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Peoria, Arizona 85345

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**ECONOMIC DEVELOPMENT AGREEMENT
BETWEEN
THE CITY OF PEORIA
AND
AMKOR TECHNOLOGY ARIZONA, INC**

This ECONOMIC DEVELOPMENT AGREEMENT ("Agreement") is entered into to be effective as of the 20 day of February, 2024 (the "Effective Date"), by and between the **CITY OF PEORIA**, a municipal corporation of the State of Arizona ("City") and **AMKOR TECHNOLOGY ARIZONA, INC.**, an Arizona corporation ("Company"). City and Company are each a "Party" to this Agreement and may be referred to herein collectively as "Parties."

RECITALS

As background to this Agreement, the Parties recite, acknowledge, and confirm the following, each of which shall be a material term and provision of this Agreement:

- A. City is a municipal corporation, duly formed under the laws of the State of Arizona.
- B. Company is a wholly owned subsidiary of an internationally known, well-respected semiconductor supply-chain manufacturer.
- C. Company intends to develop one or more facilities for the general assembly, testing, probing, bumping, or packaging of semiconductors along with uses that are attendant to, support, or are related to the business of semiconductor packaging and testing, including but not limited to, office space; administrative services; sales services; parking and transportation; research and development; utility buildings, structures, facilities, and equipment; utility production and storage; water treatment and storage; storage, warehousing and shipping; food services; employee services, including without limitation, medical or health services, banking services; childcare services and recreational facilities; and/or any other authorized permitted use (collectively, the "Permitted Uses"). All improvements to the Property for the Permitted Uses shall be referred to herein as the "Project".
- D. The Project is to be located in a portion of the "Vistancia Commercial Core," (also known as "5 North") known as Parcel D-15, comprised of approximately 24.35 acres, and Parcel D-16, comprised of approximately 31.96 acres, and legally described on Exhibit "A" (the "Property"). An aerial depiction of the location of the Vistancia Commercial Core and the Property is attached as Exhibit "B" and the Preliminary Site Plan is attached as Exhibit "C".

E. The Property is subject to that certain Amended and Restated Development Agreement for Vistancia in Peoria, Arizona, dated May 1, 2012 (the "**Original 2012 Agreement**"), and recorded on May 9, 2012, in Instrument No. 2012-0395094 of the official records of Maricopa County, Arizona ("**Official Records**"), by and between (1) City and (2) Vistancia Land Holdings L.L.C. ("**VLH**"), who is under common Control with Vistancia North, LLC ("**Vistancia North**"), Vistancia South, LLC ("**Vistancia South**"), Vistancia 150 Commercial, LLC ("**150 Commercial**"), and Vistancia 580 Commercial, LLC ("**580 Commercial**"), all of whom acknowledged and consented to the Original 2012 Agreement as successors to Vistancia, L.L.C. (formerly known as Shea Sunbelt Pleasant Point, L.L.C. ("**Shea Sunbelt**"), as amended by (i) that certain Amended and Restated First Amendment to Amended and Restated Development Agreement for Vistancia in Peoria, AZ, dated September 14, 2015, (the "**First Amendment - 2015**"), and recorded on September 30, 2015, in Instrument No. 2015-0707630 of the Official Records, by and between (1) City and (2) VLH, who is under common Control with Vistancia North, Vistancia South, 150 Commercial, 580 Commercial, Vistancia Village H, LLC, Vistancia Mystic, LLC, and Vistancia Clementine, LLC (collectively, the "**Former Owner Entities**"), all of whom acknowledged and consented to the First Amendment - 2015 as successors to Vistancia, L.L.C. (formerly Shea Sunbelt), and (ii) that certain Assignment of and Second Amendment to Amended and Restated Development Agreement for Vistancia in Peoria, AZ, dated June 24, 2021 (the "**Second Amendment - 2021**"), and recorded on July 26, 2021, in Instrument No. 2021-0806346 of the Official Records, by and between (1) City, (2) VLH, who is under common control with the Former Owner Entities, all of whom acknowledged and consented to the Second Amendment - 2021, (3) Vistancia Master Holdings LLC ("**VMH**"), who is under common control with Vistancia Commercial LLC and Vistancia Residential LLC, and (4) Vistancia Development LLC, and Vistancia Investments LLC. The Original 2012 Agreement, as amended by the First Amendment - 2015, and the Second Amendment - 2021 are hereinafter collectively referred to as the "**Vistancia Development Agreement**."

F. The Vistancia Development Agreement provides that City may direct VLH to donate a parcel of up to 50 acres to a "Targeted End User" (as that term is defined in the Vistancia Development Agreement) to promote economic development. City agrees that Company and Project meet the "Type of Use" and the "Quality of Investment" requirements (as those terms are defined in the Vistancia Development Agreement) to qualify as a Targeted End User as described in Section 2 of the First Amendment - 2015.

G. The Property is owned by Vistancia Development, LLC ("**VDV**"). VDV, as seller, and Company, as buyer, previously entered into that certain Purchase and Sale Agreement and Joint Escrow Instructions dated February 20, 2023 (the "**Vistancia Purchase Agreement**"), whereby Company agreed to acquire the Property for the purpose of constructing the Project. Of the Property, 50 acres will be conveyed pursuant to the Vistancia Development Agreement as described in Recital E above (the "**Designated Property**") and the remaining approximately 6.31 acres of the Property will be purchased by Company from VDV (the "**Purchased Property**"). Upon the conveyance of the Property to Company, VDV and Company have agreed to enter into a Joint Development Agreement (the "**Vistancia JDA**") whereby VDV has agreed to construct certain infrastructure and other improvements benefiting the Property and, in some instances, other portions of the Vistancia Commercial Core.

H. Pursuant to A.R.S. §§9-500.05, 9-500.11, and the Peoria City Charter, City is responsible to pursue the health, safety, and welfare of its residents through economic development

and is authorized to enter into a development agreement with a landowner or any other Person having an interest in real property located in the City of Peoria or outside its incorporated area. To this end, the City of Peoria seeks to promote employment opportunities through economic development programs in cooperation with targeted industries. City has found and determined that the Project and Company's anticipated employment of a targeted-industry workforce will enhance the economic vitality of City by offering new employment opportunities to residents of the City of Peoria. The expansion of employment opportunities within the City of Peoria serves to promote the health, safety, and welfare of City residents by stimulating economic activity citywide, diversifying the City of Peoria's economic base, increasing overall economic growth, and generating tax and other income for City.

I. City and Company agree that A.R.S. §9-500.05, authorizes the City to enter into a development agreement related to real property located inside the incorporated area of the City with a landowner or other Person having an interest in the real property. The Parties acknowledge Company's interest in the Property, which exists by virtue of the Vistancia Purchase Agreement, and accordingly, desire to enter into this Agreement to facilitate development consistent with the City's General Plan, its zoning ordinances, and the economic development strategy. The Parties acknowledge that the activities described in this Agreement, and related to the Project, are economic development activities within the meaning of the State of Arizona's laws concerning such matters, including but not necessarily limited to A.R.S. §9-500.11, and that all "expenditures" (as defined in A.R.S. §9-500.11) by the City pursuant to this Agreement constitute the appropriation and expenditure of public monies for and in connection with the specific public purpose of economic development as defined in A.R.S. §9-500.11.

J. City and Company intend to ^{Unofficial Document}cooperate and coordinate efforts to seek and obtain funding or reimbursements that may be available pursuant to Title 42 of the Arizona Revised Statutes.

AGREEMENT

In consideration of the mutual promises and representations set forth in this Agreement, the above Recitals, and for other good and valuable consideration, the receipt and sufficiency of which the Parties hereby acknowledge, City and Company agree as follows:

1. Incorporation of Recitals. The Parties acknowledge that the Recitals set forth above are true and correct in all material respects and are incorporated into this Agreement by this reference.
2. Definitions. In this Agreement, unless a different meaning clearly appears from the context the following definitions apply:

"Affiliate" means with respect to any Person, any other Person who directly or indirectly Controls, is Controlled by, or is under common Control with such Person.

"Agreement" means this Economic Development Agreement, as amended and restated or supplemented in writing from time to time, and includes all exhibits and schedules hereto.

"Amkor" means Amkor Technology, Inc.

"Applicable Laws" means the federal, state, county and City statutes, codes (including the City Charter), ordinances, rules, regulations, permit requirements, judgments, orders, decrees, and other official written requirements and policies, common law and any judicial or administrative interpretations thereof, which affect the subject matter of this Agreement or apply to the development of the Property, all as they may now or hereafter be enacted or amended, including but not limited to the Groundwater Code and the Management Plans adopted thereunder, Title 45 of the A.R.S., Chapter 25 of the Peoria City Code, and other ordinances, rules, regulations and permit requirements of the City, Maricopa County, the Arizona Department of Water Resources, and the Arizona Department of Environmental Quality.

"A.R.S." means the Arizona Revised Statutes as now or hereafter enacted or amended.

"Base Salary" means as defined in Section 3.4.2.1.

"Capital Expenditures" means as defined in Section 3.4.1.2.

"Cap Ex Failure" means as defined in Section 3.4.1.3.

"Cap Ex Payment" or **"Cap Ex Payments"** means as defined in Section 3.4.1.3.

"Cap Ex Payment Cap" means as defined in Section 3.4.1.3.

"Cap Ex Report" means as defined in Section 3.4.1.2.

