

CITY OF MANTECA

IMPROVEMENT AGREEMENT

* * * * * REFERENCE DATA * * * * *

NAME OF DEVELOPMENT: EMBLEM BUENA VISTA OFFSITE PACKAGE
BUENA VISTA NORTH

DEVELOPER(S) INFORMATION: QMC Manteca Holdings, LLC
114 Sansome Street, Suite 225
San Francisco, CA 94104

CITY COUNCIL RESOLUTION OF APPROVAL NO. _____ ("Resolution of Approval" herein)

IMPROVEMENTS: See Schedule A

ESTIMATED TOTAL COST OF IMPROVEMENTS: \$ 4,567,234.00
(based on Engineer's Cost Estimate in Schedule A)

-Faithful Performance Bond = 100% Total Improvements: \$ 4,549,234.00

-Labor & Materials Bond = 50% Total Improvements: \$ 2,274,617.00

-Monumentation Bond: \$ 18,000

FORM OF IMPROVEMENT SECURITY: Corporate surety bonds
 Deposit of money or negotiable bonds
 Other: _____

NAME AND ADDRESS OF CORPORATE SURETY (if applicable): Hartford Fire Insurance Company
(Name of Corporate Entity)

One Hartford Plaza
(Street Address)

Hartford CT 06155-0001
(City) (State) (Zip)

SURETY BOND NUMBERS (if applicable): 72BSBJM1222

EFFECTIVE DATE OF AGREEMENT: _____
(to be inserted by City)

COMPLETION PERIOD: ONE (1) YEAR

* * * * *

THIS IMPROVEMENT AGREEMENT (“Agreement”) is made and entered into by and between the City of Manteca, a municipal corporation (“City”), and the Developer whose name and address is set forth above in the Reference Data.

RECITALS

- A) Developer has presented to the City for approval a proposed development.
- B) The City’s Municipal Code requires, as a condition precedent to the approval of the building permit or Final Map, as applicable, that the Developer either (i) complete, in compliance with City standards, certain improvements; or (ii) enter into a secured agreement with the City to complete the improvements within a period of time specified by the City.
- C) The City Engineer has determined that construction of the Improvements, as defined in Section 1, within the time provided by this Agreement is necessary to promote the public health and safety and is a prerequisite to the orderly development of the surrounding area.

NOW, THEREFORE, in order to fulfill the conditions of the Municipal Code, Developer and City agree as follows:

1) DEVELOPER’S OBLIGATION TO CONSTRUCT IMPROVEMENTS

- A) Developer shall, at its sole expense, and in compliance with the provisions of the Municipal Code, Conditions of Approval, the Improvement Plans, and all applicable City standards, and in a good and workmanlike fashion, furnish, complete, construct, install and guarantee (as set forth in Section 3) the improvements, grading, landscaping, and monumentation generally described in Schedule A attached hereto (collectively, the “Improvements”).
- B) To the extent necessary to construct the Improvements, as determined by the City Engineer, the Developer shall acquire and dedicate, or pay the cost of acquisition by City of, all rights-of-way, easements and other interests in real property for the construction or installation of the Improvements, free and clear of all liens and encumbrances. The Developer’s obligations with regard to the acquisition by City of off-site rights-of-way, easements and other interests in real property, if any, shall be subject to a separate agreement between Developer and City.
- C) Subject to any time extensions granted in accordance with Section 4, Developer shall complete all Improvements within the “Completion Period” specified in the Reference Data; provided, however, that if the City Engineer reasonably determines in good faith that accelerated construction of the Improvements is essential in order to protect the public health, welfare and safety, including, without limitation, providing for the orderly development of the surrounding area, the City Engineer shall give Developer not less than fifteen (15) days’ prior written notice to commence or accelerate installation and construction of the Improvements, or any portion thereof. The notice shall be in writing, and shall describe the work to be done by Developer, the time within which the work will commence, and the period within which the work will be completed and identify the reasons that such early commencement is essential in order to protect the public health, welfare and

safety. All or any portion of said Improvements may be required to be constructed or completed at a specified time, providing the foregoing criteria is met. If the Developer objects to the commencement or acceleration of the Improvements as specified by the City Engineer, Developer may appeal the decision of the City Engineer to the City Council whose decision shall be final. Any such appeal shall be filed with the City Clerk within 10 days after receipt by Developer of the written notice from the City Engineer.

- D) If the Improvements to be constructed by Developer include monumentation, such monumentation shall be installed prior to the City's acceptance of all other Improvements pursuant to Section 2. As used herein, "monumentation" shall mean the setting of survey monuments and tie points and the delivery to the City Engineer of tie notes for said points.
- E) Developer shall, at its sole expense, replace or repair all public improvements, public utility facilities, and surveying or subdivision monuments which are destroyed or damaged as a result of any work under this Agreement. Any such replacement or repair shall be subject to the approval of the City Engineer.
- F) Until any category of Improvements is accepted by the City, Developer shall be responsible for the care and maintenance of such Improvements and shall bear all risks of loss or damage to said Improvements. Neither City, nor its officers, agents and employees, shall have any liability for any accident, loss or damage to the Improvements prior to their completion and acceptance by the City.
- G) Developer shall, at its sole expense, obtain all necessary permits and licenses for the construction and installation of the Improvements, give all necessary notices, and pay all fees required by City ordinance or resolution and all taxes required by law.
- H) Not less than fifteen (15) days prior to commencement of work on the Improvements, Developer shall give written notice to the City Engineer of the date fixed for such commencement of work in order that the City Engineer shall have adequate time to schedule all necessary inspections.
- I) Developer shall pay City's cost to form or annex into a community facilities district, Home Owner's Association, or other approved financing mechanism approved by the Public Works Department to maintain all landscaping, landscape irrigation, park areas including the storm drain detention basin, sound walls, street lights and associated decorative improvements within the public right-of-way.

