DEVELOPMENT AGREEMENT

Between

CITY OF PALO ALTO, a chartered city

and

STANFORD HOSPITAL AND CLINICS,
a California nonprofit public benefit corporation,

LUCILE SALTER PACKARD CHILDREN’S HOSPITAL AT STANFORD,
a California nonprofit public benefit corporation,

and

BOARD OF TRUSTEES OF THE LELAND STANFORD JUNIOR
UNIVERSITY, a body having corporate powers under the laws of the State of California
# TABLE OF CONTENTS

DEVELOPMENT AGREEMENT ................................................................. 6
RECIPIENTS .................................................................................................. 6
A. Definitions.............................................................................................. 6
B. Outline of Terms................................................................................... 6
C. Nature and Purpose of Development Agreements.............................. 7
D. Authority for City Development Agreements........................................ 7
E. Comprehensive Plan ............................................................................ 7
F. Property Interests ................................................................................ 7
G. Seismic Safety Requirements ................................................................. 7
H. Seismic Safety Project Components ....................................................... 8
I. Project Purposes....................................................................................... 8
J. Project Approvals................................................................................... 8
K. Compliance with City Requirements..................................................... 8
L. Binding Future Actions........................................................................... 9
M. Elimination of Uncertainty .................................................................... 9
N. Orderly Development .......................................................................... 9
O. Nature of Recitals ................................................................................. 10
1. Definitions............................................................................................ 10
   (a) Annual Payment................................................................................ 10
   (b) Applicable Rules............................................................................... 10
   (c) Architectural Review Approval....................................................... 10
   (d) City................................................................................................... 10
   (e) Comprehensive Plan ...................................................................... 10
   (f) Conditions of Approval .................................................................. 10
   (g) Construction Period ....................................................................... 11
   (h) County Property ............................................................................ 11
   (i) Days ................................................................................................ 11
   (j) Design Guidelines .......................................................................... 11
   (k) Development Agreement Act ......................................................... 11
   (l) Development Impact Fees............................................................... 11
   (m) Discretionary Action and Discretionary Approval ......................... 11
   (n) Effective Date ................................................................................. 12
   (o) Hospital Foundation Permit ............................................................ 12
   (p) Hospital Occupancy Permit ............................................................ 12
   (q) Hospitals ........................................................................................ 12
   (r) Hospital Zoning Ordinance .............................................................. 12
   (s) HSSA ............................................................................................. 12
   (t) Initial Payment Date ........................................................................ 13
   (u) Initial Project Approvals ................................................................ 13
   (v) Life Of The Project ........................................................................ 13
   (w) LPCH ............................................................................................ 13
   (x) Mortgage ...................................................................................... 13
2. Interest of the SUMC Parties................................................................. 16
3. Binding Effect...................................................................................... 17
4. Negation of Agency.............................................................................. 17
5. SUMC Parties’ Promises......................................................................... 17
   (a) Health Care Benefits......................................................................... 17
       (i) Summary of Intrinsic Benefits.................................................. 17
       (ii) Fund for Healthcare Services.................................................... 18
       (iii) Fund for Community Health and Safety Programs............... 18
   (b) Palo Alto Fiscal Benefits.................................................................. 19
       (i) Payment of Sales and Use Taxes............................................. 19
           (A) Designation of Project Site for Construction Period Sales and Use Tax Purposes.................... 19
           (B) Direct Pay Permit for Sales and Use Taxes from Existing Facilities................................. 20
           (C) Establishment of Retail Sales and Use Tax Reporting District................................. 20
       (ii) Assurance of Construction Use Tax Revenue............................ 20
           (A) Funds To Be Used In The Event Of A Shortfall... 20
           (B) Monitoring Construction Use Tax Revenue.......... 20
           (C) Reconciliation and Payment of Shortage or Surplus. 21
           (D) Costs of Monitoring and Compliance............... 22
       (iii) Funding of Operating Deficit................................................... 22
       (iv) Payment of Utility User Tax.................................................... 23
       (v) School Fees.............................................................................. 23
(c) **Traffic Mitigation and Reduced Vehicle Trips.** ........................................ 23
  (i) Summary of Existing Programs................................................................. 23
  (ii) Menlo Park Traffic Mitigation................................................................. 24
    (B) Pedestrian/Bike Caltrain Undercrossing. ............................................ 24
    (D) Willow Rd/Bayfront Expressway Improvements. ................................. 25
    (E) Bayfront Expressway/University Avenue Improvements. ...................... 25
    (F) Willow Road/Middlefield Road Improvements...................................... 25
    (G) Opticom Systems. .............................................................................. 25
    (H) Timing and Process for Payments...................................................... 25
  (iii) Contributions to AC Transit................................................................. 26
  (iv) Opticom Payments.................................................................................. 26
    (A) Opticom Systems. .............................................................................. 26
  (v) Caltrain Go Passes. .............................................................................. 27
  (vi) Marguerite Shuttle Service. .................................................................... 27
  (vii) Transportation Demand Management Coordinator.................................. 27
  (viii) Monitoring of TDM programs.............................................................. 28
    (A) Submission of Reports. ....................................................................... 28
    (B) 2025 Mode Split Penalty. ................................................................. 29
(d) **Linkages.** .............................................................................................. 29
  (i) Improvements to Enhance Pedestrian and Bicycle Connection from Intermodal Transit Center to El Camino Real/Quarry Road Intersection. ................................................................. 30
  (ii) Public Right-of-Way Improvements to Enhance Pedestrian and Bicycle Connection on Quarry Road................................................................. 30
  (iii) Stanford Barn Connection................................. 30
(e) **Infrastructure, Sustainable Neighborhoods and Communities, and Affordable Housing.** ................................................................. 31
  (i) Payment................................................................................................. 31
  (ii) Use of Funds.......................................................................................... 31
  (iii) Use of Housing Credit........................................................................... 31
(f) **Climate Change.** ..................................................................................... 31
  (i) Sustainability Programs Benefit. ............................................................ 31
(g) **Administrative Costs.** ............................................................................. 32
(h) **Satisfaction of All Conditions of Approval.** .......................................... 32

6. City’s Promises............................................................................................ 32
  (a) Vested Rights to Develop and Use the Property................................. 32
  (b) Permitted and Conditionally Permitted Uses......................................... 33
  (c) Maximum Density and Intensity of Uses.............................................. 33
  (d) Other Development Standards............................................................. 33
  (e) Subsequent Rules................................................................................... 33
  (f) Subsequent Approvals............................................................................ 33
  (g) Limitation on Architectural Review Approvals..................................... 34
7. Exceptions................................................................................................. 36
8. Exclusions................................................................................................. 37
(a) Sewer Facilities, Storm Drains and Runoff.                      37
(b) Limited Effect on Right to Tax, Assess, or Levy Fees or Charges. 37
(c) No Limit on Right of City to Adopt and Modify Uniform Codes.     38
(d) No Limit on Power of City to Adopt and Apply Rules Governing Provision and Use of Utility Services. 39
(e) California Environmental Quality Act Compliance (CEQA)...... 39
(f) No General Limitation on Future Exercise of Police Power. ...... 39
9. Indemnity. ................................................................................................. 39
10. Cooperation and Implementation.............................................................. 40
11. Identification of Applicable Rules............................................................ 40
12. Periodic Review of Compliance. .............................................................. 40
(a) Periodic Review. .................................................................................. 40
(b) Special Review. .................................................................................. 41
(c) Annual Report. .................................................................................... 41
(d) Supplement to the Annual Report. ...................................................... 41
(e) Procedure. ......................................................................................... 41
(f) Default by SUMC Parties. ............................................................ 42
(g) Proceedings Upon Modification or Termination. ................. 42
(h) Hearings on Modification or Termination. ................................... 43
(i) Certificate of Compliance. .............................................................. 43
13. Default by City.......................................................................................... 43
14. Remedies for Default. ............................................................................... 44
15. Modification, Amendment or Cancellation by Mutual Agreement ......... 45
16. Superseding State or Federal Law. ........................................................... 45
17. Notices. ..................................................................................................... 45
18. Term of Agreement; Force Majeure. ........................................................ 47
(a) Basic Term. ......................................................................................... 47
(b) Extension for Referendum, Litigation, Default or Moratorium.... 48
(c) Force Majeure. ................................................................................. 48
19. Assignment; Right to Assign. ................................................................... 48
(a) Assignment. ......................................................................................... 48
(i) Right to Assign. ................................................................................ 48
(ii) Release of Transferor. ................................................................. 49
20. Mortgagee Protection................................................................................. 50
(a) No Impairment.............................................................................. 50
(b) Notice of Default by the SUMC Parties. ...................................... 50
(c) Notice............................................................................................ 50
(d) Transfer of Ownership. ................................................................. 50

21. Miscellaneous. .......................................................................................... 50
(a) Effect of Recitals........................................................................... 50
(b) Construction.................................................................................. 51
(c) Severability. .................................................................................. 51
(d) Time. ............................................................................................. 51
(e) Waiver........................................................................................... 51
(f) Governing State Law. ................................................................. 52
(g) Determination of Compliance....................................................... 52
(h) Entire Agreement......................................................................... 52
(i) No Third Party Beneficiaries. ....................................................... 52
(j) Authority to Execute..................................................................... 52
(k) Administrative Appeal. ................................................................. 52
(l) Exhibits. ........................................................................................ 53
(m) Signature Pages............................................................................. 53
(n) Precedence. ................................................................................... 53
(o) Recordation. ................................................................................ 53
(p) Referendum or Challenge. ............................................................. 54
   (i) City’s Reimbursement Obligation. ............................................. 54
   (ii) Effect of Suspension or Termination of Agreement............. 55
   (iii) Limit of City’s Reimbursement Obligations............... 56
DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (hereinafter “Agreement”) is entered into as of this ___ day of _______, 2011, by and between the CITY OF PALO ALTO, a chartered city of the State of California (“City”), STANFORD HOSPITAL AND CLINICS, a California nonprofit public benefit corporation (“SHC”), LUCILE SALTER PACKARD CHILDREN’S HOSPITAL AT STANFORD, a California nonprofit public benefit corporation (“LPCH”), and THE BOARD OF TRUSTEES OF THE LELAND STANFORD JUNIOR UNIVERSITY, a body having corporate powers under the laws of the State of California (“University,” and together with SHC and LPCH, collectively, the “SUMC Parties”).

RECITALS

THIS AGREEMENT is entered into on the basis of the following facts, understandings and intentions of the parties:

A. Definitions.

These Recitals use certain terms with initial capital letters that are defined in Section 1 of this Agreement. City and the SUMC Parties intend to refer to those definitions when the capitalized terms are used in these Recitals.

B. Outline of Terms.

Stanford Hospital and Clinics and Lucile Salter Packard Children’s Hospital provide substantial and important public benefits through operation of world-class health care facilities and provision of a Level 1 trauma center located in the City of Palo Alto. The Stanford School of Medicine, which is part of Stanford University, provides substantial and important public benefits through research that will be translated into life-saving and life-enhancing medical treatments and procedures. To comply with the requirements of state law and to provide state-of-the-art medical and research facilities, the SUMC Parties intend to replace, retrofit and enhance their facilities in the City of Palo Alto. In conjunction with certain state-mandated retrofit and replacement work, the SUMC Parties also intend to expand their hospital, clinic and medical office facilities to meet patient demand. To facilitate this, the SUMC Parties have applied to the City for a development agreement pursuant to Sections 65864-65869.5 of the California Government Code and the City’s Resolution No. 6597. Pursuant to this development agreement, the SUMC Parties would provide certain community benefits and voluntary mitigations measures. In exchange for these community benefits and voluntary mitigation measures, and in recognition of the substantial public benefits provided by the SUMC Parties’ facilities and operations, the City would vest for a period of thirty (30) years the SUMC Parties’ rights to develop and use their facilities in Palo Alto in accordance with the Project Approvals, and would streamline the process for obtaining Subsequent Approvals, as described in this Agreement.
C. Nature and Purpose of Development Agreements.

Development agreements were authorized by the State of California in 1979, through the adoption of Government Code Sections 65864-65869.5. These statutes authorize the parties to enter into binding agreements for the development of real property within the City. Because California has a “late vesting” rule, landowners usually cannot be certain that they can proceed with a development project until they have actually obtained a building permit and started building. This lack of certainty can discourage long range planning and investment and make it more difficult for cities to provide needed public facilities. A development agreement, in which a city agrees that, for a certain period of time, it will not change the rules applicable to a project, and the property owner agrees to assist with the provision of public facilities or to otherwise provide community benefits, can benefit all parties.

D. Authority for City Development Agreements.

Pursuant to Government Code Section 65865, the City adopted Resolution No. 6597 establishing procedures and requirements for consideration of development agreements in Palo Alto.

E. Comprehensive Plan.

In July of 1998, the City of Palo Alto adopted its current Comprehensive Plan, a document containing the City’s official policies on land use and community design, transportation, housing, natural environment, business and economics, and community services. Its policies apply to both public and private properties. The Plan is used by the City Council and Planning and Transportation Commission to evaluate proposed land use changes in the City, including the adoption of this Agreement. It is intended to guide City land use decisions.

F. Property Interests.

The University is the fee owner of certain Property. SHC leases from the University certain portions of the Property and operates the Stanford Hospital and Clinics, as well as medical offices thereon. LPCH leases from the University certain other portions of the Property, and operates the Lucile Salter Packard Children’s Hospital thereon. A portion of the Property is occupied by the University’s School of Medicine. A portion of the Property consisting of approximately 0.65 acres is in the unincorporated area of Santa Clara County. The balance of the Property is within the City of Palo Alto.

