility, which Landowner will complete with due diligence, Landowner shall provide City with a written "Notice of Completion" of work. City shall have 10 calendar days from receipt of the Notice of Completion to accept the work, subject to such punch list items, and issue an "Acceptance of Work" or notify Landowner of any work City believes is incomplete. If City determines that the work is not complete, it shall provide Landowner with an explanation of the basis for its determination no later than 10 calendar days after receipt of the Notice of Completion. The Parties shall work diligently and in good faith to resolve the matter. If the Parties are unable to reach a mutually satisfactory resolution within 7 calendar days after Landowner's receipt of the City's objection, the Parties shall engage the dispute resolution process set forth in paragraph (i) below.

(h) Upon issuance of City's "Acceptance of Work", Landowner shall deliver a bill of sale and assignment of warranties, together with any other documents necessary to consummate the transfer of the Public Safety Facility to the City, to the Escrow provided for in Section 5.5 below, to transfer title of the Public Safety Facility, and all related warranties, to City. Landowner and City shall act in good faith to take all steps reasonably necessary to transfer ownership of the Public Safety Facility and all related warranties to City. If Landowner is not permitted to assign any warranties related to the Public Safety Facility work, Landowner shall make a warranty to City on the same terms and conditions of the warranty made to Landowner,

provided that such warranty shall be conditioned on performance of warranty obligations to Landowner. Landowner agrees that it shall take all reasonable efforts to perform such warranty obligations. Landowner shall supply City with electronic (AutoCADD files) versions of completed "As Built" drawings within 30 calendar days after City acceptance of all of the work. Title shall be transferred as part of Escrow, and shall vest conterminously with the transfer of the Property as provided in Section 5.5.

(i) In the event disputes regarding modifications or completion should arise under Section 4.2.2 of this Agreement, the Parties agree to the following procedures:

(1) At least one individual from each of the Parties will meet, in person, and attempt to resolve the dispute. If a third party is involved in the dispute, the Parties shall make diligent good faith efforts to include that third party in the dispute resolution process.

(2) If the initial meeting does not resolve the dispute, the Parties agree to mediate the matter with a JAMS representative, with JAMS' fees to be split equally between or among the parties to the dispute (unless the arbitrator finds one or more parties acted in bad faith and otherwise allocates the JAMS fees among the parties).

(3) If neither the initial meeting nor the mediation results in a resolution to the dispute, the Parties shall have the right to exercise any of its remedies available under law.

(4) City's failure to provide timely written notice to Landowner of any dispute requiring written notice under this Agreement shall be considered a waiver by City thereof. Landowner's failure to provide timely written notice to City of any dispute requiring written notice under this Agreement shall be considered a waiver by Landowner thereof.

4.2.2.1 Subject to the terms of Section 7.5 below, if Landowner fails to complete construction of the Public Safety Facility within the time periods specified above, the City shall provide Landowner a 15-day notice that the Landowner shall provide a performance bond in the amount of $13.7 million dollars net of any amounts previously paid by Landowner pursuant to the agreed upon cost estimate described in 4.2.2(b) for the Public Safety Facility and Ladder Truck with a surety acceptable to the City, by the expiration of the 15th day following the notice. The bond shall be released upon issuance of the City's Acceptance of Work.

4.2.3 Ladder Truck. Prior to issuance of the first building permit at the site, Landowner shall remit to the City $500,000 to be used by the City as a deposit a toward a fire suppression ladder truck and equipment specifications applicable to full operation of the ladder truck specified by the City (the "Ladder Truck"). Landowner shall be obligated to deliver the balance of the cost of the Ladder Truck, not to exceed a total cost of $1,100,000, to the City at the earlier of (i) the date required by the manufacturer in order for the City to take delivery of the Ladder Truck, (ii) completion of the first building at the site. If the initial $500,000 payment is not sufficient for the City to place its order for the Ladder Truck, Landowner shall pay instead, the amount required by the manufacturer to commence fabrication and assembly. The City shall be solely responsible for the specification, ordering and delivery of the Ladder Truck.

4.3 Additional Traffic Improvement. In addition to the payment for traffic mitigations identified in the project SEIR, including the payment of traffic impact fees, the Moffett Place Landowner shall fund and construct a new segment of Innovation Way between Bordeaux Avenue and Mathilda Avenue (the "Innovation Way Extension"). The Innovation Way segment shall be constructed before issuance of the certificate of occupancy for the first building or completion of the Public Safety Facility, whichever occurs first. The Parties acknowledge that Landowner may provide a performance bond for the full cost of the improvement in satisfaction of this obligation. The parties acknowledge that Innovation Way Extension is located on private property subject to a public easement for vehicular traffic. Landowner shall maintain the Innovation Way Extension.

4.4 Pedestrian/Bicycle Safety. Landowner shall contribute $250,000 toward the construction of a new signal on Caribbean Drive to accommodate pedestrian and bicycle crossing as part of the East/West channel trail construction prior to issuance of the first building permit. Funding for design and construction of the trail has been identified by the City; however, a new signal will be required on Caribbean Drive that will allow for a safe crossing across the six-lane roadway to provide a continuous trail connection to both sides of the trail. Landowner shall not be required to contribute any other amounts towards the cost of such signal or trail.

ARTICLE 5.
LAND EXCHANGE

5.1 Land Exchange. The City owns a parcel of land located at 1120 Innovation Way, Sunnyvale, CA, which is improved with a one-story fire station building of 4,138 square feet and parking for Fire Station #5. The City also owns the adjacent Parcel "A" property, a 1.03-acre parcel conveyed by the United States Air Force to the City in April 2013 pursuant to the Defense Base Closure and Realignment Act of 1990 and under the control of the Federal Emergency Management Agency ("FEMA"). Parcel A is subject to a Public Benefit Conveyance condition ("PBC"). The combined parcels comprise 1.75 acres or 76,273 square feet of land (collectively referred to as the "City Parcels"). The Landowner owns property located at 1190 Bordeaux Drive, Sunnyvale, CA which is approximately 2.07 acres or 90,169 square feet of land (the "Landowner Parcel"). The parties desire to exchange the parcels so that Landowner will own the City Parcels and the City will own the Landowner Parcel. The Landowner Parcel is larger and located on a site that is more suitable for providing fire services, and the City Parcels are located in an area that is more suitable for private development. The parties intend that the new First Station will be constructed on the Landowner Parcel and when completed and accepted by the City, the land exchange will be executed and escrow closed. Parties acknowledge that the Landowner Parcel is more valuable than the City Parcels, but the Landowner is not requiring the City to equalize the value of the exchange with a cash payment in consideration of the benefits of this Agreement and other valuable consideration.

5.2 FEMA Approval. The Parties acknowledge that, due to the PBC condition, the exchange of Parcel A for the Landowner Parcel must be approved in advance by FEMA. The City is working to secure FEMA approval to transfer the PBC condition from Parcel A to the Landowner Parcel, which will include the Public Safety Facility. The City will use its best efforts to procure approval from FEMA, which is expected to occur within 12 months of the Effective Date (the "FEMA Approval Date"). The Parties may extend the FEMA Approval Date upon

written amendment to this Agreement. The City Manager of the City of Sunnyvale is authorized to execute any extension of the FEMA Approval Date on behalf of the City.

5.3 Due Diligence. Each Party shall have 45 days following the FEMA Approval Date as a "Due Diligence Period" to investigate and conduct studies on the Property, unless the parties mutually agree to conduct due diligence earlier than this date. During the Due Diligence Period, each Party shall have an opportunity to investigate and inspect all aspects of the Property, subject to a Right of Entry Agreement, and to determine, in each Party's sole and absolute discretion, whether or not to acquire the Property pursuant to the terms and conditions set forth herein. Each Party shall have the right to review and copy any title reports, surveys, toxic and soil studies and all other correspondence and documents relating to the Property that are in the other Party's possession, during normal business hours, upon not less than 24 hours prior notice to the other Party. Landowner shall deliver to City a Phase I Environment Site Assessment, and if required by the Phase I, a Phase II Environmental Site Assessment of the Landowner Parcel at Landowner's cost. If Landowner determines it desires to conduct a Phase I Environmental Site Assessment and the assessment recommends Phase II sampling on the City Parcel, City shall provide reasonable access for such environmental testing. The City shall be provided with the proposed Phase II work plan at least 10 days prior to testing. If additional documentation relating to the Property comes into either Party's possession after expiration of the Due Diligence Period, that Party shall provide copies of such documents promptly to the other Party. The Parties acknowledge that neither Party makes any representation or warranty whatsoever as to the accuracy or completeness of any information provided to the other Party or made available under this paragraph.

5.3.1 Contingencies. Each Party shall remove any contingencies on the Property within the Due Diligence period. Contingencies include:

(1) Property inspections
(2) Title exceptions acceptable to the other Party.

5.3.2 Termination of Escrow due to Disapproval of Contingencies. If either Party gives written notice to the other Party prior to the expiration of the Due Diligence Period that that Party does not wish to complete the land exchange, then the other Party shall instruct the Escrow Holder to terminate escrow.