2) INSPECTION OF WORK AND FINAL ACCEPTANCE

- A) Developer shall at all times maintain proper facilities and safe access for inspection of the Improvements by the City Engineer and other City personnel and inspection consultants.
- B) Upon completion of the work on all or any category of the Improvements, the Developer may request, a final inspection by the City Engineer. Within ten (10)

business days of any inspection of the Improvements, the City Engineer shall provide written notice to Developer of the list of items which have been found to be incomplete and the list of items which have been found to be complete. If the City Engineer determines that all or any specified category of the Improvements have been completed in accordance with this Agreement and in compliance with the Improvement Plans and all applicable City standards, then the City Engineer shall certify to the City Council the completion of such Improvements. If the Improvements that are completed are to be dedicated to or owned by the City, the City Engineer's determination shall be submitted to the City Council for final acceptance by the City, unless such power to accept has been delegated by the City Council to the City Engineer or some other officer of the City, in which case the final acceptance shall be subject to the approval of that specified official. If the Improvements that are completed are to be dedicated to or owned by a public entity other than the City, Developer's written request shall be submitted to the applicable public entity or other owner, for final acceptance. Developer shall bear all costs of inspection and certification for completeness in accordance with City's formally adopted fees and rates.

- C) Acceptance of all or any specified category of the Improvements by the City Council shall be made upon recommendation and certification of the City Engineer following inspection of said Improvements pursuant to subparagraph B above. The City Council shall act upon the City Engineer's recommendation within thirty (30) days following certification by the City Engineer that such Improvements have been completed. Acceptance by the City Council or by the governing body of the entity that is to accept dedication or ownership of the public improvements shall not constitute a waiver by the City or such other public entity of any defects in the Improvements.
- D) Developer shall reimburse City for all costs of City in connection with the Improvement plan check, inspection and testing by the City Engineer of the Improvements to be furnished, constructed and installed by Developer. Developer shall advance a plan check, inspection and testing fee in the amount resulting from the "Engineering Fee Schedule".
- E) Developer shall provide to City "As Built" plans (one pdf file and AutoCAD file(s) of the utilities, roadway and property lines) prepared and certified by a Registered Civil Engineer prior to acceptance by the City of the Improvements.

3) GUARANTEE AND WARRANTY OF THE IMPROVEMENTS

- A) If, within a period of one year following acceptance by the City Council of the last of the Improvements, any Improvements or part of any Improvements furnished, installed or constructed by the Developer including all landscape improvements, or any of the work performed under this Agreement, is determined to be defective or otherwise fails to comply with any requirements of this Agreement or the Improvement Plans and related specifications, the Developer shall, without delay and without cost to the City, repair, replace or reconstruct any defective or otherwise unsatisfactory part or parts of the Improvements. Developer's obligations hereunder shall include the repair, replacement or reconstruction of all irrigation systems and all trees, shrubs, ground cover, landscaping for such one-year period.

- B) Should the Developer fail or refuse to act promptly in accordance with subparagraph A above, or should the exigencies of the situation require repair, replacement, or reconstruction to be undertaken before the Developer can be notified and can perform the necessary work, then the City may, in its discretion, make the necessary repairs or replacements or perform the necessary reconstruction and draw upon the Developer's improvement security to reimburse itself for the costs incurred. If the Developer's improvement security does not cover the total cost of such repairs, replacement, or reconstruction, the Developer shall reimburse the City for any excess costs incurred.
- C) The security furnished for the faithful performance of the Developer's obligation to construct and install the Improvements described herein shall include Developer's liability hereunder for the one-year guarantee and warranty of the Improvements.

4) TIME EXTENSIONS

- A) Upon a showing by the Developer of good cause therefore, the duration of the Completion Period for the Improvements (or any of them) may be extended, in writing, by the City Engineer. As used herein, "good cause" may include, without limitation, delay resulting from an act of the City; acts of God or force majeure; strikes, boycotts or similar job actions by employees or labor organizations which prevent the conduct of the work; findings made by a governmental entity that the site of a particular Improvement is of archeological significance; and/or actions or failure to act of native American monitor(s); and, the order of any court or the City of Manteca.
- B) A time extension may be granted without notice to any surety or sureties of the Developer and shall not affect the validity of this Agreement nor release the surety or sureties on any bond given as an improvement security pursuant to this Agreement.
- C) As a condition of any time extension provided for herein, the City Engineer may require the Developer to furnish new or modified improvement security guaranteeing performance of this Agreement, as extended, in an increased amount as necessary to compensate for any projected increase in the Estimated Total Cost of Improvements, as determined by the City Engineer.
- D) The City Engineer may unilaterally extend the time for Developer's performance.

