

MEMORANDUM OF UNDERSTANDING AVENUE G DEVELOPMENT

This MEMORANDUM OF UNDERSTANDING (“**MOU**”) is made as of December 13, 2022, by and between the CITY OF LANCASTER, a municipal corporation and charter city (“**City**”) and AVENUE G, LLC (“**Developer**”) **Developer** (the City and Developer are sometimes referred to herein individually as a “**Party**” and collectively as the “**Parties**”), with reference to the following facts:

A. Developer plans to develop a regional industrial business park in Lancaster, CA in an approximate one-half square mile area generally bordered by Avenue G, 30th Street West, Avenue G-8, and 40th Street West (“**Project Area**”).

B. The Project Area has been the subject of significant land speculation over several decades, resulting in excessive subdivision, with an estimated 104 individual assessor parcels in the Project Area.

C. The presence of multiple, undersized, and irregularly shaped parcels in the Project Area makes land assemblage and potential development exceedingly time consuming, expensive, and difficult.

D. At its own expense, Developer has been diligently pursuing land assemblage over the past two (2) years. These efforts have resulted in acquisition or anticipated acquisition of approximately 25 individual parcels to date, or approximately 35% of the total Project Area.

E. Developer desires to partner with the City to continue land acquisition, undertake design and planning efforts, complete entitlement and permitting, and fund construction of a regional industrial business park that would include development-ready lots and/or industrial spec or build-to-suit facilities for sale or lease.

D. The City desires to partner with Developer to cause development of large scale, regional industrial development in the Project Area, which is included in the City’s Fox Field Industrial Corridor (“**FFIC**”) Specific Plan, for the purpose of private sector job creation, tax revenue generation, and to spur further development in the FFIC.

NOW, THEREFORE, the Parties agree as follows:

1. Responsibilities of Developer.

a. Developer will continue to acquire, assemble, and hold title to parcels in the Project Area at its own expense, including payment of all required taxes and assessments.

b. Developer will be given notice of planning, design, and engineering efforts by the City related to public infrastructure and industrial park development.

c. Developer plans to serve as lead developer, at its own expense, in designing, entitling, constructing, and marketing development-ready lots and/or industrial buildings and facilities in Project Area, excluding any and all public infrastructure and land. At its own discretion, Developer may partner with other qualified development partners and may also develop Project in phases.

d. To the extent that Assessment District or other public financing programs or options are required to construct infrastructure, Developer agrees to cooperate and coordinate with the City in utilizing such options.

e. Neither Party shall receive any compensation from the other Party under this MOU.

f. Developer agrees to indemnify, defend and hold harmless the City, its elected officials, officers, employees, and volunteers (collectively for purposes of this Section, "City Indemnitees") from and against any and all claims, losses, obligations, or liabilities whatsoever, including reasonable attorney's fees, incurred in or in any manner arising out of this MOU, except where caused by the sole, active negligence or willful misconduct of the City Indemnitees.

2. Responsibilities of City.

a. To the extent permitted by law, City will support and coordinate with Developer's efforts to acquire and assemble parcels in the Project Area.

b. The City shall collaborate in good faith with Developer to determine the scope and design of public infrastructure required for the Project.

c. To the extent that Assessment District or other public financing programs or options are required to construct infrastructure and/or development, the City agrees to cooperate and coordinate with Developer in utilizing these options, at no cost to the City.

3. Notices. Any notice, demand, request, consent, approval, or communication either party desires or is required to give to the other party or any person shall be in email to the contacts set forth below, with "delivered" receipt requests, and/or in writing and either served personally or sent by prepaid, first-class mail to the address set forth below. Notice shall be deemed communicated twenty-four (24) hours from receipt of confirmation of email delivery or forty-eight (48) hours from the time of mailing if mailed as provided in this section.

To City: City of Lancaster
c/o Chenin Dow, Senior Manager
cdow@cityoflancasterca.gov

City of Lancaster
Attn: Economic Development
44933 North Fern Avenue
Lancaster, California 93534

To Developer: [Insert]

4. Assignment of Agreement. The Parties hereto may not assign their obligations hereunder to any assignee without the knowledge and prior written consent of the other party, which consent the other party shall not unreasonably withhold. Assignment may be made only to an assignee willing, financially capable and competent to carry out the assignor's obligations.

5. General Provisions.

a. Except as otherwise provided herein, the terms, conditions, covenants and agreements set forth herein shall apply to and bind the heirs, executors, administrators, assigns and successors of the Parties hereto.

b. The Parties to this Agreement do not rely upon any warranty or representation not contained in this Agreement and all exhibits attached thereto and incorporated by referenced therein.

c. This Agreement shall be governed by and interpreted with respect to the laws of the State of California.

d. Any failure or delay by any party in asserting any of its rights and remedies as to any default shall not operate as a waiver of any default or of any rights or remedies provided for herein.

6. Term; Default; Remedies; Termination.

a. This MOU shall be effective upon execution of the Agreement by both Parties, and shall remain in full force and effect for ten (10) years.

b. In the event of a breach by a Party (the Defaulting Party) of a material term of this MOU that remains uncured for thirty (30) days after the other Party has provided written notice of a breach, the other Party may avail itself of any remedy available in law or in equity.

7. Severability. In the event that any provision or provisions of this MOU are held unenforceable, all provisions not so held shall remain in full force and effect.

8. Authority of Signatories. The persons executing this MOU on behalf of the Parties hereto warrant that they are duly authorized to execute this agreement on behalf of said Parties and that by so executing this Agreement, the Parties are formally bound to the provisions of this Agreement.

9. Entire Agreement. This MOU contains the entire agreement between the Parties relating to the subject matter hereof. This MOU may be amended or modified only by a written amendment signed by both Parties or their respective successors or assigns.

10. Counterparts. This MOU may be executed in one or more counterparts, each of which shall be deemed an original, and all such counterparts together shall constitute one and the same document. The signature and acknowledgment pages from such counterparts may be assembled together to form a single instrument comprised of all pages of this MOU and a complete set of all signature and acknowledgment pages.

THE PARTIES, having read and considered the above provisions, indicate their agreement by their authorized signatures below.

AVENUE G LLC, a California limited liability company

By: _____

Dated: _____

CITY OF LANCASTER:

By: _____
Jason Caudle, City Manager

Dated: _____

ATTEST:

Andrea Alexander, City Clerk

APPROVED AS TO FORM:

Allison Burns, City Attorney