

EXHIBIT M  
PARK DESIGN AND ACQUISITION TERMS

This Agreement between Visitacion Development LLC (“Developer”) and the City and County of San Francisco, acting by and through its Recreation and Park Department (“RPD,” collectively “the Parties”), shall govern the construction, maintenance, and possible City purchase of the parcels currently known as Parcel D, Linear Park or Leland Greenway (“Linear Park”) and Parcel A, Square Park or Visitacion Park (“Square Park”, together “the Parks”). As of the date of the approval of the Development Agreement, the Parties to this Exhibit M contemplate that RPD will purchase Linear Park and Square Park; however, Developer may elect to retain ownership of Linear Park and Square Park and/or may not timely satisfy the conditions precedent to RPD’s purchase set forth in this Exhibit M.

To the extent Developer does not elect to sell Linear Park or Square Park to RPD or does not timely satisfy the conditions precedent to RPD’s purchase of either park set forth in this Exhibit M or any Purchase and Sale Agreement and/or Maintenance Agreement that may be executed by the Parties, the use and maintenance of the Park shall be governed by the provisions of Exhibit D, Regulations Regarding Access and Maintenance of Privately –Owned Community Improvements. Upon execution of a Purchase and Sale Agreement for either or both Linear Park and Square Park, the use and maintenance of the Park(s) shall be governed by the terms of this Exhibit M and any Purchase and Sale Agreement and/or Maintenance Agreement that may be executed by the Parties.

**I. Park Design**

- a. Except as specifically provided in this Exhibit M or the Development Agreement, Developer agrees to take all actions necessary to design and build the Parks according to designs approved by the City’s Recreation and Park Commission.
- b. Within 3 months after approval of the Development Agreement, Developer shall retain an independent consultant satisfactory to RPD to review the preliminary design of all utility infrastructure that would serve each Park, as reflected in the Open Space and Streetscape Master Plan (“OSSMP”) approved by the Planning Department and Board of Supervisors. The independent consultant shall report to RPD regarding the adequacy of the designed infrastructure to support the features of the preliminary park design(s) and alternative features and elements that may be considered as refinements to the preliminary design(s). The Parties acknowledge that RPD may seek design elements, including public restrooms, that call for expansion or additions to utility facilities that could create significant additional construction costs. The Parties acknowledge that the preliminary designs, and all negotiated costs as reflected in this Exhibit M, do not include or support the provision of public restrooms. If the independent consultant concludes that design elements of interest to RPD would create such additional costs, the Parties shall

negotiate in good faith about solutions that avoid such increases, including, for example, modifying other park features or adjusting the cost caps found in subsection (g) below. The Developer further agrees to cap the nearest utility lines necessary to serve a public restroom in order to accommodate the possible future provision of a restroom at the site(s) and to minimize related infrastructure costs. Upon completing review of the infrastructure plans for the Linear Park and Square Park, but no later than March 1, 2015, Developer shall elect in writing whether to proceed with the anticipated sale of Linear Park and Square Park. If Developer declines to make such election in writing, RPD shall have no further obligations under this Exhibit M.

- c. Commencing by January, 2015, RPD shall lead a design review process in cooperation with the City's Planning Department to refine and finalize the preliminary designs reflected in the Open Space and Streetscape Master Plan ("OSSMP") approved by the Planning Department and Board of Supervisors. The Developer shall cooperate in providing design professional assistance to support the design review process. Any modifications to the preliminary designs requested by RPD shall be guided by design principles and performance standards established by RPD, including but not limited to:
  - i. Integration and consistency with the design and character of other nearby parks, including Visitacion Valley Greenway;
  - ii. Unique identity and sense of place;
  - iii. Ecological value; and
  - iv. Amenities well suited to serve the current and projected demographics of the area.
- d. RPD shall establish a Community Advisory Panel (CAP) comprised of landscape design professionals and community residents (including representation from the Visitacion Valley Advisory Body). The CAP shall convene at least three and no more than eight public meetings during 2015 to review:
  - i. The preliminary designs incorporated in the OSSMP;
  - ii. RPD's proposed design principles and performance standards;
  - iii. Current and anticipated community demographics;
  - iv. RPD programming needs and "gap analysis" and any other relevant factors identified by the Parties.
- e. The Developer shall cooperate in providing design professional support for the work of the CAP. Developer shall prepare and present conceptual designs to the Recreation and Park Commission for approval no later than the first quarter of 2016. Upon approval, the conceptual design shall be referred to as the Final Conceptual Design. The Final Conceptual Designs shall contemplate a maximum construction cost for the Linear Park of **\$60 per square foot** in 2014 dollars as adjusted to reflect

