

THIS SUBDIVISION IMPROVEMENT AGREEMENT (“**Agreement**”) is made and entered into on this ____ day of ____, 2025 (“**Effective Date**”) by and between the CITY OF COMMERCE, CALIFORNIA (“**City**”) and COMSTOCK GAGE LLC, a Delaware limited liability company (“**Developer**” or “**Subdivider**”) (collectively, the “**Parties**”).

RECITALS

A. Developer has presented to the City for approval and recordation Vesting Tract Map No. 83334 (“**Final Map**”) to subdivide the parcels generally located at 7316 Gage Avenue and 6364 Zindell Avenue in the City (APNs 6357-018-005, 6357-019-904, 6357-019-905 and 6357-018-900), into three legal parcels (“**Subdivision**”). The Subdivision parcels are more particularly described in the legal descriptions attached hereto as **Exhibit A** and incorporated herein by this reference (“**Parcels**”). A copy of the Final Map is on file in the Office of the City Clerk and is incorporated herein by this reference.

B. The Subdivision is part of the mixed-use development project (“**Project**”) contemplated by the development agreement by and between the City and Developer, which was finally approved by City Council by Ordinance No. 785 (“**Development Agreement**”), which was recorded in Los Angeles County as Instrument No. 20230037596 and is incorporated herein by this reference. The Project is commonly referred to as the Modelo project and is more particularly described in the Development Agreement.

C. The Development Agreement (Section 7.2.4) allows for the phased development of the Project: “[T]he Parties agree that Developer shall be able to, except as proscribed by Sections 7.2.1, 7.2.2, and 7.2.3 [of the Development Agreement], develop the Project in accordance with Developer’s own time schedule as such schedule may exist or be modified from time to time, and Developer shall determine in its sole discretion which part of the Project to develop first, and at Developer’s chosen schedule” (“**Phased Development**”). The Developer currently proposes to complete or cause the completion of the Remediation, followed by construction of the townhome component of the Residential Element (“**Townhome Project**”) and Parking Structure, as each term is defined in the Development Agreement.

D. Vesting Tentative Tract Map No. 83334 of the Subdivision (“**VTM**”) was approved by City Council Resolution No. 22-76 (“**City Council Approval Resolution**” or “**VTM Approval**”), a copy of which is on file in the Office of the City Clerk and is incorporated herein by this reference. The City Council Approval Resolution also approved the Site Plan (No. 997) review and Master Sign Plan for the Project and imposes related conditions of Project approval (“**City Conditions of Approval**”).

E. The Development Agreement (Section 5.2) provides: “Following approval of the Vesting Tentative Map and after Developer satisfies or secures the conditions of approval associated with the Vesting Tentative Map, the Developer shall prepare and submit a Final Map to the City Engineer for consideration of final approval.”

F. The California Subdivision Map Act provides that the Final Map may only be approved by the City Council if all required subdivision public improvements have been completed . If the subdivision public improvements have not been completed the Subdivider and

the City must, as a condition precedent to the approval of the Final Map, enter into an agreement guaranteeing completion of all of the public improvements required as conditions of approval of the VTM (“SIA”). The SIA must be accompanied by a bond or other security approved by the City guaranteeing the completion of the subdivision public improvements. (Gov Code 66462, 66499). The Subdivision Map Act Government Code Section 66462(a)(2)(A) and (B) allows the SIA to require the Subdivider to complete all of the subdivision public improvements at the Subdivider’s expense or to “Initiate and consummate proceedings under an appropriate special assessment act or the Mello-Roos Community Facilities Act of 1982 (“CFD”),... for the financing and completion of all of the improvements.”

G. The City Council Approval Resolution includes multiple City Conditions of Approval, which includes a section entitled “Public Works Conditions,” but none of the conditions are specified as conditions of VTM Approval and the only reference to the Final Map is under Condition No. 62, which provides: “Building permits shall not be issued until the final map has been prepared to the satisfaction of the Building Official.”

H. The Parties desire to clarify which of the City Conditions of Approval were intended to be required as conditions of VTM Approval. The Parties hereby agree that the applicable City Conditions of Approval are set forth in **Exhibit B** attached hereto and incorporated herein by this reference (“**Subdivision Improvements and Phasing**”).

I. The California Subdivision Map Act provides: “If, at the time of approval of the final map by the legislative body, any public improvements required by the local agency pursuant to this division or local ordinance have not been completed and accepted in accordance with standards established by the local agency by ordinance applicable at the time of the approval or conditional approval of the tentative map, the legislative body, as a condition precedent to the approval of the final map, shall require the subdivider to enter into one of the following agreements specified by the local agency: (1) An agreement with the local agency upon mutually agreeable terms to thereafter complete the improvements at the subdivider’s expense,” or (2) an agreement with the local agency to “Initiate and consummate proceedings under an appropriate special assessment act or the Mello-Roos Community Facilities Act of 1982 (cumulatively “CFD”),... for the financing and completion of all of the improvements.” (Gov. Code § 66462(a)(2)(A) and (B) This Agreement is intended to fulfill the requirements of Government Code Section 66462(a) by employing a combination of both types of agreements.

J. The Development Agreement (Section 7.7) further provides: “To the extent i) Developer’s costs for the Traffic and Off-Site Improvements, and dedications, if any, for the Project exceed Developer’s fair share obligation for such Subdivision Improvements and dedications as contemplated by California Government Code Section 66000 et. seq. and other applicable law, ii) such Subdivision Improvements and dedications benefit properties other than the Project Parcels, and iii) Developer agrees to pay such excess costs, the City shall enter into a reimbursement agreement with Developer under Government Code Sections 66485- 66489 and Los Angeles County Municipal Code Section 21.32.030(B) to reimburse Developer for that portion of the costs incurred by Developer for such Subdivision Improvements and dedications that exceeds Developer’s fair share obligation. The Parties agree that the sole source of any reimbursement amount shall [be] in accordance with Government Code Section 66487.” This additional City Reimbursement is referred to herein as the “**Additional City Reimbursement**.”

K. The Subdivision is proposed pursuant to the California Subdivision Map Act, City Municipal Code Title 18 (Plats and Subdivisions) and Los Angeles County Municipal Code Title 21 (Subdivisions), which “is adopted by reference as the Subdivision Ordinance of the City” (“**City Subdivision Ordinance**”) and is supplemented by the City Vesting Tentative Map Ordinance (City Municipal Code Chapter 18.04) (collectively, “**Subdivision Laws**”).

