

Attachment 2

This page intentionally left blank.

**TEMPORARY MAINTENANCE AGREEMENT
BY AND BETWEEN
EAST GARRISON COMMUNITY SERVICES DISTRICT AND
UCP EAST GARRISON, LLC**

This TEMPORARY MAINTENANCE AGREEMENT ("AGREEMENT") is made and entered into on March 26, 2013 by and between EAST GARRISON COMMUNITY SERVICES DISTRICT, a community services district formed pursuant to Government Code Section 61000 *et seq* ("EGCSD"), and UCP EAST GARRISON, LLC a Delaware limited liability company ("UCP" or "Developer") (each a "Party" and collectively, the "Parties").

RECITALS

A. UCP acquired all rights, title and interest to the East Garrison development project, including the *Disposition and Development Agreement* (DDA) pursuant to a foreclosure process as evidenced in that certain Trustee's Deed Upon Sale ("Trustee's Deed") recorded September 9, 2009 in the Official Records under Recorder's Series Number 2009-057220. The DDA was subsequently assigned to and assumed by UCP by that certain *First Implementation Agreement to Disposition and Development* by and among the County of Monterey ("County"), the Redevelopment Agency of the County of Monterey (now known as "Successor Agency") and UCP dated June 28, 2011 ("First Implementation Agreement").

B. On July 18, 2006, an *Urban Services Agreement* by and between EGCSD and the County of Monterey was approved to comply with Condition of Approval No. 199 to Combined Development Permit No. PLN 303204 (the East Garrison Development Project). The Urban Services Agreement defined each party's responsibilities for owning, operating, and maintaining specific portions of public infrastructure improvements in the East Garrison development. On March 26, 2013, *Amendment No. 1 to the Urban Services Agreement* was approved to further define and clarify each party's roles and responsibilities therein. UCP is a party to the Amended *Urban Services Agreement*.

C. On July 18, 2006, an *Interim Funding Agreement* was approved by and between EGCSD and East Garrison Partners I, LLC (EGP), the then-Developer of the East Garrison development and UCP's predecessor in interest. The Interim Funding Agreement provides for Developer to advance funding to EGCSD to pay for any revenue shortfalls for the cost to fulfill EGCSD's responsibilities under the Urban Services Agreement as defined in the approved *Operations and Maintenance Plan for the East Garrison Development* ("OMP").

D. On June 12, 2007, the County approved a *Subdivision Improvement Agreement Re East Garrison Phase 1 Onsite and Offsite Improvement Plans* (SIA) between the County and EGP. In accordance with the SIA, the Developer completed prepared Improvement Plans which included street, storm drain, sewer, and water system improvements necessary for the development, received an Encroachment Permit for those portions to be constructed within the public road right-of-way, received a Grading Permit for the on-site improvements, and provided

the financial securities and bonds required therefore. The Improvements have been constructed. The County Board of Supervisors accepted the Improvements as complete on March 26, 2013.

E. On March 26, 2013, the Board of Supervisors, acting as the Board of Directors of EGCSO, and concurrent with the approval of this AGREEMENT, accepted the completed East Garrison Phase 1 public On-Site storm drain improvements into EGCSO maintenance system, and committed to performing the operation and maintenance of said improvements in accordance with the approved OMP.

F. In conjunction with said acceptance, the Parties agree that as UCP has existing maintenance staff on site it is most efficient and cost effective for UCP to temporarily perform EGCSO maintenance obligations in accordance with the guidelines established in the OMP. UCP is agreeable to perform all EGCSO maintenance obligations accepted as part of Phase 1 on a temporary basis as outlined herein.

NOW THEREFORE, in consideration of the promises contained herein, EGCSO and UCP agree as set forth below:

1. Term. Subject to applicable law, the term ("Term") of this AGREEMENT shall commence on the date EGCSO accepts the completed East Garrison Phase 1 improvements described in the *Urban Services Agreement* as amended on March 26, 2013, into the EGCSO maintenance system, and shall remain in effect until issuance of the Certificate of Occupancy for the three hundred fifteenth (315th) market-rate residential unit in Phase 1 of the East Garrison development. Provided, however, that the temporary maintenance obligations described herein shall be transferred to EGCSO within 120 days following certification from EGCSO that revenues generated from the Special Tax for Services are sufficient to fund all EGCSO maintenance obligations, including a fully funded reserve.