"Certificate of Occupancy" means issuance by the City of a certificate allowing occupancy of one or more structures on the Property. A Certificate of Occupancy shall include a temporary Certificate of Occupancy issued by the City with no outstanding life safety corrections, so long Company is diligently undertaking the non-life safety items necessary to obtain a final Certificate of Occupancy. Company shall be allowed to build and qualify product when a temporary Certificate of Occupancy is issued and in effect, but shall not start production until a final Certificate of Occupancy is issued.

"City" means the Party designated as City on the first page of this Agreement.

"City Approvals" means approval or permitting by the appropriate City department, administrator, or body for each Project related activity.

"City Code" means the Code of the City of Peoria, Arizona, as amended from time to time.

"City Council" means the City Council of City of Peoria.

"City Manager" means the Person designated by City as its City Manager or the designee of that Person.

"City Representative" means as defined and designated in Section 15.2.

“City’s Actual Knowledge” means as defined in Section 9.2.

“Claims” means as defined in Section 10.

“Closing” means the consummation of the transfer of the Property to Company.

“Commence Construction” (or any variant thereof) means City shall have issued a building permit for the first structure on the Property, Company shall have signed a construction contract with a general contractor for construction of the Project, and the general contractor or one or more of its subcontractors shall have mobilized on site.

“Company” means the Party designated as Company on the first page of this Agreement.

“Company Representative” means as defined and designated in Section 15.2.

“Complete Construction” (or any variant thereof) means Company has applied for and City has issued a Certificate of Occupancy for the Project.

“Construction Payment” means as defined in Section 3.3.2.2.

“Control” means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through ownership, by contract or otherwise.

“Cure Period” means as defined in Section 11.3.

“Daily Cap” means as defined in Section 5.3.

“Daily Estimated Volume” means as defined in Section 5.1.

“Default” means either a Default by Company or a Default by City, as applicable.

“Default by Company” means as defined in Section 11.1.

“Default by City” means as defined in Section 11.2.

“Designated Property” means as defined in Recital G.

“Effective Date” means as defined on the first page of this Agreement.

“Enforceability Challenge” means as defined in Section 10.4.

“First Amendment - 2015” means as defined in Recital E.

“Force Majeure Event” means as defined in Section 8.

“Former Owner Entities” means as defined in Recital E.

"FTZ" means as defined in Section 4.2.6.

"Full-Time Employee" means as defined in Section 3.4.2.1.

"Indemnatee" means as defined in Section 10.

"Job Creation Failure" means as defined in Section 3.4.2.3.

"Job Deadline" means as defined in Section 3.4.2.

"Job Payment" means as defined in Section 3.4.2.3.

"Job Payment Cap" means as defined in Section 3.4.2.3.

"Job Threshold" or "Job Thresholds" means as defined in Section 3.4.2.

"Liability Cap" means as defined in Section 3.5.

"Milestone" or "Milestones" means as defined in Section 3.3.

"Milestone Deadline" or "Milestone Deadlines" means as defined in Section 3.3.

"Milestone Failure Notice" means as defined in Section 3.3.2.

"Notice" means as defined in Section 3.3.2.

"Official Records" means as defined in Recital E.

"Ombudsman" means as defined in Section 4.2.5.

"On Site Inspector" means as defined in Section 4.2.2.

"Original 2012 Agreement" means as defined in Recital E.

"Party" or "Parties" means as defined on the first page of this Agreement.

"Permitted Uses" means as defined in Recital C.

"Person" means and includes any and all natural persons, corporations, limited partnerships, general partnerships, joint stock companies, joint ventures, associations, limited liability companies, limited liability partnerships, trusts, land trusts, business trusts, and other groups and organizations, whether or not legal entities.

"Phase One Investment Deadline" means as defined in Section 3.4.1.1.

"Phase Two Investment Deadline" means as defined in Section 3.4.1.1.

“Phase One” means Company has invested at least \$350,000,000 worth of Capital Expenditures in the Project, has employed at least 550 Full-Time Employees at the Property, and has completed the design, construction, and operation of at least one manufacturing facility including without limitation all ancillary support systems and buildings.

“Phase Two” means that after the completion of Phase One, and in addition to Phase One, Company has invested at least \$350,000,000 worth of additional Capital Expenditures in the Project (less any Capital Expenditures in excess of \$350,000,000 made on Phase One) and has employed at least a total of 850 Full-Time Employees on the Property (inclusive of all Full-Time Employees employed on Phase One). The Parties acknowledge that Phase Two is not necessarily an expansion of the size or footprint of the Project, but rather an increase in the Capital Expenditures made on the Project and an increase in the number of Full-Time Employees employed at the Project.

“Preliminary Site Plan” means as defined in Section 4.2.4.

“Processes” means as defined in Exhibit “E”.

“Project” means as defined in Recital C.

“Property” means as defined in Recital D.

“Public Infrastructure Improvements” means as defined in Section 4.3.

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“Purchased Property” means as defined in Recital G.

“Reclaimed Water” means water produced by the City’s municipal wastewater treatment facility or water reclamation facility that has been treated to meet A+ water quality standards pursuant to applicable regulatory requirements issued by the Arizona Department of Environmental Quality.

“Reclaimed Water Rate” means as defined in Section 5.2.

“Report” means as defined in Section 3.4.2.2.

“Second Amendment - 2021” means as defined in Recital E.

“Sewer Return Commitment” means as defined in Section 5.2.

“Shea Sunbelt” means as defined in Recital E.

“Term” means as defined in Section 6.

“Threshold Notice” means as defined in Section 5.2.

“Threshold Use” means as defined in Section 5.2.

“Transfer” means as defined in Section 14.

“VDV” means as defined in Recital G.

“Vistancia Commercial Core” means as defined in Recital D.

“Vistancia Development Agreement” means as defined in Recital E.

“Vistancia JDA” means as defined in Recital G.

“Vistancia North” means as defined in Recital E.

“Vistancia Purchase Agreement” means as defined in Recital G.

“Vistancia South” means as defined in Recital E.

“VLH” means as defined in Recital E.

“VMH” means as defined in Recital E.

“150 Commercial” means as defined in Recital E.

“580 Commercial” means as defined in Recital E.

3. Company Undertakings. Company agrees to undertake the following:

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3.1 Property Acquisition. Company agrees to take the actions necessary to acquire the Property from VDV pursuant to the Vistancia Purchase Agreement.

3.2 Facility Development. Company will develop the Project on the Property.

3.3 Milestone Deadlines. The Parties acknowledge that the development of the Project is a major undertaking in design, construction, and investment by each Party. Accordingly, to avoid any undue and unnecessary constraint on assets (both current and future), Company agrees that it will endeavor to complete each of the following activities (each a “Milestone” and collectively the “Milestones”) by the applicable date (each a “Milestone Deadline” and collectively the “Milestone Deadlines”):

3.3.1 Milestones.

3.3.1.1 Milestone 1 – Approval and Due Diligence Period. Approval of this Agreement by Company and commencement of “Due Diligence Period” under the Vistancia Purchase Agreement no later than March 30, 2024. The Company acknowledges and represents that executive management of Company are authorized to execute this Agreement and all related definitive documents on behalf of the Company.

- 3.3.1.2 Milestone 2 – Site Plan. Company agrees to submit its Site Plan to the City for approval no later than July 30, 2024.
- 3.3.1.3 Milestone 3 –Amkor Board of Directors Approval. Company agrees to obtain approval from the Company's Board of Directors for all other agreements pertaining to the Project no later than May 31, 2024.
- 3.3.1.4 Milestone 4 – Close of Escrow. Subject to any right to terminate provided in the Vistancia Purchase Agreement, Company agrees to take all actions required under the Vistancia Purchase Agreement to close escrow on the Property no later than October 31, 2024.
- 3.3.1.5 Milestone 5 – Air Permit; Long Lead Utilities. Company agrees to submit an application for its air permit by December 31, 2024. Company agrees to submit an application and/or sign a contract for the delivery of power by December 31, 2024.
- 3.3.1.6 Milestone 6 – Commence Construction. Company agrees to Commence Construction on or before September 30, 2025.
- 3.3.1.7 Milestone 7 – Certificates of Occupancy; Completion of Phase One of Construction. Company agrees to Complete Construction of the manufacturing facility for Phase One on or before September 30, 2027.
- 3.3.1.8 Milestone 8 – Commencement of Production. Company agrees to commence production of wafers at the Project site in the ordinary course of business on or before September 30, 2028.
- 3.3.2 Remedies for Failure to Achieve Milestone Deadlines. Failure by Company to complete a Milestone by the applicable Milestone Deadline alone shall not constitute a Default by Company under this Agreement. However, City shall have the right to deliver a written notice to Company at any time after Company fails to complete a Milestone by a Milestone Deadline (the "**Milestone Failure Notice**"), and Company shall then use commercially reasonable efforts to complete the applicable Milestone promptly following receipt of a Milestone Failure Notice. Furthermore:
- 3.3.2.1 If Company fails to Commence Construction of the Project by Milestone 6 and such failure (a) is not due to a Force Majeure Event and (b) continues for more than ninety (90) days following a Milestone Failure Notice, then either Party may terminate this Agreement by written Notice to the other Party, within one hundred and twenty (120) days following such Milestone Failure Notice, in which event Company will (i) convey the Designated Property to the City free and clear of all

liens and encumbrances other than encumbrances in effect when Company acquired the Property from VDV and documents recorded following Company's acquisition to further development of the Project such as utility easements and (ii) sell the Purchased Property to VDV on the terms set forth under the Vistancia Purchase Agreement, whereupon all obligations under this Agreement that do not expressly survive termination will be of no further force and effect. If a Party does not terminate this Agreement as provided above, then the Agreement will continue to remain in effect until it is terminated or it expires as provided otherwise in the Agreement.

