

CITY OF SAN LEANDRO

STANDARD PUBLIC IMPROVEMENT AGREEMENT

THIS AGREEMENT, entered into on _____, by and between the CITY OF SAN LEANDRO, a municipal corporation of the State of California, hereinafter referred to as "City," and Chang Income Property Partnership, L.P., San Leandro Land Series (R11) hereinafter referred to as "Owner."

In consideration of the granting of certain entitlement of use described as follows: Partial vacation of West Estudillo Street R.O.W., partial vacation of Martinez Street Public R.O.W.; issuance of encroachment permits for the construction of street improvements and undergrounding of utilities (SEE ATTACHED INFRASTRUCTURE SCOPE -the "Martinez Improvements"), required to satisfy the conditions of approval for the Tech Campus project at 1333 Martinez Street, San Leandro, California, Assessor's Parcel No. 075A 0047 007 00, 075A 0047 002 00 and 075A 0047 002 02 hereinafter referred to as "Project."

It is mutually agreed as follows:

AGREEMENTS

1. Performance of Work. Owner agrees to furnish, construct, and install at his own expense all required public improvements as shown on the plans prepared by Lea & Braze Engineering, Inc. and identified as Public Improvement Plans for Martinez Street, San Leandro, Alameda County, California, a copy of which is on file in the Office of the City Engineer and is incorporated herein by reference and all other improvements required by the City Engineer based upon the standards imposed by Title VII, Chapter 8 of the San Leandro Municipal Code of 1985 and the Standard Specifications adopted by the City of San Leandro for public works. Owner's costs shall include all necessary relocation of existing utilities.

2. Work; Satisfaction of City Engineer. All of the work on the required improvements is to be done at the places, with the materials, in the manner, and at the grades, all as shown upon the approved plans and specifications, and to the reasonable satisfaction of the City Engineer.

3. Work; Inspections; Fees. The City Engineer or his designee shall inspect all of the improvements made pursuant hereto to determine that they comply with all City regulations. Concurrently with the execution of this agreement, the Owner shall deposit with the City the sum of Fifty Thousand and Zero/100 DOLLARS (\$50,000 No/100) to cover the cost of design review and inspection of the improvements. Owner hereby agrees to increase the amount of the deposit to pay City the actual cost of inspection if such costs should exceed the original deposit.

4. Modification for Unforeseeable Circumstances. Owner reserves the right to modify said plans and specifications as the development progresses should unforeseen conditions occur, providing written approval is first obtained from the City Engineer. The City shall bear no responsibility whatsoever for work performed and rejected by the City Engineer. City reserves the right to make reasonable modifications to the plans and specifications whenever field conditions and/or public safety require such modifications. Owner shall pay City for all costs incurred in plan checking and inspection resulting from said modifications.

5. Work; Time for Commencement and Performance. City hereby fixes the time for the commencement of the required work to be on or before the 1st day of November 2014, and for its completion to be on the 1st day of July 2016. At least 15 calendar days prior to the commencement of work hereunder, Owner shall notify the City Engineer in writing of the date fixed by Owner for commencement thereof, in order that the City Engineer shall be able to provide services for inspection.

6. Location of Construction Yard. Owner agrees to locate any construction yard for the storage of equipment, vehicles, supplies and materials, or the preparation or fabrication thereof, to be used in connection with the installation of improvements for said project or the construction of buildings therein, in such a manner so as to cause a minimum of inconvenience to persons living in the areas immediately adjacent to said project, including installation of appropriate fencing and screening, and to obtain the approval of the City Engineer as to the proposed location and standards of maintenance of the yard. Immediately upon completion of the improvements to be constructed to which this agreement refers, Owner

agrees to cease using the construction yard, clear the site and restore it to its original condition, and to remove therefrom all supplies, materials, equipment, or vehicles being stored or kept thereon. Owner agrees not to use the construction yard in connection with the installation of improvements or construction of buildings elsewhere. City may extend the time within which the construction yard may be used or within which supplies, materials, equipment or vehicles may be stored or kept thereon if City shall determine that the granting of such extension will not be detrimental to the public welfare. No extension will be made except on the basis of a written application made by Owner to the City Engineer stating fully the grounds and facts relied upon for such extension.

7. Rights-of-Way Free From Obstruction. Owner agrees to keep and maintain all areas within the improved or partially improved public streets or public rights-of-way contiguous and adjacent to and within the hereinabove referred to Property, including streets being constructed and/or improved pursuant to this agreement, free and clear of all building materials, dirt, mud, sand, gravel, rocks, bricks, stones, shingles, roofing material, lumber, tool sheds, construction buildings and other similar items at all times during the improvement and construction of the improvement and all buildings and other structures within said project.