5.4 Process for Remediation of Exchange Parcels. The exchange of real property is subject to the Landowner's obligation to provide to the City a parcel which is fully remediated to meet all State of California or EPA environmental screening levels. If the Phase II test of the Landowner Parcel located within the Project site reveals substances that require remediation, Landowner and City shall meet and confer about the best approach and timing for completing the remediation prior to construction of the Public Safety Facility. If the Phase II test of the City Parcel reveals substances that require remediation, Landowner and City shall meet and confer about the best approach for funding and timing of the clean-up, including construction methods, and whether to complete the land exchange.

5.5 Escrow

5.5.1 Within five (5) working days from the Effective Date of this Agreement, the Parties shall open an escrow with First American Title Company, San Jose office. All references in this Agreement to "Escrow Holder" are to this title company. This Agreement shall constitute instructions to Escrow Holder. The Parties shall execute such additional escrow instructions as maybe required to enable Escrow Holder to close the escrow in accordance with the terms of this Agreement and as the Parties may approve, which approval shall not be unreasonably withhold.

5.5.2 Provided neither Party is in default under any term or provision of this Agreement, either Party may provide to the other Party a written notice of the close of escrow at least seven (7) days in advance of such close, but in no event shall escrow close later than _____, 2014. Such date shall be referred to herein as the "Closing Deadline."

5.5.3 "Close of Escrow" shall mean the moment when all the parties to escrow have fully performed their respective duties as provided in paragraphs (d) and (e) below, respectively, and the Escrow Holder has filed the documents for record and made distributions. Title shall be conveyed and possession delivered to each Party upon Close of Escrow and recordation of the grant deeds.

5.5.4 On or before the Closing Deadline, each Party shall deposit with Escrow Holder all of the following: (i) the fully executed and acknowledged grant deed; (ii each Party's escrow instructions sufficient to enable Escrow Holder to close the escrow in accordance with the terms of this Agreement, (iii) all documents required by Section 4.2, and (iv) any other documents, records, or agreements required from SELLER hereunder that have not previously been delivered.

5.5.5 If any condition described in this Agreement is not timely satisfied (or waived by SELLER in writing) on or prior to Closing Deadline, subject to extension pursuant to Section 7.5 hereof, (i) the Escrow shall terminate immediately upon receipt by Escrow Holder of notification from either Party of the failure of such condition, and BUYER and SELLER shall share equally any applicable escrow cancellation fees, (ii) Escrow Holder shall return all instruments and documents deposited into the Escrow to the parties depositing the same, and (iii) neither party shall have any further rights or obligations to pursue the Property exchange.

5.6 Closing Costs and Prorations: The Parties shall each pay one-half of all escrow costs and fees, all Title Company costs and fees, Title Insurance premiums, recording fees, transfer taxes and all closing costs and fees. Each party shall bear its own attorney's fees incurred in connection with this transaction. Rents, real property taxes, premiums on insurance of the Landowner Parcel shall be prorated as of the Closing Deadline.

5.7 **NO REPRESENTATIONS OR WARRANTIES:**

(1). PROPERTIES ARE SOLD "AS IS". SELLER AND BUYER AGREE THAT IF THE PROPERTIES SHALL BE EXCHANGED, IT SHALL BE "AS IS", AND THAT THE PARTIES SHALL ACCEPT POSSESSION OF THE PROPERTIES ON THE CLOSING DATE, "AS IS, WHERE IS, WITH ALL FAULTS",

WITH NO RIGHT OF SET OFF OR REDUCTION IN THE PURCHASE PRICE, AND THAT, EXCEPT FOR THE LIMITED WARRANTY OF TITLE TO BE GIVEN IN THE GRANT DEED SHALL BE WITHOUT REPRESENTATION OR WARRANTY OF ANY KIND OR NATURE WHATSOEVER BY SELLER, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, WARRANTY OF INCOME POTENTIAL, OPERATING EXPENSES, USES, MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE, AND SELLER DOES HEREBY DISCLAIM AND RENOUNCE ANY SUCH REPRESENTATION OR WARRANTY. BY ENTERING INTO THIS AGREEMENT, THE PARTIES REPRESENT AND WARRANT THAT AS OF CLOSING DEADLINE, THEY SHALL HAVE SATISFIED THEMSELVES AS TO THE CONDITION OF THE PROPERTY AND ITS SUITABILITY FOR THE DEVELOPMENT PURPOSES INTENDED BY EACH PARTY. THE PROPERTY IS SOLD IN "AS IS" CONDITION, INCLUDING WITHOUT LIMITATION AS TO ANY HAZARDOUS MATERIALS CONTAMINATION OR FOLLOWING CLEAN-UP ACTIVITIES. IN EXCHANGING THE PROPERTIES, THE PARTIES RELY SOLELY UPON THEIR OWN INSPECTION AND INVESTIGATION OF THE PROPERTY, INCLUDING, WITHOUT LIMITATION, AS TO HAZARDOUS MATERIALS CONTAMINATION AND GEOLOGICAL CONDITIONS INCLUDING EARTHQUAKE FAULTS AND NOT UPON ANY REPRESENTATION, WARRANTY, STATEMENT, STUDY, REPORT, DESCRIPTION, GUIDELINE, OR OTHER INFORMATION OR MATERIALS MADE OR FURNISHED BY THE OTHER PARTY OR ANY OF ITS OFFICERS, EMPLOYEES, AGENTS, ATTORNEYS, OR REPRESENTATIVES, WHETHER WRITTEN OR ORAL, EXPRESS OR IMPLIED, OF ANY NATURE WHATSOEVER.

(2). <u>RELEASE AND WAIVER</u>. EACH PARTY, FOR ITSELF AND FOR BUYER AND FOR ITS SUCCESSORS IN INTEREST, RELEASES THE OTHER PARTY FROM, AND WAIVES ALL CLAIMS AND LIABILITY AGAINST SELLER FOR OR ATTRIBUTABLE TO, ANY STRUCTURAL, PHYSICAL, OR ENVIRONMENTAL CONDITION AT THE PROPERTY, INCLUDING WITHOUT LIMITATION, CLAIMS OR LIABILITIES RELATING TO THE PRESENCE, DISCOVERY, OR REMOVAL OF ANY HAZARDOUS SUBSTANCES IN, AT, ABOUT, OR UNDER THE PROPERTY, OR FOR, CONNECTED WITH, OR ARISING OUT OF ANY AND ALL CLAIMS OR CAUSES OF ACTION BASED UPON CERCLA (COMPREHENSIVE ENVIRONMENTAL RESPONSES, COMPENSATION, AND LIABILITY ACT OF 1980, 42 U.S.C. §§ 9601 ET SEQ., AS AMENDED BY SARA [SUPERFUND AMENDMENT AND REAUTHORIZATION ACT OF 1986], AND AS MAY BE FURTHER AMENDED FROM TIME TO TIME), THE RESOURCE CONSERVATION AND RECOVERY ACT OF 1976, 42 U.S.C. §§ 6901 ET SEQ., OR ANY RELATED CLAIMS OR CAUSES OF ACTION OR ANY OTHER FEDERAL OR STATE BASED STATUTORY OR REGULATORY CAUSES OF ACTION FOR ENVIRONMENTAL CONTAMINATION AT, IN, OR UNDER THE PROPERTY. NOTWITHSTANDING ANYTHING HEREIN TO THE CONTRARY, THE AGREEMENTS OF BUYER SET FORTH IN THIS SUBPARAGRAPH 8B SHALL BE DEEMED REAFFIRMED AS OF THE CLOSE OF ESCROW AND SHALL SURVIVE THE CLOSE OF ESCROW AND SHALL NOT BE MERGED THEREIN. EACHPARTY

IS FAMILIAR WITH, AND HEREBY WAIVES ITS RIGHTS, IF ANY, UNDER CALIFORNIA CIVIL CODE SECTION 1542, WHICH PROVIDES AS FOLLOWS:

"A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR SETTLEMENT WITH THE DEBTOR."

EACH PARTY INDICATES ITS ACKNOWLEDGMENT OF THE FOREGOING PROVISIONS OF SUBPARAGRAPHS BY INITIALING BELOW:

_____	_____
LANDOWNER	**CITY**

5.8 Title: Each Party acknowledges receipt and examination of Escrow Holder's Preliminary Title Reports listed on Exhibit "C" and attached hereto and incorporated herein by reference. BUYER shall take fee title to the Property by grant deed subject to any and all unpaid taxes, assessments, easements, rights of way, restrictions, reservations, conditions, deeds of trust, liens and encumbrances thereon and subject to all exceptions shown on said Preliminary Report and, in addition to exceptions shown, any matters affecting the condition of title approved by BUYER in writing or created by or through the acts or omissions of BUYER, its agents, employees, or contractors. Upon Close of Escrow, each Party shall cause Escrow Holder to issue an ALTA extended coverage owner's policy of title insurance.

5.9 Possession: Possession shall be delivered to each Party by the other upon Close of Escrow and recordation of the grant deed.

5.10 Process If FEMA Approval Date Expires and Is Not Extended. If the City fails or is unable to deliver approval by FEMA for exchange of Parcel "A" by the FEMA Approval Date, or any extensions thereto, the City and Landowner shall meet and confer to revise the delivery date of Parcel "A". If the City cannot provide assurances that the City and Parcel "A" Parcel will be delivered by the FEMA Approval Date, there shall be no exchange of Property, and instead, the Landowner shall pay to the City $13.7 million for construction of the Public Safety Facility on the City Parcels and purchase of the Ladder Truck. In such event, the City and Landowner shall work together to design the Public Safety Facility so that it can be constructed on the City Parcels while the existing fire station remains in place and remains fully functional. The City and Landowner shall work together to identify a temporary site during construction if needed, within the sole discretion of the City, which shall include temporary structures such as modular buildings to provide continuous, uninterrupted fire service until the Public Safety Facility is occupied.

