FUNDING AGREEMENT

This Funding Agreement ("Agreement") is made this 12th day of November, 2014 ("Execution Date") by and between the City of Menlo Park ("City") and the Sobrato Organization ("Sobrato"), each of which is referred to herein individually as "Party" and jointly as "Parties."

RECITALS

WHEREAS, the City received an application from Sobrato to redevelop the property located at 151 Commonwealth Drive and 164 Jefferson Drive ("Property") by demolishing the existing buildings and developing the Property with two four-story office buildings ("Development"); and

WHEREAS, Sobrato offered to enter into a funding agreement to share the costs of replacing the existing water main that crosses the Property ("Project") and this was incorporated into the Conditional Development Permit approved for the Property; and

WHEREAS, the City and Sobrato have agreed to share the cost of the Project on the terms and conditions contained herein.

NOW, THEREFORE, the Parties agree as follows:

SECTION 1: Scope of Work and Reporting

1.1 Scope of Work. Sobrato is responsible for the completion of the Scope of Work as described in Exhibit A, which is attached to this Agreement and incorporated herein by this reference. Sobrato is responsible for procuring and administering any professional service and/or other contracts entered into in connection with the Scope of Work. Sobrato will oversee completion of the Scope of Work. Sobrato may appoint a designee or engage contractor(s) to perform work necessary to complete the Scope of Work, but Sobrato remains responsible to the City for the completion of the Scope of Work.

1.2 Required Approvals; Compliance with Laws. Prior to commencement of the Scope of Work, Sobrato or its designee (e.g., a consultant) will obtain all applicable local, state and federal approvals and permits for the Scope of Work. In addition, Sobrato must comply with all applicable federal, state and local laws and regulations applicable to the Project, including, but not limited to, prevailing wage requirements.

1.3 Access to Records and Record Retention. At all reasonable times, Sobrato will permit the City access to all reports, designs, drawings, plans, specifications, schedules and other materials prepared, or in the process of being prepared, for the Scope of Work by Sobrato or any contractor or consultant of Sobrato. Sobrato will provide copies of any documents described in this Section to the City upon request. Sobrato will retain all records pertaining to the Scope of Work for at least three years after completion of the Project.

SECTION 2: Funding and Payment

2.1 Funding Commitment. The City agrees to pay to Sobrato Fifty-Three Thousand Three Hundred Dollars ($53,300) for expenditures related to the Scope of Work ("City Funding"). The City Funding is a fixed contribution; therefore, public bidding/contracting requirements do not apply as they would not result in any cost savings or benefit to the City.
Sobrato agrees to pay the entire amount in excess of the City Funding needed to complete the Scope of Work. The City’s funding commitment under this Agreement in no way establishes a right for Sobrato to receive additional funding from the City.

2.2 Use of Funds.

a) Sobrato agrees that it shall use the City Funding only for the Scope of Work. Sobrato shall document, in accordance with generally-accepted accounting principles, the costs paid to complete the Scope of Work. Sobrato shall not use the City Funding to pay for costs which are unrelated to the Scope of Work. As identified in Exhibit A, the costs for any connections, fittings, or other appurtenances needed for making water connections to serve the proposed redevelopment of the Property will be paid solely by Sobrato.

b) If the City determines that Sobrato has used City Funding to pay for costs other than for the approved Scope of Work, the City will notify Sobrato of its determination. Sobrato shall, within 30 days of notification of the City’s determination, either (i) repay such funds to the City, or (ii) provide to the City an answer detailing Sobrato’s understanding of how the funds in question were spent for the approved Scope of Work, to which the City will respond within 30 days of receipt. The City’s response will be final, unless otherwise stated in the response, and Sobrato shall repay any funds determined to have been used other than for the approved Scope of Work within 30 days.

2.3 Payment of Funds. The City will pay to Sobrato the City Funding only upon completion and acceptance of the work by the City. At such time, Sobrato will provide an accounting of the costs for the Scope of Work as described in this Section 2 and an invoice requesting payment of the City Funding. Provided there is no question regarding the use of funds, the City will pay the City Funding to Sobrato within 30 days of the date of the invoice.

SECTION 3: Term

3.1 Term. The term of this Agreement will commence on the Execution Date and conclude upon the City’s payment of the City Funding to Sobrato upon the successful completion of the Scope of Work.

3.2 Time of Performance. The Scope of Work must be completed prior to the City’s final inspection allowing occupancy of the first of the two buildings that comprise the Development.

SECTION 4: Indemnification and Insurance

4.1 Indemnity by Sobrato. Sobrato shall indemnify, keep and save harmless the City and its directors, officers, agents and employees against any and all suits, claims or actions arising out of any injury to persons or property that may occur, or that may be alleged to have occurred, arising from the performance of the Project or implementation of this Agreement. Sobrato further agrees to defend any and all such actions, suits or claims and pay all charges of attorneys and all other costs and expenses of defenses as they are incurred. If any judgment is rendered, or settlement reached, against the City or any of the individuals enumerated above in any such action, Sobrato shall, at its expense, satisfy and discharge the same. This indemnification shall survive termination or expiration of the Agreement.

