



**SPECIAL MEETING  
AGENDA**

**Monday, October 16, 2017  
6:00 P.M.**

**Boardroom  
5072 Benson Road  
Union City, CA 94587**

**Directors**  
Manny Fernandez  
Tom Handley  
Pat Kite  
Anjali Lathi  
Jennifer Toy

**Officers**  
Paul R. Eldredge  
*General Manager/  
District Engineer*

Karen W. Murphy  
*Attorney*

1. Call to Order.

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2. Roll Call.

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3. Oral Communications.

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4. Force Main Relocation at the Torian Property Development in Newark:
  - a. Informational Update
  - b. Consider a Resolution to Approve Pipeline Relocation Agreement with William Lyon Homes

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5. Closed Session – The Union Sanitary District Board of Directors will now adjourn to a closed session to confer with legal counsel as follows:  
  
CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION  
Initiation of litigation pursuant to paragraph (4) of subdivision (d) of Section 54956.9: One potential case

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6. Reconvene to Open Session

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7. Adjournment – The Board will adjourn to the next Regular Meeting in the Boardroom on Monday, October 23, 2017, at 7:00 p.m.

The Public may provide oral comments at regular and special Board meetings; however, whenever possible, written statements are preferred (to be received at the Union Sanitary District at least one working day prior to the meeting).

If the subject relates to an agenda item, the speaker should address the Board at the time the item is considered. If the subject is within the Board's jurisdiction but not on the agenda, the speaker will be heard at the time "Oral Communications" is calendared. Oral comments are limited to three minutes per individual, with a maximum of 30 minutes per subject. Speaker's cards will be available in the Boardroom and are to be completed prior to discussion of the agenda item.

The facilities at the District Offices are wheelchair accessible. Any attendee requiring special accommodations at the meeting should contact the General Manager's office at (510) 477-7503 at least 24 hours in advance of the meeting.

THE PUBLIC IS INVITED TO ATTEND



**Directors**

Manny Fernandez  
Tom Handley  
Pat Kite  
Anjali Lathi  
Jennifer Toy

**Officers**

Paul R. Eldredge  
*General Manager/  
District Engineer*

Karen W. Murphy  
*Attorney*

**DATE:** October 13, 2017

**MEMO TO:** Board of Directors - Union Sanitary District

**FROM:** Paul R. Eldredge, General Manager/District Engineer  
Karen Murphy, General Counsel  
Sami E. Ghossain, Manager of Technical Services  
Rollie Arbolante, Customer Service Team Coach

**SUBJECT:** Agenda Item No. 4 - Meeting of October 16, 2017  
**Force Main Relocation at the Torian Property Development in Newark**  
**a. Informational Update**  
**b. Consider a Resolution to Approve Pipeline Relocation Agreement with William Lyon Homes**

**Recommendation**

Staff recommends that the Board:

- a. Receive an update on the Force Main Relocation regarding the Torian Property Development in Newark; and
- b. Consider a Resolution to Approve the Pipeline Relocation Agreement with William Lyon Homes

**Background**

Development Background

In September 2011, the City of Newark approved the Dumbarton Transit-Oriented Development Specific Plan. The plan includes the construction of up to 2,500 residential units, a neighborhood retail center, future transit station, and necessary infrastructure to support these uses. William Lyon Homes (WLH) is the developer proposing to begin construction of 553 residential units for a portion of the development known as the Torian property, see attached Exhibits A through D.

The District owns and operates twin 33-inch diameter reinforced concrete force mains that convey wastewater flows from the Irvington Pump Station to the Alvarado Treatment Plant in Union City. The force mains traverse the development from south to north where it crosses an Alameda County Flood Control channel. The force mains continue within an easement on a proposed wetlands parcel and within the Hickory Street right-of-way, then within an easement over two private properties, and finally across the City and County of San Francisco (CCSF) right-of-way and the San Mateo County Transit right-of-way before connecting to the Newark Pump Station.

Part of the Torian property development involves creation of a wetland preserve at the southwestern corner of the property in order to partially mitigate wetlands fill over areas. As shown on Exhibit B, a portion of the USD force main runs beneath the proposed Wetland Reserve. As part of William Lyon Home's permitting for the Torian Project, the Regional Water Quality Control Board's 401 permit condition requires the developer to obtain authorization from the District Board.

District staff required WLH to submit a feasibility report to investigate the impacts of the development on the existing force mains. Some of the major concerns investigated and addressed in the report included:

- Impacts from the proposed development and the construction of Hickory Street
- The feasibility of protecting the existing force mains in place
- Evaluating force main relocation alternatives
- Force main operational constraints, including transferring of flows from the existing force mains to new force mains
- Maintenance impacts from shorter pipe radius bends

#### Force main Relocation and Proposed Agreement

The feasibility report was extensively reviewed and a presentation was provided at a special Board workshop held March 9, 2015, with a follow-up staff report and resolution that was approved by the Board at the Board Meeting of April 13, 2015.

Since this last meeting, much of the pipeline alignment has been finalized and the project split into two different phases, see Exhibit C. Further, the parties have been negotiating the terms of a Pipeline Relocation Agreement between the District and William Lyon Homes (WLH), which, among other things, obligates WLH to complete the pipeline relocation at its cost and expense (the "Agreement"). Phase II, which is the northerly section of the project, is complicated due to a multitude of variables that are beyond the control of the District and WLH. Specifically, there are remediation efforts currently taking place on the FMC property along a majority of the Phase II alignment. The remediation is being performed by FMC and its consultants consistent with a Site Cleanup Requirements Order of the California Regional Water Quality Control Board (RWQCB). A new alignment and easement is proposed along a portion of the Phase II alignment to avoid certain areas of contamination in the District's

existing 30-foot easement area, see Exhibit D. Although these areas will be mitigated per the approved RWQCB plan, a realignment is necessary due to the proposed mitigation that is incompatible with the force mains and could provide significant O&M challenges in the future. The proposed alignment has been reviewed and approved by the District's operating groups.

All current indications are that the remediation will be completed to allow for Phase II to be completed by October 15, 2018. However, the proposed Agreement provides that should the remediation take longer than currently anticipated, the District, in consultation with WLH, has the option to extend Phase II completion until October 15, 2019 or later. WLH shall remain obligated to complete the work until complete. The proposed agreement requires WLH to provide the District a security deposit to ensure the timely completion of the Phase II work that equals 150% of the estimated value, which is currently \$3,258,000. The security is a combination of a surety bond and a cash deposit. The values of the surety bond and the cash deposit are proposed to be 100% and 50% respectively of the estimated value.

A majority of the existing easement will be utilized for the Phase II work. The developers adjacent to this section of easement have agreed via separate letters to provide a 10-foot setback from the District's existing 30-foot easement to minimize possible challenges with future O&M and land uses. In addition, the City of Newark has provided written support for the current form of the agreement.

In addition to defining the phasing and the scope of work this agreement will, among other things, memorialize the following:

- Design consultant cost responsibility (WLH)
- Contractor selection and cost responsibility (WLH selection; WLH cost)
- Construction Management selection and cost responsibility (USD selection; WLH cost)
- Cost and responsibility for any bypass pumping (WLH cost, USD oversight)
- Extended warranty after construction
- Construction work plan detailing protection of the existing force mains during construction
- Liability for all costs to repair any damage to the force mains as a result of construction operations (WLH)
- Comprehensive general liability insurance from any claims that may arise during construction
- Indemnification holding USD harmless for any and all liabilities arising from construction of the force mains
- Limits of the force main relocation, phasing of the work
- Demolition of the old Newark Treatment Plant as part of Phase I, at no cost to the District
- Details for a concrete cap, as an interim measure, to allow the construction of Hickory Street to take place while existing force mains are in operation

Staff, WLH, and the District's General and Special Counsel have reviewed these documents and spent countless hours refining deal points, reviewing and editing the plans and specifications,

and are comfortable recommending the Board consider and approve the attached resolution and agreement.

Attachments:

Exhibit A - Dumbarton TOD Site Map

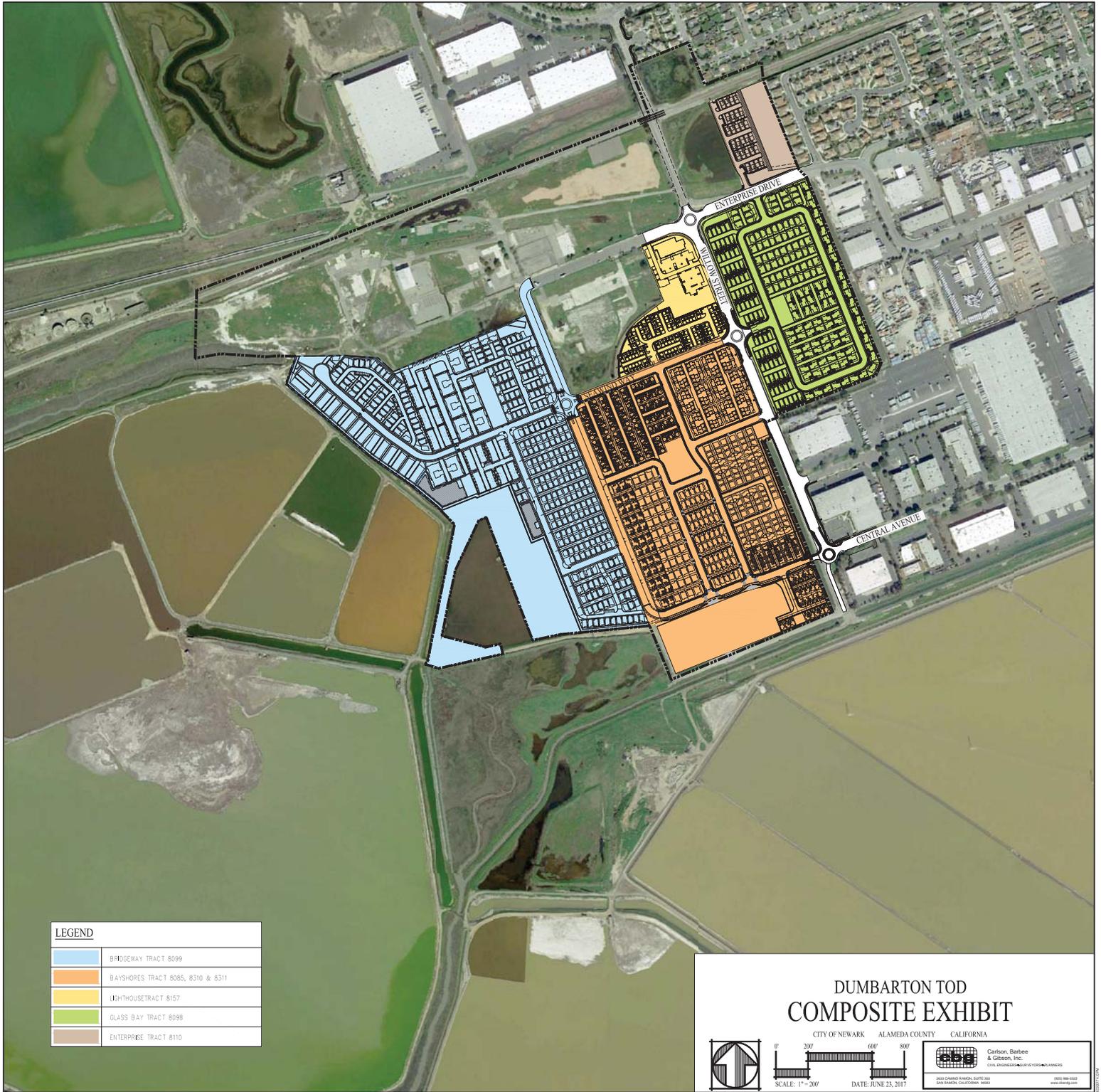
Exhibit B - WLH Site Map

Exhibit C - Project Phasing Map

Exhibit D – Phase II Proposed Alignment Map

Resolution Approving and Authorizing Pipeline Relocation Agreement

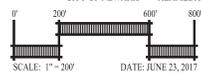
Pipelines Relocation Agreement



LEGEND	
	BRIDGEWAY TRACT 8099
	BAYSHORES TRACT 8085, 8310 & 8311
	LIGHTHOUSE TRACT 8157
	GLASS BAY TRACT 8098
	ENTERPRISE TRACT 8110