ARTICLE 6.
DEVELOPMENT APPROVALS

6.1 Additional Development Approvals. The Project has been subject to Major Moffett Park Design Review and has been recommended for approval by the City of Sunnyvale Planning Commission at a public hearing on November 11, 2013, and approved by the City Council on December 3, 2013.

6.2 The Landowner shall prepare building plans in conformance with the Uniform Building Code (UBC) as enforced by the City of Sunnyvale. Building permits shall be issued by the City when building plans are deemed consistent with the UBC as enforced by the City of Sunnyvale.

6.3 Precise improvement plans for utility and infrastructure extensions shall also be submitted for approval by the City of Sunnyvale following architectural review and approval. Site plans, landscape and irrigation plans, and lighting plans shall also be submitted to the City for review and approval by the Director of Community Development at this time.

6.4 If the Moffett Place Landowner desires to subdivide the site into smaller lots, a subdivision map shall be reviewed for approval by the City of Sunnyvale. Applications for subdivision maps shall conform to submittal requirements of the City of Sunnyvale, and shall be reviewed in accordance with the review procedures in place at the time such submittals are made. The subdivision of the, Property, or the filing of a parcel map or subdivision map that creates new legal lots, shall not require an amendment to this Agreement, provided such subdivision does not change the requirements set forth under the MPSP, as amended, the Development Approvals, or this Agreement. The Moffett Place Landowner may subdivide the Property in accordance with the laws regarding subdivision in effect in the City at the time the Landowner applies for any subdivision, and in such event, so long as such subdivision does not include plans for any physical changes to the Property (such as, but not limited to, a subdivision of the Property made necessary in order to create separate parcels for the financing of disposition of a separate portion of the Property). The City shall not impose any conditions regarding traffic improvements or requirements or off-site improvements, or impose any fees, taxes or assessments in connection with such subdivision other than those required for the Development Approvals; provided, however, that nothing herein shall excuse Landowner for the obligation to pay any processing fees then in effect and charged by the City for processing the approval of a subdivision map.

6.5 Following approval of a tentative subdivision map, the applicant shall prepare and file final subdivision maps in accord with the State Subdivision Map Act and City of Sunnyvale subdivision requirements.

6.6 No additional City approvals shall be required in order to proceed with development of the Project in accordance with the Project Entitlements.

6.7 Easements; Improvements. The City shall cooperate with the Moffett Place Landowner in connection with any arrangements for abandoning existing utility or other

easements and facilities and the relocation thereof or creation of any new easements within the Property necessary or appropriate in connection with the development of the Project.

6.8 Annual Review**.** Good Faith Compliance. The City shall, at least every twelve (12) months, during the Term of this Agreement, conduct a Planning Commission hearing to review the extent of good faith substantial compliance by the Moffett Place Landowner with the terms of this Agreement. Such periodic review shall be limited in scope to compliance with the terms of this Agreement pursuant to Government Code Section 65865.1 and Resolution No. 371-81. Notice of such annual review will be provided by the Director of Community Development to the Moffett Place Landowner thirty (30) days prior to the date of hearing by the Planning Commission and shall include the statement that any review may result in amendment or termination of this Agreement as provided herein. A finding by the City of good faith compliance by the Moffett Place Landowner with the terms of Agreement shall conclusively determine the issue up to and including the date of such review. Nothing in this section shall be deemed to create a duty of responsibility of City or the Moffett Place Landowner or define an event of default that but for such concurrent review would not have been so created or defined.

ARTICLE 7.
PROVISIONS REGARDING REMEDIES.

7.1 Failure to Comply in Good Faith. If the City Council makes a finding that the Landowner has not complied in good faith with the terms and conditions of this Agreement, the City shall provide written notice to the Moffett Place Landowner describing: (i) such failure to comply with the terms and conditions of this Agreement (referred to herein as a "Default"); (ii) the actions, if any, required by the Moffett Place Landowner to cure such Default and (iii) the time period within which such Default must be cured. The Moffett Place Landowner shall have, at a minimum, thirty (30) business days after the date of such notice to cure such Default, or in the event that such Default cannot be cured within such thirty (30) day period but can be cured within one (1) year, the Moffett Place Landowner shall have commenced the actions necessary to cure such Default and shall be diligently proceeding to complete such actions necessary to cure such Default within thirty (30) days from the date of notice. If the Default cannot be cured within 30 days, or commenced to cure within 30 days, as determined by the City during periodic or special review, the City Council may modify or terminate this, Agreement as provided in Section 7.4 below.

7.2 Failure to Cure Default. If the Moffett Place Landowner fails to cure a Default within the time periods set forth above, the City Council may modify or terminate this Agreement as provided below.

7.3 Proceedings Upon Modification or Termination. If, upon a finding under Section 6.8 and the expiration of the cure period, the City determines to proceed with modification or termination of this Agreement, the City shall give written notice to the Moffett Place Landowner of its intention to do so. The notice shall be given at least fifteen (15) calendar days before the scheduled hearing and shall contain:

(1) The time and place of the hearing;

(2) A statement as .to whether or not the City proposes to terminate or to modify the. Agreement; and

(3) Such other information as is reasonably necessary to inform the Moffett Place Landowner of the nature of the proceeding.

7.4 Hearings on Modification or Termination. At the time and place set for the hearing on modification or termination, the Landowner shall be given an opportunity to be heard, and the Landowner shall be required to demonstrate good faith compliance with the terms and conditions of this Agreement. The burden of proof on the issue shall be on the Landowner. If the City Council finds, based upon substantial evidence, that the Landowner has not complied in good faith with the terms or conditions of the Agreement, the City Council may terminate this Agreement or modify this Agreement and impose such conditions as are reasonably necessary to protect the interests of the City, in accordance with the procedures in the Development Agreement Resolution.

7.5 Permitted Delays, Extension of Times of Performance. In addition to specific provisions of this Agreement, performance by either Party under this Agreement shall not be deemed to be in Default where delays or defaults are due to war, insurrection, strikes, lockouts, walkouts, drought, riots, floods, earthquakes, fire, casualties, acts of God, acts of the public enemy, epidemics, quarantine restrictions, freight embargoes, restrictions imposed by governmental or quasigovernmental entities other than the City (including but not limited to FEMA), unusually severe weather, acts of the other Party, acts or the failure to act of any public or government agency or entity other than the City, or any other causes beyond the control or without the fault of the Party claiming an extension of time to perform. An extension of time for any such cause shall only be for the period of the enforced delay, which period shall commence to run from the time of the commencement of cause. If, however, notice by the Party claiming such extension is sent to the other Party more than thirty (30) days after the commencement of the cause, the period shall commence to run only thirty (30) days prior to the giving of such notice. Times of performance under this Agreement may also be extended in writing by the joint agreement of the City and the Moffett Place Landowner. Litigation attacking the validity of this Agreement, or any permit, ordinance, or entitlement or other action of a governmental agency necessary for the development of the Property pursuant to this Agreement shall also be deemed to create an excusable delay under this Section.

7.6 Supersedure by Subsequent Laws. If any Law made or enacted after the date of this Agreement prevents or precludes compliance with one or more provisions of this Agreement, then the provisions of this Agreement shall, to the extent feasible, be modified or suspended as may be necessary to comply with such new Law. Immediately after enactment of any such new Law, the Parties shall meet and confer in good faith to determine the feasibility of any such modification or suspension based on the effect such modification or suspension would have on the purposes and intent of this Agreement. If such modification or suspension is infeasible in either Landowner's reasonable business judgment, then such Landowner shall have the right to terminate this Agreement by written notice to the City. Such Landowner shall also have the right to challenge the new Law preventing compliance with the terms of this Agreement, and, in the event such challenge is successful, this Agreement shall remain unmodified and in full force and effect.

7.7 Breach, Remedies and Termination.

7.7.1 Remedies for Breach. City and Landowner acknowledge that the purpose of this Agreement is to carry out the Parties' objectives as set forth in the recitals. City and Landowner agree that to determine a sum of money which would adequately compensate either Party for choices they have made which would be foreclosed should the Property not be developed as contemplated by this Agreement is not possible and that damages would not be an adequate remedy. Therefore, City and Landowner agree that in the event of a breach of this Agreement, the only remedies available to the non-breaching Party shall be: (1) suits for specific performance to remedy a specific breach, (2) suits for declaratory or injunctive relief, (3) suits for mandamus under Code of Civil Procedure Section 1085, or special writs, and (4) termination or cancellation of this Agreement or, at the option of City in the event of breach by Landowner, termination of the rights of Landowner under this Agreement. Except for attorney's fees and associated costs as set forth herein, monetary damages shall not be awarded to either Party. This exclusion on damages is limited to a breach of this Agreement and shall not preclude actions by a Party to enforce payments of monies due or the performance of obligations requiring the expenditures of money under the terms of this Agreement or Applicable Laws. All of these remedies shall be cumulative and not exclusive of one another, and the exercise of any one or more of these remedies shall not constitute a waiver or election with respect to any other available remedy.

