CITY-DEVELOPER AGREEMENT

(SJMC TITLE 27)

BETWEEN

THE CITY OF SAN JOSE

AND

FAKE DEVELOPER, LLC, a Delaware Limited Liability Company

Agreement Date: _____

"Effective Date"

Developer: **FAKE DEVELOPER, LLC, a Delaware Limited Liability Company**

"Developer"

Right-of-Way Work Permit: **20-114525 IP**

"Work Permit"

Development Permit: T21-025 **Approval Date:** August 17, 2021 (Where applicable)

"Planning Permit"

Estimated Total Cost of Public Improvements: **$250,000**

Estimated Total Cost of Monumentation: **$3,256**

Security:

Bond Nos.: 1223321123

Surety: Fake Title Company

- OR -

Irrevocable Standby Letter of Credit No.: _____

Financial Institution: _____

- OR -

Cash/Certificate of Deposit, Agreement Dated: _____

Financial Institution: _____

- AND -

Clean-Up Deposit Amount: $50,000.00

(SJMC 27.38)

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Designees for Notices under the Agreement:

CITY:	Public Works Director/City Engineer City of San José 200 East Santa Clara Street San José, CA 95113-1905	**Tel.**: (408) 535-3555
CITY INSPECTOR:	**Greg Martinez**	**Tel.**: (408) 535-3555
DEVELOPER:	_____	**Tel.**: _____
SURETY:	_____	**Tel.**: _____

This City-Developer Agreement ("Agreement") is made and entered into by and between the City of San José, a municipal corporation of the State of California ("City") and the Developer.

RECITALS

WHEREAS, the Developer has applied for and obtained land use approvals from the City for that certain development project described in the Planning Permit ("Project").

WHEREAS, the Developer has requested that the City approve the Planning Permit according to the applicable City laws, rules and regulations relating to such permits, including the completion of public improvements as a condition of development that shall be secured through an agreement with the City.

WHEREAS, to satisfy the condition for issuance of the Planning Permit, Developer desires to enter into this Agreement, wherein the Developer promises to complete all of the public improvements and provide the City with the security instruments, all as set forth herein.

WHEREAS, the Developer has prepared, and the City's Director of Public Works has approved, improvement plans showing the public improvements that the Developer is required to complete as a condition of the City's approval of the Project ("Public Improvements").

WHEREAS, the City Engineer has approved an estimate of the cost of construction of the Public Improvements, as set forth in the attached **Exhibit A**, and as may be modified in accordance with this Agreement.

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NOW, THEREFORE, in consideration of the City's approval of the Planning Permit, the Developer and City agree as follows:

1. Definitions.

As used in this Agreement, the following terms shall have the meanings set forth below:

"**Acceptance Date**" means the date that the City records the Notice of Acceptance and the Public Improvements are deemed complete.

"**Agreement**" means this City-Developer Agreement between the City and the Developer, including the exhibits and attachments hereto.

"**Applicable Laws**" means (1) any federal, state, local law, code or regulation, including the Municipal Code; (2) any formally adopted and generally applicable rule, determination, interpretation of law, standard, policy, or other order of any governmental body having appropriate jurisdiction; (3) any applicable governmental approval; and (4) any consent order or decree, settlement agreement or similar agreement between the City and any governmental body, in each case as amended and having the force of law over this Agreement or the Project.

"**Call-Back Obligation**" has the meaning specified in Section 14.

"**Call-Back Period**" has the meaning specified in Section 14.

"**City**" means the City of San José, a municipal corporation of the State of California.

"**City Engineer**" means the City's Director of Public Works or their designee.

"**City Indemnitees**" has the meaning specified in Section 18.

"**Claims**" has the meaning specified in Section 18.

"**Completion Date**" means the date that is twelve (12) months after the Effective Date, subject to any extensions as expressly set forth in this Agreement.

"**Developer**" means the legal entity or entities identified on Page 1 of this Agreement in the section entitled "Developer."

"**Effective Date**" means the date this Agreement is executed by the City as written on Page 1.

"**Engineer's Estimate**" means the City Engineer's approved estimate of the cost of construction of the Public Improvements, as set forth in **Exhibit A**, and as may be modified in accordance with this Agreement.

"**Environmental Law**" means any and all federal, state, and local laws, statutes, ordinances, regulations, resolutions, decrees, and/or rules now or hereinafter in effect, as may be amended from time to time, and all implementing regulations, directives, orders, guidelines, and federal or state court decisions, interpreting, relating to, regulating or imposing liability (including, but not limited to, response, removal, remediation and damage costs) or standards of conduct or performance relating to industrial hygiene, occupational, health, and/or safety conditions, environmental conditions, or exposure to, contamination by, or clean-up of, any and

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all Hazardous Materials, including without limitation, all federal or state super-lien or environmental clean-up laws.

"**Environmental Warranty**" means the written warranty with respect to the environmental condition of the Subject Property, in the form attached to this Agreement as **Exhibit D**.

"**Event of Default**" means: (i) any event or breach of this Agreement identified in Section 16.A; and/or (ii) any other breach of the Agreement as specified in Section 16.B. that is not cured in accordance with Section 16.C.

"**Force Majeure Event**" means for purposes of this Agreement, any event or condition that: (i) is beyond the Developer's control; (ii) prevents the Developer's performance of this Agreement; and (iii) arises from one or more of the following:

A. Naturally occurring events constituting an act of God;

B. Unusually severe and abnormal climactic conditions (as compared with the five-year average weather statistics compiled by the United States National Oceanic and Atmospheric Administration for the time of year and locality of the Subject Property);

C. Strikes, stoppages or boycotts that affect a specific trade on a national or regional level, to the extent not caused by the improper acts or omissions of the Developer or any of its contractors or subcontractors;

D. A local, state or federal declaration of emergency based on an epidemic or pandemic, including any quarantine or other health-related orders, directives, regulations, laws or other requirements implemented in response to such epidemic or pandemic; or

E. Orders issued by any governmental body having jurisdiction over the Project, to the extent not caused by the improper acts or omissions of the Developer or any of its contractors or subcontractors.

"**Hazardous Material**" means: (a) substances, products, by-products, waste, or other materials of any nature or kind whatsoever which is or becomes listed, regulated or addressed under any Environmental Law; (b) materials, substances, products, by-products, waste or other materials of any nature or kind whatsoever whose presence in and of itself or in combination with other materials, substances, products, by-products or waste may give rise to liability under any Environmental Law or any statutory or common law theory based on negligence, trespass, intentional tort, nuisance, strict or absolute liability or under any reported decisions of any state or federal court; and (c) substances, products, by-products, wastes or other materials which may be hazardous or harmful to the air, water, soil, environment or affect industrial hygiene, occupational, health, safety and/or general welfare conditions, including without limitation, petroleum and/or asbestos materials, products, by-products, or waste.

"**Improvement Plans**" means the plans, drawings and specifications approved by, and as on file with, the City Engineer on the Effective Date showing the Public Improvements,

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including by reference the City's standard specifications and details for the construction and installation of improvements and any terms and conditions included with the plans, drawings and specifications.

"**Improvement Security**" has the meaning specified in Section 4.

"**Monument Security**" has the meaning specified in Section 4.

"**Municipal Code**" means the Municipal Code of the City of San José as amended from time to time.

"**Notice of Acceptance**" means the written document certifying the completion and acceptance of the Public Improvements that has been executed by the City Engineer and recorded with the County of Santa Clara.

"**Payment Security**" has the meaning specified in Section 4.

"**Performance Security**" has the meaning specified in Section 4.

"**Planning Permit**" means the Development Permit shown on Page 1 of this Agreement.

"**Project**" means the Developer's real property development project as described in the Planning Permit.

"**Project Inspector**" means the person identified on Page 2 of this Agreement as the City Inspector.

"**Project Warranties**" has the meaning specified in Section 14.

"**Public Improvements**" means the public improvements shown in the Improvement Plans that the Developer is required to complete in accordance with this Agreement.

"Public Works Clearance" means the written authorization from the City's Public Works Department that is issued after the City's approval of the Improvement Plans, receipt of all documents properly completed and payment of all fees incident to the Planning Permit, and satisfaction of all conditions identified in the Planning Permit required prior to clearance, which authorization allows the Developer to obtain a building permit for and commence construction of the Project.

"Reimbursable Improvements" means those portions of the Public Improvements that are subject to reimbursement by the City, if any, in accordance with and as identified in **Exhibit B** hereto.

"**Subject Property**" means any property to be dedicated to the City pursuant to the Planning Permit and/or upon which the Public Improvements are to be constructed.

"**Surety**" means the legal entity or entities identified on Page 1 of this Agreement as "Surety" or "Financial Institution" in the section entitled "Security" that have provided the Improvement Security.