G. Seismic Safety Requirements.

SB 1953 requires hospitals to retrofit or replace facilities that do not meet State-designated safety criteria by January 1, 2013. Further requirements must be met by 2030. If a hospital does not comply with these mandates, the State may
revoke the hospital’s operating license. On September 30, 2010, Governor Schwarzenegger signed SB 608, which will provide SHC with the ability to apply for up to five additional years for extensions to meet seismic requirements. If the extensions are granted, the legislation sets a new deadline of January 1, 2018. Effective January 1, 2011, SHC may apply for a three-year extension of the structural compliance deadline; from January 1, 2013 to January 1, 2016. SHC may also be eligible for an additional two-year extension of the 2016 deadline, subject to certain patient safety criteria. The Office of Statewide Health Planning and Development is responsible for approving plans for construction work required by SB 1953.

H. Seismic Safety Project Components.

Several buildings on the Property require structural retrofit or replacement to comply with SB 1953 and other applicable laws. Also, many of the facilities within the Property require nonstructural renovations or replacement to comply with SB 1953. Portions of the School of Medicine that currently occupy space in structures used for hospital purposes must be physically separated from those structures or replaced in order to comply with SB 1953 requirements. In addition, new or replacement hospital structures must meet current standards specified by the California building code for hospitals; compliance with these standards necessitates increased square footage and height to accommodate current seismic structural requirements, patient safety requirements, air handling systems and mechanical duct work.

I. Project Purposes.

The City and the SUMC Parties desire that the Project is designed and constructed to achieve timely compliance with the requirements of SB 1953 and other applicable laws, to meet existing and projected future demand for patient care, to provide modern, state-of-the-art facilities designed to deliver high quality healthcare services and related teaching and research, and to meet regional needs for emergency and disaster preparedness.

J. Project Approvals.

The SUMC Parties have applied for, and the City has certified or approved, as applicable, certain environmental documents and land use approvals and entitlements relating to the development of the Project. These actions are identified on Exhibit B.

K. Compliance with City Requirements.

The City’s Planning and Transportation Commission and City Council have given notice of intention to consider this Agreement, have conducted public hearings thereon pursuant to Government Code section 65867 and City’s
Resolution No. 6597, and the City Council has found that the provisions of this Agreement are consistent with City’s Comprehensive Plan, as amended.

L. **Binding Future Actions.**

   This Agreement will bind future City Councils to the terms and obligations specified in this Agreement and limit, to the degree specified in this Agreement and as authorized under state law, the future exercise of City’s ability to preclude development on the Property.

M. **Elimination of Uncertainty.**

   This Agreement will eliminate uncertainty in planning and provide for the orderly development of the Property, eliminate uncertainty about the validity of exactions imposed by City, allow installation of necessary improvements, provide for public services appropriate to the development of the Project, and generally serve the public interest, both within the City of Palo Alto and in the surrounding region.

N. **Orderly Development.**

   Development of the Project in accordance with this Agreement and the Project Approvals will provide for orderly development consistent with City’s Comprehensive Plan. The terms and conditions of this Agreement have undergone extensive review by City staff, its Planning and Transportation Commission and the City Council, and have been found to be fair, just and reasonable. Specifically, the City Council has found that:

   1. The provisions of this Agreement and its purposes are consistent with the goals, policies, programs and standards specified in City’s Comprehensive Plan;

   2. This Agreement will help attain important economic, social, environmental and planning goals of City and enhances and protects the public health, safety and welfare of the residents of the City of Palo Alto and the surrounding region.

   3. The SUMC Parties will incur substantial costs in providing community benefits, including voluntary mitigation, in excess of that required to address the impacts of the Project;

   4. This Agreement will mitigate significant environmental impacts; and

   5. This Agreement will otherwise achieve the goals and purposes for which the Development Agreement Act (California Government Code Sections 65864-65869.5) was enacted.
O. Nature of Recitals.

These recitals are intended in part to paraphrase and summarize this Agreement, however, the Agreement is expressed below with particularity and the Parties intend that their rights and obligations be determined by those provisions and not by the recitals.

NOW, THEREFORE, the parties do hereby agree as follows:

1. Definitions.

In this Agreement, unless the context otherwise requires:

(a) Annual Payment.

“Annual Payment” means each annual payment subsequent to the first payment and shall be paid no later than August 31 of the year following the year in which the first payment is made. For example, if the Initial Payment Date is June, 2011, the next Annual Payment would be due by August 31, 2012.

(b) Applicable Rules.

“Applicable Rules” means the City ordinances, resolutions, rules, regulations and official policies in effect on the Effective Date, as amended by the Project Approvals.

(c) Architectural Review Approval.

“Architectural Review Approval” means the approval of an application for architectural review under the Applicable Rules, including without limitation the Hospital Zoning Ordinance.

(d) City.

“City” is the City of Palo Alto.

(e) Comprehensive Plan.


(f) Conditions of Approval.

“Conditions of Approval” are the conditions to the Project Approvals or Subsequent Approvals included in or incorporated by reference in an ordinance, resolution or motion granting a Project Approval or Subsequent Approval, and including the environmental mitigations adopted by the City Council.
(g) **Construction Period.**

For purposes of payment, monitoring and reconciling Construction Use Tax payments in Section 5(b), “Construction Period” is the time period between the issuance of the first permit or approval by a public agency with jurisdiction over the Project, whether it be the City, OHSPD, or any other public agency, which allows the SUMC Parties to undertake development and construction activities contemplated by the Project, the issuance of which the Parties currently estimate to occur in 2011, and December 31, 2025.

(h) **County Property.**

“County Property” means the portion of the Property in the unincorporated area of Santa Clara County, consisting of approximately 0.65 acres.

(i) **Days.**

“Days” shall mean calendar days.

(j) **Design Guidelines.**

“Design Guidelines” means the Design Guidelines approved as part of the Project Approvals, as listed on Exhibit B.

(k) **Development Agreement Act.**

“Development Agreement Act” means Article 2.5 of Chapter 4, of Division 1 of the California Government Code (Sections 65864 - 65869.5).

(l) **Development Impact Fees.**

“Development Impact Fees” means all fees now or in the future collected by the City from applicants for new development (including all forms of approvals and permits necessary for development) for the funding of public services, infrastructure, improvements or facilities, but not including taxes or assessments, or fees for processing applications or permits or for design review. The fees included in this definition include, but are not limited to those fees set forth in Chapters 16.45, 16.47 and 16.58 of the Municipal Code, fees for traffic improvements and mitigation, and fees for other community facilities or related purposes (but not including any school fees imposed by a school district); provided nothing herein shall preclude City from collecting fees lawfully imposed by another entity having jurisdiction which City is required or authorized to collect pursuant to State law.

(m) **Discretionary Action and Discretionary Approval.**
“Discretionary Action” includes a “Discretionary Approval” and is an action or decision which requires the exercise of judgment, deliberation, and which contemplates the imposition of revisions or conditions, by City, including any board, commission or department and any officer or employee thereof, in the process of approving or disapproving a particular activity, as distinguished from an activity which merely requires City, including any board, commission or department and any officer or employee thereof, to determine whether there has been compliance with applicable statutes, ordinances, regulations, or Conditions of Approval.

(n) Effective Date.

“Effective Date” means June 6, 2011.

(o) Hospital Foundation Permit.

“Hospital Foundation Permit” means the OSHPD Incremental Project Permit allowing either Hospital to construct the primary load bearing foundation for a new or expanded hospital building. The SUMC Parties’ best estimate of the anticipated date for issuance of the first Hospital Foundation Permit, based on current information, is by January 1, 2012.

(p) Hospital Occupancy Permit.

“Hospital Occupancy Permit” means issuance of all permits necessary to allow the first Hospital building to be used by members of the public for healthcare services. Issuance of a temporary occupancy permit for purposes of building preparations in advance of opening shall not trigger obligations based upon issuance of the Hospital Occupancy Permit. However, a temporary or partial occupancy permit that allows the Hospital building to be used by the public for healthcare services shall trigger obligations based upon issuance of the Hospital Occupancy Permit. The SUMC Parties’ best estimate of the anticipated date for issuance of the first Hospital Occupancy Permit, based on current information, is by January 1, 2018.

(q) Hospitals.

“Hospitals” means SHC and LPCH.

(r) Hospital Zoning Ordinance.

“Hospital Zoning Ordinance” is the ordinance of City, adopted as part of the Project Approvals, amending the Zoning Ordinance to revise and establish the permitted and conditionally permitted uses, intensity, and other standards and specifications applicable to the Property.

(s) HSSA.
“HSSA” means the Alfred E. Alquist Hospital Facilities Seismic Safety Act of 1973, as amended by the Alfred E. Alquist Hospital Facilities Seismic Safety Act of 1983, and by SB 1953, as it may be further amended from time to time.

(t) **Initial Payment Date.**

“Initial Payment Date” means the date that is 45 days from the filing and posting of the Notice of Determination filed by the City after the second reading of the ordinance approving the Hospital District zoning and the ordinance approving this Development Agreement.

(u) **Initial Project Approvals.**

“Initial Project Approvals” means those entitlements, permits and approvals listed on Table 1 of Exhibit B.

(v) **Life Of The Project.**

“Life Of The Project” means fifty one years from the Effective Date.

(w) **LPCH.**

“LPCH” means Lucile Salter Packard Children’s Hospital at Stanford, a California nonprofit public benefit corporation.

(x) **Mortgage.**

“Mortgage” means and refers, singly and collectively, to any mortgages, deeds of trust, security agreements, assignments and other like security instruments encumbering all or any portion of the Property or any of the SUMC Parties’ rights under this Agreement.

(y) **Mortgagee.**

“Mortgagee” means and refers to the holder of any Mortgage encumbering all or any portion of the Property or any of the SUMC Parties’ rights under this Agreement, and any successor, assignee or transferee of any such Mortgage holder.

(z) **Net New Square Footage.**

“Net New Square Footage” means the amount of new square footage constructed pursuant to the Project Approvals, less the total amount of existing square footage demolished. For purposes of calculating applicable fees, the demolition of square footage of the structure at 1101 Welch Road, the 1973 Core Expansion building, and the 77 square foot hospital entry shall be credited against
the fees for the new SHC hospital structure; demolition of the square footage of the structures at 701 and 703 Welch Road shall be credited against the fees for expansion of LPCH; demolition of the square footage of the Nurses’ cottage, shops and sheds at the Hoover Pavilion Site shall be credited against the fees for the square footage of the new medical office building at the Hoover Pavilion Site; demolition of the Stone Building complex (1959 Hospital Buildings, including East, West, Core, Boswell, Grant, Alway, Lane and Edwards) shall be credited against the fees for new square footage for the University and SHC in the amount corresponding to the new square footage constructed by each entity. To the extent the SUMC Parties construct new buildings to replace the Stone Building complex and/or 1973 Core Expansion building prior to demolishing or vacating all or part of those structures, the SUMC Parties may, in their discretion, elect to take credit for future demolition of the Stone Building complex and/or 1973 Core Expansion building when calculating payment of fees for the new square footage. Construction of School of Medicine improvements for the University are not expected to result in any Net New Square Footage.

(aa) Occupancy Permit.

“Occupancy Permit” means a permit issued by any agency that allows a new or expanded structure to be used by members of the public for the intended uses of the facility. Issuance of a temporary occupancy permit for purposes of building preparations in advance of opening shall not trigger obligations based upon issuance of the Occupancy Permit. However, a temporary or partial occupancy permit that allows the building or structure to be used by the public for any of the intended uses of the facility shall trigger obligations based upon issuance of the Occupancy Permit.

(bb) OSHPD.

“OSHPD” means the Office of Statewide Health Planning and Development.

(cc) Party.

“Party” is a signatory to this Agreement, or a successor or assign of a signatory to this Agreement.

(dd) Project.

“Project” means development of the Property in accordance with the Applicable Rules, Project Approvals, and this Agreement, which is generally described as follows: (1) construction of the new SHC Hospital (in multiple phases), new SHC Clinic/Medical office buildings, new medical office/clinic building at the Hoover Pavilion site, new LPCH Hospital, new LPCH clinic/medical office space, new buildings for the School of Medicine, new SHC parking structure, new LPCH parking structure, new clinics parking structure at
the Main SUMC Site, new parking structure at the Hoover Pavilion Site, Welch Road widening, Durand Way connector road, new driveways and drop-off areas, other roadway improvements, new heliport, and miscellaneous accessory structures, surface parking, pavement and landscape improvements; (2) renovation and remodeling of existing hospital, clinic and medical office facilities including the Hoover Pavilion; and (3) demolition of the 1959 Stone Building complex (hospital and School of Medicine buildings), 1973 Core Expansion building, 1101 Welch Road medical offices, hospital entry, nurses’ cottage, miscellaneous shops and storage buildings at the Hoover Pavilion Site, 701 and 703 Welch Road medical offices, Parking Structure 3, Falk Lot 5, a portion of the Hoover Pavilion surface parking lot, and other miscellaneous surface parking, pavement and landscaped areas.

(ee) **Project Approvals.**

“Project Approvals” means the approvals, certifications or actions listed on Exhibit B and any Subsequent Approvals, including all Conditions of Approval.

(ff) **Property.**

“Property” means the real property more particularly described in Exhibit A.

(gg) **SB 1953.**


(hh) **SHC.**

“SHC” means Stanford Hospital and Clinics, a California nonprofit public benefit corporation.

(ii) **School of Medicine.**

“School of Medicine” means the Stanford University School of Medicine, which is part of the University.

