

Recording requested by and when
Recorded return to:

City of Watsonville
Attn: City Clerk
250 Main Street
Watsonville, CA 95076

Exempt From Recording Fees Per
Government Code §27383

(SPACE ABOVE THIS LINE FOR RECORDER'S USE)
APN: 018-711-36

PUBLIC IMPROVEMENT AGREEMENT

This PUBLIC IMPROVEMENT AGREEMENT (this “**Agreement**”), is entered into as of _____, 2023 (the “**Effective Date**”), by and between the CITY OF WATSONVILLE, a Charter City of the State of California (“**City**”) and LONE OAK-WATSONVILLE, L.L.C., a Delaware limited liability company (“**Developer**”). City and Developer are referred to herein individually as a “**Party**” and collectively as the “**Parties**.”

RECITALS

A. Developer owns certain real property located at 200 Manabe Ow Road (APN 018-711-36), in the City of Watsonville, State of California, more particularly described in legal description attached hereto and hereinafter incorporated by reference as **Exhibit A** (“**Property**”).

B. On March 21, 2023, after a duly noticed public hearing, the City’s Planning Commission approved Planning Commission Resolution No. **XXX**, recommending the City Council approve a Special Use Permit with Design Review and Environmental Review (App. No. 2138) authorizing Developer to develop a new warehousing and distribution facility totaling 155,847± square feet on an 11.5± acre site on the Property (the “**Project**”).

C. On April 11, 2023, after a duly noticed public hearing, the City Council approved City Council Resolution No. **XXX**, adopting the Initial Study/ and Mitigated Negative Declaration and Mitigation Monitoring and Reporting Program prepared for the Project in compliance with the California Environmental Quality Act (CEQA); and Resolution No. **XXX** approving a Special Use Permit with Design Review and Environmental Review (App. No. 2138) to allow the construction of a new warehousing and distribution facility totaling 155,847± square feet on an 11.5± acre site located at 200 Manabe Ow Road (APN 018-711-36), subject to certain requirements and conditions contained in the Conditions of Approval attached hereto and hereinafter incorporated by reference as Exhibit B (“**Conditions of Approval**”); and Resolution No. **XXX** approving an amendment to the Manabe Ow Business Park Specific Plan to remove two internal streets from the Land Use Plan and Circulation Plan.

D. Pursuant to Condition of Approval 25, Developer is required to enter into a public improvement agreement for the preparation of plans, specifications and an estimate (“**PS&E**”) for the completion of the off-site improvements for two roundabouts located at Ohlone Parkway/Loma Vista Drive and Ohlone Parkway/Lighthouse Drive (collectively the “**Roundabouts**”) as described in the Master Environmental Impact Report (“**MEIR**”) and associated Mitigation Monitoring Reporting Program (“**MMRP**”) for the MEIR relating to the Manabe-Ow Business Park Specific Plan (*See* MEIR and MMRP Impact 3.12-2 and MM-3.1202 (Ohlone Parkway/Lighthouse Drive); Impact 3.12-5 and MM-3.12-5 (Ohlone Parkway/Loma Vista Drive)).

It is anticipated that the Roundabouts shall be installed, constructed, and completed at a future date by a property owner/developer not a party to this Agreement.

E. Pursuant to Condition of Approval 26, Developer is required to pay its fair share contribution of the installation, construction, and completion of the Roundabouts (“**Fair Share Contribution**”).

F. The City and the Developer desire to enter into this Agreement in order to implement the Conditions of Approval, document the understanding of the Parties with respect to the preparation of the PS&E, and comply with the provisions of the City’s Municipal Code (“**Code**”).