any increase in the CPI-U for the San Francisco Bay Area as of the anticipated date of award of the construction contract up to a maximum of \$64 per square foot and shall contemplate a maximum construction cost for the Square Park of **\$60 per square foot** in 2014 dollars as adjusted to reflect any increase in the CPI-U for the San Francisco Bay Area as of the anticipated date of award of the construction contract up to a maximum of \$64 per square foot. The maximum cost figures in this paragraph include all building materials and physical improvements to the land related to park facilities, direct labor costs for installation of the park improvements, and a 10% park construction contingency; but do not include the cost of the utility facilities to serve the park sites or storm water infrastructure that is located within the park site(s) but intended to meet storm water management requirements for the Development Area as a whole. Developer shall fully disclose to RPD the documentation supporting its analysis of the cost of building a particular park design. To the extent the Parties disagree about the park whether a design recommended by RPD staff, including selected park features, can be built within the maximum costs, as adjusted, the Parties shall jointly select a mediator to resolve the dispute.

- f. After the Recreation and Park Commission has approved the Final Conceptual Design for Linear Park and/or Square Park, Developer shall elect in writing whether to proceed with the anticipated sale of Linear Park and/or Square Park. If Developer declines to make such election in writing, RPD shall have no further obligations under this Exhibit M. If Developer elects to proceed with the sale of Linear Park and/or Square Park, Developer shall prepare and submit construction drawings to RPD for review and approval. Developer shall make revisions as needed until RPD staff approves the Final Park Design. RPD and Developer will agree to a schedule for review of construction drawings before Developer begins detailed design work. Developer shall be responsible for obtaining any other City approvals that may be required in connection with the park designs.
- g. Within three months after written approval of the Final Conceptual Design for Linear Park and/or Square Park has been delivered to Developer, Developer shall elect whether to proceed with the anticipated sale of Linear Park and/or Square Park. If Developer declines to make such election, RPD shall have no further obligations under this Exhibit M.
- h. Developer shall seek and obtain advanced written approval of the design of any utility facilities planned to be built on, over or beneath Linear Park or Square Park, regardless of whether they are designed to provide service to the park.

## **II. Park Construction**

- a. Developer shall be responsible for all construction costs, including the costs of building and installing all recreation and park buildings, improvements and facilities,

as well as any infrastructure required to serve the park improvements, provided that the approved Final Conceptual Design for each park is projected to be buildable within the maximum construction cost for each park set forth in Section I.c. of this Exhibit M.

- b. Developer shall comply with all applicable laws governing construction of Linear Park and Square Park, including any applicable requirements or restrictions associated with any environmental controls as required by any governing environmental agreement or regulatory controls based on the remediation of the area surrounding and including Linear Park and Square Park.
- c. RPD, with assistance from the Department of Public Works Infrastructure Design and Construction Division, shall inspect the Park site(s) upon completion of construction, and, upon determination that the Park site(s) conform to the approved Final Park Design, applicable laws and all stated performance standards, RPD shall issue a written notice to Developer of its final acceptance of the park as constructed.

