

# **EXHIBIT A - OUTSIDE SERVICE AGREEMENT**

**Recorded at the Request of,  
and Return to:**

City Clerk  
City of South San Francisco  
400 Grand Avenue  
South San Francisco, CA 94080

Exempt from Recording Fees  
per G.C. secs. 6103, 27383

Re: APN: 013-121-040

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## **OUTSIDE SEWER SERVICE AGREEMENT**

### **RECITALS**

WHEREAS, the City of South San Francisco, California, a municipal corporation (“City”) owns and operates public sewer facilities within its boundaries; and,

WHEREAS, [REDACTED] (“Owner”) are the owners of property located at 340 Alta Vista Drive County of San Mateo (“Parcel”), which property is outside the boundaries of the City and is therefore not entitled to connect to or use City’s sewer facilities, but is within the City’s Sphere of Influence as defined under state law; and,

WHEREAS, the property is identified as APN 013-121-040 by the San Mateo County Assessor; and,

WHEREAS, the Parcel is currently serviced by the City pursuant to a Sewer Service Permit dated February 2, 1994, recorded against the Parcel and identified in the County of San Mateo Recorder’s Office file as Permit No. 94059479 (the “1994 Sewer Permit”), attached hereto and incorporated herein as Exhibit A; and

WHEREAS, the 1994 Sewer Permit authorizes the Parcel to connect to the City’s sewer facilities for the discharge into the City’s sanitary sewer system for flow capacity of a single family dwelling, a convent and accessory building for approximately 35 residents and a sanctuary; and

WHEREAS, the 1994 Sewer Permit specifies that that discharge from any other type of facility requires City approval; and

WHEREAS, Owner currently operates a 26-resident senior living facility on the Parcel, which sewer discharge is within the flow capacity permitted by the 1994 Sewer Permit; and

WHEREAS, Owner desires to expand said facility to accommodate 53 residents, which sewer discharge would exceed the permitted flow capacity under the 1994 Sewer Permit; and

WHEREAS, Owner desires the Parcel to receive additional sewer services from the City for the proposed facility expansion; and,

WHEREAS, City has agreed to provide additional sewer services and permit the additional flow capacity from the Parcel subject to the terms and conditions of this Outside Sewer Services Agreement (“Agreement”); and

WHEREAS, on [REDACTED], the City Council of the City adopted a Resolution approving this Agreement; and

WHEREAS, Owner understands that any future annexation to the City is subject to any and all City rights and determinations, whether legislative, quasi-judicial, administrative, or however characterized, with respect to any proposed annexation of the Parcel to the City.

Now, therefore, City and Owner agree as follows:

### **AGREEMENT**

Owner is hereby authorized to connect to City’s sewer line, located within the right of way running along Dorado Way, subject to the following conditions:

1. Consent to Future Annexation. In the event the Parcel shall be proposed for annexation to the City, Owner hereby consents to said annexation, and hereby waives Owner’s rights to protest such annexation pursuant to the provisions of law governing such annexations.
  - a. Taxes or Other Charges. In the event annexation of the Parcel to the City shall be duly approved by all agencies having jurisdiction thereof, Owner agrees that the Parcel shall be subject to any and all general, special, extraordinary, or additional taxes or assessments, or any and all general, special extraordinary, or additional service charges, fees, or rates, levied against, imposed upon, or otherwise pertaining to the Parcel by any and all agencies, including the City, having jurisdiction thereof in the same fashion as other like property located within the territorial limits of the City.
2. Improvements in the Event of Annexation. If a request for annexation is approved by the San Mateo Local Agency Commission (“LAFCo”) the Parcel is annexed to the City of South San Francisco, Owner, on behalf of themselves, their successors and assigns, agrees to comply with either of the following conditions:
  - a. Design and construct public improvements including sidewalk, curb and gutter improvements for the Parcel. Accordingly, Owner shall, upon the request of City in a form provided by the City, execute a subsequent Deferred Improvement Agreement guaranteeing the construction of such public improvements and compliance with other permitting, security, and regulatory requirements for constructing the improvements. A form Deferred Improvement Agreement template is attached to this Agreement as Exhibit B and incorporated herein by this reference. The City and Owner, or the successor owner of the Parcel if Owner no longer owns the property at the time of annexation, shall meet and confer at the time of the

proposed annexation to determine the applicable City standards, and requirements for constructing public improvements for the Parcel. Or, alternatively,