"**Third-Party Property**" means any real property that the Developer does not own in fee simple absolute.

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"**Warranty Security**" has the meaning specified in Section 4.

"**Work Permit**" means the Right-of-Way Work Permit shown on Page 1 of this Agreement issued by the City to the Developer pursuant to Chapter 13.36 of the Municipal Code.

2. Developer's Obligations. In performing this Agreement, Developer shall be responsible for all of the following, in addition to any other obligations set forth elsewhere in this Agreement:

A. Furnish all labor, materials, equipment and supplies necessary to complete the Public Improvements in conformity with the Improvement Plans and this Agreement;

B. Except as specifically stated otherwise in this Agreement with respect to a particular obligation, bear all costs and expenses under this Agreement;

C. Pay the City all fees required as a condition of approval of the Project and/or pursuant to Applicable Laws, including those fees set forth in **Exhibit C**, prior to the City's issuance of a Public Works Clearance for the Project. The fees may change and require recalculation by the City at any time prior to payment in full; and

D. Install all required public monuments prior to the Acceptance Date.

3. Acquisition and Dedication of Real Property Interests.

A. To the extent required by the Planning Permit, Developer shall acquire and dedicate to the City all rights-of-way, easements and other real property interests necessary for the construction and installation of the Public Improvements, or pay the City's cost of acquisition.

B. If any Public Improvements will be constructed on Third-Party Property, the Developer shall not commence construction before:

(1) The owner(s) of the Third-Party Property has made an irrevocable offer of dedication to the City of appropriate rights-of-way, easements or other real property interests as determined by the City Engineer, and the Developer has obtained written authorization from the owner(s) of the Third-Party Property to allow construction and installation of the Public Improvements; or

(2) The Developer has acquired the necessary real property interests from the owners of the Third-Party Property and made an irrevocable offer of dedication to the City of appropriate rights-of-way, easements or other real property interests as determined by the City Engineer; or

(3) An order of possession in favor of the City has been issued by a court of competent jurisdiction, and the Developer has agreed in writing to comply with the order of possession.

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C. All real property interests dedicated to the City shall be free and clear of liens and encumbrances at the time of dedication. Prior to dedication, Developer shall cause all liens and encumbrances to be removed and a warranty of such clear title to be provided to the City. Nothing in this Section shall be construed as granting an extension of time to Developer under this Agreement.

4. Improvement Security. Concurrently with the execution of this Agreement, the Developer shall furnish the City with security for the purposes, in the amounts and under the conditions specified below and in Chapter 27.38 of the Municipal Code ("Improvement Security"):

A. Types and Amounts.

(1) Performance Security. To secure the Developer's faithful performance of this Agreement in an amount equal to one hundred percent (100%) of the Engineer's Estimate ("Performance Security");

(2) Payment Security. To secure Developer's payment to any contractor, subcontractor, person renting or supplying equipment, or furnishing labor and materials for the Public Improvements in an additional amount equal to one hundred percent (100%) of the Engineer's Estimate ("Payment Security");

(3) Warranty Security. To secure the Project Warranties and the Call-Back Obligation in an additional amount equal to twenty-five percent (25%) of the Engineer's Estimate ("Warranty Security");

(4) Monument Security. To secure the Developer's setting of public monuments in an additional amount equal to one hundred percent (100%) of the estimated total cost of monumentation as set forth on Page 1 of this Agreement ("Monument Security"); and

(5) Clean-Up Deposit. A certificate of deposit in an amount determined in accordance with and for the purposes specified in Section 27.38.100 of the Municipal Code.

B. Conditions.

(1) The Developer shall provide the Improvement Security on forms approved by the City and from sureties authorized by the California Insurance Commissioner to transact the business of insurance and/or financial institutions approved by the City.

(2) Notwithstanding anything to the contrary in this Agreement, in the event of Developer's default, the Developer shall be obligated to reimburse the City for the actual cost of completing the Public Improvements regardless of whether the City's cost of completion exceeds the amount of the Improvement Security.

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(3) In the event that changes to the Public Improvements or extensions of time in accordance with this Agreement cause an increase in the estimated cost of construction that exceeds ten percent (10%) of the original Engineer's Estimate, Developer shall provide new security as required by this Section for one hundred percent (100%) of the revised Engineer's Estimate.

(4) As a condition of granting any time extension under this Agreement, the City Engineer may require the Developer to furnish new Improvement Security in an increased amount to compensate for any increase in construction costs as determined by the City Engineer.

(5) If the Developer seeks to replace any security with another security, the replacement shall: (a) comply with all the requirements for security in this Agreement; (b) be submitted for approval to the City Engineer; and (c) upon the City Engineer's written acceptance, be deemed a part of this Agreement. Upon the City's acceptance of a replacement security, the City shall release the former security.

(6) The Improvement Security shall cover the Developer's obligations under any Work Permit issued for construction of the Public Improvements pursuant to Chapter 13.36 of the Municipal Code.

5. Modifications to Improvement Plans.

A. The Improvement Plans shall not be modified after the Effective Date except as follows:

(1) By mutual agreement between the City and the Developer; or

(2) By the City, if the City Engineer determines that changes are necessary to comply with Applicable Laws; or

(3) By the City, if the City Engineer determines that changes are necessary to protect the public health, safety or welfare.

B. If the Improvement Plans are modified by mutual agreement or the City grants a time extension for completion of the Public Improvements, the City's standard specifications in effect at the time the modifications are approved or time extension is granted shall apply to the Public Improvements to be constructed. If the Improvement Plans are modified for a reason set forth in Subsections 5.A.(2) or (3) above, the specifications that apply to the Public Improvements shall be those determined by the City Engineer to be necessary to comply with Applicable Laws or protect the public health, safety or welfare.

C. If the Improvement Plans are modified, the Engineer's Estimate shall be adjusted accordingly and approved by the City Engineer.

6. Time and Conditions for Commencement of Work.

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A. Developer shall not begin construction of the Public Improvements until it receives a Public Works Clearance.

B. Developer shall commence work on the Public Improvements promptly after the Effective Date. Regardless of whether and to what extent Developer has commenced work on the Public Improvements, Developer shall remain obligated to complete the Public Improvements in accordance with this Agreement.

7. Time for Completion of Work; Extensions.

A. Subject to the conditions in this Section, the Developer shall complete the Public Improvements no later than the Completion Date.

B. The Completion Date shall be extended for a period equal to the duration of a Force Majeure Event. If Developer believes a Force Majeure Event has occurred, it shall provide the City with written notice within ten (10) business days of the commencement of the Force Majeure Event. The Developer's failure to provide the City with notice of a Force Majeure Event within the foregoing time period shall constitute the Developer's waiver of any claim to an extension of the Completion Date. The Developer's notice shall identify the Force Majeure Event and its expected duration, and a summary of the impacts to the completion of the Public Improvements and the measures taken by the Developer to mitigate these impacts. Following receipt of the notice, the City Engineer shall determine in writing the period of time to be added to the Completion Date due to the Force Majeure Event.

C. The City Engineer may extend the Completion Date in six (6) month increments for good cause shown by the Developer in writing; provided, however, that no extensions shall be granted if the Public Improvements are needed for the public health, safety or welfare, or for the orderly development of the City. The City Engineer shall approve any such extension request in writing.

D. Concurrently with the City's approval of the Developer's extension request, the Developer shall pay the City the amount of the cost recovery fee then in effect for the extension.

8. Other Permits. Developer shall obtain and comply with any public or private utility easements or authorizations necessary to construct the Public Improvements. Developer also shall obtain, maintain and comply with the conditions of all permits and authorizations necessary for the construction of the Public Improvements, including, without limitation, a Work Permit under Chapter 13.36 of the Municipal Code. The Developer's obligations under any such permits and authorizations shall not relieve it of any of its obligations under this Agreement.

9. Damage to Public Improvements, Public Property or Public Utility Facilities. Prior to the Acceptance Date, the Developer shall have responsibility for the care and maintenance of, and any damage to, the Public Improvements. Neither the City nor any official, board

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and commission or member thereof, agent or employee shall be liable or responsible for any accident, loss or damage to the Public Improvements prior to the Acceptance Date.

10. Developer's Obligation to Warn Public During Construction. Prior to the Acceptance Date, and thereafter during any construction work pursuant to the Project Warranties, Developer shall give good and adequate warning to the public of any dangerous condition on the Subject Property, including, without limitation, conditions of the Public Improvements, and shall take reasonable actions to protect the public from such dangerous condition.

11. Inspection. Developer shall maintain proper facilities and safe access for inspection of the Public Improvements by City inspectors and to the shops and facilities wherein any work is in preparation. When Applicable Laws require an inspection to be made at a particular stage of construction, Developer shall not proceed with additional work until the City has inspected and approved the work. Upon completion of the Public Improvements, the Developer shall request the City's final inspection.