4.2 Insurance. For the purposes of this Insurance section, "Entity" is defined as any entity designing, approving designs and/or performing the Scope of Work funded by this
Agreement. Entities may include Sbrato, a contractor of Sbrato, another body on behalf of which Sbrato submitted its funding application, and/or a contractor of such other body.

All Entities will provide the appropriate insurance covering the work being performed. The insurance requirements specified in this section will cover each Entity's own liability and any liability arising out of work or services of Entity subcontractors, subconsultants, suppliers, temporary workers, independent contractors, leased employees, or any other persons, firms or corporations (hereinafter collectively referred to as "Agents") working on the Project.

a) Minimum Types and Scope of Insurance. Each Entity is required to procure and maintain at its sole cost and expense insurance subject to the requirements set forth below. Such insurance will remain in full force and effect throughout performance of the Scope of Work. All policies will be issued by insurers acceptable to the City (generally with a Best's Rating of A-10 or better). Each Entity is also required to assess the risks associated with work to be performed by Agents and to require that Agents maintain adequate insurance coverages with appropriate limits and endorsements to cover such risks. To the extent that its Agent does not procure and maintain such insurance coverage, an Entity is responsible for and assumes any and all costs and expenses that may be incurred in securing said coverage or in fulfilling Entity's indemnity obligations as to itself or any of its Agents in the absence of coverage. Entities may self-insure against the risks associated with the Scope of Work, but in such case, waive subrogation in favor of the City respecting any and all claims that may arise.

i. Workers' Compensation and Employer's Liability Insurance. Worker's Compensation coverage must meet statutory limits and Employer's Liability Insurance must have minimum limits of One Million Dollars. Insurance must include a Waiver of Subrogation in favor of the City.

ii. Commercial General Liability Insurance. The limit for Commercial General Liability Insurance in each contract and subcontract cannot be less than One Million Dollars. Commercial General Liability Insurance must be primary to any other insurance, name the City as an Additional Insured, include a Separation of Interests endorsement and include a Waiver of Subrogation in favor of the City.

iii. Business Automobile Liability Insurance. The limit for Business Automobile Liability Insurance in each contract and subcontract cannot be less than One Million Dollars. Insurance must cover all owned, non-owned and hired autos, and include a Waiver of Subrogation in favor of the City.

iv. Property Insurance. Property Insurance must cover an Entity's and/or Agent's own equipment as well as any materials to be installed. Property Insurance must include a Waiver of Subrogation in favor of the City.

v. Professional Liability Insurance. If deemed appropriate by an Entity in consideration of the work required for the Project, insurance should cover each Entity's and any Agent's professional work on the Project. The limit for Professional Liability Insurance in each appropriate contract and subcontract should not be less than One Million Dollars.

vi. Contractors' Pollution Liability Insurance and/or Environmental Liability Insurance. If deemed appropriate by an Entity in consideration of the work required for the Project, insurance should cover potential pollution or environmental contamination or
accidents. The limit for Pollution and/or Environmental Liability Insurance in each appropriate contract and subcontract should not be less than One Million Dollars. Such insurance must name the City as an Additional Insured and include a Waiver of Subrogation in favor of the City.

vii. Railroad Protective Liability Insurance. Insurance is required if the Project will include any construction or demolition work within 50 feet of railroad tracks. The limit for Railroad Protective Liability Insurance in each appropriate contract and subcontract cannot be less than Two Million Dollars per occurrence and Six Million Dollars annual aggregate.

b) Excess or Umbrella Coverage. Sobrato and/or any other Entity may opt to procure excess or umbrella coverage to meet the above requirements, but in such case, these policies must also satisfy all specified endorsements and stipulations for the underlying coverages and include provisions that the policy holder's insurance is to be primary without any right of contribution from the City.

c) Deductibles and Retentions. Sobrato must ensure that deductibles or retentions on any of the above insurance policies are paid without right of contribution from the City. Deductible and retention provisions cannot contain any restrictions as to how or by whom the deductible or retention is paid. Any deductible or retention provision limiting payment to the named insured is unacceptable. In the event that any policy contains a deductible or self-insured retention, and in the event that the City seeks coverage under such policy as an additional insured, Sobrato will ensure that the policy holder satisfies such deductible to the extent of loss covered by such policy for a lawsuit arising from or connected with any alleged act or omission of the Entity or Agents, even if neither the Entity nor Agents are named defendants in the lawsuit.

d) Claims Made Coverage. If any insurance specified above is provided on a claim-made basis, then in addition to coverage requirements above, such policy must provide that:

i. Policy retroactive date coincides with or precedes the Entity's start of work (including subsequent policies purchased as renewals or replacements).

ii. Entity will make every effort to maintain similar insurance for at least three years following Project completion, including the requirement of adding all additional insureds.

iii. If insurance is terminated for any reason, each Entity agrees to purchase an extended reporting provision of at least three years to report claims arising from work performed in connection with this Agreement.

iv. Policy allows for reporting of circumstances or incidents that might give rise to future claims.