- b. Pay for the design and construction of public improvements including sidewalk, curb and gutter improvements for the Parcel, by paying a one-time charge, hereafter called a “public improvements fee,” for the purpose of funding construction of said improvements from the property to the centerline of the street or roadway, covering one-half of the street or roadway. The public improvements fee shall be a figure representing the cost of constructing such improvements from the property to the centerline of the street or roadway. Thus, as an example only, if the cost for constructing a sidewalk, driveways, curbs, gutters, two-inch grind overlay to the centerline, design costs, and contingency for a property is estimated to be \$244 per foot, the cost of constructing said improvements would be approximately \$51,500.
3. Owner, on behalf of themselves, their administrators, heirs, assigns, and transferees, agrees to pay a pro-rata share of construction of new sewer facilities installed, owned and operated by City, if the City secures the funding for such facilities, for the purpose of providing sewer service to the area, including the Parcel, known as Country Club Park.
  - a. Accordingly, Owner agrees to participate in an assessment district to fund construction of new sewer facilities serving the Parcel, or
  - b. Alternatively, pay a one-time charge, hereinafter referred to as the “frontage fee”, for the purpose of funding construction of said new facilities. The frontage fee shall be a figure representing one-half of the cost of said improvements, apportioned to each parcel served in a pro rata fashion, and then applied to individual parcels according to the amount of each parcel’s frontage to the City’s facilities, measured in lineal feet. Thus, as an example only, if the frontage fee were established in the amount of \$244 per foot, a parcel that has 100 feet of frontage will pay \$24,400.
4. Owner agrees to pay a one-time sewer capacity fee and a sewer services fee as follows:
  - a. Owner will be charged, and shall pay, (1) a one-time sewer capacity fee for the proposed increase in flow; and (2) an annual sewer service charge, both under then-applicable schedules of rates and charges, as may be amended from time to time.
  - b. Should Owner fail or refuse to pay the sanitary sewer charges required herein on or before the due date, the City may elect to collect said charges by commencement of a suit within 30 days after demand for payment and Owner shall pay all costs of the suite and reasonable attorney’s fees incurred therewith. As an alternative remedy, the City may require Owner to disconnect from the City’s sanitary sewer system at Owner’s sole cost and expense.
5. The sewer connection and subsequent service provided under this Agreement is limited to existing legal lots of record as of [REDACTED], or lots existing on the Parcel as of the date of this Agreement, whichever is fewer. City is under no obligation to provide additional hookups or service to subsequently created lots on the Parcel. This requirement is not intended

to prohibit a lot line adjustment, so long as it does not result in creation of lots exceeding in number the lots which existed on the Parcel on [REDACTED], or lots existing on the Parcel as of the date of this Agreement, whichever is fewer.

6. The Owner shall pay for all City costs in connection with preparing and processing this Agreement, and with processing the Owner's application for sewer services. The Owner shall deposit with the City \$5,000 to cover initial cost and pay the remainder of any costs over \$5,000 prior to recordation of the Agreement by the County of San Mateo. The deposit shall not be refundable if Owner withdraws the application after making the deposit.

7. Owner shall conform to the current City standards for sewer lateral construction, maintenance and inspection including those set forth under South San Francisco Municipal Code Chapter 14.14, most currently in effect and as may be amended from time to time, between the City main and the Parcel. Owner shall be responsible for the costs necessary to perform any inspections, testing, repairs, reconstruction, replacement, and/or clean out installation as required by the City Engineer to conform the sewer lateral to current City standards.

8. For all future developments and constructions on the Parcel, Owner agrees to conform to the relevant height, aircraft noise, and safety policies and compatibility criteria contained in the most recently adopted version of the San Mateo County Comprehensive Airport Land Use Plan for the environs of San Francisco International Airport.

9. Owner shall and does hereby agree to hold the City, its officers, agents and employees free and harmless from any claim or action arising out of this Agreement, and the said connection to the City's sanitary system and/or the connection into the City's sanitary sewer system, and owner shall and does hereby agree to defend any or all such claims and actions and to indemnify the City for any losses sustained as a result thereof.