NOW, THEREFORE, in order to ensure satisfactory performance of the Developer under the Code and Conditions of Approval, Developer and the City agree as follows:

1. Recitals. The above recitals are true and correct, and are incorporated into this Agreement.

2. Developer’s Obligations.

(a) Off-Site Improvements: Developer shall, at its sole cost and expense, furnish all necessary materials, equipment and labor as is required to prepare the PS&E for the construction of the Roundabouts, subject to review and approval by the Director of Public Works (“**Director**”) and/or the City Engineer in accordance with the provisions of this Agreement, including the deadlines for submittal referenced below in subsection (a)(iv)-(vi). Developer shall, at its sole cost and expense, cause the PS&E for the Roundabouts to be completed by appropriate professionals licensed by the State of California. The PS&E shall be prepared in compliance with all applicable federal, state, and the Code and any other local laws, ordinances, rules, regulations, and policies of the City of Watsonville.

(i) The PS&E for the Roundabouts shall consist of construction plans, specifications, and estimate of construction costs sufficient to construct the Roundabouts. The construction plans for the PS&E shall be original drawings on standard sheets conforming to modern accepted drafting practices showing necessary details. The specifications for the PS&E shall contain a description of the work, materials, construction methods, method of measurement, basis of payment, and the pay item for each item of work involved in the construction of the Roundabouts. The estimate included in the PS&E shall reflect current and local construction costs and shall include an annual adjustment for

cost escalation as referenced in the State Department of General Services, California Construction Cost Index CCCI. The PS&E shall conform to the City's Public Improvement Standards (Resolution 76-13, May 28, 2013, or the most current standards) and any other City standards or regulations for improvements to the public right of way, including those standards in Chapter 15 (Local Hiring) and Chapter 17 (Project Labor Agreements for Public Works Construction Projects) of Title 7 of the Watsonville Municipal Code. Once completed, the City shall diligently review and process the PS&E submitted by Developer.

(ii) The Developer shall include the following while preparing the PS&E and submit to the City as part of the review process and final approval of the PS&E:

A. Survey data including existing topographical data collected at the project sites and final documents from a registered professional land surveyor and provided in a format that shall allow subsequent project managers to use the data to generate staking information;

B. Geotechnical report that includes sampling, testing recommendations and review and approval of the final PS&E from a registered professional geotechnical engineer;

C. Roundabout design calculations and recommendations from a registered professional civil or transportation engineer.

(iii) The Developer shall make various submissions to the Director for review and approval at the 30% ("**Initial**"), 90% ("**Second**"), and 100% ("**Final**") stage of the preparation of the PS&E. Once submitted, City staff shall review and provide comments for each submittal and the Developer shall incorporate the comments from the Director into each subsequent submittal of the PS&E. A draft Roundabouts design report will be provided at the Initial design submittal stage. A draft geotechnical report shall be provided at the Second design submittal stage. The final design submittals including the design and geotechnical reports and survey data and all other information, data and other documents shall be submitted at the Final stage of the PS&E.

(b) The Initial submittal of the PS&E shall be submitted to the Director within ninety (90) days of the Effective Date of this Agreement. The Second submittal shall be submitted within sixty (60) days after the Director provides his or her comments to the Initial submittal.

(i) A grading permit may be issued to Developer at any time after the Effective Date of this Agreement upon City approval of the grading permit application.

(ii) Developer shall not request issuance and City shall not issue, a Building Permit for the Project until the Final submittal of the PS&E is received and approved by the City pursuant to subsection (a)(iii) above.

(c) Fair Share of Construction: Developer shall pay to City within thirty days of the issuance of the Building Permit for the Project its Fair Share Contribution of all costs relating to the installation, construction, and completion of the Roundabouts. The percentage of Developer's

portion of Construction Costs relative to other projects that will contribute to the funding of the Roundabouts is more particularly described in **Exhibit C** (“**Percentage of Construction**”), attached hereto and hereinafter incorporated by reference. Upon approval by the City of the Final PS&E, City shall calculate the Developer’s Fair Share Contribution by multiplying the Percentage of Construction by the total costs of the Construction of the Roundabouts identified in the Final PS&E. . The Parties agree that this Fair Share Contribution is necessary to defray the cost of public facilities related to development of the Roundabouts identified in the MEIR and MMRP and represent the Developer’s fair share of estimated costs of installation, construction, and completion of the Roundabouts, which construction is anticipated to be undertaken by a property owner/developer at some point in the future.

