

RESOLUTION NO. 2015-181

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ROHNERT PARK APPROVING A MASTER MAINTENANCE AGREEMENT WITH UNIVERSITY DISTRICT LLC AND VAST OAK PROPERTIES L.P. FOR THE VAST OAKS PHASE 1 DEVELOPMENT AND AUTHORIZING THE CITY MANAGER TO SIGN

WHEREAS, on April 8, 2014, the City Council of the City of Rohnert Park adopted Resolution 2014-035 approving the Tentative Map for the University District Specific Plan Area, prepared by MacKay & Soms and dated February 2014 (the “Tentative Map”), subject to certain conditions of approval (“Conditions”); and

WHEREAS, University District LLC and Vast Oak Property L.P. (“Developer”) has submitted the Final Maps for the first phases of development under the Tentative Map, specifically Phases 1-A, 1-B, 1-C, and 1-D for the Vast Oak Property (“Maps”), consisting of 399 single-family residential lots, for approval; and

WHEREAS, the Maps have been reviewed by the City Engineer and City Surveyor and have been determined to be technically accurate and in conformance with the Tentative Map; and

WHEREAS, the Conditions of Approval for the Tentative Map require that Developer enter into an agreement with the City for the long-term maintenance of certain improvements, including but not limited to, landscaping on private and public property, stormwater treatment measures, and the Hinebaugh Creek Trail (“Improvements”), and to establish a Homeowner’s Association (“Association”) to perform ongoing maintenance responsibilities; and

WHEREAS, the Master Maintenance Agreement included as Exhibit A provides for the ongoing maintenance of Improvements and the assignment of this responsibility to Association when appropriate and satisfies the Conditions of the Tentative Map.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Rohnert Park that it does hereby approve the Master Maintenance Agreement included as Exhibit A.

BE IT FURTHER RESOLVED that the City Manager is hereby authorized and directed to execute the Master Maintenance Agreement, in substantially similar form to those agreements attached hereto and incorporated by this reference as Exhibit A subject to minor modification by the City Manager or City Attorney.

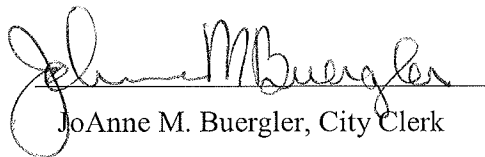
DULY AND REGULARLY ADOPTED this 24th day of November, 2015.

CITY OF ROHNERT PARK



Amy O. Ahanotu, Mayor

ATTEST:



JoAnne M. Buergler, City Clerk

Attachments: Exhibit A

CALLINAN: Aye MACKENZIE: Aye STAFFORD: Aye BELFORTE: Aye AHANOTU: Aye
AYES: (5) NOES: (0) ABSENT: (0) ABSTAIN: (0)

City of Rohnert Park
130 Avram Avenue
Rohnert Park, CA 94928
Attention: City Clerk

MASTER MAINTENANCE AGREEMENT (University District – Vast Oak)

THIS MASTER MAINTENANCE AGREEMENT (“**Agreement**”) is made and entered into this day of _____, 2015, (“**Effective Date**”), by and between UNIVERSITY DISTRICT, LLC, a Delaware limited liability company, and VAST OAK PROPERTIES L.P., a California Limited Partnership, (collectively, “**Developer**”), and the CITY OF ROHNERT PARK, a California municipal corporation (“**City**”).

A. Developer is the owner of that certain real property located in the City of Rohnert Park, County of Sonoma, State of California, known as the Vast Oak and University District project, more particularly described in Exhibit A, attached hereto and incorporated by this reference as if fully set forth herein (the “**Property**”). The Property is being developed as a mixed-use project, with residential development and a commercial retail component.

B. In connection with its development of the Property, Developer obtained a General Plan Amendment (PL2012-043), Specific Plan revision (PL2012-044), Tentative Map (PL2013-009), Tentative Parcel Map (PL2012-047), the Development Agreement (PL2012-048) and related applications (the “Project Approvals”). The Project Approvals require Developer to install and maintain certain public and private improvements both on the Property and along the Property frontage, which improvements are described and depicted in Exhibit B attached hereto and by this reference made a part hereof (the “**Project Improvements**”). The Project Improvements include frontage landscaping within the public right-of-way, the Hinebaugh Creek pedestrian/bicycle trail, the Hinebaugh Creek pedestrian/bicycle bridge and the mailbox structures.

C. City and Developer have entered into the Redwood Park Estates Easement Agreement, which sets forth the maintenance responsibilities of Developer with respect to

portions of the Hinebaugh Creek trail, landscaping and fence located within the Redwood Park Estates property. Improvements within the Redwood Park Estates property for which Developer is responsible for maintenance are described or depicted in Exhibit C (the “**Easement Improvements**”).

D. The Easement Improvements and the Project Improvements are hereinafter referred to as the “**Improvements**.” The area on which the Improvements are located is referred to herein as the “**Maintenance Area**.”

E. In addition, City’s National Pollutant Discharge Elimination System (“**NPDES**”) Municipal Separate Storm Sewer System (“**MS4**”) Permit, Order Number No. R1-2015-0030 issued by the North Coast Regional Water Quality Control Board, requires City to implement and enforce specific requirements for the construction and maintenance of onsite storm water management facilities/best management practices (collectively, “**BMPs**”) for development, redevelopment, and other applicable projects with the goal of mitigating impacts to storm water quality and runoff volume discharges into the MS4. Provisions of Title 15 and other applicable sections of the Rohnert Park Municipal Code shall apply to the construction, inspection and maintenance of BMP facilities and the enforcement of MS4 Permit requirements.

F. On September 29, 2015, City approved Developer’s Improvement Plans and a Final Standard Urban Stormwater Mitigation Plan (“**SUSMP**”) (collectively, “**Plan**”) for the Property which include provisions for the construction and maintenance of BMP facilities as part of the Improvements on the Property (the “**BMP Facilities**”) by Developer. The BMP Facilities are described in the Stormwater Management Plan dated October 14, 2015, attached hereto as Exhibit D and by this reference made a part hereof. The BMP Facilities include the Vast Oak Water Quality Basin (including the vegetation and pump), as well as the front yard water quality swales at each residence, and the permanent UDLLC basin.

G. City and Developer will enter into a Recycled Water Use Agreement in substantial conformance with the document attached as Exhibit E entitled “Recycled Water Use Agreement”, for the purpose of providing recycled water for irrigation of landscaping installed by Developer within the Maintenance Area.

H. Developer recognizes that City’s approval of the Project Approvals is based on Developer’s commitment to the long-term maintenance, repair, care and, if and when necessary, replacement of the Improvements and the BMP Facilities, and that the Project Approvals would not have been approved without the assurance that this Agreement would be executed by Developer.

I. City and Developer desire to enter into an agreement pursuant to which Developer will maintain the Project Improvements and the Easement Improvements within the Maintenance Area and the BMP Facilities.

J. As the Property is developed in accordance with the Project Approvals, Developer anticipates creating one or more homeowners’ associations (each referred to as “**the Association**”) and transferring, from time to time, (i) ownership of portions of the Property and (ii) obligations for the maintenance of the Improvements to the Association. This Agreement acknowledges the right of the Developer to make such transfers and assignments to the Association from time to time and upon satisfaction of the conditions contained in Section 15 (Assignment), the City shall

look solely to the Association for performance of the obligations imposed on Developer in this Agreement.