(jj) **Subsequent Applicable Rules.**

“Subsequent Applicable Rules” means the ordinances, resolutions, rules, regulations and official policies of City, as they may be adopted and effective after the Effective Date that do not conflict with the Applicable Rules, or that are expressly made applicable to the subject matter of this Agreement by Sections 7 and 8.
(kk) **Subsequent Approvals.**

“Subsequent Approvals” means any approval relating to the Project issued by the City upon request of any SUMC Party after the Effective Date, including Discretionary Approvals and ministerial approvals.

(ll) **Subsequent Rules.**

“Subsequent Rules” means all City ordinances, resolutions, rules, regulations and official policies in effect at the time a City action is to be taken that would apply to the Project had this Agreement not been adopted.

(mm) **SUMC.**

“SUMC” means the Stanford University Medical Center.

(nn) **SUMC Parties.**

“SUMC Parties” means SHC, LPCH, and the University.

(oo) **Term.**

“Term” means the term of this Agreement as set forth in Section 18.

(pp) **University.**

“University” means the Board of Trustees of the Leland Stanford Junior University, a body having corporate powers under the laws of the State of California.

(qq) **Vested Right.**

“Vested Right” means a property right conferred by this Agreement that may not be rescinded, reduced, revoked or abrogated by the City.

(rr) **Zoning Ordinance.**

“Zoning Ordinance” is the zoning ordinance for the City of Palo Alto (Title 18 of the Palo Alto Municipal Code).

2. **Interest of the SUMC Parties.**

Each of the SUMC Parties represent that, as of the Effective Date, it has a legal or equitable interest in all or a portion of the Property as required by Section 65865 of the California Government Code.
3. **Binding Effect.**

Subject to the provisions of Section 19 below, this Agreement, and all of the terms and conditions hereof, shall run with the land and shall be binding upon and inure to the benefit of the parties and their respective assigns, heirs or other successors in interest.

4. **Negation of Agency.**

The parties acknowledge that, in entering into and performing this Agreement, the City, on the one hand, and the SUMC Parties, on the other hand, are each acting as an independent entity and not as an agent of the other in any respect. Nothing contained herein or in any document executed in connection herewith shall be construed as making City the joint venturer or partner of any of the SUMC Parties, or any of the SUMC Parties the joint venturer or partner of the City.

5. **SUMC Parties’ Promises.**

(a) **Health Care Benefits.**

(i) **Summary of Intrinsic Benefits.**

Stanford University Medical Center is recognized as a global leader in medical care and research, having pioneered advancements in transplantation medicine, cancer care, prenatal diagnosis and treatment, and diabetes and cholesterol treatments. In 2009, the SHC and LPCH provided the following benefits and services:

- 36,559 inpatients admitted
- 48,744 emergency department visits
- 4,759 babies delivered
- $262.6 million in uncompensated medical services, charity care, and community programs.

The SUMC Parties served 64 percent of Palo Alto residents who required hospitalization in 2009. The Project will enable the SUMC Project sponsors to continue this important work, and the addition of more beds for adults and children will alleviate overcrowding and allow the hospitals to serve patients who currently must be turned away. The hospitals also provide the only Level 1 Trauma Center between San Francisco and San Jose. The Trauma Center and the Emergency Department ensure critical community emergency preparedness and response resources for the community in the event of an earthquake, pandemic, or other major disaster.
(ii) **Fund for Healthcare Services.**

Not later than the Initial Payment Date, and subject to the provisions in Section 21(p), the Hospitals will designate for Healthcare Services the amount of Three Million Dollars ($3,000,000), which amount shall increase by 4.5% per year through 2025, and thereby will total Five Million Six Hundred Thousand Dollars ($5,600,000) by December 31, 2025. After completing the reconciliation of construction use tax payments described in Section 5(b)(ii)(C), the Hospitals shall use the resulting Fund for Healthcare Services by spending the fund in even increments over a ten-year period from 2026 through 2036 to assist residents of Palo Alto who have self-payment responsibilities beyond their financial means, to pay healthcare services ("Patient Service Program"). If in any year less than one-tenth of the Fund for Healthcare Services is used by the Patient Services Program, the excess shall be used in any one or all subsequent years or added to the Fund for Community Health and Safety Programs described in Section 5(a)(iii) below. The Patient Services Program shall be in addition to the Hospitals’ Financial Assistance/Charity Care Policy dated August 2010, as amended from time to time, and in addition to any coverage afforded by the new federal Health Care and Education Reconciliation Act and subsequent amendments. The Hospitals, in their reasonable discretion, shall develop criteria for determining whether patients are qualified to receive assistance from the Patient Services Program based on Palo Alto residency status and financial need. The Hospitals shall report the criteria used to determine eligibility for assistance from the Patient Services Program, comparative criteria used to determine eligibility for assistance under the Hospitals’ charity policies (in order to verify that the Patient Services Program is in addition to the Hospitals’ charity policies and other federal requirements) and their disbursements under the Patient Services Program annually, as part of the annual report described in Section 12(d). All reporting will comply with applicable privacy laws and policies, as well as the privacy policies of the Hospitals.

If at any time the Hospitals and City mutually determine that the Patient Services Program creates undue administrative burdens or is not needed by the Palo Alto community in view of other available programs, the Hospitals shall contribute, in annual installments, the remainder of the funds allocated to the Patient Services Program to the Community Health and Safety Program Fund described in Section 5(a)(iii) below.

(iii) **Fund for Community Health and Safety Programs.**

Not later than the Initial Payment Date, and subject to the provisions in Section 21(p), the SUMC Parties shall contribute, in a single lump sum payment, Four Million Dollars ($4,000,000) (the “Community Health and Safety Program Fund”) to the City, to be held in a separate account and to be distributed to selected community health programs that benefit residents of the City, which amount could be spent at the City Council’s discretion in whole or in part on the
Project Safety Net Program. The SUMC Parties and the City shall establish a joint committee to evaluate proposals regarding the other specific programs to receive funding, composed of two representatives selected by the SUMC Parties and two representatives selected by the City. The joint committee may choose to coordinate its efforts with the City’s Human Relations Commission, and the City’s representatives on the committee may be members of the Human Relations Commission. The joint committee shall make annual recommendations to the City Council regarding proposed disbursements from the Community Health and Safety Program Fund, and the City Council shall use its reasonable discretion to decide whether to accept, reject or modify the joint committee recommendations. The City shall keep the funds paid by the SUMC Parties to the Community Health and Safety Program Fund in a separate account, to be used only for the purposes described in this Section 5(a)(iii). The City shall deliver an annual report of disbursements from the Community Health and Safety Program Fund in accordance with Section 12(d) below.

(b) **Palo Alto Fiscal Benefits.**

(i) **Payment of Sales and Use Taxes.**

The SUMC Parties shall use their best efforts to maximize the City’s allocation of sales and use taxes associated with Project construction and operation as follows:

(A) **Designation of Project Site for Construction Period Sales and Use Tax Purposes.**

The SUMC Parties shall accrue or self report sales and use taxes for the benefit of the City pursuant to the applicable regulations of the State Board of Equalization (the “SBOE”) regulations, and any additional regulations issued or amendments made thereto, for the purpose of maximizing the City’s allocation of construction use tax revenues derived from the Project available under the applicable laws and regulations. To this end, the SUMC Parties shall use their best efforts to the extent allowed by law to: (i) obtain all permits and licenses necessary to maximize the City’s allocation of construction use taxes derived from the Project, including but not limited to California Seller’s Permits, Use Tax Direct Payment Permits, and any other license or permit necessary or desirable to maximize the City’s allocation of sales and use taxes derived from the Project; (ii) designate, and require its contractors and subcontractors to designate, the Property as the place of sale of all “fixtures” furnished and/or installed as part of the Project; (iii) designate, and require all its contractors and subcontractors to designate, the Property as the place of use of all “materials” used in the construction of the Project; and (iv) require all contractors and subcontractors to allocate the local sales and use taxes derived from their contracts directly to the City. The SUMC Parties shall, and shall use their best efforts to require their contractors and subcontractors to, complete and file any forms as the SBOE
requires to effect the designations required by this Section pursuant to the applicable regulations of the SBOE. The SUMC Parties shall bear all costs associated with its activities under this Section 5(b)(i)(A). This Section 5(b)(i)(A) does not require the SUMC Parties to establish a purchasing entity or office in the City of Palo Alto.

(B) **Direct Pay Permit for Sales and Use Taxes from Existing Facilities.**

Within thirty (30) days of the Effective Date, the Hospitals shall begin and diligently complete the process necessary to obtain a use tax direct pay permit from the State of California in order to increase, on an ongoing basis, the City tax allocation for the Hospitals’ purchases. The Hospitals shall maintain the use tax direct pay permit for the Life Of The Project, unless the State of California ceases to continue to administer the use tax direct pay permit program or a substantially equivalent program.

(C) **Establishment of Retail Sales and Use Tax Reporting District.**

The SUMC Parties shall cooperate in good faith with the City to assist the City in establishing and administering a Retail Sales and Use Tax Reporting District that includes the Property and the Project, to enable the City to track the generation, allocation, reporting and payment of sales and use taxes derived from the Project. Such cooperation shall include providing the City with a list of all SBOE Permit Codes assigned to the SUMC Parties’ operations and activities on the Property and associated with the Project, and the physical locations (e.g., addresses) associated with such SBOE Permit Codes.

(ii) **Assurance of Construction Use Tax Revenue.**

The SUMC Parties shall take the following steps to provide reasonable assurance to the City that it will receive no less than Eight Million, One Hundred Thousand Dollars ($8,100,000) in construction use tax revenues resulting from the Project by December 31, 2025:

(A) **Funds To Be Used In The Event Of A Shortfall.**

As provided in Section 5(a)(ii), the Hospitals will designate the amount of Three Million Dollars ($3,000,000), which amount shall increase by 4.5% per year through 2025, and thereby will total Five Million Six Hundred Thousand Dollars ($5,600,000) by December 31, 2025.

(B) **Monitoring Construction Use Tax Revenue.**

During the Construction Period, the SUMC Parties shall use their best efforts to require Project contractors and subcontractors to report to the SUMC
Parties the permits obtained and payments made pursuant to Section 5(b)(i)(A). Within six (6) months of the conclusion of each calendar year during the Construction Period, the SUMC Parties will submit to the City a report to be used by the City to monitor payment of construction use taxes and to determine the share of such construction use taxes that the City has received as a result of the Project (“Monitoring Report”). The report shall include the following information: (i) a self-accrual report for the year identifying purchases made, purchase prices and taxes pertinent to such purchases for owner supplied items; and (ii) a memorandum for the year identifying contractor, sub-contractor, subcontractor vendor, supplier and other similarly situated persons from whom purchases were made, where such contractor, sub-contractor, vendor, and/or other similarly situated party may allocate taxes directly to the City rather than through SUMC Parties' self-accrual system.

Within sixty (60) days of receiving the SUMC Parties’ Monitoring Report, the City shall provide to the SUMC Parties its determination of the amount of construction use taxes that it has received as a result of the Project during the preceding calendar year, along with documentation of the basis for the City’s determination. In the event that the City’s local share of construction use tax revenues is diminished due to legislative and/or other legal changes, the City shall calculate the amount of construction use tax revenue that it would have received under the local share provisions existing on the Effective Date, based upon the payments actually paid to the State Board of Equalization by the SUMC Parties and their contractors and subcontractors, and the City shall add any diminished amount to the amount it has received to arrive at a total amount of “Construction Use Tax Revenues Received” as a result of the Project. The SUMC Parties shall not be required to make up, or assure, to the City that it receives the difference between the actual amount of construction use taxes that the City has received and the amount that the City would have received under the local share provisions existing on the Effective Date. However, as allowed by law and applicable restrictions, the SUMC Parties will join with the City in opposing any legislative or legal change that would result in diminution of the City’s local share of construction use tax revenues because the SUMC Parties recognize that such diminution could adversely affect City services to the community and to the Project facilities.

(C) Reconciliation and Payment of Shortage or Surplus.

In August 2026, or as soon thereafter as records are reasonably available, the City shall provide to the SUMC Parties its determination of the total amount of Construction Use Tax Revenues Received as a result of the Project, along with a report documenting the basis for the City’s determination (“Reconciliation Report”). Within thirty (30) days of receiving the Reconciliation Report, the SUMC Parties shall notify the City as to any dispute regarding the Reconciliation Report, and the SUMC Parties shall provide a report to the City documenting the
basis for the SUMC Parties’ dispute. The Parties shall act in good faith to resolve any and all disputes regarding the Reconciliation Report within ninety (90) days from the date that the SUMC Parties notify the City of such dispute or disputes.

**Shortfall.** Within thirty (30) days of the date the Parties reach mutual agreement as to the total amount of Construction Use Tax Revenues Received as a result of the Project, the SUMC Parties shall pay to the City the amount of any shortfall between Eight Million One Hundred Thousand Dollars ($8,100,000) and the amount of the Construction Use Tax Revenues Received as a result of the Project, which amount shall be paid in full regardless of whether it exceeds the amount identified pursuant to Section 5(a)(ii). The amount of the Shortfall Payment then shall be deducted from the Five Million Six Hundred Thousand Dollars ($5,600,000) amount that the SUMC Parties designated pursuant to Section 5(a)(ii), and the remainder of that designated amount, if any, shall be applied to the Patient Service Program as described in Section 5(a)(ii).

