

COOPERATION AGREEMENT

between

City of Carson,  
a California general law municipal corporation

and

The Carson Reclamation Authority,  
a California Joint Powers Authority

April [\_\_\_\_], 2018

**COOPERATION AGREEMENT**  
**[CITY AND AUTHORITY—MACERICH PROJECT/AUTHORITY IMPROVEMENTS]**

THIS COOPERATION AGREEMENT ("**Agreement**") is entered into as of the date set forth on the signature page hereto by and between (i) CITY OF CARSON, a California general law municipal corporation<sup>1</sup> ("**City**") and (ii) the CARSON RECLAMATION AUTHORITY, a California joint powers authority ("**Authority**"). City and Authority are sometimes individually referred to herein as a "Party" and collectively as "Parties".

**ARTICLE I            INTRODUCTION.**

1.1     The 157 Acre Site. Authority acquired, and currently owns, approximately 157 gross acres of real property in the City of Carson, as shown on the Site Map attached hereto as **Exhibit "A"** (the "**157 Acre Site**"). The 157 Acre Site is divided into five Cells as shown on **Exhibit "A"** and was subject to The Carson Marketplace Specific Plan, approved on February 8, 2006, and amended on April 5, 2011 (as so amended, The Boulevards at South Bay Specific Plan" or the "**Boulevards Specific Plan**"). The Boulevards Specific Plan is being further amended concurrently with the approval of this Agreement and, as amended, has been renamed "The District at South Bay Specific Plan" also referred to as the "**Specific Plan**" herein. The portion of the 157 Acre Site which is the subject of this Agreement is a portion of the forty-six-net-acre portion which is shown on **Exhibit "A"** as Cell 2. The 157 Acre Site is a former landfill site, and on October 25, 1995, the California Department of Toxic Substances Control ("**DTSC**") approved a remedial action plan (as further defined below, the "**RAP**") for portions of the 157 Acre Site, which RAP requires the installation, operation and maintenance of certain remedial systems, including a landfill liner and cap, gas collection and control system, and groundwater extraction and treatment system on the 157 Acre Site (together with other mitigation measures required by applicable law, "**Remedial Systems**"). Not a part of the Remedial Systems for purposes of this Agreement, but necessary for development on the 157 Acre Site due to the prior landfill, are building protection systems (the "**BPS**") as described herein.

1.2     Compliance Framework. DTSC entered into the Compliance Framework Agreement dated as of September 28, 2006, with the then-current property owner, Carson Marketplace LLC ("**CM**"), as amended by the First Amendment to Compliance Framework Agreement dated as of December 31, 2007 (collectively, the "**CFA**") for the purpose of setting forth a plan for addressing the environmental condition of the 157 Acre Site, and the CFA required CM to establish financial assurance for implementation of the RAP, including long-term operation and maintenance of the Remedial Systems. CM sold the 157 Acre Site to Authority on May 20, 2015. Based on the CFA, DTSC continues to have certain oversight rights concerning the development of the 157 Acre Site and agreements affecting the Remedial Systems continue to be subject to DTSC approval.

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<sup>1</sup> *Carson is not a charter city.*

1.3 Authority Remediation of 157 Acre Site. CM and Authority, the City of Carson, California (“**City**”), and the Successor Agency to the Carson Redevelopment Agency (the “**Successor Agency**”) entered into that certain Settlement, Release and Indemnity Agreement dated May 12, 2015, pursuant to which Authority agreed to take title to the 157 Acre Site, and pursuant to which Successor Agency committed to provide Fifty Million Five Hundred Thousand Dollars (\$50,500,000) in additional required funding (the “**Funding**”) to Authority through the issuance of taxable bonds. The California Department of Finance provided a determination that the Successor Agency’s obligation to provide the Funding is an enforceable obligation of the Successor Agency and that the Department of Finance had no objections to the transfer of the 157 Acre Site from CM to Authority, the issuance of bonds by Successor Agency to provide funding for completion of the remediation work and other infrastructure improvements. The Remedial Systems work is being undertaken with financial assistance being provided by Authority, the Carson Public Financing Authority and the Successor Agency through the issuance of multiple series of bonds.

1.4 Cell 2 Surface Lot; Developer Property. The 157 Acre Site has been vertically subdivided into a surface lot (the “**Surface Lot**”) and a subsurface lot (the “**Subsurface Lot**”), which lots are referenced on the “Designation of Parcels” attached hereto as **Exhibit “B”** as Parcels 1 (“**Subsurface Lot**”) and 2 (“**Surface Lot**”) of Parcel Map No. 70372. Due to the contaminated condition of the 157 Acre Site, the intent of Developer to acquire only non-contaminated property and the poorly compacted condition of the former landfill contents, it is intended by Authority and Developer, as further described in the Conveyancing Agreement (hereinafter defined), that for purposes of Development of the Project (each as defined below), Authority shall convey and Developer shall acquire: (1) fee title to approximately 41 acres of the Surface Lot located within Cell 2, as more particularly described on **Exhibit “C”** (but subject to modifications to the vertical subdivision as further described in the Conveyancing Agreement) (such land to be conveyed by Authority to Developer being referred to herein as the “**Cell 2 Surface Lot**”), (2) an exclusive easement in the portion of Cell 2 more particularly described on **Exhibit “C”** (“**Pylon Sign Easement Area**”), comprising a portion of an approximately 5 acre strip of land located between the Cell 2 Surface Lot and I-405 Freeway (the “**Embankment**”), for purposes of allowing Developer to erect, maintain and use the Developer Pylon Sign, as further described herein, and (3) certain additional signage and other easements as described in the Conveyancing Agreement. The real property interests comprising the Cell 2 Surface Lot and the Pylon Sign Easement Area and such other easements are referred to herein collectively as the “**Developer Property**”. Authority will retain all portions of the Subsurface Lot and Surface Lot other than the Developer Property. It is anticipated that Authority will convey the various components of the Developer Property pursuant to metes and bounds description and that City will, upon due consideration of same, provide a certificate of compliance as to each parcel so created.

1.5 The Project. Prior development projects have been proposed on the 157 Acre Property as described above, including the mixed-use regional retail and entertainment project described by the Boulevards Specific Plan and a 75,000-seat NFL Stadium. These projects have not proceeded. Developer has proposed development of the Cell 2 Surface Lot, to include a state-of-the-art approximately 711,000 GBA square foot regional fashion outlet mall (as further defined in the Conveyancing Agreement, the “**Project**”). Developer shall endeavor to maintain high standards of urban design, architecture, and development, including “Cal-Green” and LEED

building standards, adherence to building codes (subject to such variances as City may approve), best practices for environmental protection, energy efficiency, water conservation, and reduced greenhouse gas emissions. The Project and its phasing is described in more detail in the Scope of Development attached hereto as **Exhibit “D”**.

1.6 Public Benefits of the Project. Appropriate development of the 157 Acre Site is expected to realize significant regional and community public benefits, including, without limitation:

(a) *Increased Tax Revenues.* Due to the strategic location at the meeting place between Orange County, Long Beach, and Los Angeles, there is great potential for increased revenue through proper site development. The Project is estimated to produce over Three Million (\$3,000,000) in annual sales taxes. The development of the 157 Acre Site as planned could result in increased real property taxes, sales taxes, transient occupancy taxes, and other revenues to City exceeding Five Million Dollars (\$5,000,000) to Seven Million Dollars (\$7,000,000) per year.

(b) *Overcoming Constraint of Remediation Cost.* The 157 Acre Site is the only major undeveloped property exceeding 100 acres along the I-405 Freeway in an approximately 75-mile run. This is due to the extraordinary remediation costs, estimated to ultimately exceed One Hundred Fifty Million Dollars (\$150,000,000) in the aggregate, necessary to develop the 157 Acre Site. Many development projects have been proposed for this site over some four decades, but none have been financially feasible because of the environmental and soils condition of the 157 Acre Site. This Project represents a unique opportunity to catalyze the development of the 157 Acre Site.

(c) *Community Center.* The unique development proposed promises to be a community and regional focus of economic and social activity helping, along with the South Bay Pavilion, to provide a new community center for Carson, and giving it a regional presence competitive with other major regional centers in the highly competitive Los Angeles market area.

(d) *Job Generation.* The Project entails a land use and infrastructure plan that will support the creation of a major job center in the City and significantly improve the City's jobs to housing balance. The Project is proposed to provide substantial economic and employment opportunities for the community, with a goal of generating at least 1,600 new direct construction jobs, with another 1,000 indirect and induced, as well as 1,500 new permanent jobs.

1.7 Nature of Transaction. The Authority was created to cause the remediation of properties within Carson and the Project Agreements will serve as a model for establishment of private/public partnerships to carry out development of such properties with, in this case, specifically defined roles for the Parties. As neither Macerich nor the City want to incur liability for the preexisting soil and groundwater contamination on the 157 Acre Site, all work done in the contaminated soil is the responsibility of its owner, Authority, under the terms of its Conveyance Agreement with Macerich, and of this Agreement with City. The roles as defined in detail below, are generally described as follows:

(a) *Authority:* Seller of Cell 2 Surface Lot to Macerich and performs specified remediation of hazardous materials on site, develops certain offsite improvements pursuant to this Agreement and the Conveyancing Agreement, and installs various subsurface improvements in order to make the site developable, described and defined in the Conveyancing Agreement as the **Site Development Improvements**. Authority retains ongoing responsibility for operation and maintenance of the Remedial Systems and BPS required by DTSC.