AGREEMENT

NOW, THEREFORE, City and Developer agree as follows:

1. PURPOSE OF AGREEMENT. The purpose of this Agreement is to assure the maintenance, periodic inspection, repair, safe operation and, if and when necessary, replacement of the Improvements and the BMP Improvements by Developer at its expense in accordance with the requirements of this Agreement.
2. IMPROVEMENTS AS A BENEFIT. Developer agrees that the Improvements and the BMP Improvements will materially benefit the Property and that Developer's maintenance, repair, safe operation and, if and when necessary, replacement thereof in accordance with this Agreement is necessary for Developer to obtain the Project Approvals.
3. DEVELOPER'S RESPONSIBILITIES. Developer, at its sole expense, shall construct, install, maintain, safely operate, periodically inspect, repair, resurface and, if and when necessary, replace the Project Improvements identified in Exhibit B and the Easement Improvements identified in Exhibit C, including performing all necessary service on maintenance equipment, in order to ensure the attractive and healthy appearance of the landscaping, the attractive appearance, condition and safety of any and all structures, and the efficient operation of all of the Improvements, and including paying the electrical expense of irrigation controllers. Said electrical expense to be paid by Developer upon the direct receipt of invoices for electrical service from Pacific Gas and Electric, all in accordance with the Maintenance Standards described in Section 4 below, and industry and City standards applicable to similar improvements.
4. MAINTENANCE STANDARDS APPLICABLE TO IMPROVEMENTS WITHIN THE MAINTENANCE AREA. Developer and its maintenance staff, contractors and subcontractors shall comply with the following standards in performing the obligations imposed by this Agreement on all Improvements within the Maintenance Area:
 - (a) The Easement Improvements shall be maintained in compliance with the Project Approvals, the Plan and the Easement Agreement, in good condition, and in accordance with the custom and practice generally applicable to public rights-of-way within the City of Rohnert Park.
 - (b) Maintenance shall be in general conformance with any maintenance manual adopted by the Association pursuant to its governing documents to the extent such maintenance manual is consistent with the terms and obligations of this Agreement.
 - (c) Pedestrian/bicycle trail maintenance includes, but is not limited to maintaining the concrete surface in good condition and repairing and replacing the concrete as necessary to maintain a safe walking and riding path.
 - (d) Pedestrian/bicycle bridge maintenance includes, but is not limited to maintaining the bridge deck in good condition, maintaining corrosion resistance, regular painting, and regular graffiti removal from all surfaces, inspecting and repairing bridge abutments resulting

from creek erosion or other actions, and repairing or replacing the bridge structure and abutments due to age or damage. The bridge shall be inspected by a licensed civil engineer once every five years; the results of the inspection shall be submitted to City and Developer and any recommended repairs or corrections shall be completed in accordance with the provisions of this Section 4.

(e) Landscape maintenance includes, but is not limited to irrigating, fertilizing, periodic trimming, mowing, and/or edging of grass and lawn areas; pruning of trees, shrubs, and other vegetation; trimming and shaping of trees and shrubs to maintain a healthy, natural appearance, safe road conditions and visibility, and irrigation coverage; removing and replacing plant materials as needed; controlling weeds in all planters, shrubs, lawns, ground covers, or other planted areas, including mailbox and mailbox structures; and staking for support of trees.

(f) Clean-up maintenance includes, but is not limited to maintenance of all sidewalks, paths, mailbox and mailbox structures and other paved areas in clean and weed-free condition; maintenance of all such areas clear of dirt, mud, trash, debris or other matter which is unsafe or unsightly; removal of all trash, litter and other debris from improvements and landscaping prior to mowing; clearance and cleaning of all areas maintained prior to the end of the day on which the maintenance operations are performed to ensure that all cuttings, weeds, leaves and other debris are properly disposed of by maintenance workers.

(g) All maintenance work shall be performed in a good and workman like manner and shall conform to all applicable federal and state Occupation Safety and Health Act standards and regulations for the performance of maintenance.

(h) Any and all chemicals, unhealthful substances, and pesticides used in and during maintenance shall be applied in strict accordance with all governmental requirements. Precautionary measures shall be employed recognizing that all areas are open to public access.

(i) All use of recycled water shall comply with the requirements of the Recycled Water Use Agreement.

5. BMP FACILITIES. Developer hereby covenants, agrees and declares as follows:

(a) At its sole cost and expense, Developer shall construct, inspect, and maintain the BMP Facilities in accordance with the Plan and the SUSMP.

(b) Maintenance associated with the Vast Oak Water Quality Basin and the UDLLC Basin (if applicable) includes, but is not limited to removing trash, weeds, debris and sediment within the water quality basin parcel; trimming, mowing, or replacing vegetation; maintaining and repairing of the pump (including electrical expenses); repairing slope erosion; repairing the gravel access road, fences, and gates, and periodically replacing improvements as maybe needed. The gravity outfall pipe located between the basin and Hinebaugh Creek will be maintained by City.

(c) Maintenance associated with the front yard water quality swales shall include, but not be limited to irrigating, fertilizing, periodic trimming, mowing, and/or edging of vegetation; removing and replacing plant materials as needed and controlling weeds.

(d) Developer shall submit to City inspection reports as required by the Plan and SUSMP, and more specifically the Monitoring and Maintenance Schedule set forth in the Operations and Maintenance Manual, adopted as part of the Association's governing documents. Developer shall complete maintenance or repairs noted in the inspection reports.

6. CITY'S RIGHT TO PERFORM MAINTENANCE. In the event that Developer fails to comply with the requirements of Section 4 or the requirements of Section 5, as reasonably determined by City, City shall have the right to correct the deficiencies or to contract for the correction of such deficiencies. By executing this Agreement, Developer knowingly and willfully provides consent to City to enter and perform such maintenance work as City deems necessary to satisfy the requirements of this Agreement. It is expressly understood that City is under no obligation to maintain or repair the Improvements, and in no event shall this Agreement be construed to impose such an obligation on City.

(a) NOTICE TO DEVELOPER. Prior to taking any action under this Section 6, City shall notify Developer in writing that the condition of an Improvement(s) does not conform to the standards and requirements set forth herein, including without limitation the Maintenance Standards, and to specify the deficiencies and the actions required to be taken by Developer in accordance with this Agreement to cure the deficiencies. Upon notification of any deficiency, Developer shall have thirty (30) days from the date of the notice within which to correct, remedy or cure the deficiency. If the written notification states that the problem is urgent and relates to the public health and safety, then Developer shall have twenty-four (24) hours from receipt of the written notification to rectify the problem. Further, City retains its police powers to take immediate actions to protect the public health, safety and welfare.

(b) Lien for Costs of Required Maintenance. If Developer fails to correct, remedy, or cure or has not commenced correcting, remedying or curing such deficiency after notification and after expiration of any applicable cure period, then City may enter and perform the required work. Developer agrees to reimburse City within 60 days of the date of a notice identifying all charges and costs incurred by City for such maintenance, repair and replacement work. Until so paid, City shall have a lien for the amount of such charges or costs, which lien shall be perfected by the recordation of a "Notice of Claim of Lien". The lien shall affect only those portions of the Property owned by Developer or the Association. Any lien in favor of City created or claimed hereunder is expressly made subject and subordinate to any mortgage or deed of trust made in good faith and for value, recorded as of the date of the recordation of the Notice of Claim of Lien, and no such lien shall in any way defeat, invalidate, or impair the obligation or priority of any such mortgage or deed of trust, unless the mortgagee or beneficiary thereunder expressly subordinates its interest, of record, to such lien. No lien in favor of City created or claimed hereunder shall in any way defeat, invalidate, or impair the obligation or priority of any lease, sublease or easement unless such instrument is expressly subordinated to such lien.

(c) Legal Action. City may bring legal action to collect the sums due as the result of expending public monies to maintain, repair and, if and when necessary, replace any Improvements which are the responsibility of Developer under this Agreement. Developer and City agree that if City brings legal action to enforce its rights under this Section 6 and City prevails in such legal action, Developer shall pay City all costs incurred in performing the required work, together with interest from the date City provided notice under Section 6.a, at the rate of seven percent (7%) per annum.

(d) Additional Remedies. Developer acknowledges and agrees that City may also pursue any and all other remedies available in law or equity in the event of a breach of Developer's obligations and agreements set forth herein.

(e) Intention of City. Nothing in this Section 6 shall be construed, either expressly or by implication, as indicating an intention of City to exercise dominion or control over the Improvements.

7. RECYCLED WATER USE. Developer agrees to perform in substantial compliance with the Recycled Water Use Agreement. Notwithstanding any other provision of this Agreement, Developer shall have no obligation to provide any irrigation in violation of any requirements imposed by the State of California or any local water authority during times of drought, provided, however that Developer shall use best efforts to use drought tolerant landscaping and/or recycled water and shall otherwise maintain landscaped areas as allowed by law.

8. NO IMPAIRMENT OF LIEN. No violation or breach of the agreements, conditions, restrictions, provisions or limitations contained in this Agreement shall defeat or render invalid or in any way impair the lien or charge of any mortgage, deed of trust or other financing or security instrument.

9. ENCROACHMENT PERMIT: RIGHT OF ENTRY. Developer and City acknowledge that, to the extent that the Improvements are located within City rights-of-way, Developer shall obtain a single on-going revocable encroachment permit from City in order for Developer to perform its obligations under this Agreement. Such encroachment permit shall set forth the terms and provisions upon which Developer has a right to enter onto such rights-of-way in order to its obligations under this Agreement. The terms and conditions of the encroachment permit shall be consistent with the terms and conditions of this Agreement and shall present no obstacle to Developer performing the obligations required by this Agreement. If Developer has complied with all application and permit requirements and City nonetheless fails or refuses to issue the encroachment permit required by this Section, Developer shall be excused from performing all obligations under this Agreement relating to the Improvements located within City rights-of-way until such time as a permit is issued.