**Surplus.** Within thirty (30) days of the date the Parties reach mutual agreement as to the total amount of Construction Use Tax Revenues Received as a result of the Project, the City shall provide to the SUMC Parties the amount of any surplus between Eight Million One Hundred Thousand Dollars ($8,100,000) and the amount of the Construction Use Tax Revenues Received as a result of the Project (“Surplus Payment”). The SUMC Parties then shall reduce the amount designated pursuant to Section 5(a)(ii) in an amount commensurate with the Surplus Payment such that the fund for the Patient Service Program shall total Five Million Six Hundred Thousand Dollars ($5,600,000), comprised of the Surplus Payment paid by the City plus the difference between that payment and Five Million Six Hundred Thousand Dollars ($5,600,000) to be paid by the SUMC Parties.

**(D) Costs of Monitoring and Compliance.**

The Parties each shall bear their own costs of compliance with the provisions of Section 5(ii)(A) – (C), including but not limited to monitoring payment and receipt of construction use taxes, preparation and analysis of reports, and reconciliation.

**(iii) Funding of Operating Deficit.**

Not later than the Initial Payment Date, and subject to the provisions in Section 21(p), the SUMC Parties shall pay to the City, in a single lump sum payment, the amount of Two Million Four Hundred Seventeen Thousand Dollars ($2,417,000) for the purpose of assuring that City costs associated with the Project do not exceed revenues to the City resulting from construction and operation of the Project. This amount is the discounted net present value of the projected shortfall in revenues over a 30-year period, based upon the inflation,
(iv) Payment of Utility User Tax.

All requirements and language in Section 2.35.100(a) of the City’s Municipal Code to the contrary notwithstanding, the SUMC Parties shall pay to the City a utility user tax at a minimum rate of five percent (5%) of all electricity, gas, and water charges allocable to new construction completed as part of the Project for the Life Of The Project, which rate may be increased by the City as provided by Section 2.35.100(b) of the City’s Municipal Code.

(v) School Fees.

The SUMC Parties shall pay to the City, who in turn shall forward to the Palo Alto Unified School District, school fees upon issuance of each building permit from the City or OSHPD, in the amount that is generally applicable to non-residential development at the time of payment based upon Net New Square Footage. For buildings subject to OSHPD jurisdiction, the school fees will be paid within Thirty (30) days after issuance of a building permit from OSHPD.

(c) Traffic Mitigation and Reduced Vehicle Trips.

(i) Summary of Existing Programs.

The Hospitals provide a robust program to minimize commuting by drive-alone vehicles, which currently includes the following components:

- Incentives to forego driving or to carpool, including cash payments or other credit for participating in a carpool program, various parking incentives, online ride matching, pre-tax payroll deduction for transit passes, emergency rides home, free car rental vouchers, Zipcar car sharing credits, and other gifts and rewards.

- The free Marguerite Shuttle system, supported in part by payments from the Hospitals, connecting the Hospitals to local transit, Caltrain, and local shopping and dining.

- The Eco Pass program for hospital employees, allowing free use of VTA buses and light rail, the Dumbarton Express, the Highway 17 Express, and the Monterey-San Jose Express.

- Free use of the U-Line Stanford Express connecting BART, the ACE train, and Ardenwood Park & Ride to Stanford.
• Alternative transportation support and information, such as a bicycle commuter facilities (clothes lockers, showers, bike lockers), transit pass sales, and various sources of ‘green’ and alternative transportation information including an ‘alternative transportation website.

(ii) Menlo Park Traffic Mitigation.

The SUMC Parties shall make the following contributions to mitigate traffic in the City of Menlo Park:


The SUMC Parties shall pay to the City of Menlo Park Seventy Two Thousand Five Hundred Dollars ($72,500) to contribute toward the costs of Traffic-Adaptive Signal Technology (collectively, “Intersection Improvements”), at intersections in the City of Menlo Park, including the following: Middlefield Road/Willow Road; Sand Hill Circle and San Hill/I-280; Sand Hill Road/Sharon Park Drive, Middlefield Road/Ringwood Avenue, Middlefield Road/Ravenswood Avenue, Marsh Road/Bay Road, Marsh Road/US 101 SB ramp, Marsh Road/US 101 NB ramp, Willow Road/Bay Road.

(B) Pedestrian/Bike Caltrain Undercrossing.

The SUMC Parties shall pay to the City of Menlo Park One Hundred Eighty-Three Thousand Dollars ($183,000) to contribute to the construction of one pedestrian/bike Caltrain undercrossing in Menlo Park.

(C) Menlo Park Shuttle Fee Program.

The SUMC Parties shall to the City of Menlo Park fees to Menlo Park’s shuttle fee program or any successor program, based on Net New Square Footage in excess of Right-Sizing Square Footage, in accordance with the formula set forth below. In no event shall the SUMC Parties’ aggregate annual payment to Menlo Park for the shuttle fee program exceed Forty Six Thousand Three Hundred Forty Dollars ($46,340) per annum.

(1) The shuttle fees shall be paid in Annual Payments to the City of Menlo Park for each occupied Net New Square Footage in excess of Right-Sizing Square Footage, beginning within Thirty (30) days from of the date of issuance of an Occupancy Permit for the building, and continuing for the Life Of The Project.

(2) The amounts payable pursuant to this Section 5(c)(ii)(C)(2) shall be calculated as follows: Total Net New Square Footage for SHC facilities to be constructed is Eight Hundred Twenty Three
Thousand Seven Hundred Seventy Two (823,772) square feet, of which Three Hundred Twenty Thousand (320,000) square feet is allocable to Right-Sizing. Therefore, SHC shall pay Menlo Park shuttle fees in the amount of Five and Thirty Six Hundredths Cents ($0.0536) per square foot for each Net New Square Footage of SHC facilities in excess of Three Hundred Twenty Thousand (320,000) square feet. Total Net New Square Footage for LPCH facilities to be constructed is Four Hundred One Thousand Five Hundred (441,500) Net New Square Footage, of which One Hundred Twenty Six Thousand (126,000) is for Right-Sizing. Therefore, LPCH shall pay to Menlo Park shuttle fees in the amount of Five and Thirty Six Hundredths Cents ($0.0536) per square foot for each Net New Square Footage of LPCH facilities in excess of One Hundred Twenty Six Thousand (126,000) square feet. The SUMC Parties shall pay Menlo Park shuttle fees in the amount of Five and Thirty Six Hundredths Cents ($0.0536) per square foot for each Net New Square Footage of medical office space constructed at the Hoover Pavilion site.

(D) Willow Rd/Bayfront Expressway Improvements.

The SUMC Parties shall contribute Fourteen Thousand One Hundred Dollars ($14,100) to the City of Menlo Park for construction of improvements at the Willow Road/Bayfront Expressway intersection.

(E) Bayfront Expressway/University Avenue Improvements.

The SUMC Parties shall contribute Two Hundred Twenty Five Thousand Dollars ($225,000) to the City of Menlo Park for construction of improvements at the Bayfront Expressway/University Avenue intersection.

(F) Willow Road/Middlefield Road Improvements.

The SUMC Parties shall contribute Two Hundred Eight-Nine Thousand Dollars ($289,000) to the City of Menlo Park for construction of improvements at the Willow Road/Middlefield Road intersection.

(G) Opticom Systems.

The SUMC Parties shall contribute Six Thousand Four Hundred Dollars ($6,400) to the City of Menlo Park for installation of Opticom systems at the following four (4) intersections: Middlefield Road/Willow Road, Middlefield Road/Ravenswood Avenue, Willow Road/Bayfront Expressway, and Bayfront Expressway/University Avenue.

(H) Timing and Process for Payments.

The SUMC Parties shall make the payments to the City of Menlo Park as described above, other than the shuttle fee payments described in Section 5(c),
within Thirty (30) days after issuance of the Hospital Occupancy Permit. The shuttle fees described in Section 5(c)(ii)(C) shall be paid as Annual Payments, based on the calculations set forth in Section 5(c)(ii)(C)(2).

(iii) Contributions to AC Transit.

The Hospitals shall offer to contribute the following to AC Transit:

(A) Within Thirty (30) days from issuance of the Hospital Occupancy Permit, the Hospitals shall offer to make a one-time payment to the Alameda-Contra Costa Transit District (“AC Transit”) of Two Hundred Fifty Thousand Dollars ($250,000) to be used for capital improvements to the U-Line to increase capacity.

(B) Commencing within Thirty (30) days from issuance of the Hospital Occupancy Permit and continuing for the Life Of The Project, the Hospitals shall offer to make Annual Payments to AC Transit in a reasonable annual amount, not to exceed Fifty Thousand Dollars ($50,000), to be used for operating costs of the U-Line to maintain a load factor for bus service to the SUMC of less than 1.0.

(C) In order to encourage Hospital employees who commute from the East Bay to use public transit from the East Bay to the Project, the Hospitals shall use best efforts to lease seventy five (75) parking spaces at the Ardenwood Park and Ride lot, or an equivalent location, commencing within Thirty (30) days from issuance of the Hospital Occupancy Permit and continuing for the Life Of The Project, at a cost not to exceed Forty Five Thousand Dollars ($45,000) per year.

(iv) Opticom Payments.

Within Thirty (30) days after issuance of the Hospital Occupancy Permit, the SUMC Parties shall make the following contributions to mitigate traffic in Palo Alto.

(A) Opticom Systems.

The SUMC Parties shall pay Eleven Thousand Two Hundred Dollars ($11,200) to the City for installation of Opticom systems at the following seven (7) intersections: El Camino Real/Palm Drive/University Avenue; El Camino Real/Page Mill Road; Middlefield Road/Lytton Road; Junipero Serra/Page Mill Road; Junipero Serra/Campus Drive West, Galvez/Arboretum, Alpine/280 Northbound ramp. The City shall use its best efforts to cause the Opticom system to be installed at the intersections listed in this Section 5(c)(ii)(A) that are not located within the City’s jurisdiction.
(v) **Caltrain Go Passes.**

Commencing on September 1, 2015, the Hospitals shall purchase annual Caltrain GO Passes (free train passes) for all existing and new Hospital employees who work more than 20 hours per week, at a cost of up to One Million Eight Hundred Thousand Dollars ($1,800,000) per year, which amount shall be adjusted annually to reflect any change in the San Francisco Bay Area Consumer Price Index (the “GO Pass Amount”). The Hospitals’ obligation to provide GO Passes shall continue for fifty one (51) years, or until such earlier date as: (a) Caltrain discontinues the GO Pass program, or a substantially similar program; (b) Caltrain increases the cost of GO Passes, or a substantially similar program, such that the Hospitals’ annual costs would exceed the GO Pass Amount; or (c) Caltrain service is reduced by such an extent that the Hospitals and the City mutually determine purchase of annual GO Passes, or a substantially similar program, would no longer be effective in substantially reducing Hospital employee peak period trips in order to achieve the Alternative Mode targets specified in Section 5(c)(viii). If the cost of obtaining GO Passes exceeds the GO Pass Amount, the Hospitals shall have the option to elect either to purchase the GO Passes at the then applicable price, or to terminate the obligation to provide GO Passes, or a substantially similar program. If the Hospitals' obligation to provide GO Passes, or a substantially similar program, terminates for any of the reasons specified in this Section 5(c)(v), the Hospitals shall contribute the GO Pass Amount to one or more substitute programs to encourage use of transit by Hospital employees or otherwise reduce peak period traffic trips in the intersections impacted by the Project as identified in the Project EIR, including but not limited to regional transportation systems or solutions. The substitute program or programs shall be mutually agreed upon by the SUMC Parties and the City’s Director of Planning and Community Environment.

(vi) **Marguerite Shuttle Service.**

The Hospitals shall fund the reasonable costs, in an approximate amount of Two Million Dollars ($2,000,000), for the purchase of additional shuttle vehicles for the Marguerite shuttle service, as and when required to meet increased demand for shuttle service between the Project Sites and the Palo Alto Intermodal Transit Station. In addition, for the Life Of The Project, the Hospitals shall fund as Annual Payments the reasonable costs, in an approximate amount of Four Hundred Fifty Thousand Dollars ($450,000) per year, to cover the net increase in operating costs for the Marguerite Shuttle.

(vii) **Transportation Demand Management Coordinator.**

Commencing on September 1, 2015, and continuing through the Life Of The Project, the Hospitals shall employ an onsite qualified Transportation Demand Management (“TDM”) coordinator for the SUMC.
(viii) Monitoring of TDM programs.

The City and the SUMC Parties acknowledge that because use of transit by employees of the Hospitals is voluntary, and may be influenced by a number of factors outside of the reasonable control of the Hospitals, such as gasoline prices, costs and availability of alternative transit, housing costs and availability, and personal preferences of employees, the Hospitals cannot guarantee the results of their TDM programs. However, the Hospitals shall monitor the success of their TDM programs from the date of the Initial Project Approvals through the Life Of The Project. The following interim targets shall be used to measure the progress toward meeting the desired mode split by 2025. These interim targets assume that in the early phases of implementation, there may be larger shifts to alternative modes than the shifts that may occur in later phases of the TDM program enhancement. For purposes of calculating alternative mode share, any mode that does not constitute driving in a single-occupant vehicle to and from the work site shall be considered an “Alternative Mode,” including working remotely from home.