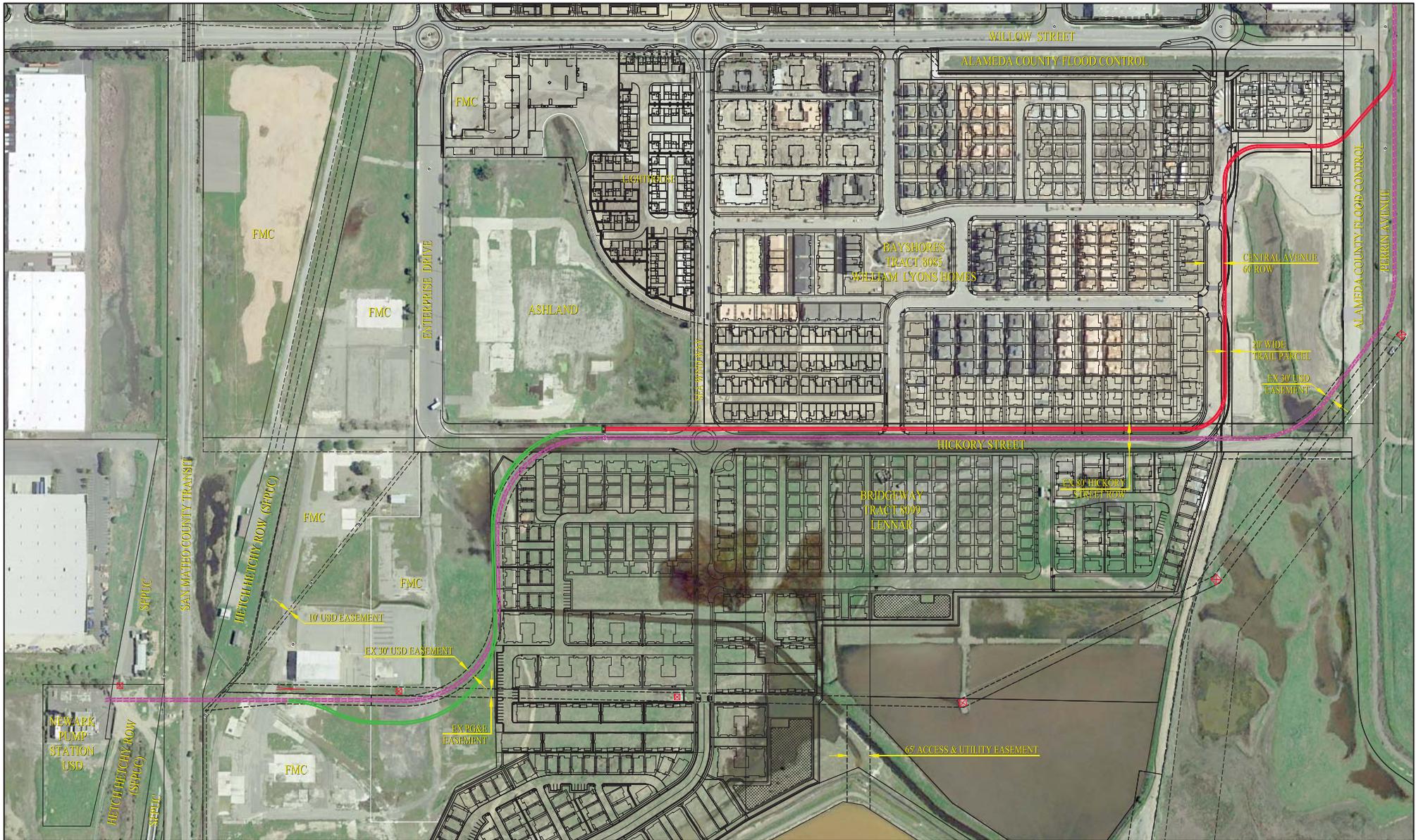
## DUMBARTON TOD COMPOSITE EXHIBIT

CITY OF NEWARK ALAMEDA COUNTY CALIFORNIA



Carlson, Barbee  
& Gibson, Inc.  
CIVIL ENGINEERS ARCHITECTS PLANNERS  
3000 CAMINO RANCHO, SUITE 200  
SAN RAMON, CALIFORNIA 94583  
925.346.9300  
www.cbgi.com

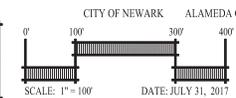
© 2017 CARLSON, BARBEE & GIBSON, INC.



**LEGEND**

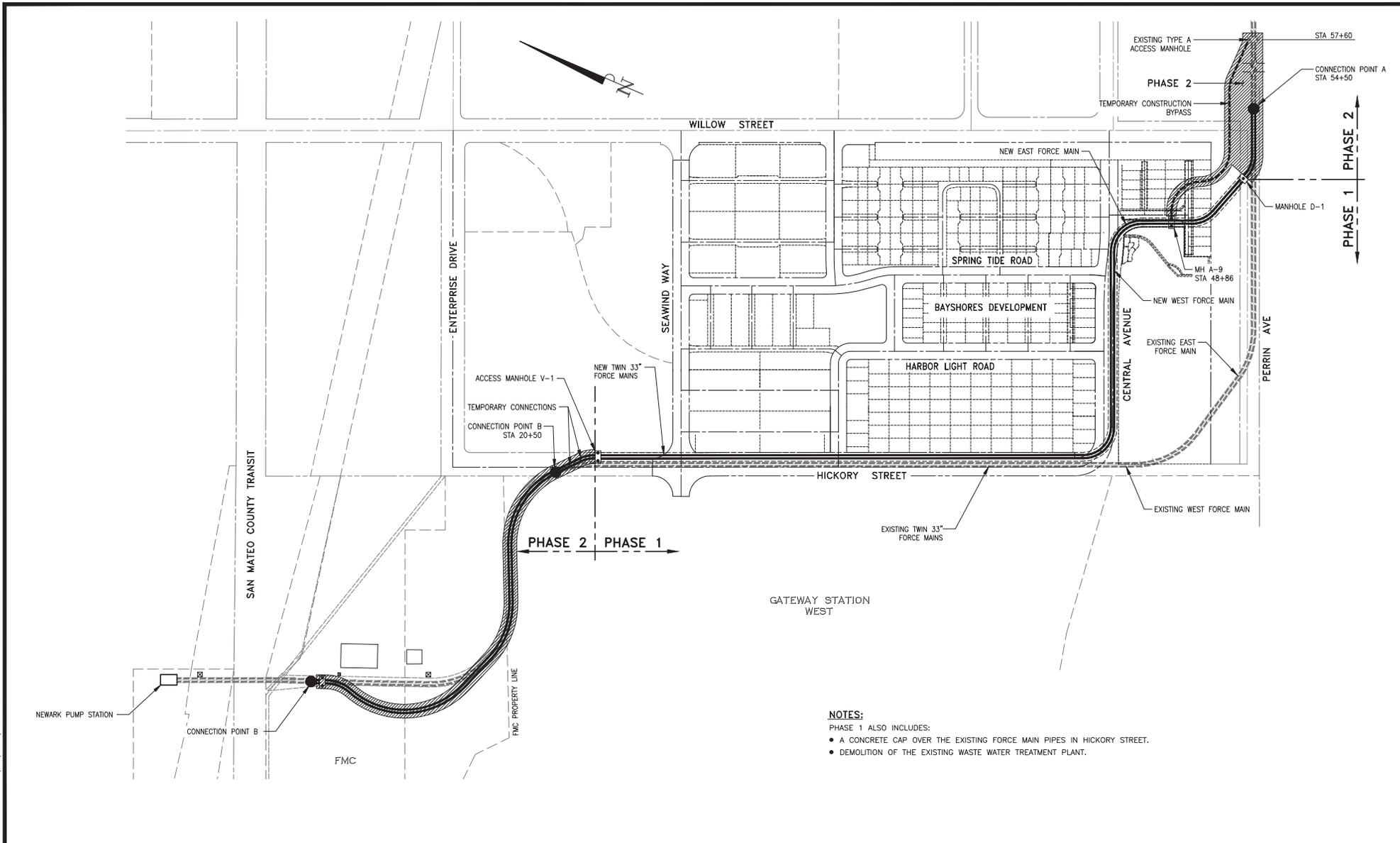
- PROPOSED TWIN 33" SANITARY SEWER FORCE MAINS PHASE 1
- PROPOSED TWIN 33" SANITARY SEWER FORCE MAINS PHASE 2
- - - - - EXISTING TWIN 33" SANITARY SEWER FORCE MAINS
- ⊠ EXISTING PG&E HIGH VOLTAGE TOWERS
- - - - - EASEMENT
- PROPERTY LINE

## USD FORCE MAIN ALIGNMENT DUMBARTON TOD



	Carlson, Barbee & Gibson, Inc. <small>CONSULTING ENGINEERS</small>
<small>SAN FRANCISCO, CALIFORNIA</small>	<small>SACRAMENTO, CALIFORNIA</small>
<small>(925) 988-1822</small>	<small>(916) 375-1877</small>

2/2/17 - S:\PROJECTS\16114-01 - NEWARK FORCE MAIN\GAD\CONSTRUCTION\DRAWING



- NOTES:**  
 PHASE 1 ALSO INCLUDES:  
 • A CONCRETE CAP OVER THE EXISTING FORCE MAIN PIPES IN HICKORY STREET.  
 • DEMOLITION OF THE EXISTING WASTE WATER TREATMENT PLANT.



COLEMAN ENGINEERING  
 1358 BLUE OAKS BOULEVARD  
 SUITE 200  
 ROSEVILLE, CA 95678  
 (916) 791-1188

BAR IS ONE INCH  
 AT FULL SCALE  
 0 1"  
 IF NOT ONE INCH  
 ON THIS SHEET  
 SCALE ACCORDINGLY

NO.	REVISIONS	BY	APP	DATE
1				
2				
3				
4				

**PHASING EXHIBIT**

## USD FORCE MAIN RELOCATION PROPOSED PHASING PLAN

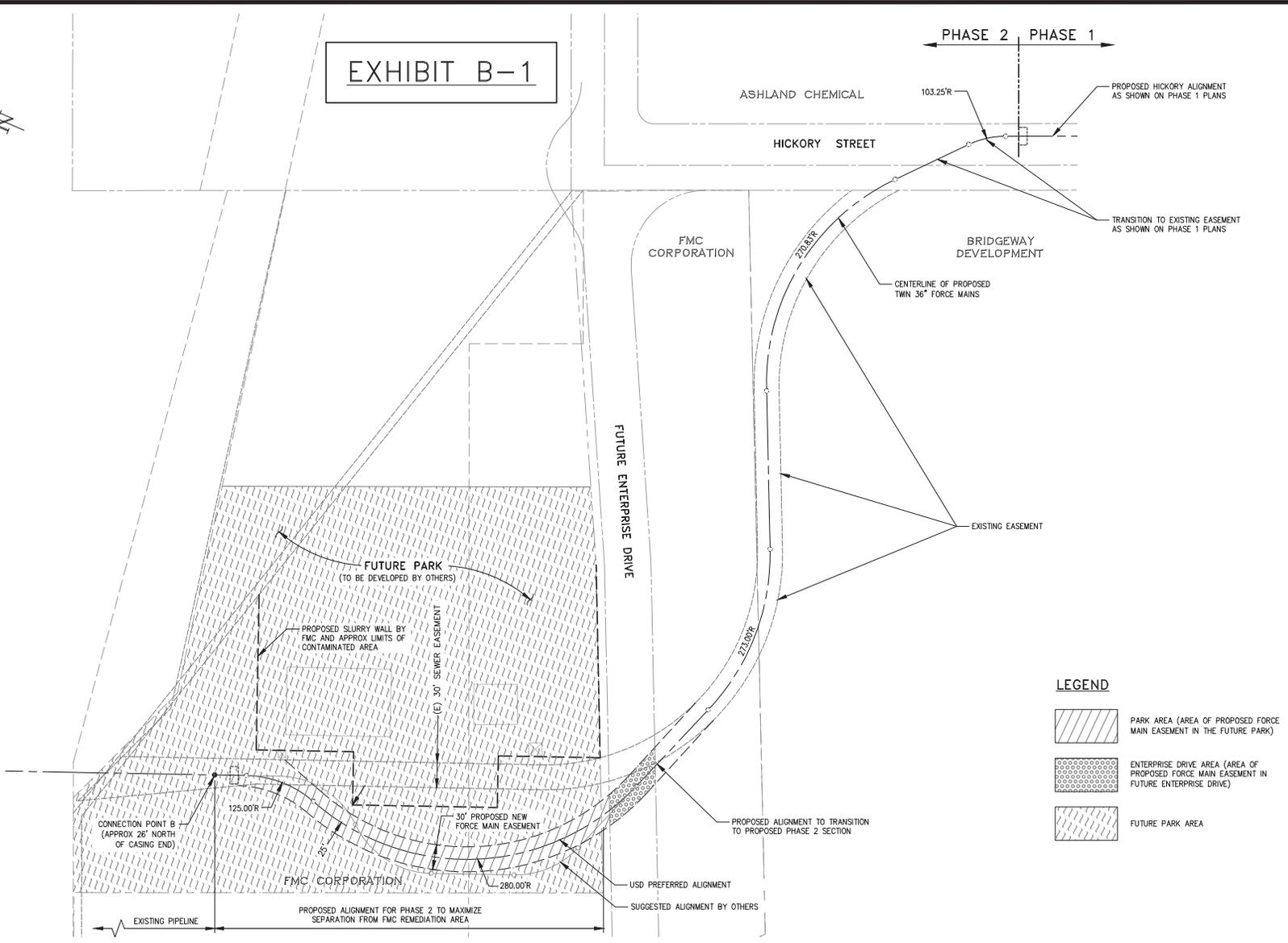
CITY OF NEWARK, ALAMEDA COUNTY, CALIFORNIA

SCALE  
 1"=150'  
 DRAWING NUMBER  
**A**  
 SHEET NUMBER  
 1 OF 1 SHEETS

10/10/17, 31, PROJECTS/MAIN/2017-01 - NEWARK FORCE MAIN/LOADS/ENTERPRISE MAIN PHASE 2 ALIGNMENT ENGINEERING



**EXHIBIT B-1**



**LEGEND**

- PARK AREA (AREA OF PROPOSED FORCE MAIN EASEMENT IN THE FUTURE PARK)
- ENTERPRISE DRIVE AREA (AREA OF PROPOSED FORCE MAIN EASEMENT IN FUTURE ENTERPRISE DRIVE)
- FUTURE PARK AREA