5) IMPROVEMENT SECURITY

- A) Unless different security amounts are specifically established by the City Engineer, prior to the City's execution of this Agreement, Developer shall provide as security to the City:
 - i) For Performance and Guarantee: Security in an amount equal to one hundred percent (100%) of the Estimated Total Cost of the Improvements,

including Grading and Monumentation, as set forth above in the Reference Data. With this security, the form of which shall be subject to the City Attorney's prior approval, the Developer assures faithful performance under this Agreement and guarantees the Improvements for one year after the completion and acceptance of the last of such Improvements, against any defective workmanship or materials or any unsatisfactory performance, pursuant to Section 3 hereof. The Developer shall be subject to the provision that the City Engineer may at any time waive, reduce, or increase the amount of such security if the City Engineer determines that the amount of the security is adequate or determines that a lesser or greater increase in the amount of the security is necessary for the protection of the City. In such event, the Developer shall provide the additional security within ten (10) days after receiving demand therefor.

- ii) For Payment: Security in an amount equal to fifty percent (50%) of the Estimated Total Cost of the Improvements, excluding Grading and Monumentation, as set forth above in the Reference Data. The security shall be issued by a bonding company licensed to issue bonds in the State of California and having a Best rating of AAA. With this security, the form of which shall be subject to the City Attorney's prior approval, the Developer guarantees payment to contractors, subcontractors, and persons renting equipment or furnishing labor or materials to them or to the Developer. If monumentation is involved, this improvement security shall also guarantee to the Developer's engineer or surveyor payment of the Estimated Total Cost of setting monuments. The Developer shall be subject to the provision that the City Engineer may at any time waive, reduce, or increase the amount of such security if the City Engineer determines that the amount of the security is adequate or determines that a lesser or greater increase in the amount of the security is necessary for the protection of the City. In such event, the Developer shall provide the additional security within ten (10) days after receiving demand therefor.

- B) If the improvement security is a corporate surety bond and, in the opinion of the City, any surety or sureties thereon become insufficient, because (i) the surety becomes insolvent; (ii) the surety's bond rating is downgraded; (iii) the surety declares bankruptcy; or (iv) the surety is no longer deemed to be an admitted surety in California by the California Department of Insurance, the Developer shall renew or replace any such surety bond with good and sufficient surety or sureties within ten (10) days after receiving from City written demand therefor.
- C) Improvement security consisting of corporate surety bonds, in the form attached hereto or as otherwise accepted by the City Attorney, shall be submitted to the City Engineer and then kept on file with the City Engineer. If a corporate surety bond is replaced by another approved bond, the replacement shall be submitted to the City Engineer and, upon filing with the City Engineer, shall be deemed to have been made a part of and incorporated into this Agreement. Upon submission to the City Engineer and then filing with the City Engineer of a replacement bond, the former improvement security shall be released.
- D) The security furnished for the faithful performance of the Developer's obligation to construct and install the Improvements described herein shall include the

Developer's liability and obligation hereunder to provide the one-year guarantee and warranty of the Improvements, and accordingly, shall not be fully released until after the City Engineer's determination that the Improvements are not defective following the completion of the one-year warranty period.

- E) Modifications of the Improvement Plans and related specifications, and modifications of the Improvements, not exceeding ten percent (10%) of the original Estimated Total Cost of the Improvements, shall not relieve or release any improvement security furnished by Developer pursuant to this Agreement. If any such modifications exceed ten percent (10%) of the Estimated Total Cost of the Improvements, Developer shall furnish additional improvement security for performance and guarantee, and for payment, as required by subparagraph "A" above, for one hundred percent (100%) of the revised Estimated Total Cost of the Improvements.
- F) Subject to any time extensions granted in accordance with Section 4 herein, the Developer shall be in default if the Developer has not completed all Improvements within the Completion Period and has not repaired any defects in the completed Improvements within the one-year guarantee and warrantee period.
- G) Alternatively, in the event of a default by the Developer pursuant to Section 10, and after written notice to Developer and reasonable opportunity to cure, City, at its sole option, shall have the right, without limiting any other rights and/or remedies available to City at law or in equity, to draw upon or utilize the improvement security furnished herewith to construct and install the Improvements itself. If City exercises this right, the release of any unused portion of such improvement security shall be in accordance with the procedures outlined in Section 6 herein, including any retention necessary for the one-year guarantee period.

6) REDUCTION OR RELEASE OF IMPROVEMENT SECURITY

- A) All public Improvements (Improvements that are to be owned or dedicated to the City or other public entity as distinguished from those owned by individual property owners, private community association, or homeowners' association) shall be first completed, deemed completed by the City Engineer and then accepted as complete by the City Council, unless such power to accept has been delegated by the City Council to the City Engineer or some other officer of the City, in which case the final acceptance shall be subject to the approval of that specified official. All private Improvements (Improvements that are to be owned by individual property owners, private community association, or homeowners' association and not dedicated or owned by the City or other public entity) shall be first completed and then accepted as complete by the City Engineer.
- B) Partial releases or reductions in the Developer's improvement security may be authorized prior to the City's acceptance of all Improvements required hereunder, as provided in this Section 6.
- C) Upon acceptance of all or any specified category of the Improvements or all improvements within a specified geographical area of the project by the City

Council, and upon written request of the Developer, the improvement security may be reduced or released as follows:

- i) Security for Performance and Guarantee: Unless Developer submits new or additional security, such as a maintenance bond, in an amount equal to ten percent (10%) of the Estimated Total Cost of the Improvements, the security for performance and guarantee shall not be reduced or released in an amount greater than ninety percent (90%) of the aggregate principal amount thereof prior to the expiration of the one-year guarantee and warranty period specified in Section 3.A., nor until any claims filed during the one-year warranty period have been settled.
 - ii) Security for Payment: Security furnished to secure payment to contractors, subcontractors, and to persons providing labor, materials or equipment shall, six (6) months after acceptance of all of the Improvements, be reduced to an amount equal to the total amount claimed by all claimants for whom liens have been filed and of which notice has been given to the City, plus an amount reasonably determined by the City Engineer to be required to assure the performance of any other obligations secured by the security. The balance of the security shall be released upon settlement or release of all claims and obligations for which the security was given.
- D) If Developer's obligations relating to any Improvements are subject to the approval of another governmental agency, the City shall not release the improvement security therefor until the obligations are performed to the satisfaction of such other governmental agency. Such agency shall have two (2) months after Developer provides notice of its performance of the obligation to register the agency's satisfaction or dissatisfaction. If at the end of that period it has not registered its satisfaction or dissatisfaction, it shall be conclusively deemed that the Developer's performance of the obligation was done to its satisfaction.

7) INDEMNIFICATION OF CITY BY DEVELOPER

- A) Neither the City, nor its officers, agents, employees nor volunteers, shall be liable or responsible for any accident, injury, loss or damage to either property or person attributable to or arising out of the defective design, construction, functionality, installation, assembly or improper maintenance, including, without limitation, the use of defective methods, materials and workmanship (collectively, "Developer's Faults"), of the Improvements by Developer, its officers, employees and agents. Developer shall indemnify, hold harmless and defend the City, its officers, agents and employees, from and against any and all losses, claims, costs, expenses, liabilities, damages, actions, causes of action and judgments, including reasonable attorneys' fees, arising directly or indirectly out of or attributable to Developer's Faults performance under this Agreement, except for the gross negligence and/or willful misconduct of the City.
- B) Developer's obligations under this Section 7 are not conditioned or dependent upon whether the City, or its officers, agents and employees, prepared, supplied or reviewed any Improvement Plans or related specifications in connection with

the project or the Improvements, or whether Developer has insurance or other indemnification covering any of these matters.

- C) Developer's obligation to indemnify, hold harmless and defend the City shall extend to injuries to persons and damages to or alleged taking of property resulting from the Developer's Faults, and the design or construction of the Improvements required herein, and shall likewise extend to claims asserted by adjacent property owners based upon the diversion of waters caused by the Developer's defective design or defective construction of public drainage systems, streets, and other public facilities or improvements. Except for a City Directive as defined below, the City's acceptance of the Improvements shall not constitute an assumption by the City of any responsibility, risk and/or liability for any damage or alleged taking of property referenced herein. City shall not be responsible or liable for the design or construction of the Improvements constructed or installed pursuant to the approved Improvement Plans, regardless of any act or omission by the City in approving the Improvement Plans, unless the particular Improvement design was required by the City over the written objection of the Developer, which objection stated that the Improvement design was potentially dangerous or defective and set forth an alternative design (a "City Directive"). After City's acceptance of the Improvements, the Developer shall remain obligated to correct or eliminate all dangerous conditions created by defects in design or construction; provided, however, that Developer shall not be responsible for routine maintenance. Developer's obligations hereunder shall remain in effect for ten (10) years following acceptance of the Improvements by the City Council. Developer acknowledges and agrees that Developer shall be responsible and liable for the Developer's Faults with respect to the Improvements and other work done pursuant to this Agreement, unless same is due to a City Directive. City shall not be liable for any acts or omissions in approving, reviewing, checking, correcting or modifying any Improvement Plans or related specifications, or in inspecting, reviewing or approving any work or construction of Improvements, unless same is due to a City Directive. The Developer's improvement security shall not be required to secure the Developer's obligations under this subparagraph C beyond the one-year guarantee and warranty period.
- D) Developer shall pay and satisfy any judgment, award or decree that may be rendered against City, its officers, officials, employees, agents, representatives and volunteers (collectively hereinafter "City and City Personnel") in accordance with the indemnity provided above, in any such suit, action, or other legal proceeding.
- E) Developer's obligation to indemnify shall not be restricted to Insurance proceeds, if any, received by the City and City Personnel.
- F) Developer, on behalf of itself and all parties claiming under or through it, hereby waives all rights of subrogation and contribution against City and City Personnel in accordance with the indemnity provided above.
- G) It is acknowledged that Developer has applied, or may apply, to the California Statewide Communities Development Authority ("CSCDA") pursuant to the Statewide Community Infrastructure Program (SCIP) (or other similar programs) for CSCDA's formation of one or more assessment districts or community facilities

districts and issuance of bonds to finance some or all of the Improvements. To the extent that pursuant to the agreement between CSCDA and the City (which may be in the form of an agreement or incorporated in a City Council resolution), the City will indemnify or hold harmless CSCDA, its members and/or other local agencies and/or their respective officers, agents and employees (collectively, the "Indemnified CSCDA Parties") for any loss, claim, cost, expense, liability, damage action, cause of action or judgement arising directly or indirectly from the design, engineering, construction, functionality, installation, assembly or maintenance of the Improvements, the Developer shall assume all of the City's responsibility for the indemnification and hold harmless of the Indemnified CSCDA Parties (with the exception of any loss, claim, cost, expense, liability, damage action, cause of action or judgement resulting from the City's sole negligence, active negligence or willful misconduct).

