

**AGREEMENT TO ASSIST REMEDIATION OF CONTAMINATED PROPERTY
AND TO PROVIDE FOR THE DEVELOPMENT OF HOUSING**

THIS Agreement to Assist Remediation of Contaminated Property and to Provide for the Development of Housing ("Agreement") is made and entered into this ___ day of April, 2019, by and between the CITY OF GARDENA ("City") and G3 URBAN, a California corporation ("Developer").

RECITALS

A. Developer is a residential home builder. Developer has submitted applications to develop a 64-unit residential, condominium project with live-work units on the parcels identified below (the "Project");

B. Developer is negotiating to acquire the following properties (the "Site") to assemble land for the Project:

Parcel A: Address: 2545 Marine Ave.; APN: 4064-023-018; Ownership: Mark Musik Choi and Kyung Jean Choi (in escrow);

Parcel B: Address: 2421 Marine Ave; APN 4064-023-019; Ownership: Gustavo and Gabino Orendain;

Parcel C: Address: 2403 Marine Ave. and 2415 Marine Ave.; APN: 4064-023-020 and 4064-023-021; Ownership: Millennium Investments LLC. (in escrow);

Parcel D: Address: 2315 Marine Ave.; APN: 4064-023-034 and 4064-023-022; Ownership: Marine Avenue Investments LLC (in escrow).

C. The site consists of undeveloped land, active commercial uses, and a vacant multi-story building that previously was used as a hospital.

D. A Phase II Environmental Assessment conducted by Developer indicates that Parcel C contains soil and vapor contamination and that the contamination may have migrated to one or more of the above surrounding properties. The Phase II recommends that additional studies be done, and remedial action be taken.

E. The presence of hazardous materials on the Site constitutes a blighted condition that contributes to the current underutilization of the Site.

F. If the entitlements for the development are approved, Developer will require financial assistance in completing any additional required studies and remedial work.

G. It is in the public interest for contaminated properties to be remediated and the City will assist in cleaning up the contaminated parcel or parcels in order to make the parcels suitable for development and eliminate blighted and underutilized property.

H. Developer will incur certain predevelopment expenses pursuant to a Reimbursement Agreement between the City of Gardena and Developer for the Payment Of Fees and Costs For Contract Environmental, Planning, Engineering and Legal Services Relating to the Development of a 64 Unit Project Located On Marine Avenue attached as Exhibit A (the "Reimbursement Agreement").

I. In order to facilitate the elimination of blighted conditions on the Site, and to provide assistance for the development of housing thereon, the City is prepared to pay up to \$150,000.00 to meet the Developer's obligations under the Reimbursement Agreement and to contribute up to an additional \$650,000.00 to assist in the clean-up of hazardous materials on the Site.

J. Developer understands that there is no guarantee that the City will approve, or conditionally approve, its Project.

NOW, THEREFORE, City and Developer agree, as follows.

1. City, in lieu of a Developer deposit, shall pay for the first \$124,954.00 called for in the Reimbursement Agreement. If additional amounts are required, City, in lieu of Developer, shall pay up to \$25,046.00 dollars in addition to the initial payment. Any required deposits in excess of \$150,000.00 shall be the sole responsibility of Developer. If City pays less than the \$150,000.00, the difference between the amount paid by City and \$150,000.00 shall be added to the amount eligible for reimbursing the cost of Services in accordance with Section 4 of this Agreement.
2. Developer shall execute an unsecured note in the form attached hereto as Exhibit B to provide for repayment of the amounts advanced by City for the Reimbursement Agreement in the event that Developer abandons the project. As used herein, "abandoning" the project is defined as a failure to pursue entitlements for the Project for a period of one year, a failure to commence remediation of contaminated portions of the Site within 6 months from receiving entitlements, or a failure to commence construction within 6 months from closure of the remedial action by the appropriate regulatory agency.
3. If the entitlements are approved, the Developer will enter into a consultant agreement with Mearns Consulting Corp. ("Consultant"), or another consultant subject to the approval of the City, to perform additional assessments, testing, and work with the proper regulatory agency to determine what actions are required for, and carry out, the environmental cleanup of the affected property to a level necessary to allow residential development ("Services").
4. City shall reimburse Developer for the actual reasonable cost of the Services performed by Consultant in an amount not to exceed \$650,000.00 or \$650,000.00