12. Final Acceptance of Work. After final completion and inspection of all Public Improvements in accordance with this Agreement, the City Engineer shall certify the completion and acceptance of the Public Improvements by the Notice of Acceptance. The City Engineer shall not execute or record the Notice of Acceptance unless the Developer has completed all aspects of the Public Improvements in accordance with the Improvement Plans and the Developer has fulfilled any other applicable obligations under this Agreement. The Notice of Acceptance shall not constitute a waiver of defects by the City. Ownership of the Public Improvements vests in the City upon the Acceptance Date.

13. Release of Securities. The City may withhold from any security to be released pursuant to this Section 13 amounts sufficient to cover the City's costs and reasonable expenses and fees, including reasonable attorney's fees, incurred as a result of an Event of Default. The City shall release amounts remaining after withholding, if any, as follows:

    A. Performance Security. The City shall release the Performance Security upon the Acceptance Date.

    B. Payment Security. After the passage of the time within which claims of lien are required to be recorded pursuant to California Civil Code Division 4, Part 6, Title 2, Chapter 4, Article 2, as amended, the City shall reduce the Payment Security to an amount equal to the total claimed by all claimants for whom claims of lien have been recorded and notice thereof given to the City. The balance of the Payment Security, if any, shall be released upon the settlement of all claims and obligations for which the security was furnished.

    C. Warranty Security. The City shall release the Warranty Security upon the later of the expiration of the Call-Back Period or the settlement of any claims made by the City during the Call-Back Period.

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D. Monument Security. The City shall release the Monument Security upon the Acceptance Date.

E. Clean-Up Deposit. The City shall return the Clean-Up Deposit upon the Acceptance Date.

14. Project Warranties; Call-Back Period.

A. The Developer warrants to the City that the Public Improvements shall: (i) consist of materials and supplies that are new, of recent manufacture and of good quality; (ii) conform to the Improvement Plans; and (iii) be free from faults and defects (collectively, "Project Warranties"), and that the Developer shall correct in accordance with this Section 14 any deficiencies in the Public Improvements that contravene the foregoing ("Call-Back Obligation").

B. If, at any time after the Acceptance Date until one (1) year following the Acceptance Date ("Call-Back Period"), the Public Improvements are found to be not in accordance with the Project Warranties, the Developer shall correct the condition promptly, and in no event later than thirty (30) calendar days, after the City mails to the Developer and Surety written notice of a claim under the Project Warranties. Developer shall be obligated to correct the Public Improvements pursuant to the Call-Back Obligation whether or not the Developer can complete the corrective work within the Call-Back Period. All applicable provisions of this Agreement, including, without limitation, the City's inspection and final acceptance of public improvement work, shall govern any work performed pursuant to the Call-Back Obligation.

C. Nothing contained in this Section shall be construed to establish a period of limitations with respect to the Developer's obligations under this Agreement or Applicable Laws, including warranties and obligations with respect to latent defects. The Call-Back Obligation only relates to the Developer's specific obligation to respond to notices from the City and correct deficiencies under the Project Warranties.

D. Notwithstanding anything to the contrary in this Section, should the City determine that the public health or safety requires correcting the Public Improvements to conform to the Project Warranties before the Developer can be notified or adequately respond, the City may perform such work as is necessary to protect the public health or safety, and Developer shall pay the City for the cost of such work upon the City's demand.

15. Environmental Warranty and Disclosures.

A. Concurrently with the execution of this Agreement, the Developer shall execute a written warranty with respect to the environmental condition of the Subject Property, in the form attached hereto as **Exhibit D** ("Environmental Warranty").

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B. The representations and warranties contained in the Environmental Warranty shall be true and correct as of the Effective Date. In addition, Developer hereby represents and warrants to the City that the Environmental Warranty also shall be true and correct as of the Acceptance Date, unless the Developer has provided, and the City has approved in writing, an amended environmental warranty prior to the Acceptance Date.

C. In addition to the disclosures made in the Environmental Warranty, the Developer shall give prompt written notice to the City if it has knowledge of or discovers any of the following:

(1) Any investigation or proceeding by a federal, state or local governmental authority with respect to the presence of any Hazardous Material on the Subject Property;

(2) The migration of any Hazardous Material from or to any property adjacent to the Subject Property;

(3) Any claims made or threatened by any third party against the City, the Subject Property or owners of the Subject Property relating to any loss or injury resulting from a Hazardous Material on or adjacent to the Subject Property; or

(4) Any occurrence or condition on property adjacent to the Subject Property that could cause the Subject Property, in whole or part, to be subject to any lawsuit or restriction on its ownership, occupancy, use for the purpose for which it is intended or transferability under any Environmental Law.

16. Events of Default; Notice and Cure Opportunity.

A. Events of Default Not Requiring Previous Notice or Cure Opportunity. Each of the following shall constitute an Event of Default by the Developer for which the City may immediately exercise its remedies under this Agreement without any requirement of the City having given notice previously or of providing any cure opportunity:

(1) Developer's failure to timely complete construction of the Public Improvements in accordance with this Agreement;

(2) Developer's assignment or transfer, or attempted assignment or transfer, of this Agreement or any right or interest therein without the City's prior written consent;

(3) Developer's failure to obtain and maintain in full force and effect any Improvement Security or required insurance in accordance with this Agreement;

(4) Developer's breach of any obligations in Section 15 of this Agreement;

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(5) The commencement of a foreclosure action or the recording of a notice of default against the Project or any portion thereof, or any conveyance in lieu or in avoidance of foreclosure;

(6) Developer's insolvency, as determined under the U.S. Bankruptcy Code;

(7) Developer's filing, or Developer's consent to the filing against it, of any petition in bankruptcy; or

(8) The issuance of an order of a court of competent jurisdiction appointing a receiver, liquidator, custodian or trustee of the Developer, or the filing of any petition against the Developer, which order has not been discharged or which filing has not been dismissed within sixty (60) days after such issuance or filing.

B. Events of Default Requiring Previous Notice or Cure Opportunity. Developer's breach of any obligation under this Agreement that is not listed in Section 16.A above shall constitute an Event of Default if not cured in accordance with Section 16.C below.

C. Notice and Cure Opportunity. For the breach of any obligation under this Agreement that is not listed in Section 16.A, the Developer shall have the following notice and cure opportunity before the breach constitutes an Event of Default and the City may exercise its remedies under this Agreement. The City shall mail written notice of the breach to the Developer and the Surety. The Developer shall have thirty (30) calendar days following the City's notice in which to complete a cure of the breach and carry out all actions necessary to prevent its reoccurrence. If Developer has not cured the breach by the thirty-first (31st) consecutive calendar day following the City's notice, the uncured breach shall constitute an Event of Default and the Developer shall have no further right to notice or cure before the City is entitled to exercise its rights under Section 17.

17. City Rights Upon Event of Default.

A. In addition to all other remedies available at law or in equity for breach of Developer's obligations under this Agreement, the City shall have the following rights upon the occurrence of an Event of Default:

(1) Draw upon and utilize the Improvement Security to mitigate the City's damages and complete the Public Improvements regardless of whether the actual cost of completing the Public Improvements exceeds the Engineer's Estimate;

(2) Take over the work and complete the Public Improvements by contract or by any other method the City deems appropriate. In such event, the City, without liability for so doing, may complete the Public Improvements using any of Developer's materials, appliances, plans and other property that

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are at the work site and that are necessary to complete the Public Improvements; and

(3) Rescind Planning Permit approval.

B. The Developer hereby grants the City all rights or authorizations necessary in order for the City to exercise the foregoing remedies without the need for the City to obtain any additional rights or authorizations at the time it exercises its remedies.

C. The Developer shall promptly reimburse the City upon demand for all costs and expenses incurred by the City in constructing the Public Improvements, enforcing the Agreement and otherwise seeking to remedy an Event of Default. Such costs and expenses may include, without limitation: City staff time; fees and charges of architects, engineers, attorneys, and other professionals; and court costs.

D. The City's choice of remedy for an Event of Default shall be in the City's sole discretion. The City's failure to declare Developer in default under this Agreement or take action with respect to an Event of Default shall not be construed as the City's waiver of any breach of the Agreement.

18. Developer's Responsibility for Improvements; Indemnity/Hold Harmless.

A. The City, its officials, boards and commissions, and members thereof, agents, and employees (collectively, "City Indemnitees") shall not be liable for any injury to persons or property arising out of, pertaining to or relating to the acts or omissions of the Developer or its agents, officers, employees, contractors and subcontractors in the performance of this Agreement.