(b) *Developer:* Develops the Project on the Cell 2 Surface Lot and makes advances to Authority for a portion of the Site Development Improvements, subject to being reimbursed by the **Sale Tax Assistance** described below. Macerich is also advancing up to \$10 million to the City to assist in the payment of the costs of the offsite improvements.

(c) *City:* The land use authority providing approval to Macerich of **Entitlements** through a **Development Agreement**. Through such agreement, City has the obligation to install, own and maintain certain public improvements serving the 157 Acre Site, defined and described in the Conveyancing Agreement as the **Offsite Improvements**. The Offsite Improvements are shown and described herein in **Exhibit "XX."** City by this Agreement is contracting with Authority to construct the Offsite Improvements. The Offsite Improvements are being funded with monies from City, Authority, and funds advanced by Macerich. The advances from Macerich are repaid through the **Sales Tax Assistance Payments**. City, by this Agreement, is agreeing to provide to Authority the funds required to make the Sales Tax Assistance Payments to reimburse the cost of the Offsite Improvements and Site Development Improvements.

#### 1.8 Summary of Obligations.

(a) *Authority Responsibilities.* The Authority is performing certain work and improvements (i) due to its obligations to DTSC to deal with the hazardous materials on the site; (ii) due to its obligations to Developer to prepare the Cell 2 Site so that it can be developed, and so that Macerich does not work within the Cell 2 Subsurface Lot; and (iii) due to its obligations to City to construct certain public infrastructure as described below.

1. DTSC Remediation Systems Costs. The RAP requires that Remedial Systems be constructed and operated for many years to cap the landfill and remove gas and contaminants which would pollute groundwater. Pursuant to the Conveyancing Agreement, Authority is responsible for the full cost of constructing the Remedial Systems, and the cost of constructing the additional required building protection systems (described and defined in the Conveyancing Agreement as the **BPS**) up to a cap of \$9 per square foot of foundation slab, with any additional costs of BPS subject to negotiation by the Parties. Except as otherwise specified in the following subparagraph, the Authority's costs for constructing Remedial Systems and BPS shall be paid from funds by or on behalf of Authority for such purpose.

2. Site Development Improvements. The Authority shall perform work necessary to prepare the site for development, given its current poor state of compaction and environmental contamination. This work includes (i) the Stormwater Work, (ii) the Sub-Foundation Systems, (iii) the Utility Work upon Cell 2, and (iv) the Foundation Systems, all as further described in Section 3.2 and as defined in Section 5.4 of the Conveyancing Agreement

(the “**Site Development Improvements**”). The Site Development Improvements are being installed by Authority within Cell 2 with funds advanced by Macerich as described in Section 4.1.

3. **Construction of Public Infrastructure.** City has the responsibility to provide public infrastructure and services on, over and in the 157 Acre Site, including streets, sidewalks, parkways, sewer, water, drainage, lighting, and other utilities, and must assure accessibility to the 157 Acre Site. The Infrastructure Obligations are described in Recital M to the Development Agreement. Under this Agreement, the City contracts with Authority to construct such improvements to avoid any City liability for the remediation of the 157 Acre Site by working on the site. By this Agreement with the City, Authority will construct all such improvements outside Cell 2 and such other public offsite infrastructure, further described and defined in the Conveyancing Agreement as the **Offsite Improvements** and as set forth in **Exhibit “XX”** hereto. The Authority’s resources are insufficient to undertake all costs of the Offsite Improvements, and Macerich is advancing up to \$10 Million for this purpose.

(b) *Agreement to Pay Over Tax Proceeds.* City will derive sales tax revenues from the development of the Project. Pursuant to this Agreement, the City agrees to pay to Authority one half of the sales tax revenues City receives from operation of the completed Project on the Cell 2 Surface Lot (subject to certain adjustments as set forth in the Conveyancing Agreement), in exchange for Authority undertaking the Offsite Improvements and Site Development Improvements. The City and Authority have reviewed the legal option of Orrick, Herrington & Sutcliffe, LLP, of even date therewith, as to the legal basis for providing such sales tax assistance to Authority and thus indirectly to Macerich and is agreeing to provide such assistance on the basis described therein. Those sales tax proceeds shall be paid by Authority to Macerich to reimburse Macerich for advances made by Macerich to fund the cost of certain Offsite Improvements and Site Development Improvements. The payments shall be made in accordance with the formula set forth in Article IV hereof.

(c) *Schedule.* Authority shall construct (i) the Remedial Systems and BPS; (ii) the Site Development Improvements, and (iii) the Offsite Improvements all as further specified in Article III hereof (the “**Authority Improvements**”). The Authority Improvements shall be performed in accordance with this Agreement substantially within the timeframes set forth in the Schedule of Performance subject to any extensions or events of force majeure.

(d) *Construction Standards.* Authority agrees to construct the Authority Improvements under this Agreement in compliance with all applicable laws, including State prevailing wage laws, and City building, construction and environmental standards.

(e) *Insurance.* The Project finances a robust insurance program to provide the Authority with coverage against environmental claims against the developers and property owners, environmental claims against contractors working on the site, business operations, general liability, personal injury, property damage and other claims. Total insurance coverage for all types is almost a billion dollars of coverage. To the extent feasible, the City shall be an additional insured to such insurance program.

(f) *Indemnity.* The Authority shall indemnify, defend and hold harmless the City and its officers, employees, and agents, from any all losses, liabilities, claims or damages arising from, or relating to, Authority's construction of the Authority Improvements, or its performance of any of the Project Agreements or the carrying out the Project in accordance therewith.

(g) *Agreements Control Over Summaries.* The Parties acknowledge that the summaries provided in Section 1.7 and this Section 1.8 are intended to provide a general overview of the transactions contemplated by this Agreement and related agreements being entered into concurrently herewith, but that the detail and specificity required for such transactions is contained only in the body of this Agreement and such other agreements, and so in the event of any conflict or inconsistency, (i) the provisions contained in the body of this Agreement and such other agreements shall control over the foregoing summaries, and (ii) the provisions of such other Agreements shall control over summaries or descriptions of such other Agreements contained in this Agreement.

1.9 Term. The term of this Agreement shall be concurrent with term of the Development Agreement and Conveyancing Agreement, and shall commence on the Effective Date and shall continue for the duration of the Sales Tax Assistance period, being twenty-five years from the date of Macerich's first receipt of sales tax reimbursements from the Project, or until the full Total Recovery Amount is paid, whichever first occurs, as the same may be extended pursuant to the Conveyancing Agreement (the "**Term**").

1.10 Compliance With CEQA. In connection with Macerich's application for, and City's consideration of, the land use entitlement approvals for the Project, and Authority's approval of the Conveyancing Agreement, a Supplemental Environmental Impact Report for the District at South Bay Specific Plan, State Clearinghouse No. 2005051059 (the "SEIR") was prepared by City in compliance with CEQA. In approving this Agreement the City and Authority have certified the SEIR as in compliance with CEQA, adopted a statement of overriding considerations and adopted a mitigation monitoring and reporting program for the SEIR. The City and Authority have found on the basis of substantial evidence based on the entire administrative record that this Agreement is consistent with all applicable plans, rules, regulations and official policies of City and Authority.

**ARTICLE II DEFINITIONS.** The terms below shall have the meaning set forth below. Other initially-capitalized terms not defined in this Agreement shall have the meanings ascribed to them in the Conveyancing Agreement. Unless the context otherwise requires, the terms defined in this Article shall apply for all purposes of this Agreement, and of any amendment hereof, and of any opinion or report or other document mentioned herein or therein have the meanings defined herein, the following definitions to be equally applicable to both the singular and plural forms of any of the terms defined herein.

2.1 "**Acceptable Project Development Cost**" shall have the meaning set forth in Section 4.6.4.

2.2 "**Actual NOI**" shall have the meaning set forth in Section 4.6.3.

2.3 “**Advances**” shall have the meaning set forth in Section 4.2.

2.4 “**Aggregate Development Cost**” shall have the meaning set forth in Section 4.6.2.

2.5 “**City Payment(s)**” means one-half of one-percent of the Local Sales Tax Revenues accrued from the Project Retail Sales in each Fiscal Quarter to be remitted by the City to Authority under this Agreement, for purposes of Authority’s repayment of any Total Recovery Amounts due and owing to Macerich, as required under the Conveyancing Agreement (described in Article IV below).

2.6 “**Conveyancing Agreement**” means the Conveyancing Agreement, of even date herewith, between Authority and Developer.

2.7 “**Data and Documentation**” means any and all Sales and Use Tax returns, bills, invoices, schedules, vouchers, receipts, cancelled checks, statements and other documents reasonably required by City to evidence Local Sales Tax Revenues payable to City from the SBE and attributable to Project Retail Sales.