COLEMAN ENGINEERING  
1358 BLUE OAKS BOULEVARD  
SUITE 200  
ROSEVILLE, CA 95678  
(916) 791-1188

BAR IS ONE INCH AT FULL SCALE  
IF NOT ONE INCH ON THIS SHEET SCALE ACCORDINGLY

NO.	REVISIONS	BY	APP	DATE

**WILLIAM LYON HOMES**  
**CITY OF NEWARK**

**TWIN FORCE MAIN RELOCATION**  
**FORCE MAIN PHASE 2 PREFERRED ALIGNMENT EXHIBIT**

CALIFORNIA

DESIGNED UNDER THE DIRECTION OF:	
CHAD R. COLEMAN R.C.E. No. 56490 - REGISTRATION EXPIRES 06-30-19	DATE
DESIGN: CRC	DATE: 10-10-17
DRAWN: WCJ	DATE: 10-10-17
CHECKED: CRC	DATE: 10-10-17

SCALE
1"=60'
DRAWING NUMBER
1
SHEET NUMBER
1 OF 1 SHEETS

**RESOLUTION NO. \_\_\_\_**

**A RESOLUTION OF THE BOARD OF DIRECTORS APPROVING AND  
AUTHORIZING EXECUTION OF A PIPELINE RELOCATION AGREEMENT  
WITH WILLIAM LYON HOMES**

**WHEREAS**, the District owns and operates twin 33-inch reinforced concrete pipe force mains that are designed to convey Peak Wet Weather Flows from the Irvington Pump Station to the District’s treatment plant in Union City. The District force mains traverse the City of Newark’s Dumbarton Transit-Oriented Development Specific Plan area from south to north within existing easements and right of ways; and

**WHEREAS**, relying on the Specific Plan EIR, on November 29, 2012, the City approved Tentative Tract Map 8085 for a 553 residential unit development on the Torian parcels (the “Torian Project”). On February 28, 2013 the City approved an addendum to the Specific Plan EIR to analyze minor revisions to the Torian Project, which included a contemplated wetland connection through, and the abandonment of, Hickory Street and a total of 547 units, and other minor site plan revisions (“Addendum”); and

**WHEREAS**, as part of the Torian Project, a wetland preserve will be created and managed in perpetuity for the benefit of the ecological and habitat values of the area (the “Wetland Reserve”). A portion of the USD force main runs beneath the Wetland Reserve. As a condition of the development under the Regional Water Quality Control Board (Water Board) 401 permit, the Water Board required the developer to submit authorization by the Union Sanitary District Board to allow portions of the USD force mains running beneath the Wetland Reserve to be abandoned in place (RWQCB Site No. 02-01-C1123(BKW)); and

**WHEREAS**, on April 13, 2015, the Board adopted Resolution No. 2755 authorizing the abandonment of the existing pipelines and their replacement with new force mains beginning south of the Specific Plan area boundary, going under the Alameda County Flood Control District (“ACFCD”) F1 Channel, through Tract 8085, then within the existing Hickory Street right of way and within the existing District easement in the Integral Communities property and FMC properties; and

**WHEREAS**, since this last meeting, much of the pipeline alignment has been finalized, the project has been split into two different phases, and the parties have been negotiating the terms of a Pipeline Relocation Agreement between the District and William Lyon Homes (WLH), which, among other things, obligates WLH to complete the pipeline relocation at its cost and expense (the “Agreement”); and

**WHEREAS**, Phase II, which is the northerly section of the project, is complicated due to a multitude of variables that are beyond the control of the District and WLH. In particular, there are remediation efforts currently taking place on the FMC property along a majority of the Phase II alignment; and

**WHEREAS**, the remediation is being completed by FMC and its consultants consistent with a Site Cleanup Requirements Order of the California Regional Water Quality Control Board (RWQCB). A new alignment and easement is proposed along a portion of the Phase II alignment to avoid certain areas of contamination in the District’s existing 30-foot easement area. Although these areas will be mitigated per the RWQCB plan, a realignment is necessary due to the proposed mitigation that is incompatible with the force mains and could provide significant O&M challenges in the future; and

**WHEREAS**, current indications are that the remediation will be completed to allow for Phase II to be completed by October 15, 2018. However, should the remediation take longer than currently anticipated, the Agreement provides that the District, in consultation with WLH, has the option to extend Phase II completion until October 15, 2019, or later. The proposed Agreement requires WLH to provide the District a security deposit to ensure the timely completion of the Phase II work that equals 150% of the estimated value; and

**WHEREAS**, a majority of the existing easement will be utilized for the Phase II work. The developers adjacent to this section of easement have provided correspondence agreeing to provide a 10 setback from the Districts existing 30-foot easement to minimize possible challenges with future O&M and land uses.

**NOW, THEREFORE, BE IT RESOLVED BY THE UNION SANITARY DISTRICT BOARD OF DIRECTORS, AS FOLLOWS:**

1. The Pipeline Relocation Agreement is hereby approved. The General Manager is authorized to execute the Pipeline Relocation Agreement in the form attached to the staff report, subject to minor revisions or amendments that may be approved by the General Manager, in consultation with the General Counsel.
2. The General Manager or his designee, in consultation with the General Counsel, is hereby authorized to take any and all actions and execute documents, including executing Grants of Easements and accepting interests in real property, necessary to effectuate the terms and conditions of the Pipeline Relocation Agreement.

**PASSED, APPROVED, AND ADOPTED this \_\_\_ day of \_\_\_\_\_, 2017.**

AYES:

NOES:

ABSENT:

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Manny Fernandez, Secretary

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Pat Kite, President

PIPELINES RELOCATION AGREEMENT  
(Newark Force Mains Upgrade and Relocation)

This PIPELINES RELOCATION AGREEMENT (“Agreement”) is made and entered into as of \_\_\_\_\_, 2017 (the “Effective Date”) by and between WILLIAM LYON HOMES, INC., a California Corporation (“Developer”), and UNION SANITARY DISTRICT, a California public sanitary district (“USD”).

RECITALS

A. Developer owns that certain real property located in the City of Newark, County of Alameda, California, as more particularly described in Exhibit A attached hereto and incorporated by reference (the “Property”).

B. In accordance with the City of Newark’s Dumbarton Transit-Oriented Development Specific Plan (the “Specific Plan”), Developer has secured approval for and commenced development of the Property with, among other things, 542 residential units and a wetland preserve.

C. USD owns and operates twin 33-inch reinforced concrete pipe sewer force mains, which run within the Specific Plan area generally from a connection point along Perrin Avenue to the South of the Property (the “Perrin Avenue Connection Point”); following Perrin Avenue to the West; then crossing the Southwest corner of the Property beneath the proposed wetland preserve; then running North along Hickory Street to the West of the Property; and then, after leaving Hickory Street, running to USD’s Newark Pump Station to the North (the “North Connection Point”), all as depicted in Exhibit B attached hereto and incorporated by reference (each a “Pipeline,” and collectively the “Pipelines”).

D. The Pipelines cross the Property and certain other properties owned by third parties (collectively, the “Other Properties”) within rights-of-way established across the Property and such Other Properties in favor of USD, all as depicted in Exhibit B (collectively, the “USD Pipelines Easement”). The Other Properties, all of which are located within the Specific Plan area or adjacent thereto, include property owned or easements held by Cargill Incorporated (the “Cargill Property”), Alameda County Flood Control District (“ACFCD Property”), Lennar Homes (the “Lennar Property”), FMC Corporation (the “FMC Property”) and the City of Newark (the “Hickory Property”), respectively.

E. In accordance with the conditions of the project and USD Resolution No. 2755 (April 13, 2015), Developer, concurrently with the construction of the subdivision improvements on the Property, is planning to remove and replace the Pipelines between the Perrin Avenue Connection Point and the North Connection Point. In accordance with the USD Resolution No. 2755, portions of the Pipelines running within the Property and the ACFCD Property will be abandoned in place, and certain segments of the Replacement Pipelines (as defined below) will be constructed within new easements over the Property and the ACFCD Property.

F. Developer shall construct the portion of the Replacement Pipelines, depicted as Phase I on Exhibit B ("Phase I") in accordance with the Scope of Work for Phase I attached hereto as Exhibit C and incorporated by reference, as amended as provided herein (the "Phase I Scope of Work"), and as otherwise provided for Phase I in this Agreement and the exhibits attached hereto. Developer shall cause the new pipelines to be designed, permitted and constructed for Phase I (the "Phase I Replacement Pipeline") to be completed in accordance with the schedule for Phase I attached hereto as Exhibit D and incorporated by reference (the "Project Schedule").

G. Developer shall also be required to construct the portion of the Replacement Pipelines, depicted as Phase II on Exhibit B ("Phase II") pursuant to a right-of-entry within a new easement area to be dedicated by FMC to USD as described in Section 1.7.2 and within the existing USD Pipelines Easement (collectively, "Phase II Easements"), in accordance with the Scope of Work for Phase II attached hereto as Exhibit C and incorporated by reference, as may be amended as provided herein (the "Phase II Scope of Work"), and as otherwise provided for Phase II in this Agreement and the exhibits attached. To the extent such work is performed on FMC Property, the work shall be performed in accordance with Article 4 below, and consistent with Site Cleanup Requirements Order No. R2-2015-0017 ("SCR Order") issued by the California Regional Water Quality Control Board (the "Water Board") on May 21, 2015, to FMC. Developer shall cause the new pipelines for Phase II (the "Phase II Replacement Pipeline") to be completed in accordance with the schedule for Phase II set forth in Project Schedule. The Phase I Replacement Pipeline and Phase II Replacement Pipeline, if applicable, shall be referred to as the "Replacement Pipeline."

H. To the extent more fully set forth below, Developer shall be responsible for all aspects of design, permitting, and construction of Phase I and Phase II (including without limitation, securing easement(s) in favor of USD and any temporary construction easements), as set forth in further detail herein, which will be at Developer's sole cost and expense (the "Project").

I. As set forth in USD Resolution No. 2755, USD has, in its capacity as a responsible agency, completed its review of the Work (as defined in Section 1.1(b) below) as required by the California Environmental Quality Act ("CEQA"), and filed a notice of determination within five (5) days of its adoption of USD Resolution No. 2755. In approving this Agreement, USD has further found that there have been no changes to the Project or changed circumstances, and there is no new information requiring preparation of a supplemental CEQA document in accordance with Section 21166 of CEQA or Section 15162 of the CEQA Guidelines.

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

## ARTICLE 1

### WORK

#### 1.1 The Work.

(a) Phase I. As described more fully herein, Developer shall design, permit and construct Phase I of the Project within easements granted from Developer to USD, secure any necessary easement(s) through the Property and ACFCO Property and Cargill property (as necessary) in favor of USD and any temporary construction easements or such additional permission or rights-of-way as may be needed to complete the Phase I of the Project in accordance with the Project Schedule, subject to Force Majeure (as defined in Section 8.15 below), and as set forth in more detail herein (collectively, the "Phase I Work"). Except as otherwise agreed by the parties, the Phase I Work shall be designed and constructed in accordance with the plans and specifications included under the Phase I Scope of Work. Any revisions to the Phase I Work shall be agreed upon in writing by both USD and Developer. No Phase I Work shall begin without prior approval by USD of the Project Design and Drawings and Specification for Phase I.

(b) Phase II. As described more fully herein, Developer shall design, permit and construct Phase II of the Project within the USD Pipelines Easements and pursuant to construction right-of-entry agreement(s) to be obtained by Developer over the FMC Property and any temporary construction easements or such additional permission or rights-of-way as may be needed to complete the Phase II of the Project in accordance with the Project Schedule and as set forth in more detail herein (collectively, the "Phase II Work"). Developer shall cause the plans for the Phase II Work to be developed in accordance with the Phase II Scope of Work and, subject to Force Majeure (as defined in Section 8.15 below), Developer is expected to complete the Phase II Work no later than October 15, 2018, as set forth in the Project Schedule, which may be extended by USD in consultation with Developer until October 15, 2019 or later, as necessary. Modifications and details of the Phase II Work shall be agreed upon in writing by USD in consultation with Developer. Except as otherwise agreed by the parties, the Phase II Work shall be designed and constructed in accordance with the plans and specifications included under the Phase II Scope of Work and the Drawings and Specifications for Phase II. No Phase II Work shall begin without prior approval by USD of the Project Design and Drawings and Specification for Phase II. Because the Phase II Work will occur within the Phase II Easements on the FMC Property and is subject to the SCR Order issued by the Water Board described herein, Developer's obligations to commence and complete the Phase II Work are contingent upon execution of the right of entry agreement(s), which shall include mutually satisfactory terms as set forth above, and any other documents pertaining to the right-of-entry. Developer shall be solely responsible for funding the Phase II Work, and for funding the removal or treatment of soil or water located within the Phase II Easements during the installation of the Pipelines. The Phase I Work and Phase II Work may be referred herein collectively as the "Work."

(i) In order to secure Developer's obligation to complete the Phase II Work in a timely manner, within fifteen (15) business days of execution of this Agreement, Developer shall furnish to USD one-hundred and fifty percent (150%) of the estimated value of the Work as good and sufficient security for faithful performance and guarantee of the completion of the Phase II Work, as follows: (i) a cash deposit (the "Cash Security"), and (ii) a bond or bonds by one or more duly authorized corporate sureties (the "Bond Security"). The Cash Security and the Bond Security shall be referred to collectively as the "Security." The costs for the Phase II Work are estimated to be in the amount of Three Million Two Hundred Fifty Eight Thousand Dollars (\$3,258,000) (the "Phase II Estimated Costs"). The Cash Security furnished by the Developer shall secure an amount equal to fifty percent (50%) of the Phase II Estimated Costs, and the Bond Security shall secure an amount equal to one hundred percent (100%) of the Phase II Estimated Costs. The Cash Security shall be deposited into an escrow account established with First American Title Insurance Company (the "Cash Security Escrow Account") pursuant to mutually satisfactory instructions submitted by Developer and USD. Upon written acceptance of the completed Phase II Work as provided in Section 3.4.2, USD shall release both the Cash Security and Bond Security to Developer.