10. The covenants and conditions contained in this Agreement shall inure to the benefit of and bind the respective parties hereto and their successors, heirs, assigns, and transferees, and all covenants shall apply to and run with the land.

11. City and Owner agree that a copy of this Agreement shall be recorded with the County recorder of San Mateo County to give constructive notice of its terms, and that this Agreement shall not be effective until such recording.

12. This Agreement represents the final expression of the parties hereto with respect to the included terms and as a complete and exclusive statement of the terms of the Agreement. No modification of this Agreement shall be effective unless and until such modification is evidenced by a writing signed by both parties.

13. CAPTIONS. Paragraph headings as used herein are for convenience only, and shall not be deemed to affect the meaning or intent of the paragraph headed thereby.

IN WITNESS WHEREOF,  
the parties have executed this Agreement, as of the date set forth below.

**CITY OF SOUTH SAN FRANCISCO**

**PROPERTY OWNER(S)**

\_\_\_\_\_  
Charles Michael Futrell, City Manager

\_\_\_\_\_  
(signature)

\_\_\_\_\_, Property Owner  
(printed name)

**ATTEST**

\_\_\_\_\_  
Rosa Acosta, City Clerk

\_\_\_\_\_  
(signature)

\_\_\_\_\_, Property Owner  
(printed name)

**APPROVED AS TO FORM**

\_\_\_\_\_  
City Attorney

# EXHIBIT A

RECORDED AT REQUEST OF  
AND RETURN TO

City Clerk  
P.O. Box 711  
So. San Francisco, CA 94083

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RECORDED AT REQUEST OF

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WARREN SLOCUM RECORDER  
SAN MATEO COUNTY  
OFFICIAL RECORDER

## PERMIT

### SANITARY SEWER CONNECTION AT ALTA VISTA DRIVE

PURSUANT TO authorization, made by the CITY COUNCIL OF THE CITY OF SOUTH SAN FRANCISCO (City hereinafter), on the 10th day of November, 1993, this permit for a sanitary sewer connection is hereby issued to RUSSIAN CONVENT OF OUR LADY OF VLADIMIR, INC. on the following terms and conditions:

1. City does hereby grant to RUSSIAN CONVENT OF OUR LADY OF VLADIMIR, INC. permission to legally connect to the City's public sewer system the parcel known as 340 - 350 Alta Vista, South San Francisco (Assessor's Parcel Nos. 013-121-020 and 013-121-030) for the discharge into the City's sanitary system at the location set forth on the Tronoff Engineer's "Proposed Dorado Way Sewer Extension" attached hereto as Exhibit "A" of domestic type sewage for one single family dwelling, a convent and accessory buildings for approximately 35 residents and a sanctuary for use by the nuns and visitors. Discharge from any other type of facility will not be permitted without City's approval.
2. Permittee shall construct and install said connection at its sole cost and expense. Maintenance and repair of the portion of the sewer main and lateral installed outside of the City limits shall be borne by the Permittor City. Permittee shall provide the City with a \$5,000.00 maintenance bond for the period of three years after acceptance of the sewer by the city. The bond shall be approved by the City Attorney and shall guarantee the repair of any defects to the street or sewer installed pursuant to this permit.
3. The parties to this agreement recognize that other properties may wish to connect their sewers to the main constructed by the Permittee. Should the City Council approve a connection of additional unincorporated property to the sewer main constructed by the Permittee pursuant to this agreement, the City agrees to collect a portion of the Permittee's cost of the construction of the sewer main and direct costs, at the time that the City's sewer connection charge is paid and refund it to the Permittee, in accordance with the following terms and provisions:

RECORDER'S OFFICE COUNTY OF SAN MATEO

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A. The Permittee shall submit appropriate documents to the City Engineer for review and approval verifying, to the satisfaction of the City Engineer, the cost of the construction and installation of the new sanitary sewer main, i. e. providing sufficient detail for the City Engineer to accurately determine the scope, magnitude and unit costs of the work performed, including the name, address and telephone number of the consultants and documentation of actual payments made..