adjusted in accordance with Section 1 of this Agreement. Reimbursement shall only be made by City providing a credit to Developer in an amount equal to any City permit and inspection fees, Quimby fees, and development fees payable for the Project. Developer shall not receive a credit for any fees payable to other entities, such as the Los Angeles Unified School District, and fees paid for processing entitlements other than as provided in Section 1 of this Agreement.

5. Any costs for Services in excess of the amount of \$650,000 shall be the responsibility of Developer.

6. In the event that Developer acquires the Site and commences the Services described in Section 3 of this Agreement prior to securing entitlements, Developer may request the City to reimburse the cost of the Services as they are performed rather than as a credit against permit, inspection and development fees. The City Manager can approve such request provided that Developer provides for repayment of all sums so reimbursed with a note payable to City secured by a first deed of trust against the Site. Said note shall be repayable upon Developer securing construction financing, or, in any event, not more than one-year from the date of execution. Any amounts so repaid on the note shall revive, in an equal amount, Developer's entitlement to credits against permit, inspection and development fees.

7. Developer shall share all information prepared by Consultant with the City.

8. Based on *Mayfield Place Housing Project, Public Works Case No. 2016-033* City has made a determination that reimbursement of the cost of the Services does not trigger the prevailing wage requirements of Labor Code Section 1720 et seq. because Developer's project is a residential project. Developer shall indemnify City should this determination be ruled incorrect by the Department of Industrial Relations or a court of law.

9. Indemnity. Developer agrees to indemnify, defend and hold harmless City, and its elected and appointed councils, boards, commissions, officers, agents, employees, and representatives from any and all claims, costs (including legal fees and costs) and liability for any challenge to this Agreement or for any personal injury or property damage which may arise directly or indirectly as a result of any actions or inactions by the Developer, or any actions or inactions of Developer's contractors, subcontractors, agents, or employees in connection with the subject matter of this Agreement.

10. Bodily Injury, Property Damage, Contractor's Pollution Liability and Workers' Compensation Insurance. Prior to commencing clean-up work on the Site and throughout the period of the performance of the Services, Developer shall maintain at its sole expense, or insure its consultants and contractors maintain at their sole expense, insurance limits as stipulated in this section.

(a) Minimum Scope and Limit of Insurance.

Coverage shall be at least as broad as:

1. Commercial General Liability (CGL): Insurance Services Office Form CG 00 01 covering CGL on an "occurrence" basis, including products and completed operations, property damage, bodily injury and personal & advertising injury with limits no less than \$3,000,000 per occurrence and \$5,000,000 in the aggregate.
 2. Automobile Liability: Insurance Services Office Form Number CA 0001 covering, Code 1 (any auto), or if Developer has no owned autos, Code 8 (hired) and 9 (non-owned), with limits no less than \$1,000,000 per accident for bodily injury and property damage, unless otherwise approved by City.
 3. Workers' Compensation insurance as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limit of no less than \$1,000,000 per accident for bodily injury or disease.
 4. Builder's Risk (Course of Construction) insurance utilizing an "All Risk" (Special Perils) coverage form, with limits equal to the completed value of the project and no coinsurance penalty provisions. Developer may submit evidence of Builder's Risk insurance in the form of Course of Construction coverage.
- (b) Contractors' Pollution Legal Liability with limits no less than \$1,000,000 per occurrence or claim, and \$2,000,000 policy aggregate.
- (c) Other Insurance Provisions. The insurance policies are to contain, or be endorsed to contain, the following provisions:
1. Additional Insured Status. The City its officers, officials, employees, (as defined in Section 1.2.3) are to be additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of the Developer including materials, parts, or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the Developer's insurance (at least as broad as ISO Form CG 20 10 11 85 or both CG 20 10 and CG 20 37 forms if later revisions used).
 2. Primary Coverage. For any claims related to this contract, the Developer's insurance coverage shall be primary insurance as respects the City its officers, officials, employees. Any insurance or self-insurance maintained by the City, its officers, officials, employees, shall be excess of the Developer's insurance and shall not contribute with it.
 3. Contractors and Subcontractors. With the exception of Contractors' Pollution Legal Liability, Developer shall require and verify that all contractors and subcontractors maintain insurance meeting all the requirements stated herein, and Developer shall ensure that City is an additional insured on insurance required