8. Extension. The dates for commencement and completion of the work of construction may be extended as herein provided. The City Engineer shall extend said dates for delays in said work actually caused by riots, strikes, lockouts, fires, earthquakes, flood and conditions resulting therefrom. Extension of said dates for any other cause shall be made only by the City Engineer. The City Engineer shall be the sole and final judge as to whether good cause has been shown to entitle Owner to an extension. Any extension granted pursuant to this paragraph shall not obligate City in any manner to grant other requests for extension.

9. Request for Extension; Granting. Any request for extension of any commencement and completion date shall be in writing, shall fully state the facts and grounds relied upon for said extension, and shall be delivered to City in the manner hereinafter specified for services of notices. Extensions shall be granted in writing and any purported oral extension or purported oral agreement to make an extension shall not be valid for any purpose whatsoever.

10. Extension; No Release of Obligations. In the event it is deemed necessary by the City to extend the time of commencement or completion of the work to be done under this Agreement beyond the dates specified herein, such extension shall in no way release any guarantee given by Owner pursuant to this Agreement, or relieve or release those providing improvement security pursuant to this Agreement. The sureties in executing the bonds shall be deemed to stipulate and agree that no change, extension of time, alteration or addition to the term of the Agreement or to the work to be performed thereunder or the specifications accompanying the same shall in any way affect its obligations on the bond, and to waive notice of any such change, extension of time, alteration or addition to the terms of the Agreement or to the work or to the specifications.

11. Extension; Condition. The granting of any extension may be conditioned upon Owner providing City with increased Inspection Fees, a cash deposit which sum is equal to one hundred percent (100%), of the estimated cost of constructing the required improvements, and new or amended surety bonds in amounts increased to reflect increases in the cost of constructing the required improvements that have occurred prior to the granting of the extension, and the cost of additional inspection services.

12. No Waiver by the City, Final Acceptance. Inspection of the work and/or materials, or approval of work and/or materials inspected, use of the work by the public as public right-of-way, or statement by any officer, agent, or employee of the City indicating the work complies with the requirements of this Agreement, shall not relieve the Owner from the obligation to fulfill the Agreement as prescribed herein. Acceptance of any part or stage of said improvements shall not be final until a written notice of acceptance of all the improvements shall have been delivered to Owner.

13. Improvement Security. Prior to the issuance of any building permit contemplated by this Agreement the Owner shall furnish to City:

(a) Improvement security in the sum of Seven Hundred and Ninety-four Thousand, Four Hundred and Twenty DOLLARS (\$794,420.00), which sum is equal to one hundred percent (100%), of the

estimated cost of constructing the required improvements and the cost of any other obligation to be performed by Owner hereunder, securing the faithful performance of this Agreement.

(b) Separate improvement security in the sum of Seven Hundred and Ninety-four Thousand, Four Hundred and Twenty DOLLARS (\$794,420.00), which sum is equal to one hundred percent (100%) of the estimated cost of constructing the required improvements, security payment to the contractor, his subcontractor and to persons furnishing labor, materials or equipment to them for the construction of the required improvements, and for the payment of amounts due under the Unemployment Insurance Act with respect to such work or labor in connection with the installation of such improvements. The form of the improvement security shall be subject to the approval of the City Attorney. Improvement security shall be reduced or released by City only in the manner provided by the City Engineer. No change, alteration or addition to the terms of this Agreement or the plans and specifications accompanying the same shall in any manner affect the obligation of those providing improvement security pursuant to this Agreement.

14. Maintenance Security: Prior to the issuance of any building permit contemplated by this Agreement the Owner shall furnish to City: a maintenance and repair security in a form acceptable to the City Engineer in the amount of Seventy-Nine Thousand, Four Hundred and Forty-Two DOLLARS (\$79,442), to guarantee that all areas to be improved are free from defect for a period of one year after initial acceptance of entire work by the City. In the event Owner fails, neglects or refuses to maintain said areas, City is hereby authorized to expend all or any portion of said deposit during construction and during the one year maintenance period to accomplish the above.

15. Hold Harmless Agreement. Owner hereby agrees to, and shall, hold City, its elective and appointive boards, commissions, officers, agents and employees harmless from and against any or all loss, liability, expense, claim, costs, suits, damages of every kind, nature and description directly or indirectly arising from the performance of the work from Owner, Owner's contractors', subcontractors', agents' or employees' operations under this Agreement. Owner agrees to, and shall, defend City and its elective and appointive boards, commissions, officers, agents and employees from any suits or actions at law or in equity

for damages caused or alleged to have been caused, by reason of any of the aforesaid operations; provided as follows:

(a) That City does not, and shall not, waive any rights against Owner which it may have by reason of the aforesaid hold harmless agreement, because of the acceptance by City, or the deposit with City by Owner, of any of the insurance policies described in paragraph 16 hereof.