B. It is the parties' intent that the Developer shall be responsible for all liability for the design and construction of the Public Improvements, and that the City shall not be liable for any negligence, nonfeasance, misfeasance or malfeasance in its inspection, review or approval of any design or construction work, unless the particular improvement or design was specifically required by the City after Developer's written objection, which objection: (i) was reviewed by the City before its approval of the improvement or design, (ii) demonstrated that the improvement or design was dangerous or defective and (iii) suggested an alternative safe and feasible design.

C. To the fullest extent permitted by law, Developer shall indemnify, defend and hold harmless the City Indemnitees from and against all claims, actions, suits, demands, damages, liabilities, obligations, losses, settlements, judgments, costs and expenses, of any kind, including, without limitation, reasonable attorney's fees and costs (collectively "Claims"), which arise out of, relate to or result from: (i) any act or omission of the Developer, its agents, officers, employees, contractors, subcontractors or invitees pursuant to or in connection with this Agreement or while in or about the Subject Property for any reason; (ii) the

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Developer's design, construction, repair or reconstruction of the Public Improvements; and/or (iii) any breach of this Agreement or violation of applicable law by the Developer, its agents, officers, employees, contractors, subcontractors or invitees, in each case whether or not caused by the negligence of the City Indemnitees, except for Claims resulting from the City's sole negligence or willful misconduct. The foregoing obligation applies to all Claims that potentially fall within this indemnity provision, even if the allegations are or may be groundless, false or fraudulent, which obligations arise at the time the City tenders such claim to Developer and continue at all times thereafter until fully satisfied. This indemnification and agreement to hold harmless shall extend to injuries to persons and damages to or taking of property resulting from the design or construction of the Public Improvements, including, without limitation, to owners of Third-Party Property as a consequence of the diversion of waters from public drainage systems, streets and other improvements constructed pursuant to this Agreement. The Notice of Acceptance shall not constitute an assumption by the City of any responsibility for any damage or taking covered by this Section 18.

19. Developer's Indemnity of Project Approval. Developer shall defend, indemnify, and hold harmless the City Indemnitees from any claim, action, or proceeding against the City Indemnitees to attack, set aside, void or annul an approval of the City, advisory agency, appeal board, or legislative body concerning the Project. The City shall promptly notify the Developer of any claim, action, or proceeding and cooperate in the defense of any such claim, action, or proceeding. In the event City fails to promptly notify the Developer of any claim, action, or proceeding, or if the City fails to cooperate in the defense, the Developer shall not thereafter be responsible to defend, indemnify, or hold harmless the City. Nothing in this Section prohibits the City from participating in the defense of any claim, action, or proceeding if the City bears its own attorneys' fees and costs and defends the action in good faith. Developer shall not be required to pay or perform any settlement that it does not approve.

20. Insurance Requirements. Developer shall obtain insurance satisfying all of the following minimum requirements, in a form approved by the City's Risk Manager, prior to commencing any work under this Agreement and shall maintain the insurance without interruption until the expiration of the Call-Back Period:

A. Commercial General Liability policy with a minimum $1 million combined single limit for bodily injury and property damage providing all of the following minimum coverage without deductibles:

(1) Premises operations; including X, C, and U coverage;

(2) Owners' and contractors' protection;

(3) Blanket contractual;

(4) Completed operations; and

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(5) Products.

B. Commercial Business Auto policy with a minimum $1 million combined single limit for bodily injury and property damage, providing all of the following minimum coverage without deductibles:

(1) Coverage shall apply to any and all leased, owned, hired, or non-owned vehicles used in pursuit of any of the activities associated with this Agreement; and

(2) Any and all mobile equipment including cranes which are not covered under the above Commercial Business Auto policy shall have said coverage provided under the Commercial General Liability policy.

C. Workers Compensation and Employers' Liability policy in accordance with the laws of the State of California and providing coverage for any and all employees of the Developer:

(1) This policy shall provide coverage for Workers' Compensation (Coverage A); and

(2) This policy shall provide coverage for $1,000,000 Employers' Liability (Coverage B).

(3) Coverage shall contain a separate waiver of subrogation in favor of the City, its officials, employees, agents and contractors.

(4) Prior to commencement of work, the Developer shall file with the City's Risk Manager a Certificate of Insurance or certification of permission to self-insure workers' compensation conforming to the requirements of the Labor Code.

D. Endorsements. All of the following endorsements are required to be made a part of each of the above-required policies as stipulated below:

(1) "The City of San José, its officers, employees and agents are hereby added as additional insureds."

(2) "This policy shall be considered primary insurance as respects to any other valid and collectible insurance the City of San José may possess, including any self-insured retention the City may have and any other insurance the City does possess shall be considered excess insurance only."

(3) "This insurance shall act for each insured and additional insured as though a separate policy has been written for each. This, however, will not act to increase the limit of the insuring company."

(4) "Thirty days prior written notice of cancellation shall be given to the City of San José in the event of cancellation and/or reduction in coverage of any

Sample Document

nature." Such notice shall be sent to the Risk Manager at the address indicated in Subsection F below.

(5) For the Excess Liability Policy only, identify on the Certificate of Insurance as "following form."

(6) Subsection D.(4) above (30 days' notice) is the only endorsement required of the Workers' Compensation and Employers' Liability policy.

E. Admitted Insurers. All insurance companies providing insurance to the Developer under this Agreement shall be admitted to transact the business of insurance by the California Insurance Commissioner.

F. Proof of Coverage. Copies of all required endorsements shall be attached to the Certificate of Insurance which shall be provided by the Developer's insurance company as evidence of the coverage required herein and shall be mailed to:

Risk Management
Finance Department
City of San José
200 East Santa Clara Street, 14th floor
San José, CA 95113-1905

G. Coverage for Work Permit. Each policy required by this Section 20 shall cover the Developer's obligations under any Work Permit issued for construction of the Public Improvements pursuant to Chapter 13.36 of the Municipal Code.

21. Sale or Disposition of Project; Assignment.

A. The Developer's obligations under this Agreement are personal obligations of the Developer and shall remain so notwithstanding the Developer's sale or transfer of all or any part of the Project.

B. Developer shall not assign this Agreement without the City's prior written consent. The City shall consider a request for an assignment or novation on a case-by-case basis where unusual circumstances render the Developer's performance of the Agreement impossible or impracticable. The sale or transfer of all or any part of the Project shall not, standing alone, constitute good cause for assignment of this Agreement. If the City approves an assignment or novation of this Agreement, the assignee shall assume the performance of and observe all obligations, representations and warranties of the Developer under the Agreement. The City's approval of any assignment or novation shall not operate to release the Developer from any of its obligations under this Agreement for work previously performed by the Developer unless such approval specifically provides otherwise.

22. Developer Not Agent of City. Neither Developer nor Developer's agents, contractors, or subcontractors shall be considered agents of the City in connection with the Developer's performance of this Agreement.

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23. Other Agreements Not Affected. Nothing in this Agreement shall: (i) preclude the City from expending monies pursuant to agreements concurrently or previously executed between the City and the Developer (if any); (ii) prevent the City from entering into agreements with other developers or property owners for the apportionment of costs of public improvements; or (iii) commit the City to any such apportionment.

24. Time is of the Essence. Time is of the essence in the performance of all of Developer's obligations under this Agreement.

25. No Vesting of Rights. The Developer's performance of this Agreement shall not be construed to vest Developer's rights with respect to any change in any zoning or building law or ordinance.

26. Notices. Unless otherwise specified in this Agreement, all notices required or provided for under this Agreement shall be in writing and delivered in person or sent by mail, postage prepaid to those individuals listed on Page 2 of this Agreement under the section entitled "Designees for Notices under the Agreement." Notices shall be effective on the date delivered in person, or if mailed, on the date of deposit in the United States Mail.

27. Compliance with Applicable Laws. In performing this Agreement, the Developer and its agents, employees, contractors, and subcontractors shall comply with Applicable Laws.

28. Compliance with Labor Code. This Agreement is subject to, and Developer agrees to comply with, applicable provisions of the Labor Code including, but not limited to, wage and hour, prevailing wage, workers compensation and other labor requirements in Division 2, Part 7, Chapter 1, as may be amended from time to time. Developer shall expressly require compliance with this Section in all agreements with contractors and subcontractors entered into in connection with this Agreement.

    Pursuant to Labor Code Section 1861, Developer by executing this Agreement certifies:

    > "I am aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this contract."

    To the extent applicable to this Agreement, Developer shall maintain or cause to be maintained all records documenting the payment of prevailing wages as required by the State prevailing wage law. Developer shall maintain such records for a minimum period of three (3) years, or for any longer period required by law, from the date of final payment to the Developer under this Agreement (if any). The Developer shall provide to the City a free copy of such records within ten (10) business days of a request for such records by the City's Office of Equality Assurance.