L. The City Subdivision Ordinance (Section 21.36.050) requires this Agreement to be accompanied by (i) a “faithful performance bond guaranteeing the faithful performance of all work, the inspection of which is the duty of the [City] engineer, in a penal sum which, in the opinion of the [City] engineer equals the cost thereof, except for monumentation work” (“**Security**”) and (ii) “money, negotiable bonds, savings and loan shares, or instruments of credit guaranteeing the faithful performance of the work” for monumentation.

NOW, THEREFORE, in consideration of the approval and recordation by the City Council of the Final Map of the Subdivision, Subdivider and City agree as follows:

1. OBLIGATION TO CONSTRUCT SUBDIVISION IMPROVEMENTS

A. Subdivider shall, at its sole expense, and in compliance with the provisions of the Subdivision Laws, submit plans and specifications for approval by City, furnish, construct, install, complete and guarantee (as set forth in Section 5) the Subdivision Improvements in accordance with the Subdivision Improvements and Phasing set forth in Exhibit B hereto. Notwithstanding the foregoing, Subdivider may seek City Reimbursement under Section 10.2.7 of the Development Agreement and Additional City Reimbursement under Section 7.7 of the Development Agreement (where applicable) for the Subdivision Improvements.

B. For each item of public improvement described in Exhibit B which refers to Bonds or CFD as security for the work of improvement, the Subdivider may employ the CFD provisions of Government Code Section 66462(a)(2)(A) to finance, construct and complete that particular public improvement. Subdivider’s use of the CFD methodology shall be subject to the following limitations:

1. Subdivider shall pay all costs of investigating, initiating, forming and completing the CFD, including issuance of bonds, sale of bonds, and receipt of bond sale proceeds by the City.

2. City shall have received sufficient bond proceeds for the cost of constructing a specific public improvement listed in Exhibit B prior to the issuance of construction permits for that specific public improvement.

3. If City has not received sufficient funds as described in subsection 2 preceding, then Subdivider shall provide to City the bonds required by Section 3 of this Agreement prior to issuance of construction permits for the specific public improvement.

4. If at anytime third party independent consultants determine that the use of the CFD methodology is not viable, that bonds are not marketable, or that the CFD will not provide sufficient bond proceeds for the planning, construction and completion of the public

improvements specified in Exhibit B, then Subdivider shall bear all costs of timely planning, bonding, constructing and completing the public improvements listed in Exhibit B.

5. If the City receives sufficient CFD bond proceeds for the timely planning, construction and completion of the public improvements specified in Exhibit B, and there remains sufficient funds for the payment for the bonds required by Section 3 of this Agreement, then Subdivider may use CFD bond proceeds for the payment of the premiums of the required bonds. Otherwise Subdivider shall pay the costs or provide the required bonds in a timely manner as specified in Exhibit B.

C. Not less than fifteen (15) calendar days prior to commencement of work on each of the Subdivision Improvements, Subdivider shall give written notice to the City Engineer of the date fixed for such commencement of work in order that the City Engineer shall have adequate time to schedule all necessary inspections.

D. Subdivider shall provide the City with final record drawings of all plans developed for the Subdivision, showing all changes and as built conditions, prior to City acceptance of the Subdivision Improvements (where applicable) and release of the Security for the applicable Subdivision Improvements.

E. Subdivider may close all or a portion of any street or area whenever necessary to protect the public during the construction of the Subdivision Improvements.

2. INSPECTION OF WORK; CITY ENGINEER APPROVAL; CITY ACCEPTANCE

A. Subdivider shall at all times maintain safe access for inspection of the Subdivision Improvements by the City Engineer and any City inspection consultants.

B. Upon completion of the work on any category of the Subdivision Improvements, Subdivider may request a final inspection by the City Engineer, which inspection shall occur within fifteen (15) business days of the request. Within ten (10) business days of the inspection of the applicable Subdivision Improvements, the City Engineer shall provide written notice to Subdivider of the list of any items that have been found to be incomplete and the list of items that have been found to be complete. If the City Engineer determines that the applicable Subdivision Improvements have been completed in accordance with this Agreement and applicable City standards, the City Engineer shall issue final clearance for such Subdivision Improvements within five (5) business days ("**City Engineer Approval**").

C. In the event that the City Engineer fails to meet any of the deadlines specified in subsection B, the City shall be prohibited from withholding issuance of a temporary certificate of occupancy for any otherwise qualifying and/or completed portion of the Project.

D. City acceptance of any specified category of Subdivision Improvements (where applicable) shall be acted upon by the City Council within thirty (30) calendar days of City Engineer Approval. Acceptance by the City Council shall not constitute a waiver by the City of any defects in the Subdivision Improvements.

3. SUBDIVISION IMPROVEMENT SECURITY

A. Subdivider shall provide the following as Security to the City pursuant to the Subdivision Improvements and Phasing set forth in Exhibit B hereto:

1. For Performance and Guarantee. Pursuant to City Subdivision Ordinance Section 21.36.070(A), Security in an amount equal to (i) one hundred percent (100%) of the estimated cost of the applicable Subdivision Improvements covered by the Security; (ii) an amount equal to the cost of inspecting the applicable Subdivision Improvements; and (iii) an amount estimated to be necessary for the guarantee and warranty of the work against any defective work or labor done, or defective materials furnished for a period of one year following the completion and City acceptance (where applicable) (“**Guarantee Period**”). Subdivider shall provide the foregoing Security in phases in accordance with the Subdivision Improvements and Phasing set forth in Exhibit B hereto.

2. For Payment. Pursuant to City Subdivision Ordinance Section 21.36.070(B), Security in an amount equal to one hundred percent (100%)^{1**} of the estimated cost of the applicable Subdivision Improvements covered by the Security, securing payment to contractors and subcontractors and to all persons renting equipment or furnishing labor or materials to them. Subdivider shall provide the foregoing Security in phases in accordance with the Subdivision Improvements and Phasing set forth in Exhibit B hereto.