3.3.2.2 If Company fails to Complete Construction of the Project by Milestone 7 and such failure (a) is not due to a Force Majeure Event and (b) continues for more than one hundred twenty (120) days, then Company shall pay to the City \$5,000 per day in liquidated damage amount for each day Construction is not Complete (each a "**Construction Payment**"), until Completion of Construction or the Liability Cap described in Section 3.5 has been reached. Any Construction Payments will be paid monthly on the first day of each month.

3.4 Economic Development. The Company further agrees to undertake the following activities: Unofficial Document

3.4.1 Capital Expenditures.

3.4.1.1 In connection with the design, permitting, and construction of the Project, Company will (a) make a minimum expenditure of \$350,000,000 USD in Capital Expenditures for improvements to Phase One of the Project on or before September 30, 2027. (the "**Phase One Investment Deadline**") and (b) make a minimum expenditure of an additional \$350,000,000 USD in Capital Expenditures for improvements to Phase Two of the Project on or before September 30, 2034 (the "**Phase Two Investment Deadline**"). Any Capital Expenditures in excess of \$350,000,000 spent on Phase One shall be credited against Capital Expenditures required for Phase Two.

3.4.1.2 For purposes of this Agreement, "**Capital Expenditures**" shall mean, all expenditures to design and construct the Project, including, without limitation, all infrastructure (whether or not constructed or installed by Company or VDV), and improvements, whether or not incurred before or after the Effective Date. Company shall deliver a report (the "**Cap Ex Report**") to City no later than January 31, 2028. The Cap Ex Report shall certify the total amount of Capital Expenditures as

of December 31st of the immediately preceding year. The Cap Ex Report shall be verified by Company and shall affirm that the information contained in the Cap Ex Report is true and accurate.

3.4.1.3 If the Company's Capital Expenditures made on the Project site do not equal or exceed \$350,000,000 by the Phase One Investment Deadline or do not equal or exceed \$700,000,000 by the Phase Two Investment Deadline such a failure will constitute a "**Cap Ex Failure**". A Cap Ex Failure alone shall not constitute a Default by Company under this Agreement. If such Cap Ex Failure is not due to a Force Majeure Event and Company fails to increase its Capital Expenditures to the required level within ninety (90) days of the Phase One Investment Deadline or the Phase Two Investment Deadline, then Company must pay to the City the following (each a "**Cap Ex Payment**" and collectively, the "**Cap Ex Payments**"):

- a. For a failure to make at least \$350,000,000 in Capital Expenditures by the Phase One Investment Deadline, an amount equal to \$350,000,000 less all Capital Expenditures made by Company prior to the date of the Phase One Investment Deadline multiplied by 1.8%, and
- b. For a Unofficial Document make at least 700,000,000 in Capital Expenditures by the Phase Two Investment Deadline, an amount equal to \$700,000,000 less all Capital Expenditures made by Company prior to the Phase Two Investment Deadline multiplied by 1.8%.

In no event shall either Cap Ex Payment exceed \$6,300,000, (each a "**Cap Ex Payment Cap**") and the cap on both Cap Ex Payments shall be \$12,600,000, which is the maximum that Company shall be required to pay for a Cap Ex Failure.

3.4.2 Job Creation. Company estimates that the Project will result in the creation of at least 550 new Full-Time Jobs in the City by September 30, 2029 and 850 new Full-Time Jobs in the City by September 30, 2034. The Company agrees that the new Full-Time Jobs will be achieved (each a "**Job Threshold**" and collectively the "**Job Thresholds**") by the following deadlines (each a "**Job Deadline**"):

<u>Job Deadline</u>	<u>Job Threshold</u>
09/30/2027	300 Full-Time Jobs
09/30/2028	425 Full-Time Jobs
09/30/2029	550 Full-Time Jobs

09/30/2034

850 Full-Time Jobs.

Once Company has achieved the Job Threshold for each of the Job Deadlines, then this job creation requirement will be deemed satisfied regardless of any fluctuation in the number of Full-Time Employees between deadlines. By way of example: If Company has employed 310 Full-Time Employees by 09/30/27, Company will be deemed to have satisfied the first Job Threshold even if the number of Full-Time Employees falls below 300 at any point prior to 09/30/28. Thereafter, Company will need to achieve 425 Full-Time Employees prior to 09/30/2028 in order to satisfy the next Job Threshold.

3.4.2.1 **“Full-Time Job”** means any full-time job position filled by the Company, that is new to the City and located at the Project site, that is reasonably expected to exist for a period of more than one (1) year from the date such position is created and first becomes available to a prospective employee and which position is continuously filled by the Company except for customary periods to advertise, interview, and hire new employees, and has an average annual pay of no less than \$60,000 (to be adjusted from year to year based on the Consumer Price Index) (the **“Base Salary”**). **“Full-Time Employee”** means any Person employed by the Company to fill a Full-Time Job made available by the Company at the Project. A Full-Time ^{Unofficial Document} Employee shall be an employee who works a minimum of 2,080 hours per year, subject to Amkor’s standard human resources policies generally applicable to Amkor’s employees and which may be applicable to Company employees separately from Amkor’s employees, including policies with respect to holidays, vacation leave, sick leave, and other forms of leave.

3.4.2.2 Company shall deliver an annual report (the **“Report”**) to the City no later than January 31, 2028, and continue to deliver an additional Report on January 31st of each year thereafter for seven (7) years. The Report shall certify the number of Full-Time Employees employed on December 31st of the prior year and on the immediately preceding Job Deadline and the average salary of those Full-Time Employees as of December 31st of the immediately preceding year and on the immediately preceding Job Deadline. The Report shall be verified by the Company who shall affirm that the information contained in the Report is true and accurate. If Company does not satisfy a Job Threshold, then the Report shall be updated on a monthly basis until that Job Threshold is met.

3.4.2.3 If Company fails to meet a Job Threshold by any one of the Job Deadlines set forth in Section 3.4.2 above such failure will

constitute a “**Job Creation Failure**”. A Job Creation Failure alone shall not constitute a Default by Company under this Agreement. If such a Job Creation Failure is not due to a Force Majeure Event and Company fails to meet the relevant Job Threshold within ninety (90) days of such Job Deadline, then Company must pay to the City an amount equal to the difference between the applicable Job Threshold and the actual number of Full-Time Jobs employed by Company, multiplied by \$5,000 (a “**Job Payment**”). On the monthly anniversary of a Job Payment and for each month thereafter until the applicable Job Threshold is met, Company shall update the Report and make a Job Payment based on the number of Full-Time Jobs reflected in the revised Report until the applicable Job Threshold is met. In no event shall the Job Payments made by Company under this Agreement exceed \$2,400,000 (the “**Job Payment Cap**”), and the Job Payment Cap shall be the maximum that Company shall be required to pay for a Job Creation Failure.

3.5 Liability Cap. In no event may the total of all Construction Payments, Cap Ex Payments, and Job Payments made by Company exceed \$15,000,000 (the “**Liability Cap**”), and when the Construction Payments, Cap Ex Payments, and Job Payments equal the Liability Cap, either Party may terminate this Agreement, whereupon all obligations under this Agreement that do not expressly survive termination shall be of no further force and effect. For the avoidance of doubt, except as provided in Section 3.3.2.1, in no event will Company be required to reconvey the Property upon such termination.

4. City Undertakings. City agrees to undertake the following:

4.1 Designation of Company as Targeted End User. At the Closing, City shall execute and deliver to VLH that certain Consent Agreement attached hereto in the form attached hereto as Exhibit “D” designating Company as a Target End User and the party entitled to receive the Dedicated Property (as defined in the Vistancia Development Agreement) pursuant to the terms of the Vistancia Development Agreement.

4.2 Development of Project. In connection with the development of the Project.

4.2.1 City will review and approve the design plans and construction permits for the Project according to the Processes described in Exhibit “E”.

4.2.2 Because of the size and complexity of the Project, City agrees, that during construction, and at no additional cost to the Company, City will provide a minimum of one (1) onsite full-time building inspector to work collaboratively with the Company according to the guidelines

in Exhibit "E", on or before November 1, 2025 (the "**On Site Inspector**").