29. Nondiscrimination. In connection with the performance of this Agreement, the Developer and its agents, employees, contractors, and subcontractors shall not discriminate

Sample Document

against any person on the basis of age, sex, race, color, religion, sexual orientation, actual or perceived gender identity, disability, ethnicity or national origin. Developer shall expressly require compliance with this Section 29 in all agreements with contractors and subcontractors in connection with this Agreement.

30. Severability. If any portion of this Agreement is held invalid by a court of competent jurisdiction, the remainder of the Agreement shall remain in full force and effect.

31. Headings. The headings used in this Agreement are for convenience only and shall not be used in the interpretation of this Agreement.

32. Incorporation of Documents and Information. The following are incorporated by reference into this Agreement:

    A. The information contained on Pages 1 and 2 of this Agreement, including the terms of the Improvement Security instruments identified thereon and attached to this Agreement;

    B. The Recitals to this Agreement;

    C. The exhibits to this Agreement, including any attachments thereto;

    D. The terms of the Planning Permit, to the extent applicable; provided, however, that in the event of a conflict between the Planning Permit and this Agreement, this Agreement shall control;

    E. The Improvement Plans, including any conditions contained therein; provided, however, that in the event of a conflict between the Improvement Plans and this Agreement, this Agreement shall control; and

    F. The terms and conditions contained in any Work Permit issued for construction of the Public Improvements pursuant to Chapter 13.36 of the Municipal Code; provided, however, that in the event of a conflict between the Work Permit and this Agreement, this Agreement shall control.

33. Joint and Several Obligations. If the Developer comprises more than one legal entity, each legal entity shall be jointly and severally liable for the Developer's obligations under this Agreement.

35. Entire Agreement. This Agreement constitutes the entire agreement of the parties with respect to the subject matter herein. All amendments or waivers of the terms of this Agreement must be in writing and signed by each party's authorized representative.

36. Interpretation. This Agreement shall be interpreted in accordance with the laws of the State of California.

37. Jurisdiction. Jurisdiction of all disputes arising out of this Agreement shall be in the County of Santa Clara, State of California.

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

DEVELOPER:*

CITY OF SAN JOSE:

Print Name of Developer and Type of Entity

(Name of Public Works Director)
Director of Public Works

By: _____

Title: _____

By: _____

Title: _____

* Proof of authorization for Developer's signatories is required to be submitted concurrently with this Agreement. All Developer's signatures must be accompanied by an attached notary acknowledgement.

EXHIBITS:

Exhibit A - Engineer's Estimate
Exhibit B - Special Provisions
Exhibit C - Fees
Exhibit D - Environmental Warranty
Exhibit E - Water Rights Quitclaim Deed (if applicable)

Form Approved by the City Attorney

Sample Document

EXHIBIT A
CITY-DEVELOPER AGREEMENT
(SJMC Title 27)

20-114525 IP
(Project)

FAKE DEVELOPER, LLC, a Delaware Limited Liability Company
(Developer)

ENGINEER'S ESTIMATE

Sample Document

SUBSTITUTE COPY OF CITY PREPARED ENGINEER'S ESTIMATE FOR THIS PAGE

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EXHIBIT B
CITY-DEVELOPER AGREEMENT
(SJMC Title 27)

20-114525 IP
(Project)

FAKE DEVELOPER, LLC, a Delaware Limited Liability Company
(Developer)

SPECIAL PROVISIONS

Developer shall comply with the following provisions:

1. Provide a computer diskette (compatible with the City's CAD system) of Project and improvement information to the Public Works Department prior to the City Engineer's consideration of this Agreement.

2. Provide the City Engineer with a copy of videotape inspections of the sanitary and storm drain systems upon their completion and rectify any problems identified by the City; the video taping of the storm drain system shall be done just prior to formal acceptance to ensure said system is problem free and clear of debris.

3. Reimbursable Improvements. [Delete Sections 3-4 and renumber Exhibit B as appropriate if no reimbursement involved]

   A. Notwithstanding anything to the contrary in this Agreement, the construction of the off-site improvements shown on _____ of the Improvement Plans (collectively, "Reimbursable Improvements") shall be subject to reimbursement by the City for the actual cost of engineering and construction in an amount not to exceed _____ DOLLARS ($_____). The City's contribution for the Reimbursable Improvements shall only cover those additional costs directly attributable to the Developer's construction of the Reimbursable Improvements and shall not cover any of Developer's costs or expenses that are attributable to the other Public Improvements for which Developer is solely responsible.

   B. The following is a summary of the Reimbursable Improvements:

      i. [Add summary of reimbursable work]

      ii. [Add summary of reimbursable work]

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iii. [Add summary of reimbursable work]

C. Except as specifically set forth in this **Exhibit B**, the Reimbursable Improvements shall be subject to all of the provisions applicable to the Public Improvements generally under the Agreement.

4. Payment for Reimbursable Improvements

A. Upon or after the Acceptance Date, Developer shall submit an invoice to the City for the Reimbursable Improvements for the actual costs incurred for the Reimbursable Improvements based upon contractor invoiced quantities and prices and shall provide the City with true copies of contractor invoices and any additional information reasonably requested by the City to verify Developer's invoice. Developer shall not seek payment from City, and City shall not reimburse Developer for, any contractor invoice amounts that Developer does not intend to or does not in fact pay, including, without limitation, amounts that Developer disputes are owed to a contractor or adjustments to contractor invoice amounts. Developer shall bear the burden of proving to the City's satisfaction that invoiced amounts are directly attributable to the cost of the Reimbursable Improvements.

B. Within thirty-five (35) days following receipt of all documentation required by this Section, the City shall, to its satisfaction, verify Developer's expenses and the work performed, and pay undisputed amounts owed for the Reimbursable Improvements.

5. Municipal Water System - Water Main Extension Contract. [Delete Section 5 and renumber Exhibit B as appropriate **and** delete Exhibit E if there is no Water Main Extension Contract applicable to the Project]

A. This Agreement incorporates by reference the provisions of Chapter 15.08 of the Municipal Code and constitutes the water main extension contract required by sections 15.08.770 and 15.08.780 whenever the Project shall obtain water service from the municipal water system and water main extension is required to serve the Project.

B. Developer shall indicate all water main extensions to the municipal water system on the Improvement Plans.

C. All applicable fees, charges and deposits required of the Developer for water main extension to the municipal water system are indicated on **Exhibit A** and **Exhibit C** to this Agreement and are subject to adjustment upon completion of the installation and determination of actual cost.

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D. Where the Developer is required to install the main extension to the municipal water system, the Improvement Security and liability insurance required by this Agreement also shall be issued in sufficient amount to include the estimated cost of the work and improvements for the installation of all water main extensions to the municipal system.

E. Developer shall cause to be conveyed to the City, from the owners of all of the real property lying within the Project, the right to take waters from any sources including, without limitation, underground basins. Such conveyance shall be in the form of Quitclaim Deed and Authorization attached hereto as **Exhibit E**. Such Quitclaim Deed and Authorization shall be recorded prior to the issuance of the Public Works Clearance for the Project.

6. [Include project-specific requirements here that are impracticable or impossible to show on the Improvement Plans or that are deviations from or are not included in the standard specs.]

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EXHIBIT C
CITY-DEVELOPER AGREEMENT
(SJMC Title 27)

20-114525 IP
(Project)

FAKE DEVELOPER, LLC, a Delaware Limited Liability Company
(Developer)

FEES

		Amount Due
1.	Sewage Treatment Plant (STP) Connection	$0.00
2.	Sanitary Sewer Connection Fee	$0.00
	a) Excess Units Charge	$0.00
3.	Storm Drainage Fee	$0.00
4.	Engineering and Inspection (E&I) Fee	$0.00
5.	Underground Service Alert (USA) Fee	$0.00
6.	Electrical Design/Review Fee	$0.00
7.	Electrical Inspection Fee	$0.00
8.	Pavement Design Fee	$0.00
9.	Materials Laboratory Testing Fee	$0.00
10.	Benchmark Maintenance Fee	$0.00
11.	Traffic Signal Design/Review Fee	$0.00
12.	Traffic Signal Inspection Fee	$0.00
13.	Traffic Signal Controller Fee	$0.00
14.	Geometric Design Fee	$0.00
15.	Pavement Marking Fee	$0.00
16.	Traffic Signs Fee	$0.00
17.	Street Name Signs Fee	$0.00
18.	Stormwater Maintenance Fee	$0.00
19.	Misc. Fee (Mult. Plan Review, Sep. Inst., T&M Review, etc.)	$0.00
20.	Public Works Record Retention Fee	$0.00
21.	Street Tree Maintenance Fee	$0.00
22.	Municipal Water - E&I Fee	$0.00
23.	Municipal Water - Area & Frontage Fee	$0.00
24.	Municipal Water - Water Meter Fee	$0.00
25.	Municipal Water - Major Water Facilities Fee	$0.00
26.	Arterial Reimbursement Fee	$0.00
27.	Utility Undergrounding In-Lieu Fee	$0.00
28.	Traffic Signal / Street / Median In-Lieu Fee	$0.00
29.	Traffic Impact Fee	$0.00
30.	Depositors Fund	$0.00

Total Fees to the City:	$ 0.00
Fees Previously Paid:	$0.00
Outstanding Fees Due:	$ 0.00

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EXHIBIT D
CITY-DEVELOPER AGREEMENT
(SJMC Title 27)

20-114525 IP
(Project)

FAKE DEVELOPER, LLC, a Delaware Limited Liability Company
(Developer)

ENVIRONMENTAL WARRANTY

This Environmental Warranty is provided in connection with that certain City-Developer Agreement between the above-named Developer and the City of San José for the above-referenced Project. Capitalized terms not defined in this Environmental Warranty shall have the meanings set forth in the City-Developer Agreement. Pursuant to the terms of the City-Developer Agreement, Developer hereby represents and warrants to the City of San José that:

1. Neither the Subject Property nor Developer are in violation of any Environmental Law, and neither the Subject Property nor Developer are subject to any existing, pending or threatened investigation by any federal, state or local governmental authority under or in connection with any Environmental Law.