10. INSURANCE. Developer shall obtain and maintain in effect a commercial general liability insurance policy which covers all activities required to be performed by Developer, its contractors, subcontractors, agents and employees under this Agreement. The policy shall name the City and its elective and appointive boards, commissions, officers, agents and employees as additional insureds. The policy shall also provide that no cancellation, major change in coverage, or expiration may be affected by the insurance company or the insured during the policy term without first giving to City thirty (30) days written notice prior to the effective date of such cancellation or change in coverage. Developer shall provide City with evidence of such insurance. Developer shall not permit any contractor or subcontractor to commence or continue work under this Agreement until the certificates or any substitute certificates have been approved by City's Risk Manager.

11. VIOLATION. Any violation of the Plan, SUSMP, or Recycled Water Use Agreement by Developer shall be deemed a public nuisance under Chapter 1.24, Nuisance Abatement, of the Rohnert Park Municipal Code and City shall be entitled to the remedies

available to it under Chapter 1.24, in addition to the remedies available to it under Chapters 1.16 and 1.25. The remedies identified herein shall be in addition to and cumulative of all other remedies, criminal or civil, which may be pursued by City.

12. PERMITS AND APPROVALS. In addition to the encroachment permit described in Section 9, Developer shall obtain any required permits or governmental approvals at its sole cost and expense.

13. TERM. This Agreement shall commence immediately upon the Effective Date and shall continue in perpetuity until and unless terminated, with or without cause, by City upon thirty (30) days written notice to Developer.

14. INDEMNIFICATION. Developer shall, to the fullest extent permitted by law, indemnify, defend and hold harmless City and its Council, boards, offices, commissions, officials, agents and employees, from and against any liability, (including, but not limited to, liability for claims, suits, actions, arbitration proceedings, administrative proceedings, regulatory proceedings, damages, losses, expenses or costs of any kind, including reasonable attorneys' fees, that may be asserted by any person or entity, including Developer, whether actual, alleged or threatened, interest, defense costs, and expert witness fees), where the same relates to, or arises out of, any work performed under this Agreement by Developer, or Developer's contractors, subcontractors, agents or employees, excepting only that resulting from the sole, active negligence or intentional misconduct of City, its employees, officials, or agents. Developer's duty to defend and hold harmless, as set forth herein, shall include the duty to defend as set forth in California Civil Code Section 2778. This indemnification obligation shall survive termination of this Agreement and is not limited in any way by any limitation on the amount or type of damages or compensation payable to or for Developer or its agents under insurance policies or workers' compensation acts, disability benefits acts or other employees' benefits acts. If any judgment or claim against City, its officials, agents, or employees, shall be entered, Developer shall pay all costs and expenses in connection therewith. Notwithstanding the foregoing and subject to the terms of the Assignment Agreement(s) described in Section 15, the parties agree that Developer's indemnification obligations under this Section 14 shall terminate upon the happening of both of the following events: (i) Developer's assignment of its rights and obligations to the Association pursuant to Section 15(b) and notification to City thereunder, and (ii) the Association's provision to City of satisfactory evidence of Insurance Coverage required by Section 10 hereof.

15. ASSIGNMENT.

(a) By City: City shall have the right at its option to assign its rights and obligations under this Agreement to another public agency without consent of Developer, if: (a) City gives thirty (30) days written notice to Developer of the intended assignment, (b) the assignment does not result in any increased cost to Developer and (c) there is no alteration of any obligation of Developer or City under this Agreement.

(b) By Developer: City and Developer acknowledge that this Agreement contemplates that the Association will eventually assume all of Developers' rights and obligations under this Agreement, although this may occur in phases. City and Developer agree that Developer, in its reasonable discretion, may assign its rights and obligations, including its indemnification obligations under Section 14, in and to this Agreement to the Association. Said assignment(s) shall be accomplished by Developer and the Association entering into one or more

agreements in substantially the form attached as Exhibit F (the “**Assignment Agreement**”). For purposes of notification, Developer shall provide City with a copy of each such Assignment Agreement within ten (10) days of its execution. As of the effective date of the Assignment Agreement, the Association shall be determined to be a party to this Agreement, City shall look solely to the Association for performance consistent with the Assignment Agreement and Developer shall have no further rights or obligations under this Agreement to the extent those rights and obligations have been assigned to the Association, provided the Assignment Agreement is in the form attached hereto, subject to only minor immaterial modifications or such modifications as are expressly approved by the City Attorney or City Manager. A purported assignment and Assignment Agreement shall have no force or effect in the event any modifications are made to the form of assignment in violation of this Section 15(b).

16. AGREEMENT ATTACHES TO LAND AND BINDS DEVELOPER’S SUCCESSORS AND ASSIGNS. This Agreement attaches to and runs with the Property in perpetuity, and shall be recorded against the Property. This Agreement binds the assigns and successors-in-interest of Developer. City and its successors and assigns, in the event of any breach of this Agreement, shall have the right to exercise all of the rights and remedies, and to maintain any actions at law or suits in equity or other proper proceedings against Developer or its permitted successors and assigns to enforce the curing of such breach. When Developer no longer owns any property subject to this Agreement, Developer shall have no further rights or obligations under this Agreement.

17. AMENDMENT TO INCORPORATE ADDITIONAL PROPERTY. Other portions of University District may be added to this Master Maintenance Agreement as provided in this Section 17 by recording an Amendment to Master Maintenance Agreement (an “**MMA Amendment**”), in substantially similar form to that attached hereto as Exhibit G, which shall be signed by Developer and City. A MMA Amendment must: (i) describe the portion of University District Specific Plan Area to be added and incorporated (“**Added Property**”); (ii) describe any Project Improvements within the Added Property; and (iii) specify that except as expressly stated in the MMA Amendment, all of the covenants, obligations and rights of this Agreement will apply to the Added Property in the same manner as if it were originally covered by this Agreement. The MMA Amendment may impose any modifications or additional covenants, obligations or rights related to the Added Property that Developer and City reasonably consider appropriate to include the Added Property in this Agreement and to reflect differences in the Improvements constructed or to be constructed on the Added Property and the Project Approvals applicable to the Added Property. Upon recording an MMA Amendment, the Added Property described in that MMA Amendment will be subject to this Agreement in the same manner as if it were originally covered by this Agreement.

18. NOTICES. Any notices relating to this Agreement shall be given in writing and shall be deemed sufficiently given and served for all purposes when delivered personally or by generally recognized overnight courier service, or three (3) days after deposit in the United States mail, certified or registered, return receipt requested, with postage prepaid, addressed as follows:

To Developer: University District LLC
 A Delaware Limited Liability Company

500 La Gonda Way, #100
Danville, CA 94526
Attn. Kevin Pohlson

With a copy to:

Attn: _____

With a copy to: Vast Oak Properties L.P.
A California Limited Partnership
c/o Quaker Hill Development Corp.
P.O. Box 2240
Healdsburg, CA 95448
Attn: Mr. Craig R. Harrington

To City: City of Rohnert Park
130 Avram Avenue
Rohnert Park, California 94928
Attn: City Manager

With a copy to: Michelle Marchetta Kenyon
Rohnert Park City Attorney
1901 Harrison Street
Oakland, California 94612

19. MISCELLANEOUS.

(a) Entire Agreement, Amendments. This Agreement contains the entire understanding and agreement of the parties. This Agreement may be altered, amended or modified only by an instrument in writing, executed by the parties to this Agreement.

(b) Section Headings. Section headings as used herein are for convenience only and shall not be deemed to be a part of such sections and shall not be construed to change the meaning hereof.

(c) Governing Law. This Agreement shall be construed and governed in accordance with the laws of the State of California. Venue shall be the County of Sonoma.

(d) Counterparts. This Agreement may be executed in any number of counterparts which together shall constitute the contract of the parties.

(e) Exhibits. Any and all exhibits and schedules attached or to be attached hereto are hereby incorporated and made a part of the Agreement by reference.

(f) Severability. If any term, provision, covenant or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions shall remain in full force and effect.

(g) Authority. Each person executing this Agreement on behalf of a party represents and warrants that such person is duly and validly authorized to do so on behalf of the entity it purports to bind and if such party is a partnership, corporation or trustee, that such partnership, corporation or trustee has full right and authority to enter into this Agreement and perform all of its obligations hereunder.