3. Pursuant to Government Code Section 66497, the Security required to be provided shall not include the cost of monumentation, so long as a separate cash deposit for the estimated cost of monumentation has been submitted to the City.

B. Security consisting of corporate surety bonds, in a form accepted by the City Attorney, shall be kept on file with the City Engineer. If a corporate surety bond is replaced by another approved bond, the replacement shall be filed with the City Engineer and, upon filing, shall be deemed to have been made a part of and incorporated into this Agreement. Upon filing and approval by the City Engineer of a replacement bond, the former Security shall be released.

C. In the event of a Failure (defined below) by Subdivider pursuant to Section 9, and after written notice to Subdivider and reasonable opportunity to cure, the City shall have the right to draw upon or utilize the Security furnished herewith to construct and install the applicable Subdivision Improvements. If City exercises this right, the release of any unused portion of such Security shall be in accordance with the procedures outlined in Section 4, including any retention necessary for the Guarantee Period.

4. REDUCTION OR RELEASE OF SECURITY

A. Partial releases or reductions in the Security shall be made pursuant to City Subdivision Ordinance Section 21.36.120, which provides: “When any portion of an improvement has been fully completed, the [City] engineer . . . may, in his discretion, authorize

¹ Gov Code 66499.2 requires payment bond to inure to benefit of persons listed in Civ Code 9000 et seq. Civ Code 9554 requires payment bond to be 100% of cost of improvements. County allowed 50% because it is charter County, but City is general law city subject to 9554.

from time to time a reduction in the bonds or instruments of credit, or a partial withdrawal of funds, or a partial reassignment and withdrawal of savings and loan certificates or shares, which bonds, instruments of credit, funds, certificates or shares were deposited in lieu of a faithful performance bond required by [the City Subdivision Ordinance], equal to the estimated cost of such completed portion.”

B. The Parties agree that once a portion of the Subdivision Improvements is completed, as confirmed by City Engineer Approval, and upon written request of Subdivider, the Security (or with respect to the cash deposit for monumentation) shall be released, provided that the following requirements are met:

1. Security for Performance and Guarantee: The Security under Section 3.A.1 shall not be reduced or released in an amount greater than fifty percent (50%) of the aggregate principal amount thereof prior to the expiration of the Guarantee Period.

2. Security for Payment: The Security under Section 3.A.2 shall, within six (6) months after City acceptance of all of the applicable Subdivision Improvements, be reduced to an amount equal to 125% of the total amount claimed by all claimants, if any, for whom liens have been filed and of which notice has been given to the City. The balance of the Security shall be released upon settlement or release of all claims, if any.

C. If Subdivider’s obligations relating to any Subdivision Improvements are subject to the approval of another governmental agency, the City shall not be required to release the Security therefor until the obligations are performed to the satisfaction of such other governmental agency. Such agency shall have thirty (30) calendar days after Subdivider’s performance of the obligation to register its satisfaction or dissatisfaction.

D. The release of the cash deposit for monumentation shall be subject to the same release requirements and retention amounts as provided in this Section 4 for the release of the Security for other Subdivision Improvements.

5. GUARANTEE & WARRANTY

A. If any Subdivision Improvements or part of any Subdivision Improvements furnished, installed or constructed by Subdivider fails to comply with any requirements of this Agreement, applicable City standards, or Subdivision Laws, Subdivider shall be obligated to repair, replace or reconstruct any defective part or parts of the Subdivision Improvements (“**Defect**”) during the Guarantee Period.

B. The City Engineer shall provide written notice to Subdivider of any purported Defect pursuant to Section 12 (Notice).

C. Subdivider shall have the right, at its sole option, to retain a third-party engineer licensed in the State of California to inspect the purported Defect(s) and provide an inspection report for consideration by the City Engineer. Subdivider shall not be required to repair, replace or reconstruct the purported Defect(s) unless and until the City Engineer reviews said inspection report and provides written findings to Subdivider pursuant to Section 12

(Notice), including but not limited to specific instructions for the repair, replacement or reconstruction (as applicable) of the Defect.

6. REIMBURSEMENT

A. As required by City Subdivision Ordinance Section 21.04.090, Subdivider shall reimburse the City of any court and attorney's fees which the City may be required by a court to pay as a result of any claim or action described under Government Code Section 66499.37 against the City (e.g., any action or proceeding to attack, review, set aside, void, or annul the decision of the City Council concerning the Subdivision.)

B. This Section 6 shall survive the termination of this Agreement.

7. INSURANCE AND INDEMNITY

A. Commercial General Liability. Subdivider shall maintain commercial general liability insurance with limits no less than One Million Dollars (\$1,000,000) combined single limit per occurrence or Two Million Dollars (\$2,000,000) aggregate limit for bodily injury, personal injury, and property damage.

B. Automobile Liability Coverage. Subdivider shall maintain automobile liability insurance covering all vehicles used in the performance of this Agreement providing a One Million Dollar (\$1,000,000) combined single limit per occurrence for bodily injury, personal injury, or property damage.

C. Workers' Compensation. Subdivider shall, to the extent required by state law, provide Workers' Compensation Insurance, including employer's liability coverage, for the protection of Subdivider's employees, with a minimum limit of One Million Dollars (\$1,000,000) or the amount required by law, whichever is greater. Subdivider shall file a certificate of insurance which evidences that Subdivider is in compliance with said Workers' Compensation Insurance requirement. Subdivider shall require all subcontractors similarly to provide such Workers' Compensation Insurance and certificates of insurance for their respective employees.

D. Subdivider agrees that if it does not keep the aforesaid insurance in full force and effect the City may either, after written notice to Subdivider pursuant to Section 12 (Notice) and failure by Subdivider to cure same within thirty (30) business days, immediately terminate this Agreement for default by Subdivider, or, if insurance is available at reasonable cost, the City may take out the necessary insurance and pay, at Subdivider's expense, the premium amount.

E. The general liability policy and automobile liability policy shall be endorsed to state that the City and its elected and appointed officers, agents, employees, and representatives (collectively, "**City Representatives**") shall be covered as additional insureds, except for any personal injury, death, or property damage directly caused by the gross negligence, recklessness, or willful misconduct of the City or the City Representatives.

F. The insurance provided by Subdivider shall be primary to any coverage available to City and shall provide that any insurance or self-insurance maintained by the City or the City Representatives shall be in excess of Subdivider's insurance and shall not contribute with it.

