

**SITE ACCESS AGREEMENT**  
(APN 303-17-053, Parcel 3)

This Site Access Agreement (the "Agreement") is entered into as of June 6, 2016, 2016 by and between the **City of Santa Clara Housing Authority** (the "City") and **Core Affordable Housing, LLC** (the "Licensee") (collectively, the "Parties") on the basis of the following facts:

RECITALS

A. The City is the owner of a six (6) acre parcel of real property in the City of Santa Clara located at 90 North Winchester Boulevard (APN 303-17-053, Parcel 3), as shown on the map attached to this Agreement as Exhibit A and incorporated herein by this reference (the "Property"). The Property was a portion of the 17-acre Bay Area Research and Extension Center owned by the State of California. The site was transferred by Grant Deed to the Housing Authority of the City of Santa Clara.

B. The Parties recently entered into that certain Exclusive Negotiating Rights Agreement (the "ENA") for the possible disposition and development of the Property.

C. Pursuant to Section 17 of the ENA, the Parties are to enter into a separate agreement to provide Licensee and its consultants with rights to enter, examine, and conduct tests on the Property, including but not limited to geological, geotechnical, soils, surveying, toxic, and Phase I Environmental Site Assessment Investigations, as well as project community meetings and information events (collectively, the "Activities").

D. The purpose of this Agreement is to establish procedures and standards for Licensee's access onto the Property while the Parties continue to negotiate towards a final disposition and development of the Property.

**AGREEMENT**

NOW, THEREFORE, in consideration of the mutual covenants and promises contained herein and for other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties mutually agree as follows:

1. Grant of Access for Activities. Subject to the terms of this Agreement, the City hereby grants Licensee and each of its authorized representatives, consultants, and subcontractors a license to enter the Property for the purpose of performing the Activities, as defined above. Access shall be allowed subject to the notice set forth in Paragraph 2 below. During the term of this Agreement, Licensee will exercise reasonable efforts to avoid any material interference with use and enjoyment of the Property by the City and any occupant or invitee on the Property, and shall maintain the City's ability to access the Property at all times, except for the types of interference and access limitations customarily associated with the Activities. After expiration or termination of this Agreement, Licensee will not interfere with the use and enjoyment of the Property by the City or any occupant or invitee on the Property, unless otherwise allowed. Licensee acknowledges that the City makes no representations or warranties

as to the condition of the Property, any hazards that may be present on or below grade at the Property, or otherwise; and that Licensee's use of the Property is subject to the Property's as is, where is, condition. Licensee further acknowledges that the Activities will be performed at Licensee's risk. To the extent the Activities cause any damage to the Property, Licensee shall repair such damage and restore the Property to a condition equivalent to the condition that existed prior to the Activities. Nothing in this Agreement shall create or constitute an easement or interest in the Property and this Agreement shall be considered nothing other than a license terminable as set forth herein.

2. Advanced Notice. Licensee will provide the City at least two (2) business days advance written notice of Licensee's intent to enter the Property to conduct the Activities. Such notice shall include the nature of the Activities which Licensee proposes to perform. In the event of an emergency or event wholly outside the control of Licensee, Licensee need not provide the above-required notice, but shall provide as much notice to the City as is reasonably possible.

3. Data Sharing. The City and Licensee acknowledge that any data sharing, reports or analyses related to the Activities are governed by Section 18 of the ENA.

4. Compliance with Laws. Licensee shall comply with all laws, regulations, ordinances and orders that apply in any manner to the Activities and obtain any permits that may be required to perform the Activities. Notwithstanding the foregoing, and except for the routine reporting of data incident to a permit application (e.g., groundwater data reporting as part of the well-permitting process), should Licensee discover conditions on the Property during the Activities that Licensee believes may require reporting to any governmental entity (local, regional, state, or federal), Licensee shall, as promptly as reasonably practical, advise the City of such discovery and thereafter provide City with the field and/or laboratory data pertaining to such discovery. The City shall be responsible for making whatever report or reports may be required in light of such discovery(ies).