from contractors/subcontractors. For CGL coverage contractors and subcontractors shall provide coverage with a format least as broad as CG 20 38 04 13.

4. Notice of Cancellation. Each insurance policy required above shall state that coverage shall not be canceled, except with notice to the City.

5. Waiver of Subrogation. Developer hereby grants to City a waiver of any right to subrogation which any insurer of said Developer may acquire against the City by virtue of the payment of any loss under such insurance. Developer agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation provided such endorsement is available on commercially reasonable terms, but this provision applies regardless of whether or not the City has received a waiver of subrogation endorsement from the insurer.

6. Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions must be declared to and approved by the City. The City may require the Developer to provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention.

7. Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII, unless otherwise acceptable to the City.

8. Deductibles. All such insurance shall have deductibility limits of not greater than \$50,000.00 unless otherwise approved by City.

9. Verification of Coverage. Developer shall furnish the City with original certificates and amendatory endorsements or copies of the applicable policy language providing the insurance coverage required above. All certificates and endorsements are to be received and approved by the City before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the Developer's obligation to provide them. The City reserves the right to require complete copies of all required insurance policies, including endorsements, required by these specifications, at any time.

10. Occurrence Basis Coverage. All policies shall be written on an occurrence basis unless otherwise approved by City.

11. Termination. This Agreement shall automatically terminate, without notice, if Developer abandons the Project or fails to obtain entitlements for the Project. City may also, by written notice to Developer, terminate this Agreement if Developer fails to commence clean-up of the Site within two years from the date of this Agreement or if Developer, having commenced clean-up, fails to diligently pursue the clean-up to completion and closure. Upon termination, Developer shall have no further rights under this Agreement.

12. Enforced Delay Extension of Time of Performance. Notwithstanding specific provisions of this Agreement, performance by either party hereunder shall not be deemed to be in default where delays or defaults are due to war; insurrection; strikes; lock-outs; labor disputes; riots; floods; earthquakes; fires; casualties; acts of God; action of the elements; acts of the public enemy; epidemics; quarantine restrictions; freight embargoes; lack of transportation; governmental restrictions or priority; litigation including litigation challenging the validity of this transaction or any element thereof; unusually severe weather; acts of the other party; or any other causes beyond the control or without the fault of the party claiming an extension of time to perform. An extension of time for any such cause shall be for the period of the enforced delay and shall commence to run from the time of the commencement of the cause, if notice by the party claiming such extension is sent to the other party within thirty (30) days of the commencement of the cause. Times of performance under this Agreement may also be extended in writing by the City and Developer.

13. Inspection of Books and Records. The City has the right, upon two (2) business day's prior written notice and during normal business hours, to inspect and audit the books and records of Developer pertaining to the Services to be reimbursed pursuant to this Agreement.