G. The insurance provided by Subdivider shall be endorsed to state that the insurer shall waive all rights of subrogation against the City and the City Representatives, except for any personal injury, death, or property damage directly caused by the gross negligence, recklessness, or willful misconduct of the City or the City Representatives.

H. The policy or policies required herein shall be issued by an insurer admitted in the State of California with a rating of at least B+, VII in the latest edition of A.M. Best's insurance guide.

I. The certificates and endorsements for each insurance policy shall be signed by a person authorized by that insurer or a broker to bind coverage on its behalf. The certificates shall also specifically state that the coverage contained in those policies affords insurance in compliance with the terms and conditions as set forth in this Agreement.

J. Deductibles. Subdivider's deductible shall not exceed Ten Thousand Dollars (\$10,000). Any deductibles or self-insured retentions of any subcontractors must be declared to and approved by the City prior to the execution of this Agreement by the City.

K. Notice of Policy Changes. Required coverage shall not be suspended, voided, cancelled, reduced in coverage or in limits, non-renewed, or materially changed for any reason, without thirty (30) calendar days' prior written notice thereof given by Subdivider to City pursuant to Section 12 (Notice).

L. Evidence of Coverage. Prior to commencement of work on the Subdivision Improvements, and at all times during the term of this Agreement, Subdivider shall maintain on file with the City Clerk a certificate or certificates of insurance showing compliance with the foregoing requirements.

M. The foregoing coverages shall be provided by Subdivider and maintained on behalf of the City and in accordance with the requirements set forth herein. If Subdivider performs construction activities through a general contractor, some or all of the foregoing insurance requirements for the period of construction may be satisfied by the general contractor's insurance coverages.

N. Indemnification. To the fullest extent permitted by law, Subdivider shall defend (with counsel of City's choosing), indemnify and hold City, its officials, officers, employees, volunteers and agents free and harmless from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury of any kind, in law or equity, to property or persons, including wrongful death, in any manner arising out of, pertaining to, or incident to any alleged acts, errors or omissions, or willful misconduct of Subdivider, its officials, officers, employees, subcontractors, consultants or agents in connection with Subdivider's activities under this Agreement, including without limitation the payment of all consequential damages, expert witness fees and attorneys' fees and other related costs and expenses. Subdivider shall

reimburse City and its officials, officers, employees, agents, and/or volunteers, for any and all legal expenses and costs incurred by each of them in connection therewith or in enforcing the indemnity herein provided. Subdivider's responsibility for such defense and indemnity obligations shall survive the termination or completion of this Agreement for the full period of time allowed by law. The defense and indemnification obligations of this Agreement are undertaken in addition to, and shall not in any way be limited by, the insurance obligations contained in this Agreement. Subdivider's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by City, its directors, officials, officers, employees, agents, or volunteers. Notwithstanding the above, Subdivider's obligation to indemnify, defend and hold harmless the City, its officers, employees and agents shall be limited to the extent caused by City's negligent acts, errors or omissions.

8. DEDICATION & ACCEPTANCE OF SUBDIVISION IMPROVEMENTS

A. Ownership of any category of the Subdivision Improvements constructed and installed by Subdivider pursuant to this Agreement to be dedicated to and accepted by the City shall vest, as applicable, in the City upon acceptance of said Subdivision Improvements by the City Council and recordation of a Notice of Completion.

B. Subdivider shall at all times prior to the acceptance of the applicable Subdivision Improvements by the City, give good and adequate warning to the public of any dangerous and defective conditions caused by the construction of the Subdivision Improvements and shall take all steps reasonably and customarily necessary to protect the public from any such dangerous or defective conditions. Subdivider agrees and understands that until acceptance of the applicable Subdivision Improvements by the City, each of the Subdivision Improvements that are offered for dedication shall be under the charge of Subdivider.

9. ENFORCEMENT ACTION; REMEDIES OF THE CITY

A. The City Engineer may, upon notice in writing of not less than ten (10) business days to Subdivider pursuant to Section 12 (Notice), cause to be forfeited to the City such portion of the Security as may be necessary to complete the applicable Subdivision Improvements, pursuant to City Subdivision Ordinance Section 21.36.140, ("**Enforcement Action**") under any of the following circumstances:

1. Upon the failure, if any, of Subdivider to complete any of the Subdivision Improvements by the applicable completion deadline set forth in Exhibit B hereto.

2. Upon the failure, if any, of Subdivider to commence the correction or cure of any Defect in any of the Subdivision Improvements within sixty (60) calendar days, but only if the Defect occurred during the Guarantee Period.

3. Upon the failure, if any, of Subdivider to perform substantial work on any of the Subdivision Improvements after commencement of work on the same, for a continuous period of ninety (90) calendar days.

4. Enforced Delay. Whenever a period of time, including a reasonable period of time, is designated above in this Section 9 or in Exhibit B within which the

Subdivider is required to do or complete any act, matter or thing, the time for the doing or completion thereof (and all downstream dates which relied on completion thereof) shall be extended by a period of time equal to the number of days during which the Subdivider is actually prevented from, or is unreasonably interfered with, the doing or completion of such act, matter or thing because of causes beyond the reasonable control of the Subdivider, including: war; insurrection; riots; floods; earthquakes; fires; casualties; acts of God; pandemics; states of emergency; stay-at-home orders; litigation and administrative proceedings, including administrative and judicial appeals, against the Project (not including any administrative proceedings contemplated by this Agreement in the normal course of affairs); an act of the City, any other governmental entity, or any utility with jurisdiction over the Project or any portion thereof; any approval required by the City, any other governmental entity, or any utility with jurisdiction over the Project or any portion thereof (not including any period of time normally expected for the processing of such approvals in the ordinary course of affairs); restrictions imposed or mandated by the City, other governmental entities, or any utility; enactment of conflicting state or federal laws or regulations; judicial decisions; or similar bases for excused performance which are not within the reasonable control of the Subdivider (financial inability excepted). This Section shall not be applicable to any proceedings with respect to bankruptcy or receivership initiated by or on behalf of the Subdivider or, if not dismissed within ninety (90) days, by any third parties against the Subdivider.