1.2 Intentionally deleted.

1.3 USD Cooperation.

1.3.1 In General. Provided that Developer has timely funded the USD Cost Deposit as set forth in Section 1.3.5 below, USD agrees to cooperate with Developer to assist in the expeditious completion of the Work, including, without limitation, prompt review of the Project Design and Drawings and Specifications (as defined below), execution of such instruments in furtherance of the Work as may reasonably be required by Developer from USD including, without limitation, permit applications, rights of entry, a license to work within the USD Pipelines Easement as part of the construction of the Project, easements, encroachment agreements or other instruments that may be requested by third parties, and responding to such other inquiries and requests for information as may be made by Developer during the prosecution of the Work.

1.3.2 USD License. USD grants Developer a license for Developer, General Contractor and subcontractors to perform the Work by within the USD Pipelines Easement or other easements or rights of way in favor of USD pursuant to the terms of this Agreement. This license shall remain in place through completion of the Project and until the expiration of the Warranty Period or until terminated by USD in the event of a material default by Developer which remains uncured as provided under Section 7.1

1.3.3 Developer Responsibility for USD Costs. Developer shall be responsible for costs incurred by USD in connection with USD's review of the Project Design and the Drawings and Specifications (as defined below), construction engineering services, any required bypass pumping and inspections of the Work until expiration of the Warranty Period ("USD Costs"). USD Costs shall include (i) USD staff time and reasonable legal expenses at the rates typically charged by USD for similar projects; (ii) consultant fees and costs incurred by USD in

accordance with this Agreement; (iii) any costs incurred by USD to assist the Developer with permits, surveys or government approvals as described below; and (iv) any other costs or expenses agreed to in writing by USD and Developer.

1.3.4 USD Consultants. USD retained DCM Consulting and West Yost Associates and other necessary consultant services (collectively, the “District Consultants”) to provide consulting and construction management services to USD for services related to the Work, including but not limited to, review and approval of the Project Design and the Drawings and Specifications (as defined below), construction management, inspections of any Work completed by Developer and any required bypass pumping (“Consultant Contracts”). USD agrees to provide Developer with advance notice of additional proposed Consultant Contracts, and any proposed amendments of previously approved Consultant Contracts. All consultants retained by USD pursuant to this Agreement will report to USD. USD agrees that it will not charge a mark-up or other administrative fee in connection with the Consultant Contracts, but may charge actual USD staff time and expenses attributable to the administration of the Consultant Contracts including reasonable legal expenses.

1.3.5 Advance of USD Costs. Within ten (10) days of the Effective Date, Developer shall deposit with USD the amount of Four Hundred Thousand Dollars (\$400,000.00), which funds shall be maintained by USD in a separate account accruing interest at the Local Agency Investment Fund (LAIF) rate (“USD Costs Deposit”). The USD Costs Deposit shall be used for the reimbursement to USD for USD Costs. Upon request by Developer, USD shall provide Developer with an updated accounting of expenses and balance in the USD Costs Deposit. If during the performance of the Work, the amount of available USD Costs Deposit funds falls below Fifty Thousand Dollars (\$50,000.00), Developer shall deposit an additional Fifty Thousand Dollars (\$50,000.00) to be used in accordance with the requirements of this Section 1.3 (“Additional Deposit”) within ten business days of its receipt of notice from USD. Upon Final Completion and acceptance of the Project and the Work by USD and the expiration of the Warranty Period, USD shall promptly return to Developer any remaining funds under the USD Costs Deposit and Additional Deposit.

#### 1.4 Project Engineer and General Contractor.

1.4.1 Project Engineer. At Developer’s cost, Developer shall engage Coleman Engineering (“Project Engineer”) to prepare design documents (“Project Design”), including but not limited to drawings and specifications (“Drawings and Specifications”), in accordance with the approved Phase I Work and Phase II Work and design approved by USD. Developer shall not commence any phase of the Work until USD, in its discretion, approves the final Drawings and Specifications. Developer shall include USD as a non-exclusive third party beneficiary in its contract with the Project Engineer.

1.4.2 General Contractor. Developer shall solicit bids for the Work from general contractors in consultation with USD. At Developer’s cost, Developer shall contract with the selected general contractor (the “General Contractor”) to perform each phase of the Work in accordance with the Phase I Scope of Work or Phase II Scope of Work, as applicable,

the Drawings and Specifications, and the Project Schedule (the “General Contract”). Except as otherwise provided herein, Developer shall be responsible for all costs in the performance of the Work, including but not limited to construction, construction management, inspection, construction related testing, final inspection/closeout and any warranty work.

#### 1.5 Construction Requirements.

1.5.1 Consistency with Drawings and Specifications. Developer shall be responsible for ensuring the General Contractor completes all Work in accordance with the Scope of Work, and Drawings and Specifications including, as such Scope of Work and Drawings and Specifications may be modified and approved by Developer and USD in writing.

1.5.2 Sequencing. For each phase of the Work, USD shall continue to operate and maintain the existing Pipelines until the new Replacement Pipelines are placed in service by USD. In order to maintain adequate force main capacity, one Pipeline or Replacement Pipeline must remain operational at all times. Temporary, above-grade pipelines may be necessary to provide bypass around certain areas to meet the requirements of this Section 1.5.2. Any bypass shall be approved by USD prior to being placed in service. One existing Pipeline may be taken out of service only with the prior written approval of USD and only for the purpose of making the connections to the first new Replacement Pipeline. The first new Replacement Pipeline will be TV inspected, placed into service, tested, pigged and approved for use by USD prior to taking the second existing Pipeline out of service. After testing and approval of the new Replacement Pipeline for use by USD, the second existing Pipeline may be taken out of service for the purpose of making the connections to the second new Replacement Pipeline. The second new Replacement Pipeline will then be TV inspected, and following construction of the connections, the second new Replacement Pipeline will be tested, pigged, and approved for use by USD. Following Substantial Completion, Developer and USD will perform any remaining testing required for the Replacement Pipelines and sewer connections in accordance with Section 3.3.

1.5.3 Maintenance. USD agrees to allow use of each Replacement Pipeline as it is put into service; provided, however, that Developer will remain responsible for maintenance and repairs of both Replacement Pipelines until Substantial Completion. Developer and the General Contractor shall obtain USD’s prior written consent for each instance of any such maintenance or repair of the “live” Replacement Pipelines. Upon Substantial Completion, and subject to the provisions of Section 3.4.1, USD shall assume ongoing maintenance responsibilities for the Replacement Pipelines pursuant to the USD Pipelines Easements, any additional easements for the Replacement Pipelines, and the FMC Right-of-Entry (as defined in Section 1.7.2 below). Except for the required Warranty and ongoing obligations under the FMC Right-of-Entry, Developer shall have no further responsibility for maintenance of the Replacement Pipelines after Final Completion and acceptance by USD pursuant to Section 3.4.

#### 1.5.4 Safety.

(a) Developer acknowledges that it is fully aware of the hazards of working near live pressure sanitary sewer systems and the absolute requirement to take all

necessary precautions to ensure that the Pipelines, Replacement Pipelines, their joints and all other connections are not damaged creating a sewage leak or spill. Developer shall be solely responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work and any necessary remediation work in the event there is a sewage leak or spill. Such shared responsibility shall not, however, relieve the General Contractor of its responsibility for the safety of persons or property in the performance of the Work, or for compliance with applicable safety laws and regulations.

(b) While the Work is in progress, Developer shall comply and cause General Contractor to comply with all applicable safety and health laws including California Occupational Safety and Health Act (“CAL/OSHA”), the William-Steiger Occupational Safety and Health Act of 1970 (“OSHA”), and any safety and health rules, orders and regulations promulgated thereunder or by any regulatory agency with jurisdiction over the Project, including without limitation a leak or spill response plan. Developer and General Contractor shall follow all necessary precautions for excavation of any trenches in connection with the Work. Developer and General Contractor shall not permit any vehicles or heavy equipment at any time to be near, over, on or in any physical proximity to the Pipelines and Replacement Pipelines.

1.5.5 Notice of Commencement. Developer shall provide USD with written notice ten (10) business days prior to commencing the Work and shall inform USD of all times and schedules during which it will perform the Work. Developer shall cause the Work to be performed during normal business hours, and shall obtain USD’s prior written consent for any portion of the Work to be performed outside of normal business hours.

1.5.6 Compliance with Laws. Developer and General Contractor shall comply with all applicable federal, state and local laws and regulations now in effect or that become effective during the performance of the Work, including any permit issued by USD or other public entity in connection with the Work. USD shall not be responsible or liable for Developer’s failure to comply with any applicable laws or regulations.

1.5.7 Damage to Property or Improvements. Developer shall exercise all reasonable and necessary precautions to protect, and shall be responsible for any damage to, any public or private property or improvements, including but not limited to the Pipelines, other existing utilities, street pavements and curbs, gutters, and sidewalks, directly attributable to the performance of the Work and shall repair, replace and restore any damaged property or improvements at its sole expense, and pay all charges, fees, and penalties associated with any sanitary sewer leaks, and subject to the reasonable approval of USD or any affected property owner, if applicable.

1.5.8 Warranty. Developer shall cause the General Contractor to provide a warranty bond, in a form approved by USD in its discretion, to warrant that (i) any materials, supplies, products and equipment furnished under the “General Contract” will be new unless otherwise specified, and (ii) the Work will be of good workmanship and quality, free from faults and defects and in conformance with the Scope of Work and Drawings and Specifications, the

standards in the industry, and applicable law (the “Warranty”). The warranty bond shall warrant the Work for a period of two (2) years from Final Completion of both the Phase I and Phase II Work (the “Warranty Period”).

1.5.9 Guarantee of the Work. The Developer shall cause the General Contractor to make, at its own expense, all repairs or replacements necessitated by defects in the Work’s materials or workmanship and pay for any damage to other works resulting from such defects, which becomes evident within the Warranty Period or within such longer period of time as may be prescribed by law or by the terms of any applicable special guarantee required by the Drawings and Specifications. The Developer shall cause General Contractor to further assume responsibility for a similar guarantee for all work and materials provided by subcontractors or manufacturers of materials and/or equipment. Until such time as the warranty bond is in place and approved by USD, Developer shall remain obligated for repairs and replacement as provided in this Agreement.

1.5.10 Notice of Defective Work. During the Warranty Period, the Developer shall cause its General Contractor, under its warranty bond, upon the receipt of notice in writing from USD, to promptly make all repairs arising out of defective materials, workmanship, or equipment. USD is hereby authorized to make such repairs, the General Contractor and its surety shall be liable for the cost thereof, if within five (5) business days after giving of such notice to the General Contractor and/or its surety has failed to make or undertake the repairs with due diligence. In case of emergency, where in the opinion of USD delay could cause serious loss or damage, repairs may be made without notice being sent to the General Contractor, and the expense in connection therewith shall be charged to the General Contractor shall be liable for the cost thereof.

1.5.11 Acceptance Conditions. USD’s acceptance of the Work or a portion of the Work shall not extinguish any covenant or agreement on the part of the Developer to be performed or fulfilled under this Agreement which has not, in fact, been performed or fulfilled at the time of such acceptance. All covenants and agreements shall continue to be binding on the Developer until they have been fulfilled. USD and Developer agree that such partial acceptance and possession, and use of the Work shall not be deemed as Substantial Completion or acceptance of any other part of the Work. The warranty and guarantee contained herein shall not amount to nor shall it be deemed to be a waiver by USD of any rights or remedies (or time limits in which to enforce such rights or remedies) it may have against the Developer for defective workmanship or defective materials under the laws of this State.

1.6 Permits; Surveys; Government Approvals. Developer shall, at its sole cost and expense, keep in effect or obtain at all times during the term of this Agreement any licenses, permits, approvals, and surveys that are required for Developer to perform the Work, including permits and authorizations from any governmental entity having jurisdiction over the Project. Developer and USD acknowledge and agree that certain portions of the Work will occur in wetlands or other waters of the United States (including the wetlands preserve located on the Property, east of the Hickory Street right-of-way) and that Developer’s obligation to secure

permits for the Work shall include, without limitation, any and all permits required from agencies with jurisdiction over wetlands, waters or listed species affected by the Work, including (as applicable) the U.S. Army Corps of Engineers, the San Francisco Bay Regional Water Quality Control Board, the California Department of Fish and Wildlife and the U.S. Fish and Wildlife Service. Developer and USD also acknowledge and agree that the FMC Property is subject to the SCR Order issued by the Water Board, that FMC is remediating the property under the oversight of the Water Board, and that subsurface work in soil or groundwater shall be performed consistent with Article 4 below, and to the extent applicable, shall be governed by a Soil and Groundwater Management Plan to be developed by FMC under the oversight of the Water Board. USD shall reasonably assist and cooperate with the Developer in obtaining such permits and government authorizations. To the extent USD has existing authority under any federal permits (including any reporting or nonreporting nationwide permit) related to the Work, USD agrees to assign to Developer a right to rely on such permits in the completion of the Work upon request by Developer.

## 1.7 Rights-of-Entry/Easements.

1.7.1 Phase I Easements. In consultation with USD, at Developer's sole cost and expense, Developer shall secure an easement across the ACFCD Property and the Cargill property (as necessary) in favor of USD, and in a form approved by, USD to permit construction, installation, use, operation, maintain, repair, replacement of the Phase I Replacement Pipeline. Developer shall also grant USD an easement across the Property in favor of USD, and in a form approved by, USD to permit construction, installation, use, operation, maintain, repair, replacement of the Phase I Replacement Pipeline. In addition, Developer shall obtain all consents and approvals necessary to complete the Work. The parties acknowledge and agree that upon Final Completion, a portion of existing Pipelines located within the ACFCD Property, including the portion of the existing Pipelines running along Perrin Avenue right-of-way located near the southern side of the Property, shall be abandoned in place pursuant to the terms of the easement agreements to be obtained under this Section 1.7.1.

