

AGREEMENT FOR INDEPENDENT CONTRACTOR SERVICES

This Independent Contractor Agreement (“Agreement”) is entered into this _____ by and between the Mission-West Valley Land Corporation (“CORPORATION”), a California non-profit public benefit corporation with a principal place of business at 14000 Fruitvale Avenue, Saratoga CA 95070, and _____ (“CONSULTANT”) (collectively referred to as the “Parties”). This Agreement is entered into with reference to the following Recitals, all of which are incorporated and made a part of this Agreement.

RECITALS

WHEREAS, the CORPORATION desires the assistance of an experienced consultant to provide certain specialized consulting services regarding public land development and management of a non-profit, public-benefit corporation on a temporary, part-time basis.

WHEREAS, the CONSULTANT is specially-trained, experienced and competent in such matters and is capable and desirous of Furnishing the special services hereinafter described.

WHEREAS, the authority for entering into this contract is contained in Sections 53060 of the California Government Code and such other provisions of law as may be applicable.

NOW, THEREFORE, in consideration of the foregoing representations and the following terms and conditions, the Parties agree as follows.

1. **Term.** Unless earlier terminated pursuant to the provisions of this Agreement, the term of this Agreement shall commence August 1, 2014 and terminate on July 31, 2019.
2. **Scope of Services.** The CONSULTANT shall provide specialized consulting services regarding public land development and operational management relating to the CORPORATION’S real estate assets, master ground leases and ground subleases. CONSULTANT shall monitor and resolve pertinent business terms and issues with all ground tenants, generally administer the ground leases and negotiate (with CORPORATION’S legal counsel) on behalf of the CORPORATION in its dealings with its ground tenants.
 - a. The CORPORATION has three properties that consist of approximately 60 acres in and around the Mission College campus in Santa Clara and comprise the real estate assets of the CORPORATION.
 - (1) *Mercado Shopping Center*—3101 Mission College Boulevard
 - (2) *Sobrato Office Project*—2811, 2821, 2831, 2841 Mission College Boulevard
 - (3) *Quality Technology Services Project*—2805, 2807 Mission College Boulevard
 - b. The CORPORATION master leased each of these properties from the West Valley-Mission Community College District for the following lease terms:

- (1) *Mercado Shopping Center* – 55 years commencing September 19, 1990, with two extension options, the first for 25 years and the second for 15 years.
- (2) *Sobrato Office Project* – 55 years commencing April 20, 1996, with two extension options of 20 years each.
- (3) *Quality Technology Services (QTS) Project* – 55 years commencing October 2, 1997, with two extension options of 10 years each.

c. The CORPORATION subsequently ground subleased each of the properties as follows:

- (1) *Mercado Shopping Center* – Initial term of 55 years commencing September 19, 1990, with two extension options, the first for 25 Years and the second for 15 Years. Current ground subtenant is Lakha Properties-Santa Clara LLC.
- (2) *Sobrato Office Project* – This is a two-phase (two-parcel) office project, one parcel of which is subleased to SI 27, LLC and the other of which is subleased to SI 29, LLC, both Sobrato affiliates, for initial terms of 55 Years commencing June 11, 1996, with two extension options of 20 years each
- (3) *Quality Technology Services (QTS) Project* – Initial term of 55 years commencing October 2, 1997, with two extension options of 10 years each. Current ground subtenant is Quality Investment Properties Santa Clara, LLC.

- 3. Consultant Responsibilities and Limitations.** CONSULTANT may perform the services under the Agreement at any suitable time and location the CONSULTANT chooses, but must be available in Santa Clara County as reasonably needed to perform such services. CONSULTANT shall provide all materials and equipment required, other than photocopying, postage, letterhead and envelopes. CONSULTANT acknowledges and agrees that CONSULTANT is not entitled to any STRS or PERS benefits for services completed under this Agreement or compensation received under this agreement.
- 4. Qualifications and Standard of Care.** CONSULTANT represents that he has the skills, experience, qualifications and ability to perform and complete the Services under this Agreement, acting with due care and in accordance with the applicable standards of care under California law for those providing similar services, and in accordance with the terms of this Agreement.
- 5. Compensation.** In consideration of the Services provided in Paragraph 2, the CORPORATION shall pay to the CONSULTANT based on his hourly rate of _____. The CORPORATION further agrees to reimburse CONSULTANT for activities related to the hourly activities, including telephone calls, photocopying, mail expenses, and mileage. CONSULTANT shall submit invoices to the CORPORATION for payment on a monthly basis, and such invoices shall be payable within thirty (30) days.