### **III. Park Purchase**

- a. Subject to appropriation, RPD agrees to take all actions necessary to reserve funds in the Open Space Acquisition Fund established by Section 16.107(f)(3) of the San Francisco Charter to purchase Linear Park for a final purchase price not to exceed **\$1,966,500** and to purchase Square Park for a final purchase price not to exceed **\$2,533,500**. The parties affirm that these prices are below the full market value of the property as determined by an appraisal procured by the City's Real Estate Division in 2014. Developer agrees to sell the sites to RPD at these reduced purchase prices in exchange for RPD's commitment to purchase the sites according to the terms of this Exhibit M.
- b. Subject to appropriation, three years after approval of the Development Agreement by the Board of Supervisors, RPD shall be prepared to deliver funds for the purchase of Linear Park, provided that the Parties shall have obtained all approvals necessary to transfer ownership of Linear Park to the City under the jurisdiction of RPD according to the terms of any Purchase and Sale Agreement approved by the Parties and upon satisfaction of all the following conditions:
  - i. Developer's timely election to proceed with sale of the Parks in accordance with Section I. g. of this Exhibit M;
  - ii. Developer's good faith cooperation with the design review process described in this Exhibit M;
  - iii. Approval of the Final Conceptual Design by the Recreation and Park Commission;
  - iv. Approval by RPD staff of construction drawings reflecting the Final Park Design;

- v. RPD approval of the infrastructure serving the Park and any other infrastructure on, over or beneath the Park;
- vi. Developer's receipt of all regulatory approvals that may be required in connection with design, construction or use of the Park, including any federal, state or local environmental approvals required to establish use of a park as an approved use;
- vii. RPD's issuance of final acceptance of the Park in accordance with Section II.c., and
- viii. Approval and execution of a Maintenance Agreement governing RPD services to Linear Park.

If all the conditions set forth here are not satisfied within **five** years after approval of the Development Agreement by the Board of Supervisors, RPD shall have no further obligations with respect to the anticipated purchase of Linear Park.

- c. Subject to appropriation, five years after approval of the Development Agreement by the Board of Supervisors, RPD shall be prepared to deliver funds for the purchase of Square Park, provided that the Parties shall have obtained all approvals necessary to transfer ownership of Square Park to the City under the jurisdiction of RPD according to the terms of any Purchase and Sale Agreement approved by the Parties, and upon satisfaction of all the following conditions:

- i. Developer's timely election to proceed with sale of the Parks in accordance with Section I. g. of this Exhibit M;
- ii. Developer's good faith cooperation with the design review process described in this Exhibit M;
- iii. Approval of the Final Conceptual Design by the Recreation and Park Commission;
- iv. Approval by RPD staff of construction drawings reflecting the Final Park Design;
- v. RPD approval of the infrastructure serving the Park and any other infrastructure on, over or beneath the Park;
- vi. Developer's receipt of all regulatory approvals that may be required in connection with design, construction or use of the Park, including any federal, state or local environmental approvals required to establish use of a park as an approved use;
- vii. RPD's issuance of final acceptance of the Park in accordance with Section II.c., and
- viii. Approval and execution of a Maintenance Agreement governing RPD services to Square Park.

If all the conditions set forth here are not satisfied within **seven** years after approval of the Development Agreement by the Board of Supervisors, RPD shall have no further obligations with respect to the anticipated purchase of Square Park.