1.7.2 Phase II Easements. The Phase II Work shall be completed by Developer pursuant to the USD Pipelines Easements, a construction right-of-entry to be obtained by Developer, in consultation with USD, over the FMC Property, which shall include but not be limited to the right of USD to maintain the Replacement Pipelines (the "FMC Right-of-Entry"). USD shall negotiate the terms of an Irrevocable Offer to Dedicate to effectuate the acceptance of an easement over that portion of the FMC Property not encumbered by the USD Pipelines Easements after completion and acceptance of the Phase II Work. The Irrevocable Offer to Dedicate and the FMC Right-of-Entry shall be executed concurrently. Developer, at its sole cost and expense, shall prepare the necessary plats and legal descriptions for the Irrevocable Offer to Dedicate.

1.7.3 Form of Easements and Right-of-Entry Approvals. The easements, approvals, offers to dedicate, and rights-of-entry, including the FMC Right-of-Entry, must be in forms approved by USD. Further, the easements, in the case of the FMC property, shall be

consistent with the USD Pipelines Easements currently existing in favor of USD but shall permit the surface of the easement area described as the “Future Park” in Exhibit B1, attached hereto and incorporated herein by reference, to be incorporated into a public park and the construction of Enterprise Drive over that portion of the easement area described as “Future Enterprise Drive” in Exhibit B1, subject to review and approval by USD.

1.7.4 Abandonment of Easement/New Property Easement. The parties acknowledge that the Pipelines currently traverse a portion of the Property pursuant to the USD Pipelines Easement. As depicted on Exhibit B, a portion of the existing Pipelines located in the southwest portion of the Property within the USD Pipelines Easement shall be abandoned in place and the Replacement Pipelines shall be re-routed within the Property within a new easement granted by Owner in favor of USD, in a form approved by USD that grants USD the absolute right in perpetuity to use and maintain the easement. The parties acknowledge and agree that upon Final Completion of Phase I and Phase II, a portion of existing Pipelines within the USD Pipelines Easement will be abandoned in place. Upon Final Completion of Phase I and Phase II, USD shall record a quitclaim deed, reasonably acceptable to Developer and the owner of the underlying fee property, as applicable, terminating that portion of the USD Pipelines Easement within which the abandoned Pipelines are located. USD shall have no obligation to remove the abandoned Pipelines now or in the future.

## ARTICLE 2

Intentionally Deleted.

## ARTICLE 3

### INSPECTIONS

3.1 Developer Inspection. USD represents and warrants that, to the best of its current, actual knowledge without the need to inspect, the existing Pipelines and connection points are in a reasonable state of repair and are sufficient to permit connection and transition of the Work, with the exception of ongoing general required maintenance. Prior to commencing construction of the Work, Developer, in its sole and absolute discretion, may elect to survey and/or inspect the existing USD facilities, including without limitation, the connection points to locate or confirm any existing damage, leaks or deficiencies, or other issues that may prevent a seamless connection and transition of the Work to the pipeline connection points. Developer shall provide to USD a written report documenting any deficiencies or damage in the USD facilities. Developer shall repair any existing damage, leaks or deficiencies for that portion of the existing Pipelines for Phase II that is within one pipeline length from the connection point to make a safe connection, and Developer shall have no obligation to repair or replace any portion of the existing Pipelines for Phase II beyond such first pipeline length to provide a safe connection.

3.2 USD Inspection. USD reserves the right to inspect the Project site during working hours and agreed upon non-working hours during the Work. Developer shall provide USD

access to the Project site for such inspections. Developer shall pay any costs incurred by USD in connection with inspections and engineering reviews as set forth in Section 1.3.3. Developer and/or the General Contractor shall not be relieved of their primary responsibility for safety on the Project site due to inspection by USD or a decision by USD or its consultants not to inspect.

3.3 USD's Right To Stop Work. If during the prosecution of the Work, USD discovers evidence of a leak or spill, or reasonably suspects damage to its facilities, including but not limited to the Pipelines, pump station and connection points, USD shall have the right to stop the performance of the Work by the Developer and the General Contractor. Developer and the General Contractor shall promptly stop prosecution of the Work until USD has investigated and determined the cause of the leak, spill and/or damage. If the leak, spill and/or damage was caused by the Work, including without limitation by the Developer or the General Contractor, as reasonably determined by USD, the Developer and General Contractor shall promptly repair any damage and clean up and remediate any leak or spill. USD will endeavor to work with the Developer to develop a revised work plan which would allow the Developer and General Contractor to continue its prosecution of other portions of the Work, while the repairs, clean-up and/or remediation is on-going. If USD is cited, fined or penalized by a governmental agency, including but not limited to the Environmental Protection Agency or the California Regional Water Quality Control Board, for a leak, spill or other damage caused in whole or in part by the Developer or the General Contractor, the Developer shall reimburse USD for the full amount of any fine or penalty paid by USD including reasonable attorneys' fees incurred in responding to those governmental agencies. Within thirty (30) calendar days of its receipt of a billing statement from USD for reimbursement of costs or expenses, including fines or penalties, described herein, the Developer shall reimburse USD for those stated amounts.

### 3.4 Final Completion and Acceptance.

3.4.1 Substantial Completion. Developer shall provide USD written notice upon achieving substantial completion of the Work, including the activation of the new Replacement Pipelines. Upon receipt of Developer's notice of substantial completion, Developer and USD shall promptly thereafter inspect the Work and jointly develop a list of any deficiencies for correction (the "Punch-List"). Developer shall direct the General Contractor to promptly correct any deficiencies identified on the Punch-List. Failure to include an item on the Punch-List does not alter the responsibility of the Developer to complete the Work in accordance with the Scope of Work or the Drawings and Specifications.

3.4.2 Final Completion. Final Completion is defined as completion of the Work, as applicable, including correction of Punch-List items. Developer will notify USD in writing upon achieving Final Completion for the Work ("Final Completion Notice"). Final Completion for the Work shall be deemed achieved, unless within ten (10) days following USD's receipt of the Final Completion Notice, USD notifies Developer in writing that specific Punch-List items remain incomplete and provides an updated Punch-List. Upon Final Completion of the Work and General Contractor's provision of the warranty bond as required by Section 1.5.8, USD shall promptly (i) process and provide written acceptance of the Project and the Work and any

applicable offers to dedicate, (ii) assume all risk of loss, ongoing maintenance and operational responsibilities for the Replacement Pipelines, and (iii) upon expiration of the Warranty Period, return all funds remaining under the USD Costs Deposit or Additional Deposit.

## ARTICLE 4

### HAZARDOUS MATERIALS

4.1 Existing Hazardous Materials. Developer acknowledges that portions of the FMC Property on which the USD Pipelines Easement is currently located are undergoing environmental remediation and the relocation of a portion of the USD Pipelines Easement located on the FMC Property, as described in Section 1.7.4, as well as the location of the Phase II Replacement Pipelines, are designed to avoid existing Hazardous Materials (as defined below). Further, Developer acknowledges that the FMC Property is subject to SCR Order No. R2-2015-0017 issued by the Water Board on May 21, 2015. More specifically, and relevant to this Agreement and the Phase II Pipeline Easements, Developer and USD understand that FMC is proceeding with remedial activities on the portion of the FMC Property known as the “Enterprise Parcel” pursuant to the SCR Order. Developer and USD understand that the Water Board will subsequently review the effectiveness of those activities and deem FMC’s activities complete and having fulfilled FMC’s obligations regarding that part of the SCR Order. In addition, Developer and USD understand that FMC is also proceeding with remedial activities on that portion of the FMC Property known as the “Park Parcel” pursuant to the SCR Order. Developer and USD similarly understand that the Water Board will subsequently review the effectiveness of those activities and deem FMC’s activities complete and having fulfilled FMC’s obligations regarding that part of the SCR Order. Developer and USD understand and acknowledge that subsurface work in areas formerly impacted by FMC’s activities and subject to the SCR Order will be governed by a to-be-prepared Soil and Groundwater Management Plan (the “Soil and Groundwater Management Plan”), which will be reviewed and approved by the Water Board.

4.2 Conformance with Soil and Groundwater Management Plan. Developer shall perform its work in accordance with the Soil and Groundwater Management Plan and shall immediately report any discovery of Hazardous Materials within the Phase II Pipeline Easement to FMC and to USD and as otherwise may be required by the Soil and Groundwater Management Plan. Developer shall cause the General Contractor to perform all Work in accordance with federal, state and local laws and regulations regarding Hazardous Materials. USD agrees to cooperate with Developer in any investigative or remedial actions undertaken by Developer in order to conform Developer’s activities with the Soil and Groundwater Management Plan. Developer agrees and acknowledges that, as between itself and USD, Developer is and shall be solely responsible for conforming with the Soil and Groundwater Management Plan in order to complete the Work.

4.3 No Control by USD. With respect to any investigative or remedial activities by Developer in order to conform the Work with the Soil and Groundwater Management Plan in

accordance with the foregoing, USD shall have the right to be informed and to comment on any plans or actions to conduct such investigation or remediation, but USD's rights, whether under this Section or otherwise, shall not create any right, duty or obligation on the part of USD to direct, oversee, supervise or exercise control over such investigative or remedial activities, nor shall it be deemed to constitute direction, oversight, supervision of, or exercise of control over, such investigative or remedial activities. Any statement by USD or its representatives regarding any actions taken in order to conform the Work with the Soil and Groundwater Management Plan, including, but not limited to, any statement phrased in the form of a recommendation, direction, command, approval, granting of permission or denial of permission shall be construed, at most, as a suggestion and shall not be deemed to constitute direction, oversight, supervision, or exercise of control over the performance of any such investigative or remedial activities.

4.4 No Waiver of Rights against Third Parties. Neither USD nor Developer intend (nor any other entity referred to in this Agreement) intend their allocation of or reference to respective responsibilities as set forth in this Article 4 to waive or relinquish any rights one or the other or both of them may have against third parties.

4.5 Resumption of Work. After Developer resolves a condition governed by the Soil and Groundwater Management Plan pursuant to this Article 4 and specifically regarding any discovery of Hazardous Materials within the Phase II Pipeline Easements, and to the extent Work was required to cease, the General Contractor shall resume Work in an affected area.

4.6 Definition of "Hazardous Materials." As used in this Agreement, the term "Hazardous Materials" shall include, without limitation, substances defined as or listed as "hazardous substances," "hazardous materials," "toxic substances," "petroleum," "carcinogen," "pollutant," "contaminant," "asbestos," or "hazardous waste" in any federal, state or local laws, rules or regulations, including without limitation, the Federal Water Pollution Control Act (33 U.S.C. §§ 1251 et seq.), the Hazardous Materials Transportation Act (49 U.S.C. §§ 1801 et seq.), the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. §§ 9601 et seq.), the California Health and Safety Code (§§ 25100 et seq., §§ 25300 et seq.), the California Water Code (§§ 13000 et seq.) and California Civil Code (§2929.5), all as heretofore or hereafter amended, or any judicial or administrative interpretation of such law, rule or ordinance.

## ARTICLE 5

### INSURANCE AND BONDS

5.1 Developer Insurance Requirements. Developer shall cause the Work to be covered under the insurance coverages described in Exhibit J attached hereto and incorporated by reference.

5.2 Bonds. Concurrently with execution of the General Contract, or as otherwise stated herein, Developer shall cause General Contractor to furnish both a Performance Bond

and a Labor and Material Payment Bond in favor of the USD and Developer as security for the faithful performance and payment of any of the General Contractor's obligations under the General Contract and Developer's obligations under this Agreement for the Work (for Phase I or Phase II, as applicable). The bonds shall be delivered to USD and Developer prior to commencement of the Work (for Phase I or Phase II, as applicable). The bonds shall: (a) be in amounts at least equal to the Project Costs for the Work (for Phase I or Phase II, as applicable) as set forth in the General Contract; (b) provide that no changes or additions to the Drawings and Specifications or clarification instructions given to the General Contractor shall exonerate or discharge the surety under such bond; (c) provide that if the General Contractor fails to complete the Work in accordance with the Project Schedule, subject to Force Majeure, or within the Warranty Period fails to correct or repair any defective or deficient work within a reasonable period, the surety shall either contract with another contractor to complete the Work, the corrections or repairs or fund up to the penal amount of the bond for the completion of the Work, corrections or repairs pursuant to the terms and conditions of the General Contract and this Agreement, and (d) be issued by sureties qualified to do business in the State of California and named in the current list of "Surety Companies Acceptable on Federal Bonds," as published in the Federal Register by the Audit Staff Bureau of Accounts, U.S. Treasury Department. Upon expiration of the Warranty Period, USD and Developer shall release the Performance Bond and the Labor and Material Payment Bond (for Phase I or Phase II, as applicable).

## ARTICLE 6

### INDEMNITY

6.1 Indemnity by Developer. To the fullest extent permitted by law, Developer shall defend, indemnify and hold harmless USD, including its officers, directors, employees, and District Consultants ("USD Indemnitees"), from and against any and all claims, losses, demands, liabilities, damages, costs or expenses, including, without limitation, reasonable attorneys' fees and court costs, incurred by or made against USD Indemnitees (each individually a "Claim" and collectively, "Claims") arising out of or resulting from Developer's or General Contractor's performance of the Project, the Work or this Agreement caused by or resulting from Developer's or General Contractor's active or passive negligence, error or omission, intentional wrongdoing or willful misconduct, any breach of any obligation under this Agreement. Developer's indemnity, defense and hold harmless obligations shall not extend to that portion of a Claim or Claims that arises from the active negligence or the willful misconduct of USD or any USD Indemnitee. Developer's indemnity, defense and hold harmless obligations shall survive termination of the expiration or termination of this Agreement until such time that is determined by final judgment that the Claims against the USD Indemnitees for such matters that can be indemnified hereunder are fully and finally barred as to the USD Indemnitees for the applicable statute of limitations.

