

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

City Clerk
City of San Leandro
835 E. 14th Street
San Leandro, CA 94577

(Space Above This Line Reserved For Recorder's Use)

This instrument is exempt from recording fees pursuant to Government Code section 27383.
Documentary Transfer Tax is \$0.00 (exempt per Revenue & Taxation Code section 11922, Transfer to Municipality).

DRAFT

EDEN ROAD PUBLIC IMPROVEMENT AGREEMENT

THIS AGREEMENT, effective _____, is by and between the CITY OF SAN LEANDRO, a charter city formed under the laws of the State of California, hereinafter referred to as "City," Alco Iron & Metal, a corporation, hereinafter referred to as "Applicant," and KK Eden Properties LLC, a California limited liability company, hereinafter referred to as "Owner," together the "Parties."

RECITALS

- A. The City administers public rights of way within City limits and maintains street and road improvements within said rights of way.
- B. Alameda County Assessor's parcel number 042 4530 005 02, also known as Eden Road, is an unimproved, dirt and gravel strip of land owned in fee by the City and used by the City, the public, and Applicant for roadway purposes. Eden Road is not constructed to modern legally acceptable public road or street standards.
- C. Eden Road is the subject of a plan line designating the land as a future public road.
- D. Improvements must be made to Eden Road before it can be deemed in compliance with all relevant statutory and regulatory standards applicable to public roads or streets.
- E. Plans dated February 2023 were prepared generally showing the location and extent of improvements **from the westerly end of the City Parcel (APN 42-4530-5-2) to Doolittle Drive including road and intersection improvements within the Caltrans right-of-way**, necessary for the City to designate Eden Road as meeting the standards of a public road or street. The design, permitting, and construction of these improvements as well as the management, and inspection of the work is defined as the "Project." In addition to the paving of the Road, the project shall also include the design and installation of other ancillary improvements necessary for the road to meet regulatory requirements and passing of inspections, all of which shall be privately designed, installed and maintained, with the exception of the existing main sewer line that will continue to be publicly maintained. Examples of such private improvements include but are not necessarily limited to: street lighting, trash capture devices, pavement, curbs, gutters, sidewalks, storm drain systems, and stormwater treatment facilities.

F. The total cost of the Project is estimated to be approximately \$5,000,000.

G. Upon completion, the Project will provide benefits to the public and adjacent property owners.

H. KK Eden Properties LLC (“Owner”) owns parcels 042 4530 001 01, 042 4530 001 02, 042 4530 003 02, 042 4530 003 01, and 042 4530 003 03, adjacent to the Project. Applicant is leasing this land from Owner. Applicant is applying to the City for a conditional use permit (“CUP”) to use a portion of the land for Applicant’s business under application #PLN21-0027. As a condition to obtaining the CUP, City and/or other relevant agencies with regulatory authority have indicated that Applicant develop the Project, for certain valuable consideration, including but not limited to assistance with Applicant’s ability to obtain a conditional use permit for its adjacent properties. City is interested in cooperating with Applicant to develop the Project.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing recitals and for other good and valuable consideration the receipt of which is hereby acknowledged, the Parties agree as follows:

1. Recitals: The recitals above are true and correct and made a part of this Agreement.
2. Term of Agreement: This Agreement is effective following execution by all parties involved and shall remain in effect in perpetuity. The provisions of this agreement shall be applicable to the property and future prospective owners in the event the property were to be sold in the future.
3. Respective Parties’ Financial Contributions to the Project:
 - a. City’s Financial Contributions: City agrees to sell Eden Road to KK Eden Properties LLC (Owner) at the negotiated price of \$1.00 (one dollar) as-is, where-is, without warranties or guarantees, including but not limited to suitability for a particular use. Following completion of the deliverables in Section 3.1.i below, Owner shall sell and convey to City a public utility easement (“PUE”) in perpetuity across the entire length of Eden Road, further described in Section 5 of this Agreement. Applicant shall hire a California-licensed land surveyor and shall be responsible for the costs associated with the development and preparation of the plat and legal description for the PUE, while the City of San Leandro shall be responsible for the review and approval of the PUE

documents. The price to be paid by City to Applicant for the PUE shall be comprised of the following:

- i. One Million Dollars (\$1,000,000.00) payment from City of San Leandro to Applicant, to be paid within 30 days following completion of all the following requirements: full execution of this agreement, development of the draft PUE, plan sets to execute the Project are approved, and submittal of bonds for performance of the Project with a surety rating of “A” or greater, or a letter of credit accompanied by a bank letter of guarantee that guarantees access to the credit line for the full estimated value of the project that is reviewed and approved by the City’s Finance Director (whichever of the above requirements occurs last).
 - ii. Conditioned on the completion of the Project, passing of all regulatory inspections, and full execution of the PUE referenced in section (a), above, the City shall pay an additional sum of \$2,000,000 (two million dollars) to the applicant within 30 days following completion of the above. At the same time the \$1,000,000 payment stated above is due, City shall segregate the additional \$2,000,000 into a discrete line-item identified for this specific project within the City’s accounts. .
 - iii. It shall be further noted that the above-referenced payments totaling \$3,000,000 solely reflect the mutually-agreed upon value of the PUE. As a privately owned road, Applicant shall be responsible for any and all costs associated with construction of the Project, including compliance with any relevant legal requirements associated with a privately constructed project on privately-owned property.
- b. **Owner’s Contribution:** Owner agrees to use a portion of its existing land for a vehicular turnaround area, that shall be constructed in compliance with City of San Leandro and Alameda County Fire Department requirements and standards. This turnaround shall be demarcated on the Eden Road plans submitted to the City.
4. **Construction:** Applicant shall construct improvements within Eden Road from Doolittle Drive to the western end of Parcel APN # 77A-746-10. City agrees to fully off-set the

costs of all City permitting fees for the Project using existing funds in the designated project account, including all fees for City grading permits, City encroachment permits, and any other City-issued permits needed for the Project, with the exception of inspection fees (applicant shall be responsible for payment of all inspection fees). Applicant will also be responsible for all permit fees required from other governmental agencies, such as the California Department of Transportation (“Caltrans”), which is expected to charge fees for an encroachment permit necessary for any work that shall take place within Caltrans right-of-way in proximity to Doolittle Drive and which is necessary to complete the Project. Applicant shall construct such improvements in accordance with City standards, federal, state, and local laws, and under a grading permit issued by the City, in accordance with City of San Leandro Municipal Code, Title 7, Chapter 7-12 – Grading, Excavations and Fills. Applicant shall furnish to City reproducible plastic film or electronic as-built drawings of the permanent improvements constructed by Applicant of a quality acceptable to the City Engineer together with a certification by Applicant’s engineer that the improvements were constructed in accordance with relevant regulatory standards. Applicant shall resolve all liens associated with the work.

5. Private Road & Easements: Following the sale of Eden Road to Owner, Eden Road shall become a private road. Following completion of the deliverables in Section 3.a., Owner shall convey to City a “PUE” in perpetuity across the entire length of Eden Road. The Parties agree that the PUE will be limited such that:

(a) Public access on Eden Road may be limited to the business hours of any properties with frontage along Eden Road. Parties understand there is an existing gate at the entrance of Eden Road. Owner or Applicant may choose to close the existing gate at the entrance of Eden Road during non-business hours.

(b) All property owners fronting Eden Road, any public agencies with regulatory authority over the property, emergency vehicles, and/or entities with an easement over the road will have continual ongoing 24/7 access to Eden Road. All emergency vehicles will also have 24/7 access to Eden Road through a Knox box, which Applicant will install during Project construction.

6. Ongoing Maintenance of Road: Owner (or any subsequent future owners of the property) shall be solely responsible for the ongoing maintenance of Eden Road, in perpetuity.

Furthermore, Eden Road shall be maintained at a Pavement Condition Index (“PCI”) level of 65 or greater, in perpetuity. Owners commit to making available to the City of San Leandro upon request and not more frequently than on an annual basis reports prepared by a third-party with relevant expertise affirming the PCI rating. To the extent the condition of the road is ever determined to have degraded below a PCI of 65, Applicant acknowledges that it shall be deemed to have violated the terms of this agreement and with the anticipated terms of its Conditional Use Permit, which could result in the rescission of the aforementioned Conditional Use Permit #PLN21-0027.

6 (a). City Contribution Towards Road Maintenance Costs. As a result of the public benefits derived from retaining access rights across the PUE, City agrees to reimburse the Owner of Eden Road towards 10% of the long-term maintenance costs of the road. Owner shall provide a minimum of 30-days advance notice to the City of any prospective maintenance work for the City’s review and approval prior to the commencement of any such maintenance work, and receipts shall be submitted to the City for reimbursement of 10% of those costs once such work is completed. Owner shall be responsible for ensuring any such work complies with relevant public contracting code and/or prevailing wage requirements and shall defend and indemnify the City in the event of any legal challenges directly stemming from such maintenance activities. To the extent any future damage to the road following completion of the project can be clearly identified as being caused from the operations of any particular party with frontage or access rights across Eden Road, then that party shall be exclusively responsible for all costs associated with repairing said damaged sections of the road.

7. Soil Testing: As a privately owned road purchased as-is, where-is, the Owner and/or Applicant will be allowed to test the soil to determine its makeup for disposal purposes.

8. Utility Lines: City will be responsible for any City utility lines that existed on Eden Road prior to the start of construction of this Project, including a sewage line (“Existing Line(s)”). If the City determines there is a need for any repair or replacement of Existing Lines or if a need for new City utility line(s) occurs in the future, it shall be the City’s sole responsibility and cost to conduct such repair, replacement, or installation of such utility line(s) or related infrastructure, and the City shall repair any damage to Eden Road caused by said work, including restoring the

condition of the road such that it is in compliance with relevant regulatory standards and able to pass inspections.