2. Temporary Maintenance of the CSO Property by UCP. Throughout the term of this AGREEMENT, UCP shall perform at its sole cost all maintenance obligations on the above-described EGCSO Phase 1 improvements in accordance with the scope and schedule set forth in the OMP, including but are not limited to:

- a. Drainage, stormwater facilities and systems, and retention basins for flood control as shown in Exhibit 3 of the *First Amendment to Urban Services Agreement* approved by the Board of Supervisors on March 26, 2013.
- b. Lincoln Park and other Open Space as shown in Exhibit 4 of the *First Amendment to Urban Services Agreement* approved by the Board of Supervisors on March 26, 2013.

3. Inspections by EGCSO. EGCSO may periodically inspect the Improvements to confirm that maintenance is being performed in accordance with the OMP. Any deficiencies noted by EGCSO will be communicated to UCP. Inspections by EGCSO in no way relieve the responsibility of UCP to perform the maintenance activities provided for in this AGREEMENT. EGCSO will not be responsible for maintenance means, methods, techniques, sequences, or procedures, or for safety precautions and programs in connection with the work, and it will not be responsible for the UCP's failure to carry out the work in accordance with the OMP.

4. Final Inspection Prior to Transfer. Prior to the end of the term of this AGREEMENT as defined by paragraph 1 above, EGCSO shall inspect the Improvements to confirm said Improvements have been properly maintained prior to the return of responsibility for maintenance of the Improvements from UCP to EGCSO. The Parties shall resolve all maintenance issues prior to the transfer of responsibility to EGCSO. Parties agree to use their best efforts to complete any transfer of maintenance obligations to EGCSO within 90-days of the termination of UCP obligations, pursuant to Paragraph 2, above. UCP will not be required to post additional warranty bonds for EGCSO maintenance costs or obligations at transfer.

5. Reports. UCP shall provide quarterly reports to EGCSO as to the performance of maintenance. These reports shall include any extraordinary damage or failure as well as identification of the completion of significant maintenance events.

6. Reimbursement of Temporary Maintenance Costs. Any costs associated with UCP's maintenance obligations pursuant to this Agreement shall not be charged to EGCSO, but shall instead be included as "Project Costs" as that term is used in the DDA. Notwithstanding the above, however, after the transfer of maintenance obligations from UCP to EGCSO pursuant to Paragraphs 1 and 4, should EGCSO seek interim funding of EGCSO costs, EGCSO shall be obligated to reimburse UCP for all interim funding provided pursuant to the existing approved Interim Funding Agreement dated July 18, 2006.

7. Cost of Maintenance/Retention of Funds. As stated above, UCP shall solely bear the cost to perform the maintenance obligations in accordance with the scope and schedule set forth in the OMP. Any revenues accrued by EGCSO during the term of this AGREEMENT shall be kept by EGCSO and shall be used for and restricted to the following purposes: to pay for costs related to law enforcement services authorized to be paid through EGCSO special taxes; to establish and fund a capital replacement reserve for EGCSO; to pay for the direct administrative costs associated with the implementation and monitoring of this Agreement; to pay for the costs of inspections associated with this Agreement; to pay for direct costs associated with the management of the EGCSO; and to pay for any other EGCSO-associated costs (with the written concurrence of UCP).

8. Notices. All notices, statements, or other documents which any party shall be required or desire to give to any other party hereunder must be in writing and shall be given by the party only in one of the following ways: (i) by personal delivery, or (ii) by addressing it as indicated below, and by depositing it, registered or certified mail, postage prepaid, in the United States mail. If so delivered or mailed, each such notice, statement, or other document shall be conclusively deemed to have been given when personally delivered, or forty-eight (48) hours after the date of mailing (excluding Saturdays, Sundays, and federal holidays), as the case may be. The addresses for notices and other communications, until further notice, are:

UCP: UCP East Garrison, LLC
6489 Camden Avenue, Suite 204
San Jose, CA 95120
Attn: James W. Fletcher
Phone: (408) 323-1113
Fax: (408) 323-1114

With a copy to: W. Allen Bennett, Esq.
Vice President & General Counsel
548 W. Cromwell, Suite 104
Fresno, CA 93711
Phone: (559) 439-4464
Fax: (559) 439-4477

CSD: General Manager, East Garrison Community Services District
c/o Director of Public Works
County of Monterey
Resource Management Agency
168 W. Alisal Street, 2nd Floor
Salinas, CA 93901