e) Failure to Procure Adequate Insurance. Failure by any Entity to procure sufficient insurance to financially support Section 4.1, Indemnity by Sobrato, of this Agreement does not excuse Sobrato from meeting all obligations of Section 4.1 and the remainder of this Agreement, generally. Prior to beginning work under this Agreement, Sobrato must obtain, and produce upon request of the City, satisfactory evidence of compliance with the insurance requirements of this section.
SECTION 5: Miscellaneous

5.1 Notices. All notices required or permitted to be given under this Agreement must be in writing and mailed postage prepaid by certified or registered mail, return receipt requested, or by personal delivery or overnight courier to the appropriate address indicated below or at such other place(s) that either Party may designate in written notice to the other. Notices are deemed received upon delivery if personally served, one day after mailing if delivered via overnight courier, or two days after mailing if mailed as provided above.

To City:
City of Menlo Park
701 Laurel St.
Menlo Park, CA 94025
Attn: Jesse Quirion
Interim Public Works Director

To Sobrato:
The Sobrato Organization
Attn: John Michael Sobrato
10600 N. De Anza Blvd., Suite 200
Cupertino, CA 95014

5.2 No Waiver. No waiver of any default or breach of any covenant of this Agreement by either Party will be implied from any omission by either Party to take action on account of such default if such default persists or is repeated. Express waivers are limited in scope and duration to their express provisions. Consent to one action does not imply consent to any future action.

5.3 Assignment. Parties are prohibited from assigning, transferring or otherwise substituting their interests or obligations under this Agreement without the written consent of all other Parties, provided however, Sobrato shall have the right to assign this Agreement to an affiliated entity of Sobrato that is the owner of the Property, without the prior approval or consent of the City.

5.4 Governing Law. This Agreement is governed by the laws of the State of California as applied to contracts that are made and performed entirely in California.

5.5 Compliance with Laws. In performance of this Agreement, the Parties must comply with all applicable Federal, State and local laws, regulations and ordinances.

5.6 Modifications. This Agreement may only be modified in a writing executed by both Parties.

5.7 Attorneys' Fees. In the event legal proceedings are instituted to enforce any provision of this Agreement, the prevailing Party in said proceedings is entitled to its costs, including reasonable attorneys' fees.

5.8 Relationship of the Parties. It is understood that this is an Agreement by and between Independent Contractors and does not create the relationship of agent, servant, employee, partnership, joint venture or association, or any other relationship other than that of Independent Contractor.
5.9 **Ownership of Work.** All reports, designs, drawings, plans, specifications, schedules, studies, memoranda, and other documents assembled for or prepared by or for, in the process of being assembled or prepared by or for, or furnished to Sobrato under this Agreement are the joint property of the City and Sobrato, and will not be destroyed without the prior written consent of the City. The City is entitled to copies and access to these materials during the progress of the Project and upon completion or termination of the Project or this Agreement. Sobrato may retain a copy of all material produced under this Agreement for its use in its general activities. This Section does not preclude additional shared ownership of work with other entities under contract with Sobrato for funding of the Project.

5.10 **Non-discrimination.** Sobrato and any contractors performing services on behalf of Sobrato will not discriminate or permit discrimination against any person or group of persons on the basis of race, color, religion, national origin or ancestry, age, sex, sexual orientation, marital status, pregnancy, childbirth or related conditions, medical condition, mental or physical disability or veteran’s status, or in any manner prohibited by federal, state or local laws.

5.11 **Warranty of Authority to Execute Agreement.** Each Party to this Agreement represents and warrants that each person whose signature appears hereon is authorized and has the full authority to execute this Agreement on behalf of the entity that is a Party to this Agreement.

5.12 **Severability.** If any portion of this Agreement, or the application thereof is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining portions of this Agreement, or the application thereof, will remain in full force and effect.

5.13 **Counterparts.** This Agreement may be executed in counterparts.

5.14 **Entire Agreement.** This Agreement constitutes the entire agreement between the Parties pertaining to its subject matter and supersedes any prior or contemporaneous written or oral agreement between the Parties on the same subject.

IN WITNESS WHEREOF, the Parties have hereunder subscribed their names the day and year indicated below.

CITY OF MENLO PARK

By: Alex McIntyre  
Its: City Manager

THE SOBRATO ORGANIZATION,  
a California limited liability company

By: John Michael Sobrato  
Its: Manager

Approved as to form:

City Attorney  
City of Menlo Park

Exhibit A: Scope of Work Information
EXHIBIT A
SCOPE OF WORK

Replacement of approximately 600 linear feet of 10 inch diameter water main running along the complete length of the property line parallel to Highway 101. Said pipe to be replaced with new C900 pipe 10 inches in diameter, including the installation of isolation valves at each end to facilitate future operation and maintenance. Work will also include the abandonment of the existing 600 linear feet of 10 inch AC water pipe by means of filling it with slurry and capping both ends. The costs for any connections, fittings, or other appurtenances needed for making water connections to serve the proposed redevelopment of the Property will be paid for solely by Sobrato.