B. Should additional unincorporated property owners wish to connect their property to the City's sewer system via the sewer main installed by the Permittee, the City will make every legal effort to collect a partial reimbursement of the cost of constructing the sewer from the applicant and to refund it to the Permittee.

If the City collects such costs, the City will refund the collected costs to the Permittee. In the event the City is unable or fails to collect the applicant's share, such share shall not become an obligation or liability of the City. It is understood by the Permittee that the "total cost" of the installation will never be fully recouped, because the Permittee will always bear a proportionate share of the cost of the installation regardless of how many properties connect to the sewer.

Refunds will be based upon the lot area of the properties involved, compared with the lot area of Permittee's lot, in accordance with the following formula:

Construction Cost + Direct Costs = Construction Cost

Applicant's Lot Area +  
Permittee's Lot Area = Total Area

Construction Costs  
Total Area X Applicant's Lot Area = Applicant's Share  
of Permittee's  
Sewer Cost

Should additional property owners connect to the



sewer, the new applicant's share shall be calculated by adding their lot area to determine a new construction cost/area ratio. The new applicant's share will be calculated as above and reimbursement made to the previous Permittees who have contributed toward the cost of the construction of the sewer based upon their lot areas.

- C. The City's obligation to compute, collect and refund the construction cost to the Permittee or future Permittees shall expire twenty years from the date of this agreement.
  - D. Direct costs are costs of sewer design and plans, City and County fees (connection charges, item 7 below, are not included in the direct costs) and construction staking costs.
4. The Permittee shall obtain an Encroachment Permit from the County of San Mateo to excavate and restore the street and to pay all other fees and costs during construction period only; pay the permit inspection fee, based upon the entire estimated construction cost of the sewer (including the portion within the unincorporated area), provide bonds and insurance, and submit three copies of the City and County approved construction plans prior to commencing work on the sewer main.

The City will inspect the sewer pipe installation and manhole construction work. The City will charge the Permittee the City's normal inspection fee of \$300.00 plus 2% of the cost of the sewer construction in excess of \$10,000.00.

Upon the completion of the sewer main installation, the Permittee shall submit two blue line prints and one plastic film reproducible set of as-built construction plans to the City Engineer prior to receiving a refund of the encroachment permit deposit or release of the permit bond.

- 5. Should an assessment district to construct a sanitary sewer system within the unincorporated portion of the Country Club Park, San Mateo County unincorporated area, be proposed by either the City of South San Francisco, the County of San Mateo, or the residents of the unincorporated portion of the Country Club Park, San



Mateo County unincorporated area, the Permittees agree that they will not protest or otherwise contest the formation of said assessment district, provided the district does not assess Permittees for a sanitary sewer and appurtenances to serve their property.

6. The Permittee shall and does hereby agree to hold City, its officers, agents and employees free and harmless from any claim or action arising out of the construction of said connection to the City's sanitary sewer system and Permittee shall and does hereby agree to defend any or all such claims and actions and indemnify the City for any losses sustained as a result thereof.
7. Permittee shall pay City a connection charge of \$50.00 per fixture unit less credit for existing fixture units within fourteen days of signing this agreement and pay an annual sanitary user sewer charge on or before the 10th day of November of each year commencing with the 10th day of November, 1994, computed in accordance with the master or prevailing fee schedule.
8. Should Permittee fail or refuse to pay the sanitary sewer charges set forth in the preceding paragraph, then the City may elect to collect said charges by commencement of a suit within thirty (30) days after demand for payment and Permittee shall pay City for the costs of the suit and reasonable attorneys fees incurred therefor.

As an alternate remedy, City may require Permittee to disconnect from the City's sanitary sewer system at its sole cost and expense and should Permittee fail to disconnect within thirty (30) days after demand therefor, then City may commence an action to compel Permittee to so disconnect and Permittee shall pay costs of the suit and reasonable attorney's fees incurred therefor.

9. This permit shall take effect when Permittee has deposited with the City Clerk the connection charge set forth in Paragraph 7 and executed the acceptance of this permit as endorsed hereon. However, the permit will become void if it is not signed by the applicant Permittee and returned to the City within 30 days of its approval the City Council.
10. This permit will become void if the sewer main extension has not been constructed within 36 months of the approval of the agreement by the City Council, provided that the

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delay was not caused by the circumstances beyond the control of the Permittee, i.e. an act of God, a natural disaster, labor union strike or other such unforeseen occurrence.