9. Resolution of Certain Disputes

a. Informal Resolution. If any dispute arises between or among the Parties as to interpretation or application of any of the terms of this AGREEMENT, the Parties shall attempt to resolve the dispute in accordance with this AGREEMENT prior to judicial reference or formal court action. As to any such dispute, the Parties shall first meet and confer in good faith to resolve the matter between themselves. Each Party shall make all reasonable efforts to provide to the other Party or Parties all information relevant to the dispute, to the end that all Parties will have appropriate and adequate information to resolve the dispute.

b. Mediation. Before pursuing any administrative or judicial remedies to resolve any dispute or claim under this AGREEMENT, the Parties hereto shall attempt in good faith to resolve any such dispute by mediation conducted by a mediator mutually selected by the Parties or in the absence of mutual agreement, a panel of three (3) mediators where each Party selects one mediator, and those two mediators select the third mediator. The third mediator shall serve as chairperson and shall adhere to the Commercial Mediation Rules of the American Arbitration Association.

c. Judicial Reference. If mediation is not required under the provisions of this AGREEMENT or mediation has not resolved the dispute and any Party to this AGREEMENT commences a lawsuit relating to a dispute arising under this AGREEMENT, all the issues in such action, whether of fact or law, shall be resolved by judicial reference pursuant to the provisions of California Code of Civil Procedure Sections 638.1 and 641 through 645.1. The Parties shall cooperate in good faith to ensure that all necessary and appropriate parties are

included in the judicial reference proceeding unless it is satisfied that all necessary and appropriate parties will participate. The following shall apply to any such proceedings:

(i) The proceeding shall be brought and held in Monterey County, unless the Parties agree to an alternative venue.

(ii) The Parties shall use the procedures adopted by JAMS/ENDISPUTE ("JAMS") for judicial reference and selection of a referee (or any other entity offering judicial reference dispute resolution procedures as may be mutually acceptable to the Parties).

(iii) The referee must be a retired judge or a licensed attorney with substantial experience in relevant real estate matters.

(iv) The Parties to the litigation shall agree upon a single referee who shall have the power to try any and all of the issues raised, whether of fact or of law, which may be pertinent to the matters in dispute, and to issue a statement of decision thereon. Any dispute regarding the selection of the referee shall be resolved by JAMS or the entity providing the reference services, or, if no entity is involved, by the court in accordance with California Code of Civil Procedure Sections 638 and 640.

(v) The referee shall be authorized to provide all remedies available in law or equity appropriate under the circumstances of the controversy and consistent with this AGREEMENT, other than punitive damages.

(vi) The referee may require one or more pre-hearing conferences.

(vii) The Parties shall be entitled to discovery, and the referee shall oversee discovery and may enforce all discovery orders in the same manner as any trial court judge.

(viii) A stenographic record of the trial shall be made.

(ix) The referee's statement of decision shall contain findings of fact and conclusions of law to the extent applicable.

(x) The referee shall have the authority to rule on all post-hearing motions in the same manner as a trial judge.

(xi) The Parties shall promptly and diligently cooperate with each other and the referee and perform such acts, as may be necessary for an expeditious resolution of the dispute.

(xii) The costs of such proceedings, including the fees of a referee, shall be borne equally by the Parties to the dispute.

(xiii) The statement of decision of the referee upon all of the issues considered by the referee shall be binding upon the Parties, and upon filing of the statement of decision with the clerk of the court, or with the judge where there is no clerk, judgment may be entered thereon.

The decision of the referee shall be appealable as if rendered by the court. Except for actions for indemnification, the Parties acknowledge and accept that they are waiving their right to a jury trial to the extent such waiver is authorized by the Legislature in response to the decision of the California Supreme Court in *Grafton Partners v. Superior Court of Alameda County* (2005) 36 Cal.4th 944.

10. Indemnity. UCP shall indemnify, defend, and hold harmless EGCSO, its officers, agents, and employees, and the County, its officers, agents, and employees, from and against any and all claims, liabilities, and losses whatsoever (including damages to property and injuries to or death of persons, court costs, and reasonable attorneys' fees) occurring or resulting to any and all persons, firms or corporations furnishing or supplying work, services, materials, or supplies in connection with the performance of this AGREEMENT, and from any and all claims, liabilities, and losses occurring or resulting to any person, firm, or corporation for damage, injury, or death arising out of or connected with UCP's performance of this AGREEMENT, unless such claims, liabilities, or losses arise out of the sole negligence or willful misconduct of EGCSO or County. "UCP's performance" includes UCP's action or inaction and the action or inaction of UCP's officers, employees, agents and subcontractors.