#### IV. Park Operation and Maintenance

- a. Developer shall make two annual payments to RPD for each of the 22 years after RPD's purchase of either of the Park(s): a "Routine Maintenance Payment" and a "Renewal Maintenance Payment" as follows:
  - i. The Routine Maintenance Payment shall cover RPD costs to maintain the Park(s) in accordance with the park maintenance standards set forth in Proposition C or any successor standards for maintenance of public parks that may be established by law or RPD policy ("Citywide Park Maintenance Standards"). Such maintenance shall include the services of gardeners, janitors, and security service, as well as the provision of all required utility services. The Routine Maintenance Payment shall be \$200,000 as adjusted to reflect increases in labor, utility and materials and supplies costs between the date of approval of the Development Agreement and the date that RPD commences delivery of any maintenance services, and each year thereafter. Twenty per cent of the Routine Maintenance Payment shall be adjusted annually according to the CPI-U for the San Francisco Bay Area. Eighty per cent of the Routine Maintenance Payment shall be adjusted by any increase in the cost of RPD employee salaries and benefits reflected in amendments to the City's collective bargaining agreements with the relevant City employees or the CPI-U for the San Francisco Bay Area, whichever is less.
  - ii. The Renewal Payment shall be set aside by the City and used exclusively to cover RPD costs to repair or replace damaged or obsolete park improvements and equipment. The Renewal Payment shall be \$50,000, as adjusted to reflect the CPI-U for the San Francisco Bay Area between the date of approval of the Development Agreement and the date that RPD commences delivery of any maintenance services, and each year thereafter. The City shall set aside and maintain the Renewal Payments, together with any interest earned thereon, and any amount unspent or uncommitted at the end of the fiscal year shall be carried forward to the next fiscal year and, subject to the budgetary and fiscal limitations of the San Francisco Charter, shall be appropriated only for the purposes specified in this Section.
  - iii. Both the Routine Maintenance Payment and the Renewal Payment shall be pro-rated by 50% to the extent that Developer has transferred ownership of only one of the Parks and may be further pro-rated to reflect partial years of City Maintenance service.
- b. The Parties may agree that Developer shall purchase and RPD shall provide a higher level of service than called for by Citywide Park Maintenance Standards according to

the terms of a Maintenance Agreement governing service to Linear Park and/or Square Park.

- c. The Parties anticipate that Developer will satisfy its obligations under this Section IV through creation of a Community Facilities District and/or Master Homeowner Association and transfer to RPD revenues from assessments on successor property owners. Accordingly, the terms of this Exhibit M which describe the maintenance obligations of the Developer shall be included in the CC&Rs for any HOA created for the Development Area, and shall be recorded against all parcels in the Development Area, and the obligations under this Section IV shall be included as an obligation for any CFD established for the Development Area. If such CFD and/or HOA is established and the obligations therein cover the total costs of the obligations under this Section IV, the CFD and/or the HOA shall succeed to the duty to make annual payments under this section.

**V. Miscellaneous Provisions**

- a. Developer shall make deposits in three installments to RPD to support RPD's project management activities during the park design review and construction process as follows:
  - i. \$20,000 by January, 2015;
  - ii. \$20,000 no later than 30 days before Developer begins construction of Linear Park
  - iii. \$20,000 no later than 30 days before Developer begins construction of Square Park
- b. RPD shall bill Developer quarterly for project management activities, drawing first on any balance from the deposits made in accordance with subsection a. Developer shall pay RPD for any amounts exceeding the deposit within 30 days of any quarterly RPD bill. Upon RPD approval of the Final Park Design for Linear Park and/or Square Park and RPD issuance of final acceptance for either Linear Park and/or Square Park, if RPD has not used the full value of any deposit payment, the remaining balance shall be credited to any future work or returned to Developer at RPD's discretion.
- c. The time for any actions contemplated in this Exhibit M may be extended by written mutual agreement of the Parties.
- d. If the City purchases Linear Park and/or Square Park, RPD retains the authority to name the Park(s).

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the day and year first above written.

**DEVELOPER**

Universal Paragon Corporation,  
a California Corporation

By: \_\_\_\_\_

Its: \_\_\_\_\_

**CITY:**

**CITY AND COUNTY OF SAN FRANCISCO,  
a municipal corporation**

By: \_\_\_\_\_  
PHILIP GINSBURG, General Manager  
Recreation and Park Department

**APPROVED BY  
RECREATION AND PARK COMMISSION  
PURSUANT TO RESOLUTION NO. \_\_\_\_\_ DATED: \_\_\_\_\_**

\_\_\_\_\_  
Margaret McArthur, Commission Liaison

**APPROVED AS TO FORM:  
DENNIS J. HERRERA, City Attorney**

By \_\_\_\_\_  
Julia M. C. Friedlander, Deputy City Attorney