5. Removal of Materials. Licensee shall be responsible for the proper and timely transport, treatment, storage, and/or disposal of any waste or other materials generated or collected in connection with the Activities (collectively, "Wastes"). Licensee also shall not be deemed to be the "owner" or "generator" of such Waste(s) in connection with any required treatment, transport or disposal of such Waste(s), but Licensee shall promptly arrange for the removal and disposal of all such Wastes. The City agrees to the extent necessary, to cooperate with Licensee in its efforts to remove and dispose of Wastes, including but not limited to executing shipping and disposal manifests in connection with the transport and disposal of such Wastes. The Parties agree that in the event that any Waste is classified as a "hazardous waste," as that term is defined under any applicable law, due to the presence of contamination or hazardous materials at or under the Property that existed prior to the Activities at issue, Licensee shall not be deemed to be the "owner" or "generator" of such Waste in connection with any required treatment, transport or disposal of such Waste. However, prior to disposing of any hazardous waste, Licensee shall notify the City if any hazardous wastes are identified. Such notification shall include the nature of the hazardous wastes, the amount and the steps Licensee is proposing to take for disposal.

6. Indemnification. Licensee shall defend, indemnify, and hold harmless the City from and against all suits and causes of action, claims, losses, demands and expenses, including, but not limited to, reasonable attorneys' fees and costs of litigation, damage or liability of any nature whatsoever, arising directly or indirectly, in whole or in part, are caused by, arise in connection with, result from, relate to, or are alleged to be caused by, arise in connection with performance of this Agreement on the part of the Licensee or any contractor or subcontractor of the Licensee. The Licensee shall pay immediately upon the City's demand any amounts owing under this indemnity. The duty of the Licensee to indemnify includes the duty to defend the City, at the City's choosing, to pay the City's costs of its defense in any court action, administrative action, or other proceeding brought by any third Party arising in any manner by reason of or incident to the performance of this Agreement on the part of the Licensee or any contractor or subcontractor of the Licensee. The City shall have the right to reasonably approve any attorneys retained by the Licensee to defend the City and shall have the right to reasonably approve any settlement or compromise. The Licensee's duty to indemnify the City shall survive the termination of this Agreement..

7. Insurance. Throughout the term of this Agreement, Licensee shall maintain and require its consultants and subcontractors involved in the Activities (except for offsite analytical laboratories and others not entering the Property) to maintain the following insurance coverage:

(a) Comprehensive General Liability Insurance, in an amount of not less than \$2,000,000 per occurrence (Licensee) and \$1 million per occurrence (subcontractors);

(b) Automobile Liability Insurance in an amount of not less than \$2,000,000 per occurrence (Licensee) and \$1 million per occurrence (subcontractors);

(c) Workers' Compensation Insurance adequate to meet the statutory requirements of all jurisdictions having authority over such claims, including, but not limited to, the State of California, and Employer's Liability Insurance in an amount of not less than \$1,000,000 per occurrence (Licensee, and \$500,000 by subcontractors); and

(d) Contractor's Pollution Liability Insurance in an amount not less than \$5 million per occurrence.

(e) Prior to coming upon the Property pursuant to this Agreement, Licensee shall provide the City with a certificate or certificates of insurance evidencing the foregoing coverages and with a blanket policy endorsement adding the City, its officers, managers, employees, elected officials, and agents as additional insureds to the Comprehensive General, Contractor's Pollution Liability, and Automobile liability coverage. The certificate(s) of insurance shall be on an industry-standard Accord form; the endorsements shall be on the carrier's additional insured form and either: (a) the endorsement shall provide that the insurance shall not be cancelled or terminated for any reason except upon not less than ten (10) days' notice to City, or (b) Licensee shall provide evidence that the full premium for each policy has been paid in full (e.g., the effectiveness of the policy is not subject to future monthly payments of premiums or financing). The Workers Compensation Insurance coverage shall be endorsed to waive

subrogation rights against the City and its officers, managers, employees, elected officials, and agents.

8. No Liens. Licensee shall bear all costs relating to the Activities. Licensee and its contractors shall not incur any liens against the Property in connection with the Activities or in any way attributable to the acts of Licensee or Licensee's agents or subcontractors on the Property. Licensee agrees to indemnify, defend, and hold City harmless from any such liens and/or claims of liens for Activities performed, materials furnished, or any other activities under control of Licensee or its agents or subcontractors which, pursuant to the laws of California, may become a lien on the Property. Should any lien be filed against the Property in connection with Licensee's Activities, Licensee may bond around the lien as part of disputing the lien with the party asserting the lien.

