RECORDING REQUESTED BY

NAME: City of Sunnyvale

**WHEN RECORDED MAIL TO:**

**NAME:** City of Sunnyvale/Engineering Division

**ADDRESS:** P.O. Box 3707

**CITY/STATE/ZIP:** Sunnyvale, CA 94088-3707

(DOCUMENT WILL ONLY BE RETURNED TO NAME & ADDRESS INDENTIFIED ABOVE)

(SPACE ABOVE FOR RECORDER'S USE)

# IMPROVEMENT AGREEMENT

## DP-XX-XX

THIS IMPROVEMENT AGREEMENT (the "Agreement"), is made and entered into in the City of Sunnyvale, County of Santa Clara, State of California, this ____ day of _____, 2016, by and between the CITY OF SUNNYVALE, a municipal corporation of the State of California, hereinafter called "City" and _____, hereinafter called "Developer";

W I T N E S S E T H:

This Agreement is entered upon the basis of the following facts, understandings and intentions of the City and the Developer:

A. On _____, 2016, the City Council approved the project with conditions (Planning Application #201x-xxxx) for an area known as _____, and identified as Santa Clara County Assessor's Parcels numbered xxx-xx-xxx (the "Project Area").

NOW, THEREFORE, in consideration of Developer's execution of this Agreement and delivery of the improvement securities required under section 2 the Developer and City agree as follows:

1. Completion of Improvements.

(a) Developer shall submit, within 60 days of its execution of this Agreement, all improvement plans for public use within the Subdivision Area for City's review and approval.

(b) Developer shall complete all improvements for public use in the Project Area consistent with the Planning Application #201x-xxxx conditions of approval (the "COA's").
(c) Developer shall furnish, construct and install at Developer's own expense all improvements as required by COAs and in accordance with all City approved plans and specifications.
(d) Any deviation from this Paragraph 1 is subject to mutual agreement upon a 30-day advance written notice and subject to Paragraph 12.

2. Improvement Securities.

(a) Faithful Performance Bond – Developer has furnished and delivered to City concurrently with this Agreement, adequate and acceptable improvement security as required by Title 13 of the Sunnyvale Municipal Code, or as amended, in the amount of _____ and No/100 dollars ($xxx,xxx.00) to secure Developer's faithful performance of furnishing, constructing or installing all improvements required by Paragraph 1 above.

(b) City shall reduce Developer's security amount upon Developer's completion of improvements required by Paragraph 1 above and receipt of an unconditional lien release.

(c) Notwithstanding Paragraph 2.(b) above, Developer shall maintain a minimum of twenty-five percent (25%) of the faithful performance securities required by Paragraph 1 for a period of one (1) year ("Warranty Period") from completion and acceptance by the Director of Public Works of improvements required by Paragraph 1 above, against any defective work or labor done by Developer or its contractors or defective materials supplied by Developer or its contractors as warranty security ("Warranty Security"). City shall release the Warranty Security upon expiration of the Warranty Period and settlement of any claims filed during the Warranty Period related to work, labor or materials provided by Developer or its contractors.

3. Indemnification. Developer shall indemnify and hold harmless City, its officers, employees, and agents from any and all liability, damages, claims, or causes of action for injury to person or persons, or damage to property which may arise out of, or occur by reason of the performance or work by Developer or its contractors in furtherance of this agreement and the Conditions of Approval, including all costs and attorney fees incurred in defending any claim arising as a result thereof. Any performance or work provided by other property owner(s) or their contractors within the Subdivision Area will not be an obligation of Developer and such other property owner(s) shall indemnify the City and Developer therefore under a separate agreement.

4. Insurance. Concurrently with the acceptance of this Agreement, Developer shall furnish and deliver to City a certificate showing that Developer has such public liability and property damage insurance insuring Developer against any loss or liability of any kind or nature whatsoever which may arise during the performance of, or which may result from any of the work herein required to be done by Developer, including all costs of defending

any claim arising as a result thereof. Such policy shall be in an aggregate amount of at least One Million Dollars ($1,000,000.00) for the death or injury to any person or persons in any one accident or occurrence. Developer shall also provide Certificates from its contractors who will perform the work which shall show Workers' Compensation Insurance and Employer's Liability Insurance for all of the latter's employees. Said policies shall remain in full force and effect until this Agreement shall be fully performed and shall state by its terms or by an endorsement thereof that said policy shall not be canceled until the City shall have at least thirty (30) days notice in writing of said cancellation.

A contractual liability endorsement shall be added to each insurance policy extending coverage to include the liability assumed in Paragraph 4 above. THE CITY OF SUNNYVALE MUST BE NAMED AS AN ADDITIONAL INSURED.