(h) No Agency Relationship. Neither Developer nor any of Developer's agents, contractors or subcontractors are or shall be considered to be agents of City in connection with the performance of any of Developer's obligations under this Agreement. Nor shall City and Developer, be deemed to have become a partner of each other in the conduct of their respective business or otherwise a joint venture.

(i) Joint and Several Liability. University District, LLC and Vast Oak Properties, L.P., are jointly and severally liable for all obligations under this Agreement.

(j) Attorneys' Fees and Costs. Either party may bring a lawsuit to enforce or require performance of the terms of this Agreement, and the prevailing party in such suit or proceeding shall be entitled to recover from the other party reasonable costs and expenses, including attorneys' fees.

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

DEVELOPER:

University District LLC
A Delaware Limited Liability Company

By: _____
Name: _____
Title: _____
[Signature must be notarized]

Vast Oak Properties L.P.
A California Limited Partnership

By: _____
Name: _____
Title: _____
[Signature must be notarized]

CITY:

City of Rohnert Park
A Municipal Corporation

By: _____
Darren Jenkins, City Manager
Per Resolution No. 20__ - __ adopted by the
Rohnert Park City Council at its meeting of November
24, 2015.
[Signature must be notarized]

ATTEST:

Jo Anne Buergler, City Clerk

APPROVED AS TO FORM:

Michelle Marchetta Kenyon, City Attorney

List of Exhibits

- A. Legal Description of Property (Vast Oak Phase 1-A through 1-D only)
- B. Project Improvements
- C. Easement Improvements
- D. Storm Water Quality Improvements
- E. Recycled Water Use Agreement
- F. Form of Assignment Agreement
- G. Form of Amendment to Master Maintenance Agreement

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
) ss
County of _____)

On _____, before me, _____,
(Name of Notary)

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

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

(Notary Signature)

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
) ss
County of _____)

On _____, before me, _____,
(Name of Notary)

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

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

(Notary Signature)

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
) ss
County of _____)

On _____, before me, _____,
(Name of Notary)

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

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

(Notary Signature)

EXHIBIT A, B, C, D & E

[to be inserted]

EXHIBIT F

FORM OF ASSIGNMENT AND ASSUMPTION AGREEMENT

This ASSIGNMENT AND ASSUMPTION AGREEMENT (“**Agreement**”), is made by and between UNIVERSITY DISTRICT, LLC, a Delaware limited liability company, and VAST OAK PROPERTIES, L.P., a California Limited Partnership, (collectively, “**Assignor**”), and **ASSOCIATION, a California non-profit mutual benefit corporation (“**Assignee**”).

1. Maintenance Agreement. On _____, Assignor and the City of Rohnert Park, a California municipal corporation (“**City**”) entered into an agreement entitled “MASTER MAINTENANCE AGREEMENT (University District - Vast Oak)” dated _____ (the “**Maintenance Agreement**”).

2. Right to Assign. Pursuant to Section 15 of the Maintenance Agreement, Assignor desires to assign certain rights and obligations under the Maintenance Agreement to Assignee.

3. Effective Date. The term “Effective Date” shall mean the latest date which appears opposite a party’s signature.

4. Defined Terms. Capitalized terms used herein and not otherwise defined shall have the meaning set forth in the Maintenance Agreement.

5. Assignment of Rights and Obligations. Assignor assigns, transfers, and conveys to Assignee, as of the Effective Date, all of its rights, obligations and under the Maintenance Agreement only as such rights, obligations and interest pertain to that portion of the Maintenance Area described and shown on Exhibit A attached hereto (the “**Assigned Maintenance Area**”). Assignee accepts and receives all such rights, obligations and interest in, to and under the Maintenance Agreement as such rights, obligations and interest pertain to the Assigned Maintenance Area.

6. Assumption of Liabilities. Assignee assumes all of the duties and obligations of Assignor hereafter accruing or arising incident to the Assigned Maintenance Area of the Maintenance Agreement. Assignee confirms that as of the Effective Date, it shall be deemed a party to the Maintenance Agreement and Assignee agrees to be bound by all the terms of, and to undertake all the obligations of, Assignor contained therein.

7. Indemnification. Subject to Section 8 (Exception), Assignor and Assignee agree that upon the occurrence of: (a) Assignor’s assignment of its rights and obligations under the Maintenance Agreement to Assignee as specified herein and notice to City thereof; and (b) the provision to City of satisfactory evidence of Insurance Coverage procured by Assignee in compliance with the requirements under the Maintenance Agreement, Assignor’s indemnifications obligations pertaining to the Assigned Maintenance Area are terminated. Assignee further agrees to use its efforts to obtain Insurance Coverage as expeditiously as possible; provided, however, in the event the Assignee does not obtain Insurance Coverage and provide City notice thereof within sixty (60) days of the Effective Date, Assignor shall have the right to terminate this Agreement and reassume its rights and obligations under the Maintenance Agreement.

8. Exception. Notwithstanding Section 6 (Assumption of Liabilities), the parties hereto agree that City shall be entitled to pursue claims accruing or arising incident to the Maintenance Agreement on or before the Effective Date, and all its rights and remedies related to such claims, for (a) payments of indemnity

due under the Maintenance Agreement from Assignor, and/or (b) insurance payments or proceeds, provided, however, that Assignor's liability for such claims shall not exceed the liability it would have incurred if the assignment had not been made.

9. Miscellaneous.

a. Each party to this Agreement shall execute and deliver such instruments, documents and other written information and take such other actions as the other party may reasonably require in order to carry out the intent of this Agreement.

b. This Agreement and all the provisions hereof shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

c. This Agreement may be executed in one or more counterparts, all of which taken together shall constitute one instrument.

d. This Agreement is made and entered into in California, and the laws of California shall govern the validity and interpretation hereof and the performance by the parties hereto of their respective duties and obligations.

e. This Agreement shall be recorded in the Official Records of the County of Sonoma, State of California.

Assignor: _____

Dated: _____

Assignee: _____

Dated: _____

EXHIBIT G

FORM OF MMA AMENDMENT

)
)
RECORDING REQUESTED BY)
AND WHEN RECORDED MAIL TO:)
)
City of Rohnert Park)
130 Avram Avenue)
Rohnert Park, CA 94928)
Attention: City Clerk)
)
)

(Space Above This Line for Recorder's Use Only)
Exempt from recording fee per Gov. Code § 27383.

AMENDMENT TO MASTER MAINTENANCE AGREEMENT

This AMENDMENT TO MASTER MAINTENANCE AGREEMENT ("**Amendment**"), is made as of _____ by and between UNIVERSITY DISTRICT, LLC, a Delaware limited liability company, and VAST OAK PROPERTIES, L.P., a California Limited Partnership, (collectively, "**Developer**"), and CITY OF ROHNERT PARK, a California municipal corporation (the "**City**").

1. Maintenance Agreement. On _____, Developer and City entered into an agreement entitled "MASTER MAINTENANCE AGREEMENT (University District - Vast Oak)" dated _____ (the "**Maintenance Agreement**").

2. Right to Assign. Pursuant to Section 17 of the Maintenance Agreement, City and Developer desire to add the Added Property, described in Exhibit A, attached hereto and incorporated herein by this reference, to the Maintenance Agreement.

3. Effective Date. The term "Effective Date" shall mean the date set forth above.

4. Defined Terms. Capitalized terms used herein and not otherwise defined shall have the meaning set forth in the Maintenance Agreement.

5. Project Improvements. The term "Project Improvements," as defined in the Maintenance Agreement, is hereby amended to include those improvements described in Exhibit B, attached hereto and incorporated herein by this reference.

6. Additional Obligations. Except as expressly set forth herein, all of the covenants, obligations and rights set forth in the Maintenance Agreement shall apply to the Added Property and Developer.

7. Miscellaneous.

a. Each party to this Agreement shall execute and deliver such instruments, documents and other written information and take such other actions as the other party may reasonably require in order to carry out the intent of this Agreement.

b. This Agreement and all the provisions hereof shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

c. This Agreement may be executed in one or more counterparts, all of which taken together shall constitute one instrument.

d. This Agreement is made and entered into in California, and the laws of California shall govern the validity and interpretation hereof and the performance by the parties hereto of their respective duties and obligations.

e. This Agreement shall be recorded in the Official Records of the County of Sonoma, State of California.

IN WITNESS WHEREOF, the parties have executed this Amendment as of the Effective Date.