(d) Labor Code Compliance. Developer shall comply, and shall use its best efforts to ensure that its contractors, consultants and any subcontractors comply with all applicable State of California Labor Code requirements; the City zoning and development standards; building, plumbing, mechanical and electrical codes; all other provisions of the City of Watsonville Municipal Code; and all applicable disabled and handicapped access requirements, including the Americans With Disabilities Act, 42 U.S.C. Section 12101, *et seq.*, Government Code Section 4450, *et seq.*, Government Code Section 11135, *et seq.*, and the Unruh Civil Rights Act, Civil Code Section 51, *et seq* relating to the preparation of the PS&E for the Roundabouts.

Developer acknowledges and agrees that the Roundabouts constitute “public works” as defined in Labor Code §1720. Developer and its contractors, consultants and subcontractors shall be required to comply with prevailing wage requirements in connection with the PS&E for the Roundabouts, to the extent required by applicable State of California Labor Code requirements.

Developer shall defend, with counsel reasonably acceptable to City, indemnify and hold harmless City and their respective officials, officers, employees, agents and representatives (“**Indemnitees**”) from and against any and all liabilities, obligations, orders, claims, damages, governmental fines or penalties, and actual expenses of defense with respect thereto, including reasonable attorneys’ fees and costs (“**Claims**”) arising out of Developers’ failure to comply with State of California Labor Code requirements in connection with the preparation of the PS&E for the Roundabouts. Further, Developer shall indemnify and hold harmless the Indemnitees with respect to all final judgments or settlements in actions brought by any “contractor” in connection with the preparation of the PS&E for the Roundabouts in which City is (i) determined to be an “awarding body” and (ii) damages are awarded, pursuant to Labor Code sections 1726 or 1781. Developers’ defense, indemnity and hold harmless obligations under this section shall survive expiration or termination of this Agreement.

3. Extensions. The Developer may request an extension of the time period specified in Section 2(a) for completion of the PS&E by written request to the Director. A request shall include satisfactory evidence, as determined by the Director, to justify the extension, and shall be made upon the Director’s determination that Developer cannot reasonably meet the deadline in the time remaining for completion. The Director may request additional information, and shall in good faith attempt to determine within thirty (30) days of the request whether to grant an extension of time. The Director’s failure to respond within the time specified shall, however, not constitute either a grant or denial of the requested extension. The Director shall not unreasonably withhold a request for an extension. The Director may reasonably condition an extension subject to the

terms of this Agreement. No extension approved hereunder shall limit or relieve liability, or provide an extension on any future obligation under this Agreement.

4. Indemnification of City. Developer, its successors and assigns, shall defend and indemnify the Indemnitees from and against any and all loss, cost, damage, injury, liability, and claims (“Losses”) to the extent arising from Developer’s breach of or negligent performance (or nonperformance) of this Agreement, except to the extent that such indemnity is void or otherwise unenforceable under applicable law, and except to the extent such Loss is the result of the gross negligence or willful misconduct of City. The foregoing indemnity shall include, without limitation, reasonable fees of attorneys, consultants and experts and related costs, and the City’s cost of investigating any claims against the City.

(a) Limitation on City Liability. The City shall not be an insurer or surety for the design of the PS&E, nor shall any officer or employee thereof be liable or responsible for any accident, loss, or damage happening or occurring during the construction of the Roundabouts, except as may arise due to the gross negligence or willful acts or omissions of the City.

