

COMPENSATION AGREEMENT

(AUTUMN STREET EXTENSION PROPERTIES - PHASE II)

THIS COMPENSATION AGREEMENT (this "Agreement") is made and entered into as of _____, 2015 (the "Effective Date"), by and among the Successor Agency to the former Redevelopment Agency of the City of San Jose, a public entity established under Health and Safety Code section 34173 (the "Successor Agency"), the City of San Jose, a California municipal corporation (the "City"), and each of the undersigned local agencies and school districts, each a taxing entity as defined by Health and Safety Code section 34171(k) (the "Taxing Entities"), with the consent of the Oversight Board to the Successor Agency, a local entity established under Health and Safety Code section 34179 (the "Oversight Board"). The Successor Agency, City, and the Taxing Entities are collectively the "Parties" and each a "Party."

RECITALS

WHEREAS, pursuant to Health and Safety Code section 34191.5, the Successor Agency prepared a long-range property management plan (the "Plan") to dispose of the real property of the former Redevelopment Agency of the City of San Jose, including the real property located at 456 Autumn Court in the City of San Jose, County of Santa Clara, California, and more particularly described in the attached Exhibit A (the "Property"), incorporated by reference herein; and

WHEREAS, the Oversight Board and the Department of Finance approved the Plan and pursuant to Health and Safety Code section 34191.4(a), the Property transferred to the Community Redevelopment Property Trust Fund for administration by the Successor Agency; and

WHEREAS, in accordance with the Plan, the Parties desire to enter into this Agreement to dedicate the Property to the City for public use under the terms and conditions of this Agreement.

NOW, THEREFORE, for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Parties hereby agree as follows:

AGREEMENT

1. Dedication for Public Right-of-Way Use.

a. Subject to the terms and conditions of this Agreement, the Successor Agency shall dedicate and transfer its interest in and to the Property to the City. In consideration of the Successor Agency's conveyance of the Property, the City agrees to accept the Property subject to the following conditions: (i) the City shall hold the Property in trust to be used as public right of way for the second phase of the extension of Autumn Street in San Jose ("Dedicated Purpose"); and (ii) the conveyance shall be subject to an express condition subsequent that if the City (A) fails to construct the Property into public right-of-way and formally accept the Property into the

City road system within ten (10) years after the Transfer Date, or (B) diverts the Property from the Dedicated Purpose at any time during the Dedicated Purpose Period as defined below, the Property shall revert to the Successor Agency, its successors or assigns to be held in trust for the benefit of the Successor Agency and the Taxing Entities to be sold pursuant to Section 3 of this Agreement. For purposes of this Agreement, the term "Dedicated Purpose Period" shall be the period commencing on the date of the recording of the Deed (as defined in Section 2 of this Agreement) Deed transferring the Property to the City ("Transfer Date") and terminating 30 years after the Transfer Date.

b. The City further agrees that during the period after the Transfer Date, but prior to the completion date of the construction of the Property into public right-of-way in accordance with the Dedicated Purpose, the following shall apply: (i) any revenue (net of reasonable and necessary expenses related to the Property) generated by the Property shall be transferred to the Successor Agency, (ii) the City shall annually provide the Taxing Entities with a statement of the Property's revenue and expenses, and (iii) the Taxing Entities shall have the right upon reasonable written notice to City, to audit and examine such books, records and documents and other relevant items in the possession or control of City to the extent necessary to confirm the City's compliance with the requirements of this Section.

2. Conveyance of Property. The conveyance described in Section 1 above shall occur by grant deed ("Deed") in substantially the form attached hereto as Exhibit B, which shall contain the right of reverter described in Section 1(a)(ii) above. The Successor Agency shall transfer the Property to the City by recording the duly executed and acknowledged Deed with the Santa Clara County Office of the Clerk-Recorder; the Successor Agency shall promptly provide copies of the recorded Deed and a copy of this Agreement to the Taxing Entities. Any costs of escrow and title associated with the conveyance of the Property to the City shall be borne by the City.