2. Neither Developer nor any other person with Developer's permission to be on the Subject Property has used, generated, manufactured or produced, on, under, or about the Subject Property, any Hazardous Material except in compliance with all Environmental Laws.

3. Developer has not caused or permitted the release of, and has no knowledge of the release or presence of, any Hazardous Material on the Subject Property or the migration of any Hazardous Material from or to any other property adjacent to the Subject Property except in compliance with all Environmental Laws.

4. The signatories hereto have the legal power, right and authority to execute this warranty on behalf of Developer, and in making the representations herein, have either personally conducted a reasonable investigation of the Subject Property or are relying on the reasonable investigation and professional opinion of Developer's environmental experts.

5. No consent of any other party is required to execute this warranty and make the representations herein on behalf of Developer to City.

Each of the undersigned persons declares under penalty of perjury that the foregoing is true and correct as of the date below and as of the Acceptance Date unless Developer has

Sample Document

provided to City, and the City has approved in writing prior to the Acceptance Date, an amended environmental warranty.

Dated: _____

DEVELOPER*:

By: _____
Title: _____

By: _____
Title: _____

*Proof of authorization for Developer's signatures is required to be submitted concurrently with this environmental warranty.

**All Developer's signatures must be accompanied by an attached notary acknowledgement.

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RECORDED WITHOUT FEE UNDER SECTION 6103 GOVERNMENT CODE OF THE STATE OF CALIFORNIA

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:
AND MAIL TAX STATEMENT TO:

City of San José – Public Works
200 East Santa Clara Street, 5th Floor
San José, CA 95113-1905

Deed No:
3 Dash No:
APN: Insert APN

Space above this line for Recorder's use

The Undersigned Grantee(s) Declare(s): DOCUMENTARY TRANSFER TAX **$0**; CITY TRANSFER TAX **$0**; Recorded for the benefit of the City of San José and is exempt from fee per Government Code sections 27383 and 6103.

[ ] computed on the consideration or full value of property conveyed, OR

[ ] computed on the consideration or full value less value of liens and/or encumbrances remaining at time of sale,

[ ] unincorporated area; [X] **City of San José**, and

[ ] _____
Signature of Declarant

EXHIBIT E
CITY-DEVELOPER AGREEMENT
(SJMC Title 27)

20-114525 IP
(Project)

FAKE DEVELOPER, LLC, a Delaware Limited Liability Company
(Developer)

QUITCLAIM DEED AND AUTHORIZATION

FAKE DEVELOPER, LLC, a Delaware Limited Liability Company, hereinafter "Grantor," does hereby grant, bargain, sell, assign, convey, remise, release and forever QUITCLAIM unto the City of San José, a municipal corporation, hereinafter "Grantee," all the right, title, interest, estate, claim and demand, both at law and in equity, as well as in possession as in expectancy of the Grantor as owner of that certain real property commonly known as Assessor's Parcel No. **Insert APN**, situated in the County of Santa Clara, State of California, and more specifically described in Exhibit "A" attached hereto and incorporated herein by reference ("Property"), to pump, take or otherwise extract water from any sources including but not limited to the underground basin or any underground strata. Further, on behalf of itself and

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its successors in ownership of overlying land within the Property, Grantor hereby irrevocably authorizes Grantee, its successors and assigns, to so pump, take or otherwise extract such water from said sources; provided, however, that nothing contained in this instrument shall be deemed to authorize Grantee to enter upon the Property.

This conveyance is made in order to further confirm Grantee's right to extract said water under law.

This assignment, conveyance and authorization is made for the benefit of the Property and shall bind each owner of the Property or any portion thereof.

The terms and provisions of this deed and authorization shall run with the land and shall, without regard to technical classification or designation, legal or otherwise, be to the fullest extent permitted by law and equity, binding for the benefit of the community and the City and enforceable by the City against the Grantee, its heirs, successors and assigns, to the Property or any part thereof or any interest therein.

IN WITNESS WHEREOF, said Grantors have caused this instrument to be executed this _____ day of _____, 20__.

GRANTOR*:
By: _____
Title: _____

By: _____
Title: _____

* Proof of authorization for Grantor's signatures is required to be submitted concurrently with this Quitclaim Deed and Authorization.

** All signatures require notary acknowledgement.

Attachment A – Legal Description of the Property

[Attach Attachment A]

Sample Document

Bond No. _____

Premium _____

FAITHFUL PERFORMANCE BOND

WHEREAS, the CITY OF SAN JOSE, a municipal corporation of the State of California ("City"), and **FAKE DEVELOPER, LLC, a Delaware Limited Liability Company**, as principal ("Principal") have entered into an agreement entitled **Subdivision Improvement Agreement 20-114525 IP (3-123456) for Tract No. 10518**, incorporated herein by reference and referred to as the "Contract," which requires Principal to install and complete certain designated public improvements; and,

WHEREAS, under the terms of the Contract and prior to commencing any work under the Contract, Principal is required to furnish a bond to City for faithful performance of the Contract.

NOW, THEREFORE, we the Principal and _____, a corporation duly authorized and admitted to transact business and issue surety bonds in the State of California ("Surety"), are held firmly bound unto the City in the sum of **TWO HUNDRED FIFTY THOUSAND DOLLARS AND NO/100 DOLLARS ($250,000.00)**, for the payment of which sum well and truly to be made, we the Principal and Surety bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally.

The condition of this obligation is such that, if the Principal, Principal's heirs, executors, administrators, successors, or assigns shall in all things stand to and abide by, and well and truly keep and perform all covenants, conditions, and agreements required to be kept and performed by Principal in the Contract and any changes, additions, or alterations made thereto, to be kept and performed at the time and in the manner therein specified, and in all respects according to their true intent and meanings, and shall indemnify and save harmless City, its officers, employees, and agents, as therein provided, then this obligation shall be null and void; otherwise, it shall be and remain in full force and effect.

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As a part of the obligation secured hereby and in addition to the sum specified above, there shall be included all costs, expenses, and fees, including attorney's fees, reasonably incurred by City in successfully enforcing such obligation, all to be taxed as costs and included in any judgment rendered.

The Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration, or addition to the terms of the Contract or to the work to be performed thereunder or to the specifications accompanying the same shall in any way affect its obligations on this bond, and it does hereby waive notice of any such change, extension, alteration, or addition.

IN WITNESS WHEREOF, this instrument has been duly executed by authorized representatives of the Principal and Surety. SIGNED AND SEALED on _____, 20_____.

PRINCIPAL:	SURETY:
_____	_____
(Principal name) (Seal)	(Surety name)
BY: _____	BY: _____
(Signature)	(Signature)
_____	_____
(Print name and title)	(Print name and title)
Principal address and telephone:	Surety address and telephone:

Affix Corporate Seals
Attach Notary Acknowledgments for All Signatures
Attach Power-of-Attorney if executed by Attorney-in-Fact

Sample Document

Bond No. _____

Premium _____

PAYMENT (LABOR AND MATERIALS) BOND

WHEREAS, the CITY OF SAN JOSE, a municipal corporation of the State of California ("City"), and **FAKE DEVELOPER, LLC, a Delaware Limited Liability Company,** as principal ("Principal") have entered into an agreement entitled **Subdivision Improvement Agreement 20-114525 IP (3-123456) for Tract No. 10518**, incorporated herein by reference and referred to as the "Contract," which requires Principal to install and complete certain designated public improvements; and,

WHEREAS, under the terms of the Contract and prior to commencing any work under the Contract, Principal is required to furnish a good and sufficient payment bond to the City to secure the claims to which reference is made in Title 15 (commencing with Section 3082) of Part 4 of Division 3 of the California Civil Code.