<table>
<thead>
<tr>
<th>Target Year</th>
<th>Alternative Mode Share</th>
<th>Percent Change</th>
</tr>
</thead>
<tbody>
<tr>
<td>EIR Baseline (2006)</td>
<td>22.9 %</td>
<td>NA</td>
</tr>
<tr>
<td>Project Approval Baseline (2011)</td>
<td>TBD</td>
<td>TBD</td>
</tr>
<tr>
<td>2018</td>
<td>30 %</td>
<td>7.1%</td>
</tr>
<tr>
<td>2021</td>
<td>33 %</td>
<td>+3 %</td>
</tr>
<tr>
<td>2025</td>
<td>35.1 %</td>
<td>+2.1 %</td>
</tr>
</tbody>
</table>

If the applicable interim target is not met for any two consecutive years prior to 2025, the Hospitals shall provide alternative transportation funding to the City in Annual Payments in the amount of One Hundred Seventy Five Thousand Dollars ($175,000) per year until the earlier of the year 2025 or the year the applicable interim mode split target is achieved, subject to a maximum of five Annual Payments. The alternative transportation funding must be used by the City for local projects and programs that encourage use of alternative transportation mode uses or otherwise reduce peak period traffic trips in the intersections impacted by the Project as identified in the Project EIR, including but not limited to regional transportation systems and solutions.

(A) Submission of Reports.

The Hospitals shall submit annual reports showing the current number of employees employed over 20 hours per week; the number of employees using an alternative mode share as documented by a study or survey to be completed by the
Hospitals using a method mutually agreeable to the City and Hospitals; and the efforts used by the Hospitals to attempt to achieve the Alternative Mode targets.

(B) 2025 Mode Split Penalty.

If by 2025, the Hospitals have not demonstrated substantial achievement of the Thirty Five and One-Tenth Percent (35.1%) target modal split for alternative transportation modes, the Hospitals shall make a lump sum payment of Four Million Dollars ($4.0 million) to the City for local projects and programs that encourage and improve use of alternative transportation mode uses or otherwise reduce peak period traffic trips in the intersections impacted by the Project as identified in the Project EIR, including but not limited to regional transportation systems or solutions. The City shall identify capital projects and program enhancements for which the funds may be applied. Sample projects may include contributions towards regional transportation projects of interest to the City and that are identified within the Valley Transportation Authority—Valley Transportation Plan or other local planning documents. If required, said Four Million Dollar ($4,000,000) payment shall constitute funds to be used by the City to offset trips by Hospital employees through citywide trip reduction. The Four Million Dollar ($4,000,000) payment shall not relieve the SUMC Parties of any of their other obligations under this Agreement, including but not limited to their obligations to continue to attempt to achieve the 35.1% target modal split through implementation of the GO Pass or substantially similar program, or a substitute program mutually agreed upon by the SUMC Parties and the City’s Director of Planning and Community Environment, which shall continue pursuant to the terms of this Agreement for fifty-one (51) years from commencement of the GO Pass program. Further, the Hospitals shall continue to implement an enhanced TDM program, monitor modal splits by Hospital employees, and strive to maximize use of alternative commute modes by Hospital employees. In addition, the Hospitals shall continue to meet with the City on a regular basis to identify potential improvements to the enhanced TDM program. The City shall keep all payments received from the Hospitals pursuant to this Section 5(c)(viii) in a separate account (the “TDM Fund”), to be used only for the purposes described in this Section 5(c)(viii). The City shall deliver an annual report of disbursements from the TDM Fund in accordance with Section 12 below.

(d) Linkages.

To further encourage use of Caltrain, bus and other transit services, and to enhance and encourage use of pedestrian and bicycle connections between the SUMC and downtown Palo Alto, the SUMC Parties shall fund the following improvements:
(i) **Improvements to Enhance Pedestrian and Bicycle Connection from Intermodal Transit Center to El Camino Real/Quarry Road Intersection.**

Two Million Two Hundred Fifty Thousand Dollars ($2,250,000) for improvements to enhance the pedestrian and bicycle connection from the Palo Alto Intermodal Transit Center to the existing intersection at El Camino Real and Quarry Road, with up to Two Million Dollars ($2,000,000) of that amount going to the development of an attractive, landscaped passive park/green space with a clearly marked and lighted pedestrian pathway, benches and flower borders. Not later than the Initial Payment Date, and subject to the provisions in Section 21(p), the SUMC Parties shall pay to the City Two Million Two Hundred Fifty Thousand Dollars ($2,250,000) in one lump sum (the “Intermodal Transit Fund”), and the City shall be responsible for constructing the improvements described in this Section 5(d)(i). The City shall keep the Intermodal Transit Fund in a separate account, to be used only for the purposes described in this Section 5(d)(i). The City shall deliver an annual report of disbursements from the Intermodal Transit Fund in accordance with Section 12(d) below. The City shall construct the improvements described in this Section 5(d)(i) prior to issuance of the Hospital Occupancy Permit.

(ii) **Public Right-of-Way Improvements to Enhance Pedestrian and Bicycle Connection on Quarry Road.**

Four Hundred Thousand Dollars ($400,000) for improvements to and within the public right-of-way to enhance the pedestrian and bicycle connection from the west side of El Camino Real to Welch Road along Quarry Road, including urban design elements and way finding, wider bicycle lanes, as necessary, on Quarry Road, enhanced transit nodes for bus and/or shuttle stops, and prominent bicycle facilities. Not later than the Initial Payment Date, and subject to the provisions in Section 21(p), the SUMC Parties shall pay to the City Four Hundred Thousand Dollars ($400,000) in one lump sum (the “Quarry Road Fund”), and the City will be responsible for constructing the improvements. The City shall keep the Quarry Road Fund in a separate account, to be used only for the purposes described in this Section 5(d)(ii). The City shall deliver an annual report of disbursements from the Quarry Road Fund in accordance with Section 12(d) below. The City shall construct the improvements described in this Section 5(d)(ii) prior to issuance of the Hospital Occupancy Permit.

(iii) **Stanford Barn Connection.**

Up to Seven Hundred Thousand Dollars ($700,000) for improvements to enhance the pedestrian connection between the SUMC and the Stanford Shopping Center going from Welch Road to Vineyard Lane, in the area adjacent to the Stanford Barn. The SUMC Parties shall be responsible for constructing these improvements prior to issuance of the Hospital Occupancy Permit.
(e) **Infrastructure, Sustainable Neighborhoods and Communities, and Affordable Housing.**

   (i) **Payment.**

   Subject to the provisions of Section 21(p), the SUMC Parties shall pay to the City a total of Twenty-Three Million Two Hundred Thousand Dollars ($23,200,000) for use in connection with infrastructure, sustainable neighborhoods and communities, and affordable housing. The SUMC Parties shall make this contribution in three equal payments as follows:

   (A) the first payment shall be made not later than the Initial Payment Date;

   (B) the second payment shall be made within Thirty (30) days from issuance of the first Hospital Foundation Permit; and

   (C) the third payment shall be made within Thirty (30) days from issuance of the first Hospital Occupancy Permit.

   (ii) **Use of Funds.**

   The amount of One Million Seven Hundred Twenty Thousand Four Hundred Eighty Eight Dollars ($1,720,488) shall be used in the same manner as funds collected by the City pursuant to its housing fee ordinance. The City shall keep the balance of the payments made pursuant to this Section 5(e) (the “Infrastructure, Sustainable Neighborhoods and Communities, and Affordable Housing Fund”) in a separate account, to be used only for the purposes described in this Section 5(e). The City shall deliver an annual report of disbursements from the Infrastructure, Sustainable Neighborhoods and Communities, and Affordable Housing Fund in accordance with Section 12(d) below.

   (iii) **Use of Housing Credit.**

   The housing credit issued to the SUMC Parties in connection with the Alma substation relocation and Quarry Substation Lease may be used to offset the obligations in this Agreement.

   (f) **Climate Change.**

   (i) **Sustainability Programs Benefit.**

   Subject to the provisions in Section 21(p), the SUMC Parties shall contribute Twelve Million Dollars ($12 Million) to the City for use in projects and programs (including carbon credits) for a sustainable community, including programs identified in the City’s Climate Action Plan, as may be amended, and investments in renewable energy and energy conservation. The SUMC Parties’
obligation to make this contribution is conditioned on there being no other non-voluntary requirement applicable to the Project to participate in Palo Alto Utilities’ Palo Alto Green Program. The SUMC Parties shall make this contribution in three equal payments, as follows:

(A) the first payment shall be made not later than the Initial Payment Date;

(B) the second payment shall be made within Thirty (30) days from issuance of the first Hospital Foundation Permit; and

(C) the third payment shall be made within Thirty (30) days from issuance of the first Hospital Occupancy Permit.

The City shall keep all payments made pursuant to this Section 5(f) (the “Climate Change Fund”) in a separate account, to be used only for the purposes described in this Section 5(f). The City shall deliver an annual report of disbursements from the Climate Change Fund in accordance with Section 12(d) below.

(g) Administrative Costs.

In implementing each of the funds described in this Section 5, the funds may be used for the Party’s reasonable costs of administering the funds, including establishing and maintaining the necessary accounts, reporting upon the use and balance of funds, establishing and implementing procedures to allocate funding, and other activities to implement the funds’ purposes.

(h) Satisfaction of All Conditions of Approval.

The SUMC Parties shall satisfy all Conditions of Approval by the dates and within the time periods required by the Project Approvals, subject to such modifications allowed by this Agreement.

6. City’s Promises.

(a) Vested Rights to Develop and Use the Property.

City hereby grants to the SUMC Parties the vested right to develop, construct and use the Project on the Property in accordance with the terms and conditions of the Applicable Rules, the Project Approvals and this Agreement, and City hereby finds the Project consistent with the Comprehensive Plan and the Zoning Ordinance as amended by the Project Approvals. City shall not apply to the Project any change in the Applicable Rules adopted or effective after the Effective Date, except as provided in Sections 7 and 8 below.
(b) **Permitted and Conditionally Permitted Uses.**

The permitted and conditionally permitted uses of the Property shall be those described in the Hospital Zoning Ordinance. Upon approval by the City, each conditional use permit issued for the Project shall be vested for the Term of this Agreement and the provisions of Section 18.77.090 of the City’s Municipal Code shall not apply to such conditional use permits; provided however, that the rights of the SUMC Parties to continue and maintain permitted and conditionally permitted uses on the Property shall be subject to compliance with the terms and conditions of this Agreement, the other Applicable Rules, and the Project Approvals.

(c) **Maximum Density and Intensity of Uses.**

When developed, the density and intensity of use of the Property shall not exceed those densities and intensities of use set forth in the Hospital Zoning Ordinance.

(d) **Other Development Standards.**

All design and development standards not set forth in the Project Approvals or this Agreement shall be in accordance with the Applicable Rules and the Subsequent Applicable Rules as applied to the Project; provided such standards shall not conflict with the Project Approvals or this Agreement.

(e) **Subsequent Rules.**

Subsequent Rules that conflict with the SUMC Parties’ rights to develop the Property as provided under this Agreement are applicable to the Project only under the circumstances described in Sections 7 and 8 below. This limitation applies to changes made by ordinance, initiative, referendum, resolution, policy, order or moratorium, initiated or instituted for any reason whatsoever and adopted by the Mayor, City Council, Planning and Transportation Commission or any other board, commission or department of City, or any officer or employee thereof, or by the electorate.

(f) **Subsequent Approvals.**

City shall not deny or unreasonably delay any Subsequent Approval that is necessary to the exercise of the rights vested in the SUMC Parties by this Agreement. Any conditions, terms, restrictions, and requirements for subsequent Discretionary Actions imposed or required by City, including those provided for herein, shall not prevent development of the land for the uses and to the density or intensity of development set forth in the Agreement. Except as provided in Sections 7 or 8 below. City shall not interpret any Subsequent Approval or apply any Subsequent Rule in a manner that would conflict with the Applicable Rules or the Project Approvals or reduce the development rights provided by this
Agreement. Upon City approval, each Subsequent Approval shall be vested for the Term of the Agreement and the provisions of Sections 6(a) and 6(b) shall apply to each Subsequent Approval.

(g) Limitation on Architectural Review Approvals.

To the extent that the Project Approvals or Applicable Rules require further decisions, determinations or actions pertaining to architectural review and/or site and design review (collectively “Architectural Review Approval”), the decision in all cases shall be made by the Director of Planning and Community Environment, after recommendation by the Architectural Review Board, subject only to appeal to the City Council, pursuant to Section 18.77.070 of the Municipal Code as set forth in the Applicable Rules, without review or recommendation by the Planning and Transportation Commission. Further, in each case, Architectural Approval shall be limited to determining consistency with the Design Guidelines, the Hospital Zoning Ordinance, and the findings regarding architectural review set forth in Section 18.76.020(d) of the Municipal Code. City shall process any application for Architectural Review Approval expeditiously. The provisions of this Section 6(g) shall apply to each architectural review or site and design review process undertaken and Architectural Review Approval granted with regard to any portion of the Project.

(h) Annexation of County Property.

City shall petition the Local Agency Formation Commission (LAFCO) to annex to City the County Property. The SUMC Parties shall cooperate by executing all necessary documents, by providing all information requested by City acting as the conducting authority for purposes of the annexation proceedings, and by attending annexation hearings and testifying in favor of the annexation. The SUMC Parties shall be responsible for paying all reasonable costs of the annexation.

(i) Utility and Storm Drain Connections.

Unless prohibited by a moratorium lawfully adopted by another governmental agency, or by action taken by City in accordance with Sections 7 or 8, or by state or federal law, City shall allow the SUMC Parties to connect the Project to the City’s sanitary sewers, storm drains, water system, gas system and electrical system in accordance with its generally applicable rules in effect at the time of application for service and shall issue all permits and authorizations necessary for such connections and service in accordance with such generally applicable rules. A moratorium shall not prevent the issuance of Discretionary Approvals or ministerial approvals for the Project, provided that City shall not be required to allow any connections or provide any services barred by the moratorium.