DEVELOPER:

University District LLC
A Delaware Limited Liability Company

By: _____
Name: _____
Title: _____
[Signature must be notarized]

Vast Oak Properties L.P.
A California Limited Partnership

By: _____
Name: _____
Title: _____
[Signature must be notarized]

CITY:

City of Rohnert Park
A Municipal Corporation

By: _____
City Manager
[Signature must be notarized]

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney

[Exhibits A and B and notary pages to be added]

EXHIBIT A

PROPERTY DESCRIPTION

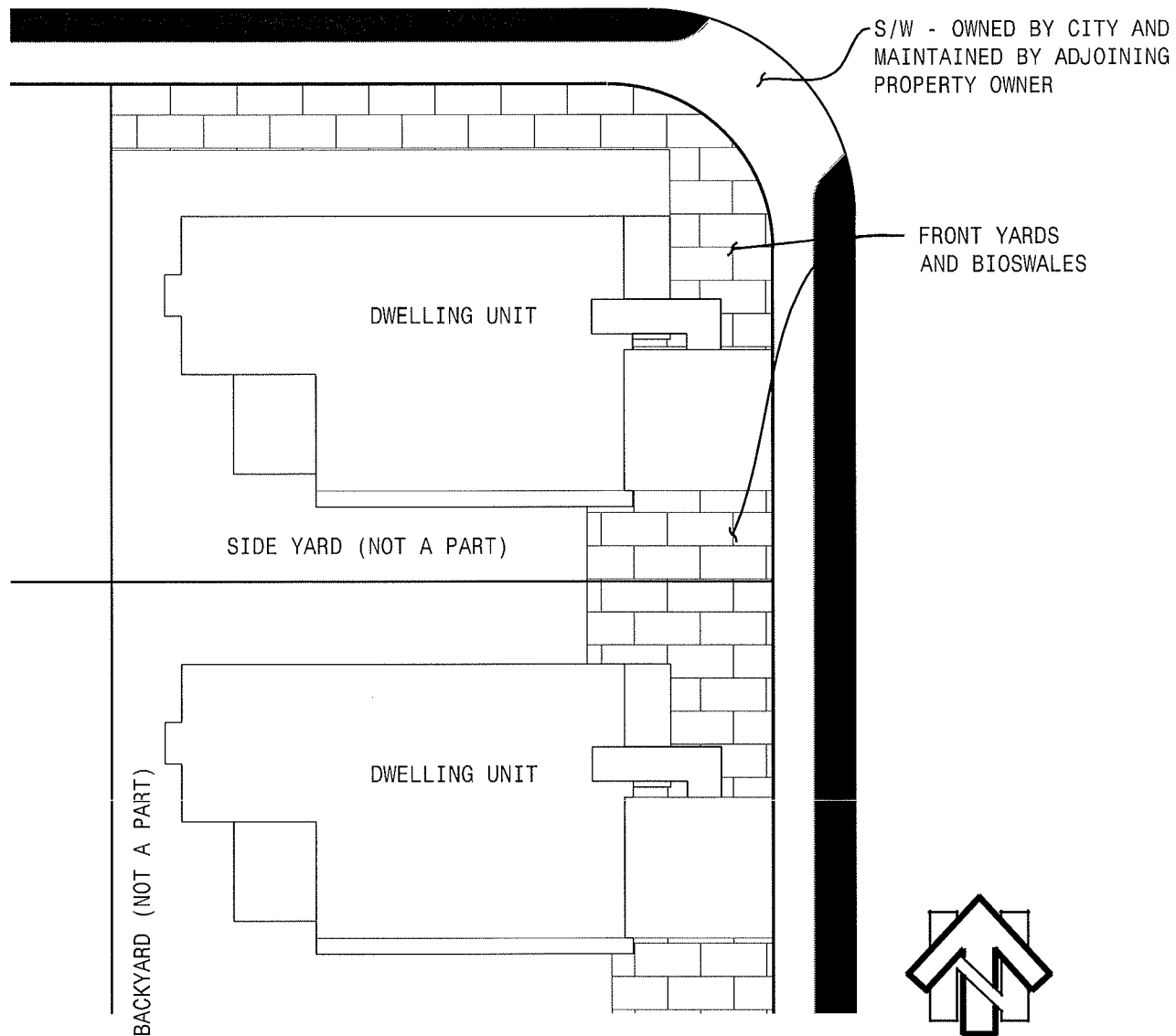
ALL THAT CERTAIN REAL PROPERTY SITUATED IN THE CITY OF ROHNERT PARK, COUNTY OF SONOMA, STATE OF CALIFORNIA, BEING LOTS 1 THROUGH 82 OF THAT CERTAIN MAP ENTITLED "VAST OAK PHASE 1-A" RECORDED IN BOOK ____ OF MAPS, AT PAGES ____ THROUGH ___, SONOMA COUNTY RECORDS;

ALL THAT CERTAIN REAL PROPERTY SITUATED IN THE CITY OF ROHNERT PARK, COUNTY OF SONOMA, STATE OF CALIFORNIA, BEING LOTS 83 THROUGH 246 OF THAT CERTAIN MAP ENTITLED "VAST OAK PHASE 1-B" RECORDED IN BOOK ____ OF MAPS, AT PAGES ____ THROUGH ___, SONOMA COUNTY RECORDS;

ALL THAT CERTAIN REAL PROPERTY SITUATED IN THE CITY OF ROHNERT PARK, COUNTY OF SONOMA, STATE OF CALIFORNIA, BEING LOTS 247 THROUGH 362 OF THAT CERTAIN MAP ENTITLED "VAST OAK PHASE 1-C" RECORDED IN BOOK ____ OF MAPS, AT PAGES ____ THROUGH ___, SONOMA COUNTY RECORDS;

ALL THAT CERTAIN REAL PROPERTY SITUATED IN THE CITY OF ROHNERT PARK, COUNTY OF SONOMA, STATE OF CALIFORNIA, BEING LOTS 363 THROUGH 399 OF THAT CERTAIN MAP ENTITLED "VAST OAK PHASE 1-D" RECORDED IN BOOK ____ OF MAPS, AT PAGES ____ THROUGH ___, SONOMA COUNTY RECORDS;

END OF DESCRIPTION



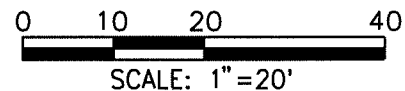
LEGEND



PRIVATELY OWNED - HOA MAINTAINED



CITY OWNED - HOA MAINTAINED



SHEET 3 OF 3

FAST OAK PHASE I MAINTENANCE RESPONSIBILITIES

EXHIBIT B

CITY OF ROHNERT PARK

COUNTY OF SONOMA

CALIFORNIA

MACKAY & SOMPS

ENGINEERS

PLANNERS

SURVEYORS

5142B FRANKLIN DR, PLEASANTON, CA 94588

(925)225-0690

PLEASANTON

1"=20'

11-16-2015

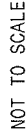
19539.010

OFFICE

SCALE

DATE

JOB NO.



NOT TO SCALE

1) EASEMENT AREA TO BE RE-PLANTED WITH NATIVE GRASSES.

INDICATES REDWOOD PARK
ESTATES PROPERTY TO BE
CONVEYED AS AN EASEMENT
TO THE CITY.
(4211± SF, 0.10± AC)