3. Sale of Property. If the Property reverts to the Successor Agency pursuant to Section 1 (a) (ii) of this Agreement, the Successor Agency shall promptly hold a public sale of the Property for fair market value; provided the Successor Agency shall offer, and City may purchase, the Property for fair market value in lieu of such sale. The Successor Agency shall within 30 days of such public sale or purchase by the City remit the sales proceeds (less any normal and customary seller closing costs) to the Santa Clara County Auditor-Controller for distribution to the Taxing Entities in proportion to their shares of the base property tax in effect on the date of distribution pursuant to Health and Safety Code section 34188; provided, however, if the Successor Agency is in an insufficiency position such that the sales proceeds are necessary to pay enforceable obligations of the Successor Agency, the sales proceeds shall be remitted to the Successor Agency and shall be used to pay enforceable obligations of the Successor Agency.

4. Condition of Property. City acknowledges and agrees that except as expressly set forth in this Agreement, the Parties are not making any representations or warranties regarding the Property, whether express or implied. City takes the Property "AS-IS" "WHERE IS" AND "WITH ALL FAULTS" and no patent or latent defect or deficiency in the condition of the Property whether or not known or discovered, shall affect the rights of either of the Parties. In the City's discretion, City shall examine the legal, environmental, land use, seismic, title, survey,

and physical characteristics and condition of the Property. By accepting this dedication, City shall be deemed to have approved of all such characteristics and condition of the Property.

5. Release. City agrees that, upon the closing of this transaction, City shall fully and forever release and discharge the Successor Agency and the Taxing Entities and their respective elected and appointed officers, officials, employees, agents, and representatives (collectively, the "Indemnitees") from any and all liabilities, losses, claims (including third-party claims), demands, damages (of any nature whatsoever), causes of action, costs, penalties, fines, judgments, attorneys' fees, consultants' fees, and costs and experts' fees, orders, decrees and administrative actions (collectively, "Claims"), whether direct or indirect, known or unknown, foreseen or unforeseen, that may arise on account of or in any way connected to the Property, including without limitation, (i) the physical, environmental, and seismic condition of the Property or any law or regulation applicable thereto, (ii) any patent or latent defects or deficiencies of the Property, and (iii) any and all matters related to the Property or any portion thereof, including without limitation, the condition and/or operation of the Property and each part thereof; provided, however, that Indemnitees shall not be released from any Claim involving fraud or intentional misrepresentation of any Indemnitee or Claims that arise from the gross negligence or willful misconduct acts or omissions of the Indemnitees.

City expressly waives the provisions of section 1542 of the California Civil Code, which provides:

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

The provisions of this Section shall survive the closing and shall not be deemed merged into any instrument or conveyance delivered at closing.

CITY

Initials: _____

6. Indemnity. In lieu of and notwithstanding the pro rata risk allocation which might otherwise be imposed between the Parties pursuant to Government Code section 895.6, the Parties agree that all losses or liabilities incurred by a Party shall not be shared pro rata but instead the Parties agree that pursuant to Government Code section 895.4, each of the Parties shall fully indemnify and hold each of the other Parties, their officers, board members, employees and agents, harmless from any claim, expense or cost, damage or liability imposed for injury (as defined by Government Code section 810.8) occurring by reason of the negligent acts or omissions or willful misconduct of the indemnifying Party, its officers, board members, employees or agents, under or in connection with or arising out of any work, authority or

jurisdiction delegated to such Party under this Agreement. No Party, nor any officer, board member, employee or agent thereof shall be responsible for any damage or liability occurring by reason of the negligent acts or omissions or willful misconduct of other Parties hereto, their officers, board members, employees or agents, under or in connection with or arising out of any work, authority or jurisdiction delegated to such other Parties under this Agreement. This Section shall survive any termination of the Agreement.

7. Non-Waiver. No waiver of a breach, failure of any condition, or any right or remedy contained in or granted by the provisions of this Agreement will be effective unless it is in writing and signed by the waiving Parties.

8. No Third Party Beneficiaries. The Parties intend that the rights, obligations and covenants in this Agreement shall be exclusively enforceable by the Parties. There are no third party beneficiaries to this Agreement.

9. No Partnership. Nothing contained in this Agreement shall be construed to constitute any Party as a partner, employee, joint venturer, or agent of any other Party.

10. Covenants Run With Land. The agreements, covenants and conditions contained in this Agreement are and shall be deemed to be covenants running with the land and shall be binding upon and shall inure to the benefit of City, Successor Agency, and the Taxing Entities and their respective successors and assigns.