NOW, THEREFORE, we the Principal and _____, a corporation duly authorized and admitted to transact business and issue surety bonds in the State of California ("Surety"), are held firmly bound unto the City, and unto all contractors, subcontractors, suppliers, laborers, materialmen and other persons employed in the performance of the Contract and referred to in the aforesaid Civil Code, as obligees, in the sum of **TWO HUNDRED FIFTY THOUSAND DOLLARS AND NO/100 DOLLARS ($250,000.00)**, on the condition that if Principal shall fail to pay for any materials or equipment furnished or used or for any work or labor thereon of any kind, or for amounts due under the Unemployment Insurance Act with respect to such work or labor, or for any amounts required to be deducted, withheld, and paid over to the Employment Development Department from the wages of employees of the Principal and all subcontractors with respect to such work or labor, then the Surety shall pay the same in an amount not exceeding the sum specified above. If suit is brought upon this bond, Surety shall pay, in addition to the above sum, all costs, expenses, and fees, including attorney's fees, reasonably incurred by any obligee in successfully enforcing the obligation secured hereby, all to be taxed as costs and included in

Sample Document

the judgment rendered. Should the condition of this bond be fully performed, then this obligation shall become null and void; otherwise, it shall be and remain in full force and effect, and shall bind Principal, Surety, their heirs, executors, administrators, successors, and assigns, jointly and severally.

IT IS HEREBY EXPRESSLY STIPULATED AND AGREED that this bond shall inure to the benefit of all persons, companies, corporations, political subdivisions, and State agencies entitled to file claims under Title 15 (commencing with Section 3082) of Part 4 of Division 3 of the Civil Code, so as to give a right of action to them or their assigns in any suit brought upon this bond. The Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Contract or to the work to be performed thereunder or the specifications accompanying the same shall in any way affect its obligations on this bond, and it does hereby waive notice of any such change, extension, alteration or addition.

IN WITNESS WHEREOF, this instrument has been duly executed by authorized representatives of the Principal and Surety. SIGNED AND SEALED on _____, 20_____.

PRINCIPAL:	SURETY:
_____ (Seal)	_____
(Principal name)	(Surety name)
BY: _____	BY: _____
(Signature)	(Signature)
_____	_____
(Print name and title)	(Print name and title)
Principal address and telephone:	Surety address and telephone:

Affix Corporate Seals
Attach Notary Acknowledgments for All Signatures
Attach Power-of-Attorney if executed by Attorney-in-Fact

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Bond No. _____

Premium _____

WARRANTY BOND

WHEREAS, the City of San Jose, a municipal corporation of the State of California ("City") and **FAKE DEVELOPER, LLC, a Delaware Limited Liability Company**, as principal ("Principal") have entered into an agreement entitled **Subdivision Improvement Agreement 20-114525 IP (3-123456) for Tract No. 10518**, incorporated herein by reference and referred to as the "Contract," which requires Principal to install and complete certain designated public improvements; and,

WHEREAS, under the terms of the Contract, Principal is required to furnish a bond to City to make good and protect the City against the results of any work or labor done or materials or equipment furnished which are defective or not in accordance with the terms of the Contract having been used or incorporated in any part of the work so contracted for, which shall have appeared or been discovered, within the period of one (1) year from and after the completion and final acceptance of the work done under the Contract.

NOW, THEREFORE, we the Principal and _____, a corporation duly authorized and admitted to transact business and issue surety bonds in the State of California ("Surety"), are held firmly bound unto the City in the sum of **SIXTY-TWO THOUSAND FIVE HUNDRED DOLLARS AND NO/100 DOLLARS ($62,500.00)**, for the payment of which sum well and truly to be made, we the Principal and Surety bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally.

The condition of this obligation is such that, if the Principal shall well and truly make good and protect the City against the results of any work or labor done or materials or equipment furnished which are defective or not in accordance with the terms of the Contract having been used or incorporated in any part of the work performed under the Contract, which shall have appeared or been discovered within said one-year period from and after completion of all work under the Contract and final acceptance by City of said work, then this obligation shall be null and void; otherwise, it shall be and remain in full force and effect.

Sample Document

The Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Contract or to the work to be performed thereunder or the specifications accompanying the same shall in any way affect its obligations on this bond, and it does hereby waive notice of any change, extension of time, alteration or addition.

IN WITNESS WHEREOF, this instrument has been duly executed by authorized representatives of the Principal and Surety. SIGNED AND SEALED on _____, 20_____.

PRINCIPAL:	SURETY:
_____	_____
(Principal name) (Seal)	(Surety name)
BY: _____	BY: _____
(Signature)	(Signature)
_____	_____
(Print name and title)	(Print name and title)
Principal address and telephone:	Surety address and telephone:

Affix Corporate Seals
Attach Notary Acknowledgments for All Signatures
Attach Power-of-Attorney if executed by Attorney-in-Fact

Sample Document

Bond No. _____

Premium _____

MONUMENT BOND

WHEREAS, the CITY OF SAN JOSE, a municipal corporation of the State of California ("City"), and **FAKE DEVELOPER, LLC, a Delaware Limited Liability Company**, as principal ("Principal") have entered into an agreement entitled **Subdivision Improvement Agreement 20-114525 IP (3-123456) for Tract No. 10518**, incorporated herein by reference and referred to as the "Contract," which requires Principal to install and complete certain designated public improvements, including the setting of monuments; and,

WHEREAS, under the terms of the Contract, Principal is required to furnish a bond to City for setting of monuments.

NOW, THEREFORE, we the Principal and _____, a corporation duly authorized and admitted to transact business and issue surety bonds in the State of California ("Surety"), are held firmly bound unto the City, as obligee, in the sum of: **THREE THOUSAND TWO HUNDRED FIFTY-SIX DOLLARS AND NO/100 DOLLARS ($3,256.00)**, for the payment of which sum well and truly to be made, we the Principal and Surety bind ourselves, our heirs, executors, administrators, successors, and assigns, jointly and severally.

The condition of this obligation is such that if the Principal, Principal's heirs, executors, administrators, successors, or assigns, shall in all things stand to and abide by, and well and truly keep and perform all covenants, conditions, and agreements required to be kept and performed by Principal in the Contract, including the setting of monuments, and any changes, additions, or alterations made thereto, to be kept and performed at the time and in the manner therein specified, and in all respects according to their true intent and meanings, and shall indemnify and save harmless City, its officers, employees, and agents, as therein provided, then this obligation shall be null and void; otherwise, it shall be and remain in full force and effect.

Sample Document

As a part of the obligation secured hereby and in addition to the sum specified above, there shall be included all costs, expenses, and fees, including attorney's fees, reasonably incurred by City in successfully enforcing such obligation, all to be taxed as costs and included in any judgment rendered.

The Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Contract or to the work to be performed thereunder or to the specifications accompanying the same shall in any way affect its obligations on this bond, and it does hereby waive notice of any change, extension of time, alteration or addition.

IN WITNESS WHEREOF, this instrument has been duly executed by authorized representatives of the Principal and Surety. SIGNED AND SEALED on _____, 20_____.

PRINCIPAL:	SURETY:
_____	_____
(Principal name) (Seal)	(Surety name)
BY: _____	BY: _____
(Signature)	(Signature)
_____	_____
(Print name and title)	(Print name and title)
Principal address and telephone:	Surety address and telephone:

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Affix Corporate Seals
Attach Notary Acknowledgments for All Signatures
Attach Power-of-Attorney if executed by Attorney-in-Fact

Bond No. _____

Premium _____

FAITHFUL PERFORMANCE BOND

WHEREAS, the CITY OF SAN JOSE, a municipal corporation of the State of California ("City"), and **FAKE DEVELOPER, LLC, a Delaware Limited Liability Company**, as principal ("Principal") have entered into an agreement entitled **City-Developer Agreement 26-114525 IP (3-123456)**, incorporated herein by reference and referred to as the "Contract," which requires Principal to install and complete certain designated public improvements; and,

WHEREAS, under the terms of the Contract and prior to commencing any work under the Contract, Principal is required to furnish a bond to City for faithful performance of the Contract.

NOW, THEREFORE, we the Principal and _____, a corporation duly authorized and admitted to transact business and issue surety bonds in the State of California ("Surety"), are held firmly bound unto the City in the sum of **TWO HUNDRED FIFTY THOUSAND DOLLARS AND NO/100 DOLLARS ($250,000.00)**, for the payment of which sum well and truly to be made, we the Principal and Surety bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally.

The condition of this obligation is such that, if the Principal, Principal's heirs, executors, administrators, successors, or assigns shall in all things stand to and abide by, and well and truly keep and perform all covenants, conditions, and agreements required to be kept and performed by Principal in the Contract and any changes, additions, or alterations made thereto, to be kept and performed at the time and in the manner therein specified, and in all respects according to their true intent and meanings, and shall indemnify and save harmless City, its officers, employees, and agents, as therein provided, then this obligation shall be null and void; otherwise, it shall be and remain in full force and effect.