REDWOOD PARK ESTATES PROPERTY EASEMENT
TRAIL CONNECTION/LANDSCAPING

EXHIBIT C

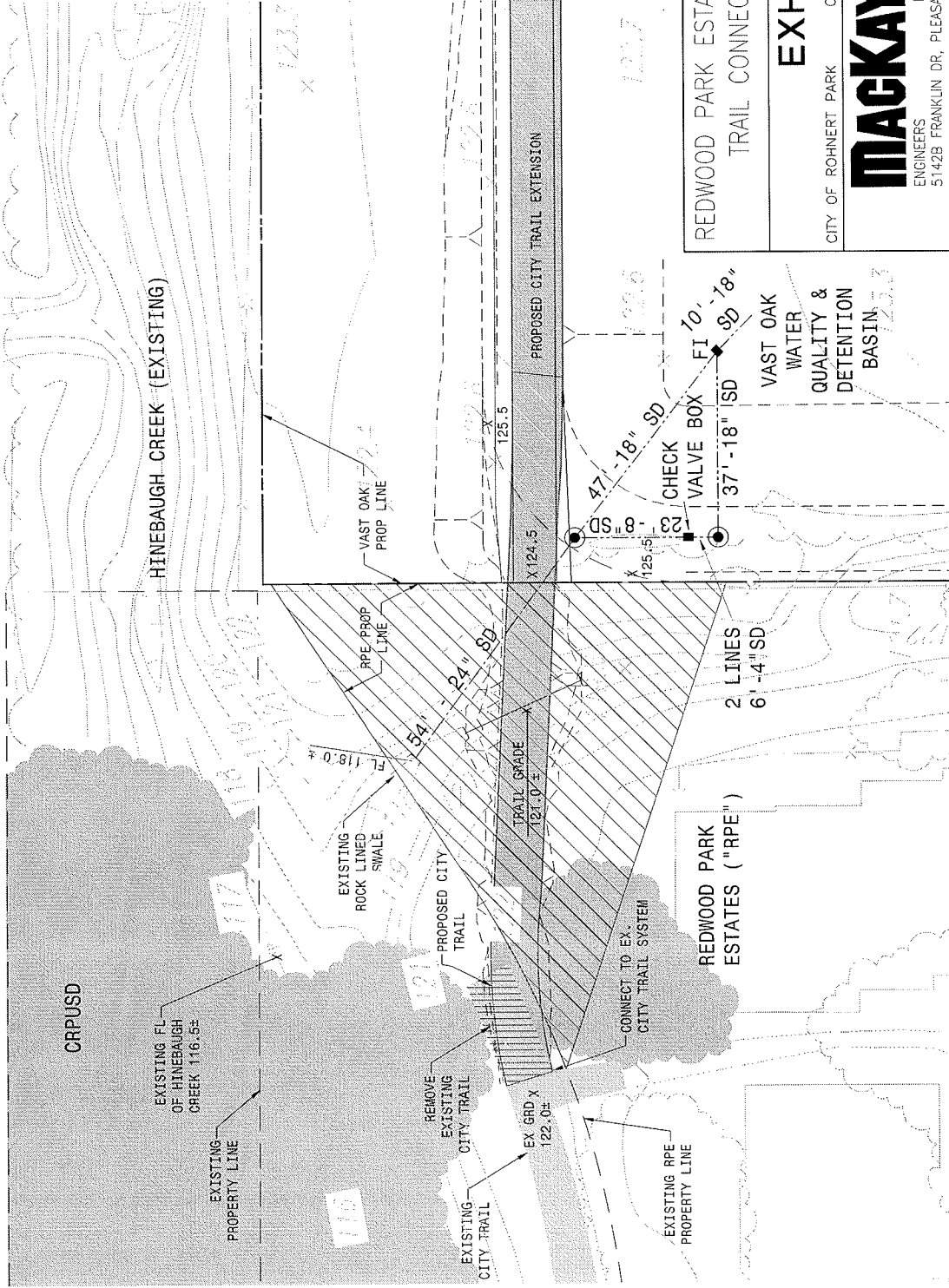
CITY OF ROHNERT PARK
COUNTY OF SONOMA
CALIFORNIA

TACKAY & SONS

ENGINEERS
5142B FRANKLIN DR, PLEASANTON, CA 94588

PLEASANTON	NTS	10-15-2015	19539.010
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OFFICE	SCALE	DATE	JOB NO.
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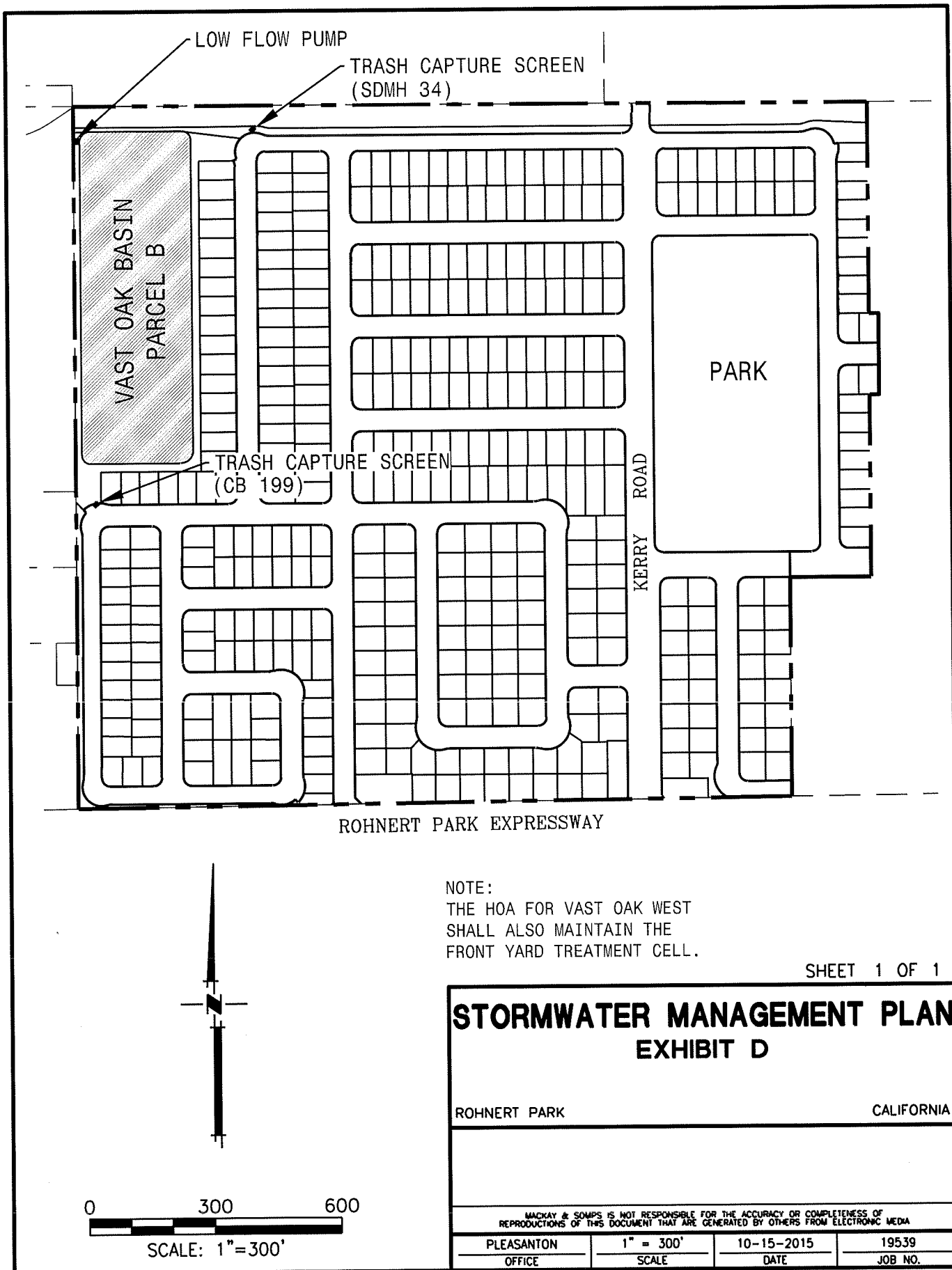


Exhibit E to Agreement

RECYCLED WATER USER AGREEMENT

THIS AGREEMENT ("Agreement") is entered into this _____ day of _____, 20____ by the CITY OF ROHNERT PARK, a municipal corporation, ("CITY") and _____ ("USER") (collectively, the "Parties").

RECITALS

- A. CITY is party to a Producer/Distributor Agreement for Transfer of the Rohnert Park Urban Reuse System and Supply of Recycled Water between the City of Santa Rosa and the City of Rohnert Park, dated July 16, 2015 ("Producer/Distributor Agreement"), that authorizes it to distribute tertiary treated recycled water, as defined by Title 22 of the California Code of Regulations ("Recycled Water"), through the Rohnert Park Urban Reuse System ("Urban Reuse System").
- B. USER owns property identified as APN # _____ and located at _____, which includes certain landscaped areas that USER desires to irrigate with recycled water distributed by CITY. Irrigation of these landscaped areas with Recycled Water will allow CITY and USER to conserve potable water.
- C. USER may also undertake construction activities on the property and USER desires to use Recycled Water distributed by the CITY for construction water purposes including moisture conditioning, dust control, concrete mixing and other uses permitted by Title 22 of the California Code of Regulations. Use of Recycled Water for construction purposes also allows CITY and USER to conserve potable water.