2.8 “**Feasibility Gap**” shall have the meaning set forth in Section 4.6.5.

2.9 “**Fiscal Quarter**” means one calendar year quarter commencing on January 1, April 1, July 1, or October 1, and ending on, as applicable, the immediately following March 31st, June 30th, September 30th, or December 31st, respectively. As an example, the Fiscal Quarter commencing January 1st shall end on the immediately following March 31st, the Fiscal Quarter commencing on April 1st shall end on the immediately following June 30th, and so on.<sup>2</sup>

2.10 “**Local Sales Tax Revenues**” means that portion of the Sales and Use Tax, if any, paid by owners, tenants or other occupants of the Project upon taxable sales and uses attributable to the operation of the Project and allocated and actually paid to, and received by, City under the Uniform Local Sales and Use Tax Law (Part 1.5, Division 2 of the California Revenue and Taxation Code). Local Sales Tax Revenues shall not include (i) Penalty Assessments,<sup>3</sup> (ii) any Sales Tax levied by, collected for or allocated to the State of California, the County of Los Angeles, a district or any entity (including an allocation to a statewide or countywide pool) other than City, (iii) any administrative fee charged by the SBE, (iv) the portion of any Sales or Use Tax subject to any sharing, rebate, offset or other charge imposed pursuant to any applicable provision of federal, state or local (except the City’s) law, rule, or regulation and thus not retained by City, (v) any Sales Tax attributable to any transaction not consummated during the Term, or (vi) any Sales Tax (or other funds measured by Sales Tax) required by the State of California to be paid over to another public entity (including the State) or set aside and/or required by the State of California to be pledged to a specific use other than for deposit into or payment from the Cities’ general funds, including retroactively. The California Legislature might provide for the payment to City of some form of revenues for the purpose of offsetting any losses the City has suffered in Local Sales and Use Tax Revenues resulting from the enactment

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<sup>2</sup> *No need for Fiscal Year definition—added nothing.*

<sup>3</sup> *Why not Penalty Assessments, to the extent they’re paid over to the City? Or are they not?*



of recent State legislation (e.g., the "triple flip" legislation). The Parties agree that should the California legislature provide for such offsetting revenues, then any such offsetting revenues which are (i) intended to offset the loss of Sales Tax revenues to City as a result of changes in law, and (ii) actually received by City, and (iii) not subject to any restrictions on use beyond those which are otherwise generally applicable to Sales Tax revenues received by California municipalities, will be deemed to be "Local Sales Tax Revenues" within the meaning of this Agreement.

2.11 **"Notice of Default"** shall have the meaning set forth in Section 8.1 below.

2.12 **"Payment Period"** means each period occurring four times per calendar year and ending on the last day of each calendar quarter. The Parties acknowledge that the SBE remits Local Sales Tax Revenues to the City approximately three months after the end of the Fiscal Quarter in which Sales and Use Tax payments are actually paid from Project Retail Sales to the SBE, and will take longer for processing from the City to Authority, and then from Authority to Macerich in accordance with this Agreement.

2.13 **"Penalty Assessments"** means penalties, assessments, collection costs and other costs, fees or charges resulting from late or delinquent payment of Sales or Use Tax and which are levied, assessed or otherwise collected from Project Retail Sales.

2.14 **"Personnel"** shall have the meaning set forth in Section 6.1 below.

2.15 **"Project Agreements"** means and is inclusive of the following:

- (a) This Cooperation Agreement;
- (b) The Conveyancing Agreement;
- (c) The Development Agreement; and
- (d) Those certain access agreements giving Macerich access to the 157 Acre Site and giving Authority access to the Surface Lot.

2.16 **"Project Retail Sales"** means sales made by any form of retail enterprise at the Project that maintains a retail sales operation and at which Retail Sales transactions are consummated at the Project pursuant to the Sales and Use Tax Law. Sales from shops, outlets, grocers, restaurants and other food services, and e-commerce sales made or fulfilled from the Project are intended to be included to the extent included under the Sales and Use Tax Law.

2.17 **"Quarterly Report"** means a quarterly report processed by the City's/Authority's Sales and Use Tax consultant in accordance with Section 5.2 below.

2.18 **"Reimbursement Term"** shall have the meaning in Section 4.4.5.

2.19 **"Required Return"** shall have the meaning in Section 4.6.4.

2.20 “**Retail Sales**” means all sales of tangible personal property to any person or entity which is subject to the Sales and Use Tax Law and which generates Local Sales Tax Revenues.

2.21 “**Sales and Use Tax Law**” means (i) Part 1 of Division 2 of the California Revenue and Taxation Code, commencing with Section 6001, and any successor law thereto, (ii) any legislation allowing City or other public, agency with jurisdiction in City to levy any form of sales and use tax on the operations of the Project, and (iii) regulations of the SBE and other binding rulings and interpretations relating to (i) and (ii) hereof.

2.22 “**Sales and Use Tax**” means all sales and use taxes levied under the authority of the California Sales and Use Tax Law.

2.23 “**Sales Tax Assistance**” means the funds payable by City to Authority under this Agreement to enable Authority to repay the Total Recovery Amount under the Conveyancing Agreement.

2.24 “**SBE**” means the California State Board of Equalization, and any successor agency.

2.25 “**Total Recovery Amount**” shall have the meaning set forth in Section 4.4.

### **ARTICLE III AUTHORITY CONSTRUCTION OBLIGATIONS.**

3.1 Authority Construction of Remedial Systems and BPS. As provided in Section 1.1, the 157 Acre Site is a former landfill site and Authority as owner is subject to the RAP requiring installation, operation and maintenance of certain remedial systems including site preparation and relocation of trash layers; installation of landfill liner, cap, gas collection and control systems; and installation of groundwater extraction and treatment systems. Authority shall construct, operate and maintain the Remedial Systems and BPS all as set forth in the Conveyancing Agreement, and below, and shall otherwise comply with its obligations under the RAP and applicable law with respect to hazardous materials located within the 157 Acre Site. Authority has the right to contract with third parties to operate Remedial Systems, to manage the construction processes and Remedial Systems, and to provide various expert services related thereto, including an environmental remediation entity for the entire 157 Acre Site.

3.2 Authority Construction of Cell 2 Site Development Improvements. Due to the unsuitability of the soils for development caused by the waste materials therein and poor compaction, neither City nor Macerich are willing to undertake construction of improvements within the Cell 2 Subsurface Lot, and thus Authority has agreed to undertake construction of the Site Development Improvements as described herein, and the Offsite Improvements described below, in Section 3.3 The Site Development Improvements include the Stormwater Work, the Utility Work, the Sub-Foundation Systems, and Foundation Systems, all as described more specifically in the Conveyancing Agreement. Authority shall install, maintain, and repair the Site Development Improvements which work shall be funded by Macerich through the Advances, which shall then be reimbursed through the Sales Tax Assistance as described in Article IV. The Site Development Improvements and Offsite Improvements together shall constitute the “**Authority Work.**”

3.3 Authority Construction of Offsite Improvements. Authority shall fulfill certain obligations of City in accordance with the Project EIR by constructing the Offsite Improvements as set forth herein and in the Conveyancing Agreement. Additionally, except for Stamps Road south of Lenardo Drive, all roads and Offsite Improvements built by Authority on the 157 Acre Site and after formal acceptance by City will be maintained by the City as public streets and improvements. City hereby agrees to accept such improvements if properly constructed hereunder in accordance with all City standards and will (i) be responsible for all liability claims for public use not resulting from the contamination, and (ii) accept ownership of the improvements. City will maintain such roadway systems in a finished and attractive manner conducive to the success of the Project.

3.4 Contract Administration. Authority retains exclusive rights to contract with and direct the work of its contractors constructing the Authority Improvements hereunder. Authority must undertake the work as a public agency subject to all laws of the state of California, as well as ordinances of the city of Carson, and such requirements shall not make the City liable for the Authority's acts, or the condition of the property hereunder. To this end, Authority agrees as follows:

3.4.1 *Contract Administration.* To perform the construction contract administration for all Authority Improvements, which shall include actual construction, contract administration, materials testing and construction surveys. Authority may utilize an engineering consultant team that includes a licensed Civil Engineer and a construction inspector or other representative to perform the function of the Resident Engineer and inspector.

3.4.2 *Plans and Specifications.* To use plans and specifications prepared in accordance with the RAP, CFA, City ordinances, applicable laws, and to obtain City's approval of the construction terms and costs (which approval may be granted administratively through the City Manager) and, as to the Offsite Improvements and Site Development Improvements, Macerich's approval thereof.

3.4.3 *Advertising and Bidding.* All construction work shall be advertised, bid, and awarded in compliance with all applicable laws, including City standards and policies, and the contracts shall thereafter be administered in accordance therewith.

3.4.4 *Security.* Authority shall require its contractors to provide such work and performance security, including without limitation bonds securing performance, labor and materials, and other such bid bonds as typically required under City policy for the award of public construction contracts.