6.2 Indemnity by USD. To the fullest extent permitted by law, USD shall defend, indemnify and hold harmless Developer and Developer Indemnities from any and all Claims, to

the extent arising from USD's active negligence, intentional wrongdoing or willful misconduct with respect to the Work, the Pipelines or Replacement Pipelines. USD's indemnity, defense and hold harmless obligations shall not apply to the extent a Claim arises from the negligence or the willful misconduct of Developer or Developer Indemnitee. USD's indemnity, defense and hold harmless obligations shall survive the expiration or termination of this Agreement until such time that is determined by final judgment that the Claims against the Developer Indemnitees for such matters indemnified hereunder are fully and finally barred as to the Developer Indemnitees for the applicable statute of limitations.

## ARTICLE 7

### DEFAULT

7.1 Default. In the event of a material breach by a party of any term or covenant contained in this Agreement, the non-defaulting party may give written notice of such default to the defaulting party, which notice shall include the acts required to cure the same with reasonable specificity. The defaulting party shall have a period of seven (7) days after receipt of such notice within which to cure such default, provided the defaulting party commences and diligently pursues cure to completion, which period may be extended as may be reasonably required if cure cannot be achieved within such seven (7) day period. In the event the defaulting party fails to cure such default within the period provided in this Section 7.1, the non-defaulting party may at its election, pursue all remedies available at law or in equity in the event of a breach of this Agreement by defaulting party.

(a) In the event of an uncured Developer default, USD shall have the right, but not the obligations, to direct the General Contractor's surety to complete the Work in accordance with the plans and specifications or have either its own forces or a third party licensed contractor of its choice complete the Work in accordance with the approved plans and specification at the expense of the Developer and its surety. USD also reserves the right to terminate this Agreement in the event the default is not cured as required by Section 7.1. If USD elects to complete the Work with either its own forces or another general contractor, the Developer and its surety shall reimburse USD for all costs incurred to complete the Work and all other costs reasonably incurred by USD as a result of the Developer's default, in excess of the funds remaining under the USD Costs Deposit or Additional Deposit, which USD shall retain.

## ARTICLE 8

### GENERAL PROVISIONS

8.1 Notices. All notices, consents, requests, reports, demands or other communications hereunder (collectively, "Notices") shall be in writing and may be given personally, by reputable overnight delivery service or by email or facsimile transmission to each of the parties at the following addresses:

To Developer: William Lyon Homes, Inc.  
4694 MacArthur Court, 8<sup>th</sup> Floor  
Newport Beach, CA 92660  
Attn: Mr. Scott Hilk  
FacsimileNo.: \_\_\_\_\_  
Email: [scott.hilk@Lyonhomes.com](mailto:scott.hilk@Lyonhomes.com)

and

William Lyon Homes, Inc.  
4694 MacArthur Court, 8<sup>th</sup> Floor  
Newport Beach, CA 92660  
Attn: Mr. Richard S. Robinson  
Facsimile No.: (949) 252-2574  
Email: [rick.robinson@lyonhomes.com](mailto:rick.robinson@lyonhomes.com)

With copies to: Newmeyer & Dillion, LLP  
895 Dove Street, Fifth Floor  
Newport Beach, CA 92660  
Facsimile No.: (949) 854-7099  
Attn: John O’Hara, Esq.  
E-Mail: [john.ohara@ndlf.com](mailto:john.ohara@ndlf.com)

To USD: Union Sanitary District  
5072 Benson Road  
Union City, CA 94587-2508  
Attn: Paul R. Eldredge  
Facsimile No.:(510) 477-7501  
E-mail: [paule@unionsanitary.ca.gov](mailto:paule@unionsanitary.ca.gov)

With copies to: Burke, Williams & Sorensen  
1901 Harrison Street, Suite 900  
Oakland, CA 94612  
Attn: Karen Murphy  
Facsimile No.:(510) 839-9104  
E-mail: [kmurphy@bwslaw.com](mailto:kmurphy@bwslaw.com)

A notice shall be effective on the date of personal delivery if personally delivered before 5:00 p.m. California time on a business day, otherwise on the business day following personal delivery; or on the date of receipt, if transmitted by electronic facsimile transmission (with electronic confirmation of transmission) prior to 5:00 p.m. California time on a business day, otherwise on the next business day; or two (2) business days following the date the notice is postmarked, if mailed, or on the business day following delivery to the applicable overnight courier, if sent by overnight courier for next business day delivery and otherwise when

received; provided, however, that failure of delivery due to a recipient's change of address or email without notice shall be granted an extension of two (2) business days. Either party may change the address to which notices are to be given to it by giving notice of such change of address in the manner set forth above for giving notice. Any notice under this Agreement may be given on behalf of a party by the attorney for that party.

8.2 Complete Agreement. This Agreement, including exhibits hereto, represent the full and complete understanding of the parties and supersede any previous agreements, representations or understandings, oral or written, with respect to the subject matter hereof. This Agreement may be modified or altered only by a written instrument signed by the parties.

8.3 Successors. This Agreement shall inure to the benefit of and shall be binding upon the successors and assigns of Developer and the successors and assigns of USD; provided, however, that this Agreement is not assignable without the prior written consent of the other party. Such consent to assignment shall bind and inure to the benefit of the respective successors and assigns of the parties.

8.4 Modification. This Agreement may not be amended unless made in writing and signed by each party.

8.5 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same agreement.

8.6 Authority. The parties represent that the individuals signing this Agreement have the authority to do so.

8.7 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California.

8.8 Attorneys' Fees. If any action is brought by either party against the other party, relating to or arising out of this Agreement, the transaction described herein or the enforcement hereof, the prevailing party shall be entitled to recover from the other party reasonable attorneys' fees, costs and expenses incurred in connection with the prosecution or defense of such action or any appeals therefrom. The provisions of this Section 8.8 shall survive the entry of any judgment, and shall not merge, or be deemed to have merged, into any judgment.

8.9 No Waiver. No failure to exercise, and no delay in exercising any right, power or remedy hereunder shall impair any right, power or remedy that any party hereto may have, nor shall such failure or delay be construed to be a waiver of any such rights, powers or remedies, or an acquiescence in any breach or default hereunder, nor shall any waiver of any breach or default of any party hereto be deemed a waiver of any default or breach subsequently occurring.

8.10 Severability. In case any one or more of the provisions contained herein should be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired thereby.

8.11 Representatives. Developer and USD shall each designate in writing to each other a “representative” and each party’s representative shall have full authority to execute any and all instruments requiring signature and to act on behalf of the applicable party with respect to all matters arising out of this Agreement.

8.12 Third Party Beneficiary. This Agreement is between the parties hereto exclusively, and no third parties are intended to be benefited hereby.

8.13 Term. This Agreement shall continue and remain in full force and effect until the earlier of (i) USD’s acceptance of the Work as provided in Section 3.4, or (ii) termination of the Agreement.

8.14 Contractors. CONTRACTORS ARE REQUIRED BY LAW TO BE LICENSED AND REGULATED BY THE CONTRACTORS’ STATE LICENSE BOARD WHICH HAS JURISDICTION TO INVESTIGATE COMPLAINTS AGAINST CONTRACTORS IF A COMPLAINT REGARDING A PATENT ACT OR OMISSION IS FILED WITHIN FOUR (4) YEARS OF THE DATE OF THE ALLEGED VIOLATION. A COMPLAINT REGARDING A LATENT ACT OR OMISSION PERTAINING TO STRUCTURAL DEFECTS MUST BE FILED WITHIN TEN (10) YEARS OF THE DATE OF THE ALLEGED VIOLATION. ANY QUESTIONS CONCERNING A CONTRACTOR MAY BE REFERRED TO THE REGISTRAR, CONTRACTORS’ STATE LICENSE BOARD, P.O. BOX 26000, SACRAMENTO, CALIFORNIA 95826.

8.15 Force Majeure. Neither Party shall be held responsible or liable for an inability to fulfill or delay in fulfilling any obligation under this Agreement (other than the payment of money), by reason of an act of God, natural disaster, accident, strikes, lockouts or other labor disturbances or disputes, unavailability of materials or labor, rationing or restrictions on the use of utilities or public transportation whether due to energy shortages, war, civil disturbance, riot, governmental rules, regulations, or restrictions, building moratorium (including without limitation, any moratoria under the California Subdivision Map Act), delay in issuance of any permits or governmental approvals, or litigation or other legal action by a third party (“Force Majeure”). Any Party relying on a Force Majeure shall give the other Party reasonable notice thereof and the Parties shall use their best efforts to minimize potential adverse effects from such Force Majeure. The Parties further acknowledge that Developer’s ability to meet the Project Schedule will depend upon the cooperation of certain third parties as well as USD’s timely cooperation in reviewing and approving the Drawings and Specifications (as defined herein), construction submittals, requests for information from a contractor, as well as providing other construction information in a timely manner and otherwise taking such action as may be necessary or appropriate to expedite the Work as specified in Section 1.3, above.

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

“Developer”

William Lyon Homes, Inc.  
a California Corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

“USD”

Union Sanitary District  
a California Public Sanitary District

By: \_\_\_\_\_  
Name: Paul R. Eldredge, P.E.  
Title: General Manager

Approved as to form:

\_\_\_\_\_  
Karen Murphy, General Counsel

EXHIBIT A

PROPERTY

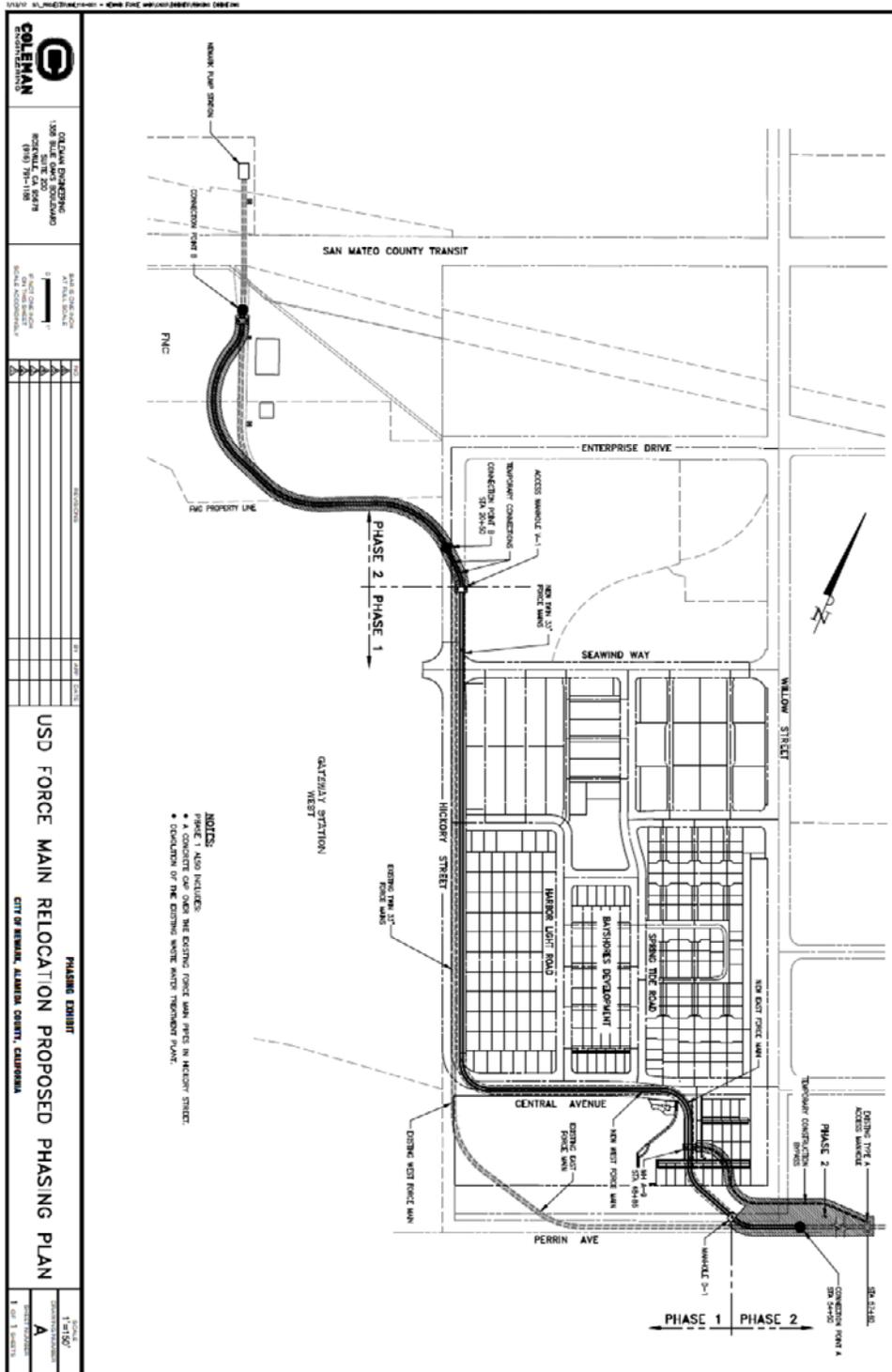
ALL THAT REAL PROPERTY SITUATED IN THE CITY OF NEWARK, COUNTY OF ALAMEDA, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

LOTS 1, 2, 3, 5, 6, 7, 8, 9, 11, 12, 14, 15, 16, 17, 18, 19, 21, 30 THROUGH 40, INCLUSIVE, 46 THROUGH 152, INCLUSIVE, 159 THROUGH 164, INCLUSIVE, 168 THROUGH 173, INCLUSIVE, 177 THROUGH 180, INCLUSIVE, 185 THROUGH 216, INCLUSIVE, LOTS A, B, C, D, E, F AND G AND PARCELS A, B, C, D, E, F, G, H, I, J, K, L, M, N, O, P AND Q AND OF TRACT 8085, FILED MAY 4, 2016, IN BOOK 339 OF MAPS, PAGES 76 THROUGH 93, INCLUSIVE, OFFICIAL RECORDS OF ALAMEDA COUNTY.