AGREEMENT

1. DEFINITIONS.

- a. "DDW" means the State Water Resources Control Board's Division of Drinking Water.
- b. "General Permit" means the State Water Resources Control Board Order WQ2014-0090-DWQ General Waste Discharge Requirements for Recycled Water Use adopted on June 3, 2014 as it now exists or may be amended or revised.
- c. "High Pressure System" means the portion of the Rohnert Park Reuse System that begins at the Poncia Pump Station near the intersection of Stony Point Road and Rohnert Park Expressway and that delivers recycled water at pressures of approximately 100 pounds per square inch.
- d. "Low Pressure System" means the portion of the Rohnert Park Reuse System that begins at the intersection of Stony Point Road and Wilfred Avenue and the delivers recycled water at pressures between 5 and 20 pounds per square inch
- e. "PSI" means pounds per square inch.
- f. "NPDES" means National Pollutant Discharge Elimination System.

- g. “NPDES Permit” means the NPDES Waste Discharge Requirements and Master Reclamation Permit for the City of Santa Rosa Subregional Water Reclamation System issued by the North Coast Regional Water Quality Control Board, as it now exists or may be amended or revised.
 - h. “Recycled Water Use Permit” means local authorization from the CITY to utilize Recycled Water in accordance with state and federal water quality laws and permits issued by the State Water Resources Control Board or the North Coast Regional Water Resources Control Board.
 - i. “Recycled Water Users Guide” means the “Recycled Water Users Guide” produced by the City of Santa Rosa, as it now exists or may be amended or revised.
 - j. “RWQCB” means the North Coast Regional Water Quality Control Board.
 - k. “Subregional System” means the Santa Rosa Subregional Water Reclamation System.
 - l. “SCDEH” means the Sonoma County Department of Environmental Health
 - m. “SWRCB” means the State Water Resources Control Board.
 - n. “Title 17” means Title 17 of the California Code of Regulations, as it now exists or may be amended or revised.
 - o. “Title 22” means Title 22, Division 4 of the California Code of Regulations, as it now exists or may be amended or revised.
 - p. “Water Reclamation Requirements” means the requirements outlined in Title 22 of the California Code of Regulations as they exist now or may be amended or revised.
2. TERM. The term of this Agreement shall be _____ years (“Term”) commencing on the date this Agreement is fully executed (“Effective Date”), unless earlier terminated in accordance with Section 14.
3. USE AREA. USER shall use Recycled Water it receives under this Agreement for construction purposes and/or use on certain landscaped areas by using the onsite recycled water system as described in Exhibit A and shown in Exhibit B, which are attached hereto and incorporated herein by this reference. The Recycled Water use areas and the onsite recycled water system are collectively referred to as the “SITE”.
4. CITY DISTRIBUTION OF RECYCLED WATER.
- a. Quality of Recycled Water. The Recycled Water distributed by CITY to USER under this Agreement shall be of a sufficient quality for construction use or irrigation of landscaped areas with unrestricted access in accordance with Title 22 and the regulations and guidelines of the RWQCB and DDW.
 - b. Recycled Water System Pressure. CITY shall distribute Recycled Water to the Site at typically 60 to 90 PSI, if user is connected to the City’s High

Pressure System, or at typically 8 to 15 PSI if USER is connected to the City's Low Pressure System. The actual distribution rate will vary depending on the demand of USER's Recycled Water irrigation system. For purposes of this Agreement, USER is connected to (check one):

☐ High Pressure System

☐ Low Pressure System

- c. Recycled Water Distribution Control. CITY shall control distribution of Recycled Water to the Site by a valve station located on the Site, as shown in Exhibit B. The valve station shall be owned and operated by CITY, and CITY shall have unrestricted access to the valve at all times.
- d. Limitations Precluding the Distribution of Recycled Water. The Parties acknowledge that distribution of Recycled Water to USER under this Agreement may be prevented by causes outside the reasonable control of CITY including, but not limited to, acts of God, insufficient Recycled Water supply as determined by CITY in its sole discretion, malfunction of CITY's distribution system, malfunction of the Subregional System's treatment or distribution systems, acts of a third party, or order of a governmental regulatory authority.
 - i. If distribution is interrupted under this Section, USER agrees to return to Recycled Water use as soon as CITY is able to resume delivery.
 - ii. If distribution is interrupted under this Section, CITY shall have no obligation to provide any alternate source of water supply to USER and USER shall pay for the full cost of any water used from an alternate source of supply.
- e. City Authority to Interrupt Distribution. City may interrupt distribution of Recycled Water to USER under this Agreement if CITY, in its sole discretion, determines that USER is not responsibly managing the Site or that USER is out of compliance with laws, rules, regulations, or permits related to USER's use of Recycled Water or CITY's distribution of Recycled Water. If CITY interrupts distribution of Recycled Water under this Section, CITY shall have no obligation to provide any alternate source of water supply to USER and USER shall pay for the full cost of any water used from an alternate source of supply.

5. USER PAYMENT FOR RECYCLED WATER.

- a. Beginning on the Effective Date, USER shall pay CITY for Recycled Water at 95% of the CITY's potable water rate ("Recycled Water Rate"). Increases in the Recycled Water Rate are effective at the time an increase in potable water rates are effective.
- b. CITY shall read the USER'S recycled water meter(s) approximately monthly and shall bill the USER for the total quantity delivered during the billing period in accordance with the City's standard billing practices. USER may periodically review CITY's meter reads if desired

- c. Payment for bills is due within 20 days of receipt. If payment is not received within 20 days, CITY will impose a ten percent (10%) late payment charge.
- d. At any time during the term of this Agreement, CITY may modify the meter reading and billing schedule from monthly to every other month. CITY will provide USER with 30 days written notice of any change to the meter reading frequency.

6. ENTIRE AGREEMENT SUBJECT TO RECYCLED WATER REGULATORY REQUIREMENTS

- a. USER acknowledges that CITY is subject to state and local Recycled Water laws, rules, regulations and permits as they exist now or may be amended, revised or superseded during the Term of this Agreement, including but not limited to the provisions for Recycled Water use established by the NPDES Permit or the General Permit, Title 17, Title 22, Water Reclamation Requirements, and requirements of the DDW.
- b. USER acknowledges that it also has responsibility to comply with all state and local Recycled Water laws, rules, regulations and permits as they exist now or may be amended, revised or superseded during the Term of this Agreement, including but not limited to those that apply to the use of Recycled Water on the Site. USER acknowledges receipt of the Recycled Water User's Guide, and agrees to comply with all requirements set forth therein, as those requirements may be revised or amended. USER also agrees to comply with the DDW's Guidelines for Use of Recycled Water, as those requirements may be revised or amended, including those requirements included in Exhibit C, attached hereto and incorporated herein by this reference.
- c. USER shall design, install, and operate its Recycled Water irrigation system at the Site in full compliance with all laws, rules, regulations and permits for Recycled Water use as they exist now and as they may be enacted, amended, or revised during the Term of this Agreement.
- d. This Agreement constitutes a Recycled Water Use Permit.

7. RECEIPT AND APPLICATION OF RECYCLED WATER.

- a. USER agrees to receive, accept and apply Recycled Water distributed by CITY during the Term of this Agreement only for construction or irrigation use on landscaped areas and only through the onsite recycled water system, except for portions of the Site where application of the Recycled Water may be prohibited by any law, rule, regulation, or guideline governing the use of Recycled Water. USER shall make no other use of the Recycled Water, without amendment to this Agreement in accordance with Section 12(b).
- b. USER will primarily irrigate with Recycled Water between 8:00 p.m. and 7:00 a.m. If USER irrigates with Recycled Water during any other period of time, USER shall control the irrigation use to minimize public contact with Recycled Water.

8. SITE SUPERVISOR.

- a. USER shall designate a site supervisor, and may designate an alternate site supervisor, who shall be the CITY's primary point(s) of contact for the site (collectively, "Site Supervisors"). By entering into this Agreement, USER certifies that the Site Supervisors have all necessary authority to carry out any of USER's obligations under this Agreement, including but not limited to USER's compliance with all requirements of Section 6. The Site Supervisors shall attend any Site Supervisor training required by CITY during the Term of this Agreement. At least one of the Site Supervisors must be available at all times and must have any necessary staff available at all time to assure 24-hour system coverage and prompt response to any operational issues identified by CITY.
- b. USER hereby designates the following person(s) as Site Supervisors. USER shall promptly inform CITY in writing of any change to these designated Site Supervisors and/or their phone number(s) during the term of this Agreement.