(j) Waste Treatment Capacity.
Subject to any limitation imposed by state or federal law, in the event of a moratorium preventing or limiting sanitary sewer connections, the SUMC Parties shall have priority for sanitary sewer treatment capacity for the Project over other unbuilt residential, commercial or industrial development until December 31, 2025. In addition, the SUMC Parties shall have priority over new commercial space built or approved subsequent to the Effective Date, including but not limited to retail, office and industrial space, until December 31, 2025. These priorities apply to both “domestic waste” and “industrial waste.”

(k) **Storm Drain Capacity.**

Subject to any limitation imposed by state or federal law, in the event of a moratorium preventing or limiting discharge or increased runoff to storm drains, the SUMC Parties shall have priority for use of storm drains for the Project over other unbuilt commercial development until December 31, 2025. The SUMC Parties also shall have priority over new commercial space built or approved subsequent to the Effective Date, including but not limited to retail, office, and industrial space, until December 31, 2025.

(l) **OSHPD.**

City recognizes that, pursuant to the HSSA, (i) OSHPD has exclusive jurisdiction of certain aspects of design and construction, including construction of associated infrastructure, of hospital buildings, including plan review, issuance of building permits, building inspections, and issuance of certificates of occupancy, and, (ii) certain OSHPD standards and rules apply to non-hospital buildings that provide outpatient clinical services. In the event that any OSHPD requirement conflicts with the Project Approvals, the City shall (a) approve revisions to Project Approvals or, as necessary, grant Subsequent Approvals for modifications that are not inconsistent with the Hospital Zoning Ordinance, or, (b) if necessary modifications would be inconsistent with the Hospital Zoning Ordinance, promptly and in good faith enter into negotiations with the appropriate SUMC Parties for such modifications to the Project Approvals as are necessary to conform to the conflicting OSHPD requirement so that the public benefits and objectives of this Agreement will be achieved at the earliest feasible date. The approval of such revisions or modifications shall be determined in the first instance by the Director of Planning and Community Environment, subject to review only by expedited appeal to the City Council.

(m) **No Other Dedications.**

Except as may be required to provide for the installation and maintenance of City-owned public utilities to the Project, including such easements as may be required to install and maintain utility laterals required to serve the Project buildings, and except as otherwise set forth in this Agreement or the Project Approvals, or as may be agreeable to the SUMC Parties, the SUMC Parties shall
not be required to make any dedications or reservations of the Property, or any portion thereof or interest therein, or of any other property in connection with the development, construction, use, or operation of the Project, or any portion thereof. The Parties shall also cooperate to identify the locations for any new necessary easements, and the locations of any existing easements that are no longer necessary and may be relinquished or vacated, to minimize the costs to the Parties of creating, maintaining, or vacating such easements.

(n) No Other Public Improvements or Financial Contributions.

Except as may be required under the Conditions of Approval, in connection with the relocation of City-owned public utilities under Welch Road, the gas line retrofitting on Welch Road, or restoration of any public improvements impacted by the Project construction, the SUMC Parties shall not be required to construct public improvements or make financial contributions to City in lieu of public improvements as part of the Project, except as expressly set forth in this Agreement, or as may be agreeable to the SUMC Parties, or as provided in the Project Approvals.

(o) No Obligation to Develop.

The SUMC Parties shall have no obligation to develop the Project, or any component of it. The SUMC Parties may develop the Project in their sole discretion in accordance with their own time schedule, subject to the terms and conditions of this Agreement. The SUMC Parties may develop and construct the Project in any sequence or phases, in their sole discretion.

(p) Timing for Performance of Conditions of Approval.

The SUMC Parties may request in writing a change in the time of performance of any Condition of Approval. Within a reasonable time of receiving the request, the City Manager or his or her designee (a) shall determine whether additional environmental review is required because of the proposed change; (b) may condition approval of the proposed change upon changes in the timing of related conditions or mitigation measures; and, finally, (c) shall approve, conditionally approve or deny the requested change. Within a reasonable time of receiving the City Manager’s decision on the request, the SUMC Parties shall give written notice of its acceptance or of its withdrawal of the request. The change shall be effective upon receipt by the City of the notice of acceptance.

7. Exceptions.

To the extent Subsequent Rules (including a moratorium otherwise lawfully adopted by City) conflict with the Applicable Rules or Project Approvals, they may be applied to the Project without the consent of the SUMC Parties only (i) if City determines that application of such Subsequent Rules is
necessary to protect against conditions that create a substantial and demonstrable risk to the physical health or safety of residents or users of the site to which the Subsequent Rules apply or the affected surrounding region; or (ii) if such Subsequent Rules are mandated or required by supervening federal, state or regional statute or regulation; or (iii) if otherwise provided by this Agreement.

8. Exclusions.

(a) Sewer Facilities, Storm Drains and Runoff.

This Agreement does not affect the SUMC Parties’ obligations, if any, to pay for or construct improvements in the storm drain system required to implement the Project, nor does it affect the SUMC Parties’ obligations to meet any applicable federal, state and local discharge limits and requirements pertaining to sewer facilities, storm drains or runoff.

(b) Limited Effect on Right to Tax, Assess, or Levy Fees or Charges.

Except as expressly provided herein, this Agreement does not limit the power and right of the City to impose the same taxes, levy the same assessments, or require the payment of the same permit fees and charges by the SUMC Parties as the City requires for all other nonresidential development or property on a citywide basis. The SUMC Parties shall be required to pay all Development Impact Fees in effect on the Effective Date, as provided in this Section 8(b), subject to the SUMC Parties’ right to protest and/or pursue a challenge in law or equity to the new or increased Development Impact Fee. The SUMC Parties shall not be required to pay any new Development Impact Fees adopted after the Effective Date through December 31, 2019, unless such payment becomes due under the Applicable Rules or this Agreement on or after January 1, 2020. Further, the City shall not require the SUMC Parties to pay any increase in the amount of a Development Impact Fee, except as set forth in this Section 8(b) and the amount of the Development Impact Fees shall be calculated as set forth in this Section 8(b). All fees, charges, taxes and assessments permitted by this Agreement, and as modified from time to time, are Applicable Rules or Subsequent Applicable Rules. For buildings subject to OHSPD jurisdiction, City fees shall be considered due not later than 30 days after issuance of the Hospital Foundation Permit from OSHPD. In no event may any fees be paid later than the date for payment under the Applicable Rules.

(i) All provisions and requirements of this Agreement and the Applicable Rules to the contrary notwithstanding, the SUMC Parties shall have the following options with respect to the timing of payment of Development Impact Fees, and the rates of Development Impact Fees will be calculated as follows:

(A) If the SUMC Parties elect to pay or prepay all or any portion of the Development Impact Fees between the Effective Date and
December 31, 2011, the SUMC Parties shall pay such fees at the rate in effect on the Effective Date;

(B) If the SUMC Parties elect to pay or prepay all or any portion of the Development Impact Fees on or after January 1, 2012 through and including December 31, 2019, the SUMC Parties shall pay such fees at the rate applicable citywide to nonresidential development at the time of payment; except that the City shall not require the SUMC Parties to pay any increase in a Development Impact Fee that exceeds an amount calculated according to the rate in effect on the Effective Date and adjusted to reflect the change in the San Francisco Bay Area Consumer Price Index from January 1, 2012 to the date of payment.

(C) If the SUMC Parties elect to pay all or any portion of the Development Impact Fees on or after January 1, 2020, the SUMC Parties shall pay such fees at the rate applicable citywide to nonresidential development at the time of payment, subject to the SUMC Parties’ right to protest and/or pursue a challenge in law or equity to the increased fee.

(ii) The SUMC Parties shall not receive any credit against any City Development Impact Fees for any community benefits provided pursuant to this Agreement.

(iii) Payment of the city-wide Transportation Impact Fees in accordance with this Agreement shall constitute the Project’s entire fair share contribution to the following transportation mitigation measures: TR 2.1 (contribution to traffic adaptive signal technology in Palo Alto); TR 2.2 (contribution to Everett undercrossing in Palo Alto); and TR 7.2 (contribution to Palo Alto Crosstown Shuttle).

(iv) Except as provided in this Section 8(b), the SUMC Parties shall pay Development Impact Fees in accordance with the Applicable Rules, on the basis of Net New Square Footage.

(v) Nothing in this Agreement shall preclude the City from collecting fees from the SUMC Parties that are lawfully imposed on the Project by another entity having jurisdiction over the Project which the City is required or authorized to collect pursuant to applicable laws.

(c) No Limit on Right of City to Adopt and Modify Uniform Codes.

This Agreement does not limit the right of the City, to the extent permitted by state law, to adopt Building, Plumbing, Electrical, Fire and similar uniform construction codes, and to adopt local modifications of those codes, from time to time. Those codes, as modified from time to time, are Subsequent Applicable Rules.
(d) **No Limit on Power of City to Adopt and Apply Rules Governing Provision and Use of Utility Services.**

Except as expressly provided in Section 6, this Agreement does not limit the power and right of the City to adopt and amend from time to time rules and procedures governing the provision and use of utility services provided by the City. These rules, as modified from time to time, are Subsequent Applicable Rules. If there is any conflict between such Rules and Section 6, the latter shall control.

(e) **California Environmental Quality Act Compliance (CEQA).**

The City has prepared and certified an EIR and has imposed mitigation measures as Conditions of Approval prior to the execution of this Agreement. This Agreement does not limit the City’s duty to comply with the provisions of CEQA and the associated Guidelines, and to comply with the provisions of its own local CEQA procedures, as they may be amended from time to time, that comply with the provisions of section 21082 of CEQA. However, the City shall not undertake additional environmental review under CEQA unless required to do so by CEQA. In the event that any such further environmental review is required for a Subsequent Approval or other Discretionary Action, it shall be in accordance with Sections 15162-15164 of the CEQA Guidelines, and the scope of analysis and evaluation shall be as required by CEQA.

(f) **No General Limitation on Future Exercise of Police Power.**

The City retains its right to exercise its general police power except when such exercise would conflict with the vested rights granted under this Agreement. The police powers so retained and enforceable under this Agreement shall include, but are not limited to, the enactment of regulations concerning the disposition of construction and demolition materials that apply generally to the City.

9. **Indemnity.**

To the maximum extent permitted by law, the SUMC Parties shall defend, indemnify and hold harmless the City, its City Council, its officers, employees and agents (each an “Indemnified Party” and collectively the “Indemnified Parties”) from and against any claim, action, or proceeding brought by any third party against the Indemnified Parties to attack, set aside, or void any of the Project Approvals, or any Subsequent Approvals. The SUMC Parties shall take the lead role in defending any such claim, action or proceeding, and may, in their sole discretion, elect to be represented by the attorneys of their choice. The City may, in its sole discretion, elect to be represented by the attorneys of its choice in any such action or proceeding, with the reasonable costs of such representation to be paid by the SUMC Parties. The SUMC Parties and the City shall fully coordinate and cooperate in the defense of any such action and shall keep each other fully
informed of all developments relevant to such defense, subject only to confidentiality requirements and any privileges or legal doctrines that may prevent the communication of any such information. The SUMC Parties’ obligations set forth in this Section 9 shall survive any suspension or termination of this Agreement, regardless of cause.


The Parties shall cooperate to implement this Agreement in a manner that ensures that all Parties realize the intended benefits of the Agreement. With respect to the City, such cooperation shall include, but without limitation, diligent processing of applications for approval of development of the Project that comply with the Project Approvals, Applicable Rules and Subsequent Applicable Rules, and the City shall not unreasonably deny or delay any Discretionary Action, Subsequent Approval or OSHPD approval that is necessary to the exercise of the rights vested in the SUMC Parties by this Agreement. Such cooperation shall include, but without limitation, prompt compliance by each Party with all requests by another Party for materials and information necessary to determine the responding Party’s compliance with this Agreement, and the diligent provision and implementation of all community benefits and voluntary mitigation measures to be provided by the SUMC Parties under this Agreement and the City’s expenditures of funds for the purposes described in this Agreement.


Prior to the Effective Date, the Parties will use reasonable efforts to identify and assemble four (4) sets of the Applicable Rules, one (1) set for the City and one (1) set for each of the SUMC Parties, so that if it becomes necessary in the future to refer to any of the Applicable Rules, there will be a common set of the Applicable Rules available to each Party. Failure by City to identify or assemble written Applicable Rules shall in no manner limit City’s ability to later identify or use such Applicable Rules.


(a) Periodic Review.

City shall review this Agreement annually, in accordance with the procedures and standards set forth in this Agreement and City of Palo Alto City Council Resolution No. 6597 in order to ascertain the SUMC Parties’ compliance with the terms of the Agreement. The SUMC Parties shall submit an annual report (the “Annual Report”) to the Director of Planning and Community Environment (the “Planning Director”), in the form and containing the content described in Section 12(c) below, each year within thirty (30) days after the anniversary of the Effective Date. The Annual Report shall be accompanied by an annual review fee sufficient to cover the estimated costs of review of the Annual Report. The amount of the annual review fee shall not exceed the City’s
actual, reasonable costs for such review. Within forty-five (45) days of receipt of the SUMC Parties’ Annual Report, the City shall prepare and submit to the SUMC Parties a Supplement to the Annual Report, in the form and containing the content described in Section 12(d) below, to demonstrate the City’s good faith compliance with the terms of this Agreement.

(b) Special Review.

The City Council may order a special review of compliance with this Agreement any time the City Council determines that the SUMC Parties may be in breach of the Agreement. The Planning Director or City Council, as determined from time to time by the City Council, shall conduct such special reviews, at the City’s expense.

(c) Annual Report.

The Annual Report to be submitted by the SUMC Parties pursuant to Section 12(a) above shall summarize the SUMC Parties’ progress on the Project, including, at a minimum (i) a list of the net new square footage for which a certificate of occupancy has been received; (ii) a description of the steps the SUMC Parties have taken to comply with the obligations listed in Section 5 of this Agreement; and (iii) any other information the City reasonably requires to determine the SUMC Parties’ compliance with this Agreement.