- 4.2.3 Upon completion and official acceptance of the Public Infrastructure Improvements, City shall assume responsibility for the operation and maintenance of the Public Infrastructure Improvements.
- 4.2.4 Company has proposed a preliminary site plan attached as Exhibit "C" (the "**Preliminary Site Plan**"). The Preliminary Site Plan establishes the basic components of the Project. Development of the Project will be in accordance with the Vistancia Planned Community District Standards and Guidelines report, and applicable City of Peoria laws and regulations as appropriate. Company may request amendments to the Applicable Laws and regulations from time to time, and any such amendments will be reviewed and processed by the City in its reasonable discretion, pursuant to this Agreement and in accordance with applicable procedures and regulatory requirements.
- 4.2.5 The City will designate a project Ombudsman for the Company during the development of the to serve as a single point of contact for the Company to expedite and facilitate City Approvals and related inspections throughout the construction period for the Project (the "**Ombudsman**").
- 4.2.6 Upon Company's ^{Unofficial Document} request, the City will make reasonable efforts to assist and cooperate with Company throughout Company's Foreign Trade Zone ("**FTZ**") application process. City makes no representations or warranties, express, implied, statutory, or otherwise, concerning the impact or quality of any cooperation or assistance provided by City. Company will be the responsible party as to the Phoenix Foreign Trade Zone No. 75, FTZ process, and the entire FTZ program including concurrence letters.
- 4.2.7 Upon Company's request, City will make reasonable efforts to assist and cooperate with Company to identify State incentives offered by the Arizona Commerce Authority for which Company may be eligible as a result of Company's development of the Project. City makes no representations or warranties, express, implied, statutory, or otherwise, concerning the impact or quality of any cooperation or assistance provided by City.
- 4.3 Public Infrastructure. Pursuant to the Vistancia JDA, VDV will be constructing certain improvements including but not limited to the improvements described on Exhibit "G" (the "**Public Infrastructure Improvements**"). City acknowledges that such Public Infrastructure Improvements are for the benefit of the public and benefit more than just the Property. As such, City will reimburse VDV (or Company if Company pays VDV for such Public Infrastructure Improvements under the terms of

the Vistancia JDA). Notwithstanding any language in any agreement to the contrary, the City will not reimburse any party for costs related to public infrastructure unless said party complies with the provisions of Title 34 of the A.R.S. and City requirements for construction projects as specified in Section 2-300 *et seq.* of the Peoria City Code.

5. Water and Wastewater Services.

- 5.1 From and after the execution of this Agreement, City will ensure the availability to Company, subject to payment of any applicable fees and charges, an estimated maximum 980,000 gallons per day (GPD) of Reclaimed Water for Phase One; and an estimated maximum 1.96 Million GPD of Reclaimed Water for combined Phases One and Two (the “**Daily Estimated Volume**”). If Company does not expand the size or the footprint of the Project in Phase Two by September 30 2034, then Company and the City shall assess whether the Daily Estimated Volume should be adjusted based on Company’s usage during the two (2) preceding years and Company’s forecast of future demands. If Company does not forecast any increase in future demand, then unless the Parties otherwise agree, the Daily Estimated Volume shall be adjusted to an amount equal to the average GPD used in the two (2) preceding years plus 10%. Any change in the Daily Estimated Volume shall be evidenced by an amendment to this Agreement signed by the Parties.
- 5.2 For the period commencing on the Effective Date and continuing until September 30, 2034, City shall charge Company for Reclaimed Water at a rate of 50% of the treatment cost (the “**Reclaimed Water Rate**”). Until the first anniversary of the date when Company’s use exceeds 650,000 GPD (the “**Threshold Use**”), Company will use reasonable efforts to return no less than 80% of the actual daily volume (the “**Sewer Return Commitment**”) in a condition acceptable for reuse in City’s reasonable discretion. City will notify Company of the date when the Threshold Use has been exceeded (the “**Threshold Notice**”). At all times after the first anniversary of the date when Company receives the Threshold Notice and until September 30, 2034, Company will return no less than the Sewer Return Commitment.
- 5.3 If Company fails to return the full Sewer Return Commitment or exceeds the Daily Estimated Volume and such failure or excess consumption is not due to a Force Majeure Event, the City will Notify Company specifying the failure pursuant to this Section 5.3. In the event that Company either exceeds the Daily Estimated Volume or falls short of the Sewer Return Commitment by five percent (5%) or more for seven (7) days or more in any thirty (30) day period, then during the period when Company is in violation of such requirements, Company must pay a surcharge equal to twenty-five percent (25%) of the total Reclaimed Water Rate for (i) all water used in excess of the Daily Estimated Volume and (ii) for the amount by which the Sewer Return Commitment is not met. Company’s daily water supply will be capped at one hundred and twenty percent (120%) of the

Daily Estimated Volume (the “**Daily Cap**”). If Company’s water consumption reaches the Daily Cap, Company may request an increase in the Daily Cap. City will consider Company’s request in good faith and the City Manager or designee may temporarily increase the Daily Cap. If the Company requests a permanent increase to the Daily Cap, Company must provide justification for such request. The City Manager or designee will consider such request in good faith and may grant or deny said request in their sole discretion.

- 5.4 In the event of disruption of this Reclaimed Water service, including a reduction in quality below ADEQ Class A+ standards, City agrees to make available temporary potable water service equal to the Daily Estimated Volume until Reclaimed Water service and quality is restored.
- 5.3 City shall provide separate potable water service to the Property, at City’s then current established applicable rates. Use of this potable water must be limited to drinking water and other needs that require potable water within the Project.
- 5.4 Company agrees to design its entire production processes, all equipment, fixtures, and other facilities including without limitation boilers, chiller units, and other ancillary utility services, to be functionally compatible with the Reclaimed Water provided by City.
- 5.5 City assures Company ^{Unofficial Document} that City is designated by the Arizona Department of Water Resources as having a 100-year Assured Water Supply pursuant to applicable Arizona law including without limitation, A.R.S. 45-576, associated administrative codes, and the Peoria City Code.
- 5.6 The Parties shall comply with the Federal Clean Water Act by requiring and enforcing an industrial pretreatment program consistent with all applicable 40 C.F.R. Subchapter N standards.
- 5.7 Company shall design, construct, operate, and monitor an industrial wastewater pretreatment program in accordance with all applicable federal, state, and municipal requirements including without limitation 40 C.F.R. Part 469 Subpart A; and Peoria City Code.
- 5.8 The Parties agree to work collaboratively to design a wastewater pre-treatment system compatible with City’s existing wastewater treatment system.
- 5.9 The Parties agree to work collaboratively to the extent reasonably possible to design, fund, construct, and operate a holistic recycled water solution that will provide a sustainable supply of water sufficient to meet the Daily Estimated Volume specified in Section 5.1 and meet ADEQ Class A+ standards.

6. Term. Unless sooner terminated in accordance with the terms hereof, the term of this Agreement shall commence on the Effective Date and continue until all of the following have occurred: (a) the full performance of all obligations by the Parties hereunder; and (b) payment of all amounts due by the Parties hereunder (the "**Term**"), as it may be extended by the application of extensions otherwise set forth in this Agreement. Notwithstanding the foregoing, all reimbursement obligations, warranties, and indemnity provisions of the Parties, and any provision of this Agreement that explicitly states it will survive termination will survive any such expiration or termination in accordance with the terms of this Agreement. This Agreement shall terminate and be of no further force and effect, and Company will have no further obligation or liability under this Agreement, if (i) Company fails to acquire the Property from VDV by October 31, 2024 for any reason other than a default by VDV under the Vistancia Purchase Agreement or (ii) the Vistancia Purchase Agreement is terminated without Company acquiring the Property. Any termination of this Agreement in accordance with the terms hereof shall be automatic, but City shall, if requested by Company (or if Company fails to acquire the Property), execute a document in recordable form evidencing termination hereof.

7. Performance Extensions. From time to time following the Effective Date, City, at the request of Company and in the discretion of the City Manager or designee, may, by written agreement, refine and revise any Milestone, deadline, or other dates herein as may be necessary to accommodate any factors, events or occurrences that necessitate such refinement or revision.

8. Force Majeure Event. Neither City nor Company, as the case may be, will be considered not to have performed its obligations under this Agreement or to be in Default if such performance is delayed due to causes beyond the Party's Control and without its fault, negligence, or failure to comply with Applicable Law, ^{Unofficial Document 3} but not limited to, unusually inclement weather, acts of God, substantial unavailability or shortage of labor or materials (except as a result of a Party's failure to timely order or request any material or labor), national emergency, epidemics or pandemics resulting in a federal or state declared state of emergency, fire or other casualty, natural disaster, war, act of a public enemy, terrorism or act of terror (including but not limited to bio-terrorism or eco-terrorism), nuclear radiation, blockade, the failure to perform required actions within customary time periods by governmental authorities, riots, acts of violence, labor strike, injunctions in connection with litigation (including the effect of delays on account of any petitions for initiative or referendum), interruption, extortion, sabotage, or similar occurrence or any exercise of the power of eminent domain, condemnation, or other taking by the action of any governmental body on behalf of any public, quasi-public, or private entity, or declaration of moratorium or similar hiatus directly affecting the Project (whether permanent or temporary) by any public, quasi-public, or private entity other than City (each a "**Force Majeure Event**"). In no event will a Force Majeure Event include any delay resulting from general economic or market conditions, or any Party's failure to pay any amount due from such Party pursuant to this Agreement when due. Each Party affected by a Force Majeure Event shall provide Notice to the other Party within ten (10) business days after such Party first becomes aware of a condition that creates the Force Majeure Event, which Notice shall reasonably detail the reason(s) giving rise to the Force Majeure Event and what efforts the affected Party intends to take to minimize the Force Majeure Event, and which shall also set forth a good faith estimate of the anticipated duration of the Force Majeure Event. Any Party affected by a Force Majeure Event shall make reasonable efforts to minimize any delay resulting from such Force Majeure Event. Failure to timely deliver Notice of a Force Majeure Event shall not affect a Party's ability to claim an extension on account of such Force Majeure Event, but if Notice by a Party claiming such extension is sent to the other

Party more than thirty (30) days after the commencement of the Force Majeure Event, the period shall commence to run only thirty (30) calendar days prior to the giving of such Notice. Under no circumstances shall a Force Majeure Event include any event that commenced or occurred prior to the Effective Date, even if such event continues to occur after the Effective Date.

9. Representations of the Parties.

9.1 Representations and Warranties of City. City acknowledges, represents, warrants, and covenants to Company that the following are true as of the Effective Date, and will be true as of Closing:

9.1.1 The Person or Persons executing this Agreement and any attached agreements, on behalf of City are duly authorized to do so and thereby bind City hereto without the signature of any other Person.