6. Termination of Agreement.

- a. Mutual Consent. This Agreement may be terminated at any time by mutual consent of the Parties, by giving written notice of at least thirty (30) calendar days to the other.
- b. Early Termination. Either the CORPORATION or CONSULTANT may unilaterally and without cause terminate this Agreement at any time by thirty (30) days advance written notice to the other.
- c. Termination for “cause.” The CORPORATION may terminate this Agreement immediately and without notice for “cause.” For purposes of this Agreement, the term “cause” shall mean a good faith determination by the CORPORATION that one or more of the following have occurred:
 - (1) Dishonesty of CONSULTANT; or
 - (2) CONSULTANT has divulged confidential information gained in the course of performing the services described herein; or
 - (3) CONSULTANT is guilty of misconduct in the rendering of services on behalf of the CORPORATION; or
 - (4) A willful breach by CONSULTANT of its material duties and obligations as set forth in the Agreement; or
 - (5) The habitual neglect or poor performance or gross negligence by CONSULTANT of his material duties as set forth in the Agreement which continues uncorrected for a period of thirty (30) days after written notice thereof by the CORPORATION to CONSULTANT
- d. Effect of Termination. If the CORPORATION terminates the Agreement pursuant to this Section, the CORPORATION shall remit to CONSULTANT all sums due under Section 4 for the entire period through the desired date of termination. However, if CONSULTANT is terminated for “cause” pursuant to this Section, then no further compensation shall be owed by the CORPORATION after such termination.

7. Insurance Requirements. At all times during the Term of this Agreement, the CONSULTANT shall obtain and maintain the following policies of insurance with coverage limits set forth below.

- a. Workers’ Compensation Insurance. CONSULTANT shall secure workers’ compensation insurance coverage in a form and amount covering CONSULTANT’S full liability under the California Workers’ Compensation Insurance & Safety Act and in accordance with the applicable state and federal laws.
- b. Commercial Liability Insurance. Commercial General Liability Insurance including both bodily injury and property damage in the amount of \$1,000,000 per occurrence and \$1,000,000 general aggregate.

- c. Professional Liability Insurance. Professional Liability Insurance with a limit of \$1,000,000 per claim and \$1,000,000 in the aggregate.
 - d. Automobile Liability Insurance. Automobile Liability Insurance in the amount of 41,000,000 combined single limit that shall protect the CORPORATION and the CONSULTANT from all claims of bodily injury and property damage.
 - e. No Cancellation or Coverage Reduction Without Notice. All policies of insurance shall include the following: “this policy shall not be canceled or reduced in required limits of liability or amounts of insurance until notice has been mailed to CORPORATION, stating date of cancellation or reduction. The date of cancellation or reduction shall not be less than thirty (30) days after date of mailing notice.”
 - f. Additional Insureds. CORPORATION and West Valley-Mission Community College District are named additional insureds under all policies except Workers’ Compensation Insurance, Professional Liability and Employers’ Liability Insurance.
- 8. Indemnification.** CONSULTANT shall indemnify and hold the CORPORATION and the District from and against any and all liability imposed or claimed, including attorney’s fees and other legal expenses, arising directly or indirectly from any act or failure of CONSULTANT, including but not limited to all claims relating to the injury or death of any person or damage to any property but not for any loss, injury, death or damage caused by the sole negligence or willful misconduct of the CORPORATION or the District. This indemnification shall apply to claims occurring after termination of this Agreement as well as while the Agreement is in force.
- 9. Audit.** CONSULTANT shall establish and maintain books, records, and systems of account, in accordance with generally accepted accounting principles, reflecting all business operations of CONSULTANT transacted under this Agreement. CONSULTANT shall retain these books, records, and systems of account during the Term of this Agreement and for five (5) years thereafter. CONSULTANT shall permit the CORPORATION, its agent, other representatives, or an independent auditor to audit, examine, and make excerpts, copies, and transcripts from all books and records, and to make audit(s) of all billing statements, invoices, records, and other data related to the services covered by this Agreement. Audit(s) may be performed at any time, provided that the CORPORATION shall give reasonable prior notice to CONSULTANT and shall conduct audit(s) during CONSULTANT’S normal business hours, unless CONSULTANT otherwise consents.
- 10. Taxes.** CONSULTANT is responsible for the payment of all required taxes and all FICA contributions. The CORPORATION will not be withholding sums for FICA or state or federal taxes for the CONSULTANT.
- 11. Independent Contractor Status.** The parties agree that CONSULTANT is an independent contractor and not an employee, agent, joint venture, or partner of the CORPORATION or the District. Nothing in this Agreement shall be interpreted or construed as creating or establishing the relationship of employer and employee between the CORPORATION or the District and CONSULTANT. Both parties acknowledge that CONSULTANT is not an

employee of the CORPORATION or the District for state and federal purposes. CONSULTANT shall not be entitled to any benefits to which employees of the CORPORATION or the District are entitled, including but not limited to, overtime, retirement benefits, workers' compensation benefits, injury leave, or other leave benefits.