LOTS 1 THROUGH 8, INCLUSIVE, PARCELS A, B, C AND LOTS A AND B OF TRACT 8310, FILED JUNE 9, 2017 IN BOOK 347 OF MAPS, PAGES 49 THROUGH 52, INCLUSIVE, OFFICIAL RECORDS OF ALAMEDA COUNTY.

EXHIBIT B AND B1

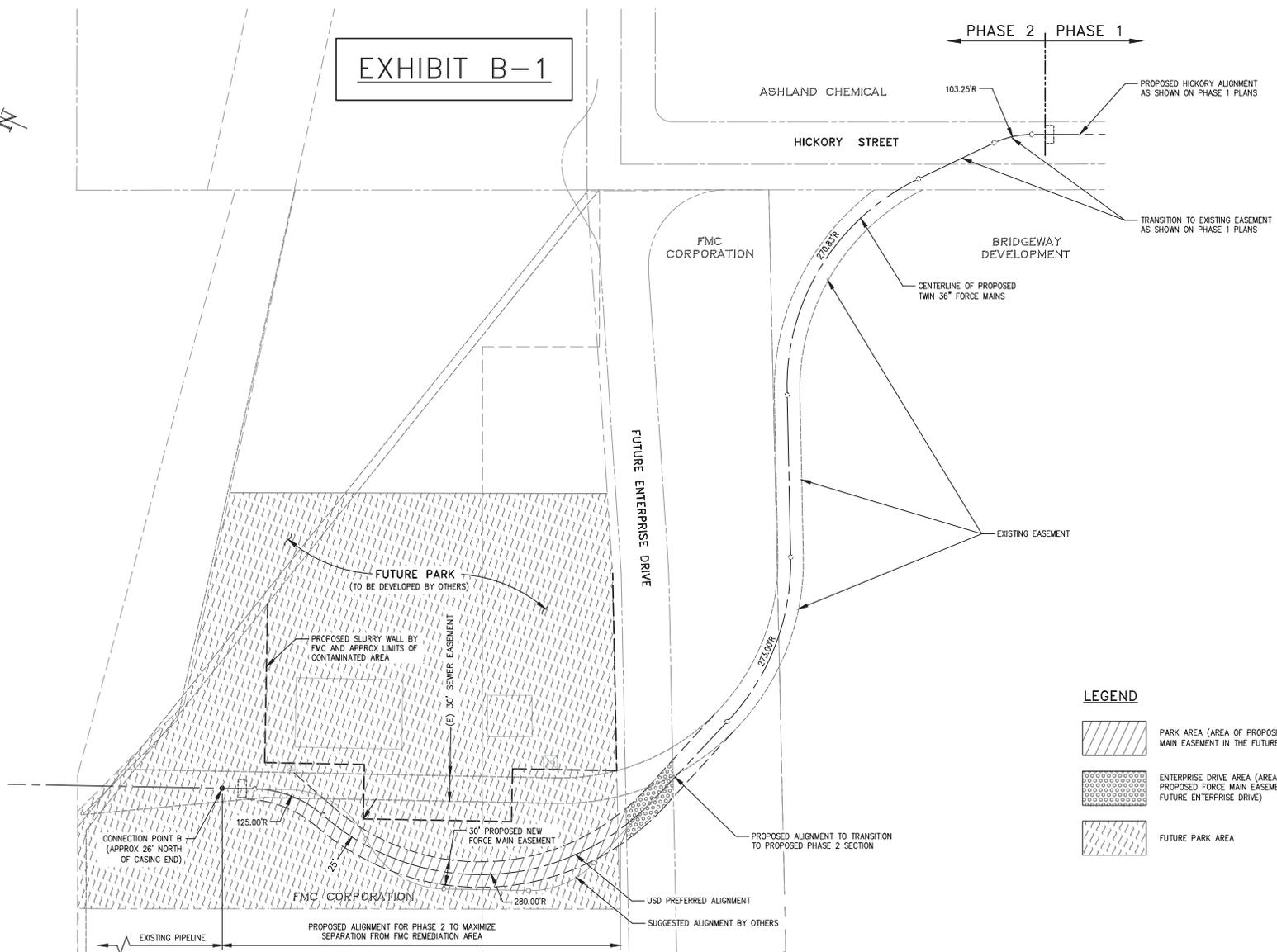
LOCATION MAP AND PROPOSED ALIGNMENT MAP



10/10/17, 11:30 AM, PROJECTS/MAIN/2017-01 - NEWARK FORCE MAIN/2017-01/PHASE 2 - ALIGNMENT ENGINEERING



**EXHIBIT B-1**



**LEGEND**

- PARK AREA (AREA OF PROPOSED FORCE MAIN EASEMENT IN THE FUTURE PARK)
- ENTERPRISE DRIVE AREA (AREA OF PROPOSED FORCE MAIN EASEMENT IN FUTURE ENTERPRISE DRIVE)
- FUTURE PARK AREA



**COLEMAN ENGINEERING**  
 1358 BLUE OAKS BOULEVARD  
 SUITE 200  
 ROSEVILLE, CA 95678  
 (916) 791-1188

BAR IS ONE INCH AT FULL SCALE  
  
 IF NOT ONE INCH ON THIS SHEET SCALE ACCORDINGLY

NO.	REVISIONS	BY	APP	DATE

**WILLIAM LYON HOMES**  
**CITY OF NEWARK**

**FORCE MAIN PHASE 2 PREFERRED ALIGNMENT EXHIBIT**

**TWIN FORCE MAIN RELOCATION**

**CALIFORNIA**

DESIGNED UNDER THE DIRECTION OF:

CHAD R. COLEMAN  
 R.C.E. No. 56490 - REGISTRATION EXPIRES 06-30-19      DATE  
 DESIGN: CRC      DATE: 10-10-17  
 DRAWN: WCJ      DATE: 10-10-17  
 CHECKED: CRC      DATE: 10-10-17

SCALE  
**1"=60'**  
 DRAWING NUMBER  
**1**  
 SHEET NUMBER  
**1** OF 1 SHEETS

## EXHIBIT C

### SCOPE OF WORK

#### PHASE I

Phase I construction is depicted on the plans and described in the specifications below:

#### Replacement pipeline -Design Documents

##### Plans

Title: Twin Force Main Relocation

Sheets: 1-15 inclusive

Designer: Coleman Engineering

Date: TBD

##### Technical Specifications

Title: Twin Force Main Relocation

Designer: Coleman Engineering

Pages: 1-174 inclusive

Date: TBD

Any work that impacts the existing force mains shall be completed as set forth in the Project Schedule. All Work shall include the necessary dewatering, testing, pigging and any corrective work necessary for the normal operation of the force main by USD. Phase 1 construction sequencing:

- Existing pipe is protected in place along the alignment of proposed Hickory Street (e.g. concrete cap over existing force mains) as an interim measure.
- New Pipeline is installed, no connections to the existing force mains. – Hickory Street can be constructed prior to new pipe being placed in service.
- Phase I will be limited to the following construction described in the plans and specifications:
- Limits of construction are from Manhole V-1 (approximately Station 22+15) on the north end to Manhole D-1 (approximately Station 52+93) on the south end.
- The Bore and Jack operation to place the new force main pipeline under the ACFWCD Channel between Sta. 50+53 and Sta. 51+81 will be completed during Phase I only after plans and specifications are approved by USD to adequately protect the existing pipelines. The proximity of the jack and bore operations has the potential to impact the existing pipelines. Additionally, the jack and bore work will not be started until an encroachment permit is obtained from ACFWCD.

- Both force main pipes at each end of the alignment (4 pipe ends total) will be terminated with welded HDPE flange fittings and fitted with blind flanges capable of resisting the full test pressure of the force main pipeline.
- Pressure testing of both installed pipelines between Manholes V-1 and D-1 will pass and be completed.
- No connection of the new force main pipeline to the existing force main pipeline will be made until the connection details and sequencing have been reviewed and approved by USD.
- No bypass pumping is currently anticipated for Phase I construction.
- The connection from the new force main to the existing force mains shall be completed as a part of Phase II, with the exception if Phase II across the FMC property is delayed, at which point USD may elect to connect Phase I to the existing force main. The connections shall not be started during the rainy season (generally defined as October 15 through April 15), or as weather conditions dictate the operation of the existing force mains.

#### Protection of the existing pipelines in Hickory Street

Upon review and approval of the plans, geotechnical reports and structural details/calculations by USD (This is required to confirming that the concrete cap shall provide adequate protection of the existing force mains), install concrete cap over the existing pipeline in Hickory Street from Central Avenue to Seawind Way to protect the existing pipeline during placement of fill and construction of Hickory Street. This is an interim measure to facilitate the construction of the Phase I Replacement Pipelines and Hickory Street while the exiting force mains are in service.

Demolition of USD treatment plant - Phase 1 includes the demolition of the old USD Newark Treatment Plant at no cost to USD.

- Developer will prepare all required plans required for permits and USD approval prior to commencing any work.
- Demolish the final clarifier, aeration tanks, pumping plant and remove all surface asphalt, concrete and foundations to a depth of 3 feet
- Demolish the Mixing tank, clarifier, 2 digesters, all buildings and remove all surface asphalt, concrete and foundations to a depth of 3 feet below existing grade
- Demolish building structure and remove all surface asphalt, concrete and foundations to a depth of 3 feet below existing grade
- Developer to retain the salvage value of the material
- All metal, concrete, and asphalt to be sent to recycler
- All work to be performed within the fenced in boundaries
- Developer to remove and dispose of all stockpiled material on the site prior to or during the demolition work.
- USD will be the applicant for required demolition permits, Developer to provide assistance with permit application.

- USD will provide required disconnect letters from PG&E required for demolition permit with Developer assistance to prepare letters.
- USD to assist with SWPPP provision and permitting requirements for the demolition work.
- Developer to secure the perimeter, including ensuring all fencing is secure and any damage is repaired, upon completion of the work.

## **PHASE II**

The Phase II Work shall be designed and constructed in accordance with the plans and specifications included under the Phase II Scope of Work and the Drawings and Specifications for Phase II. No Phase II Work shall begin without prior approval by USD of the Project Design and Drawings and Specification for Phase II.

At the south end of the project, the work will consist of:

- Providing a temporary connection by-pass, around the connection area
- Removal of the existing pipelines to the connection point at Sta. 54+50
- Construction of new pipeline from Manhole D-1 to Connection point A

At the north end of the project, the work will consist of:

- Providing a temporary connection by-pass, around the connection area
- Removal of the existing pipelines from approximately the transition of the proposed Phase 2 to USD MHs AM249914 and AM259914 in Hickory Street. The portion of the existing pipe from the transition of the proposed alignment to the proposed Phase 2 to connection point B shall be abandoned in place except as required for the connections. References to Phase 2 in Exhibits B, B1 and this Exhibit C shall mean Phase II as defined in the Agreement.
- Construction of new pipeline from Manhole V-1 to Connection point B, partially through the existing easement on the Lennar & FMC Properties and partially through a new easement to be provided by FMC.
- Encasing approximately 600 lineal feet of the new force main in concrete and waterproofing the manholes.

The connection of the new force main pipeline to the existing force main pipeline will be made after plans including the connection details and sequencing have been reviewed and approved by USD. The connections shall not be started during the rainy season (generally defined as October 15 through April 15th), or as weather conditions dictate the operation of the existing force mains.