(d) Supplement to the Annual Report.

The Supplement to the Annual Report to be submitted by the City pursuant to Section 12(a) above shall include an accounting of the funds received by the City, including a description of each of the funds that the City is required to maintain under Section 5 of this Agreement (“City Funds”), the City’s expenditures from each of the City Funds, and the purposes for which the expenditures were used. The City’s descriptions of the expenditures shall be at the level of detail the SUMC Parties reasonably determine is necessary to confirm that the City’s expenditures from the City Funds are consistent with the terms of Section 5 of this Agreement. The City’s report shall be included in any hearings held by the City pursuant to Section 12(e) of this Agreement. The City shall bear the burden of proof that the City has complied with the requirements of Section 5 for use of funds paid by the SUMC parties.

(e) Procedure.

During either a periodic review or a special review, the SUMC Parties shall be required to demonstrate good faith compliance with the terms of the Agreement. The burden of proof on this issue shall be on the SUMC Parties. During the periodic or special review, the City may rely on information in addition to that provided in the Annual Report prepared by the SUMC Parties pursuant to Section 12(a) above. The Parties acknowledge that failure by the
SUMC Parties to demonstrate good faith compliance shall constitute grounds for termination or modification of this Agreement in accordance with the provisions of this Section 12.

(i) Upon the SUMC Parties’ submission of the Annual Report to the Planning Director, the Planning Director shall review the Annual Report and, based on the Annual Report and any other information available to the Planning Director relating to the SUMC Parties’ compliance with the Agreement, prepare and submit a report (the “Planning Director’s Report”) to the City Council setting forth the evidence concerning good faith compliance by the SUMC Parties with the terms of this Agreement and the recommended finding on that issue.

(ii) The City Council shall review the Planning Director’s report, the Annual Report submitted by the SUMC Parties, and any other information available to the City Council relating to the SUMC Parties’ compliance with the Agreement.

(iii) If, upon completing its review, the City Council finds that the SUMC Parties have complied in good faith with the terms and conditions of this Agreement, the review shall be concluded.

(f) Default by SUMC Parties.

If, upon completing its review described in Section 12(e), the City Council makes a finding, on the basis of substantial evidence, that the SUMC Parties have not complied in good faith with the terms and conditions of this Agreement, the City shall provide written notice to the SUMC Parties describing: (i) such failure to comply with the terms and conditions of this Agreement (referred to herein as a “Default”), (ii) whether the Default can be cured, (iii) the actions, if any, required by the SUMC Parties to cure such Default, and (iv) the time period within which such Default must be cured. If the Default can be cured, the SUMC Parties shall have at a minimum 90 days after the date of such notice to cure such Default, or in the event that such Default cannot be cured within such 90-day period but can be cured within one (1) year, the SUMC Parties shall have commenced the actions necessary to cure such Default and shall be diligently proceeding to complete such actions necessary to cure such Default within 90 days from the date of the notice. If the Default cannot be cured or cannot be cured within one (1) year, as determined by City during the periodic or special review, the City Council may modify or terminate this Agreement as provided in Section 12(g) and Section 12(h).

(g) Proceedings Upon Modification or Termination.

If, upon a finding under Section 12(f) and the expiration of the cure period specified in Section 12(f) above, City determines to proceed with modification or termination of this Agreement, City shall give written notice to the SUMC Parties.
of its intention so to do. The notice shall be given at least ten calendar days before the scheduled hearing and shall contain:

(i) The time and place of the hearing;

(ii) A statement as to whether or not the City proposes to terminate or to modify the Agreement; and

(iii) Such other information as is reasonably necessary to inform the SUMC Parties of the nature of the proceeding.

(h) **Hearings on Modification or Termination.**

At the time and place set for the hearing on modification or termination, the SUMC Parties shall be given an opportunity to be heard and shall be required to demonstrate good faith compliance with the terms and conditions of this Agreement. The burden of proof on the issue shall be on the SUMC Parties. If the City Council finds, based upon substantial evidence, that the SUMC Parties has not complied in good faith with the terms or conditions of the Agreement, the City Council may terminate this Agreement or modify this Agreement in a manner mutually acceptable to the Parties to address the Default. The decision of the City Council shall be final and subject to judicial review as provided in Section 14, below.

(i) **Certificate of Compliance.**

If, at the conclusion of a periodic or special review, the SUMC Parties are found or deemed to be in compliance with this Agreement, City shall, upon request by the SUMC Parties, issue a Certificate of Compliance (“Certificate”) to the SUMC Parties stating that after the most recent periodic or special review and based upon the information known or made known to the Planning Director and City Council that: (1) this Agreement remains in effect, and (2) the SUMC Parties are not in Default. The Certificate shall be in recordable form, shall contain information necessary communicate constructive record notice of the finding of compliance, shall state whether the Certificate is issued after a periodic or special review and shall state the anticipated date of commencement of the next periodic review. The SUMC Parties may record the Certificate without cost or expense to City.

13. **Default by City.**

If the SUMC Parties determine that City has failed to comply with any of the City’s obligations under this Agreement, the SUMC Parties may provide written notice to the City describing its contentions regarding (i) such failure to comply with the terms and conditions of this Agreement (referred to herein as a “City Default”), (ii) whether the City Default can be cured, (iii) the actions, if any, required of City to cure such City Default, and (iv) the time period within which
such City Default must be cured. If the City Default can be cured, City shall have at least 90 days after the date of such notice to cure such Default, or in the event that such City Default cannot be cured within such 90 days period but can be cured within one year, City shall have commenced all actions necessary to cure such Default and shall be diligently proceeding to complete all such actions necessary to cure such Default within 90 days from the date of notice. If the SUMC Parties contend that the City Default cannot be cured or cannot be cured within one year, or if City fails to cure within the applicable cure period as provided in this Section 13, the SUMC Parties shall give notice to City of its contentions before pursuing the remedies described in Section 14.


It is acknowledged by the Parties that City would not have entered into this Agreement if doing so would subject it to the risk of incurring liability in damages, either for breach of this Agreement, anticipatory breach, repudiation of the Agreement, or for any actions with respect to its implementation or application. The Parties intend by the provisions of this Section 14 that none of the Parties shall have any liability for money damages arising out of a breach of this Agreement, and no liability in money damages for any claims arising out of the application process, negotiation, execution and adoption, or the implementation or application of this Agreement.

Each of the Parties hereto may pursue any remedy at law or equity available for the breach of any provision of this Agreement, including but not limited to temporary or permanent injunctive relief or restraining orders, except that the Parties shall have no liability in damages for any acts which are alleged to have arisen out of or relate to this Agreement, under any circumstances.

The Parties further acknowledge that money damages and remedies at law generally are inadequate, and specific performance is the most appropriate remedy for the enforcement of this Agreement and should be available to all Parties for the following reasons:

(a) Money damages are excluded as provided above.

(b) Due to the size, nature, and scope of the Project, it may not be practical or possible to restore the Property to its original condition once implementation of this Agreement has begun. After such implementation, the SUMC Parties may be foreclosed from other choices they may have had to utilize the Property or portions thereof. The SUMC Parties have invested significant time and resources and performed extensive planning and processing of the Project in agreeing to the terms of this Agreement and will be investing even more significant time and resources in implementing the Project in reliance upon the terms of this Agreement, and it is not possible to determine the sum of money which would adequately compensate the SUMC Parties for such efforts.
Except for non-damages remedies, including the remedy of specific performance, the SUMC Parties, on the one hand, and the City, on the other hand, for themselves, their successors and assignees, hereby release one another’s officers, trustees, directors, agents and employees from any and all claims, demands, actions, or suits of any kind or nature arising out of any liability, known or unknown, present or future, including, but not limited to, any claim or liability, based or asserted, pursuant to Article I, Section 19 of the California Constitution, the Fifth and Fourteenth Amendments of the United States Constitution, or any other law or ordinance which seeks to impose any money damages, whatsoever, upon the Parties because the Parties entered into this Agreement, because of the terms of this Agreement, or because of the manner of implementation or performance of this Agreement.

All legal actions shall be heard by a reference from the Santa Clara County Superior Court pursuant to Code of Civil Procedure Section 638, et seq. The parties to the action shall agree upon a single referee who shall then try all issues, whether of fact or law, and report a finding and judgment thereon and issue all legal and equitable relief appropriate under the circumstances of the controversy before the referee. If the parties to the action are unable to agree on a referee within ten (10) days of a written request to do so by any Party, any Party may seek to have one appointed pursuant to Code of Civil Procedure section 640. The cost of such proceeding shall initially be borne equally by the parties to the action. Any referee selected pursuant to this Section 13 shall be considered a temporary judge appointed pursuant to Article 6, Section 21 of the California Constitution.

15. **Modification, Amendment or Cancellation by Mutual Agreement.**

Subject to meeting the notice and hearing requirements of Section 65867 of the Development Agreement Act, this Agreement may be modified, amended, or cancelled at any time by mutual consent of the Parties in accordance with the provisions of Section 65868 of the Development Agreement Act and City’s Resolution No. 6597.

16. **Superseding State or Federal Law.**

In the event that any state or federal law or regulation enacted or adopted after the date of this Agreement shall prevent or preclude compliance with any of the provisions hereof, such provisions shall be modified or suspended only to the extent and for the time necessary to achieve compliance with said law or regulation and the remaining provisions of this Agreement shall be in full force and effect. Upon repeal of said law or regulation or occurrence of other circumstances removing the effect thereof upon this Agreement, the provisions hereof shall be restored to their full original effect.

17. **Notices.**
All notices required or provided for under this Agreement shall be in writing and shall be delivered personally or by overnight courier service or sent by certified or registered mail, return receipt requested. Any notice shall be deemed to have been duly given and received upon receipt. Notices to the parties shall be addressed as follows:

City: City Manager
      City of Palo Alto
      250 Hamilton Avenue
      Palo Alto, California 94301

with copies to: City Attorney
               City of Palo Alto, 8th Floor
               250 Hamilton Avenue
               Palo Alto, California 94301
Any Party may change its address for notice by giving ten (10) days’ notice of such change in the manner provided for in this paragraph.

18. **Term of Agreement; Force Majeure.**

(a) **Basic Term.**

Except as to those obligations that expressly extend for the Life Of The Project, or otherwise expressly extend beyond the stated Term of the Agreement, the Term of this Agreement shall commence as of the Effective Date, and shall continue for thirty (30) years from the adoption of the Ordinance authorizing this Agreement or until earlier terminated by mutual consent of the Parties or as otherwise provided by this Agreement. Upon the termination of this Agreement, no Party shall have any further right or obligation hereunder except with respect to any obligation to have been performed prior to such termination, or with respect to any default in the performance of the provisions of this Agreement which has occurred prior to such termination, or with respect to any obligations which are specifically set forth as surviving this Agreement.
(b) **Extension for Referendum, Litigation, Default or Moratorium.**

If a Party is deprived of a benefit under this Agreement as a result of referendum of one or more of the Project Approvals, litigation challenging one or more of the Project Approvals or one or more Subsequent Approvals, a moratorium, or a default by the other Party, then the Party so deprived may elect to extend the Term of this Agreement with respect to that benefit for the duration of the moratorium or default.

(c) **Force Majeure.**

Performance by either the SUMC Parties, on the one hand, or the City, on the other hand, of an obligation hereunder shall be excused during any period of “Permitted Delay.” Permitted Delay shall mean delay beyond the reasonable control of a Party including, without limitation, an inability to perform caused by (a) acts of God, including without limitation earthquakes, floods, fire, and other natural calamities, (b) civil commotion; (c) riots or terrorist acts; (d) strikes or other forms of material labor disputes; (e) shortages of materials or supplies; and (f) vandalism. A Party’s financial inability to perform shall not be a ground for claiming a Permitted Delay. The Party claiming the Permitted Delay shall notify the other Party of its intent to claim a Permitted Delay, the specific grounds of the same and the anticipated period of the Permitted Delay within 10 business days after the occurrence of the conditions which establish the grounds for the claim. The period of Permitted Delay shall last not longer than the conditions preventing performance.

19. **Assignment; Right to Assign.**

(a) **Assignment.**

(i) **Right to Assign.**

Each of the SUMC Parties shall have the right to sell, transfer or assign its interest in the Property, in whole or in part (provided that no such partial transfer shall be permitted to cause a violation of the Subdivision Map Act, Government Code section 66410, et seq.), to any person or entity at any time during the term of this Agreement; provided:

(A) Concurrently with any such sale, transfer or assignment, or within ten (10) business days thereafter, the transferor shall notify City, in writing, of such sale, transfer or assignment and shall provide City with an executed agreement, in a form reasonably acceptable to the City, by the purchaser, transferee or assignee and providing therein that the purchaser, transferee or assignee expressly and unconditionally assumes all the duties and obligations of the transferor under this Agreement.
(B) No sale, transfer or assignment of any right or interest under this Agreement shall be made without the prior written consent of the City Council, which consent may not be unreasonably withheld.

Notwithstanding the failure of any purchaser, transferee or assignee to execute the agreement required by subparagraph (i) above, the burdens of this Agreement shall be binding upon such purchaser, transferee or assignee, but the benefits of this Agreement shall not inure to such purchaser, transferee or assignee until and unless such agreement is executed.

(ii) Release of Transferor.

Notwithstanding any sale, transfer or assignment, the transferring Party shall continue to be obligated under this Agreement unless such Party is given a release in writing by City, which release will be provided by City upon the full satisfaction by the transferring Party of all the following conditions:

(A) The transferring Party no longer has a legal or equitable interest in the portion of the Property being transferred.

