ASSIGNMENT & ACCEPTANCE AGREEMENT
WITH CONSENT

This ASSIGNMENT AND ACCEPTANCE AGREEMENT ("Agreement") is made this _______________________, 2017, by and between MidPen Housing Corporation hereinafter referred to as "Assignor", the City of Menlo Park hereinafter referred to as "Assignee", and DevCon Construction Inc. ("Contractor").

WHEREAS, Assignor entered into a Funding Agreement with the Assignee dated __08/19/2016__ by which Assignor agreed to cause the construction of certain water main improvements on Assignee’s property/public right of way ("Project").

WHEREAS Assignor entered into a contract, with the Contractor dated __09/01/2016__, for the construction of the Project hereinafter referred to as "Contract".

WHEREAS, Pursuant to the Funding Agreement, Assignor and Assignee agreed that upon completion of the Project, Assignor would assign and the Assignee would assume all Assignor’s rights under and warranties, from the Contract. The assignment and assumption does not include any of Assignor’s obligations under the Contract and Contractor by its signature on this Agreement acknowledges that Assignor’s obligations under the Contract have been satisfied as of the date of this Agreement.

WHEREAS, Pursuant to the Funding Agreement, Assignor and Assignee agreed that upon completion of the Project, Assignor would assign and the Assignee would accept the Project and the improvements and work included and a part of the Project, Assignee further agreed on behalf of itself and all successors and assigns to release MidPen and its related and affiliated entities and their insurers (but not its subcontractors performing the work nor such subcontractors’ insurers) from all responsibility and liability associated with the Project.

WHEREAS, the Contract permits the Assignor to assign its rights under the Contract.

NOW THEREFORE, IN CONSIDERATION OF THE MUTUAL COVENANTS, PROMISES, REPRESENTATIONS AND AGREEMENTS SET FORTH HEREIN, AND FOR OTHER GOOD AND VALUABLE CONSIDERATION, THE RECEIPT SUFFICIENCY AND EXCHANGE OF WHICH ARE HEREBY ACKNOWLEDGED, THE PARTIES, INTENDING TO BE LEGALLY BOUND, AGREE AS FOLLOWS:

1. Assignor by its signature below acknowledges and agrees that as of the date of this Agreement, all of Assignor’s rights, title, interest in and pursuant to the Contract, including but not limited to warranties, and title to the Project are assigned to Assignee. It is further agreed that this assignment does not include the Assignor’s obligations, responsibilities and duties under the Contract.

2. Assignee by its signature below acknowledges and agrees that as of the date of this Agreement, Assignee accepts the Project and all of Assignor’s rights, title, and interest, in and pursuant to the Contract. It is further agreed that this assumption does not include the Assignor’s obligations, responsibilities and duties under the Contract.

3. Contractor, by its signature below, consents to Assignor’s assignment to Assignee of all rights, title, interest, in and pursuant to the Contract, including but not limited to all warranties.
Contractor by its signature below acknowledges and affirms that Assignor’s obligations, responsibilities and duties under the Contract, including but not limited to payments dues under the Contract, have been satisfied as of the date of this Agreement.

4. Contractor further agrees to provide appropriate Certificates of Insurance and Additional Insured Endorsements naming Assignee as an additional insured as required in accordance with the Contract. Contractor further agrees to naming/assigning to Assignee on any and all warranties issued or provided as a part of the Contract.

5. Assignor by its signature below acknowledges and agrees that as of the date of this Agreement, all of Assignor’s rights, title, and interest, to the Project and to the improvements and work included and a part of the Project are assigned to Assignee.

6. Assignee by its signature below acknowledges and agrees that as of the date of this Agreement, Assignee accepts all of Assignor’s rights, title, and interest to the Project and to the improvements and work included and a part of the Project.

7. Assignee by its signature below acknowledges and agrees that as of the date of this Agreement, Assignee releases and forever discharges Assignor and each of their directors, officers, owners, principals, partners, employees, representatives, predecessors, successors, designees, assigns, parent, subsidiary, affiliated and related entities, and their insurers, (but not Contractor or its subcontractors or their respective insurers) of and from any and all claims, demands, actions, causes of action, suits, injuries, fines, penalties, obligations, debts, damages, losses, loss of service, liens, liabilities, costs, expenses, attorneys’ fees, debts and expenses of every kind and nature whatsoever, in law or in equity (including, but not limited to attorneys’ fees, property damage and personal injury claims), known or unknown, asserted or unasserted, fixed or contingent, including any and all rights to subrogation therefore, which Assignee has had, does have, can have, shall have and may hereafter have arising out of or connected to the Project.

8. This Agreement is governed by the laws of the state of California, without regard to California’s conflict or choice of law provisions, and the parties expressly consent to jurisdiction in such courts.

9. If any provision of this Agreement or the application thereof to any entity, person or circumstance shall be invalid or unenforceable to any extent, the remainder of this Agreement and the application of such provisions to other entities, persons or circumstances shall not be affected thereby, and shall be enforced to the greatest extent permitted by law.
IN WITNESS WHEREOF, the parties set their hands and seals as of the date first above written.

ASSIGNOR
By: 
Name: Jan M. Lindenthal
Title: VP of Real Estate Development

ASSIGNEE
By: 
Name: Alex McIntyre
Title: City Manager

CONTRACTOR
By: 
Name: Brett Sisney
Title: Vice President