11. This permit shall bind Permittees, the City, their successors in interest, and assigns.

Dated: Feb 11, 1994

By Ray von Boh  
City Engineer

**ACCEPTANCE:**

This permit is accepted by the undersigned who agree to comply with and be bound by the terms thereof and this Permit shall bind the undersigned Permittee, assigns and successors in interest.

RUSSIAN CONVENT OF OUR LADY OF  
VLADIMIR, INC.

Dated: 2-2-94

By Abbess Evtropia Mungalova  
Abbess Evtropia Mungalova,  
President

94059479

RECORDER'S OFFICE COUNTY OF SAN MATEO

**CALIFORNIA ALL-PURPOSE ACKNOWLEDGEMENT**

STATE OF CALIFORNIA )

COUNTY OF San Francisco )

On February 3, 1994 before me, MICHAEL Y. KLESTOFF  
DATE NAME TITLE OF OFFICER E.G. JANE DOE, NOTARY PUBLIC

personally appeared, ABBESS EVTROPIA MUNGALOVA  
personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Michael Y. Klestoff (SEAL)  
NOTARY PUBLIC SIGNATURE



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**OPTIONAL INFORMATION**

TITLE OR TYPE OF DOCUMENT Permit for Sanitary Sewer Connection at Alta Vista Drive  
DATE OF DOCUMENT \_\_\_\_\_ NUMBER OF PAGES 5  
SIGNER(S) OTHER THAN NAMED ABOVE City of South San Francisco

RECORDER'S OFFICE COUNTY OF SAN MATEO

**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**

No. 5193

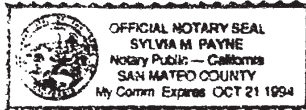
State of California

County of San Mateo

On 2/14/94 before me, Sylvia M. Payne, Notary Public-----  
DATE NAME, TITLE OF OFFICER - E.G. "JANE DOE, NOTARY PUBLIC"

personally appeared Ray VonDohren-----  
NAME(S) OF SIGNER(S)

☒ personally known to me - OR - ☒ proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



WITNESS my hand and official seal.

Sylvia M. Payne  
SIGNATURE OF NOTARY

**OPTIONAL SECTION**

**CAPACITY CLAIMED BY SIGNER**

Though statute does not require the Notary to fill in the data below, doing so may prove invaluable to persons relying on the document.

☐ INDIVIDUAL

☒ CORPORATE OFFICER(S)

City Engineer  
TITLE(S)

☐ PARTNER(S) ☐ LIMITED

☐ GENERAL

☐ ATTORNEY-IN-FACT

☐ TRUSTEE(S)

☐ GUARDIAN/CONSERVATOR

☐ OTHER \_\_\_\_\_

**SIGNER IS REPRESENTING:**

NAME OF PERSON(S) OR ENTITY(IES)

City of South San Francisco

94059479

THIS CERTIFICATE MUST BE ATTACHED TO THE DOCUMENT DESCRIBED AT RIGHT.

Though the data requested here is not required by law, it could prevent fraudulent reattachment of this form.

**OPTIONAL SECTION**

TITLE OR TYPE OF DOCUMENT Sanitary Sewer Conner / 340-350 Alta Vista

NUMBER OF PAGES 5 DATE OF DOCUMENT 2/11/94

SIGNER(S) OTHER THAN NAMED ABOVE Abbess E. Mungalova

# EXHIBIT B

Recorded at the Request of,  
and Return to:

Exempt from Recording Fees  
per G.C. secs. 6103, 27383

Re: APN: [REDACTED]

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## DEFERRED IMPROVEMENT AGREEMENT FOR OUTSIDE SEWER SERVICES

This Deferred Improvement Agreement ("Agreement") is made and entered into this [REDACTED] day of [REDACTED], 2019 ("Effective Date"), by and between City of South San Francisco (hereinafter the "City"), and [REDACTED] (hereinafter "Owner"). The City and the Owner are collectively referred to herein as the "Parties."