(b) That the aforesaid hold harmless agreement by Owner shall apply to all damages and claims for damages of every kind suffered, or alleged to have been suffered, by reason of any of the aforesaid operations referred to in this paragraph, regardless of whether or not City has prepared, supplied, or approved of plans and/or specifications for the project, or regardless of whether or not such insurance policies shall have been determined to be applicable to any of such damages or claims for damages.

16. Owner's Insurance. Concurrently with the execution hereof, Owner shall obtain or cause to be obtained and filed with the Risk Manager, all insurance required under this paragraph, and such insurance shall have been approved by the Risk Manager of City, as to form, amount and carrier. Prior to the commencement of work under this Agreement, Owner's general contractor shall obtain or cause to be obtained and filed with the Risk Manager, all insurance required under this paragraph, and such insurance shall have been approved by the Risk Manager of City, as to form, amount and carrier. Owner shall not allow any contractor or subcontractor to commence work on this contract or subcontract until all insurance required for Owner and Owner's general contractor shall have been so obtained and approved. Said insurance shall be maintained in full force and effect until the completion of work under this Agreement and the final acceptance thereof by City. All requirements herein provided shall appear either in the body of the insurance policies or as endorsements and shall specifically bind the insurance carrier.

(a) Minimum Scope of Insurance. Coverage shall be at least as broad as:

1. Insurance Services Office form number GL 0002 (Ed. 1/73) covering comprehensive General Liability and Insurance Services Office form number GL 0404 covering Broad Form Comprehensive General

Liability; or Insurance Services Office Commercial General Liability coverage ("occurrence" form CG 0001.)

2. Insurance Services Office form number CA 0001 (Ed. 1/78) covering Automobile Liability, code 1 "any auto" and endorsement CA 0025.
3. Workers' Compensation insurance as required by the Labor Code of the State of California and Employers Liability Insurance.

(b) Minimum Limits of Insurance. Owner shall maintain limits no less than:

1. General Liability: \$1,000,000 combined single limit per occurrence for bodily injury, personal injury and property damage. If commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.
2. Automobile Liability: \$1,000,000 combined single limit per accident for bodily injury and property damage.
3. Workers' Compensation and Employers Liability: Workers' compensation limits as required by the Labor Code of the State of California and Employers Liability limits of \$1,000,000 per accident.

(c) Deductibles and Self-Insurance Retentions. Any deductibles or self-insured retentions must be declared to and approved by the City. At the option of the City, either the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City, its officers, officials and employees; or the Owner shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.

(d) Other Insurance Provisions. The policies are to contain, or be endorsed to contain, the following provisions:

1. General Liability and Automobile Liability Coverages.

- a. The City, its officers, agents, officials, employees and volunteers shall be named as additional insureds as respects: liability arising out of activities performed by or on behalf of the owner; products and completed operations of the Owner, premises owned, occupied or used by the Owner, or automobiles owned, leased, hired or borrowed by the Owner. The coverage shall contain no special limitations on the scope of the protection afforded to the City, its officers, officials, employees or volunteers.
- b. The Owner's insurance coverage shall be primary insurance as respects the City, its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees or volunteers shall be excess of the Owner's insurance and shall not contribute with it.
- c. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the City, its officers, officials, employees or volunteers.
- d. The Owner's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

2. Workers' Compensation and Employers Liability Coverage.

The insurer shall agree to waive all rights of subrogation against the City, its officers, officials, employees and volunteers for losses arising from work performed by the Owner for the City.

3. All Coverages.

Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, cancelled by either party, reduced in coverage or in limits except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the City.

- (e) Acceptability of Insurers. Insurance is to be placed with insurers with a Bests' rating of no less than A:VII.
- (f) Verification of Coverage. Owner shall furnish City with certificates of insurance and with original endorsements effecting coverage required by this clause. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The certificates and endorsements are to be received and approved by the City before work commences. The City reserves the right to require complete, certified copies of all required insurance policies, at any time. The City reserves the right to modify these insurance requirements as the best interests of the City dictate.
- (g) Subcontractors. Owner and/or Owner's general contractor shall include all subcontractors as insureds under its policies or shall obtain separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein.

17. Title to Improvements. Title to, and ownership of, all improvements constructed hereunder by Owner shall vest absolutely in City, upon completion and acceptance of such improvements by City unless otherwise provided.