3.4.5 *Contract Change Orders.* Authority (and, as to the Offsite Improvements and Site Development Improvements, Macerich) shall have the right at any time, without invalidating this Agreement, to order extra work or make changes to contracted work by altering, adding to or deducting from said contracted work. No such extra work may be undertaken unless a written change order is first given by the Authority to the contractor, incorporating therein any adjustment in (i) the contract sum, and/or (ii) the time to perform such contracted work, which said adjustments are subject to the written approval of the Contractor ("**Change Order**"). All such Change Orders must be signed by the Contractor and Contract Officer prior

to commencing the extra work thereunder. Any Change Order that will increase compensation for, or costs of an awarded contract above five percent (5%) of the contract sum or \$100,000, whichever is less; or any increase in the time to perform of up to one hundred eighty (180) days; and does not materially affect the work, and that are not detrimental to the interests of Macerich, may be approved by the Authority's Director. Any greater increases, taken either separately or cumulatively must be reported to City and must be approved by the Authority Board and, if related to the Offsite Improvements or Site Development Improvements, Macerich.

3.4.6 *Final Inspections and Payment Accounting.* City may inspect and accept or reject any of the public infrastructure constructed by Authority, including the Offsite Improvements, both during performance or when completed for purposes of ensuring regulatory and legal compliance with local, state and federal laws, building codes, and, to the extent relevant, the RAP and CFN. City shall reject or finally accept any portion thereof within thirty (30) days after submittal to City, and shall concurrently notify Macerich of such final acceptance in writing. Acceptance of any work by City shall not constitute a waiver of any of the provisions of this Agreement including, but not limited to provisions pertaining to warranty and indemnification and insurance, respectively. Authority shall furnish City, within one hundred twenty (120) calendar days after final payment to any construction contractor for the Offsite Improvements, a final accounting of the total costs, including an itemization of actual unit costs and actual quantities.

3.4.7 *Form of Construction Contract.* In its administration and implementation of contractors' work pursuant to this Agreement, Authority shall utilize a standard construction contract form similar to the form and substance generally used by City in its public works contracts.

3.4.8 *Access to Books and Records.* City shall at all times have the right to inspect and audit the books and records of Authority to assure that all work has been performed and disbursements made properly in accordance with contract provisions. Each Party shall bear its own costs of such audit.

3.5 Standards of Work Applicable to Authority Improvements. Authority shall at all times faithfully, competently and to the best of its ability, experience and talent, perform all services described herein. Authority covenants that it shall follow the highest professional standards in performing the work required hereunder and that all materials will be of good quality, fit for the purpose intended.

3.5.1 *Compliance with Law.* Authority shall keep itself informed concerning, and shall render all work hereunder in accordance with all ordinances, resolutions, statutes, rules, and regulations of the City and any Federal, State or local governmental entity having jurisdiction in effect at the time service is rendered.

3.5.2 *Licenses, Permits, Fees and Assessments.* Authority shall obtain at its sole cost and expense such licenses, permits, registrations, and approvals as may be required by law for the performance of the work required by this Agreement. Authority shall have the sole obligation to pay for any fees, assessments and taxes, plus applicable penalties and interest, which may be imposed by law and arise from or are necessary for the Authority's performance

of the work required by this Agreement, and shall indemnify, defend and hold harmless City, its officers, employees or agents of City, against any such fees, assessments, taxes penalties or interest levied, assessed or imposed against City hereunder.

3.5.3 *Protection and Care of Work and Materials.* Authority shall adopt reasonable methods, including providing and maintaining storage facilities, during the life of the Agreement to furnish continuous protection to the work, and the equipment, materials, papers, documents, plans, studies and/or other components thereof to prevent losses or damages, and shall be responsible for all such damages, to persons or property.

3.5.4 *Assurance of Non Discrimination During Construction.* The Authority agrees that there shall be no discrimination against or segregation of, any person or group of persons on account of race, color, creed, religion, sex, marital status, sexual orientation or gender preference, national origin, or ancestry in the performance of the Authority Improvements or of this Agreement, and shall assume compliance with this provision from its contractors, subcontractors, and other performing work on the site. The Authority shall take affirmative action to ensure that employees are treated during employment without regard to their race, color, creed, religion, sex, marital status, sexual orientation or gender preference, national origin, or ancestry.

3.5.5 *Assurance of Payment of Prevailing Wages.* Authority shall pay prevailing wages as required by law, as described in California Labor Code § 1720 in the performance of the Authority Improvements. Authority acknowledges and agrees that should any third party, including, but not limited to, the Director of the Department of Industrial Relations (“**DIR**”), require Authority or any of its contractors or subcontractors to pay the general prevailing wage rates of per diem wages and overtime and holiday wages determined by the Director of the DIR under Prevailing Wage Law, then Authority shall indemnify, defend, and hold City harmless from any such determinations, or actions (whether legal, equitable, or administrative in nature) or other proceedings, and shall assume all obligations and liabilities for the payment of such wages and for compliance with the provisions of the Prevailing Wage Law.

3.6 *Integration with Remainder Site.* Authority shall coordinate the construction and maintenance of Authority Improvements located on cells outside Cell 2 (i.e., 157 Acre Site Cells 1, 3, 4, and 5, comprising approximately 110 acres, or the “**Remainder Site**”) such that Authority Improvements on Cell 2 and those on the Remainder Site will not impair current or future development. Authority shall use commercially reasonable efforts to enter exclusive negotiating agreements with one or more developers for development of the Remainder Site (the “**Remainder Developers**”), and shall facilitate cooperation among these Developers and Macerich to achieve integrated projects to maximize the potential of the development. Authority’s reasonable efforts to integrate Authority Improvements as between the Remainder Site and the Cell 2 Site shall include, without limitation:

(a) That construction activities on the Remainder Site, including dust, noise, odors, traffic impediments, etc., do not adversely affect the Project, and that the construction activity on the Cell 2 Surface Lot will not adversely affect the development of the Remainder Site.

(b) That certain “**Phased Development Plan**” or “**MAPO**” approved by DTSC, which will include mitigation measures for the phased development of cells to comply with DTSC requirements.

(c) Commencing at least twenty (20) days prior to the scheduled soft opening of the Project, and continuing thereafter, Authority will route all construction traffic for development of the other portions of the 157 Acre Site away from the Project by prohibiting such traffic on Lenardo Street east of Stamps Road and northwest of a point 300 feet north of the I-405 Freeway off-ramp.

3.7 Schedule of Performance. Authority shall commence its work pursuant to this Agreement and continue such work within the time periods therefor established in the Schedule of Performance. Extensions to the time periods specified in the Schedule of Performance may be approved in writing by the Authority Director, but not exceeding one hundred eighty (180) days cumulatively. Schedule extensions beyond such 180-day harbor period shall require written approval of Authority Board.

3.7.1 *Timing of Authority Efforts on the Remainder Site.* Authority will use commercially reasonable efforts to perform any work it is required to do on the Remainder Site promptly as necessary to permit construction and occupation of the Project in accordance with the Schedule of Performance and without interruption. Authority will keep City informed of its efforts to develop the Remainder Site and of anything that might adversely affect the Schedule of Performance so as to minimize Project disruption.

3.7.2 *Time of the Essence.* Time is of the essence in the performance of this Agreement.

3.7.3 *Force Majeure.* The time periods specified in the Schedule of Performance for performance of the work rendered pursuant to this Agreement shall be extended for Force Majeure as set forth in Section 23.2 of the Conveyancing Agreement. Authority shall ascertain the facts and the extent of delay, and extend the time for performing the services for the period of the enforced delay when, and if in the judgment of the Authority Director, such delay is justified.

3.7.4 *Term of Construction Covenants.* The term of all construction-related covenants under this Agreement shall commence upon execution of this Agreement by all Parties and terminate upon the construction completion of all Authority improvements following final inspections and approval under Section 3.4.6 above.

#### **ARTICLE IV FUNDING OF AUTHORITY IMPROVEMENTS; MACERICH ADVANCES.**

4.1 Authority Improvements to be Directly Funded Through Authority or Other Entities. The following Authority Improvements will be funded directly by the Authority or other entities, as follows:

4.1.1 *Remedial Systems.* The Authority's costs for constructing Remedial Systems shall be paid from funds held by Authority and [[the Successor Agency]]<sup>4</sup> for such purpose. The costs of operating, maintaining, repairing and replacing the Remedial Systems to be constructed and retained by Authority shall be paid through the Community Facilities District as provided in the Development Agreement.

4.1.2 *Above-Ground BPS Systems.* Authority will retain ownership of and responsibility for construction, maintenance, repair and replacement of above-ground BPS improvements (e.g., venting systems and gas monitoring systems), but operating and maintenance expenses can be recovered through the Community Facilities District described in the Development Agreement.

4.1.3 *Public Infrastructure Obligations.* Pursuant to this Agreement, Authority is agreeing to construct certain "Infrastructure Obligations" of City described in Recital M to the Development Agreement, which include the Offsite Improvements and are to be built by Authority and then, after delivery and acceptance, operated and maintained by the appropriate public agency in accordance with the **Responsibility Matrix, Exhibit "XX."** The total estimated cost of such Offsite Improvements is approximately \$23,350,000. Macerich is making advances (the "**Offsite Advances**") to pay a portion of the costs of the Offsite Improvements included therein pursuant to Section XX of this Agreement. Authority is paying for the construction of the remaining portion of the Offsite Improvements with its own funding.