B. Following Subdivider's receipt of written notice of an Enforcement Action and failure by Subdivider to meet the deadlines specified in subsection A, the City may serve written notice of any such Enforcement Action upon the surety on any corporate surety bond furnished as Security hereunder, and request that said surety take over and complete the applicable Subdivision Improvements. If such surety, within thirty (30) calendar days after service of such notice, does not give the City written notice of its intention to complete the applicable Subdivision Improvements, or does not commence such performance within sixty (60) calendar days after notice to the City of such intention to perform, the City may take over the work and prosecute the same to completion.

10. RELATIONSHIP OF THE PARTIES

Neither Subdivider, nor any of Subdivider's contractors, employees or agents, are or shall be deemed to be, agents of the City in connection with the performance of Subdivider's obligations under this Agreement.

11. ASSIGNMENT; TRANSFER; NOTICE

A. City Consent Not Required. Consistent with Section 16 of the Development Agreement, City consent shall not be required for the following assignments or transfers of all or a portion of the rights or privileges or the delegation of obligations of Subdivider contained in this Agreement:

1. To an affiliate of the Subdivider or to a joint venture, partnership or limited liability company in which Subdivider (directly or indirectly) has the right to make day-to-day management decisions and in which such the Subdivider (directly or indirectly) maintains an equity ownership interest.

2. To any ground lessee of a subdivided lot within the Project or to any tenant or subtenant to occupy space within the Project.

3. To a purchaser who purchases any Parcel or a portion of any Parcel (once further subdivided) after Project Completion with respect to such Parcel or portion of such Parcel.

4. Pursuant to any mortgage, deed of trust, sale and leaseback or other form of conveyance required to implement any reasonable method of financing requiring a security arrangement with respect to the Project or any portion thereof.

5. From the mortgagee, beneficiary or other person providing the financing after exercising its foreclosure rights or accepting a deed in lieu of foreclosure or otherwise succeeding to title to the Project or a portion thereof (the words “mortgage” and “deed of trust” include all other appropriate modes of financing).

6. To any transferee or assignee resulting from any proceeding in bankruptcy, receivership or order relating thereto.

B. City Consent Required. Consistent with Section 16 of the Development Agreement, except as provided in subsection A, City consent shall be required for Subdivider to transfer all or any of its rights or privileges, or delegate any of its obligations contained in this Agreement. The City Manager or its designee shall, within thirty (30) calendar days of request therefor, either consent to or disapprove the proposed assignment or transfer. Failure of the City Manager or its designee to provide its consent or disapproval within thirty (30) calendar days shall be deemed disapproval of the proposed assignment or transfer.

C. Consistent with Section 16 of the Development Agreement, any assignment or transfer of the rights and privileges of Subdivider or any portion thereof, whether or not the City consent has been required, shall be evidenced by an Assignment and Assumption Agreement reasonably satisfactory to Subdivider and the City Manager or its designee, pursuant to which the transferee or assignee shall assume all of the duties and obligations of the Subdivider under this Agreement with respect to the portion of the Subdivision Improvements assigned or transferred to such transferee which accrue from and after the date of such assignment or transfer.

12. NOTICES

All notices required or provided for in this Agreement shall be in writing and delivered in person or by mail, postage prepaid, as follows:

A. Any notice or communication required hereunder must be in writing, and may be given personally, by registered or certified mail (return receipt requested), or by Federal Express or other similar courier promising overnight delivery. If personally delivered, a notice shall be deemed to have been given when delivered to the Party to whom it is addressed. If given by registered or certified mail, such notice or communication shall be deemed to have been given and received on the first to occur of (i) actual receipt by any of the addressees designated below as the Party to whom notices are to be sent, or (ii) five (5) calendar days after a registered or

certified letter containing such notice, properly addressed, with postage prepaid, is deposited in the United States mail. If given by Federal Express or similar courier, a notice or communication shall be deemed to have been given and received on the date delivered as shown on a receipt issued by the courier. Any Party hereto may at any time, by giving ten (10) calendar days written notice to the other Party hereto, designate any other address in substitution of the address to which such notice or communication shall be given.

Notice to City:

Ernie Hernandez, City Manager
City of Commerce
2535 Commerce Way
Commerce, CA 90040

Jim Tolbert, Assistant City Manager
City of Commerce
2535 Commerce Way
Commerce, CA 90040

Director of Public Works & City Engineer
City of Commerce
2535 Commerce Way
Commerce, CA 90040

With a copy to:

City Attorney
City of Commerce
2535 Commerce Way
Commerce, CA 90040

Notice to Subdivider:

Adrian Comstock
Managing Member
Comstock Gage LLC
1801 Century Park East
Suite 1095
Los Angeles, CA 90067

With a copy to:

Stephen Etheridge
Allen Matkins Leck Gamble Mallory & Natsis
865 S Figueroa Street Suite 2800
Los Angeles, CA 90017

B. A Party may change the addresses above by giving notice in writing to the other Party and thereafter notices shall be addressed and transmitted to the new address.

13. ENTIRE AGREEMENT

This Agreement constitutes the entire agreement of the Parties with respect to its subject matter. All modifications, amendments, or waivers of any terms of this Agreement shall be in writing and signed by the duly authorized representatives of the Parties. In the case of the City, the duly authorized representative, unless otherwise specified herein, shall be the City Engineer.

14. SEVERABILITY

The provisions of this Agreement are severable. If any portion of this Agreement is held invalid by a court of competent jurisdiction, the remainder of the Agreement shall remain in full force and effect.

15. INCORPORATION OF RECITALS

The Recitals are hereby incorporated into this Agreement.

16. GOVERNING LAW

This Agreement shall be governed by the laws of the State of California.

17. EFFECTIVE DATE OF THE AGREEMENT

This Agreement shall be and become effective as of the date that it is executed by a duly authorized City Representative, it being the intention of the Parties that Subdivider shall first execute this Agreement and thereafter submit it to the City. The City shall insert the Effective Date and shall transmit a fully executed counterpart to Subdivider. This Agreement shall become null and void if not executed by the City within ninety (90) calendar days after delivery to City by Subdivider.

SIGNATURES BEGIN ON NEXT PAGE

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their respective officers thereunto duly authorized, as of the dates set forth below their respective signatures.