11. Notices. All deliveries, notices, requests, demands or other communications provided for or required by this Agreement shall be in writing and shall be deemed to have been given when sent by registered or certified mail, return receipt requested; when sent by overnight carrier; or upon email confirmation to sender of receipt of a facsimile communication which is followed by a mailed hard copy from sender. Notices shall be addressed as specified in each Party's signature block.

12. Severability. In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions of this Agreement, but this Agreement shall be construed as if such invalid, illegal, or unenforceable provisions had not been contained herein.

13. Time is of the Essence. Time is of the essence of each and all of the agreements, covenants, and conditions of this Agreement.

14. Ambiguities. Any rule of construction to the effect that ambiguities are to be resolved against the drafting party does not apply in interpreting this Agreement.

15. Integration. This instrument constitutes the entire agreement between the Parties with respect to the subject matter hereof and supersedes all prior offers and negotiations, oral or written.

16. Amendment. This Agreement may be modified only in writing and only if signed by the Taxing Entities and the City at the time of the modification. Following the execution of this Agreement, the Successor Agency's consent shall not be required for any modification of the Agreement.

17. Governing Law. This Agreement shall be construed and interpreted according to the laws of the State of California, excluding its conflict of law principles. Proper venue for legal actions will be exclusively vested in a state court in the County of Santa Clara. The Parties agree that subject matter and personal jurisdiction are proper in state court in the County of Santa Clara, and waive all venue objections.

18. Counterparts. This Agreement may be executed in one or more counterparts, each of which will be considered an original, but all of which together will constitute one and the same instrument.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

**SUCCESSOR AGENCY TO THE
REDEVELOPMENT AGENCY OF THE
CITY OF SAN JOSE**

Approved as to form:

Thomas D. Murtha
Senior Deputy City Attorney

By:_____
Norberto Dueñas
Executive Officer

CITY OF SAN JOSE

Approved as to form:

Patricia A. Deignan
Chief Deputy City Attorney

By:_____
Norberto Dueñas
City Manager

**SANTA CLARA COUNTY
AUDITOR-CONTROLLER**

Approved as to form and legality:

E. Ray Ruiz
Deputy County Counsel

By:_____
Name:_____
Title: Finance Director
70 W. Hedding Street
East Wing, 2nd Floor
San Jose, CA 95110

[Signature Pages Follow]

Approved as to form and legality:

COUNTY OF SANTA CLARA

E. Ray Ruiz
Deputy County Counsel

Attest:

Megan Doyle
Clerk of the Board

By: _____
Name: Dave Cortese
Title: President, Board of Supervisors
70 W. Hedding Street
San Jose, CA 95110

**FRANKLIN-McKINLEY SCHOOL
DISTRICT**

**SAN JOSE-EVERGREEN COMMUNITY
COLLEGE DISTRICT**

By: _____
Name: _____
Title: _____
Address: _____

By: _____
Name: _____
Title: _____
Address: _____

SAN JOSE UNIFIED SCHOOL DISTRICT

**ORCHARD ELEMENTARY SCHOOL
DISTRICT**

By: _____
Name: _____
Title: _____
Address: _____

By: _____
Name: _____
Title: _____
Address: _____

EAST SIDE UNION HIGH SCHOOL DISTRICT

By: _____
Name: _____
Title: _____
Address: _____

OAK GROVE SCHOOL DISTRICT

By: _____
Name: _____
Title: _____
Address: _____

SANTA CLARA OFFICE OF EDUCATION

By: _____
Name: _____
Title: _____
Address: _____

BAY AREA AIR QUALITY MANAGEMENT DISTRICT

By: _____
Name: _____
Title: _____
Address: _____

SANTA CLARA UNIFIED SCHOOL DISTRICT

By: _____
Name: _____
Title: _____
Address: _____

WEST VALLEY-MISSION COMMUNITY COLLEGE DISTRICT

By: _____
Name: _____
Title: _____
Address: _____

SANTA CLARA VALLEY WATER DISTRICT

By: _____
Name: _____
Title: _____
Address: _____

GUADALUPE-COYOTE RESOURCE CONSERVATION DISTRICT

By: _____
Name: _____
Title: _____
Address: _____

EXHIBIT A

PROPERTY DESCRIPTION

Real property in the City of San Jose, County of Santa Clara, State of California, described as follows:

ALL THAT CERTAIN REAL PROPERTY SITUATE IN THE CITY OF SAN JOSE, COUNTY OF SANTA CLARA, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

ALL OF LOT 17, as shown upon that certain entitled "Map of Herschbach's Subdivision of Autumn Court" which Map was filed for record in the Office of the Recorder of the County of Santa Clara, State of California on November 15, 1923 in Book R of Maps, at Page 47.

APN: 259-29-041

EXHIBIT B

When recorded mail to:
City of San José-Real Estate
200 East Santa Clara Street,
5th Floor Tower
San José, California 95113
Re: Autumn Street Extension

THIS DOCUMENT IS RECORDED FOR THE BENEFIT
OF THE SUCCESSOR AGENCY TO THE REDEVELOPMENT
AGENCY OF THE CITY OF SAN JOSE AND
IS EXEMPT FROM FEE PER GOVERNMENT
CODE SECTIONS 27383 AND 6103

GRANT DEED

FOR VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, the Successor Agency to the Redevelopment Agency of the City of San José, an entity formed pursuant to California Health and Safety Code Section 34170 et. seq. (õGrantorö) does hereby dedicate, remise, release, and convey to the City of San José, a municipal corporation ("Grantee"), all that real property situated in the City of San José, County of Santa Clara, State of California as more particularly described in Exhibit A attached hereto (õPropertyö).

(1) This conveyance shall be subject to an express condition subsequent that if the City (i) fails to construct the Property into public right-of-way and formally accept the Property into the City road system within ten (10) years after the date this Deed is recorded in the official records of Santa Clara County (õTransfer Dateö), or (ii) diverts the Property from the Dedicated Purpose at any time during the Dedicated Purpose Period as defined below, the Property shall revert to the Successor Agency, its successors or assigns to be held in trust for the benefit of the Successor Agency and the Taxing Entities for sale pursuant to Section 3 of the Compensation Agreement (Autumn Street Extension Properties - Phase II), dated _____, by and among the Grantor, Grantee, and the Taxing Entities, which is attached to this Deed as Exhibit B and incorporated by reference herein. For purposes of this Agreement, the term õDedicated Purpose Periodö shall be the period commencing on the Transfer Date and terminating 30 years after the Transfer Date.

(2) Grantee herein covenants by and for itself, its heirs, executors, administrators, and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, or on the basis of actual or perceived gender identity in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the premises herein conveyed, nor shall the grantee or any person claiming under or through him or

her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, or vendees in the premises herein conveyed. The foregoing covenants shall run with the land.

(3) The covenant against discrimination set forth in Paragraph (2) of this Deed shall remain in perpetuity and shall not be subject to release. In addition, such covenant shall be construed as a covenant running with the land and not as a condition which might result in forfeiture of title.

IN WITNESS WHEREOF, the Grantor and Grantee have caused this instrument to be executed on their behalf by their respective officers hereunto as duly authorized the ____ day of _____, 2015.

õGrantorö

APPROVED AS TO FORM

SUCCESSOR AGENCY

By:_____
Sr. Deputy City Attorney

By:_____
Norberto Duenas
Executive Officer

The Grantee hereby accepts this written deed, subject to all of the matters set forth above.

APPROVED AS TO FORM

CITY OF SAN JOSE

By:_____
Chief Deputy City Attorney

By:_____
Norberto Duenas
City Manager

EXHIBIT A

Legal Description

[To Be Attached]

EXHIBIT B

Compensation Agreement

[To Be Attached]

CERTIFICATE OF ACCEPTANCE

This is to certify that the interest in real property conveyed to the City of San Jose, a charter city and municipal corporation of the State of California, by this Deed is hereby accepted by the undersigned officer of said City on behalf of the Council of the City of San Jose, pursuant to authority conferred by the Council of the City of San Jose on _____, 2014 and the City consents to recordation of this Deed, by the City's duly authorized officer.

CITY OF SAN JOSE, a municipal corporation

Norberto Duenas, City Manager