4.1.4 *Site Development Improvements.* The Site Development Improvements are described in Section 3.2 and are being constructed and maintained by Authority, but all Site Development Costs, including for future maintenance and repair will be advanced or reimbursed by Macerich (the "**Site Development Advances**") in accordance with Section 6 of the Conveyancing Agreement, subject to reimbursement through the Sales Tax Financing Assistance pursuant to Section 7 of the Conveyancing Agreement, and as described in this Article IV.

4.2 Macerich Recovery of Advances. The Offsite Advances in Section 4.1.3 and Site Development Advances in Section 4.1.4 (collectively the "**Advances**") made by Macerich, together with interest thereon, are to be repaid to Macerich over time via the Sales Tax Assistance Payments, subject to certain limitations, all as described below. City acknowledges that Authority's ability to make these payments will depend on City's making payments to Authority in the amounts payable by Authority to Macerich pursuant to Section 7 of the Conveyancing Agreement, subject to the conditions and limitations set forth in that Section 7 (the "**Sales Tax Assistance Payments**"), and thus Authority is relying on this Agreement in entering into the Conveyancing Agreement. In the event of any conflict between the terms of this Article IV and Section 7 of the Conveyancing Agreement, the terms of the Conveyancing Agreement shall govern.

#### 4.3 Rationale for Reimbursement of Advances.

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<sup>4</sup> *Why is Successor Agency still holding any such funds? What approvals or other steps are required to move them from Successor Agency to Authority??*

4.3.1 *Fundamental Assumptions.* Because the 157 Acre Site, including the Cell 2 Subsurface Lot, is a contaminated and poorly-compacted landfill subject to the RAP, the Parties acknowledge that development of the Project on the Cell 2 Site would be financially infeasible unless the Cell 2 Site itself were very substantially remediated and improved to address both its environmental and compaction issues. Additionally, Authority has a responsibility under the RAP to remediate the 157 Acre Site and has substantial funds to do so. Authority believes that the sales tax revenues to be generated by the Project, as well as the secondary benefits of economic redevelopment in this area of the City spurred by development of the Project, justify the expenditure of substantial funds to address those issues so as to permit such development.

4.3.2 *Sales Tax Assistance to Make Project Feasible.* The need for the Sales Tax Assistance is based upon the fact that a developer would not proceed with the Project without a reasonable assurance that it can achieve a reasonable rate of return on its costs to build the Project, *i.e.*, net operating income from the Project representing at least the “**Required Return**” (as defined in Section 4.6.4 below). Inability to achieve the Required Return for the Project would produce a financial “**Feasibility Gap**” (as defined in Section 4.6.5 below). Macerich has estimated that it will achieve the Required Return only if Authority pays the cost of the Site Development Improvements. Authority does not currently have funds to pay for the Site Development Improvements, and therefore Macerich has agreed to make the Site Development Advances as described in Section 4.1.4 above. To reimburse the Site Development Advances (and Offsite Advances), the Parties have negotiated the Sales Tax Assistance Payments described herein. The Sales Tax Assistance Payments are intended to bridge the financial Feasibility Gap, subject to the limitations set forth in Section 4.6 below.

4.4 Total Recovery Amount; Recovery Terms. For the foregoing reasons, Macerich has agreed in the Conveyancing Agreement to make the Offsite Advances and the Site Development Advances on the terms and conditions described in the Conveyancing Agreement (described in Section 4.2 above). The total amount of the Offsite Advances and Site Development Advances actually made, plus interest thereon as described in Section 4.4.2 below, shall be the “**Total Recovery Amount**”. Authority shall pay to Macerich the Total Recovery Amount, to the extent there is a Feasibility Gap, from sales taxes (the “**Sales Tax Assistance Payments**”) on the following terms and conditions (the “**Recovery Terms**”):

4.4.1 *Limited by Feasibility Gap.* That portion of the Total Recovery Amount comprised of the cost of the Site Development Advances cannot exceed the Feasibility Gap (as defined in Section 4.6.5).

4.4.2 *Interest.* Interest shall accrue on the Offsite Advances and the Site Development Advances at the rate of 6% per annum compounded monthly, accruing from the date of each advance until repaid (such interest being included in the Total Recovery Amount).

4.4.3 *Sales Tax Limit.* Payments of interest and principal shall be made from any source available to Authority, in installments equal to fifty percent of the sales taxes received by the City accruing from the Project, beginning with the first dollar of such sales taxes received by the City until the Total Recovery Amount and all interest accrued thereon is paid in full, subject to the Feasibility Gap and other limitations below. In consideration of the substantial



benefits to the City from the development of the Project, the City is concurrently herewith entering into this Agreement to pay over to Authority sales taxes received by the City in the amounts payable by Authority.

4.4.4 *Reduction in Assistance Without Phase II.* If construction has not commenced on Phase II by the seventh anniversary of the Grand Opening of Phase I of the Project, then, from and after the date of such seventh anniversary, the foregoing payment rate of *fifty* percent of the sales taxes received by the City accruing from the Project shall be changed to *forty-five* percent of the sales taxes received by the City accruing from the Project from and after such seventh anniversary. If by the tenth anniversary of the Grand Opening of Phase I of the Project Macerich commences construction on Phase II, then such payment rate shall be adjusted back to *fifty* percent of the sales taxes received by the City accruing from the Project from and after the Grand Opening of such Phase II.

4.4.5 *Term.* The reimbursement term (“**Reimbursement Term**”) commences on the date of Macerich’s first receipt of sales tax reimbursements from the Project and ends on the twenty-fifth anniversary of such date, subject, however, to adjustment pursuant to Section 4.6 below. If and to the extent that the foregoing payments are insufficient to fully repay the Total Recovery Amount, the portion of the balance unpaid at the expiration of the Reimbursement Term shall be forgiven.

4.4.6 *Application.* Reimbursement payments shall be deemed applied first to accrued interest on, and then principal of, advances for Offsite Improvements, and then to accrued interest on, and then principal of, advances for the Site Development Improvements.

4.4.7 *Prepayment.* There shall be no prepayment penalty.

4.4.8 *Early Termination.* The repayment obligation shall terminate and all sums then outstanding shall be forgiven if (i) the right to receive the Total Recovery Amount is transferred to an entity other than an approved transferee of the Project pursuant to Section 22 of the Conveyancing Agreement, or (ii) the Project ceases operations for more than 180 consecutive days, not including periods of non-operation caused by the City or Authority, arising from the environmental condition of the 157 Acre Site, resulting from casualty to or condemnation of any portion of the Project, or resulting from any other Force Majeure.

4.5 Authority Obligation to Obtain Sales Tax Assistance. The Project shall be deemed to be the situs of all sales occurring on the Developer Property. Authority shall use its best efforts to collect the sums due under this Agreement and otherwise enforce the terms hereof so as to ensure that it receives and can pay over to Macerich the sums it is required to pay hereunder. The administration and payment of funds shall be in accordance with Article V.

4.6 Limitation on Repayment of Recovery Amount. The Parties acknowledge that the payoff of the Total Recovery Amount through sales taxes has been projected based on reasonable good faith estimates, but the Project may exceed expectations, for instance if the overall cost of the Project is less than estimated, or the Project generates a greater than anticipated return, making the Project financially feasible even if Macerich had borne some or all of the cost of the Site Development Improvements. Authority does not want to repay the Total Recovery Amount

to the extent, if any, that the construction of the Site Development Improvements at Authority's cost would not have been required in order to make development of the Project financially feasible, or to the extent that the Total Recovery Amount has been repaid in less than the 25-year Reimbursement Term, as Macerich would then receive a windfall. Therefore, to prevent such a windfall, the Total Recovery Amount repayable by Authority shall be limited to the extent a Feasibility Gap exists, as described in this Section 4.6.

4.6.1 *Feasibility Gap.* The Site Development Advances shall be reimbursed only to the extent such costs, if actually borne by Macerich, would have caused the Project to fail to produce the Required Return (defined in Section 4.6.4 below), and thus cause a Feasibility Gap, as described in Section 4.6.5 below, and in such case, only to the extent thereof. The Feasibility Gap is the difference between the Aggregate Development Cost (defined below) and the amount that Macerich could have afforded to pay to develop the Project given the actual performance of the Project, determined using the concepts defined below. The Feasibility Gap shall be calculated at a date (the "**Calculation Date**") determined as follows:

(a) If before the tenth anniversary of the Grand Opening of Phase I of the Project, Macerich commences construction of Phase II, then the Calculation Date shall be a date selected by Authority that is not less than twelve months nor more than thirty six months after the Grand Opening of Phase II of the Project.

(b) If Macerich has not commenced construction of Phase II before the tenth anniversary of the Grand Opening of Phase I of the Project, then the Calculation Date will be the tenth anniversary of the Grand Opening of Phase I.