9.1.2 City has all requisite power and authority to enter into and perform this Agreement and any attached agreements and to incur the obligations provided for herein and in any attached agreement and has taken all action necessary to authorize the execution, delivery, and performance of this Agreement, subject to the express terms and limitations in this Agreement.

9.1.3 The execution, delivery, and performance of this Agreement and any attached agreements by City does not result in any violation of and does not conflict with ^{Unofficial Document} or constitute a default under, any present agreement, license, security agreement or other instrument to which City is a party, or any judgment, decree, order, statute, rule, or governmental regulation.

9.1.4 There are no receiverships, conservatorships, or voluntary or involuntary proceedings in bankruptcy or any other debtor relief actions contemplated by City or filed by City, or to City's knowledge, pending in any current judicial or administrative proceeding against City.

9.1.5 To City's Actual Knowledge, there are no pending, threatened, or contemplated actions, suits, proceedings, or investigations, at law or in equity, or otherwise in, for or by any court or governmental board, commission, agency, department, or office arising from or relating to this Agreement or the Property.

9.1.6 All consents and approvals necessary to the execution, delivery, and performance of this Agreement, have been obtained, and no further City Council action needs to be taken in connection with such execution, delivery, and performance.

9.1.7 To City's Actual Knowledge, City has received no written notice of any noncompliance with any federal, state, or local laws, regulations, and orders relating to environmental matters with respect to the Property.

- 9.1.8 This Agreement (and each undertaking of City contained in this Agreement) constitutes a valid, binding, and enforceable obligation of City, enforceable according to its terms, except to the extent limited by bankruptcy, insolvency, and other laws of general application affecting creditors' rights and by equitable principles, whether considered at law or in equity.
- 9.1.9 If a matter represented by City under Section 9.1.5 or Section 9.1.7 was true as of the date of this Agreement, but subsequently is rendered inaccurate because of the occurrence of events or circumstances arising other than due to City's intentional action or violation of Applicable Laws, then such inaccuracy shall not constitute a Default by City under this Agreement but will constitute a failure of a condition to Closing if such inaccuracy materially increases Company's good faith estimate of the cost or time to develop the Property or the ability of Company to obtain financing. Failure of such a condition to Closing shall entitle Company to terminate this Agreement and all of Company's obligations, whereupon both Parties shall be released from further liability under this Agreement, except for those expressly provided in this Agreement to survive. If Company does not elect to so terminate, Company timely shall proceed to Closing and the failure of such condition to Closing shall be deemed waived.
- 9.2 Actual Knowledge of City ^{Unofficial Document} When used in this Agreement, the term actual knowledge of City (or words of similar import) shall mean and be limited to the actual (and not imparted, implied, or constructive) current knowledge of the City's Director of Economic Development, the City's City Attorney, and the City's Manager, without any duty or obligation of inquiry or investigation (the "**City's Actual Knowledge**"). Notwithstanding anything herein to the contrary, no such person is a Party to this Agreement and no such person shall have any personal liability or liability whatsoever with respect to any matters set forth in this Agreement or City's representations and/or warranties herein being or becoming untrue, inaccurate, or incomplete in any respect.
- 9.3 Representations and Warranties of Company. Company acknowledges, represents, warrants, and covenants to City that the following are true as of the Effective Date and will be true as of Closing:
- 9.3.1 Except for the approval referenced in Section 3.3.2.2, the Person or Persons executing this Agreement and any attached agreements, on behalf of Company are duly authorized to do so and thereby bind Company hereto without the signature of any other Person.
- 9.3.2 Except for the approval referenced in Section 3.3.2.2, Company has all requisite power and authority to enter into and perform this Agreement and any attached agreements and to incur the obligations provided for herein and in any attached agreement and has taken all action necessary

to authorize the execution, delivery, and performance of this Agreement, subject to the express terms and limitations in this Agreement.

- 9.3.3 The execution, delivery, and performance of this Agreement and any attached agreements by Company does not result in any violation of and does not conflict with or constitute a default under, any present agreement, mortgage, deed of trust, indenture, credit extension agreement, license, security agreement or other instrument to which Company is a party, or any judgment, decree, order, statute, rule, or governmental regulation.
- 9.3.4 No approvals or consents by third parties or governmental authorities are required for Company to consummate the transactions contemplated hereby.
- 9.3.5 Company covenants and agrees that it, except as expressly allowed in this Agreement, has not, and shall not, encumber any portion of the Property prior to the Closing.
- 9.3.6 There are no attachments, levies, executions, assignments for the benefit of creditors, receiverships, conservatorships, or voluntary or involuntary proceedings in bankruptcy or any other debtor relief actions contemplated by Company or filed by Company, or to Company's ~~kn~~^{Unofficial Document} pending in any current judicial or administrative proceeding against Company.
- 9.3.7 This Agreement (and each undertaking of Company contained in this Agreement) constitutes a valid, binding, and enforceable obligation of Company, enforceable according to its terms, except to the extent limited by bankruptcy, insolvency, and other laws of general application affecting creditors' rights and by equitable principles, whether considered at law or in equity.

10. Indemnity. Company, at its sole cost and expense, shall indemnify, defend, and hold harmless City and its officers, officials, agents, and employees (each an "Indemnitee") from and against any and all claims, investigations, actions, liabilities, damages, losses, or expenses (including court costs, reasonable attorneys' fees, and costs of claim processing, investigation and litigation) for bodily injury or personal injury (including death), or loss or damage to tangible or intangible property caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of Company or any of its owners, officers, directors, agents or employees, in each case in performing Company's obligations under this Agreement (hereinafter referred to as "Claims"), including all third party Claims, but excluding any Claims to the extent arising from (i) the grossly negligent or willful acts or omissions of the Indemnitee, or (ii) City's Default under this Agreement. This indemnity includes Claims arising out of or arising out of the failure of Company or any of its owners, officers, directors, agents, or employees to conform to any federal, state, or local law, statute, ordinance, rule, regulation, or court decree, but excludes Claims recovered under the Workers' Compensation Law. It is agreed that Company will be responsible

for primary loss investigation, defense, and judgment costs for Claims where this indemnification is applicable, but in no event shall Company or any of its owners, officers, directors, agents, or employees be liable for any special damages, direct damages, incidental damages, consequential damages, or exemplary damages whatsoever. Such indemnification shall be subject to the following:

- 10.1 City shall notify Company of any Claim arising under or made against it promptly upon becoming aware of the same if City intends to seek indemnity with respect to such Claim under Section 10.
- 10.2 The obligations of Company under Section 10 shall not, in any way, be affected by the absence in any case of covering insurance or by the failure of any insurance carrier to perform any obligation on its part to be performed under insurance policies affecting the Project.
- 10.3 If any Claim is made or brought against City by reason of any event which is the subject of Company's foregoing indemnity, then, upon demand by City or election by Company, Company, at its sole cost and expense, shall resist or defend such Claim with legal counsel reasonably acceptable to City, and City may elect in its discretion to stay any City obligations under this Agreement that are or would be impacted by such Claim if successful pending resolution of the challenge. City shall have the right to be represented by counsel of its own choosing, but at its own expense. So long as Company is contesting any such Claim in good faith, City shall not pay or settle such Claim. Unofficial Document City shall provide reasonable assistance to Company in the defense of such Claim at Company's request and reasonable expense.
- 10.4 In the event of any proceeding or litigation by a third party that names the City or Company as a party and challenges the validity, enforceability, constitutionality, or sufficiency of this Agreement or challenges the authority or ability, of the City to enter into this Agreement or perform any obligations hereunder (an "**Enforceability Challenge**"), then if Company has not yet Commenced Construction at the time of the Enforceability Challenge occurs and the Enforceability Challenge is not frivolous, Company shall have the right to terminate this Agreement upon written Notice to the City, in which event, Company will transfer the Property to City as provided in Section 3.3.2.1 and Company will have no further obligation to the City under this Section 10.4. For purpose of this Section, an Enforceability Challenge shall be deemed not to be frivolous if the parties to such proceeding or litigation proceed to the discovery phase. If Company does not elect to terminate this Agreement under the preceding sentence or if the Enforceability Challenge occurs after Company Commences Construction, Company shall defend against such Enforceability Challenge at its sole cost and expense and shall be responsible for any actual damages in the event such Enforceability Challenge is successful, provided that the City shall be wholly responsible for all other amounts payable in excess thereof, including without limitation penalties and costs, each as may be awarded by a court or agreed to in

settlement. If Company does not elect to terminate this Agreement on account of an Enforceability Challenge, and if such proceeding or litigation by a third party names only the City as a party, Company shall seek to intervene and/or join such action and at its sole cost and expense, shall defend against such Enforceability Challenge. If such a defense of this Agreement is undertaken under this Section 10.4, the City and Company shall cooperate in defending the Enforceability Challenge and may, by mutual agreement, select joint legal counsel and enter into a joint defense agreement with respect to the Enforceability Challenge. Further, the Parties will cooperate with one another and comply with any court order affecting the enforceability of this Agreement, and except as provided in this Section 10 and in Section 3.5, neither Party shall have any claim against the other if one or more provisions of this Agreement are deemed to be void, invalid, or otherwise legally unenforceable. For avoidance of doubt, Company has the right to take the necessary action, including additional payments to the City, to conform to any court order affecting the enforceability of this Agreement. If a joint defense is undertaken, Company shall be wholly responsible for all actual damages, attorney's fees, and costs, each as may be awarded by a court or agreed to in settlement, and the City shall be wholly responsible for all other amounts payable in excess thereof, including without limitation penalties and costs, each as may be awarded by a court or agreed to in settlement. Neither Party to this Agreement shall be obligated to make any payment or perform any obligation hereunder if such payment or performance shall cease to be legal, valid, binding, or enforceable whether due to a change in State or Federal law or interpretation by a court of competent jurisdiction, or will result in the imposition against either Party of any penalty, tax or fine or in the reduction or loss of any federal or state funding, or state shared revenues or any other funds, payments, or credits to which either Party would otherwise be entitled.