11. Insurance.

a. Evidence of Coverage:

Prior to commencement of this AGREEMENT, UCP shall provide a "Certificate of Insurance" certifying that coverage as required herein has been obtained. Individual endorsements executed by the insurance carrier shall accompany the certificate. In addition, UCP upon request shall provide a certified copy of the policy or policies.

This verification of coverage shall be sent to the County's Contracts/Purchasing Department, unless otherwise directed. UCP shall not receive a "Notice to Proceed" with the work under this AGREEMENT until it has obtained all insurance required and such, insurance has been approved by the County. This approval of insurance shall neither relieve nor decrease the liability of UCP.

b. Qualifying Insurers:

All coverage's, except surety, shall be issued by companies which hold a current policy holder's alphabetic and financial size category rating of not less than A- VII, according to the current Best's Key Rating Guide or a company of equal financial stability that is approved by the County's Purchasing Manager.

c. Insurance Coverage Requirements: Without limiting UCP's duty to indemnify, UCP shall maintain in effect throughout the term of this AGREEMENT a policy or policies of insurance with the following minimum limits of liability:

Commercial general liability insurance, including but not limited to premises and operations, including coverage for Bodily Injury and Property Damage, Personal Injury, Contractual Liability, Broadform Property Damage, Independent Contractors, Products

and Completed Operations, with a combined single limit for Bodily Injury and Property Damage of not less than \$1,000,000 per occurrence.

Business automobile liability insurance, covering all motor vehicles, including owned, leased, non-owned, and hired vehicles, used in providing services under this AGREEMENT, with a combined single limit for Bodily Injury and Property Damage of not less than \$1,000,000 per occurrence.

Workers' Compensation Insurance, if UCP employs others in the performance of this AGREEMENT, in accordance with California Labor Code section 3700 and with Employer's Liability limits not less than \$1,000,000 each person, \$1,000,000 each accident and \$1,000,000 each disease.

Professional liability insurance, if required for the professional services being provided, (e.g., those persons authorized by a license to engage in a business or profession regulated by the California Business and Professions Code), in the amount of not less than \$1,000,000 per claim and \$2,000,000 in the aggregate, to cover liability for malpractice or errors or omissions made in the course of rendering professional services. If professional liability insurance is written on a "claims-made" basis rather than an occurrence basis, UCP shall, upon the expiration or earlier termination of this AGREEMENT, obtain extended reporting coverage ("tail coverage") with the same liability limits. Any such tail coverage shall continue for at least three years following the expiration or earlier termination of this AGREEMENT.

d. Other Insurance Requirements.

All insurance required by this AGREEMENT shall be with a company acceptable to EGCS and County and issued and executed by an admitted insurer authorized to transact Insurance business in the State of California. Unless otherwise specified by this AGREEMENT, all such insurance shall be written on an occurrence basis, or, if the policy is not written on an occurrence basis, such policy with the coverage required herein shall continue in effect for a period of three years following the date UCP completes its performance of services under this AGREEMENT.

Each liability policy shall provide that EGCS and County shall be given notice in writing at least thirty days in advance of any endorsed reduction in coverage or limit, cancellation, or intended non-renewal thereof. Each policy shall provide coverage for UCP and additional insureds with respect to claims arising from each subcontractor, if any, performing work under this AGREEMENT, or be accompanied by a certificate of insurance from each subcontractor showing each subcontractor has identical insurance coverage to the above requirements.

Commercial general liability and automobile liability policies shall provide an endorsement naming EGCS, its officers, agents, and employees, and the County of Monterey, its officers, agents, and employees as Additional Insureds with respect to liability arising out of UCP'S work, including ongoing and completed operations, and shall further provide that such insurance is primary insurance to any insurance or self-insurance maintained by the County and that the insurance of the Additional Insureds shall not be called upon to contribute to a loss covered by UCP'S insurance. The required endorsement form for Commercial General Liability Additional

Insured is ISO Form CG 20 10 11-85 or CG 20 10 10 01 in tandem with CG 20 37 10 01 (2000). The required endorsement form for Automobile Additional Insured endorsement is ISO Form CA 20 48 02 99.

Prior to the execution of this AGREEMENT by the County, UCP shall file certificates of insurance with the County's contract administrator and County's Contracts/Purchasing Division, showing that UCP has in effect the insurance required by this AGREEMENT. UCP shall file a new or amended certificate of insurance within five calendar days after any change is made in any insurance policy, which would alter the information on the certificate then on file. Acceptance or approval of insurance shall in no way modify or change the indemnification clause in this AGREEMENT, which shall continue in full force and effect.