EXHIBIT D

PROPOSED PROJECT SCHEDULE

<b>TASK</b>	<b>DATE</b>
<u>PHASE 1</u>	
USD Board Approval	October 16, 2017
Phase 1 Plan Approval	October 17, 2017
Contractor Award	October 17, 2017
Order Pipe Material	October 17, 2017
Mobilize Contractor (set up dewatering, schedule subcontractors, secure materials)	October 17, 2017
Install Dewatering wells	October 17, 2017
Start Casing Pipe Installation Under ACFCO Channel	October 17, 2017
Complete Installation of Force Mains From Access Manhole A-5 to Manhole D-1	February 28, 2018
Complete Construction of Concrete Cap Over Existing Pipeline in Hickory Street	December 6, 2017
Complete Demolition of Sewer Treatment Facilities	December 31, 2017
<u>PHASE 2</u>	
Agreement on Realignment Location for Force Mains	February 26, 2018
Design of Phase 2 Approved	April 1, 2018
Contractor Award and Pipe Material Order	May 1, 2018
Complete Installation of Force Mains, Connection to the Existing Pipelines and completion of all Work	October 15, 2018 or October 15, 2019

EXHIBIT E

Intentionally Deleted

EXHIBIT F

Intentionally Deleted

EXHIBIT G

Intentionally Deleted

EXHIBIT H

Intentionally Deleted

EXHIBIT I

Intentionally Deleted

EXHIBIT J

INSURANCE REQUIREMENTS

Prior to commencement of any Work under this Agreement, Developer shall cause Contractor, at Contractor's sole cost, to comply with the following insurance requirements:

1. General Requirements.

a. Carrier Requirements. All insurance to be carried by Contractor will be maintained by Contractor at its cost with insurance carriers approved to do business in California, having a general policyholders rating of not less than an "A-" and financial rating of not less than "VIII" as currently rated by A.M. Best Company, or such other ratings as agreed upon in writing by Developer in Developer's Discretion.

b. Insurance Limits; No Limitation of Liability. Contractor may provide the required insurance in whole or in part through a policy or policies covering other liabilities and projects of Contractor; provided, however, that any such policy or policies shall satisfy all of the requirements set forth in this Exhibit, including the endorsements described below. The required insurance limits stated in this Insurance Exhibit are minimum limits. Nothing contained in this Exhibit is to be construed as limiting the type, quality or quantity of insurance Contractor should maintain for its own protection. The carrying of insurance as specified herein shall not be construed to limit Contractor's liability under the Contract Documents or as a matter of Law. Nothing in this Insurance Exhibit shall be deemed to place any responsibility on Developer for ensuring that the required coverages are sufficient for the conduct of Contractor's business.

c. Evidence of Insurance. As evidence of the insurance required by this Insurance Exhibit, and except as otherwise provided below, Developer will accept certificates of insurance from Contractor's insurance broker (and, where required below, endorsements from Contractor's insurance carrier) and other evidence of insurance acceptable to Developer, in Developer's Discretion, showing the required coverages for the applicable insurance required of Contractor and Contractor's Representatives in force for the specified periods. Developer has the right at any time to obtain certified policies from Contractor and Contractor's Representatives and their insurance carriers as Developer in Developer's Discretion deems necessary. Such evidence shall be delivered to Developer promptly upon execution of this Contract in accordance with Section 2.1 of the Contract, or prior to commencement of Work, whichever earliest occurs, and show specifically the amount of the deductible or SIR under each policy. Each policy, certificate and endorsement shall be subject to approval by Developer in Developer's Discretion.

d. Changes in Coverage. In no event will any insurance required hereunder be amended or reformed or rescinded or terminated or otherwise changed or allowed to lapse prior to the earlier of the completion of the Work pursuant to the provisions of this Contract or termination of the Contract or such longer period as may be specified in this Exhibit. Contractor shall provide thirty (30) days' prior written notice to Developer of any cancellation, non-renewal

or material change in coverage, scope or amount of any policy. In the event (i) any policy expires or is canceled before the expiration of this Contract, or (ii) any policy is amended so that the required coverages are reduced or otherwise changed to the detriment of Developer or any named insured, Contractor shall immediately bring such insurance into compliance with the requirements of this Contract and deliver new certificates and endorsements (and policies, if requested by Developer) to Developer upon the renewal, replacement or modification of such policy(ies). If Contractor fails to comply with the foregoing requirements, then Developer reserves the right, but shall have no obligation, to procure such policy(ies) and to deduct the cost thereof from any sum due Contractor under this Contract, and Contractor shall fully cooperate in the purchase of such insurance.

e. SIRs and Deductibles. Developer shall be given the opportunity to approve and, in Developer's Discretion, disapprove, the amount of any proposed self-insured retention ("SIR") or deductible. If Contractor, with Developer's approval, elects to maintain an SIR or deductible with respect to the insurance required by this Insurance Exhibit, it shall not apply to the additional insureds listed below and no such additional insured shall be obligated to reimburse such SIR or deductible or to pay Contractor as a reimbursable cost, any actual or imputed cost of maintaining such SIR or deductible. Notwithstanding the foregoing, any additional insured may satisfy the SIR or deductible through or on behalf of the Contractor or Contractor's Representative if the additional insured elects to do so.

2. Required Coverage: Contractor shall maintain the following insurance for the times provided herein:

a. Workers' Compensation Insurance. Workers' Compensation Insurance, including Employer's Liability, with a minimum limit of \$1,000,000 or the current limit carried by Contractor or the amount required to be carried by California law, whichever is greater, for all individuals whom Contractor employs in carrying out the Work. This insurance shall be in strict accordance with the requirements of the most current and applicable Workers' Compensation Insurance Laws in effect from time to time in California. Prior to the commencement of the Work, Contractor shall cause a waiver of subrogation endorsement (with respect to Developer and the additional insureds listed under Section 3 below) from Contractor's insurance carrier to be delivered to Developer in form satisfactory to Developer in Developer's Discretion.

b. Commercial General Liability Insurance. Commercial General Liability Insurance on an "occurrence" basis, with a minimum combined single limit for bodily injury, property damage and personal and advertising injury of Ten Million Dollars (10,000,000), or the current limited carried by Contractor, whichever is greater, unless other limits are agreed to in writing in Developer's Discretion, covering operations, independent contractors, products and completed operations, blanket contractual liability, broad form property damage, severability of interest and cross liability clauses, personal injury and explosion, collapse and underground hazards (X,C,U). The limits of liability specified in this Exhibit may be provided by any combination of primary and umbrella/excess liability insurance policies. Such policies shall be renewed annually for at least ten (10) years after final acceptance and completion of the Work or with a statute of

limitations tail coverage. In addition, the Commercial General Liability Insurance shall comply with the following:

- (i) There shall be no limitation of coverage to vicarious liability and coverage shall extend to any independent liability of the additional insureds;
- (ii) There shall be no exclusionary language or limitations of coverage relating to soils subsidence or earth movement of any kind regardless of cause;
- (iii) There shall be no exclusionary language or limitations of coverage relating to residential construction, condominiums, multi-family or multi-unit dwellings, if applicable to the Work;
- (iv) There shall be no exclusionary language or limitations that are applicable to the additional insured that are not also applicable to the named insured;
- (v) There shall be no exclusionary language or limitations of coverage relating to property damage relating to mold or fungus; and
- (vi) There shall be a provision that defense costs and attorneys' and experts' fees awarded as costs are paid in addition to and do not deplete any policy limits.

c. Automobile Liability Insurance. Automobile liability insurance (including but not limited to owned and non-owned vehicles, as applicable) on an occurrence basis, covering all automobiles, trucks and other vehicles and trailers used by Contractor in connection with the Work, with a minimum combined single limit for bodily injury and property damage of not less than \$1,000,000 and uninsured motorists coverage of \$1,000,000, or, in each case, the current limited carried by Contractor, whichever is greater.

d. Pollution Liability Insurance. Contractor shall procure and maintain, at its sole cost and expense, for the full period of the Work, insurance covering losses caused by pollution incidents that arise from its operations. The insurance required by this Section shall apply to bodily injury, property damage, including loss of use of damaged property or of property that has not been physically injured; cleanup costs, and defense, including costs and expenses incurred in the investigation, defense, or settlement of claims. The policy of insurance affording these required coverages shall be written in an amount of at least \$5,000,000 per occurrence, with an aggregate of at least \$5,000,000, or the amount actually carried by the Contractor, whichever is greater. If the coverage is written on a claim-made basis, Contractor warrants that any retroactive date applicable to coverage under the policy precedes the effective date of this Agreement: and that continuous coverage will be maintained or an extended discovery period will be exercised for a period of four (4) years beginning from the time after final completion of the entire Project by Developer (regardless of any earlier completion of the Contractor's Work) or such longer period as may be required by the Agreement. As set forth in Section 3 below, Developer, Owner and Owner Related Parties shall be named as additional insured on such policy

as to both the operations and product completed operations hazards. The policy shall be endorsed to state that the insurance afforded to the additional insureds shall apply as primary insurance and that any other insurance maintained by Developer shall be excess only and non-contributory. If the Work includes the disposal of any hazardous materials from the Project, Contractor must furnish evidence of pollution liability insurance maintained by the disposal site operator for losses arising from the insured facility accepting waste from the Project, which insurance shall satisfy the same requirements and have the same minimum and aggregate limits as stated above. If autos owned or hired by Contractor will be used to transport pollutants or hazardous materials, then the Commercial Auto Coverage in this Exhibit shall include coverage for liability arising out of the transportation of pollutants and hazardous materials.

e. Professional Errors and Omissions Liability Insurance. In the event the Contract Documents call for Contractor to provide architectural, design, engineering, management or similar professional services, Contractor shall maintain Professional Errors and Omissions Liability Insurance with a coverage limit of not less than \$1,000,000 per claim, or current limit carried, whichever is greater, and with a SIR or deductible acceptable to Developer as stated above in this Exhibit. Such insurance shall include coverage for prior acts and shall be maintained during the term of the Contract and renewed for at least ten (10) years thereafter, so long as such renewable coverage is available at commercially reasonable rates and, if commercially available, include Developer and its affiliates as additional insureds in the manner set forth.

f. Transit Insurance. Contractor shall maintain "all risk" insurance, on a replacement cost basis covering loss or damage to property (for which it has title and/or risk of loss) which will become a final part of the Project, while in transit outside of the Project site and while stored or worked upon away from the Project site. Developer shall be included as a loss payee under such policy as its interests may appear.

g. Rental Equipment. In the event that rental of equipment is undertaken to complete or perform the Work, Contractor shall be solely responsible for such rental equipment. Such responsibility shall include, but not be limited to, theft, fire, vandalism and use by unauthorized Persons. In addition to the other insurance coverage that Contractor is required to maintain under this Contract, Contractor may elect to obtain a "rental cost reimbursement endorsement" to provide coverage for any equipment it rents in connection with the Work.

3. Additional Insured Endorsement. Developer and the parties described in this section shall be included as additional insureds under the Commercial General Liability Insurance (including operations and, if commercially available, completed operations); and the Pollution Liability Insurance described above (including operations and, if commercially available, completed operations). They shall be named as additional insureds pursuant to an endorsement to such policies in a form satisfactory to Developer in Developer's Discretion. The endorsement shall list the following parties as additional insureds: "Developer, Union Sanitation District, Owner, Owner Related Parties and all persons and entities controlling, controlled by or under common control with such entities, together with their respective owners, shareholders, partners, members, divisions, officers, directors, employees, representatives and agents, and all

of their respective successors and assigns.” There shall be no insured versus insured exclusion applicable to the additional insureds.

In the event that the Work involves the construction of infrastructure or other improvements that will be conveyed to a Public Entity, the above endorsement shall also include the name of the public entity as an additional insured under the coverage. The policy coverage shall not contain any exclusionary language or limitations that are applicable to any additional insured that are not applicable to the named insured.

In addition to the listing of additional insureds, the endorsement shall also provide: *“This insurance is primary and any other insurance maintained by such additional insureds is excess and shall not be required to contribute with this insurance as respects claims or liability caused by, arising out of or resulting from the acts or omissions or work of the named insured, or of others who performed work on behalf of the named insured. Any of such additional insureds may, at his/her/its election, pay any self-insured retention or deductible amount in connection with any claim or liability for which coverage is or may be provided by such insurance notwithstanding any other provision of the policy.”*

4. **Contractor’s Representatives’ Insurance.** Contractor will not permit any of Contractor’s Representatives to commence Work on the Project until each such Contractor’s Representative, as applicable, has complied with all applicable insurance requirements stated in this Exhibit. In each of its Subcontracts, Contractor shall make Developer and the other additional insureds listed above express third party beneficiaries to such Subcontract. Each such Subcontract shall also require Contractor’s Representative to comply with each and every requirement of this Exhibit applicable to Contractor, except with respect to the limits of such insurance which, instead, shall be as follows, unless such Contractor’s Representative currently maintains higher limits, in which case such Contractor’s Representative shall be required to maintain such higher limits:

a. **Workers’ Compensation:** Statutory Workers’ Compensation and Employer’s Liability with the following limits: (i) bodily injury by accident: \$1,000,000 each accident; (ii) bodily injury by disease: \$1,000,000 each employee; and (iii) bodily injury by disease: \$1,000,000 policy limit.

b. **Commercial General Liability:** \$1,000,000 per occurrence, \$2,000,000 General Aggregate, \$1,000,000 Products and Completed Operations Aggregate; \$1,000,000 Personal and Advertising Injury Liability. Any Subcontractor responsible for Work involving mass grading or trenching or other Work over five feet in depth shall carry \$5,000,000 per occurrence and aggregate liability coverages. Subcontractors for hardrock, framing, waterproofing, sheet metal and stucco shall provide the following limits: \$2,000,000 per occurrence, \$2,000,000 general aggregate, \$2,000,000 products and completed operations aggregate and \$3,000,000 excess/umbrella;

c. **Automobile Liability:** \$1,000,000 each occurrence;

d. Professional Liability: \$1,000,000 per claim, and \$2,000,000 in the aggregate.

5. **Waiver of Subrogation**. Contractor hereby waives, and shall require its Subcontractors to waive, all rights of recovery, whether by subrogation or otherwise, because of deductible or self-insured retention clauses, inadequacy of limits of any insurance policy, limitations or exclusions of coverage, against Developer, Developer's insurers and their officers, directors, agents, and employees, and any other contractor, Subcontractor or other individual or entity performing work or rendering services on behalf of Developer or Contractor in connection with the planning, development and construction of the Project. Contractor shall also require that all insurance policies obtained by Contractor or its Subcontractors relating to any Work pursuant to the Contract Documents include clauses providing that each insurer waives any rights of recovery by subrogation, or otherwise, against Developer together with the same parties referenced immediately above in this Section. Contractor shall require similar written express waivers and insurance clauses from each of its Subcontractors. A waiver of subrogation shall be effective as to any individual or entity even if such individual or entity (i) would otherwise have a duty of indemnification, contractual or otherwise, (ii) did not pay the insurance premium directly or indirectly, and (iii) whether or not such individual or entity has an insurable interest in the property damaged.

**[THIS IS THE END OF THE EXHIBIT.]**