

Attachment B

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East Garrison Community Services District

Board Order

168 West Alisal Street,
1st Floor
Salinas, CA, 93901
831.755.5066

Agreement No. A-12423

Upon motion of Director Parker, seconded by Director Alejo and carried by those members present, the Board of Directors hereby:

Approved and authorized the Chair to sign Amendment No. 1 to Agreement No. A-12423, a Temporary Maintenance Agreement by and between East Garrison Community Services District and UCP East Garrison, LLC relating to temporary maintenance obligations for improvements at the East Garrison development in an amount not to exceed \$80,000 in FY16-17, \$699,300 in FY17-18, \$714,800 in FY18-19, and \$731,400 in FY19-20, and with a term to end within sixty (60) days of the District's approval of an agreement with a selected vendor to provide these maintenance services.

PASSED AND ADOPTED this 12th day of September 2017, by the following vote, to wit:

AYES: Directors Alejo, Phillips, Salinas, Parker and Adams

NOES: None

ABSENT: None

I, Gail T. Borkowski, Clerk of the Board of Supervisors of the County of Monterey, State of California, hereby certify that the foregoing is a true copy of an original order of said Board of Supervisors duly made and entered in the minutes thereof of Minute Book 80 for the meeting September 12, 2017.

Dated: September 12, 2017
File ID: EGCSD 17-003

Gail T. Borkowski, Clerk of the Board of Supervisors
County of Monterey, State of California

By Donnie Hancock
Deputy

**AMENDMENT NO. 1
TO
TEMPORARY MAINTENANCE AGREEMENT
BY AND BETWEEN
EAST GARRISON COMMUNITY SERVICES DISTRICT AND
UCP EAST GARRISON, LLC**

This AMENDMENT NO. 1 TO AGREEMENT No. A-12423, TEMPORARY MAINTENANCE AGREEMENT by and between EAST GARRISON COMMUNITY SERVICES DISTRICT and UCP EAST GARRISON, LLC ("Amendment No.1") is made and entered into as of July 25, 2017.

RECITALS

- A. On March 26, 2013, the EAST GARRISON COMMUNITY SERVICES DISTRICT ("District") and UCP EAST GARRISON, LLC ("UCP" or "Developer") entered into an agreement (the "Temporary Maintenance Agreement" or "Agreement") whereby UCP agreed to provide all maintenance obligations on Phase 1 District improvements, in accordance with the scope and schedule of the approved *Operations and Maintenance Plan for the East Garrison Development* ("OMP") related to the East Garrison Disposition and Development Agreement ("East Garrison DDA").
- B. Paragraph 1 ("Term") of the Temporary Maintenance Agreement provides that it shall remain in effect until the issuance of the Certificate of Occupancy for the three hundred fifteenth (315th) market-rate residential unit in Phase 1 of the East Garrison development. The Term also contained a proviso that the temporary maintenance obligations are to be transferred to the District within one hundred twenty (120) days of a certification from the District that revenues generated from the Special Tax for Services are sufficient to fund all District maintenance obligations, including a fully funded reserve.
- C. Paragraph 2 ("Temporary Maintenance of the CSD Property by UCP") of the Agreement identifies certain improvements included in the scope of UCP's maintenance responsibilities, but is unclear as to the scope of all improvements to be maintained by UCP pursuant to the Agreement.
- D. Paragraph 6 ("Reimbursement of Temporary Maintenance Costs") of the Agreement provides that UCP's maintenance obligations pursuant to the Agreement are not to be charged to the District, but instead included as "Project Costs" as that term is used in the East Garrison DDA. Paragraph 7 ("Cost of Maintenance/ Retention of Funds") of the Agreement further provided that any revenues accrued by the District pursuant to the Agreement are to be kept by the District and used for restricted purposes as set forth in the Agreement.
- E. Development pursuant to the East Garrison DDA has proceeded, and the District is preparing to solicit a consultant to provide maintenance and related services, including the types of services described in the Temporary Maintenance Agreement undertaken by UCP. The

District believes sufficient revenues are being generated to assume maintenance duties, however, it is not known at this time if a consultant will be selected within the 120-day time frame contemplated by Paragraph 1. The District also recognizes the original intent of the parties to the East Garrison Disposition and Development Agreement was for the District to assume costs of maintenance of District property when it was financially capable.

F. UCP recognizes the marketing benefits of the obligations it assumed to maintain District improvements during critical stages of the development of East Garrison, as well as the continued benefits of control of maintenance of improvements by UCP, but does not wish to assume responsibility for continued costs if the District is financially capable.