10.5 This Section 10 shall survive the expiration or earlier termination of the Agreement.

11. Default.

11.1 Default by Company. "**Default by Company**" under this Agreement will mean any breach, default, or failure by Company to satisfy any obligation or agreement herein other than the failure to achieve a Milestone by a Milestone Deadline, Cap Ex Failure, or Job Creation Failure, including without limitation, one or more of the following for which a specific remedy is not set forth above:

11.1.1 Any representation or warranty made in this Agreement by Company was materially inaccurate when made,

11.1.2 Company Transfers or attempts to Transfer or assign this Agreement in violation of the Agreement, or

11.1.3 Company fails to observe or timely perform any other covenant, promise, obligation, or agreement contained in this Agreement other than those for which there is a specific remedy set forth herein.

11.2 Default by City. “**Default by City**” under this Agreement will mean one or more of the following:

11.2.1 Any representation or warranty made in this Agreement by City was materially inaccurate when made, or

11.2.2 City fails to observe or timely perform any other covenant, promise, obligation, or agreement contained in this Agreement other than those for which there is a specific remedy set forth herein.

11.3 Grace Periods; Notice; Cure. Upon Notice of an event of Default by any Party, the non-defaulting Party may give written Notice and such Party shall proceed immediately to attempt to cure or remedy such Default. In any event, (1) such Default must be cured within thirty (30) days after receipt of such Notice; or (2) if such Default is of a nature not capable of being cured within thirty (30) days, such cure or remedy must be commenced within such period and diligently pursued to completion, but such Default must be cured within ninety (90) days of such Notice unless extended pursuant to Section 7. (the “**Cure Period**”).

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12. Remedies. Whenever any event of Default occurs and is not cured by the defaulting Party in accordance with this Agreement, the other Party may pursue one or more of the following remedies:

12.1 Remedies for Default. In the event of a Default hereunder and failure by the defaulting Party to timely cure the Default as provided in Section 11.3, then except to the extent remedies are specifically limited herein, the non-defaulting Party shall have all remedies available to it at law or in equity. Without limiting the foregoing, a Party or any successor-in-interest or assignee, may institute a legal action to cure, correct or remedy any Default, to enforce any covenant or agreement herein, or to enjoin any threatened or attempted violation, including suits for declaratory relief, specific performance, relief in the nature of mandamus and actions for damages, provided, however, that Claims for damages shall be limited to actual damages.

12.2 Waiver of Certain Damages. Notwithstanding anything in this Agreement to the contrary, each of City and Company waives its right to seek and recover consequential, exemplary, special, punitive, or similar damages from the other, the only permitted claim for damages being actual damages reasonably incurred by the aggrieved Party.

12.3 Delays; Waivers. Except as otherwise expressly provided in this Agreement, any delay by any Party in asserting any right or remedy under this Agreement will not operate as a waiver of any such rights or limit such rights in any way; and any waiver in fact made by such Party with respect to any Default by the other Party will not be considered as a waiver by the performing Party of rights with respect to any other Default or with respect to the particular Default except to the extent specifically waived in writing. It is the intent of the Parties that this provision will enable each Party to avoid the risk of being limited in the exercise of any right or remedy provided in this Agreement by waiver, laches, or otherwise at a time when it may still hope to resolve the problems created by the Default involved.

13. Compliance with Law. Company and City shall comply with all Applicable Laws that affect the Property as are now in effect or as may hereafter be adopted or amended. In the event of any moratorium that is instituted pursuant to A.R.S. §9-463.06, Company or any owner of all or any portion of the Property shall be automatically granted a waiver of the applicability of such moratorium to develop the Property pursuant to the provisions of this Agreement, as described in A.R.S. §9-463.06.D.

14. Assignability, Restriction on Transfers. Except as otherwise expressly provided in this Agreement, the rights established under this Agreement are not personal rights but attach to and run with the Property, subject, however, to any termination on account of Company's failure to satisfy certain Milestones or as otherwise as provided herein. All the provisions hereof shall inure to the benefit of and be binding upon the successors and assigns of the Parties hereto pursuant to A.R.S. §9-500.05(D). Notwithstanding ^{Unofficial Document} the foregoing, no assignment or similar transfer of Company's interest in the Property or this Agreement (each, a "Transfer") may not occur during the Term of this Agreement without City's written consent, which may be withheld in City's sole discretion, except Company will have the right to Transfer the Property and assign its rights and obligations under this Agreement without City Approval (i) to an entity who acquires the Property for the purpose of leasing the Property to Company or an Affiliate of Company or (ii) to an Affiliate who acquires or leases the Property, and an assignment to an Affiliate shall relieve the assignee from any further obligations under this Agreement occurring from and after such assignment. Company shall provide to City a true and correct copy of any assignment (including an assignment to an Affiliate), together with a copy of the document or instrument pursuant to which such assignee fully assumes all of Company's covenants and obligations under this Agreement and agrees to be bound by the terms and conditions of this Agreement. Except as otherwise expressly provided in this Agreement, the assignment by Company of its rights under this Agreement shall not relieve Company personally of any obligations unless City expressly agrees to such relief in writing, and any assignment that does not comply in all respects with this Section 14 shall be void, and not voidable. Company shall have the right collaterally to assign its rights under this Agreement as security for one or more lenders in conjunction with Project financing upon prior written Notice to the City. No voluntary or involuntary successor in interest to Company may acquire any rights or powers under this Agreement except as expressly set forth in this Agreement, and any Transfer in violation of this Agreement will be void, and not voidable.

15. Miscellaneous. The following additional provisions apply to this Agreement:

- 15.1 City Manager's Power to Consent. City authorizes and empowers the City Manager to review and consent, at the sole discretion of the City Manager, to any minor modifications to the obligations imposed on a Party, or any administrative changes to this Agreement. Such minor modifications or administrative changes shall advance the objectives and goals of this Agreement and shall neither undermine nor run counter to the substantive requirements established by this Agreement. Notwithstanding the foregoing, any modification or change shall be taken to the Peoria City Council if: (i) such action is required by law to go to City Council, or (ii) in the sole discretion of the City Manager, the modification or change should be approved by the Peoria City Council.
- 15.2 General Cooperation. City agrees to use its best efforts to assist Company or its Affiliates in the development of the Project, including any assistance with other governmental agencies as appropriate. To further the commitment of City and Company to cooperate in the implementation of this Agreement, City shall designate and appoint a representative to act as liaison between City and its various departments, and Company shall designate and appoint a representative to act on its behalf under this Agreement. The initial representative for the City (the "**City Representative**") shall be Mike Faust, and the initial representative for Company (the "**Company Representative**") shall be Ji Park. Both the City Representative and the Company Representative shall be available at reasonable times to discuss and review the performance of City and Company under this ^{Unofficial Document} Agreement and the development of the Project. A Party may change its Representative at any time by giving Notice to the other Party as provided in this Agreement.
- 15.3 Amendments and Interpretation. This Agreement may not be amended except by formal writing executed by both Parties. The City Manager may exercise his or her administrative authority to correct scrivener's errors, interpret and administer this Agreement, and approve amendments to this Agreement.
- 15.4 Severability. Upon mutual agreement of the Parties, if any term, condition, covenant, stipulation, agreement, or provision in this Agreement is held to be invalid or unenforceable for any reason, the invalidity of any such term, condition, covenant, stipulation, agreement, or provision shall in no way affect any other term, condition, covenant, stipulation, agreement, or provision of this Agreement.
- 15.5 No Exemption. Nothing in this Agreement exempts Company from payment of any sales tax, rental tax, use tax, or any other municipal fees or charges.
- 15.6 No Partnership. It is not intended by this Agreement to, and nothing contained in this Agreement shall create any partnership, joint venture, or other arrangement between Company and City.

- 15.7 Notices. Notices hereunder (each, a “**Notice**”) shall be given in writing and delivered to the other Party or other applicable Person, or mailed by registered or certified mail, return receipt requested, postage prepaid, or by FedEx or other reliable courier service that confirms delivery in writing. With respect to the Parties, a Notice shall be addressed to a Party as follows:

To Company: c/o Amkor Technology, Inc.
2045 East Innovation Circle
Tempe, AZ 85284
Attn: Giel Rutten, CEO

Copy to: c/o Amkor Technology, Inc.
2045 East Innovation Circle
Tempe, AZ 85284
Attn: David R. McCann
Sr. Vice President, Chief of Staff

and

c/o Amkor Technology, Inc.
2045 East Innovation Circle
Tempe, AZ 85284
Attn: Mark Rogers, General Counsel

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To City: Henry Darwin, City Manager
City of Peoria
8401 West Monroe Street
Peoria, Arizona 85345

Copy to: Emily Jurmu, City Attorney
City of Peoria
8401 West Monroe Street
Peoria, Arizona 85345

Service of any Notice by mail in accordance with the foregoing shall be deemed to be complete three (3) days (excluding Friday, Saturday, Sunday, and legal holidays) after the Notice is deposited in the United States mail. Service of any Notice by overnight courier or hand delivery in accordance with the foregoing shall be deemed to be complete upon receipt or refusal to receive.