9. Hold Harmless and Indemnity: (a) Applicant and Owner shall hold harmless, indemnify and, at the City's request, defend City (with counsel acceptable by City), its elected officials, officers, employees, agents, boards and commissions, whether elected or appointed, from and against all claims, demands, actions, causes of action, losses, damages, liabilities, costs and expenses, including but not limited to reasonable attorneys' fees and costs, for or in connection with personal injury (including, but not limited to, death) or damage to property (both real and personal) which arises out of or is in any way connected with the negligent acts, errors or omissions of Applicant, its agents, contractors, subcontractors, or employees in connection with the performance of this Agreement.

(b) City shall hold harmless and indemnify Applicant and Owner, and their officers, employees, and agents, from and against all claims, demands, actions, causes of action, losses, damages, liabilities, costs and expenses, including but not limited to reasonable attorneys' fees and costs, for or in connection with personal injury (including, but not limited to, death) or damage to property (both real and personal) which arises out of or is in any way connected with the negligent acts, errors or omissions of City, its agents, contractors, subcontractors, or employees in connection with the performance of this Agreement.

10. Notice of Breach and Default: If Applicant refuses or fails to pay its contribution, or any severable part thereof, with such diligence as will insure completion of this Agreement within the time specified, or any extensions thereof, or if the Applicant should be adjudged as bankrupt, or if Applicant should make a general assignment for the benefit of Applicant's creditors, or if a receiver should be appointed in the event of Applicant's insolvency, or if Applicant or any of Applicant's contractors, subcontractors, agents or employees should violate any of the provisions of this Agreement, the City Engineer or City Manager may serve written notice upon Applicant of Default. Upon such notice, City may take any and all legal actions to enforce this Agreement, including but not limited to specific performance.

If City refuses or fails to pay its contribution, or any severable part thereof, with such diligence as will insure completion of this Agreement within the time specified, or any extensions thereof, or if the City should be adjudged as bankrupt, or if City should make a general assignment for the benefit of City's creditors, or if a receiver should be appointed in the event

of City's insolvency, or if City or any of City's contractors, subcontractors, agents, or employees should violate any of the provisions of this Agreement, Applicant and/or Owner may serve written notice upon City of Default. Upon such notice, Applicant and/or Owner may take any and all legal actions to enforce this Agreement, including but not limited to specific performance.

11. Parties Obligated: Parties agree that this Agreement shall bind each Party and each Party's successors in interest, heirs, successors, and assigns.

12. Attorneys' Fees: If a party to this Agreement brings any action, including an action for declaratory relief, to enforce or interpret any provision of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees in addition to any other relief to which that party may be entitled. The court may set such fees in the same action or in a separate action brought for that purpose.

13. Governing Law: The laws of the State of California shall govern this Agreement. This Agreement, and all the provisions of this Agreement, shall be deemed drafted by all of the Parties, and shall not be construed against any Party on the basis of that Party's role in drafting this Agreement.

14. Severability: If a court of competent jurisdiction finds or rules that any provision of this Agreement is invalid, void, or unenforceable, the provisions of this Agreement not so adjudged shall remain in full force and effect. The invalidity in whole or in part of any provision of this Agreement shall not void or affect the validity of any other provision of this Agreement.

15. Termination: This Agreement may only be terminated by either Party for cause.

16. Recordation of Agreement. Upon the execution of this Agreement, the Parties agree that City shall record this Agreement in the Official Records of Alameda County.

17. Assignment, Entire Agreement, and Amendment. This Agreement cannot be assigned without the prior written consent of the non-assigning party. This Agreement represents the entire agreement of the parties, and supersedes all prior oral and written agreements. This Agreement may only be amended in a writing signed by the parties.

18. 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

City of San Leandro
City Hall
835 East 14th Street
San Leandro, CA 94577

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

Alco Iron & Metals
Attn: Michael Bercovich
2140 Davis Street
San Leandro, CA 94577

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

KK Eden Properties LLC
Attn: Kem Kantor
2140 Davis Street
San Leandro, CA 94577

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

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

CITY
CITY OF SAN LEANDRO,
a Municipal Corporation

Dated: _____

By: _____
Fran Robustelli
City Manager

APPLICANT
ALCO IRON & METAL COMPANY,
a California Corporation

Dated: _____

By: _____
Michael Bercovich
COO

OWNER
KK Eden Properties LLC,
a California LLC

Dated: _____

By: _____
Kem Kantor
Managing Member

Attach:

[Notary Acknowledgment for each signature]
[Approved Engineer's Estimate]

Approved as to Form:

Richard D. Pio Roda, City Attorney

5568498.1

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