7.7.2 Notice of Breach. Prior to the initiation of any action for relief specified in Section 7.7.1 above because of an alleged breach of this Agreement, the Party claiming breach shall deliver to the other Party a written notice of breach (the "Notice of Breach"). The Notice of Breach shall specify the reasons for the allegation of breach with reasonable particularity. The so-called breaching Party shall have thirty (30) days to either: (a) use good faith efforts to cure the breach or, if such cure is of the nature to take longer than 30 days, to take reasonable actions to commence curing the breach during the thirty (30) day period; or (b) if in the determination of the so-called breaching Party, the event does not constitute a breach of this Agreement, the so-called breaching Party, within thirty (30) days of receipt of the Notice of Breach, shall deliver to the Party claiming the breach a "Notice of Non-Breach" which sets forth with reasonable particularity the reasons that a breach has not occurred. Failure to respond within the thirty (30) days shall not be deemed an admission of the breach, but the Party alleging the breach may proceed to pursue its remedies under this Article 7.

7.7.3 Termination by Mutual Consent**.** This Agreement may be voluntarily terminated in whole or in part by the mutual consent of the Parties or their successors in interest, in the sole and absolute discretion of each as to its consent, in accordance with the provisions of the City’s Development Agreement Resolution.

7.7.4 Termination by The City. Council has determined as set forth in Section 7.4 that a Landowner is not in substantial compliance with the terms of this Agreement past any applicable notice and cure period and his Default remains uncured.

7.7.5 Landowner's Right to Terminate. Landowner shall have the right to terminate this Agreement only under the following circumstances:

(1) Landowner has found the City in breach of this Agreement, has given the City notice of such breach and the City has not cured such breach within thirty (30) days of receipt of such notice or, if the breach cannot reasonably be cured within such thirty (30) day period, if the City has not commenced to cure such breach within thirty (30) days of receipt of such notice and is not diligently proceeding to cure such breach.

(2) Landowner is unable to complete the Project because of supersedure by a subsequent Law or court action, as set forth in Section 7.6.

7.7.6 Effect of Termination. If this Agreement is terminated for any reason, such termination shall not affect any condition or obligation due to the City from the Landowner prior to the date of termination and such termination shall not affect any Approvals or Conditions already granted or established by the City or any City entitlement or approval with respect to the Property that has been granted prior to the date of termination. Upon the termination of this Agreement, the Landowner or any successor thereto may continue to pursue the development of the Project pursuant to all such Approvals, Conditions and other entitlements or approvals for the Project already granted by the City, but without the benefit of the rights and terms of this Agreement.

7.7.7 Recordation of Termination. In the event of a termination, the City and Landowner agree to cooperate with one another in executing a Memorandum of Termination to record in the Official Records of Santa Clara County within thirty (30) days of the date of termination.

7.7.8 Remedies. Either Party may, in addition to any other rights or remedies, institute legal or equitable action to cure, correct or remedy any default, enforce any covenant or agreement herein, enjoin any threatened or attempted violation or enforce by specific performance the obligations and rights of the Parties hereto.

7.7.9 No Damages Relief Against City. The parties acknowledge that the City would not have entered into this Development Agreement had it been exposed to damage claims from Landowner for any breach thereof. As such, the parties agree that in no event shall Landowner be entitled to recover damages against City for breach of this Development Agreement.

7.7.10 Waiver; Cumulative Remedies. Failure by a Party to insist upon the strict performance of any of the provisions of this Agreement by the other Party, irrespective of the length of time for which such failure continues, shall not constitute a waiver of such Party's right to demand strict compliance by such other Party in the future. No waiver by a Party of an event of Default shall be effective or binding upon such Party unless made in writing by such Party, and no such waiver shall be implied from any omission by a Party to take any action with respect to such event of Default. No express written waiver of any event of Default shall affect any other event of Default, or cover any other period of time, other than any event of Default and/or period of time specified in such express waiver. Except as provided in this Section, all of the remedies permitted or available to a Party under this Agreement, or at law or in equity, shall be cumulative and not alternative, and invocation of any such right or remedy

shall not constitute a waiver or election of remedies with respect to any other permitted or available right or remedy.

ARTICLE 8
GENERAL PROVISIONS

8.1 Project as a Private Undertaking. It is specifically understood and agreed by and between the Parties that the Project is a private development. This Agreement is made and entered into for the sole protection and benefit of the Landowner and the City and their successors and assigns. No other person shall have any right of action based upon any provision of this Agreement. The City and Landowner hereby renounce the existence of any third-party beneficiary to this Agreement and agree that nothing contained herein shall be construed as giving any other person or entity third-party beneficiary status. No partnership, joint venture or other association of any kind is formed by this Agreement.

8.2 Estoppel Certificate. Either Party may, at any time, and from time-to-time, deliver written notice to the other Party requesting such Party to certify in writing that, to the knowledge of the certifying Party: (i) this Agreement is in full force and effect and a binding obligation of the Parties; (ii) this Agreement has not been amended or modified either orally or in writing, and if so amended, identifying the amendments; (iii) the requesting Party is not in default in the performance of its obligations under this Agreement, or if in default, describing therein the nature and amount of any such defaults; and (iv) the requesting Party has been found to be in compliance with this Agreement, and the date of the last determination of such compliance. A Party receiving a request hereunder shall execute and return such certificate within thirty (30) days following receipt thereof. The Director shall have the right to execute any certificate requested by the Landowner hereunder. The City acknowledges that a certificate hereunder may be relied upon by transferees and Mortgagees.

8.3 Right to Assign.

8.3.1 Generally. Except as is described in Section 8.3.2 below, the Landowner's rights and responsibilities hereunder may be sold or assigned in conjunction with the transfer, sale or assignment of the Property at any time during the term of this Agreement, without the need for the consent or approval of (but with written notification to) the City, within ten (10) days after such assignment, and provided further, any assignee shall have affirmatively assumed all of the relevant Landowner's obligations to the City. The assignee shall provide adequate assurances of compliance with the conditions of development that require design features, construction of the amenities building, and other requirements to ensure transit-oriented uses and activities.

8.3.2 Until Public Safety Facility Built and Ladder Truck Paid For. Notwithstanding the foregoing, only during the time period until the Public Safety Facility is completed and the Ladder Truck paid for, Landowner may not assign Landowner’s rights and responsibilities hereunder to a third party, other than in a Permitted Transfer described in Subsection 8.3.2 (3) below, without, in Landowner’s sole and absolute discretion, complying with either Subsection 8.3.2(1) or Subsection 8.3.2(2) below.

(1) Posting Performance Bond or Other Financial Assurances. If the Landowner, in its sole and absolute discretion, at the time the Landowner sends notice of such an assignment to a third party, delivers to the City a performance bond or other form of financial assurance reasonably acceptable to the City in the amount of $13.7 million dollars net of any amounts previously paid by Landowner pursuant to the agreed upon cost estimate described in Section 4.2.1.2 hereof for the Public Safety Facility and Ladder Truck with a surety reasonably acceptable to the City, then the consent of the City shall not be necessary for any such assignment, and the City shall have no right to object thereto.

(2) Obtain Consent of City. If Landowner does not deliver the performance bond or other financial assurance described in Subsection 8.3.2(1) above and seeks to assign Landowner's rights and responsibilities under this Agreement (other than in a Permitted Transfer described in Subsection 8.3.2(3) below) during the time period until the Public Safety Facility is completed and the Ladder Truck paid for, the Landlord must first receive the prior written consent of the City to such assignment, which consent shall not be unreasonably withheld and which consent shall be deemed to have been given by the City if the City does not decline such consent in writing delivered to the Landowner within thirty (30) days after receipt of request therefor. The sole grounds for the City to reasonably withhold the City's consent to any such proposed assignment shall be a determination, in the City's reasonable opinion, that the proposed assignee lacks the financial resources to complete the rights and responsibilities hereunder of the Landowner to complete the building of the Public Safety Facility and pay for the Ladder Truck hereunder. Any such assignee shall be bound by the terms of this Agreement, including the obligation to past a performance bond if necessary pursuant to the terms of Section 4.2.1.1 hereof.

(3) Permitted Transfers. Notwithstanding anything to the contrary in this Section 8.3.2 or elsewhere in this Agreement, the City's consent shall not be necessary, and the Landowner may freely transfer the Property without the being required to post any performance bond or other financial assurance, in connection with a Permitted Transfer that includes a transfer of the rights and obligations of the Landowner pursuant to this Agreement. As used herein, the term "Permitted Transfer" shall mean any of the following: (i) the recording of a deed of trust or other assignment of the Property as collateral for security purposes, including in connection with a financing as described in Section 8.4 below, (ii) any public or private foreclosure or trustee's sale or deed-in-lieu of foreclosure in connection with a financing described in sub item (i) above, or any transfer of the Property on one occasion subsequent to any foreclosure, trustee's sale or deed-in-lieu of foreclosure by any lender or party who takes title to the Property as a result thereof, (iii) any transfers of the Property or any portion thereof to an entity that is an Affiliate of the Landowner, (iv) any joint ventures of the Landowner with another party or transfers of economic interests in the Landowner, (v) any subdivision, dedication or lot line adjustments of the Property, (vi) any leases, subleases, easements or licenses entered into with respect to the Property, and (vii) any sales of any portions of the Property which do not include the Landowner Parcel described in Section 5.1 hereof. As used in item (iii) above, the term "Affiliate" shall mean an entity in which Jay Paul has at least a fifty percent (50%) ownership interest and exercises operational control.