5. Insurance. As of the Effective Date of this Agreement, Developer shall, at its sole cost and expense, procure and maintain in effect, or cause to be procured and maintained in effect by any contractor, consultant or any subcontractor performing work pursuant to this Agreement, insurance coverage for general liability, automobile liability, workers compensation and professional liability against claims which may arise out of or result from the preparation of the PS&E, its agents, employees and contractors, consultants and any subcontractors. The insurance policies shall be provided by a financially responsible insurance company authorized to write business in the State of California and have, at all times, a Best’s rating of “A- VII” (A minus VII) or better by AM Best & Company, and with coverage and policy limits as follows:

(i) The general liability insurance coverage shall have a per occurrence limit of two million and 00/100 dollars (\$2,000,000.00) and an aggregate limit of at least five million and 00/100 dollars (\$5,000,000.00), and shall be endorsed to (a) include the Indemnitees as additional covered parties providing all required coverages including coverages for both ongoing and completed operations, (b) stipulate that such coverage is primary and is not excess of, or contributing with, any other insurance carried by, or for the benefit of the Indemnitees, (c) apply separately to each insured and additional insured against whom claim is made or suit is brought, except with respect to the limits of the insurer’s liability, (d) waive any and all right of subrogation against the Indemnitees, and (e) contain a cross liability/severability endorsement (unless the base policy contains a separation of insureds clause accomplishing the same result);

(ii) The auto liability insurance coverage shall cover all owned, hired and non-owned vehicles utilized by Developer in connection with this Agreement with a per occurrence limit of two million and 00/100 dollars (\$2,000,000.00) and an aggregate limit of not less than five million and 00/100 dollars (\$5,000,000.00), and shall be endorsed to (a) include the Indemnitees as additional covered parties, (b) stipulate that such coverage is primary and is not excess of, or contributing with, any other insurance carried by, or for the benefit of the Indemnitees, (c) apply separately to each insured and additional covered parties against whom claim is made or suit is brought, except with respect to the limits of

the insurer's liability, (d) waive any and all right of subrogation against the Indemnitees, and (e) contain a cross liability/severability endorsement (unless the base policy contains a separation of insureds clause accomplishing the same result);

(iii) Worker's Compensation insurance as required by the State of California which shall be endorsed to waive any and all rights of subrogation against the Indemnitees; further, any and all contractors, consultants and subcontractors shall maintain insurance coverage limits in accordance with state statute which shall also be endorsed to waive any and all rights of subrogation against the Indemnitees;

(b) The professional liability coverage shall have a per occurrence limit of two million and 00/100 dollars (\$2,000,000.00) and an aggregate limit of at least five million and 00/100 dollars (\$5,000,000.00). Developer shall maintain, or cause to be maintained by its contractors, consultants or subcontractors, professional errors and omissions liability insurance for protection against claims alleging negligent acts, errors or omissions which may arise from Developer's operations under this Agreement, whether such operations be by Developer or by its employees, contractors, consultants or subcontractors. Developer shall procure, or cause to be procured by its contractors, consultants or subcontractors, the professional errors and omissions liability insurance described herein and shall ensure that the policy provides and allows for a reporting period of at least four (4) years after the professional liability policy expires.

(i) Developer shall satisfactorily provide certificates and endorsements of insurance to the City before starting to perform the obligations described herein. Certificates and policies shall state that the policy shall not be canceled or reduced in coverage without thirty (30) days written notice to City. Approval of insurance by City shall not relieve or decrease the extent to which Developer may be held responsible for payment of damages resulting from services or operations performed pursuant to this Agreement. Developer shall not perform any work under this Agreement until Developer has obtained the required insurance and until the required certificates have been submitted to the City and approved by the City Attorney.