15.8 Payments. Payments shall be made and delivered in the same manner as Notices and shall be effective at the same time that a Notice would be deemed effective under Section 15.7.

15.9 Integration. This Agreement and any attached agreements constitute the entire agreement between the Parties with respect to the subject matter hereof and supersedes all other written or verbal agreements between the Parties with respect

to the Property. This Agreement may not be changed, modified, or rescinded, except in writing, signed by all Parties and any attempt at oral modification of this Agreement shall be void and of no effect.

15.10 Construction. Whenever the context of this Agreement requires, the singular shall include the plural, and the masculine shall include the feminine. This Agreement was negotiated on the basis that it shall be construed according to its plain meaning and neither for nor against either Party, regardless of their respective roles in preparing this Agreement. The terms of this Agreement were established in light of the plain meaning of this Agreement and this Agreement shall therefore be interpreted according to its plain meaning and without regard to rules of interpretation, if any, that might otherwise favor Company or City. Notwithstanding any language in the Vistancia Purchase Agreement or the Vistancia JDA, in event of any conflict between the language of this Agreement and the Vistancia Purchase Agreement and/or the Vistancia JDA, the language of this Agreement will govern.

15.11 Section Headings. The section headings contained herein are for convenience in reference and not intended to define or limit the scope of any provision of this Agreement.

15.12 No Third-Party Beneficiaries. No term or provision of this Agreement is intended to, or shall, be for the benefit of any Person not a Party hereto, and no such other Person shall have any right or cause of action hereunder. City shall have no liability to third parties for ^{Unofficial Document} ~~any~~ approval of plans, Company's construction of improvements, Company's negligence, Company's failure to comply with the provisions of this Agreement, or otherwise as a result of the existence of this Agreement.

15.13 Exhibits. All exhibits attached hereto as specified herein are hereby incorporated into and made an integral part of this Agreement for all purposes.

15.14 Days. If the last day of any time period stated in this Agreement or the date on which any obligations to be performed under this Agreement falls on a Friday, Saturday, Sunday, or legal holiday recognized by City, then the duration of such time period or the date of performance, as applicable, shall be extended so that it shall end on the next succeeding day which is not a Friday, Saturday, Sunday, or legal holiday recognized by City.

15.15 Attorneys' Fees. In the event of any dispute between the Parties in connection with this Agreement, the Party prevailing in such action or proceeding shall be entitled to recover from the other Party all of its reasonable costs and fees, including reasonable attorneys' fees; provided, however, that no such amount shall be awarded, owed or payable until (i) the court in question has made a finding that one or the other Party is the prevailing party in such proceeding, and (ii) a final, non-appealable order of judgment is entered by a court of competent jurisdiction, or where applicable, the mandate of an appellate court of competent jurisdiction shall issue.

15.16 Choice of Law. This Agreement shall be deemed to be made under, shall be construed in accordance with, and shall be governed by the internal, substantive laws of the State of Arizona (without reference to conflict of law principles).

15.17 Venue and Jurisdiction. Any action brought to interpret, enforce or construe any provision of this Agreement shall be commenced and maintained in the Superior Court of the State of Arizona in and for the County of Maricopa (or in the United States District Court for the District of Arizona, if, but only if, the Superior Court lacks or declines jurisdiction over such action). The Parties irrevocably consent to the exclusive jurisdiction and venue in such courts for such purposes and agree not to seek transfer or removal of any action commenced in accordance with the terms of this Section 15.17. The provisions of this Section 15.17 have been specifically bargained for by City and constitute additional consideration to City for its entering into, and agreeing to be bound by this Agreement.

15.18 No Liability of City Officials. No City Council member, official, representative, agent, attorney, or employee of City shall be personally liable to Company, or to any successor in interest to Company, in the event of Default by City or for any amount that may become due to Company or its successors, or with respect to any obligation of City under the terms of this Agreement or for any amount that may become due to Company or its successors.

15.19 Recordation. This Agreement shall be recorded in the Official Records within ten (10) calendar days ^{Unofficial Document} after execution of this Agreement by City.

15.20 Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which together shall be deemed to be one and the same instrument.

15.21 Arizona Law Provisions.

15.21.1 No member, its officer, official, agent, or employee of City shall have any direct or indirect interest in this Agreement, nor participate in any decision relating to the Agreement, which is prohibited by Applicable Law. This Agreement shall be subject to cancellation pursuant to the provisions of A.R.S. § 38-511 relating to conflicts of interest.

15.21.2 To the extent applicable, Company certifies that it is not currently engaged in, and agrees for the duration of this Agreement that it will not engage in a boycott, as that term is defined in A.R.S. §35-393, of Israel.

15.21.3 To the extent applicable under A.R.S. §41-4401, Company warrants compliance with all federal immigration laws and regulations that relate to their employees and contractors and their compliance with the e-verify requirements under A.R.S. § 23-214(A). The failure by Company to comply with such warranty shall be deemed a material breach

of this Agreement and may result in the termination of this Agreement by the City.

15.21.4 To the extent applicable under A.R.S. §35-394, Company hereby certifies it does not currently, and for the duration of this Agreement shall not use: (a) the forced labor of ethnic Uyghurs in the People's Republic of China, (b) any goods or services produced by the forced labor of ethnic Uyghurs in the People's Republic of China, and (c) any contractors, subcontractors or suppliers that use the forced labor or any goods or services produced by the forced labor of ethnic Uyghurs in the People's Republic of China. If Company becomes aware during the duration of this Agreement that it is not in compliance with such certification, Company shall take such actions as provided by Applicable Law, including providing the required Notice to City. If City determines that Company is not in compliance with the foregoing certification, such failure to comply with the certifications in this Section 15.21.4 shall be deemed a material breach of this Agreement and may result in the termination of this Agreement by City if not cured within any applicable Cure Period.

**[REMAINDER OF PAGE INTENTIONALLY BLANK;
SIGNATURES FOLLOW ON NEXT PAGES]**

Unofficial Document

IN WITNESS WHEREOF, the Parties have executed this Agreement on the date(s) written below.

CITY:

CITY OF PEORIA, an Arizona municipal corporation

By: _____

Henry Darwin, City Manager

ATTEST:

Agnes Goodwine
Agnes Goodwine, City Clerk



APPROVED AS TO FORM:

Emily Jurnu
Emily Jurnu, City Attorney

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STATE OF ARIZONA
County of Maricopa

COMPANY:

AMKOR TECHNOLOGY ARIZONA, INC., an Arizona corporation

By: _____

Kevin Engel,
President

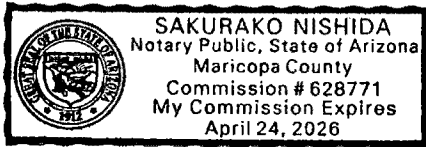
STATE OF ARIZONA
County of Maricopa

On this 20 day of February, 2024, before me personally appeared Kevin Engel the President of Amkor Technology Arizona, Inc., an Arizona corporation, for and on behalf thereof, whose identity was proven to me on the basis of satisfactory evidence to be the person whom he claims to be and acknowledged that he signed the above/attached document.



Notary Public

[Affix notary seal here]



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List of Exhibits

<u>Exhibit</u>	<u>Description</u>
A.	Legal Description of Property
B.	Aerial Depiction of Property
C.	Preliminary Site Plan
D.	Consent Agreement Form
E.	Peoria Priority Track Development Guidelines
F.	Intentionally Deleted
G.	Public Infrastructure Improvements

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EXHIBIT A

Legal Description of Property

LEGAL DESCRIPTION FOR VISTANCIA VILLAGE D SOUTH, PARCELS D-15 & D-16

All that certain lot, tract, or parcel of land, situated in a portion of Section 25, Township 5 North, Range 1 West and Section 30, Township 5 North, Range 1 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, and being more completely described as follows, to-wit:

COMMENCING at a found GLO monument on pipe for the Southeast corner of said Section 25, from which a found GLO monument on 2" pipe for the South Quarter corner of said Section 25 bears North 89 deg. 47 min. 14 sec. West (Basis of Bearings) – 2,565.10 feet, said point also being the most southerly Southeast corner of Parcel D6 as shown on the Master Plat of Vistancia Village D South recorded in Book 1498 of Maps, Page 14, of Maricopa County Records (MCR);

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THENCE North 89 deg. 47 min. 14 sec. West along the South line of the Southeast Quarter of said Section 25, same being the South line of said Parcel D6, a distance of 2,108.38 feet;

THENCE North 00 deg. 12 min. 46 sec. East departing said South lines, a distance of 1,634.39 feet to the **TRUE POINT OF BEGINNING**;

THENCE North 22 deg. 13 min. 05 sec. West, a distance of 42.43 feet;

THENCE North 22 deg. 46 min. 55 sec. East, a distance of 114.66 feet to a Point of Curvature of a circular curve to the right, having a radius of 965.00 feet, a central angle of 08 deg. 31 min. 12 sec., and being subtended by a chord which bears North 27 deg. 02 min. 31 sec. East - 143.37 feet;

THENCE in a northeasterly direction along said curve to the right, a distance of 143.50 feet;

THENCE North 31 deg. 18 min. 07 sec. East tangent to said curve, a distance of 1,059.97 feet;