9. Notices. Formal notices, demands and communications between the City and the Licensee shall be sufficiently given if, and shall not be deemed given unless, dispatched by certified mail, postage prepaid, return receipt requested, or sent by express delivery or overnight courier service, to the office of the parties shown as follows, or such other address as the parties may designate in writing from time to time:

City: City of Santa Clara  
1500 Warburton Avenue  
Santa Clara, CA 95050  
Attention: City Manager

Licensee: Core Affordable Housing, LLC  
470 South Market Street  
San Jose, CA 95113  
Attention: Chris Neale

Such written notices, demands and communications shall be effective on the date shown on the delivery receipt as the date delivered or the date on which delivery was refused.

10. Termination. Either Party may terminate this Agreement upon five (5) days written notice to the other Party. Absent such notice, this Agreement shall terminate concurrent with termination of the ENA. In addition, City shall have the right to immediately terminate this Agreement by written notice to Licensee in the event of a material breach of this Agreement by Licensee.

11. Limitation on Effect of Agreement. This Agreement shall not obligate either the City or the Licensee to enter into a DDA or to enter into any particular DDA. By execution of this Agreement, the City is not committing itself to or agreeing to undertake acquisition, disposition, or exercise of control over any property.

12. Defaults and Remedies.

(a) Default. Failure by either party to negotiate in good faith as provided in this Agreement shall constitute an event of default hereunder. The non-defaulting party shall give written notice of a default to the defaulting party, specifying the nature of the

default and the required action to cure the default. If a default remains uncured thirty (30) days after receipt by the defaulting party of such notice, the non-defaulting party may exercise the remedies set forth in subsection (b).

(b) Remedies. In the event of an uncured default by the City, the Licensee's sole remedy shall be to terminate this Agreement or the ENA. Following such termination and the return of the appropriate amount of the Good Faith Deposit and any interest earned thereon, neither party shall have any further right, remedy or obligation under this Agreement; provided, however, that the Licensee's indemnification obligation shall survive such termination.

In the event of an uncured default by Licensee, the City's sole remedy shall be to terminate this Agreement or the ENA and to retain any unexpended funds remaining in the Good Faith Deposit and any interest earned thereon. Following such termination, neither party shall have any right, remedy or obligation under this Agreement; provided; however, that the Licensee's indemnification obligation shall survive such termination.

Except as expressly provided above, neither party shall have any liability to the other for damages or otherwise for any default, nor shall either party have any other claims with respect to performance under this Agreement. Each party specifically waives and releases any such rights or claims they may otherwise have at law or in equity.

13. Assignment. The Licensee shall not assign its rights or responsibilities under this Agreement, in whole or in part, except with the written consent of the City. Any attempted assignment without such prior written consent shall be invalid and void. Notwithstanding the above, consultants and subcontractors of Licensee are permitted access to the Property pursuant to this Agreement.

14. No Attorney's Fees. The prevailing party in any action to enforce this Agreement shall not be entitled to recover reasonable attorneys' fees and costs from the other Party (including fees and costs in any subsequent action or proceeding to enforce or interpret any judgment entered pursuant to an action on this Agreement). Each Party shall bear its own costs and fees.

15. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California.

16. Entire Agreement. This Agreement constitutes the entire agreement of the parties regarding site access to the Property.

17. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same agreement.

IN WITNESS WHEREOF, this Agreement has been executed by the parties on the date first above written.

APPROVED AS TO FORM:

*Diana Jazely*  
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For RICHARD E. NOSKY, JR.  
City Attorney

ATTEST: *AS*  
\_\_\_\_\_  
ROD DIRIDON, JR.  
City Clerk

Dated: *6/16/16*  
\_\_\_\_\_  
*R* RAJEEV BATRA  
Acting City Manager  
1500 Warburton Avenue  
Santa Clara, CA 95050  
Telephone: (408) 615-2210  
Fax: (408) 241-6771

“CITY”

**CORE AFFORDABLE HOUSING, LLC**  
Licensee

Dated: *5/17/16*  
\_\_\_\_\_  
By: *CR*  
\_\_\_\_\_  
Name: Chris Neale  
\_\_\_\_\_  
Title: Executive Vice President, Development  
\_\_\_\_\_  
Local Address: 470 South Market Street  
\_\_\_\_\_  
San Jose, CA 95113  
\_\_\_\_\_  
Email Address: cneale@thecorecompanies.com  
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Telephone: (408) 292-7841  
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Fax: (408) 292-0339  
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