(B) The transferring Party is not then in default and default proceedings have not been commenced by City under this Agreement.

(C) The transferring Party has provided City with the notice and executed agreement required under Section 19(a)(1)(i) above.

(D) The purchaser, transferee or assignee provides City with security reasonably satisfactory to City to secure performance of its obligations under this Agreement.

Nothing contained in this Section 19 shall prevent a transfer of the Property, or any portion thereof, to an institutional lender or Mortgagee as a result of a foreclosure of a Mortgage or deed in lieu of foreclosure, and any lender or Mortgagee acquiring the Property, or any portion thereof, as a result of foreclosure of a Mortgage or a deed in lieu of foreclosure shall take such Property subject to the terms of this Agreement; provided, however, in no event shall such lender or Mortgagee be liable for any defaults or monetary obligations of the SUMC Parties arising prior to acquisition of title to the Property by such lender or Mortgagee; and provided further in no event shall any such lender or Mortgagee or its successors or assigns be entitled to a building permit or occupancy certificate for any portion of the Project until all fees due under this Agreement have been paid to City, until all outstanding obligations of the SUMC Parties have been performed, and until any and all outstanding Defaults have been cured.
20. **Mortgagee Protection.**

The Parties hereto agree that this Agreement shall not prevent or limit any of the SUMC Parties in any manner, at their sole discretion, from encumbering the Property or any portion thereof or any improvement thereon by any Mortgage securing financing with respect to the Property or development of the Property. City acknowledges that the lenders providing such financing may require certain Agreement interpretations and shall upon request, from time to time, meet with any of the SUMC Parties and representatives of such lenders to consider any such request for interpretation. City will not unreasonably withhold its consent to any such requested interpretation provided such interpretation is consistent with the intent and purposes of this Agreement. Any Mortgagee of the Property shall be entitled to the following rights and privileges:

(a) **No Impairment.**

Neither entering into this Agreement nor a breach of this Agreement shall defeat, render invalid, diminish or impair the lien of any mortgage or deed of trust on the Property made in good faith and for value.

(b) **Notice of Default by the SUMC Parties.**

The Mortgagee of any mortgage or deed of trust encumbering the Property, or any part thereof, which Mortgagee, has submitted a request in writing to the City in the manner specified herein for giving notices, shall be entitled to receive written notification from City of any Default by the SUMC Parties in the performance of the SUMC Parties’ obligations under this Agreement.

(c) **Notice.**

If City timely receives a request from a Mortgagee requesting a copy of any notice of default given to any of the SUMC Parties under the terms of this Agreement, City shall provide a copy of that notice to the Mortgagee within twenty (20) days of sending the notice of default to the SUMC Parties. The Mortgagee shall have the right, but not the obligation, to cure the default during the remaining cure period allowed such Party under this Agreement.

(d) **Transfer of Ownership.**

Mortgagee shall have the rights set forth in the last paragraph of Section 18 above.

21. **Miscellaneous.**

(a) **Effect of Recitals.**
The Recitals are intended in part to paraphrase and summarize this Agreement, however, the terms, covenants and conditions of this Agreement are expressed with particularity in Section 1, et seq. and the rights and obligations of the Parties are to be determined by the terms of the Agreement and not by the Recitals. To the extent the Recitals provide factual context for the Agreement, they may be considered when interpreting the terms and provisions of the Agreement.

(b) **Construction.**

As used in this Agreement, and as the context may require, the singular includes the plural and vice versa, and the masculine gender includes the feminine and neuter and vice versa.

This Agreement shall be construed as a whole according to its fair language and common meaning to achieve the objectives and purposes of the Parties. This Agreement has been reviewed and revised by legal counsel for each Signatory Party, and no presumption or rule that ambiguities shall be construed against the drafting Party shall apply to the interpretation or enforcement of this Agreement. Each Signatory Party has consulted with counsel and determined that this Agreement accurately and completely reflects the agreement of the Parties.

The captions of the sections and subsections of this Agreement are solely for the convenience of reference and shall be disregarded in the construction and interpretation of this Agreement.

(c) **Severability.**

If any terms of this Agreement are determined to be invalid, void, or unenforceable, the remainder of this Agreement shall not be affected to the extent the remaining terms are not rendered impractical or impossible to perform taking into consideration the purposes of this Agreement.

(d) **Time.**

Time is of the essence of this Agreement and of each and every term and condition hereof.

(e) **Waiver.**

No waiver of any provision of this Agreement shall be effective unless in writing and signed by a duly authorized representative of the Party against whom enforcement of a waiver is sought. No waiver of any right or remedy in respect of any occurrence or event shall be deemed a waiver of any other right or remedy or in respect of any other occurrence or event.
(f) **Governing State Law.**

This Agreement shall be construed in accordance with the laws of the state of California.

(g) **Determination of Compliance.**

At any time during the Term of this Agreement, any Party or its lender, may request any Party to this Agreement to confirm that to the best of such Party’s knowledge, no defaults exist under this Agreement or if defaults do exist, to describe the nature of such defaults. Each Party shall provide such a determination to such lender or other Party within forty-five (45) days of the request therefor. The failure of any Party to provide the requested determination within such forty-five (45) day period shall constitute a confirmation that to the best of such Party’s knowledge, no defaults exist under this Agreement. Requests for such determinations shall be made in writing and as required by Section 17 above.

(h) **Entire Agreement.**

This Agreement contains the entire understanding and agreement of the Parties. There are no oral or written representations, understandings, undertakings, or agreements that are not contained or expressly referred to herein, and any such representations, understandings, or agreements are superseded by this Agreement. No evidence of any such representations, understandings, or agreements shall be admissible in any proceeding of any kind or nature relating to the terms or conditions of this Agreement, its interpretation, or breach.

(i) **No Third Party Beneficiaries.**

This Agreement is made and entered into for the sole protection and benefit of the signatory Parties and their successors and assigns, including Mortgagees. No other person shall have any right of action based upon any provision of this Agreement.

(j) **Authority to Execute.**

Each person executing this Agreement warrants and represents that he or she has the authority to bind the signatory Party for which he or she is signing to the performance of its obligations hereunder.

(k) **Administrative Appeal.**

Whenever in the Applicable Rules or Subsequent Applicable Rules any requirement or action by the SUMC Parties is conditioned upon the approval or satisfaction, however expressed, of any entity other than City, such condition shall not be interpreted as providing the third party the right to make any final decision
other than as may be authorized by law other than the Applicable Rules or Subsequent Applicable Rules. Where a third party has no right authorized by law other than the Applicable Rules or Subsequent Applicable Rules to make a final decision, a condition requiring approval or satisfaction of such third party, however expressed, shall mean that the third party shall provide, as appropriate, advice, consultation, a recommendation and/or an initial decision regarding the condition. The actual determination in such case will be made by the official or entity of City required or authorized to make such determination in accordance with the applicable provisions of the Palo Alto Municipal Code as set forth in the Applicable Rules. Appeals from determinations made by City officials or entities shall be made in accordance with applicable provisions of the Palo Alto Municipal Code as set forth in the Applicable Rules.

(l) Exhibits.

The following exhibits to which reference is made in this Agreement are deemed incorporated herein in their entirety:

Exhibit A – Property Description

Exhibit B – Project Approvals

If the recorder refuses to record any exhibit, the City Clerk may replace it with a single sheet bearing the exhibit identification letter, stating the title of the exhibit, the reason it is not being recorded, and that the original, certified by the City Clerk, is in the possession of the City Clerk and will be reattached to the original when it is returned by the recorder to the City Clerk.

(m) Signature Pages.

For convenience, the signatory Parties may execute and acknowledge this Agreement on separate signature pages, which, when attached hereto, shall constitute one complete agreement.

(n) Precedence.

If any conflict or inconsistency arises between this Agreement and the Applicable Rules or the Subsequent Rules, the provisions of this Agreement shall have precedence and shall control over the conflicting or inconsistent provisions of the Applicable Rules or Subsequent Rules.

(o) Recordation.

Whenever recordation is required or may be required by either Party, City shall be responsible for recordation. If City fails to record a document when required, the SUMC Parties may, but are not obligated to, record the document and by doing so the SUMC Parties do not assume the duties or obligations of City.
established by this Section or the Development Agreement Act nor does it waive any right it may have to compel City to properly perform its duties and obligations. The failure of City to record or to properly record this Agreement or any other document as provided herein shall not affect or limit in any way the SUMC Parties’ rights to enforce this Agreement and to rely upon it.

(p) **Referendum or Challenge.**

In the absence of a referendum petition, City shall not unilaterally submit the Project Approvals or the ordinance approving this Agreement to a referendum by action of the City Council on its own motion without the SUMC Parties’ consent. In addition to the remedies set forth in Section 18(b), if the Project Approvals or the ordinance approving this Agreement is the subject of a referendum, or if litigation is commenced seeking to rescind the Project Approvals or the City’s decision to enter into this Agreement or to declare this Agreement void (“Legal Action”), less than one year from the filing with the County Clerk by the City of the Notice of Determination following the second reading of the ordinance approving the Hospital District zoning and the ordinance approving this Agreement (the “NOD”), each Party shall have the right to terminate this Agreement by written notice to the other Parties no later than thirty (30) days after the event that gives a Party the right to terminate, or such later time allowed in writing by the non-terminating Party or Parties. Each Party’s right to unilaterally terminate this Agreement as set forth in this Section 21(p) shall expire one year from the date of the filing of the NOD. The Parties may also, at any time by mutual agreement, suspend performance of all or part of the obligations in this Agreement pending the outcome of any such referendum or litigation.

(i) **City’s Reimbursement Obligation.**

If the Project Approvals or the Ordinance approving this Agreement is challenged by a Legal Action as described above in Section 21(p), the City shall return payments made by the SUMC Parties to the City according to the following requirements:

(A) If the Legal Action is filed with the court before 90 days have elapsed from the filing of the NOD, then the City shall return all payments made by the SUMC Parties pursuant to Section 5 of this Agreement, within 30 days of the City’s receipt of a written request by the SUMC Parties.

(B) If the Legal Action is filed with the court more than 90 days but less than one year after the filing of the NOD, then the City shall return payments made by the SUMC Parties pursuant to Section 5 of this Agreement, within 30 days of the City’s receipt of a written request by the SUMC Parties, as follows:
(1) **Section 5(a)(iii) (Fund for Community Health and Safety Programs) Payments.**

The City shall return to the SUMC Parties such portions of payments made by the SUMC Parties pursuant to Section 5(a)(iii) that have not been disbursed through the City’s Human Relations Committee or otherwise, or contractually committed to a third party community health care program by the City.

(2) **Section 5(b)(iii) (Fund for Operating Deficit) Payments.**

The City shall return to the SUMC Parties such portions of payments made by the SUMC Parties pursuant to Section 5(b)(iii) that have not been contractually committed by the City to a third party.

(3) **Section 5(e)(i) (Infrastructure, Sustainable Neighborhoods and Communities, and Affordable Housing Fund) Payments.**

The City shall return to the SUMC Parties such portions of payments made by the SUMC Parties pursuant to Section 5(e)(i) that have not been contractually committed by the City to a third party.

(4) **Section 5(f)(i) (Sustainability Programs) Payments.**

The City shall return to the SUMC Parties such portions of payments made by the SUMC Parties pursuant to Section 5(f)(i) that have not been contractually committed by the City to a third party.

(C) If the Legal Action is filed with the court one year or more after the filing of the NOD, and results in a final judgment that materially impairs the SUMC Parties’ vested rights under this Agreement, then the City shall have no obligation to return any payments already made by the SUMC Parties to the City pursuant to this Agreement, and all of the Parties’ outstanding obligations under this Agreement shall be suspended until the Parties have mutually agreed to either reinstate or terminate this Agreement.

(ii) **Effect of Suspension or Termination of Agreement.**

If the Parties mutually agree to suspend performance of all or part of the obligations in this Agreement pending the outcome of the Legal Action pursuant to Section 21(p) above, the agreement to suspend performance shall address the terms under which the SUMC Parties’ payment obligations under Section 5 shall be reinstated.
In the event that the SUMC Parties unilaterally terminate this Development Agreement pursuant to Section 21(p), the City may elect at its reasonable discretion to revoke the conditional use permit for the Project in whole or in part, and the SUMC Parties will not contend that commencement of construction elsewhere on the Property has vested the SUMC Parties’ rights to construct structures for which construction has not yet commenced. The Parties’ rights and obligations set forth in this Section 21(p)(ii) shall survive the SUMC Parties’ unilateral termination of this Agreement pursuant to the provisions of Section 21(p).

(iii) Limit of City’s Reimbursement Obligations.

Except as specifically set forth in this Section 21(p), the City shall have no obligation to return any payments made by the SUMC Parties pursuant to this Agreement.

IN WITNESS WHEREOF, this Agreement has been executed by the parties as of the day and year first above written.

ATTEST: CITY OF PALO ALTO

City Clerk Mayor

APPROVED AS TO FORM:

City Attorney

APPROVED:

City Manager

APPROVED AS TO CONTENT:

Director of Planning and Community Environment

STANFORD HOSPITAL AND CLINICS

By: _______________________

Name: _______________________

Title: _______________________

56
LUCILE SALTER PACKARD CHILDRENS HOSPITAL AT STANFORD

By: __________________________
Name: ________________________
Title: _________________________

THE BOARD OF TRUSTEES OF THE LELAND STANFORD UNIVERSITY

By: __________________________
Name: ________________________
Title: _________________________