G. Accordingly, in order to continue the proper, efficient and cost-effective maintenance of the East Garrison Project in a manner that promotes the continued development of the Project, the District and UCP wish to amend the Agreement to provide for the reimbursement of services performed by UCP under the Agreement as of the date set forth below.

NOW, THEREFORE, in consideration of the promises contained herein, the District and UCP agree to amend the Temporary Maintenance Agreement as follows:

1. Paragraph 1 ("Term") of the Temporary Maintenance Agreement is amended to read as follows:

1. Term. Subject to applicable law, the term ("Term") of this AGREEMENT shall commence on the date EGCS D accepts the completed East Garrison Phase 1 improvements described in the *Urban Services Agreement* as amended on March 26, 2013, into the EGCS D maintenance system, and shall remain in effect until issuance of 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, with the exception of Lincoln Park, as set forth below in Paragraph 1.1, shall be transferred to EGCS D within sixty (60) days of the approval of an agreement between EGCS D and a selected vendor to provide maintenance services.

2. Paragraph 1.1 is hereby added to the Temporary Maintenance Agreement to read as follows:

1.1 Lincoln Park. Notwithstanding anything to the contrary in the AGREEMENT, UCP shall continue to maintain Lincoln Park for a period of one (1) year following the later of: (a) the issuance of the three hundred fifteenth (315th) market-rate residential unit Certificate of Occupancy in Phase 1 of the East Garrison development; or (b) the approval of an agreement between EGCS D and a selected vendor to provide maintenance services, or (c) the EGCS D providing notice to UCP of such approved agreement.

3. Paragraph 2 ("Temporary Maintenance of the CSD Property by UCP") of the Temporary Maintenance Agreement is amended to read as follows:

Throughout the term of this AGREEMENT, UCP shall perform all maintenance obligations on ESCSD improvements in all Phases of the Project in accordance with the scope and schedule of the applicable OMP, including but not limited to all drainage, stormwater facilities and systems, and retention basins for flood control; Lincoln Park and other Open Space as shown in Exhibits 3 and 4 of the *First Amendment to Urban Services Agreement* approved by the Board of Supervisors on March 26, 2013.

4. Paragraph 6 (“Reimbursement of Temporary Maintenance Costs”) of the Temporary Maintenance Agreement is amended by replacing Paragraph 6 with the following:

6. Reimbursement of Temporary Maintenance Costs.

(a) Any costs associated with UCP’s maintenance obligations pursuant to this Agreement prior to the date of March 1, 2017, shall not be charged to EGCSO, but shall instead be included as “Project Costs” as that term is used in the DDA. In addition, unless through a future amendment past costs are reimbursed, the Project Costs incurred by UCP pursuant to this Agreement shall be chargeable only to the Successor Agency to the Redevelopment Agency of the County of Monterey and not to the Fort Ord Reuse Authority.

(b) Actual, direct costs associated with UCP’s maintenance obligations pursuant to this Agreement incurred on or after March 1, 2017, shall be reimbursed by EGCSO. The estimated cost of services provided under this Agreement shall not exceed the Total Annual Budget as is set forth below and as detailed in Exhibit 2 to this Amendment No. 1 (the “Total Annual Budget”):

ANNUAL BUDGET				
	FY16-17	FY17-18	FY18-19	FY19-20
Task 1: Public Road Annual Maintenance	\$ 7,500	\$ 65,200	\$ 66,600	\$ 68,100
Task 2: Stormwater/Flood Control Annual Maintenance	\$ 7,600	\$ 66,600	\$ 68,100	\$ 69,700
Task 3: Park & Open Space Annual Maintenance	\$ 57,600	\$ 503,900	\$ 515,100	\$ 526,700
Task 4: Optional Services as Assigned				
Non-Emergency Services	\$ 7,300	\$43,600	\$45,000	\$46,500
Emergency Services		\$20,000	\$20,000	\$20,000
TOTAL MAXIMUM ANNUAL COST	\$ 80,000	\$ 699,300	\$ 714,800	\$ 731,400

The parties acknowledge that the Annual Budget as stated herein is an estimate which may not reflect the actual cost of services, and while EGCSO shall have no obligation to pay any amount in excess of the Total Annual Budget, the parties agree to meet and confer in good faith on a semi-annual basis in order to review the Total Annual Budget and make reasonable adjustments to the Budget if necessary and mutually agreed upon by the parties. UCP shall submit monthly invoices which shall include details of service rendered and expenses incurred during the dates indicated. Detail of services shall describe the nature of the work, the scope line item from Exhibit 2, and the EGCSO

property or facility upon which the work was performed. Costs for purchased materials or for work performed by sub-contractors or sub-vendors shall be supported by attached invoices. No mark-up for materials or sub-contractor or sub-vendor costs will be allowed. Mileage costs shall be billed at the current County of Monterey mileage billing rate.