8) INSURANCE. Developer shall have insurance as follows:

- A) **General Liability:** Developer shall at all times during the term of this Agreement carry, maintain, and keep in full force and effect, a policy or policies of comprehensive General liability insurance, with limits of Five Million Dollars (\$5,000,000.00) for each occurrence and in the aggregate, combined single limit, against any personal injury, death, loss or damage resulting from the wrongful or negligent acts or omissions of Developer, its officers, employees, agents and independent contractors including products/completed operations coverage by a separate written endorsement at least as broad as a CG 20 37 or a CG 20 38. If such insurance contains a general aggregate limit, either the general aggregate shall apply separately to this project, or the general aggregate limit shall be three times the occurrence limit.
- B) **Automobile Liability (including owned, non-owned, and hired autos):** Developer shall at all times during the Term of this Agreement also carry, maintain, and keep in full force and effect a policy or policies of commercial automobile liability insurance with a combined single limit of One Million Dollars (\$1,000,000.00), single limit, per occurrence for bodily injury and property damage, which will cover the drivers and automobiles used to perform Services pursuant to this Agreement. Such insurance shall include coverage for owned, non-owned, and hired automobiles.
- C) **Workers' Compensation.** Developer shall, to the extent required by state law, provide Workers' Compensation Insurance, including employer's liability coverage, for the protection of Developer's employees, in the amount required by law. Developer shall file a certificate of insurance which evidences that Developer is in compliance with said Workers' Compensation Insurance requirement. Developer shall require all subcontractors similarly to provide such Workers' Compensation Insurance and certificates of insurance for their respective employees.
- D) Developer agrees that if it does not keep the aforesaid insurance in full force and effect City may either immediately terminate this Agreement for default by Developer, or, if insurance is available at reasonable cost, City may take out the necessary insurance and pay, at Developer expense, the premium thereon.

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- E) The general liability policy shall be endorsed to state that City, its officers, officials, employees, agents, representatives and volunteers shall be covered as additional insureds with respect to the work or operations performed by or on behalf of Developer, including materials, parts or equipment furnished in connection with such work. The automobile liability policy shall be endorsed to state that City and City Personnel shall be covered as additional insureds with respect to the ownership, operation, maintenance, use, loading or unloading of any automobile owned, leased, hired or borrowed by Developer or for which Developer is responsible.
- F) The insurance provided by Developer shall be primary to any coverage available to City and shall provide that any insurance or self-insurance maintained by City or City Personnel shall be in excess of Developer's insurance and shall not contribute with it.
- G) The insurance provided by Developer shall be endorsed to state that the insurer shall waive all rights of subrogation against City and City Personnel.
- H) The policy or policies required herein shall be issued by an insurer admitted in the State of California with a rating of no less than A-, VII unless otherwise approved by the City.
- I) The certificates and endorsements for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf. The certificates shall also specifically state that the coverage contained in those policies affords insurance in compliance with the terms and conditions as set forth in this Agreement.
- J) Deductibles. Any deductibles or self-insured retentions (SIRs) must be declared to and approved by City prior to the execution of this Agreement by City. At the option of City, either the insurer shall reduce or eliminate the deductibles or self-insured retentions as respects City, or Developer shall procure a bond guaranteeing payment of losses and expenses. The commercial general liability and any excess/umbrella policies shall be endorsed to allow the City to satisfy any SIRs in the Named Insured is unable or unwilling to pay the SIRs.
- K) Notice of Policy Changes. Each such insurance policy shall be endorsed to state that coverage shall not be suspended, voided, cancelled, reduced in coverage or in limits, non-renewed, or materially changed for any reason, without thirty (30) days prior written notice thereof given by the insurer to City by U.S. mail, certified, or by personal delivery. In addition to such notice provided to City by the insurer, Developer shall also provide City with thirty (30) days prior written notice, by certified mail return receipt requested, of the suspension, voiding, cancellation, reduction in coverage or in limits, non-renewal, or material change for any reason, of any such insurance policy or policies.
- L) Evidence of Coverage. Prior to commencement of work, and at all times during the term of this Agreement, Developer shall maintain on file with the City Clerk a certificate or certificates of insurance in a form acceptable to the City Attorney, showing that the aforesaid policies are in effect in the required amounts, the

additional insureds are named therein, and the policies cannot be canceled, reduced or otherwise modified except on thirty (30) days written notice by the insurance carrier to the City. The duplicate originals and original endorsements for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf. The certificates shall also specifically state that the coverage contained in those policies affords insurance in compliance with the terms and conditions as set forth in this Agreement. The procuring of such insurance or the delivery of duplicate originals and endorsements evidencing the same shall not be construed as a limitation on Developer's obligation to indemnify City and City Personnel.

- M) Nothing contained herein shall be construed as limiting in any way Developer obligations of indemnification under Section 7 or any other extent to which Developer may be held responsible for payment of damages to persons or property resulting from its operations, including operations and work performed or materials supplied by or on behalf of Developer, any subcontractors or by anyone directly or indirectly employed by any of them.

