LIVERMORE
CALIFORNIA

CITY COUNCIL

AGENDA
MONDAY, JULY 24, 2023

REGULAR HYBRID MEETING – 7:00 PM

CLOSED SESSION - 6:30 PM
MEETING PARTICIPATION INFORMATION CAN BE FOUND AT THE END OF THE AGENDA

IN PERSON INFORMATION:
CIVIC CENTER MEETING HALL
CITY COUNCIL CHAMBERS
1016 S. LIVERMORE AVENUE

TELECONFERENCE INFORMATION:
ZOOM WEBINAR:
https://us02web.zoom.us/j/88972523480

Zoom dial in phone number:
1 669 900 6833
Meeting ID: 889 7252 3480

CITY OF LIVERMORE YOUTUBE CHANNEL:
https://www.youtube.com/c/CityofLivermoreCalifornia

TV29:
Comcast TV Channel 29
tv29live.org

John P Marchand, Mayor
Brittni Kiick, Vice Mayor
Ben Barrientos, Council Member
Evan Branning, Council Member
Robert W Carling, Council Member

1. CLOSED SESSION - 6:30PM

- Roll Call
- Opportunity for the the Public to Address City Council Regarding Closed Session Items
- Adjourn to Closed Session

Note: This Closed Session my be continued to the end of the Regular Meeting.

1.1 Public Employee Performance Evaluation. City Attorney Goal Setting for 2023-2024 Review, pursuant to Government Code section 54957.

2. CALL TO ORDER

ROLL CALL

Council Member Ben Barrientos
Council Member Evan Branning
Council Member Robert W. Carling
Vice Mayor Brittni Kiick
Mayor John Marchand

PLEDGE OF ALLEGIANCE

REPORT OF ACTION TAKEN IN CLOSED SESSION

3. PROCLAMATIONS AND PRESENTATIONS - NONE.

4. OPEN FORUM

- In conformance with the Brown Act, no City Council action can occur on items presented during Open Forum.
- To provide public comment in person, please submit a speaker card. When your name is called, walk to the lectern to address City Council.
- To provide public comment virtually, please log into Zoom and use the 'raise hand' feature.
- Comments are limited to a maximum of 3 minutes per person, per item. The Mayor may reduce the amount of time based on the number of persons wishing to speak.
- Comments are limited to one comment per person per item regardless of format or time submitted (this includes email and e-comment submissions prior to the meeting as well as live comments during the meeting).
- Open Forum will conclude after 30 minutes; however, if there are additional speakers, Open Forum will reconvene before the meeting adjourns.

5. CONSENT CALENDAR

Consent Calendar items are considered routine and are acted upon by the City Council with a single action. Members of the audience wishing to provide public input must submit a speaker card if in person or use the 'raise hand' feature if participating using Zoom. Comments are limited to one comment per person per item regardless of format or time submitted (this includes email and e-comment submissions prior to the meeting as well as live comments during the meeting).

5.1 Resolution authorizing supplemental appropriations of FEMA Storm Reimbursement (Fund 222) and delegation of authority to the City Manager to award construction contracts, in an amount not-to-exceed $2,800,000, for the 2023 Storm Damage Debris Removal Project S202300A and 2023 Storm Damage Permanent Repair Project S202300P.

Recommendation:
Staff recommends the City Council adopt a resolution:

1. Authorizing supplemental appropriations of FEMA Storm Reimbursement (Fund 222) in the amount of $1,700,000 to FY 2023-24 and $1,125,000 to FY 2024-25 for the 2023 Storm Damage Debris Removal Project S202300A;
2. Delegating authority to the City Manager to award construction contracts in a total amount not-to-exceed $2,800,000 for the 2023 Storm Damage Debris Removal Project S202300A and the 2023 Storm Damage Permanent Repair Project S202300P in substantially similar form to the draft contracts in Exhibit A and Exhibit B of the Resolution subject to the City Attorney approval to form of the final construction contracts and Risk Management approval of insurance; execute any change orders or amendments which do not exceed the not-to-exceed amount; reject all other bids, and take whatever actions are necessary and appropriate to carry out the purpose and intent of this resolution, including approving minor changes to the proposed agreement.

Staff Report
Attachments:
1. Site Map
2. Resolution
3. Exhibit A - Draft Construction Contract Mocho
4. Exhibit B - Draft Construction Contract

5.2 Resolution authorizing appropriations of $300,000 in HOME investment partnership program funds for a loan to Tri-Valley REACH, Inc., and authorizing execution of an affordable housing loan agreement, affordable housing regulatory agreement and all related documents between the City of Livermore and Tri-Valley REACH, Inc. for the acquisition of 772 Camden Common.

Recommendation:
Staff recommends the City Council adopt a resolution:

1. Authorizing and appropriating $300,000 in HOME Investment Partnership Program (HOME) funds (fund 671) for a loan to Tri-Valley REACH, Inc. to assist with the acquisition of 772 Camden Common;
2. Authorizing the City Manager to approve and execute the Affordable Housing Loan Agreement attached in substantial form as Exhibit A to the Resolution and the Affordable Housing Regulatory Agreement and Declaration of Restrictive Covenants attached in substantial form as Exhibit B to the Resolution, between the City of Livermore and Tri-Valley REACH, Inc. for 772 Camden Common, subject to final form approval by the City Attorney; and,
3. Authorizing the City Manager to execute related documents authorized and described in the loan agreements and necessary to appropriate and expend the HOME funds.