### RECITALS

A. Owner owns certain real property located in the City of South San Francisco, County of San Mateo, State of California, commonly referred to as APN: [REDACTED]. The parcel is hereinafter referred to as the "Subject Property".

B. The Subject Property is outside the boundaries of the City and is therefore not entitled to connect to or use City's sewer facilities, but it is within the City's sphere of influence as defined by state law.

C. The Owner desires to utilize the Subject Property's existing sewer connection in order to receive sewer services from the City, and the City and Owner have executed an Outside Sewer Service Agreement, attached hereto and incorporated as Exhibit A.

D. A condition pursuant to the Outside Sewer Service Agreement for the Subject Property require the Owner to complete the following public improvements:

[REDACTED]  
(hereinafter the "Improvements") upon annexation of the Subject Property to the City. Owner shall be responsible for the cost of designing and constructing the Improvements when requested by the City as outlined in Section 2 below.

E. City requires Owner to enter into this Agreement to ensure that the Improvements shall be designed and constructed by Owner pursuant to the terms hereof upon annexation of the Subject Property to the City. City also requires Owner to obtain all

necessary permits for access and construction of the Improvements, and to enter into any other necessary agreements to allow for the construction of the Improvements.

F. Owner is willing to enter into this Agreement to design and construct the Improvements at a later date upon annexation of the Subject Property to the City, and under the terms and conditions set forth herein.

### A G R E E M E N T

NOW, THEREFORE, BE IT AGREED as follows:

1. RECITALS. The foregoing recitals are true and correct and are incorporated into this Agreement by this reference.

2. IMPROVEMENTS TO BE CONSTRUCTED. Owner agrees to design and construct or cause to be constructed the Improvements outlined in Recital D above. The Improvements shall conform to all applicable local, state and federal laws, and standards in effect at the time of construction, and shall be completed in a manner satisfactory to the City Manager or designee.

3. TIME OF CONSTRUCTION. Owner's obligation to design and construct or cause to be constructed the Improvements shall commence upon a request for annexation is approved by the San Mateo Local Agency Commission ("LAFCO") and the Subject Property is annexed to the City of South San Francisco. Upon annexation of the Subject Property, Owner shall design and construct or cause to be constructed the Improvements within the time set forth in a written demand from the City Manager or designee, who shall have the sole and exclusive right and power to determine the date at which construction of the Improvements shall commence and be completed; provided, however, that Owner shall be given at least [REDACTED] days after notification to complete the work.

4. COST OF CONSTRUCTION. The Improvements shall be designed and constructed at the sole cost and expense of Owner, and Owner shall pay such connection, inspection, and other fees as shall at the time be required by any ordinance and resolutions of the City. The total estimated cost of construction is [REDACTED] (\$ [REDACTED]), which includes costs of constructing the Improvements and for inspection, testing, permits, and City administration.

5. APPROVAL BY THE CITY. All work required under this Agreement shall be subject to inspection by the City and shall not be deemed complete until the City has indicated in writing that the Improvements have been completed in a satisfactory manner and in accord with all applicable local, state, and federal standards then in effect. Notwithstanding the foregoing, City inspection, approval or acceptance of the Improvements shall not relieve the Owner of its obligations to fulfill this Agreement as provided herein, nor shall the City be estopped from bringing any action for damages arising from Owner's failure to comply with the terms and conditions of this Agreement.

6. ONE YEAR REPAIR AND WARRANTY PERIOD. For a period of one year from the date the City approves the completed Improvements, Owner agrees to maintain

the Improvements and repair any defects or unsatisfactory work to the reasonable satisfaction of the City Engineer. The City shall provide written notice of any repair or correction work which, in the reasonable opinion of the City Engineer, must be completed. If within the one-year period Owner fails, refuses or neglects to complete any such repairs or corrections within 30 days of receipt mailing by Owner of written notice from the City, or such reasonably longer period if the repair or correction work cannot be reasonably completed within such 30 day period, the City may complete the work and recover the reasonable cost and expense of doing so from Owner, including proceeding against the security posted by Owner as required in section 6 below.