“SUBDIVIDER”

(Name of person or business entity)

By:_____
(Signature of authorized officer)

(Name of authorized officer)

(Title of authorized officer)

Date:_____

“CITY”

(Name of authorized City Representative)

By:_____
(Signature of authorized City Representative)

Date:_____

ATTEST:

(Name of City Clerk)

By: _____
(Signature of authorized City Clerk)

Date: _____

APPROVED AS TO FORM:

(Name of City Attorney)

By: _____
(Signature of City Attorney)

Date: _____

ACKNOWLEDGEMENTS BEGIN ON NEXT PAGE

CIVIL CODE §1189

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CIVIL CODE §1189

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EXHIBIT A

LEGAL DESCRIPTIONS FOR PARCELS

EXHIBIT B

SUBDIVISION IMPROVEMENTS AND PHASING

The Parties hereby agree that the City Conditions of Approval set forth below are the VTM Conditions of Approval for purposes of this Agreement and shall constitute the required Subdivision Improvements. The phasing of the Subdivision Improvements and associated Security requirements shall be pursuant to the Phased Development of the Project, as set forth below. For purposes of this Exhibit B, Subdivision Improvements and associated Security requirements for the Townhome Project are referred to herein as “**Phase 1.**” Phase 1A improvements are considered immediately necessary to serve the needs of the Phase 1 development. Phase 1B improvements are necessary for Phase 1 development, but may be phased in the construction process of Phase I. All references to a permit for grading of Phase 1 below means the grading permit for the Townhome Project, which is distinguished from the Remediation grading plan. Subdivision Improvements and associated Security requirements for the remaining Project buildings, excluding the Parking Structure, are referred to herein as “**Phase 2**”.

The City Subdivision Ordinance provides that “plans, profiles, and specifications” for (i) “road improvements, including drainage structures incidental thereto and including two-foot cement gutters wherever concrete curb is required” and (ii) any “fences, walls, water mains, sanitary sewers, other means of sewage disposal, or storm drains (other than structures incidental to road improvements)” shall be provided to the Director of Public Works not later than the time of submittal of the final map to the Director of Public Works (“**Plans and Specifications**”). (City Subdivision Ordinance §§ 21.32.070, 100.) The Parties acknowledge that the Plans and Specifications provide the basis for the required amount of Security for the Subdivision Improvements.

	Modelo Subdivision Improvement Agreement Conditions				
Condition NO.	Describe Work	Plans and Specs Date	Security Date	Complete Work Date	Cost Estimate
	For Purposes of this Chart Phase 1 is Townhomes, Phase 2 is all other public improvements excluding the parking structure				
	PUBLIC WORKS CONDITIONS				

	Modelo Subdivision Improvement Agreement Conditions				
Condition NO.	Describe Work	Plans and Specs Date	Security Date	Complete Work Date	Cost Estimate
63	Grind and overlay Zindell Ave, Kuhl Dr and the portion of Gage Ave between Slauson Ave. and Zindell Ave. with 2 inches of Asphalt rubber hot mix and implement aesthetic improvements per plans that will be submitted by the applicant and approved by the Building Official. AC paving type (specifications to be provided by city). The exact limit of grinding and overlay shall be determined and marked in the field by the Public Works inspector. At the City's discretion Applicant may be granted an in-lieu fee instead of street paving for Gage Avenue and if so, Applicant shall pay in-lieu fee for the street rehabilitation. The in-lieu fees shall be calculated during plan review	Phase 1A. To be approved by the City before permit issued for construction of Phase 1.	Phase 1A. Bonds within 30 days after Final Map Approval and before permit issued for remediation grading	Prior to Final Cert Occupancy for Phase 1	\$625,000
64	Plant Parkway Trees on Zindell Ave consistent with the Modelo design. Applicant shall submit a landscaping plan that shall be subject to City's approval, which shall not be unreasonably withheld.	Phase 1B. To be approved by the City before permit issued for construction of Phase 1.	Phase 1B. Bonds prior to issuance of grading permits for Phase 1.	Prior to Final Cert of Occupancy for Phase 1.	\$20,000
65	Conduct a street lighting study on Zindell Ave and Kuhl Dr for City's the approval and install lighting on Zindell Ave and Kuhl Dr consistent with the Modelo design.	Phase 1B. To be approved by the City before permit issued for construction of Phase 1.	Phase 1B. Bonds prior to issuance of grading Permit for Phase 1.	Prior to Final Cert of Occupancy Phase 1.	\$100,000

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Condition NO.	Describe Work	Plans and Specs Date	Security Date	Complete Work Date	Cost Estimate
66	Underground all overhead utilities on Zindell Ave, Kuhl Dr and the portion of Gage Ave between Slauson Ave. and Zindell Ave. Applicant at the City's discretion may pay in lieu fees to the City for the required undergrounding work. Applicant shall prepare an engineer's estimate including contingencies for the City's review.	Phase 1B. To be approved by the City before permit issued for construction of Phase 1.	Phase 1B. CFD or Bonds prior to issuance of construction permits for Phase 1.	Prior to Final Cert of Occupancy for Phase 1.	\$2,000,000
67	Dedicate Corner cut off and construct ADA ramps and full width sidewalk within the frontage of the property on Zindell Ave.	Phase 1A. To be submitted and approved by the City before permit issued for grading of Phase 1.	Phase 1A. Bonds within 30 days after Final Map Approval and before permit issued for remediation grading	Prior to Final Cert of Occupancy for Phase 1.	\$95,000
68	For Phase 1. Dedicate adequate right of way for street purposes. Dedications shall be to the discretion of the Public Works Director, or his/her designees. For Phase 2. Dedicate adequate right of way for street purposes. Dedications shall be to the discretion of the Public Works Director, or his/her designees.			Prior to Final Cert of Occupancy for Phase 1. Prior to Final Cert of Occupancy for Phase 2	
70	Site Drainage not retained on site shall be collected and deposited in the storm drain or similar structure or device, and if necessary, filtered per NPDES regulations. Site storm and/or nuisance water shall not flow across the city sidewalk.	Prior to issuance of grading permit for Phase 1.		Prior to Final Cert Occupancy Phase 1,	Developer to submit cost estimates with plans and specs for review and approval by City