9) OWNERSHIP OF THE IMPROVEMENTS

- A) Ownership of all or any category of the Improvements constructed and installed by the Developer pursuant to this Agreement shall vest, as applicable, in the City (or other specified governmental agency) upon acceptance of said Improvements by the City Council (or other specified governmental agency) and recordation of a Notice of Completion.
- B) The Developer shall at all times prior to the acceptance of the Improvements by the City, give good and adequate warning to the public of each and every dangerous and defective condition caused by the construction of the Improvements and shall take all steps necessary to protect the public from such dangerous or defective conditions. The Developer agrees and understands that until acceptance of the Improvements by the City, each Improvement and Improvement area that is offered for dedication shall be under the charge of the Developer, and the Developer may close all or a portion of any street or area whenever necessary to protect the public during the construction of the Improvements.

10) DEFAULT AND BREACH BY THE DEVELOPER AND REMEDIES OF THE CITY

- A) Upon the occurrence of any of the following events, the Developer shall be deemed to be in default under this Agreement:
 - i) Subject to any time extensions granted in accordance with Section 4, failure to complete construction and installation of the Improvements by the completion date set forth above in the Reference Data;
 - ii) Failure to promptly correct or cure any defect in the Improvements or any of them during the one-year guarantee and warranty period as required by

ATTACHMENT 3

Section 3.A or failure to commence correction or cure of any such defect or failure to diligently prosecute same to completion, in each instance following receipt by Developer of written notice that such defect exists;

- iii) Subject to any time extensions granted in accordance with Section 4, failure to perform substantial construction work of the Improvements or any of them, after commencement of work on same, for a period of thirty (30) days after Developer's receipt of written notice thereof from the City;
 - iv) Insolvency, appointment of a receiver, or the filing of any petition in bankruptcy, whether voluntary or involuntary, and such is not cured or discharged within a period of thirty (30) days;
 - v) Commencement of a foreclosure action against the Property or any portion thereof, or any conveyance by the Developer in lieu or in avoidance of foreclosure, within thirty (30) days after receipt by Developer of written notice thereof from the City; or
 - vi) Failure to perform any other obligations in accordance with the terms and provisions of this Agreement within thirty (30) days after receipt by Developer of written notice thereof from the City.
- B) City reserves to itself all remedies available to it at law or in equity for any breach of Developer's obligations under this Agreement. City shall have the right, without limitation of other rights or remedies after written notice to Developer and a reasonable opportunity for Developer to cure any such alleged default, to draw upon or utilize any improvement security furnished hereunder to complete the Improvements or otherwise mitigate City's damages in the event of Developer's default.
- C) The City may serve written notice of any alleged default upon the surety on any corporate surety bond furnished as improvement security hereunder, and request that said surety take over and complete the Improvements herein specified. If such surety, within seven (7) days after service of such notice of default, does not give the City written notice of its intention to perform this Agreement, or does not commence such performance within five (5) days after notice to the City of such intention to perform, the City may take over the work and prosecute the same to completion, by contract or by any other method the City deems advisable, for the account and at the expense of the Developer and its surety.
- D) Developer acknowledges that the Estimated Total Costs and improvement security amounts set forth herein may not reflect the actual cost of construction or installation of the Improvements, and, consequently, City's damages for Developer's default shall be measured by the actual cost of completing the required Improvements. If the damages incurred by the City in taking over and completing the Improvements exceeds the principal amount of the improvement security, then the Developer shall reimburse the City in the amount of such excess damages.

- E) City may, without liability for so doing, take possession of, and utilize in completing the Improvements, such materials, appliances, plant and other property belonging to Developer as may be on the site of the work and necessary for the performance of the work. Developer hereby consents to entry by the City and its representatives, including contractors, upon any real property owned by Developer or by any assignee of this Agreement, in the event the City elects to maintain or complete the work on the Improvements following Developer's default.
- F) Developer acknowledges and agrees that City has conferred substantial rights upon the Developer. As a result, City will be damaged to the extent of the cost of construction or installation of the Improvements upon Developer's failure to perform its obligations under this Agreement, which failure is not promptly remedied by sureties or by Developer.
- G) The City's failure to take an enforcement action with respect to a default, or to declare a default or breach, shall not be construed as a waiver of that default or breach or any subsequent default or breach of the Developer.
- H) If City sues to compel Developer's performance of this Agreement, or to recover damages or costs incurred in completing or maintaining the work on the Improvements, Developer agrees to pay all attorneys' fees and other costs and expenses of litigation incurred by the City in connection therewith, even if Developer subsequently resumes and completes the work.

11) RELATIONSHIP OF THE PARTIES

- A) Neither Developer, nor any of Developer's contractors, employees or agents, are or shall be deemed to be, agents of the City in connection with the performance of Developer's obligations under this Agreement.

12) ASSIGNMENT

- A) Developer shall not assign this Agreement, or any portion thereof, without the prior written consent of the City. Any attempted or purported assignment in violation of this subparagraph A shall be null and void and shall have no force or effect.
- B) For purposes of assignment under this Agreement, "prior written consent" means:
 - i) For fee credits: An amendment to this Agreement, approved and signed by the City Manager, that only assigns fee credits to a builder.
 - ii) For all other assignments, including those in addition to fee credits: An amendment to this Agreement, approved and signed by the City Council or its designee.
- C) The sale or other disposition of the Developer's Property shall not relieve Developer of its obligations hereunder. If Developer intends to sell the Property, or any portion thereof, to any other person or entity, the Developer may request a

17) SEVERABILITY

- A) The provisions of this Agreement are severable. 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.