6. Miscellaneous.

(a) Relationship Between the Parties; Authority; Binding Effect. In performing its obligations under this Agreement, the Developer and its contractors, consultants and any subcontractors are not agents or employees of the City. This Agreement does not create any partnership or agency between the Parties, each of which is, and at all times shall remain, solely responsible for all acts of its officials, employees, agents, contractors, consultants and any subcontractors, including any negligent acts or omissions. No Party is an agent of the other, and has no authority to act on behalf of or to bind the other Party to any obligation whatsoever. Each Party executing this Agreement on behalf of a Party represents and warrants that such person is duly and validly authorized to do so on behalf of the entity it purports to bind. Each of the terms, covenants and conditions of this Agreement shall extend to and be binding on and shall inure to the benefit the Parties and each of their respective successors and assigns and all those taking by, under or through it or them.

(b) Venue; Attorneys' Fees. In the event that any action is brought by either Party hereto as against the other Party for the enforcement or declaration of any right or remedy in or under this Agreement or for the breach of any covenant or condition of this Agreement, venue for any such proceeding shall be in the Superior Court of the County of Santa Cruz, State of California. Should any party hereto institute any action or proceeding in court or other dispute resolution mechanism (“**DRM**”) to enforce any provision hereof by reason of an alleged breach of any provision of this Agreement, the prevailing party shall be entitled to receive from the losing party, court or DRM costs or expenses incurred by the prevailing party including, without limitation, expert witness fees, document copying expenses, exhibit preparation costs, carrier expenses and postage and communication expenses, and such amount as the court or DRM may adjudge to be reasonable attorneys' fees for the services rendered the prevailing party in such action or proceeding. Attorneys' fees under this Section include attorneys' fees on any appeal, and, in addition, a party entitled to attorneys' fees shall be entitled to all other reasonable costs and expenses incurred in connection with such action.

(c) Notices.

(i) A notice or communication under this Agreement by either Party to the other (or by or to the Director) shall be sufficiently given or delivered if dispatched by hand or by registered or certified mail, postage prepaid, or via electronic mail, addressed as follows:

In the case of a notice or communication to the Public Works Director:

City of Watsonville
Attn: Public Works Director
25 Main Street
Watsonville, CA 95076
Reference: 200 Manabe Ow
Email: murray.fontes@cityofwatsonville.org

With copies to:

Office of the City Attorney
c/o Burke, Williams & Sorensen, LLP
1 California Street, Suite 3050
San Francisco, CA 94111-5432
Attn: Samantha Zutler, City Attorney
Reference: 200 Manabe Ow
Email: SZutler@bwslaw.com

And in the case of a notice or communication to the Developer:

Lone Oak – Watsonville, L.L.C.
c/o Reyes Holdings, L.L.C.
6250 North River Road, Suite 9000
Rosemont, Illinois 60018
Attn: General Counsel
Email: kcooper@reyesholdings.com

(ii) Any mailing address may be changed at any time by giving written notice of such change in the manner provided above at least ten (10) days prior to the effective date of the change. All notices under this Agreement shall be deemed given, received, made or communicated on the date personal receipt actually occurs or, if mailed, on the delivery date or attempted delivery date shown on the return receipt or, if by electronic mail transmission, on the date when sent provided that the sender receives no notice of non-delivery.

(d) Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the permitted successors and assigns of the Parties hereto, and upon such transfer in accordance with the provisions set forth herein, the Developer shall be released from its obligations hereunder. Any assignment of rights and obligations under this Agreement shall be in writing between City, Developer and its assignee, shall clearly identify the scope of the rights and/or obligations assigned and shall be subject to the approval of the Director and City Attorney, including.

(e) Legal and Equitable Relief. Each Party shall have the right (but not the obligation) to prosecute any proceedings at law or in equity against any other Party, or any other person or entity, violating or attempting to violate or defaulting in the performance of any of the provisions contained in this Agreement in order to prevent such party, person or entity from violating or attempting to violate or defaulting in the performance of any of the provisions of this Agreement or to recover damages for any such violation or default. It is agreed that damages would be an inadequate remedy for violation of this Agreement by any party and, therefore, injunctive or other appropriate equitable relief shall be available to the other party. The remedies available under this Section shall include, by way of illustration but not limitation, ex parte applications for temporary restraining orders, preliminary injunctions and permanent injunctions enjoining any such violation or attempted violation or default, and actions for specific performance of this Agreement. The result of every action or omission whereby any covenant, condition or restriction herein contained is violated in whole or in part is hereby declared to be and to constitute a nuisance, and every remedy allowed by law or equity against any party, either public or private, shall be applicable against every such result and may be exercised by any party.