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Condition NO.	Describe Work	Plans and Specs Date	Security Date	Complete Work Date	Cost Estimate
71	Comply with requirements of Los Angeles County for construction of new storm drain and connection to the existing and or new catch basin the public right of way. Grant adequate easement to LAC for ownership and maintenance of storm drains.	Phase 1A. To be submitted and approved by LA County and the City before permit issued for grading of Phase 1...	Phase 1A. Bonds within 30 days after Final Map Approval and before permit issued for remediation grading	Prior to Final Cert of Occupancy for Phase 1	\$ 194,330
72	Construct /reconstruct new catch basin at the end of Zindell Ave. to handle site and street drainage per LA County Flood Control requirements.	Phase 1A. To be submitted and approved by LA County and the City before permit issued for grading of Phase 1.	Phase 1A. Bonds within 30 days after Final Map Approval and before permit issued for remediation grading	Prior to Final Cert of Occupancy for Phase 1.	\$3,500
73	Construct curb return type driveways for ingress and egress purposes.			Prior to Final Cert of Occupancy for Phase 1, as applicable to Phase 1	Developer to submit cost estimates with plans and specs for review and approval by City
74	Sewer capacity Study shall be prepared for the City's review and approve by the City Engineer or his/her designee. The radius of the study shall be Commerce	Phase 1B. Sewer capacity	Phase 1B. CFD or Bonds Prior	Prior to Final Cert of	\$4,000,000

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Condition NO.	Describe Work	Plans and Specs Date	Security Date	Complete Work Date	Cost Estimate
	city limits. If sewer is found to be inadequate, sewer, improvement plans shall be submitted to the City for approval and required improvements shall be made at the sole cost to the property owner/developer.	study be submitted and approved by LA County and the City before permit issued for grading of Phase 1.	to issuance of grading permits for Phase 1.	Occupancy for Phase 1.	
75	Conduct a water capacity study per requirements of Cal Water and the City.	Phase 1A. To be submitted and approved by Calwater and the City before permit issued for grading of Phase 1.	Phase 1A. Bonds within 30 days after Final Map Approval and before permit issued for remediation grading	Prior to Final Cert of Occupancy for Phase 1.	\$100,000
76	Execute a covenant agreement with the City for ingress and egress from/to the City parks.		None	Prior Cert Occupancy for Community Element	
77	Any and all required public improvements impacting or associated with Phase 1 required as part of the Traffic Report. Improvements within the State Right of way shall meet Caltrans requirements, if applicable.	See PDF TRA-1 through TRA-10 below.	See PDF TRA-1 through	See PDF TRA-1 through TRA-10 below.	\$1,500,000

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Condition NO.	Describe Work	Plans and Specs Date	Security Date	Complete Work Date	Cost Estimate
			TRA-10 below.		
81	Underground all dry utility services (if permitted by the applicable utility companies) that will serve the property, including telephone, electric, CATV, and internet. Show services to the proposed development on the offsite plans. Applies to both property line and within the property.	Phase 1A To be submitted and approved by utility companies and the City before permit issued for grading for Phase 1.	Phase 1A. Bonds within 30 days after Final Map Approval and before permit issued for remediation grading	Prior to Final Cert of Occupancy for Phase 1.	\$100,000
84A	All existing driveways aprons for Phase 1, to be closed shall be removed and replaced with new curb, gutter, and sidewalk constructed in accordance with SPPWC standards.	To be submitted and approved by the City before permit for construction issued for Phase1	None	Prior to Final Cert of Occupancy for Phase 1	Developer to submit cost estimates with plans and specs for review and approval by City
84B	All existing driveways aprons for Phase 2, to be closed shall be removed and replaced with new curb, gutter, and sidewalk constructed in accordance with SPPWC standards.	To be submitted and approved by the City before permit for construction issued for Phase 2	None	Prior to Final Cert of Occupancy for Phase 2	Developer to submit cost estimates with plans and specs for review and approval by City

	Modelo Subdivision Improvement Agreement Conditions				
Condition NO.	Describe Work	Plans and Specs Date	Security Date	Complete Work Date	Cost Estimate
	EIR CONDITIONS				
PDF- TRA-1.	The Applicant shall reconfigure the southbound approach of the Telegraph Road I/5 Northbound Ramps (Garfield Avenue) intersection to accommodate a right-turn lane. This would result in a southbound approach providing two through lanes and one right-turn lane. This improvement could be implemented by restriping the existing lanes and no widening would be required.	Phase 1B. To be submitted and approved by the Caltrans and City before permit issued for construction of Phase 1	Phase 1B. CFD or bonds Before construction permit issued for Phase 1	Prior to Final Cert of Occupancy for Phase 1.	\$100,000
PDF- TRA-2.	The applicant shall submit a fair share payment to the City toward the cost of installing a signal at the Telegraph Road/1-5 Northbound Off-Ramp (Slauson Avenue) intersection.	Prior Bldg Permits for construction for Phase 2	CFD or Bonds Prior Bldg Permits for construction for Phase 2	Prior to Final Cert of Occupancy for Phase 2	
PDF- TRA-3	The Applicant shall reconfigure the southbound approach of the Garfield Avenue/Slauson Avenue intersection to accommodate a right-turn lane. This would result in a southbound approach providing a left-turn lane, two through lanes, and a right-turn lane. This improvement could be implemented by restriping the existing lanes and no widening would be required.	Phase 1B. To be submitted and approved by the City before permit issued for construction for Phase 1.	Phase 1B. CFD or bonds before construction permit issued for Phase 1	Prior to Final Cert of Occupancy for Phase 1	\$100,000