18) INCORPORATION OF REFERENCE DATA AND RECITALS

- A) The Reference Data, the Recitals, Schedule A is incorporated into, and made a part of, this Agreement.

19) CONFLICTS PROVISION

- A) To the extent there are any conflicts and/or disputes regarding interpretation between the Improvement Agreement and Developer's attachments to this Improvement Agreement, such conflicts shall be resolved and determined exclusively in favor of the City, without exception.

20) GOVERNING LAW AND VENUE

- A) This Agreement shall be governed by the laws of the State of California. Venue for any legal action arising out of this Agreement shall be any competent court in the County of San Joaquin, California.

21) EFFECTIVE DATE OF THE AGREEMENT

- A) This Agreement shall be and become effective as of the date that it is executed by a duly authorized officer or employee of the City, it being the intention of the parties that the Developer shall first execute this Agreement and thereafter submit it to the City. The City shall insert the effective date in the Reference Data in all counterparts of this Agreement and shall transmit a fully executed counterpart to the Developer.

SIGNATURES ON NEXT PAGE

ATTACHMENT 3

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their respective officers, thereunto duly authorized, as of the dates set forth below their respective signatures.

[Note: All signatures must be acknowledged by a notary public and the acknowledgement must be attached. If signed by a Corporation, the signatures of two Corporate officers are required, unless a resolution of the Corporation's Board of Directors is provided indicating that the signature of the one signatory is sufficient to bind the Corporation.]

"DEVELOPER"

QMC MANTECA HOLDINGS, LLC

By: [Signature]
(Signature of authorized officer)

By: [Signature]
(Signature of authorized officer)

Jesse Herzog
(Type or print name of authorized officer)

Tyuse Woon
(Type or print name of authorized officer)

Managing Director
(Title of authorized officer)

Senior Director
(Title of authorized officer)

5/6/26
Date

5/11/26
Date

"CITY"

CITY OF MANTECA
a Municipal Corporation

Toni Lundgren, City Manager

Approved as to form:

ATTEST:

Kousha Mckeenejad, Deputy City Attorney

(SEAL)
Cassandra Candini-Tilton
Director of Legislative Services

ACKNOWLEDGMENT

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

State of California
County of San Francisco)

On May 6, 2026 before me, Desiree Morgan, Notary Public
(insert name and title of the officer)

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

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

WITNESS my hand and official seal.



Signature *Desiree Morgan* (Seal)

ACKNOWLEDGMENT

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

State of California
County of San Francisco)

On May 11, 2026 before me, Desiree Morgan
(insert name and title of the officer)

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

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

WITNESS my hand and official seal.

Signature

Desiree Morgan (Seal)



SCHEDULE A

1) IMPROVEMENTS

- A) STREET, SIDEWALK, CURB AND GUTTER, DRAINAGE FACILITIES, WATERLINES, SANITARY SEWER FACILITIES, STREETLIGHTS, STREET SIGNS, AND OTHER RELATED WORKS shall be constructed or installed in accordance with those offsite improvement plans designated as EMBLEM BUENA VISTA OFFSITE PACKAGE by SANDIS and signed by the City Engineer on _____ and 140-490 QUINTAL ROAD PROJECT BUENA VISTA NORTH prepared by GUZZARDO PARTNERSHIP, INC. and signed by the Public Works Director on _____, (herein referred to as the "Improvement Plans"). Should the Improvement Plans omit an improvement required by the project's entitlement Conditions of Approval, the Developer is required to make that improvement as part of the project.

2) DEVELOPER'S OBLIGATION WITH RESPECT TO CERTAIN IMPROVEMENTS

- A) POWER POLES AND UTILITY POLES:

Developer agrees that the power poles and telephone poles, wherever said poles are located beyond curb and gutter boundary lines, shall be moved prior to the construction of curbs and gutters to a location mutually agreeable to Developer and City.

- B) UNDERGROUND UTILITY LINES:

Developer agrees that the completion of the Improvements shall not occur until such time as all underground utility lines in the street section have been installed and tested.

3) LANDSCAPE MAINTENANCE

A Community Facilities District (CFD) shall be formed/annexed into, at the developer's expense, to provide for the maintenance of the park/drainage basin, streetlights, open spaces and all streetscape/median/roundabout landscape improvements. Said CFD, or other funding source, shall be in place prior to the issuance of the first building permit for a production home and as further defined in the City of Manteca Parkland Construction Policy. Developer shall be responsible for maintenance of improvements pertaining to the CFD until sufficient special tax revenue has been collected through the CFD or the City to properly maintain. This may be accomplished through a maintenance agreement, direct payment to the City, or other means as approved by the City.

NOTE: IF CORPORATE SURETY BONDS ARE TO BE UTILIZED, A SINGLE FAITHFUL PERFORMANCE BOND AND A SINGLE PAYMENT BOND (LABOR AND MATERIALS BOND) MUST BE SUBMITTED FOR ALL OF THE REQUIRED CATEGORIES OF IMPROVEMENTS.