THENCE North 76 deg. 18 min. 07 sec. East, a distance of 42.43 feet;

THENCE South 58 deg. 41 min. 53 sec. East, a distance of 394.70 feet to a Point of Curvature of a circular curve to the left, having a radius of 1,070.00 feet, a central angle of 08 deg. 27 min. 30 sec., and being subtended by a chord which bears South 62 deg. 55 min. 38 sec. East - 157.82 feet;

THENCE in a southeasterly direction along said curve to the left, a distance of 157.96 feet;

THENCE South 67 deg. 09 min. 23 sec. East tangent to said curve, a distance of 1,064.24 feet;

THENCE South 22 deg. 09 min. 23 sec. East, a distance of 42.43 feet;

THENCE South 22 deg. 50 min. 37 sec. West, a distance of 791.97 feet to a Point of Curvature of a circular curve to the right, having a radius of 635.00 feet, a central angle of 61 deg. 46 min. 14 sec., and being subtended by a chord which bears South 53 deg. 43 min. 44 sec. West - 651.92 feet;

THENCE in a southwesterly direction along said curve to the right, a distance of 684.59 feet;

THENCE South 84 deg. 36 min. 51 sec. West tangent to said curve, a distance of 511.50 feet;

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THENCE North 52 deg. 23 min. 23 sec. West, a distance of 43.88 feet to a Point of Curvature of a non-tangent circular curve to the left, having a radius of 715.00 feet, a central angle of 56 deg. 37 min. 20 sec., and being subtended by a chord which bears North 38 deg. 54 min. 25 sec. West - 678.19 feet;

THENCE in a northwesterly direction along said curve to the left, a distance of 706.59 feet;

THENCE North 67 deg. 13 min. 05 sec. West tangent to said curve, a distance of 387.22 feet to the **POINT OF BEGINNING**, containing 2,452,934 square feet or 56.312 acres of land, more or less.

EXHIBIT B and C ON FILE IN THE
CITY OF PEORIA

CITY CLERK'S OFFICE
8401 W. Monroe Street
Peoria, AZ 85345

EXHIBIT D

Consent Agreement Form

WHEN RECORDED RETURN TO:

Berens Blonstein PLC
 7033 E. Greenway Parkway, Suite 210
 Scottsdale, AZ 85254
 Attention: Marc D. Blonstein

CONSENT AGREEMENT

This Consent Agreement (this “**Agreement**”) is executed by the CITY OF PEORIA, ARIZONA, an Arizona municipal corporation (the “**City**”), to be effective as of February ___, 2024 (the “**Effective Date**”).

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RECITALS

A. The City and VISTANCIA LAND HOLDINGS, LLC, a Delaware limited liability company (“**VLH**”) (with the consent of the Former Owner Entities, as defined in the Second Amendment) previously entered into that certain Amended and Restated Development Agreement for Vistancia in Peoria, Arizona, dated May 1, 2012 (the “**Original Agreement**”), and recorded on May 9, 2012, in Instrument No. 2012-0395094 of the official records of Maricopa County, Arizona (the “**Official Records**”), as amended by that certain Amended and Restated First Amendment to Amended and Restated Development Agreement for Vistancia in Peoria, Arizona, dated September 14, 2015 (the “**First Amendment**”), and recorded on September 30, 2015, in Instrument No. 2015-0707630 of the Official Records, and as further amended by that certain Assignment of and Second Amendment to Amended and Restated Development Agreement for Vistancia in Peoria, Arizona, dated June 24, 2021, and recorded in Instrument No. 2021-0806346 in the Official Records on July 26, 2021 (the “**Second Amendment**”) (the Original Agreement, First Amendment and Second Amendment are, collectively, the “**Development Agreement**”).

B. Pursuant to the Second Amendment, VISTANCIA DEVELOPMENT LLC, a Delaware limited liability company (“**Vistancia Development**”) assumed the obligations of VLH and each of the Former Owner Entities under the Development Agreement.

C. The City wishes to consent to the conveyance of certain property to AMKOR TECHNOLOGY ARIZONA, INC., an Arizona corporation ("**Amkor**") and evidence its confirmation that upon such conveyance, Vistancia Development will have satisfied certain obligations under the Development Agreement, as set forth in this Agreement.

1. **Confirmation of Satisfaction of Targeted End User Obligations.** Vistancia Development, as seller, and Amkor, as buyer, have entered into a Purchase and Sale Agreement dated February __, 2024 whereby Vistancia has agreed to convey to Amkor approximately 56.31 acres of real property within Vistancia Commercial Core (the "**Amkor Property**"). The City hereby confirms and agrees that Amkor satisfies the Type of Use Requirement (as defined in Section 2(a) of the First Amendment), and satisfies the Quality of Investment Requirement (as defined in Section 2(b) of the First Amendment) and that, therefore, Amkor is a targeted end user (as such term is used in Section 18 of the Original Agreement). Notwithstanding anything in the Development Agreement to the contrary, the City hereby directs Vistancia Development to convey the Amkor Property directly to Amkor and not to the City. Upon conveyance of the Amkor Property to Amkor, all obligations under the Development Agreement concerning a "targeted end user" will be fully satisfied and, except for the City's obligation to release the Deed of Trust as described in Paragraph 3, below, neither the City nor Vistancia Development shall have any further obligation with respect thereto.

2. **Location of Donation Land.** ^{Unofficial Document} ~~Document~~ to Section 3(c) of the Second Amendment, although the Deed of Trust (as defined in Section 3(c) of the Second Amendment) described fifty (50) specific acres of land located within the Vistancia Commercial Core, pursuant to Section 3(c) of the Second Amendment, the Parties agreed that the final location of the fifty (50) acres of land to be donated pursuant to Section 18.1.2 of the Original Agreement and Section 6(a) of the First Amendment (the "**Donation Land**") would be located elsewhere within the Vistancia Commercial Core, which final location would be determined by the City and Vistancia Development once a targeted end user had been selected as set forth in Section 2 of the First Amendment and was ready to locate. The City hereby confirms and agrees that the Amkor Property contains all of the Donation Land.

3. **Release of Deed of Trust.** The City shall, concurrently with the conveyance of the Amkor Property to Amkor, record that certain Release of Deed of Trust, which terminates and releases the Deed of Trust.

4. **Effect of Agreement.** Except as set forth in this Agreement, the Development Agreement continues in full force and effect.

[SIGNATURE PAGE APPEARS FOLLOWING PAGE]

Dated: February ___, 2024

IN WITNESS WHEREOF, the Parties have executed this Agreement on the date(s) written below.

CITY:

CITY OF PEORIA, an Arizona municipal corporation

By: _____
Henry Darwin, City Manager

ATTEST:

Agnes Goodwine, City Clerk

APPROVED AS TO FORM:

Unofficial Document

Emily Jurnu, City Attorney

EXHIBIT E

City Review Process

Review of the conceptual design plans and construction documents for the Project shall be based on the priority review schedule and integration of City required processes within the Company's Integrated Master Project Schedule. For the purposes of this Exhibit "E", City required processes (or "**Processes**") are inclusive of all Conceptual Design Applications and Construction Document Reviews, including but not limited to site plan applications, civil plan reviews, building plan reviews, and any other specialty engineering requirements as defined in the overall Project design. Integration into the Master Project Schedule shall include without limitation:

- **Project Kickoff meeting:** During this initial Project planning meeting, the Company's design and contracting team will work with the City staff to identify and include all City required process steps into the scope of the Project. City will provide points of contact, owners of Project tasks, and standard City review times for the Processes for inclusion in the Master Project Schedule.
- **Schedule Creation and Critical Path Identification:** City Staff will work collaboratively with Company's Program/Project Manager to establish a baseline Project schedule that supports the Company's design and construction schedule and incorporates the City's required review timeframes for the Processes, including a minimum two review cycle: an initial review and minimum second Unofficial Document review to confirm the inclusion of comments from initial review. In addition to the inclusion of City related Processes, the Company shall take into consideration and include schedule details for the design and construction of the necessary infrastructure to serve the Project, including (e.g. water, wastewater, Reclaimed Water, storm drain, on-site and off-site roadways), along with dry utilities (e.g. electrical equipment, natural gas, fiber optic, etc.) into the Master Project Schedule.
- **In-person Pre-meetings and Comment reviews:** City and Company design team will utilize In-person pre-meetings, post-application meetings, and regularly scheduled coordination meetings with City staff whenever possible to answer any design or process-related questions throughout the duration of the entitlement and construction of the Project. Should the Company desire, virtual meetings may be substituted at the discretion of the Company.
- **Recurring Master Project Schedule Meetings:** City will participate in recurring Project-scheduled review meetings at a frequency determined by the Company but no more frequently than one time per week, and no less frequently than monthly throughout the duration of the Project.
- **Schedule:** The Parties shall cooperate in good faith to achieve the timeframes and guidelines established by City and Company, but timeframes and guidelines shall not constitute a Default under this Agreement. Such schedule shall be subject to City's review and approval, which approval shall not be unreasonably withheld, and shall include allowances for periods of time required for City's review and approval of submissions, and for approvals of authorities having jurisdiction over Project approval and funding.

EXHIBIT F

[Intentionally Deleted]

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EXHIBIT G

Public Infrastructure Improvements *[NTD: Need complimentary map]*

1. Phase 2 of Westward Skies Road including all utilities as outlined in the City's 2023 Utility Master Plan Update
2. Phase 1 of Peakview Road including all utilities as outlined in the City's 2023 Utility Master Plan Update

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