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As a part of the obligation secured hereby and in addition to the sum specified above, there shall be included all costs, expenses, and fees, including attorney's fees, reasonably incurred by City in successfully enforcing such obligation, all to be taxed as costs and included in any judgment rendered.

The Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration, or addition to the terms of the Contract or to the work to be performed thereunder or to the specifications accompanying the same shall in any way affect its obligations on this bond, and it does hereby waive notice of any such change, extension, alteration, or addition.

IN WITNESS WHEREOF, this instrument has been duly executed by authorized representatives of the Principal and Surety. SIGNED AND SEALED on _____, 20_____.

PRINCIPAL:	SURETY:
_____	_____
(Principal name) (Seal)	(Surety name)
BY: _____	BY: _____
(Signature)	(Signature)
_____	_____
(Print name and title)	(Print name and title)
Principal address and telephone:	Surety address and telephone:

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Bond No. _____

Premium _____

PAYMENT (LABOR AND MATERIALS) BOND

WHEREAS, the CITY OF SAN JOSE, a municipal corporation of the State of California ("City"), and **FAKE DEVELOPER, LLC, a Delaware Limited Liability Company,** as principal ("Principal") have entered into an agreement entitled **City-Developer Agreement 26-114525 IP (3-123456)**, incorporated herein by reference and referred to as the "Contract," which requires Principal to install and complete certain designated public improvements; and,

WHEREAS, under the terms of the Contract and prior to commencing any work under the Contract, Principal is required to furnish a good and sufficient payment bond to the City to secure the claims to which reference is made in Title 15 (commencing with Section 3082) of Part 4 of Division 3 of the California Civil Code.

NOW, THEREFORE, we the Principal and _____, a corporation duly authorized and admitted to transact business and issue surety bonds in the State of California ("Surety"), are held firmly bound unto the City, and unto all contractors, subcontractors, suppliers, laborers, materialmen and other persons employed in the performance of the Contract and referred to in the aforesaid Civil Code, as obligees, in the sum of **TWO HUNDRED FIFTY THOUSAND DOLLARS AND NO/100 DOLLARS ($250,000.00)**, on the condition that if Principal shall fail to pay for any materials or equipment furnished or used or for any work or labor thereon of any kind, or for amounts due under the Unemployment Insurance Act with respect to such work or labor, or for any amounts required to be deducted, withheld, and paid over to the Employment Development Department from the wages of employees of the Principal and all subcontractors with respect to such work or labor, then the Surety shall pay the same in an amount not exceeding the sum specified above. If suit is brought upon this bond, Surety shall pay, in addition to the above sum, all costs, expenses, and fees, including attorney's fees, reasonably incurred by any obligee in successfully enforcing the obligation secured hereby, all to be taxed as costs and included in

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the judgment rendered. Should the condition of this bond be fully performed, then this obligation shall become null and void; otherwise, it shall be and remain in full force and effect, and shall bind Principal, Surety, their heirs, executors, administrators, successors, and assigns, jointly and severally.

IT IS HEREBY EXPRESSLY STIPULATED AND AGREED that this bond shall inure to the benefit of all persons, companies, corporations, political subdivisions, and State agencies entitled to file claims under Title 15 (commencing with Section 3082) of Part 4 of Division 3 of the Civil Code, so as to give a right of action to them or their assigns in any suit brought upon this bond. The Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Contract or to the work to be performed thereunder or the specifications accompanying the same shall in any way affect its obligations on this bond, and it does hereby waive notice of any such change, extension, alteration or addition.

IN WITNESS WHEREOF, this instrument has been duly executed by authorized representatives of the Principal and Surety. SIGNED AND SEALED on _____, 20_____.

PRINCIPAL:	SURETY:
_____ (Seal)	_____
(Principal name)	(Surety name)
BY: _____	BY: _____
(Signature)	(Signature)
_____	_____
(Print name and title)	(Print name and title)
Principal address and telephone:	Surety address and telephone:

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Bond No. _____

Premium _____

WARRANTY BOND

WHEREAS, the City of San Jose, a municipal corporation of the State of California ("City") and **FAKE DEVELOPER, LLC, a Delaware Limited Liability Company**, as principal ("Principal") have entered into an agreement entitled **City-Developer Agreement 20-114525 IP (3-123456)**, incorporated herein by reference and referred to as the "Contract," which requires Principal to install and complete certain designated public improvements; and,

WHEREAS, under the terms of the Contract, Principal is required to furnish a bond to City to make good and protect the City against the results of any work or labor done or materials or equipment furnished which are defective or not in accordance with the terms of the Contract having been used or incorporated in any part of the work so contracted for, which shall have appeared or been discovered, within the period of one (1) year from and after the completion and final acceptance of the work done under the Contract.

NOW, THEREFORE, we the Principal and _____, a corporation duly authorized and admitted to transact business and issue surety bonds in the State of California ("Surety"), are held firmly bound unto the City in the sum of **SIXTY-TWO THOUSAND FIVE HUNDRED DOLLARS AND NO/100 DOLLARS ($62,500.00)**, for the payment of which sum well and truly to be made, we the Principal and Surety bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally.

The condition of this obligation is such that, if the Principal shall well and truly make good and protect the City against the results of any work or labor done or materials or equipment furnished which are defective or not in accordance with the terms of the Contract having been used or incorporated in any part of the work performed under the Contract, which shall have appeared or been discovered within said one-year period from and after completion of all work under the Contract and final acceptance by City of said work, then this obligation shall be null and void; otherwise, it shall be and remain in full force and effect.

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The Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Contract or to the work to be performed thereunder or the specifications accompanying the same shall in any way affect its obligations on this bond, and it does hereby waive notice of any change, extension of time, alteration or addition.

IN WITNESS WHEREOF, this instrument has been duly executed by authorized representatives of the Principal and Surety. SIGNED AND SEALED on _____, 20_____.

PRINCIPAL:	SURETY:
_____	_____
(Principal name) (Seal)	(Surety name)
BY: _____	BY: _____
(Signature)	(Signature)
_____	_____
(Print name and title)	(Print name and title)
Principal address and telephone:	Surety address and telephone:

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Sample Document

Bond No. _____

Premium _____

MONUMENT BOND

WHEREAS, the CITY OF SAN JOSE, a municipal corporation of the State of California ("City"), and **FAKE DEVELOPER, LLC, a Delaware Limited Liability Company**, as principal ("Principal") have entered into an agreement entitled **City-Developer Agreement 20-114525 IP (3-123456)** incorporated herein by reference and referred to as the "Contract," which requires Principal to install and complete certain designated public improvements, including the setting of monuments; and,

WHEREAS, under the terms of the Contract, Principal is required to furnish a bond to City for setting of monuments.

NOW, THEREFORE, we the Principal and _____, a corporation duly authorized and admitted to transact business and issue surety bonds in the State of California ("Surety"), are held firmly bound unto the City, as obligee, in the sum of: **THREE THOUSAND TWO HUNDRED FIFTY-SIX DOLLARS AND NO/100 DOLLARS ($3,256.00)**, for the payment of which sum well and truly to be made, we the Principal and Surety bind ourselves, our heirs, executors, administrators, successors, and assigns, jointly and severally.

The condition of this obligation is such that if the Principal, Principal's heirs, executors, administrators, successors, or assigns, shall in all things stand to and abide by, and well and truly keep and perform all covenants, conditions, and agreements required to be kept and performed by Principal in the Contract, including the setting of monuments, and any changes, additions, or alterations made thereto, to be kept and performed at the time and in the manner therein specified, and in all respects according to their true intent and meanings, and shall indemnify and save harmless City, its officers, employees, and agents, as therein provided, then this obligation shall be null and void; otherwise, it shall be and remain in full force and effect.

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As a part of the obligation secured hereby and in addition to the sum specified above, there shall be included all costs, expenses, and fees, including attorney's fees, reasonably incurred by City in successfully enforcing such obligation, all to be taxed as costs and included in any judgment rendered.

The Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Contract or to the work to be performed thereunder or to the specifications accompanying the same shall in any way affect its obligations on this bond, and it does hereby waive notice of any change, extension of time, alteration or addition.

IN WITNESS WHEREOF, this instrument has been duly executed by authorized representatives of the Principal and Surety. SIGNED AND SEALED on _____, 20_____.

PRINCIPAL:	SURETY:
_____	_____
(Principal name) (Seal)	(Surety name)
BY: _____	BY: _____
(Signature)	(Signature)
_____	_____
(Print name and title)	(Print name and title)
Principal address and telephone:	Surety address and telephone:

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