14. Notices. All notices or other communications required or permitted hereunder shall be in writing, and shall be personally delivered or sent by reputable overnight mail service, first class, registered or certified United States mail, postage prepaid, return receipt requested, delivered or sent by telecopy or electronic mail transmission and shall be deemed received upon the earlier of (i) if personally delivered, the date of delivery to the address of the person to receive such notice, (ii) if sent by overnight mail via reputable courier or other delivery service, one (1) business day after the date of deposit with such overnight mail service, (iii) if sent by registered or certified mail, two (2) business days after the date of posting by the United States post office, and (iv) if sent by telecopy or electronic mail transmission, upon receipt, provided that the party giving notice shall deliver a copy of such notice to the other party by delivery of a copy of such notice by one of the other methods specified in this section, as follows:

DEVELOPER: G3 Urban
 108 S Orange Grove Blvd #102
 Pasadena Ca 91105
 Attention:
 Fax:
 e-mail:

CITY: City of Gardena

 Gardena City Hall
 1700 W. 162nd Street
 Gardena, CA 90247

Attention: City Manager
Fax (310) 217-9694
e-mail: emedrano@cityofgardena.org

with a copy to:

Peter L. Wallin, Esq.
Wallin, Kress, Reisman & Kranitz, LLP
11355 W. Olympic Boulevard Street, Suite 300
Los Angeles, CA 90064
Fax: (310) 450-9584
e-mail: pwallin@cityofgardena.org

15. Assignment. Developer may not assign its rights and obligations under this Agreement except with the approval of the City, which approval shall not be unreasonably withheld if the assignment is to an entity owned and controlled by the principals of Developer that undertakes in writing to perform the obligations of Developer hereunder, provided, however, that such assignment shall not relieve Developer from the obligations undertaken herein.

16. Agreement is Entire Agreement. This Agreement contains the sole and entire Agreement between the parties concerning the Site and Project. The parties acknowledge and agree that neither of them has made any representation with respect to the subject matter of this Agreement or any representations inducing the execution and delivery hereof, except representations set forth herein. The parties further acknowledge that all statements or representations that heretofore may have been made by either of them to the other are void and of no effect.

17. Attorney's Fees. In the event either party shall bring legal action to enforce or interpret the terms of this Agreement, the prevailing party shall be entitled to recover reasonable attorney's fees and court costs as part of its judgment.

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

THE CITY OF GARDENA,

APPROVED AS TO FORM

BY

PETER L. WALLIN
CITY ATTORNEY

By: _____

TASHA CERDA, Mayor

G3 URBAN,

By: _____

Its: CEO

**CITY OF GARDENA
ECONOMIC DEVELOPMENT SUBSIDY REPORT
PURSUANT TO GOVERNMENT CODE SECTION 53083**

INTRODUCTION

Legislative Intent

With the adoption of Assembly Bill 562 in 2013, now codified as California Government Code Section 53083, the California Legislature recognized the authority of local officials to use their regulatory powers, direct spending, and tax policies to influence where, when, and how the private sector invests capital and improves real property. The Legislature also intended to promote transparency and accountability in economic development subsidies, similar to annual financial reporting and local fiscal decisions. The legislation requires that subsidies to local businesses in the amount of \$100,000 or more – those intended to increase employment, enhance the local tax base, and attract or retain desirable businesses – be detailed in a written report and placed on an agenda for a public hearing at a regularly scheduled meeting. The City Council, at its regularly scheduled April 9, 2019 meeting, will consider approval of an agreement that would provide a subsidy in excess of \$100,000 to G3 Urban, Inc. and Affiliates. Therefore, this report is intended to satisfy the requirements of Government Code Section 53083, and is being made available to the public prior to consideration of the proposed agreement and authorization of the economic development subsidy.

Proposed Agreement

The City of Gardena proposes to enter into an Economic Development Subsidy Agreement (“Agreement”) in an effort to remediate contaminated properties, eliminate blight and assist the development of 63 single family dwelling units. The Agreement requires the City to pay up to \$150,000.00 of Developer’s predevelopment costs for environmental studies. The Agreement also provides that the City will contribute up to an additional \$650,000.00 to assist in the clean-up of hazardous materials on the development site. These monies will be provided as credits against permit and impact fees otherwise payable by developer.

AB 562 REPORTING REQUIREMENTS

This section addresses the required reporting elements of Government Code Section 53083.