8.4 Financing. Mortgages, deeds of trust, sales and leasebacks, or other forms of conveyance required for any reasonable method of financing requiring a security arrangement

with respect to the Property are permitted without the consent of the City, provided the Landowner retains the legal or equitable interest in the Property and remains fully responsible hereunder.

8.5 Release Upon Transfer. Upon the sale, transfer or assignment of the Landowner's rights and interests under this Section of this Agreement, the Landowner shall be released from its obligations pursuant to this Agreement with respect to the Property or portion thereof so transferred which arise subsequent to the effective date of the transfer; provided, however, that if Landowner seeks to deliver a performance bond to the City pursuant to Section 8.3.2(1) above rather than seek the City's approval to an assignment of this Agreement, then the obligation of the Landowner to deliver such performance bond to the City shall survive any sale, transfer or assignment of the Property and this Agreement until such performance bond is actually delivered to the City.

8.6 Enforceability. The City agrees that, unless this Agreement is amended or canceled pursuant to the provisions of this Agreement and the Enacting Ordinance, this Agreement shall be enforceable by either Party notwithstanding any change hereafter in any applicable City law.

8.7 City Finding. The City hereby finds and determines that execution of this Agreement is in the best interest of the public health, safety and general welfare and is consistent with the General Plan.

8.8 Covenants to Run with the Land. All of the provisions, agreements, rights, powers, standards, terms, covenants, and obligations contained in this Agreement shall be binding upon the Parties and their respective heirs, successors, assignees, devises, administrators, representatives, lessees, and all other persons acquiring the Property, or any portion thereof, or any interest therein, whether by operation of law or in any manner whatsoever, and shall inure to the benefit of the Parties and their respective heirs, successors and assignees. All of the provisions of this Agreement shall be enforceable as equitable servitudes and constitute covenants running with the land pursuant to applicable laws, including, but not limited to, Section 1468 of the Civil Code of the State of California. Each covenant to do, or refrain from doing, some act on the Property hereunder: (i) is for the benefit of such properties and is a burden upon such properties; (ii) runs with such properties; and (iii) is binding upon each Party and each successive owner during its ownership of such properties or any portion thereof, and each person having any interest therein derived in any manner through any owner of such properties, or any portion thereof, and shall benefit each Party and its property hereunder, and each other person succeeding to an interest in such properties; provided that no liability or obligation shall accrue to any person, if this Agreement terminates pursuant to Section 7 of this Agreement.

8.9 Amendment or Cancellation. Either Party may propose an amendment to or cancellation of this Agreement in whole or in part, in the manner provided for in Government Code Section 65868 and Resolution No. 371-81. No amendment to or cancellation of this Agreement or any provision hereof shall be effective for any purpose unless adopted pursuant to the procedures included in Resolution No. 371-81 and specifically set forth in a writing, which refers expressly to this Agreement and is signed by duly authorized representatives of the Parties.

8.10 Recordation. Any amendment, termination or cancellation of this Agreement shall be recorded by the City Clerk not later than ten (10) days after the effective date of the action effecting such amendment, termination or cancellation; however, a failure to record shall not affect the validity of the amendment, termination or cancellation.

8.11 Effect of Termination Upon Landowner's Obligations.

8.11.1 Notwithstanding any other provision to the contrary, termination or cancellation of this Agreement or termination of the rights of Landowner as to the entire Property, or any part the Property, shall not affect any rights or requirements to comply with the terms and conditions of the Approvals, Conditions and any other entitlements or consent already given by the City to the Landowner, all of which shall remain in full force and effect, unmodified, in accordance with their terms and conditions, notwithstanding the termination of this Agreement. Such termination of this Agreement shall also not affect any payments then due and owing to City, nor shall it affect the covenants of Landowner specified in Section 8.11.2 below, all of which shall continue after the termination or cancellation of this Agreement.

8.11.2 Notwithstanding anything in this Agreement to the contrary, the following provisions of this Agreement shall survive and remain in effect following termination or cancellation of this Agreement for so long as necessary to give them full force and effect with respect to claims or rights of City arising prior to termination or cancellation:

(a) Section 8.11.1 (Landowner's obligations upon termination or cancellation);

(b) Section 7.7 (Remedies; limitation on damages and exceptions thereto; accrued obligations); and

(c) Section 8.19 (Indemnification).

8.12 Amendments to Development Agreement Legislation. This Agreement has been entered into in reliance upon the provisions of California Government Code Section 65864 et seq. relating to development agreements, as those provisions existed at the date of execution of this Agreement. No amendment or addition to those provisions which would materially affect the interpretation or enforceability of this Agreement shall be applicable to this Agreement unless such amendment or addition is specifically required by the California State Legislature, or is mandated by a court of competent jurisdiction. If such amendment or change is permissive (as opposed to mandatory), this Agreement shall not be affected unless the Parties mutually agree in writing, after following the procedures in Section 8.9, to amend this Agreement to permit such applicability

8.13 Amendment of Approvals. To the extent permitted by local, state, and federal law, any Approval may, from time to time, be amended or modified by submittal of an application from the Landowner and following the procedures for such amendment or modification contained in the Sunnyvale Municipal Code. Upon any approval of such an amendment or modification, the amendment or modification shall automatically be deemed to be

incorporated into the Development Approvals without any further procedure to amend this Agreement.

8.14 Mortgagee Protection. This Agreement shall be superior and senior to any lien placed upon the Property or any portion of the Property after the date of recording of this Agreement, including the lien of any deed of trust or mortgage ("Mortgage"). Notwithstanding the foregoing, no breach of this Agreement shall defeat, render invalid, diminish, or impair the lien of any Mortgage made in good faith and for value, but all of the terms and conditions contained in this Agreement (including but not limited to City's remedies to terminate the rights of Landowner (and its successors and assigns) under this Agreement, to terminate this Agreement, and to seek other relief as provided in this Agreement) shall be binding upon and effective against any person or entity, including any deed of trust beneficiary or mortgagee ("Mortgagee") who acquires title to the Property, or any portion thereof, by foreclosure, trustee's sale, deed in lieu of foreclosure, or otherwise.

8.15 Mortgagee Not Obligated. Notwithstanding the provisions of this Agreement above, no Mortgagee shall have any obligation or duty under this Agreement with respect to any indemnifications of the Landowner hereunder for any time period before or after such Mortgagee owns fee title to the Property, nor shall Mortgagee have any obligation or duty under this Agreement to construct or complete the construction of improvements on the Property, or to guarantee such construction or completion; provided, however, that a Mortgagee shall not be entitled to devote the Property to any uses or to construct any improvements on the Property other than those uses or improvements provided for or authorized by this Agreement, or otherwise under Applicable Law.

8.16 Notice of Default to Mortgagee. If City receives a written notice from a Mortgagee, Landowner or any approved assignee requesting a copy of any notice of default given Landowner or any approved or permitted assignee and specifying the address for service, then City shall deliver to the Mortgagee at Mortgagee's cost (or Landowner's cost), concurrently with service to Landowner, any notice given to Landowner with respect to any claim by City the Landowner is in default under this Agreement, and if City makes a determination of default, City shall if so requested by the Mortgagee likewise serve at Mortgagee's cost (or Landowner's cost) notice of noncompliance on the Mortgagee concurrently with service on Landowner. Each Mortgagee shall have the right during the same period available to Landowner, together with whatever additional time period is reasonably necessary to cure such default, including but not limited to the time period necessary to foreclose on the Property, in which to cure or remedy, or to commence to cure or remedy, the event of default claimed or the areas of noncompliance set forth in the City’s notice; provided that in no event shall such Mortgagee be entitled to more than one hundred forty (140) days longer than the Landowner in which to complete such cure .

8.17 No Supersedure. In the event any Mortgagee becomes the owner of the Property pursuant to a foreclosure or other transfer, nothing herein shall be deemed to supersede or release a Mortgagee or modify a Mortgagee's obligations under any subdivision improvement agreement or other obligation incurred with respect to the Property outside this Agreement, nor shall any provision of this paragraph constitute an obligation of City to the Mortgagee, except as to the notice requirements.

8.18 No Duty of City. It is specifically understood and agreed by the Parties that the development contemplated by this Agreement is a private development, that City has no interest in or responsibility for or duty to third persons concerning any of said improvements, and that Landowner shall have full power over and exclusive control of the Property subject only to the limitations and obligations of Landowner under this Agreement.

8.19 Indemnification. Landowner hereby agrees to and shall hold City and its elected and appointed representatives, officers, agents, and employees harmless from any liability for damage or claims for damage for personal injury, including death, as well as from claims for property damage which may arise from the negligence or willful misconduct of Landowner in connection with Landowner's construction of the Public Safety Facility or any other public improvement items pursuant to the terms of this Agreement, excepting suits and actions brought by Landowner for default of the Agreement or to the extent arising from the intentional acts, negligence, or willful misconduct of City, its elected and appointed representatives, officers, agents, employees, contractors or subcontractors, or of a third party.