UCP shall at all times during the term of this AGREEMENT maintain in force the insurance coverage required under this AGREEMENT and shall send, without demand by County, annual certificates to County's Contract Administrator and County's Contracts/Purchasing Division. If the certificate is not received by the expiration date, County shall notify UCP and UCP shall have five calendar days to send in the certificate, evidencing no lapse in coverage during the interim. Failure by UCP to maintain such insurance is a default of this AGREEMENT, which entitles County, at its sole discretion, to terminate this AGREEMENT immediately.

e. Notwithstanding anything to the contrary in this AGREEMENT, the parties hereby agree that the EGCS and UCP may enter into this AGREEMENT and it shall become effective without the delivery of the insurance policy required by this Section 11, if the following occurs:

- i. UCP delivers to the EGCS, and the EGCS, in its sole and absolute discretion, approves a pro forma copy of the insurance policy required by this Section 11;
- ii. UCP delivers a written certificate or other written evidence satisfactory to the EGCS (in its sole and absolute discretion), from an Insurance Carrier meeting the requirements of this Section 10 stating that such Insurance Company intends to issue an insurance policy substantially in the form of the pro forma policy delivered pursuant to this Section 11 above; and
- iii. UCP delivers evidence satisfactory to the EGCS (in its sole and absolute discretion), that the premium for the insurance policy required for 2012-2013 in accordance with this Section 10 has been paid in full.

12. Recordation. This AGREEMENT and any amendment thereto shall be recorded within the records of the Office of the Recorder for the County of Monterey and shall constitute a covenant running with the land for all the parcels within the Project and shall be binding on UCP, all property owners, administrators, executors, assigns, heirs, and all other successors in interest.

13. Default and Remedies. In the event UCP fails to perform its maintenance obligations, or fails to obtain the insurance required under Section 11 hereof, or fails to take any

other required action under this AGREEMENT, EGCSO may take whatever action at law or in equity or under this AGREEMENT to which it is entitled, including but not limited to an action for damages or for specific performance or otherwise to enforce performance and observance of any obligation, condition or covenant of UCP under this AGREEMENT. Notwithstanding anything else in this AGREEMENT, if UCP fails to obtain the insurance required under Section 11 hereof, EGCSO may obtain such insurance insuring EGCSO and County, and charge UCP for the cost. In addition, EGCSO shall be entitled to all of its costs associated with enforcing the terms of this AGREEMENT, including, without limitation, attorneys' fees and costs, and court costs. Any costs associated with activities required by EGCSO to cure a default or enforce an obligation of UCP pursuant to this provision shall not be eligible for reimbursement to UCP, whether as "Project Costs" or otherwise.

14. Miscellaneous. As used in this AGREEMENT, all words in the masculine, feminine, or neuter gender, and the plural or singular number, shall each be construed to include the others whenever the context so requires. This AGREEMENT shall be binding upon and inure to the benefit of the respective successors and assigns of the Parties hereto. This AGREEMENT shall be governed by and construed in accordance with the laws of the State of California. Time is of the essence of this AGREEMENT. No change in or addition to, or waiver or termination of this AGREEMENT or any part thereof, shall be valid unless in writing and signed on behalf of each of the Parties hereto. Every provision of this AGREEMENT is intended to be severable. If any term or provision hereof is illegal or invalid for any reason whatsoever, such illegality or unenforceability shall not affect the validity of the remainder of this AGREEMENT. This AGREEMENT may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

IN WITNESS WHEREOF, the parties have executed this AGREEMENT as of the Effective Date set forth below.

UCP:
UCP EAST GARRISON, LLC, a
Delaware limited liability company

EGCSD:
East Garrison Community Services
District

By: UCP, LLC, a Delaware Limited
Liability Company, its sole member

By: Fernando Armenta

Name: FERNANDO ARMENTA

By: James W. Fletcher

Title: Supervisor, Director

Name: JAMES W. FLETCHER

Title: COO

APPROVED AND CONSENTED TO:

SUCCESSOR AGENCY TO THE REDEVELOPMENT
AGENCY OF THE COUNTY OF MONTEREY

By: Fernando Armenta

Title: Nicholas E. Chiles
Asst. County
Administrative Officer

APPROVED AS TO FORM:

Kay Reimann
Kay Reimann
Sr. Deputy County Counsel

Date: 3/22/13