(c) The calculation of the Feasibility Gap will be based on the whole Project including both Phases, unless Macerich does not commence construction of Phase II by the tenth anniversary of the Grand Opening of Phase I. In such event the calculation will be based only on Phase I, and any resulting reduction in Sales Tax Assistance pursuant to Section 4.6.5 below shall be permanent.

4.6.2 *Aggregate Development Cost.* Upon the conclusion of the construction and opening of Phase I of the Project, Authority shall provide a final accounting of the Site Development Advances. Such accounting shall be updated, if necessary, at the time of determination of the Feasibility Gap as described below. The actual development cost of the entire Project, including tenant improvements, shall be determined based on the costs reported by Macerich's parent, The Macerich Company, in its SEC filings, or, if not reported in such filings, then on another financial report that has been audited by a "Big Four" accounting firm. The actual development cost of the entire Project, *plus* the total amount of Offsite Advances and Site Development Advances, shall be the "**Aggregate Development Cost**".

4.6.3 *Actual NOI.* The actual Project real estate net operating income shall be determined for the full calendar year before the Calculation Date, *excluding* any Sales Tax Assistance Payments received by Macerich and its affiliates (the "**Actual NOI**"). The Actual NOI shall be based on a financial report that has been audited by a "Big Four" accounting firm, unless there is a pending legal or regulatory challenge to such financial reporting, in which case the Actual NOI can be audited by a "Big Four" accounting firm retained by Authority.

Additionally, if Macerich has represented to any third party in connection with an acquisition or loan transaction in the six months prior to the date of determination that the Actual NOI is higher than that contained in such financial report, then such higher Actual NOI shall be utilized.

4.6.4 *Acceptable Development Cost.* The “**Acceptable Development Cost**” shall be determined by dividing the Actual NOI by the return on cost that Macerich needs to achieve in order to move forward with the Project (the “**Required Return**”), which is an amount equal to (i) 8%, increased at a rate of (ii) 4% per annum from the first anniversary of the Grand Opening of the Project to the date of determination.

4.6.5 *Feasibility Gap.* If the Aggregate Development Cost is greater than the Acceptable Development Cost, then the difference shall be the “**Feasibility Gap**”. If there is a Feasibility Gap, Authority shall be required to reimburse on account of Macerich Site Development Advances the *lesser* of (i) the aggregate amount of such advances, and (ii) the Feasibility Gap. Sales Tax Assistance payments made prior to the date of such determination shall be credited to reimbursement of Macerich advances in accordance with the Recovery Terms. If the Acceptable Development Cost is equal to or greater than the Aggregate Development Cost then Authority shall not be required to reimburse the Site Development Advances.

4.6.6 *Sample Calculation.* A “Sample Calculation of Total Recovery Amount Payments” illustrating the application of the foregoing is attached as Exhibit XX.

4.6.7 *Payments Pending Determination of Feasibility Gap.* Until the Feasibility Gap has been determined, all payments on account of the Total Recovery Amount shall be made in accordance with Section 4.4 above, with Sales Tax Assistance Payments credited first towards the Offsite Advances. Notwithstanding the foregoing, the Parties may mutually agree to make adjustments to the Recovery Terms as reasonably needed to achieve the same economic results in different ways.

4.6.8 *Adjustments for Phase II Calculations.* If upon the determination of the Feasibility Gap after Grand Opening of Phase II, the Feasibility Gap is reduced, the Total Recovery Amount shall be so limited, crediting payments already made per Section 4.6.7. If the recalculation either eliminates any further payment of the Total Recovery Amount or if an excess of payments has occurred to Macerich, Macerich shall be liable for reimbursement of the excess payment.

4.7 *Prompt Payment.* Where one of the Parties hereto is required to make a payment to the other, payments shall be made promptly, and, unless otherwise specified, in no less than thirty days after the date of delivery of written request for payment supported with appropriate documentation. Any payment not made within thirty days of the due date thereafter accrues interest compounded monthly at the rate of 8% per annum.

## ARTICLE V                      TERMS OF SALES TAX FINANCING ASSISTANCE

5.1 Quarterly Principal/Interest Accruals. City shall pay from whatever funds are available to it monies equivalent to Authority Local Sales Tax Revenues received by the City in the amount of the Sales Tax Assistance Payments, as described herein. Authority shall pay over

to Macerich the sums it receives from the City in accordance with the formula described in Article IV hereof.

5.2 Quarterly Report Preceding City Payment for Each Fiscal Quarter. Section 7.3 of the Conveyancing Agreement contains provisions relating to collection and reporting of sales tax information to assist in the determination of Sales Tax Assistance Payments. City shall fully cooperate with Authority in Authority's efforts to comply with such provisions. City and Authority shall timely procure Data and Documentation to allow their consultant to develop a Quarterly Report with respect to each Fiscal Quarter, showing:

(a) The principal and interest accruals on the Total Recovery Amounts due in that Fiscal Quarter, broken-down by Site Development Advances and Offsite Improvement Advances,

(b) Project Retail Sales for the Fiscal Quarter for which the relevant Local Sales Tax Revenues have been received by the City,

(c) Local Sales Tax Revenues paid to City by SBE for the Fiscal Quarter,<sup>5</sup> and

(d) The Sales Tax Assistance Payment due to Macerich for that Fiscal Quarter.

(e) Remaining balance on the unpaid Total Recovery Amount.

The SBE may not make its true up payment until three months following the end of the Quarter and it can take two more months for the consultants to provide the Data and Documentation for the Report to City<sup>6</sup>. City and Authority hereby agree to use their commercially reasonable best efforts to cause their consultant to prepare the Quarterly Reports within one hundred fifty (150) days of the end of the relevant Fiscal Quarter.

5.3 City's Agreement to Pay to Authority Amount Equal Sales Tax Assistant Payment (City Payment) Following Approved Quarterly Report. Upon receipt of a Quarterly Report by City, the City shall promptly pay over to Authority the City Payment for the Fiscal Quarter as identified in the Quarterly Report. The City Payment shall be paid by City to Authority no more than fifteen (15) days following receipt of each Quarterly Report.

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<sup>5</sup> City needs to provide to MAC ASAP whatever language it will require in Project leases to authorize this disclosure.

<sup>6</sup> Example using recent 3<sup>rd</sup> Qtr 2017:

- City does not receive detailed information from the state, but from its consultant, HdL. 3<sup>rd</sup> quarter 2017 ended September 30.
- City received its 3<sup>rd</sup> quarter true up payment from the state on December 29 (90 days from end of quarter). A check with no report, and no data.
- City received the data for 3<sup>rd</sup> quarter from HdL on February 22, or 55 days after the payment was received.
- After receiving the data, City believes it can pay Authority within 15 days, or 70 days from when city received the payment, and 160 days from end of quarter.

5.4 Conditions Precedent to Payment of City Payments. City's obligations to make City Payments to Authority are contingent upon the satisfaction of the following conditions precedent:

- (a) The Project Agreements having become effective, and thereafter the Project is completed and a Certificate of Completion is issued;
- (b) No grounds for withholding have arisen under Section 5.7;
- (c) SBE's provision to City's consultants of sufficient Data and Documentation for the subject Project Retail Sale operations as may reasonably be required to allocate Local Sales Tax Revenues received by the City to the Project;
- (d) City having actually received the Local Sales Tax Revenues.

5.5 Authority's Agreement to Remit City Payments to Macerich; Payment Protocol. Within twenty-two (22) days following receipt of the City Payment from City, Authority shall remit the City Payment to Macerich. If there is a dispute regarding the amount of any such pass-through payment from Authority to Macerich, City shall pay to Authority and Authority shall pay to Macerich the undisputed amount within the timeframes set forth in this Agreement, and the disputed portion, to the extent determined to have been due, shall accrue interest at eight percent (8%) per annum. Pursuant to the Conveyancing Agreement, if Macerich desires to dispute any such payment, it must do so within ninety (90) days of receipt of the disputed payment or it shall be deemed to have waived the right to dispute such payment. The Authority's remittance of the City Payment hereunder is subject to the following:

- (a) *Application.* Payments shall be deemed applied first to accrued interest on, and then principal of, Macerich Advances for the Offsite Improvements, and then to accrued interest on, and then principal of, Macerich Advances for the Site Development Improvements.
- (b) *Prepayment.* There shall be no prepayment penalty.

5.6 Recaptures by State. If at any time during or after the Loan Term, the SBE determines that all or any portion of Local Sales Tax Revenues paid to the City were improperly paid (an "improper allocation"), then the portion of such Local Sales Tax Revenue included in any City Payment(s) shall be refunded or credited against future City Payment(s). If the SBE requires repayment of, or offsets against future Local Sales Tax Revenues from the Project, or otherwise demands recapture of improperly allocated and/or paid City Payments, then City and Authority agree to promptly so notify Macerich in writing such that Macerich shall, within thirty (30) calendar days after written demand, repay all City Payments (or applicable portions thereof) theretofore paid to Macerich that are attributable to such improper allocation, all as further specified in the Conveyancing Agreement.