5. Fees and Charges. The following fees and charges shall be paid prior to any encroachment permit issuance:

| | | |
|---|---|---|
| 1. | Sanitary Sewer | |
| | a. Connection | $_____ |
| | b. Existing Sanitary Sewer Frontage Charge | $ N.A. |
| 2. | Storm Drain Connection | $ N.A. |
| 3. | Water | |
| | a. Connection | $_____ |
| | b. Existing Water Main Frontage Charge | $ N.A. |
| | c. Water Meters | $_____ |
| | d. Tapping Fee | $_____ |
| 4. | Fire Hydrants | $ N.A. |
| 5. | Inspection and/or Engineering | $_____ |
| 6. | Street Lighting System | $ N.A. |
| 7. | Street Trees | $_____ |
| 8. | Maintenance Deposit | $_____ |
| 9. | Other: Traffic Control Plan | $_____ |
| | TOTAL FEES AND CHARGES | $_____ |

Please note there are other applicable fees such as technology fees, cross-connection inspection/testing fees, and/or building clearance fee associated with the project that need to be paid separately at the time of each corresponding permit issuance.

6. Construction Yard and Laydown Areas. Developer shall locate any construction yard for the storage of equipment, vehicles, supplies and materials or the preparation or fabrication thereof, to be used in connection with the installation of improvements for said subdivision or the construction of buildings, therein, in such a manner so as to cause a minimum of inconvenience to persons living in the areas immediately adjacent to said subdivision, and to obtain the approval of the Director of Public Works to the proposed location of the yard. Immediately upon completion of the final building to be constructed in the subdivision, or unit thereof, to which this agreement refers, Developer shall cease using the construction yard and to remove therefrom all supplies, materials, equipment, or vehicles being stored or kept thereon. Developer agrees not to use the construction yard in connection with the installation of improvements or construction of buildings in any other subdivision, or any other unit of the subdivision to which this agreement refers. City may extend the time within which the construction yard may be used or within which supplies, materials, equipment or vehicles may be stored or kept thereon if City shall determine that the granting of such extension will not be detrimental to the public welfare. No extension will be made except on the basis of a written application made by Developer stating fully the grounds and facts relied upon it for such extension.

7. Time Limitations. Developer shall perform all of the work required by Paragraph 1 on or before eighteen (18) months from the effective date of this Agreement, however, that City may extend the time within which City work and improvements shall be completed if City shall determine that the granting of such extension will not be detrimental to the public welfare. No extension will be made except on the basis of a written application made by Developer stating fully the grounds and facts relied upon for such extension.

8. Inspections. The Director of Public Works shall inspect all of the improvements made pursuant hereto to determine that they comply with all City regulations.

9. Workmanlike Manner During Construction. Developer shall keep and maintain all areas within the improved or partially improved public streets or public rights-of-way contiguous and adjacent to and within the hereinabove referenced to Subdivision Area, including streets being constructed and/or improved pursuant to this Agreement, free and clear of all dirt, mud, sand, gravel, rocks, bricks, stones, shingles, roofing material, lumber, tool sheds, construction buildings and other similar items at all times during the improvement and construction of the improvement and all buildings and other structures within said Subdivision.

10. Maintenance Deposit. – Concurrently with the acceptance of this Agreement, Developer has posted and filed with City a cash deposit in the amount of _____ and No/100 dollars ($XXXX.00) to guarantee that all areas to be improved within public streets and public rights-of-way, as required by the approved improvements plans, are properly maintained, repaired, replaced, restored and

rebuilt including all concrete work, street pavement, street lighting system, storm drain system, sanitary sewer system, water main system and proper clean up and sweeping of all debris, buildings, equipment and other items. In the event Developer fails, neglects, or refuses to maintain said areas, City is hereby authorized to expend all or any portion of said deposit during construction and during the one year maintenance period to accomplish the above for a clean and safe project site.

11. Binding on Successors and Assigns. This Agreement shall inure to the benefit of and be binding upon the successors and assigns of the respective parties hereto.

12. Assignment Prohibited. This Agreement shall not be assigned without the prior written consent of the City.

13. Miscellaneous Provisions.

(a) All modifications, amendments or waivers under this Agreement must be in writing and signed by the authorized representatives of the parties also known as "City" and "Developer".

(b) The Director of Public Works or his/her designee is the authorized representatives for the City.

(c) This Agreement shall be construed and interpreted according to California law, and any action to enforce the terms of this Agreement or for the breach thereof shall be brought and tried in the County of Santa Clara.

(d) Time is of the essence.

(e) The provisions of this Agreement are severable. If any portion is held invalid by a court of competent jurisdiction, the remainder of this Agreement shall remain in full force and effect.

(f) Each of the Exhibits referenced in this Agreement are attached hereto and incorporated herein.

(g) This Agreement may be signed in multiple counterparts each of which shall be deemed to be an original but all of which shall constitute a single agreement.

IN WITNESS WHEREOF, the City of Sunnyvale has caused this Agreement to be executed on the ____ day of _____, 201x, and Developer has caused this Agreement to be executed the day and year first above written.

CITY OF SUNNYVALE
A Municipal Corporation

DEVELOPER:

By _____
Craig Mobeck, City Engineer
Assistant Director of Public Works

By _____
Name, Title

APPROVED:
As to form:

By _____
Robert Boco
Senior Assistant City Attorney

All DEVELOPER signatures must be acknowledged by a notary public.
City Engineer signature must be acknowledged by a notary public.

Attachments:
Exhibit A – Engineer's Opinion of Probable Costs

EXHIBIT “A”

Engineer’s Opinion of Probable Costs