The effort anticipated to complete this work is based on the scope of work and cost estimates contained within the *Operation and Maintenance Plan, East Garrison Development*, rev April 26, 2013 and escalated to 2017 dollars. Cost estimates provided for tasks are the best estimates available at the time of Plan preparation; actual invoiced amounts may vary from the initial task estimates due to weather impacts, unanticipated repairs, inspection report recommendations, etc. An amendment to the Agreement is not required if the task allocated budget amount(s) do not exceed the overall Agreement not-to-exceed amount. In the event UCP costs are to exceed the task allocated budget amount(s), UCP shall notify EGCSO in advance and as soon as possible in writing and clearly describe how UCP will achieve net fiscal neutrality.

Work under Task 4, Optional Services, shall be provided only upon prior written authorization by EGCSO, and only if the cost of the work is within the indicated budget, excepting in the event of an emergency, in which case UCP may provide the response and repair services and notify EGCSO as soon as reasonably practicable. An "emergency" as used herein means only the following events: fire, flash flood, earthquake, Act of God, Act of War, and or an immediate unexpected threat to public health or safety which poses a substantial risk of serious bodily harm. The cost for such emergency services under this Agreement shall not exceed the Total Annual amount of \$20,000. Optional Services include work not anticipated in the Operation and Maintenance Plan which may be required to provide for public safety or compliance with statutes or regulations within the properties and facilities owned by the EGCSO. Except for emergency work, for any recommended work initiated by UCP, UCP shall provide EGCSO a written scope of work, justification of need, and detailed cost estimate for review by EGCSO prior to EGCSO issuing authorization to proceed with the work. For recommended work initiated by EGCSO, UCP shall provide upon request a detailed cost estimate for review by EGCSO prior to issuing authorization to proceed with the work.

Attached as Exhibit 1 to this Amendment No. 1 is a listing of incurred costs from March 1, 2017 to May 1, 2017. UCP represents that such costs are reasonable and consistent and not anticipated to increase over the anticipated term of this Agreement. All services provided during the period March 1 through June 30, 2017 must be invoiced not later than July 31, 2017.

5. Paragraph 8 ("Notices") of the Temporary Maintenance Agreement is amended by replacing the addresses for notices and other communications to read as follows:

UCP: UCP East Garrison, LLC
99 Almaden Blvd, Suite 400
San Jose, CA 95113

Attn: James Fletcher, Division President
Phone: 408-207-9499, Ext.405
Fax: 408-323-1114
E-mail: jfletcher@benchmarkcommunities.com

With copy to: Holly Traube Cordova, General Counsel
7815 North Palm Avenue, Suite 101
Fresno, CA 93711
Phone: 661-487-6080
E-mail: hcordova@benchmarkcommunities.com

CSD: General Manager, East Garrison Community Services District
c/o Deputy Director of Administrative Services
Monterey County Resource Management Agency
1441 Shilling Place South, 2nd Floor
Salinas, CA 93901
Phone: 831-755-4794
E-mail: EllerbeS@co.monterey.ca.us

6. Paragraph 12 ("Recordation") of the Temporary Maintenance Agreement is hereby deleted.

7. References in the Temporary Maintenance Agreement to UCP bearing the "sole cost" of maintenance obligations, including references found in Paragraphs 2 and 7, shall be modified by the provisions of this Amendment No. 1 to allow reimbursement of maintenance obligations performed by UCP on or after March 1, 2017.

8. All other terms and conditions of the Temporary Maintenance Agreement shall remain in full force and effect.

[Signatures on next page]

IN WITNESS WHEREOF, the parties have executed this Amendment No. 1 to the Temporary Maintenance Agreement as of the Effective date set forth above.

MASTER DEVELOPER:

UCP EAST GARRISON, LLC, a Delaware limited liability company

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

By: 

Dustin L. Bogue
President

Approved as to form:

By: 

Brian Briggs, Deputy
County Counsel

EAST GARRISON COMMUNITY SERVICES DISTRICT

By: 

Mary L. Adams
Chair, Board of Directors

APPROVED AND CONSENTED TO

**SUCCESSOR AGENCY TO THE
REDEVELOPMENT AGENCY OF THE COUNTY
OF MONTEREY**

Approved as to form:

By: 

Brian Briggs, Deputy
County Counsel

By: 

Nicholas E. Chiulos
Assistant County Administrative Officer

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