This indemnification and hold harmless agreement applies to all damages and claims for damages suffered or alleged to have been suffered by reason of the operations referred to in this Section 8.19, regardless of whether or not City prepared, supplied, or approved plans or specifications for the Property, but does not apply to damages and claims for damages with respect to the Public Safety Facility or other public improvements and facilities not caused by Landowner in completing any punch list items for the Public Safety Facility after the City has issued an Acceptance Notice therefor or otherwise accepted such improvement, unless those claims are based on the operations of the Landowner referred to in this Section 8.19 prior to such Acceptance Notice.

8.20 Notices. Any notice to either Party shall be in writing and given by delivering the notice in person or by sending the notice by registered or certified mail, or Express Mail, return receipt requested, with postage prepaid, to the Party's mailing address.

8.21 Mailing Addresses. The respective mailing addresses of the Parties are, until changed as hereinafter provided, the following:

City:	Director of Community Development City of Sunnyvale 456 W. Olive Avenue P.O. Box 3707 Sunnyvale, CA 94088
With a copy to:	City Attorney City of Sunnyvale 456 W. Olive Avenue P.O. Box 3707 Sunnyvale, CA 94088

Moffett Place Landowner:	Moffett Place Landowner c/o Jay Paul Company Four Embarcadero Center, Suite 3620 San Francisco, CA 94111 Attn: Ms. Janette D'Elia
With a copy to:	Sheppard Mullin Richter & Hampton LLP Four Embarcadero Center 17th Floor San Francisco, CA 94111 Attn: Doug Van Gessel

Either Party may change its mailing address at any time by giving ten (10) days' notice of such change in the manner provided for in this section. All notices under this Agreement shall be deemed given, received, made or communicated on the date personal delivery is effectuated or, if mailed, on the delivery date or attempted delivery date shown on the return receipt. Nothing in this provision shall be construed to prohibit communication by facsimile transmission, so long as an original is sent by first class mail, commercial carrier or is hand-delivered.

ARTICLE 9.
MISCELLANEOUS

9.1 Approvals. Unless otherwise provided herein, whenever approval, consent or satisfaction (herein collectively referred to as an "approval") is required of a Party pursuant to this Agreement, such approval shall not be unreasonably withheld. If a Party shall disapprove, the reasons therefor shall be stated in reasonable detail in writing. Approval by a Party to or of any act or request by the other Party shall not be deemed to waive or render unnecessary approval to or of any similar or subsequent acts or requests.

9.2 Project Approvals Independent. All approvals which may be granted pursuant to this Agreement, and all approvals or other land use approvals which have been or may be issued or granted by the City with respect to the Property, constitute independent actions and approvals by the City. If any provisions of this Agreement or the application of any provision of this Agreement to a particular situation is held by a court of competent jurisdiction to be invalid or unenforceable, or if the City terminates this Agreement for any reason, such invalidity, unenforceability or termination of this Agreement or any part hereof shall not affect the validity or effectiveness of any approvals or other land use approvals. In such cases, such approvals will remain in effect pursuant to their own terms, provisions and conditions.

9.3 Not a Public Dedication. Nothing herein contained shall be deemed to be a gift or dedication of the Property, or of the Project, or any portion thereof, to the general public, for the general public, or for any-public use or purpose whatsoever. This proscription does not extend to any portion of the Property which may be dedicated in compliance with any conditions of approval. The Landowner shall have the right to prevent or prohibit the use of the

Property, or the Project, or any portion thereof, including common areas and buildings and improvements located thereon; by any person for any purposes inimical to the operation of a private, integrated Project as contemplated by this Agreement.

9.4 Severability. Invalidation of any of the provisions contained in this Agreement, or of the application thereof to any person, by judgment or court order, shall in no way affect any of the other provisions hereof or the application thereof to any other person or circumstance and the same shall remain in full force and effect, unless enforcement of this Agreement as so invalidated would be unreasonable or grossly inequitable under all the circumstances or would frustrate the purposes of this Agreement.

9.5 Construction of Agreement. The provisions of this Agreement and the Exhibits shall be construed as a whole according to their common meaning and not strictly for or against any Party in order to achieve the objectives and purpose of the Parties. The captions preceding the text of each Article, Section, Subsection and the Table of Contents are included only for convenience of reference and shall be disregarded in the construction and interpretation of this Agreement. Wherever required by the context, the singular shall include the plural and vice versa, and the masculine gender shall include the feminine or neuter genders, or vice versa. All references to "person" shall include, without limitation, any and all corporations, partnerships or other legal entities.

9.6 Other Necessary Acts. Each Party covenants, on behalf of itself and its successors, heirs and assigns, to take all actions and do all things, and to execute, with acknowledgment or affidavit if required, any and all further instruments, documents and writings as may be reasonably necessary or proper to achieve the purposes and objectives of this Agreement and to secure the other party the full and complete enjoyment of its rights and privileges hereunder.

9.7 Applicable Law. This Agreement, and the rights and obligations of the Parties, shall be construed by and enforced in accordance with the laws of the State of California.

9.8 Equal Authorship. This Agreement has been reviewed by legal counsel for both the Landowner and City, and no presumption or rule that ambiguities shall be construed against the drafting Party shall apply to the interpretation or enforcement of this Agreement.

9.9 Time. Time is of the essence of this Agreement and of each and every term and condition hereof. In particular, the City agrees to act in a timely fashion in accepting, processing, checking and approving all maps, documents, plans, permit applications and any other matters requiring the City's review or approval relating to the Project or Property. Subject to extensions of time by mutual consent in writing, unreasonable delay by either party to perform any term or provision of this Agreement shall constitute a default.

9.10 Subsequent Projects. After the effective date of this Agreement, the City may approve other projects that place a burden on the City's infrastructure; however, it is the intent and agreement of the Parties that the Moffett Place Landowner's right to build and occupy

the Project, as described in this Agreement, shall not be diminished despite the increased burden of future approved development on public facilities.

9.11 Entire Agreement. This written Agreement and the Exhibits contain all the representations and the entire agreement between the Parties with respect to the subject matter hereof. Except as otherwise specified in this Agreement, any prior correspondence, memoranda, agreements, warranties or representations are superseded in total by this Agreement and Exhibits.

9.12 Form of Agreement; Exhibits. This Agreement is executed in three duplicate originals, each of which is deemed to be an original. This Agreement consists of 31 pages and exhibits which constitute the entire understanding and agreement of the parties. Said exhibits are identified as follows:

Exhibit A-1 and A-2: Property Description and Site Map
Exhibit B: Public Safety Facility Requirements
Exhibit C: List of Preliminary Title Reports

9.13 Authority. The Parties hereby represent that the person hereby signing this Agreement on behalf of each respective Party has the authority to bind the Party to the Agreement.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the day and year first above written.

"City"

CITY OF SUNNYVALE,
A Charter City

By:_____
Name: Gary Luebbers
Title: City Manager

Date: _____

Attest:

City Clerk

Approved as to Form:

_____
City Attorney

"Landowner"

MOFFETT PLACE LLC,
a Delaware limited liability company

By: _____

Date:_____

Approved as to Form:

_____

Exhibit A-1

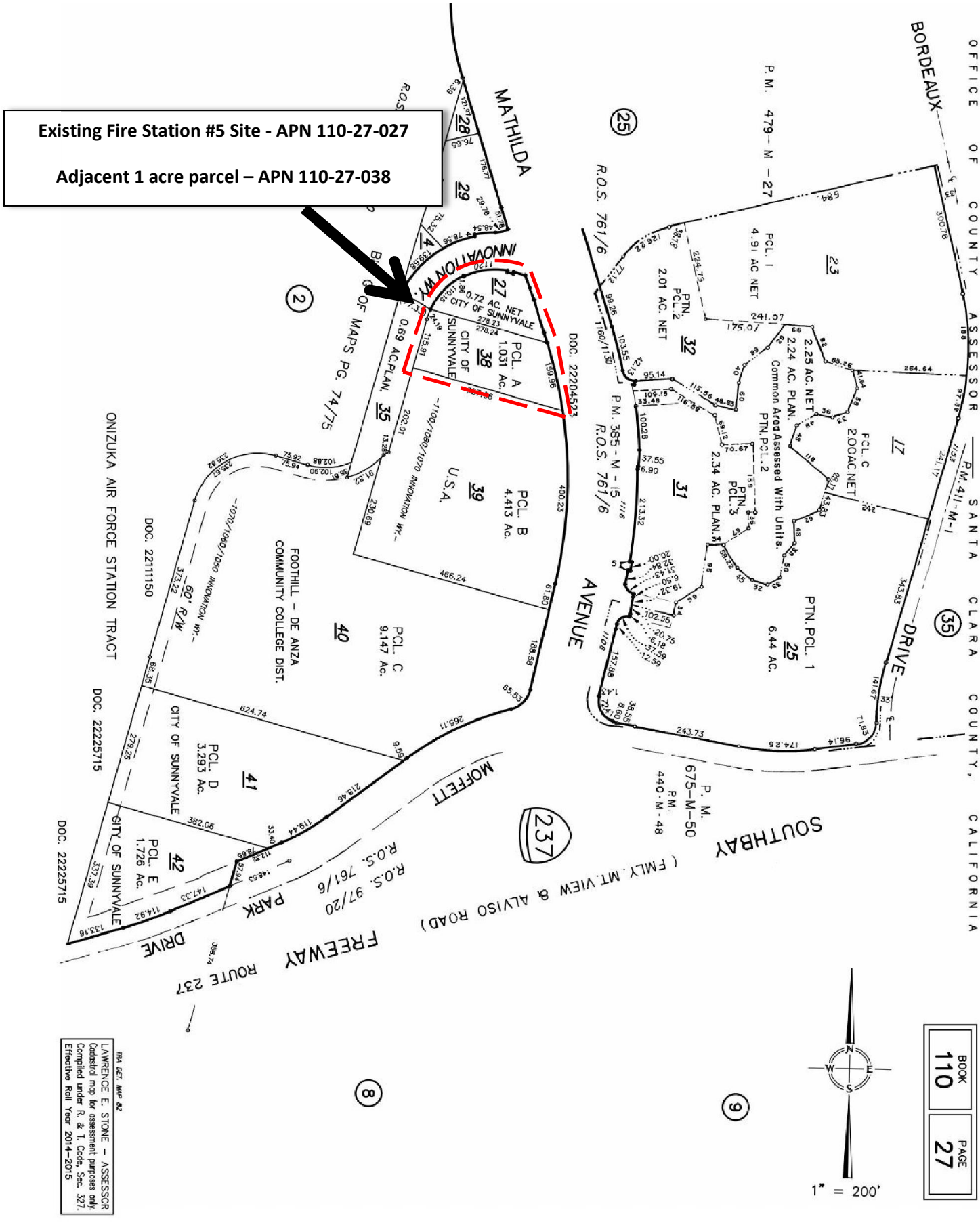
Existing Fire Station #5 Site - APN 110-27-027
Adjacent 1 acre parcel – APN 110-27-038
OFFICE OF COUNTY ASSESSOR
SANTA CLARA COUNTY, CALIFORNIA
BORDEAUX
DRIVE
MATHILDA
AVENUE
SOUTHBAY
MOFFETT
PARK
DRIVE
FREEWAY ROUTE 237
(FMLY. MT. VIEW & ALVISO ROAD)
ONIZUKA AIR FORCE STATION TRACT
INNOVATION WY.
CITY OF SUNNYVALE
FOOTHILL – DE ANZA COMMUNITY COLLEGE DIST.
U.S.A.
PCL. A 1.031 Ac.
PCL. B 4.413 Ac.
PCL. C 9.147 Ac.
PCL. D 3.293 Ac.
PCL. E 1.726 Ac.
0.72 AC. NET
0.69 AC.PLAN.
PTN. PCL. 1 6.44 AC.
PTN. PCL. 2 2.34 AC. PLAN.
PTN. PCL. 3
2.25 AC. NET
2.24 AC. PLAN.
Common Area Assessed With Units.
FCL. C 2.00AC NET
FCL. I 4.91 AC NET
PTN. PCL. 2 2.01 AC. NET
P.M. 479-M-27
P.M. 411-M-1
P.M. 385-M-15
P.M. 675-M-50
P.M. 440-M-48
R.O.S. 761/6
R.O.S. 97/20
DOC. 22204523
DOC. 22111150
DOC. 22225715
1" = 200'
BOOK 110
PAGE 27
TRA DET. MAP 62
LAWRENCE E. STONE – ASSESSOR
Cadastral map for assessment purposes only.
Compiled under R. & T. Code, Sec. 327.
Effective Roll Year 2014-2015

Exhibit A-2

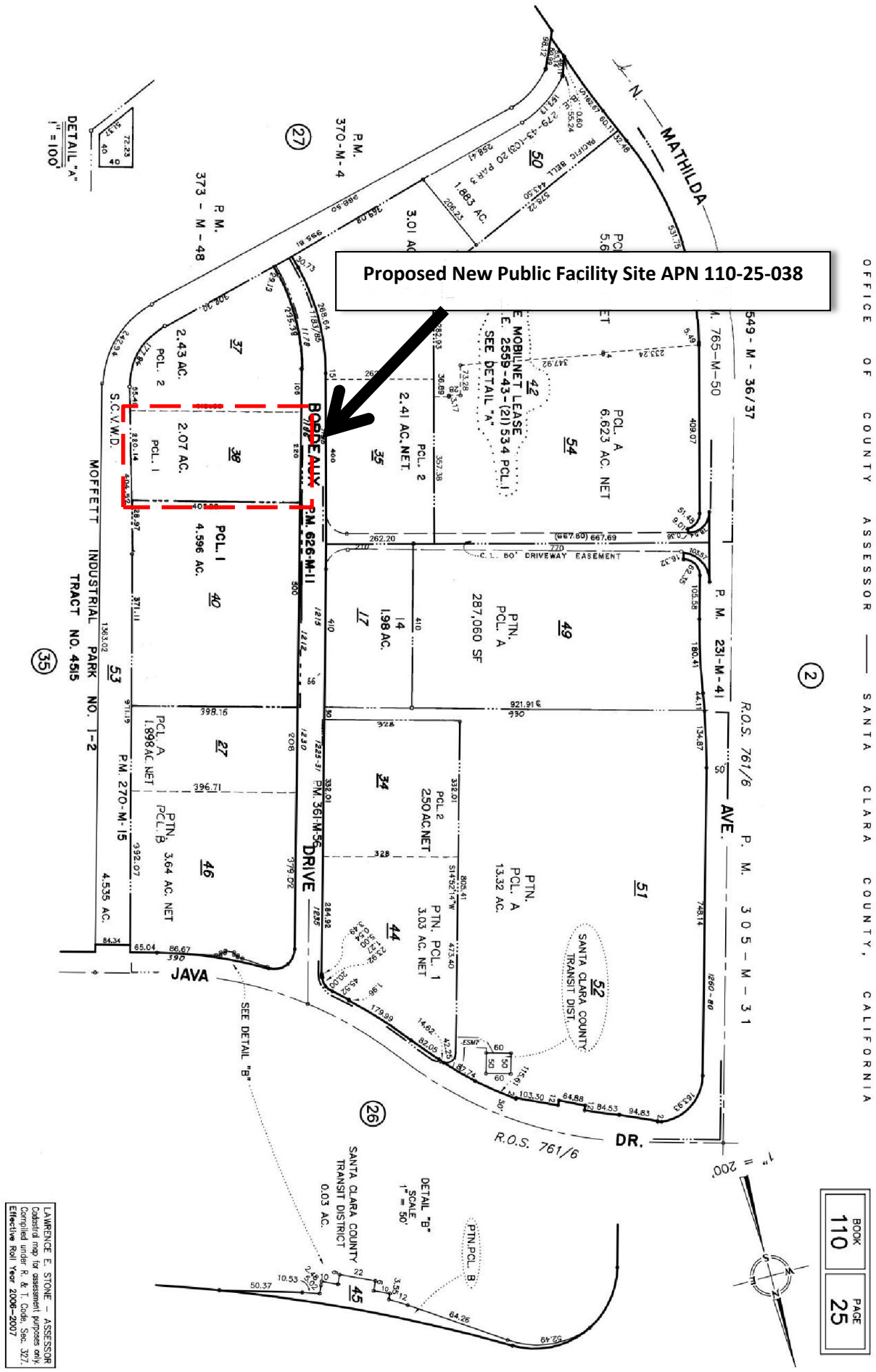
Proposed New Public Facility Site APN 110-25-038
OFFICE OF COUNTY ASSESSOR — SANTA CLARA COUNTY, CALIFORNIA
MATHILDA
AVE.
DRIVE
JAVA
DR.
BORDEAUX
MOFFETT INDUSTRIAL PARK NO. 1-2
TRACT NO. 4515
SANTA CLARA COUNTY TRANSIT DIST.
SANTA CLARA COUNTY TRANSIT DISTRICT 0.03 AC.
DETAIL "A" 1" = 100'
DETAIL "B" SCALE 1" = 50'
SEE DETAIL "A"
SEE DETAIL "B"
R.O.S. 761/6
1" = 200'
BOOK 110
PAGE 25
LAWRENCE E. STONE – ASSESSOR
Cadastral map for assessment purposes only
Compiled under R. & T. Code, Sec. 327.
Effective Roll Year 2006–2007

Exhibit B

PROGRAM

Fire Station 5, Sunnyvale. 3-Bay Alternative 11.12.2013

Total Building Area: 17,241 SF (Fire station area = 10,938 SF / Shooting Range Area = 6,303 SF)

Building Height: 1-story

Sustainable Design Criteria: LEED Silver Equivalent

Building Program:

Apparatus Bay and Associated Functions:

1. 3-bay apparatus room.
    a. 17'-6" interior clear height
    b. Apparatus bay doors – 16' wide and 13' tall (8) & drive through doors at back
    c. Diesel exhaust system (Nederman or similar)
2. Turn out gear storage room with 18 lockers
3. Haz Mat wash down room
    a. 2 commercial grade washers
    b. Hose down area
    c. Residential size washer/dryer
    d. Restroom
4. EMS storage room
5. Mechanics work room
6. Recessed area for 10' long hose rack

Living Quarters:

7. Day Room
    a. Commercial grade kitchen to include:
        i. 3 fridge/freezers
        ii. Range
        iii. Double wall ovens
        iv. Dishwasher
        v. Ice machine
        vi. Large pantry
        vii. Island
    b. Dining table for 10
    c. Lounge area with seating for 10
    d. Storage room for household items
8. 6x single occupancy sleeping rooms
    a. Twin XL bed

    b. Bed side table
    c. Storage locker for clothing with gun locker inside
    d. Small desk and chair
9. 3x single occupancy restroom/shower
10. single occupancy restroom close to day room
11. storage closet for linens
12. Private office (2 person)

Office Area:

13. Visitor lobby
14. Private office (2 person)
15. Open office area (6 person)
16. Conference room (6 person)
17. Exercise room
18. Restrooms
19. Janitors closet
20. Training room (50 people)
    a. Storage room for tables and chairs
    b. Media storage room
    c. AV system – pull down projection screen and ceiling mounted projector
    d. White boards
    e. Viewing windows into shooting range

Shooting Range:

21. 8 lane 25 yard shooting range
22. 10' wide roll up door for vehicular access into shooting range (optional)
23. Lobby (separate entrance from training yard)
24. Vestibule between lobby and shooting range
25. Weapons cleaning room
26. Armory
27. Ammunition storage room
28. Target prop storage room
29. CMU wall construction throughout this area.