5.6.1 *Prior to Remittance of City Payment to Macerich.* If the SBE determines that all or any portion of the Local Sales Tax Revenues from the Project are improper allocations *prior* to a City Payment being remittance to Macerich, City and Authority shall promptly notify Macerich in writing of such SBE re-determination, use all reasonable efforts to resolve such improper allocation with SBE, and/or adjust or offset any City Payment and Quarterly Report as

needed to resolve the improper allocation, prior to Authority remitting a City Payment to Macerich. All deadlines for remittance of the challenged portion of such City Payment(s) shall be held in abeyance pending such resolution of the improper allocation.

5.6.2 *Defense of SBE Proceedings.* In the event the SBE questions the correctness of the allocation of Local Sales Tax Revenues to City or determines that there has been an improper allocation to City, City, with Authority's reasonable cooperation, will promptly use its reasonable good faith efforts to pursue its available administrative remedies to recover all payments due to the City from the SBE. For purpose of this paragraph, administrative proceedings include all SBE meetings, conferences and appeals before SBE Board Members. Authority shall cooperate fully with City and its attorneys, and shall have the right to be present at and participate in all SBE administrative proceedings.

5.7 Withholding of City Payments for Indemnification and Disputes. City may withhold from any City Payment any amount payable to Authority to the extent that any amounts of such City Payment or underlying Local Sales Tax Revenues are in dispute with SBE, until resolution of such dispute. If Macerich defaults on its obligation to advance or reimburse to Authority amounts it is required to pay for Authority repairs, replacements and maintenance of the Site Development Improvements, City shall pay such amounts to Authority, and Authority may use such amounts to cure the default, and neither City nor Authority shall be liable to Macerich therefor.

5.8 Audit of Books and Records. Either Party shall, upon no less than five (5) Business Days prior written request from the other Party, make the entirety of its books, records and Data and Documentation relating to the calculation and determination of that Party's rights and obligations under this Agreement available at no cost to the requesting Party and/or its designees (including its accountants and/or attorneys). Nothing herein shall be deemed to abridge or constitute a waiver of any Party's evidentiary rights and privileges arising pursuant to any provision of law, hereof or as otherwise ordered by any court of competent jurisdiction. Each Party shall bear the costs of its own auditors, experts and other consultants it may engage to complete its investigation of the other Party's books and records hereof.

5.9 No Reduction Agreement, Pledge or Waiver. During the Term of this Agreement, the City shall not enter into any agreement, nor waive any rights, the effect of which would be to reduce, delay, postpone, forfeit, rebate or otherwise limit the Local Sales Tax Revenues receivable by the City in any manner which would impair the City's ability to pay the Sales Tax Assistance Payments in accordance with this Agreement.

5.10 Creation of Special Fund. A special fund will be created by City, to be held separate and apart from all other funds of the City and to be known as the "Cell 2 Surface Lot Revenues Fund" (the "Fund") or by such other name as shall be designated by the City Manager of the City, into which Fund shall be deposited sales tax revenues derived by the City from the Project or other funds as designated, as shall be necessary to enable the City to satisfy the City's payment obligations under the Cooperation Agreement. Pursuant to the Cooperation Agreement, City will pay to Authority certain funds received after development of the Cell 2 Surface Lot, in exchange for Authority undertaking City's Infrastructure Obligations. Authority is entering into the Cooperation Agreement with City to carry out these obligations and to receive the financial

payments specified therein which will allow it to meet its obligations thereunder. All payment obligations of the City under the Cooperation Agreement shall be limited obligations of the City, payable solely from sales tax revenues derived from the Project on deposit in the special fund established pursuant to this Section 5.10.

## **ARTICLE VI            CITY ADMINISTRATIVE OBLIGATIONS.**

6.1    City Appointment of City Personnel to Authority. Pursuant to this Agreement, City hereby agrees to appoint certain City staff and administrative personnel to serve the Authority for the purposes of rendering the staffing services needed by Authority under the Project Agreements. City personnel appointed to the service of Authority for performance of its obligations under the Project Agreements include, without limitation, the following personnel: the City Manager and the Assistant City Manager (the “**Personnel**”), and such other personnel as the City Manager may from time to time designate. By entering into this Agreement and performing its obligations hereunder, City does not assume and shall not become responsible in any way for the performance of any Authority obligations arising out of the Project Agreements.

6.2    Provision of Services. City shall provide the Personnel to Authority and shall make such Personnel available as may be reasonably determined by Authority under the Project Agreements. At all times during the term of the Project Agreements, Authority shall be solely responsible for determining the number and identity of the Personnel for managing, overseeing and performing the work required of Authority under the Project Agreements, and for determining the timing, means and methods of such work.

6.3    Replacements. In the event that any of the Personnel become unavailable to work on Authority’s obligations, or Authority desires additional Personnel from City, then City shall in cooperation with Authority seek qualified replacements or new Personnel as may be reasonably requested by Authority from time to time, and to recommend to Authority alternative or new qualified Personnel to replace the existing Personnel, as applicable, which Personnel shall be selected by Authority in its sole discretion and hired by City. Existing or new Personnel may consist of third-party professional services consultants or contractors retained by City. City shall not provide to Authority any Personnel that are not approved for hire by Authority.

6.4    Personnel Work Product. Personnel shall at all times be subject to the sole and exclusive direction of Authority in connection with Project Agreement administrative activities and Authority obligations. To the extent Personnel produce any work product, including intellectual property, relating to Authority or the Project, such work product shall be the sole and exclusive property of Authority.

## **ARTICLE VII            INSURANCE AND INDEMNITIES.**

7.1    Insurance Program. Authority has obtained extensive environmental insurance as described in the recitals. Authority shall continue to maintain such insurance and shall comply with the other requirements for insurance set forth in the “Description of Insurance Program” set forth in the Project Agreements. To the extent feasible, the City shall be an additional insured to such insurance program.

7.2 Indemnity and Release Obligations. Authority will be required to protect, defend, indemnify, release and hold harmless City and its elected officials, officers, employees, volunteers and agents (“**Indemnified Parties**”) from and against any and all Claims or Litigation arising out of or resulting in any way from: (i) Authority’s performance of this Agreement, including the performance of any Personnel working on Authority’s behalf, (ii) any claims for personal injury, loss, or damage arising during construction or thereafter due to Macerich’s construction, development or operations upon the Cell 2 Site or Authority’s construction, development or operations of Authority Improvements; (iii) any repair, cleanup or detoxification, or preparation and implementation of any removal, remediation, response, closure, or other plan (regardless of whether undertaken due to governmental action) concerning any hazardous waste and/or household hazardous waste (as such terms will be broadly defined) deposited after the commencement of Project or Authority Improvement construction, and (iv) Claims pursuant to Section 107(e) of the Comprehensive Environmental Response, Compensation and Liability Act, “CERCLA”, 42 U.S.C. Section 9607(e), or California Health and Safety Code Section 25364, the Resource Conservation and Recovery Act, “RCRA”, 42 U.S.C. Sections 6901 et seq. or other similar federal, state or local law or regulation resulting from Macerich actions or those of its contractors, tenants, or invitees. Such indemnification shall not cover any Claim due to the negligence or willful misconduct of the Indemnified Parties or to the extent the Indemnified Parties have received compensation from an insurance carrier for the full amount of such Claim;

7.2.1 Provided, however, it is acknowledged and agreed that the obligations of Authority under this Section shall not apply to the extent that coverage for defense and payment of loss is provided to City, as applicable, under any of the insurance programs obtained and maintained by Authority or Macerich as provided in the Conveyancing Agreement. Performance by such insurers shall be deemed to satisfy the obligations of Authority under this Section.

7.2.2 Furthermore, the obligations of Authority under this Section shall not apply to the extent that City’s losses for Claims or Litigation are covered by Macerich’s indemnity obligations to City, as applicable, under any of the other Project Agreements. To the extent Macerich performs indemnity and defense obligations to the City under Project Agreements, such indemnity and defense by Macerich shall relieve the indemnity obligations of Authority under this Section.

7.2.3 Authority shall remain obligated to fully defend and indemnify City for Claims or Litigation not otherwise offset by insurance or Macerich’s indemnity/defense obligations in other Project Agreements.

7.3 Authority’s Contractors’ Claims. In the event any of Authority’s contractors, sub-contractors or other parties retained by Authority provides a notice of intent to make a claim against Authority relating to this Agreement or the Authority Improvements, Authority shall, in accordance with Authority’s procedures, notify City of the notice of intent and City shall cooperate with Authority, at Authority’s expense, in analyzing and resolving the claim within a reasonable time; provided, however that Authority shall not cause City to become a party to any such claim. Authority shall defend, indemnify, and hold the City harmless in the event of any claim brought against City due to Authority Improvement construction and design.

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7.4 Survival. All indemnity provisions set forth in this Agreement shall survive termination and/or expiration of this Agreement for any reason.

## ARTICLE VIII      DEFAULTS & ENFORCEMENT.

8.1 Disputes; Default; Cure Periods. Either Party's failure or unreasonable delay to perform any term or provision of this Agreement constitutes a default. In the event of a default, the injured Party shall give written notice of such default to the defaulting Party, specifying the default and stating how such default may be cured (a "**Notice of Default**"). Delay in giving such notice shall not constitute a waiver of the default. If the defaulting Party fails to cure the default within thirty days after receipt of a Notice of Default, or, if the default is of a nature that cannot be cured within thirty days, the defaulting Party fails to commence to cure the default within said thirty days and thereafter diligently prosecute such cure to completion, then the non-defaulting party shall have the right to seek all judicial relief caused by such default.