18. Repair or Reconstruction of Defective Work. Except as otherwise expressly provided in this Agreement, and excepting only items of routine maintenance, ordinary wear and tear and unusual abuse or neglect, Owner guarantees all work executed by Owner and/or Owner's agents, and all supplies, materials and devices of whatsoever nature incorporated in, or attached to the work, or otherwise delivered to City as a part of the work pursuant to the Agreement, to be free of all defects of workmanship and materials for a period of one year after initial acceptance of the entire work by City. Owner shall repair or replace any or all such work or material, together with all or any other work or materials which may be displaced or damaged in so doing, that may prove defective in workmanship or material within said one year guarantee period without expense or charge of any nature whatsoever to City. Owner further covenants and agrees that when defects in design, workmanship and materials actually appear during the guarantee period, and have been corrected, the guarantee period shall automatically be extended for an additional year to insure that such defects have actually been corrected.

In the event the Owner shall fail to comply with the conditions of the foregoing guarantee within thirty (30) days time, after being notified of the defect in writing, City shall have the right, but shall not be obligated, to repair or obtain the repair of the defect, and Owner shall pay to City on demand all costs and expense of such repair. Notwithstanding anything herein to the contrary, in the event that any defect in workmanship or material covered by the foregoing guarantee results in a condition which constitutes an immediate hazard to the public health, safety, or welfare, City shall have the right to immediately repair, or cause to be repaired, such defect, and Owner shall pay to City on demand all costs and expense of such repair. The foregoing statement relating to hazards to health and safety shall be deemed to include either temporary or permanent repairs which may be required as determined in the sole discretion and judgment of City.

If City, at its sole option, makes or causes to be made the necessary repairs or replacements or performs the necessary work, Owner shall pay, in addition to actual costs and expenses of such repair or work, fifty percent (50%) of such costs and expenses for overhead and interest at the maximum rate of interest permitted by law accruing thirty (30) days from the date of billing for such work or repairs.

19. Owner Not Agent of City. Neither Owner nor any of Owner's agents or contractors are or shall be considered to be agents of City in connection with the performance of Owner's obligations under this Agreement.

20. Notice of Breach and Default. If Owner refuses or fails to obtain prosecution of the work, or any severable part thereof, with such diligence as will insure its completion within the time specified, or any extension thereof, or fails to obtain completion of said work within such time, or if Owner should be adjudged as bankrupt, or should make a general assignment for the benefit of Owner's creditors, or if a receiver should be appointed, or if Owner, or any of Owner's contractors, subcontractors, agents or employees should violate any of the provisions of this Agreement, the City Engineer may serve written notice on Owner and Owner's surety or holder of other security of breach of this Agreement, or of any portion, thereof, and default of Owner.

21. Breach of Agreement; Performance by Surety or City. In the event of any such notice of breach of this Agreement, Owner's surety shall have the duty to take over and complete the work and the improvement herein specified; provided, however, that if the surety, within thirty (30) days after the serving upon it of such notice of breach, does not give City written notice of its intention to take over the performance of the contract, and does not commence performance thereof within thirty (30) days after notice to City of such election, City may take over the work and prosecute the same to completion, by contract or by any other method City may deem advisable, for the account and at the expense of Owner and Owner's surety shall be liable to City for any damages and/or reasonable and documented excess costs occasioned by City thereby; and, in such event, City, without liability for so doing, may take possession of, and utilize in

completing the work, such materials, appliances, plant and other property belonging to Owner as may be on the site of the work and necessary therefor.

22. Notices. All notices herein required shall be in writing, and delivered in person or sent by registered mail, postage prepaid.

Notices required to be given to City shall be addressed as follows:

City Clerk
Civic Center
835 E. 14th Street
San Leandro, California 94577.

Notices required to be given to Owner shall be addressed as follows:

Chang Income Property Partnership, L.P., San Leandro Land Series (R11)
520 S. El Camino Real, 9TH Floor
San Mateo, CA 94402
Attn: Sunny Tong

Notices required to be given surety of Owner shall be addressed as follows:

To be provided

Any party or the surety may change such address by notice in writing to the other party and thereafter notices shall be addressed and transmitted to the new address.

23. Recordation of Abstract. Concurrently with the execution of this Agreement, Owner has executed and has caused to be acknowledged an abstract of this Agreement. Owner agrees City may record said abstract in the Official Records of Alameda County.

24. Assignment. This Agreement will not be assigned without the prior written consent of City.

25. Additional Terms and Conditions. This Agreement is subject to the following additional terms and conditions, if any:

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year herein above written.

CITY OF SAN LEANDRO, a Municipal Corporation

Dated: _____

By: _____
Chris Zapata
City Manager

Owner(s)

Dated: _____

By: _____
Signature

Print name

Title

Attach:

- [Appropriate Notary]
- [Acknowledgment]

Approved as to Form:

Richard Pio Roda, City Attorney