Outdoor Areas:

30. Fully fenced perimeter
    a. Painted steel picket fence on street frontage
        i. Rolling gate, 26' wide
    b. Black chainlink fence for balance of perimeter
31. Perimeter landscaping for screening
32. Main electrical room
33. Transformer

34. Emergency generator (100KW)
35. Trash/Recycle enclosure
36. Concrete apron in front of apparatus bay
37. Employee patio area off day room:
    a. Combination paving and planting
    b. Gas grill
38. 4x visitor parking spaces
39. Pedestrian path from sidewalk to lobby – colored concrete
40. Vehicular access to shooting range
    a. 11' wide Asphalt roadway
    b. Sliding gate – 10' wide
41. 5x staff parking stalls within fenced perimeter
42. Outdoor drill/training/maintenance yard – 30,000 SF
    a. Asphalt paving
    b. 2 fire hydrants

Other Specialty Systems:

43. Water collection and treatment system for fire truck wash down area of training yard
44. Ring down alarm system (Zetron or similar)

Moffett Place

Fire Station No 5 - Summary of Estimated Costs - w/1% for Art & 3 Bay Drive-Through

Construction (Level 10)	$	11,538,907
Testing & Special Inspections	$	9,500
LEED Commissioning	$	15,000
Archeologist	$	10,000
Architectural & Engineering (DES)	$	750,000
1% For Art	$	115,389
FF&E	$	157,344
Total	$	12,596,140
Fire Truck	$	1,100,000
Total	$	13,700,000

LEVEL 10 CONSTRUCTION

Cost Model For
Moffett Place Fire Station #5
per 11/6/13 Program

Project Name: Moffett Place Fire Station #5
Fire Station No 5 Sunnyvale, CA
Owner: Jay Paul Co.
Architect: DES Architects

Proposal #: TBD
Date Revised: November 6, 2013

Fire Station Building Area:	10,938	SF
Shooting Range	6,303	SF
Fire Station Site Area:	71,195	SF
1% For Art	-	

Description	Total SF	Building $/Unit	Building Amount	Sitework Amount	Total $/Unit	Total Amount
Moffett Place Fire Station #5		589.77	$ 6,450,936	$ 2,325,092		$ 8,776,028
Shooting Range		438.34	$ 2,762,879	$ -		$ 2,762,879
Total Construiction			**$ 9,213,815**	**$ 2,325,092**		**$ 11,538,907**
Total						**$ 11,538,907**

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Moffett Place

Fire Station No 5 - Summary of Estimated Costs - 3 Bay Station 11.6.13 w/1% for Art

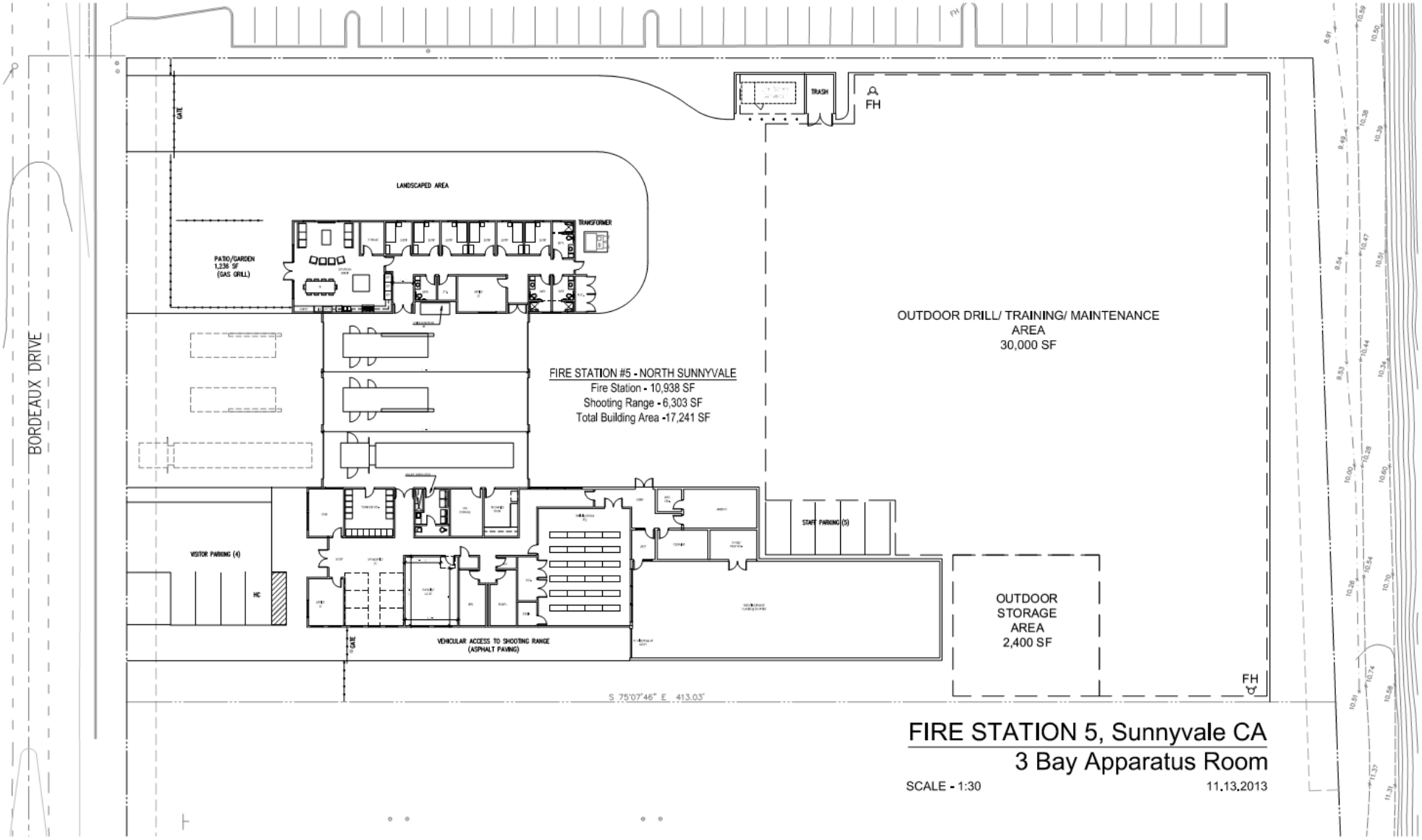
Conceptual Budget

	units	rooms	total qty	unit cost	total cost
Sleep Rooms					
Sleep room beds	1	6	6	$1,000	$6,000
Sleep room cabinet	1	6	6	$1,200	$7,200
Sleep room desk	1	6	6	$1,200	$7,200
Sleep room desk chair	1	6	6	$750	$4,500
Sleep room desk lamp	1	6	6	$200	$1,200
Sleep room linen set up	1	6	6	$400	$2,400
Day Room					
Dayroom sofa	2	1	2	$1,800	$3,600
Dayroom lounge chairs	4	1	4	$1,200	$4,800
Dayroom coffee table	2	1	2	$1,000	$2,000
Dayroom side table	4	1	4	$750	$3,000
Dining room table	1	1	1	$2,000	$2,000
Dining room chairs	10	1	10	$700	$7,000
Patio					
Patio table 60" round w/ umbrella	1	1	1	$1,000	$1,000
Patio chairs	6	1	6	$200	$1,200
BBQ	1	1	1	$1,000	$1,000
Private Offices					
Private office desk	2	2	4	$1,200	$4,800
Private office desk chair	2	2	4	$750	$3,000
Private office desk lamp	2	2	4	$200	$800
Open Office					
Workstations 6' x 8'	6	1	6	$2,800	$16,800
Workstation chairs	6	1	6	$750	$4,500
Conference Room					
Conference table for 10	1	1	1	$3,500	$3,500
Conference chairs	10	1	10	$500	$5,000
Trianing Room					
Training tables	25	1	25	$800	$20,000
Training chairs	50	1	50	$400	$20,000
Total					$132,500
Sales Tax					$11,594
Deliery/Installation					$13,250
Total					$157,344

Optional:

Exercise Equipment (inc tax & installation)

Cybex	1	1	1	$24,227	$24,227
TRX	1	1	1	$841	$841
					$25,068



FIRE STATION 5, Sunnyvale CA

3 Bay Apparatus Room

SCALE - 1:30

11.13.2013