7. SECURITY

a. Owner will be required, prior to commencing construction of the Improvements and at the sole discretion of City, to execute and deliver to City the following bonds:

(1) Faithful Performance Bond. Owner shall submit a corporate surety bond in the amount of 100% of the total estimated cost of construction of the Improvements indicated in Section 3, guaranteeing the faithful performance of this Agreement. The bond shall be executed as surety by a corporation authorized to issue surety bonds in the State of California and shall be in a form and with a surety approved by the City Attorney. Any additions, alterations or modifications to this Agreement or the plans and specifications including any extension of time within which the Improvements may be completed, shall not release or exonerate the surety(ies) on the bond.

(2) Labor and Materials Bond. Owner shall submit a corporate surety bond in the amount of 100% of the total estimated cost of construction of the Improvements as indicated in Section 3, guaranteeing the payment of all persons for labor or materials furnished in the construction of the Improvements. The bond shall be executed as surety by a corporation authorized to issue surety bonds in the State of California and shall be in a form and with a surety approved by the City Attorney.

(3) Maintenance Bond. Before the City's acceptance of the Improvements, Owner shall deposit with the City either cash or an acceptable corporate surety bond in the amount of 50% of the estimated cost of construction of the Improvements indicated in Section 3, as security for maintenance of the Improvements and to guarantee the Improvements against any defective work or labor done, or defective materials used in the work.

b. As a part of the obligation guaranteed by the security, and in addition to the full amount of the security, there shall be included costs and reasonable expenses and fees, including attorneys' fees, incurred by the City in enforcing the obligations secured.

8. OWNER'S WARRANTY. The undersigned warrants to City that Owner is the sole titleholder to the Subject Property, and that the signatory is authorized to execute this Agreement on behalf of the Owner.



9. ENCROACHMENT PERMIT; OTHER PERMISSIONS; PREVAILING WAGES.

a. Encroachment permit. For any work done in the public right-of-way, Owner shall obtain an encroachment permit from the City and shall, at its sole cost, furnish the City with the required certificates of insurance and endorsements for review and approval by the City before the start of any work, and shall maintain insurance throughout the duration of the Agreement. Owner will obtain any and all other permits that may be required to complete the Improvements, including, but not limited to, permits from [REDACTED].

b. Prevailing wages. If it is determined that Owner is required to pay prevailing wages for the work performed under this Agreement, the Owner shall pay all penalties and wages as required by law.

10. HOLD HARMLESS. To the fullest extent permitted by law, Owner shall hold harmless and, upon request, promptly and fully protect, defend and indemnify City and its officers, agents, and employees from any liability or claims, including any actions at law or equity, for personal injury, including death, to any person or damage to any property arising out of the acts or omissions of Owner or of any officer, agent or employee of Owner or any contractor or subcontractor of Owner during (i) the construction or subsequent use of the Improvements, or (ii) caused in whole or in part by any activity authorized or required by this Agreement, or the performance or nonperformance of the work.

11. DEFAULT.

a. Owner shall be deemed to be in default of this Agreement if Owner or any officer, agent or employee of Owner fails to comply with any of the provisions of this Agreement and to remedy such failure within ten (10) calendar days of receipt of written notice from City specifying the nature of such failure. The determination as to whether such default has occurred shall be made by the City Manager or designee.

b. If the default relates to a failure of Owner to complete the Improvements in accordance with the terms of this Agreement, City may, after first giving the Owner at least ten (10) days prior written notice of its intent to do so, elect to construct or arrange for the construction of the Improvements on behalf of and at the expense of Owner. Should City elect this option, City shall be entitled to recover from Owner the actual cost to City of completing the Improvements, plus an administrative fee of 5% of the actual cost. City shall make a written demand for such costs and fee on or after the time the Improvements are deemed complete. In the event Owner fails to pay the costs and fee so demanded within ten (10) days of receipt of the demand, the amount of the costs and fee shall become a personal obligation of the Owner and a lien against the Subject Property. City may enforce such a lien by judicial foreclosure or any other proceeding authorized by law. If the Subject Property is subdivided at the time the lien is imposed, the amount of the lien shall be divided proportionately among the various parcels.

c. In the event that City serves a notice of default upon Owner's surety, Owner's surety shall have the duty to take over and complete the Improvements herein specified; provided, however, that if the surety, within five (5) days after such notice by City fails to provide City with a written acknowledgment that the surety will take over and complete such Improvements, then by further written notice to the surety by City, City may elect to take over the work and prosecute the same to completion, by contract or by any other method City may deem advisable, for the account and at the expense of the Owner and Owner's surety. Owner and Owner's surety shall be liable to the City for any cost or damages occasioned City thereby, including those costs and reasonable expenses including attorneys' fees; and in such event, City, without liability for so doing, may take possession of, and utilize in completing the Improvements, such materials, appliances, plans and other property belonging to Owner as may be on the site of the work and necessary therefore.