- (1) The name and address of all corporations or any other business entities, except for sole proprietorships, that are the beneficiary of the economic development subsidy, if applicable.

G3 is a California incorporated entity and has its principal place of business at 15235 South Western Avenue, Gardena, CA 90249.

- (2) The start and end dates and schedule, if applicable, for the economic development subsidy.

The first \$150,000 for predevelopment costs will be advanced by City during the project entitlement phase. Developer's costs for remediation of hazardous materials on the site will be applied as credits against fees that are payable to the City prior to commencing construction. Thus the subsidy will commence upon approval of the Agreement and will end prior to commencing construction.

- (3) A description of the economic development subsidy, including the estimated total amount of the expenditure of public funds by, or of revenue lost to, the local agency because of the economic development subsidy.

The proposed Agreement, in essence, waives up to \$800,000.00 in permit and impact fees in an amount equal to the costs to perform environmental studies and to clean-up the contaminated properties. The City anticipates that the fees payable by Developer for the development will be approximately \$800,000. Absent the development the City would not receive these fees so the City is not truly out of pocket for the subsidy provided by this Agreement.

The City's normal practice is to have a developer enter into a Reimbursement Agreement to pay the City's costs for conducting environmental studies and other entitlement processing costs. Under the proposed Agreement the Developer will enter into a Reimbursement Agreement but the City will pay for the first \$124,954.00 called for in the agreement. If additional amounts are required, City, in lieu of Developer, shall pay up to \$25,046.00 dollars in addition to the initial payment. Any required deposits in excess of \$150,000.00 shall be the sole responsibility of Developer. Developer shall execute an unsecured note in favor of the City which will be payable if Developer abandons the project. If City pays less than the \$150,000.00, the difference between the amount paid by City and \$150,000.00 shall be added to the amount eligible for reimbursing the cost of environmental clean-up services.

The Developer shall execute an unsecured note to provide for repayment of the amounts advanced by City for the Reimbursement Agreement in the event that Developer abandons the Project.

The City shall also reimburse Developer for the actual reasonable cost of the remediation services performed in an amount not to exceed \$650,000.00. Reimbursement shall be made by City providing a credit to Developer in an amount equal to any City permit and inspection fees, Quimby fees, and development fees payable for the Project. Developer shall not receive a credit for any fees payable to other entities, such as the Los Angeles Unified School District, and fees paid for processing entitlements other than as provided in Section 1 of this Agreement. Any costs for Services in excess of the amount of \$650,000 shall be the responsibility of Developer

In the event that Developer acquires the Site and commences the Services described in the subject Agreement prior to securing entitlements, Developer may request the City to reimburse the cost of the remediation services as they are performed rather than as a credit against permit, inspection and development fees. The City Manager can approve such request provided that Developer provides for repayment of all sums so reimbursed with a note payable to City secured by a first deed of trust against the development site. The note shall be repayable upon Developer securing construction financing, or, in any event, not more than one-year from the date of execution. Any

amounts so repaid on the note shall revive, in an equal amount, Developer's entitlement to credits against permit, inspection and development fees.

(4) A statement of the public purposes for the economic development subsidy.

The major portion of the development site has been unproductive blighted property for decades. The presence of soil contamination impedes productive use of the site. Clean up of contaminated properties and converting blighted properties into residential use serves an important public purpose.

(5) Projected tax revenue to the local agency as a result of the economic development subsidy.

The 63 homes should produce annual property tax revenues to the City in an approximate amount of \$45,000. Current property tax revenues are nominal. The residents of the homes should also increase utility tax and sales tax receipts in the City in an amount that is roughly estimated at \$20,000 annually.

(6) Estimated number of jobs created by the economic development subsidy, broken down by full-time, part-time, and temporary positions.

G3 Urban estimates that it will create a total of 150 or more jobs by the economic development subsidy. Of those jobs, 25 will be full time, and 125 will be temporary positions.