- 12. Non-Assignability.** CONSULTANT shall not assign this Agreement or any portion thereof to a third party without the prior written consent of the CORPORATION, and any attempted assignment without such prior written consent in violation of this Section automatically shall terminate Agreement.
- 13. No Subcontracting.** CONSULTANT shall not subcontract without the express written approval of the CORPORATION.
- 14. Compliance with Laws.** CONSULTANT shall observe and comply with all rules and regulations of the CORPORATION'S Board of Directors and all federal, state, and local laws, ordinances and regulations. CONSULTANT shall give all notices required by any law, ordinance, rule and regulation bearing on conduct of the Services as indicated or specified. Each and every provision of law and clause required by law to be inserted into this Agreement shall be deemed inserted herein and this Agreement shall be read and enforced as though it were included herein.
- 15. Permits/Licenses.** CONSULTANT shall secure and maintain in force such permits and licenses as are required by law in connection with the furnishing of services pursuant to this Agreement.
- 16. Partial Invalidity.** If any provision in this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions will nevertheless continue in full force without being impaired or invalidated in any way.
- 17. Governing Law.** This Agreement will be governed by and construed in accordance with the laws of the State of California.
- 18. Anti-Discrimination.** In the performance of this Agreement there shall be no discrimination against any person because of race, color, ancestry, national origin, religious creed, physical disability, medical condition, marital status, sexual orientation, gender, or age. CONSULTANT agrees to comply with applicable federal and California laws including, but not limited to the California Fair Employment and Housing Act beginning with Government Code Section 12900 and Labor Code Section 1735 and District policy.
- 19. No Rights in Third Parties.** This Agreement does not create any rights in, or inure to the benefit of, any third party except as expressly provided herein.
- 20. Confidentiality.** CONSULTANT shall maintain the confidentiality of all confidential information received in the course of performing the Services. This requirement to maintain confidentiality shall extend beyond the termination of this Agreement.

21. Notice. Any notice required or permitted to be given under this Agreement shall be deemed to have been given, served, and received if given in writing and either personally delivered or deposited in the United States mail, registered or certified mail, postage prepaid, return receipt required, or sent by overnight delivery service, or facsimile transmission, addressed as follows:

Mission-West Valley Land Corporation
Attn: Vice Chancellor, Administrative Services
14000 Fruitvale Avenue
Saratoga, CA 95070-5698
Fax: (408)
Tel: (408) 741-2082

“CONSULTANT”

Any notice personally given or sent by facsimile transmission shall be effective upon receipt. Any notice sent by overnight delivery service shall be effective the business day next following delivery thereof to the overnight delivery service. Any notice given by mail shall be effective three (3) days after deposit in the United States mail.

22. Integration/Entire Agreement of Parties. This Agreement constitutes the entire Agreement between the Parties and supersedes all prior discussions, negotiations, and agreements, whether oral or written. This Agreement may be amended or modified only by a written instrument executed by both Parties.

23. Attorneys’ Fees. In any dispute between the Parties, the prevailing party shall be entitled to recover from the other party all reasonable costs, including without limitation, reasonable attorneys’ fees.

24. Waiver. The waiver by either party of any breach of any term, covenant, or condition herein contained shall not be deemed to be a waiver of any other term, covenant, condition, or any subsequent breach of the same or any other term, covenant, or condition herein contained.

25. Jurisdiction/Venue. The Parties agree and consent that the jurisdiction for any dispute arising from this Agreement shall be in the State of California, County of Santa Clara. Such courts shall have exclusive jurisdiction to hear and decide any issue, dispute or controversy arising from this Agreement.

26. Modification. This Agreement, including any pages attached hereto and incorporated by reference, constitutes the entire Agreement by the parties and may be modified only by subsequent written agreement executed by both parties.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.

MISSION-WEST VALLEY LAND CORPORATION

By: _____

Date: _____

Its: _____

CONSULTANT

By: _____

Date: _____

Its: _____