12. ATTORNEY FEES. Should it become necessary for either party hereto to institute legal action against the other to enforce any part of this Agreement or any lien arising thereunder, all reasonable costs and expenses incurred by the prevailing party in successfully enforcing this Agreement or lien shall be paid by the non-prevailing party, including reasonable attorney fees. All such costs, expenses and fees shall be taxed as costs and included in any judgment rendered, and may also become a lien on the Subject Property.

13. AGREEMENT BINDING ON SUCCESSORS IN INTEREST. The provisions of this Agreement are for the benefit of the Subject Property as well as for the protection of the health, safety, and welfare of the residents of the City. For this reason, such provisions are intended to bind, and shall bind the heirs, executors, administrators, grantees and any other assignees or successors in interest of the Owner; and any burden imposed by such provisions shall run with the Subject Property.

14. RECORDATION. Immediately following execution, this Agreement shall be recorded by City in the Official Records of the County Recorder of the County of San Mateo.

15. NOTICES. All notices given by City to Owner pursuant to Paragraphs 2 and 10 of this Agreement shall be by personal service or sent by certified or registered mail, return receipt requested, with delivery restricted to addressee only. The date of delivery on the return receipt shall be conclusive upon all parties to this Agreement. All other notices, demands, requests, consents, approvals or communications that either party desires or is required by this Agreement to give to the other shall be in writing and either served personally or sent by prepaid, first-class mail. Notice mailed in this manner shall be conclusively deemed communicated within forty-eight (48) hours from time of mailing. Either party may change its address by notifying the other party in writing. Until notification of such change has been received, all notices sent under this Paragraph shall be addressed as follows:

Owner:

xxx  
Attn: xxx  
xxx  
xxx

City:

City of South San Francisco

Attn:

xxx

xxx

16. INTERPRETATION. The parties agree that they have carefully reviewed this Agreement, have consulted independent counsel if they saw fit or have independently elected not to do so. The doctrine that any ambiguities in a contract are to be resolved against the drafting party, shall not be employed in the interpretation of this Agreement or any amendments or exhibits hereto. This Agreement shall be interpreted and construed according to the domestic laws of the State of California, without regard to the choice of law doctrine.

17. SEVERABILITY. If any part, term, or provision of this Agreement is held by any court to be unlawful and void, the validity of the remaining portions shall not be affected and the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular part, term or provision held to be invalid.

18. MODIFICATION. This Agreement may be modified or amended only with the prior written consent of the parties, or their successors in interest. Such modifications and amendments shall be executed with the same formality as this Agreement, shall be recorded, and shall be interpreted as provided in this Agreement.

19. EFFECTIVE DATE. This Agreement shall become effective on the date of execution, which shall be deemed to be the date first written above.

20. QUITCLAIM DEED. Upon performance of Owner's obligations under this Agreement, City agrees, if requested by Owner, to execute, acknowledge and deliver a quitclaim deed to Owner within thirty (30) days after performance and to execute, acknowledge and deliver any other documents required by any title company to remove the cloud of this Agreement from the title to the Subject Property.

IN WITNESS WHEREOF, the parties hereto have hereunto executed this Agreement on the date hereinafter indicated.

[SIGNATURES ON THE FOLLOWING PAGE]

**CITY**

**Owner**

\_\_\_\_\_  
Charles Michael Futrell, City Manager

\_\_\_\_\_  
[NAME], Property Owner

ATTEST

\_\_\_\_\_  
Rosa Acosta, City Clerk

APPROVED AS TO FORM

\_\_\_\_\_  
City Attorney

3380057.1

TEMPLATE ONLY