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Condition NO.	Describe Work	Plans and Specs Date	Security Date	Complete Work Date	Cost Estimate
PDF- TRA-4	**The Applicant shall reconfigure the southbound approach of the Garfield Avenue/Slauson Avenue intersection into two three-legged intersections. Intersection 13a, which would be a T intersection between the 1-5 Southbound Ramps & Slauson Avenue, would be restriped to provide one left-turn lane, two through lanes, and one through/right-turn lane in the eastbound direction; two left-turn lanes and one free right-turn lane in the southbound direction: two through lanes and one free right-turn lane in the westbound direction; and a left-turn/through/right-turn lane out of the north bound driveway. Intersection 13b, which would be a T intersection between Gage Avenue & Slauson Avenue, would be restriped to provide two through lanes and one right-turn lane in the eastbound direction: one left-turn/through/right turn lane for the southbound driveway: two left-turn lanes, two through lanes, and a through/right turn lane in the westbound direction; and two left-turn lanes and a free right-turn lane in the northbound direction.	Prior to issuance of construction permit for Phase 2.	CFD or bonds prior to issuance of bldg. permit for Phase 2.	Prior to Final Cert of Occupancy for Phase 2	
PDF- TRA-5	The Applicant shall reconfigure the eastbound approach of the Telerah Road/Slauson Avenue intersection to accommodate an additional through lane, resulting in an eastbound approach providing one left-turn lane, three through lanes, and one right-turn lane. The westbound approach of the intersection would be modified to accommodate a new through/right-turn lane, resulting in one left-turn lane, two through lanes, one through/right-turn lane, and one right-turn lane. The overlap phase on the westbound approach would be eliminated with the addition of the through/right-turn lane. The southbound approach would be modified to accommodate a second right-turn lane and would eliminate the existing free right-turn lane. The approach would provide a left-turn lane, two through lanes, and two right-turn lanes. This improvement could be implemented by restriping the existing lanes in both directions and no widening would be required, although reconfiguration of the "pork-chop"	Prior to issuance of construction permits for Phase 2	CFD or bonds prior to issuance of construction permits for Phase 2	Prior to Final Cert of Occupancy for Phase 2	

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Condition NO.	Describe Work	Plans and Specs Date	Security Date	Complete Work Date	Cost Estimate
	right-turn island on the southbound approach would be necessary.				
PDF-TRA-6	The Applicant shall reconfigure the southbound approach of the Eastern Avenue/Gage Avenue intersection to accommodate a through/right-turn lane. This would result in a southbound approach providing one left turn lane, two through lanes and one through/right-turn lane. This improvement could be implemented by restriping the existing lanes and no widening would be required. The through lane would need to be striped south of the intersection.	Prior to issuance of construction permits for Phase 2	CFD or bonds prior to issuance of construction permits for Phase 2	Prior to Final Cert of Occupancy for Phase 2	
PDF-TRA-7	The Applicant shall reconfigure the northbound approach of the Garfield Avenue/Gage Avenue intersection to accommodate a right-turn lane and the southbound approach of the intersection to accommodate a right-turn lane. This would result in a northbound approach providing one left-turn lane, two through lanes, and one right-turn lane and a southbound approach providing one left-turn lane two through lanes and one right turn lane. This improvement could be implemented by restriping the existing wide through/right-turn lanes in each direction into two lanes - one through lane and one right-turn lane. No widening would be required.	Prior to issuance of construction permits for Phase 2	CFD or bonds prior to issuance of construction permits for Phase 2	Prior to Final Cert of Occupancy for Phase 2	
PDF-TRA-8	The Applicant shall reconfigure the southbound approach of the Eastern Avenue/Florence Avenue intersection to accommodate a through/right-turn lane. This would result in a southbound approach providing two left-turn lanes two through lanes one through/right-turn lane and one right turn lane. This improvement could be implemented by restriping one of the existing through lanes and therefore no widening would be required. The right-turn lane immediately adjacent to the curb would have to be signed as a "Freeway Only" turn lane.	Prior to issuance of construction permits for Phase 2	CFD or bonds prior to issuance of construction permits for Phase 2	Prior to Final Cert of Occupancy for Phase 2	

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PDF- TRA-9	The Applicant shall reconfigure the westbound approach of the Paramount Boulevard/Telegraph Road intersection to accommodate a through/right-turn lane. This would result in a westbound approach providing one left-turn lane, two through lanes, and one through/right-turn lane. This improvement could be implemented by removing part of the median and moving back the stop bar at the adjacent intersection. The existing crosswalk would have to be relocated as a result of the right-turn lane. No widening would be required.	Prior to issuance of construction permits for Phase 2	CFD or bonds prior to issuance of construction permits for Phase 2	Prior to Final Cert of Occupancy for Phase 2	
PDF- TRA-10	The contractor will prepare a detailed Construction Management Plan, including street closure , information, a detour plan, haul routes, and a staging plan, and submit to the City for review and approval. The Construction Management Plan will formalize how construction would be carried out and identify specific actions that would be required to reduce effects on the surrounding community. The Construction Management Plan will be based on the nature and timing of the specific construction activities and other projects in the vicinity of the Project site and will include, but not be limited to, the following elements, as appropriate: • Advance, bilingual notification of adjacent property owners and occupants of upcoming construction activities, including durations and daily hours of operation. • Prohibition of construction worker or equipment parking on adjacent streets. • Temporary pedestrian, bicycle, and vehicular traffic controls (i.e., flag persons) during all construction activities adjacent to public rights-of-way to ensure traffic safety on public roadways. These controls will include, but not be limited to, flag people trained in pedestrian and bicycle safety. • Temporary traffic control during all construction activities adjacent to public rights-of-way to	To be submitted and approved by the City before permit issued for grading for Phase 1	Not Applicable	To be submitted and approved by the City before permit issued for grading Phase 1	

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	improve traffic flow on public roadways (e.g., flag persons). • Scheduling of construction activities to reduce the effect on traffic flow on surrounding arterial streets. • Potential sequencing of construction activity to reduce the amount of construction-related traffic on arterial streets. • Containment of construction activity within the Project site boundaries • Prohibition of construction-related vehicles/equipment parking on surrounding public streets. • Safety precautions for roadway travelers, transit riders, vehicular parking, pedestrians, and bicyclists through such measures as alternate routing and protection barriers will be implemented as appropriate. • Scheduling of construction-related deliveries, haul trips, etc., so as to occur outside the commuter peak hours to the extent feasible. • Notifying emergency service providers and law enforcement to ensure that provision of sufficient emergency service, access, and evacuation can occur during construction. • Obtain the required permits for truck haul routes prior to issuance of any permit for the Project • The Project contractor shall identify and enforce truck haul routes deemed acceptable by the City and Caltrans for construction trucks. • Signs shall be posted along roads identifying construction traffic access or flow limitations due to single lane conditions during periods of truck traffic if needed. • Accommodate all equipment and worker parking on-site to the extent feasible. Approval from Caltrans for any lane closures during construction period.				

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