SCHEDULE A

Engineer's Cost Estimate

Date: 22-Apr-26
 Project #: 621021
 Project: 144-490 Quintal Rd Manteca - Buena Vista N/Atherton
 Prepared By: JME/RES
Engineering Opinion of Probable Construction Costs



PAVING

Item	Description	Unit	Quantity	Unit Price	Bid Amount
1	6" PCC over 6" Class II AB (sidewalk)	SF	15,470	\$10.00	\$154,700
2	6" PCC over 6" Class II AB (Bus Turnout)	SF	1,500	\$20.00	\$30,000
3	12-ft Mixed Use Trail	SF	4,000	\$5.00	\$44,880
4	4" AC over 6" Class II AB (roadway paving)	SF	51,700	\$3.50	\$180,950
TOTAL					\$410,230

EARTHWORK

Item	Description	Unit	Quantity	Unit Price	Bid Amount
5	Fine Grading	SF	45,000	\$0.50	\$22,500
TOTAL					\$22,500

SOUNDWALL

Item	Description	Unit	Quantity	Unit Price	Bid Amount
6	4' Sound wall	LF	60	\$500.00	\$48,000
7	8' Sound wall	LF	1,039	\$800.00	\$831,200
TOTAL					\$879,200

STREETLIGHTING

Item	Description	Unit	Quantity	Unit Price	Bid Amount
8	Replace Luminaire on existing Streetlight pole	EA	1	\$2,500.00	\$2,500
9	Relocate Existing Streetlight	EA	3	\$5,000.00	\$15,000
10	New Pedestrian light / Pole / Foundation	EA	12	\$12,000.00	\$144,000
11	New Streetlight / Pole / Foundation	EA	15	\$12,000.00	\$180,000
TOTAL					\$341,500

CURB AND GUTTER

Item	Description	Unit	Quantity	Unit Price	Bid Amount
12	3-foot wide concrete valley gutter	LF	310	\$35.00	\$10,850
13	6" curb and 18" gutter	LF	2,840	\$30.00	\$85,200
14	6" vertical curb	LF	136	\$25.00	\$3,400
15	Bioretention Walls	LF	907	\$200.00	\$181,400
TOTAL					\$402,314

STORM DRAINAGE

Item	Description	Unit	Quantity	Unit Price	Bid Amount
16	12" RCP	LF	409	\$90.00	\$36,810
17	24" RCP	LF	950	\$200.00	\$190,000
18	Storm Sewer Manhole - 48" dia	EA	13	\$5,000.00	\$65,000
19	Bioretention Area	SF	3,021	\$25.00	\$75,525
20	Rain Guardian Pretreatment Chamber	EA	10	\$3,000.00	\$30,000
21	Connect to existing SD Manhole	EA	1	\$12,000.00	\$12,000
22	Curb Inlet	EA	2	\$3,000.00	\$6,000
23	Catch basin	EA	9	\$2,500.00	\$22,500
TOTAL					\$437,835

SANITARY SEWER

Item	Description	Unit	Quantity	Unit Price	Bid Amount
24	3" PVC Force Main	LF	84	\$70.00	\$5,880
25	6" PVC	LF	910	\$80.00	\$72,800
26	8" PVC	LF	510	\$90.00	\$45,900
27	Sanitary Sewer Manhole < 6' deep	EA	12	\$5,000.00	\$60,000
28	Connect to existing SS Manhole	EA	1	\$12,000.00	\$12,000
29	Sanitary Sewer Pump Station	EA	1	\$150,000.00	\$150,000
TOTAL					\$346,580

WATER

Item	Description	Unit	Quantity	Unit Price	Bid Amount
30	8" PVC C900	LF	1,100	\$100.75	\$110,825
31	8" Water Lateral	LF	100	\$90.00	\$9,000
32	6" Gate Valve (DW)	EA	7	\$1,000.00	\$7,000
33	8" Gate Valve	EA	3	\$1,250.00	\$3,750
34	Fire hydrant	EA	4	\$2,500.00	\$10,000
35	Water connection to Existing Water Main	EA	1	\$12,000.00	\$12,000

SCHEDULE A

					TOTAL	\$152,575
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Joint Trench

Item	Description	Unit	Quantity	Unit Price	Bid Amount	
36	Joint Trench	LF	1,100	\$200.00	\$220,000	
					TOTAL	\$220,000

Electrical

Item	Description	Unit	Quantity	Unit Price	Bid Amount	
37	Utility transformer, 1000kVA	EA	1	\$55,000.00	\$55,000	
38	Transformer concrete pad	EA	1	\$2,500.00	\$2,500.00	
39	Distribution feeder, 1200A (secondary)	LF	300	\$540.00	\$162,000.00	
					TOTAL	\$219,500

LANDSCAPING

Item	Description	Unit	Quantity	Unit Price	Bid Amount	
40	Landscaping	SF	28,000	\$17.00	\$476,000	
41	Irrigation including piping, controllers, sprinklers, etc	SF	22,050	\$1.00	\$22,050	
42	Median Paving	SF	270	\$15.00	\$4,050	
43	Trees	EA	25	\$500.00	\$12,500	
					TOTAL	\$514,600

MISCELLANEOUS

Item	Description	Unit	Quantity	Unit Price	Bid Amount	
44	Atherton & Beuna Vista Intersection Improvements	LS	1	\$500,000.00	\$500,000	
45	Street Monument	EA	6	\$3,000.00	\$18,000	
46	End of Street Barricade	EA	6	\$400.00	\$2,400	
47	Signing and Striping	LS	1	\$100,000.00	\$100,000	
					TOTAL	\$620,400

TOTAL

\$4,567,234

Notes:

1. This Preliminary opinion of probable construction costs should be used only as a guide. There is no responsibility assumed for fluctuations in cost or quantity of material, labor or components.