(f) Waiver. Failure by a Party to insist upon the strict performance of any of the provisions of this Agreement by another Party, or the failure by a Party to exercise its rights upon the default of another Party, shall not constitute a waiver of such Party's right to insist upon and demand strict compliance by the other Party with the terms of this Agreement thereafter.

(g) Parties in Interest. Nothing in this Agreement, expressed or implied, is intended to or shall be construed to confer upon or to give to any person or entity other than the City and the Developer, any rights, remedies or claims under or by reason of this Agreement or any covenants, conditions or stipulations hereof; and all covenants, conditions, promises, and agreements in this Agreement contained by or on behalf of the City, or the Developer shall be for the sole and exclusive benefit of the named Parties.

(h) Amendment. This Agreement may be amended, from time to time, by written supplement or amendment hereto and executed by the City and the Developer. The Director of Public Works, with the consent and approval of the City Attorney, is authorized to execute on behalf of the City any amendment that the Director determines is in the City's best interests and does not materially increase the City's obligations or materially diminish the City's rights under this Agreement. The foregoing notwithstanding, nothing herein shall preclude the Director from seeking and securing approval or concurrence of any amendment by the City Council.

(i) Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original.

(j) Interpretation of Agreement. The recitals above and exhibits attached hereto are incorporated herein by reference and comprise part of this Agreement. This Agreement constitutes the entire agreement between the Parties with respect to the subject matter hereof and no prior oral or written understanding shall be of any force or effect with respect to the matters covered herein. The titles to the sections of this Agreement are not a part of this Agreement and shall have no effect upon the construction or interpretation of any part of this Agreement. As used in this Agreement, masculine, feminine or neuter gender and the singular or plural number shall each be deemed to include the others where and when the context so dictates. The word "including" shall be construed as if followed by the words "without limitation." This Agreement shall be interpreted as though prepared jointly by both Parties. The laws of the State of California, without regard to conflict of laws principles, shall govern the interpretation and enforcement of this Agreement. This Agreement shall be interpreted as though jointly prepared by both Parties.

(k) Severability. If any term, provision, condition or covenant of this Agreement or its application to any party or circumstances shall be held, to any extent, invalid or unenforceable, the remainder of this Agreement, or the application of the term, provision, condition or covenant to persons or circumstances other than those as to whom or which it is held invalid or unenforceable, shall not be affected, and shall be valid and enforceable to the fullest extent permitted by law.

(l) Recording Agreement. This Agreement shall be recorded against the title of the Property.

(m) Purpose and Effect of Recording. This Agreement shall be recorded for the purpose of providing constructive notice to any future owner of the Property of Developer obligations and responsibilities under this Agreement.

(n) Notice of Termination. At the time all the obligations and requirements specified in this Agreement are fully satisfied as determined by the Director of Public Works in consultation

with affected City departments, the Parties shall execute and record (if applicable) a Notice of Termination.

[SIGNATURES ON NEXT PAGE]

IN WITNESS WHEREOF, the City and Developer have executed this Agreement in one or more copies as of the day and year first above written.

DEVELOPER:

LONE OAK-WATSONVILLE, L.L.C.:

By:

Name:

Title: _____

CITY:

CITY OF WATSONVILLE

Rene Mendez, City Manager

ATTEST

Irwin Ortiz, City Clerk

APPROVED AS TO FORM:

CITY ATTORNEY

Samantha Zutler, City Attorney

EXHIBIT A
Legal Description of Property

EXHIBIT B
Conditions of Approval

EXHIBIT C
Percentage of Construction