Site Supervisor	Alternate Site Supervisor
Name:	Name:
Position:	Position:
24 hour phone:	24 hour phone:

9. ON-SITE FACILITY REQUIREMENTS.

- a. CITY shall install, access, read and maintain the Recycled Water meter(s) on the Site, as shown in Exhibit B, to monitor Recycled Water distribution to USER.
- b. USER shall perform all work and shall be responsible for all costs of construction, operation, and maintenance of all other aspects of the Recycled Water distribution and irrigation systems at the Site that are not specifically the responsibility of CITY under this Agreement, including but not limited to all costs of modifications required of, or desired by, USER. Such modifications may include, but are not limited to:
 - i. Placing of appropriate signs on the Site that notify USER's employees and the public of the use of Recycled Water on the Site.
 - ii. Marking all solenoid valve boxes on the Recycled Water system. Marking shall be in accordance with all laws, regulations, and guidelines, which may include placing an appropriate purple tag on the existing valve box lid or providing a new purple lid.
- c. CITY shall be responsible for the ongoing maintenance, repair and replacement of the Recycled Water meter and all facilities connecting the water meter to the Urban Reuse System. USER shall be responsible for

the ongoing maintenance, repair and replacement of all Recycled Water system facilities downstream from the meter and all initial and ongoing onsite management and operation of USER's Recycled Water system to ensure USER meets its obligations under this Agreement, including but not limited to meeting CITY's and all regulatory agencies' requirements for use of the Recycled Water.

- d. Any installation, modification or construction of USER's Recycled Water irrigation system shall be in accordance with all laws, regulations, and guidelines, including but not limited to those promulgated by DDW, RWQCB and SCDEH, pertaining to nonpotable water systems including, but not limited to, the proper marking of piping, valves, valve boxes, controllers and all other components to differentiate them from onsite potable water facilities.

10. RECORD DRAWINGS. USER shall notify CITY prior to making any modifications or changes to USER's water systems at the Site. USER shall also provide CITY with accurate record drawings each time USER modifies or changes USER's water systems on the SITE during the term of this Agreement. The record drawings shall show the locations of all pipelines, controllers, valves, fountains, buildings, structures, property boundaries, wells and any other features known or considered by the City to be important to the onsite use of Recycled Water.

11. PERMISSION TO ENTER. USER agrees to allow CITY, RWQCB, DDW and SCDEH, acting through their duly authorized employees, agents, representatives or contractors, access at reasonable times to enter the Site for the purpose of observation of or modification of Recycled Water facilities, for maintaining CITY-installed facilities, for meter reading, and for observing and verifying that USER is operating its Recycled Water facilities and is using the Recycled Water in a proper manner and in accordance with this Agreement, any Recycled Water laws, rules, regulations, or guidelines, the requirements of any regulatory agency, and all other provisions of law. When entering the Site, CITY shall not unreasonably interfere with USER's operations and use of the Site.

12. GENERAL CONDITIONS.

- a. This Agreement shall be construed and interpreted in accordance with the laws of the State of California, and venue shall be in the State courts in the County of Sonoma.
- b. This Agreement contains all agreements of the Parties with regard to the subject of this Agreement and cannot be enlarged, modified or changed in any respect except by written agreement between the Parties.
- c. The unenforceability, invalidity or illegality of any provision of this Agreement shall not render the other provisions unenforceable, invalid or illegal, and the Parties shall negotiate in good faith as to the effect of said unenforceability, invalidity or illegality on the rights and obligations of the Parties.
- d. The captions, titles and headings in this Agreement shall have no effect on the interpretation of this Agreement or any part thereof.

- e. This Agreement shall be binding on the heirs, successors, lessees, sub lessees, assigns and transferees of USER.

13. ASSIGNMENT.

- a. This Agreement may be assigned by the CITY to the City of Santa Rosa in its role as producer of Recycled Water.
- b. USER may not assign this Agreement.

14. TERMINATION.

- a. Should one party breach any of the terms and conditions in this Agreement, written notice of such breach shall be given to the breaching party by the other party. If the breaching party does not take reasonable steps toward correcting the breach within 5 days from such notice, the other party may, in addition to any remedies provided in this Agreement and/or by law, terminate this Agreement on 30 days' written notice to the breaching party.
- b. In addition, CITY may terminate this Agreement immediately if:
 - i. USER does not make payment to City of any amount due under this Agreement within 30 calendar days of the payment deadlines provided in Section 5.
 - ii. CITY, in its sole discretion, determines that USER is not responsibly managing the SITE, or that USER is out of compliance with laws, rules, regulations, or permits related to USER's use of Recycled Water.
 - iii. CITY, in its sole discretion, determines it is or will be, unable to distribute adequately treated Recycled Water to USER for any reason whatsoever for a period greater than 30 calendar days.
 - iv. CITY, in its sole discretion, determines it cannot reasonably meet the laws, rules, regulations, or permit requirements related to the CITY's distribution of Recycled Water under the terms of this Agreement.
 - v. CITY is ordered to cease distribution of Recycled Water to USER by a governmental authority.
- c. USER may terminate this Agreement on 30 calendar days written notice to CITY if the land use on USER's entire Site is changed and use of Recycled Water is no longer feasible.
- d. In the event of termination, CITY shall not be obligated to reconnect USER's irrigation system to any potable water supply or other water supply, and any and all of USER's costs associated with such termination shall be borne exclusively by USER.

15. NOTICES. Any notices necessary to be given by either party to the other relative to this Agreement shall be in writing. Both parties agree that any such notice

shall be effective when personally delivered or deposited, postage paid, in the U.S. mail addressed as follows:

CITY	USER

16. RECORDATION. Either party to this Agreement may record a Memorandum of Agreement.

17. AUTHORITY. USER hereby represents and warrants to CITY that it has the power and authority and the legal right to consummate the transactions contemplated in this Agreement, that this Agreement has been duly authorized, and that, when executed by the signatory or signatories listed below, this Agreement shall constitute a valid agreement binding on USER in accordance with the terms hereof.

IN WITNESS WHEREOF, CITY and USER have executed this Agreement as of the date and year first written above.

Signatures on next page

USER:

_____ Individual/Sole Proprietor

_____ Partnership

_____ Corporation

_____ Limited Liability Company

_____ Other
(please specify: _____)

CITY:

CITY OF ROHNERT PARK,

A Municipal Corporation

By: _____

Print Name: _____

Title: City Manager

Per Minute Order adopted by the
Rohnert Park City Council at its meeting
Of 10/13/15

By (Signature): _____

Print Name: _____

Print Title: _____

Telephone: _____

APPROVED AS TO FORM:

Michelle Marchetta Kenyon, City Attorney

EXHIBIT A

LOCATION OF APPLICATION AREA

The location of USER's application area, the aggregate of which shall be known as USER'S SITE, is as follows:

<u>Application Area Name</u>	<u>Application Area Street Address</u>	<u>Approximate Irrigation Area (Acres)</u>
----------------------------------	--	--

EXHIBIT B

DIAGRAM OF APPLICATION AREA

EXHIBIT C

SPECIAL RECYCLED WATER USE REQUIREMENTS

The following use requirements are taken from the State Water Resource Control Board Division of Drinking Water's Guidelines for Use of Recycled Water.

1. Recycled Water and spray shall be confined to the authorized use area.
2. CITY-provided signs shall be prominently posted to inform the public that Recycled Water is being used.
3. Public contact with Recycled Water shall be minimized.
4. Recycled Water piping, controllers, valves, etc., shall be marked to differentiate the Recycled Water facilities from the potable water facilities.
5. Recycled Water valves, outlets, quick couplers and sprinklers shall be of a type, or secured in a manner, that permits operation only by USER'S authorized personnel.
6. Any use or installation of hose bibs shall be posted "RECYCLED WATER. DO NOT DRINK."
7. In accordance with DDW requirements, there shall be at least a 10-foot horizontal and 1-foot vertical separation between all pipelines transporting Recycled Water and those transporting potable water, with the potable water pipeline above the Recycled Water pipeline.
8. An air-gap separation or reduced-pressure-principle device shall be provided at all potable water service connections to Recycled Water use areas. There shall be no connection between potable water supply and Recycled Water piping. Supplementing Recycled Water with any other source shall not be allowed except through an air-gap separation.
9. Drinking water facilities shall be protected from Recycled Water spray.
10. There shall be no Recycled Water irrigation or impoundment within 50 feet of any well for domestic supply.
11. Adequate measures shall be taken to minimize ponding and runoff and to prevent the breeding of mosquitoes of public health significance.
12. Inspection, supervision and employee training shall be provided by USER to assure safe and proper operation of the Recycled Water system.