8.2 Equity. Due to the complex nature of the transaction contemplated herein for the purpose of remediating the condition of the property and facilitating economic development of the City as described above, and due to the difficulty and speculative nature of establishing certain legal damages, or special, consequential or other damages in the event of a default, the parties agree that in any action for relief by the parties or any third party benefitting from the transaction equitable relief shall also be available to the parties or such third party.

8.3 Legal Actions. Either Party may institute a legal action to require the specific performance or injunction of any default for any uncured default, or to obtain any other equitable remedy consistent with the purpose of this Agreement. The following provisions shall apply to any such legal action:

8.3.1 *Jurisdiction and Venue.* Legal actions must be instituted and maintained in the Superior Court of the County of Los Angeles, State of California, or in the United States District Court for the Southern District of California. Parties specifically waive any rights provided to them pursuant to California Code of Civil Procedure §394 or federal or state statutes or judicial decisions of like effect.

8.3.2 *Applicable Law.* The laws of the State of California shall govern the interpretation and enforcement of this Agreement.

8.3.3 *Attorneys' Fees.* In the event that any action or proceeding is commenced by either the Authority or City against the other to interpret or enforce any provision of this Agreement, the prevailing Party in any such action or proceeding shall be entitled to recover from the non-prevailing Party, in addition to all other relief to which the prevailing Party may be entitled, the prevailing Party's reasonable attorneys' fees and litigation costs, including fees for use of in-house legal counsel by a Party, as established by a court of law. Recoverable costs and fees shall include those incurred on appeal and in the enforcement of any judgment.

8.4 Interest. In the event any Party fails to make any payment when due, the unpaid amount shall bear interest from the due date until the date of payment at the rate is 8% per annum compounded monthly.

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8.5 Enforcement by Third Party Beneficiary. The Parties agree that Macerich is the intended Third Party Beneficiary of the provisions of this Agreement for the payment of the City Payments to Authority to enable the Authority to make Sales Tax Assistance Payments to Macerich, pursuant to the Conveyancing Agreement. In the event of any failure by City to make payment to Authority, and if Authority fails to timely act to obtain payment from City, Macerich shall have the same rights as the Authority hereunder to enforce Authority's rights against City.

## ARTICLE IX MISCELLANEOUS

9.1 Amendment of Agreement. Any amendment, modification, waiver or release to or of this Agreement (each, an "**Amendment**") shall only be by written agreement between the Parties, and consented to by Macerich as third party beneficiary. No modification to this Agreement to which Macerich has not consented in writing shall have any force or effect unless and until Macerich consents to such Amendment in writing. City and Authority agree to consider reasonable requests for amendments to this Agreement that may be made by any of the Parties hereto, Macerich, lending institutions, bond counsel or financial consultants.

9.2 Restrictions on Transfer. Neither Party hereto shall transfer or assign its rights, obligations or interests under this Agreement, directly or indirectly, voluntarily or by operation of law, without the prior written approval of the non-transferring Party subject to the transfer provisions of the Project Agreements.

9.3 Execution in Counterparts. This Agreement may be executed in several counterparts, each of which shall be deemed an original, and all of which shall constitute but one and the same instrument.

9.4 Business Days. Any act or thing required to be done or exist on any date set forth herein which does not constitute a Business Day in any year shall be deemed to be done or to exist on such date if such act or thing is done or exists on the next date, which constitutes a Business Day.

9.5 Consent. Whenever consent or approval of any Party is required under this Agreement, that Party shall not unreasonably withhold, delay or condition such consent or approval unless a different standard is otherwise provided by a specific provision of this Agreement.

9.6 Notices and Demands. All notices or other communications required or permitted between City and Office Depot under this Agreement shall be in writing, and may be (i) personally delivered, (ii) sent by United States registered or certified mail, postage prepaid, return receipt requested, (iii) sent by telecopy, or (iv) sent by nationally recognized overnight courier service (e.g., Federal Express), and addressed to the Parties at the following addresses:

**Authority:** Carson Reclamation Authority  
701 East Carson Street  
Carson, California 90745  
Attention: City Manager  
Email: [kfarfsing@carson.ca.us](mailto:kfarfsing@carson.ca.us)  
Telephone: (310) 952-1728

With a copy to: Aleshire & Wynder LLP  
18881 Von Karman Avenue, Suite 1700  
Irvine, CA 92612  
Attention: Sunny Soltani, Esq.  
Email: [ssoltani@awattorneys.com](mailto:ssoltani@awattorneys.com)  
Telephone: (949) 223-1170 ext. 5407

And to: The Macerich Company  
401 Wilshire Boulevard, Suite 700  
Santa Monica, CA 90402  
Attn: Ann C. Menard, Esq.

**City:** City of Carson  
Same address, contact and copy information as for Authority.

With a copy to: The Macerich Company  
401 Wilshire Boulevard, Suite 700  
Santa Monica, CA 90402  
Attn: Ann C. Menard, Esq.

Any notice not so given by registered or certified United States mail shall be deemed to have been received on the second Business Day after the same is deposited in the United States mail. Any notice not so given by registered or certified mail, such as notices delivered by telecopy or courier service (e.g., Federal Express) shall be deemed received upon actual receipt of the same by the Party to whom the notice is given.

9.7 Nonliability of Officials and Employees. No board member, official, contractor, consultant, attorney or employee of either Party shall be personally liable to the other or any voluntary or involuntary successors or assignees, or any lender or other party holding an interest in this Agreement, in the event of any Default or breach by either Party, or for any amount which may become due to a Party or to its successors or assignees, or on any obligations arising under this Agreement.

9.8 Entire Agreement. With the exception of the identified Project Agreements, this Agreement contains all of the terms and conditions agreed upon by the Parties. No other understanding, oral or otherwise, indirect conflict with this Agreement shall be deemed to exist or to bind any of the Parties hereto. All prior written or oral offers, counteroffers, memoranda of understanding, proposals and the like are superseded by this Agreement.

9.9 Interpretation. City and Authority acknowledge that this Agreement is the product of mutual arms-length negotiation and drafting and that both Parties have been represented by

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legal counsel in the negotiation and charting of this Agreement. Accordingly, the rule of construction which provides that ambiguities in a document shall be construed the drafter of that document shall have no application to the interpretation and enforcement of this Agreement. In any action or proceeding to interpret or enforce this Agreement, the finder of fact may refer to any extrinsic evidence not in direct conflict with any specific provision of this Agreement to determine and give effect to the intention of the Parties with respect to any ambiguities in this agreement.

9.10 Successors and Assigns. The terms, covenants and conditions of this Agreement shall be binding upon and inure to the benefit of the Parties hereto and their voluntary and involuntary successors and assigns.

9.11 Third Party Beneficiaries. Macerich shall be considered a third party beneficiary under this Agreement. Except for such third party beneficiary, no other person or entity not a signatory to this Agreement shall have any rights or causes of action against any Party to this Agreement as a result of that Party's performance or non-performance under this Agreement.

9.12 Severability. City and Authority declare that the provisions of this Agreement are severable. If it is determined by a court of competent jurisdiction that any term, condition or provision hereof is void, voidable, or unenforceable for any reason whatsoever, then such term, condition or provision shall be severed from this Agreement and the remainder of the Agreement enforced in accordance with its terms.

9.13 Further Acts and Releases. City and Authority each agree to take such additional acts and execute such other documents as may be reasonable and necessary in the performance of their obligations hereunder.

9.14 Relationship of Parties. The Parties shall not be deemed in a relationship of partners or joint ventures by virtue of this Agreement, nor shall either Party be an agent, representative, trustee or fiduciary of the other. Neither Party shall have any authority to bind the other to any agreement.

9.15 Authority. The persons executing this Agreement on behalf of the Parties hereto warrant that (i) such Party is duly organized and existing, (ii) they are duly authorized to execute and deliver this Agreement on behalf of said Party, (iii) by so executing this Agreement, such Party is formally bound to the provisions of this Agreement, and (iv) the entering into this Agreement does not violate any provision of any other Agreement to which said Party is bound or law or regulation applicable to such Party. This Agreement shall be binding upon the heirs, executors, administrators, successors and assigns of the Parties.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the Parties hereto execute this Agreement:

Dated: \_\_\_\_\_, 20\_\_\_\_

**CITY OF CARSON**, a general law  
California municipal corporation

By: \_\_\_\_\_  
\_\_\_\_\_, Mayor

Attest:

\_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Sunny K. Soltani  
City Attorney

Dated: \_\_\_\_\_, 20\_\_\_\_

**CARSON RECLAMATION  
AUTHORITY**, a California Joint Powers  
Authority

By: \_\_\_\_\_  
\_\_\_\_\_, Chair

Attest:

\_\_\_\_\_  
Authority Secretary

APPROVED AS TO FORM:

\_\_\_\_\_  
Sunny K. Soltani

Authority Counsel

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