Staff Report

Attachments:
1. Resolution
2. Exhibit A - Loan Agreement
2. Exhibit B - Regulatory Agreement

5.3 Resolution authorizing appropriations of $307,697 from Business License Tax settlement funds and execution of an 18-month agreement with Rincon Consultants, Inc. to prepare an Environmental Impact Report for the East of Greenville Study Area in an in an amount not-to-exceed $307,697.

Recommendation:
Staff recommends the City Council adopt a resolution:

1. appropriating $307,697 from Business License Tax settlement funds to cover the contract cost
2. authorizing the City Manager to execute an agreement with Rincon Consultants, Inc. (Rincon) to prepare an Environmental Impact Report for the East of Greenville Study Area, over an 18-month term, in an in an amount not-to-exceed $307,697 in substantially similar form to the draft contract in Exhibit A of the Resolution subject to the City Attorney approval to form of the final construction contract and acceptance of insurance by the Risk Manager.

Staff Report
Attachments:
1. Resolution
2. Exhibit A - Draft Professional Services Agreement

5.4 Resolution awarding and authorizing execution of an agreement for a duration not to exceed 180 working days with Terocons Inc. in an amount not-to-exceed $760,407, for the construction of the Crosswalk Improvement Project, No. 2022-06/2021-35.

Recommendation:
Staff recommends the City Council adopt a resolution authorizing the City Manager to execute a construction contract with Terocons Inc. in an amount not-to-exceed $760,407, for a contract duration not to exceed 180 working days, for construction of the Crosswalk Improvement Project, No. 2022-06/2021-35 in substantially similar form to the draft contract in Exhibit A of the Resolution subject to the City Attorney approval to form of the final construction contract and acceptance of insurance by the Risk Manager.

Staff Report
Attachments:
1. Location Map
2. Resolution
3. Exhibit A - Agreement

5.5 Resolution awarding and authorizing execution of an agreement for a duration not-to-exceed 70 working days, in an amount not-to-exceed $365,670, with Gradetech Inc. for repairing 0.8 centerline miles of three trails and constructing a new bypass segment at Robertson Park,

Project 2018-20

Recommendation:
Staff recommends the City Council adopt a resolution:

1. Awarding a construction contract to Gradetech Inc., in an amount not-to-exceed $365,670, for construction of the Multi-Use Trail Repairs - 2020 Project 2018-20, and authorizing the City Manager to sign the agreement as Exhibit A to the resolution; and
2. Rejecting all other bids or proposals; and
3. Authorizing the City Manager to take whatever actions are necessary and appropriate to carry out the purpose and intent of this resolution including approving minor changes to the proposed agreement.

Staff Report
Attachments:
1. Location Map
2. Resolution
3. Exhibit A - Agreement

5.6 Resolution authorizing execution of a two-year agreement with Interwest Consulting Group to provide planning technical services in an amount not-to-exceed $326,400.

Recommendation:
Staff recommends the City Council adopt a resolution authorizing the City Manager to execute an agreement with Interwest Consulting Group to provide planning technical services for the period of July 24, 2023, through July 24, 2025, in an amount not-to-exceed $326,400.

Staff Report
Attachments:
1. Resolution
2. Exhibit A - Interwest Consulting Group Professional Services Agreement

5.7 Resolution authorizing execution of a five-year license agreement with Trilateral LLC to allow the public to park in the parking lot of the former Bank of the West building at 2287 Second Street.

Recommendation:
Staff recommends the City Council adopt a resolution authorizing the City Manager to execute a license agreement with Trilateral LLC to allow the public to park in the parking lot of the former Bank of the West building located at 2287 Second Street.

Staff Report
Attachments:
1. Location Map
2. Resolution
3. Exhibit A - License Agreement

5.8 Resolution authorizing the City Manager to execute the second amendment to the standard

services agreement with the County of Alameda accepting grant funding for Horizons Family Counseling, for the term of July 1, 2023 to December 31, 2023, in the total amount not-to-exceed $310,000.

Recommendation:
Staff recommends the City Council adopt a resolution authorizing the City Manager to execute the Second Amendment to the Standard Services Agreement with the County of Alameda accepting grant funding for Horizons Family Counseling for the term of July 1, 2023 to December 31, 2023, in the total amount not-to-exceed $310,000.

Staff Report
Attachments:
1. Resolution
2. Exhibit A - Notice of Intent
3. Exhibit B - Agreement

5.9 Resolution authorizing an agreement with the Livermore Valley Joint Unified School District (LVJUSD) for Horizons Family Counseling to provide mental health related services to LVJUSD students, for the term of November 15, 2022 through June 30, 2024, with a total amount not-to-exceed $240,000.

Recommendation:
Staff recommends the City Council adopt a resolution authorizing the City Manager to execute an agreement with the Livermore Valley Joint Unified School District (LVJUSD) for Horizons Family Counseling to provide mental health related services to LVJUSD students, for the term of November 15, 2022 through June 30, 2024, with a total amount not-to-exceed $240,000.

Staff Report
Attachments:
1. Resolution
2. Exhibit A - Agreement

5.10 Resolution approving a new master property agreement with the Livermore Area Recreation and Park District for joint use properties and facilities.

Recommendation:
Staff recommends the City Council adopt a resolution approving a new master property agreement with the Livermore Area Recreation and Park District for joint use properties and facilities and authorizing the City Manager to sign the agreement.

Staff Report
Attachments:
1. Location Map - Parks
2. Location Map - Trails
3. Resolution
4. Exhibit A - Agreement

5.11 Resolution authorizing the execution of a subordination agreement with Housing Trust Silicon

Valley (HTSV) that will allow the City's Deed of Trust recorded on property to take a lower lien position than new first mortgage financing to be provided by HTSV, for the Owl's Landing Apartments property located at 842 Herman Way.

Recommendation:
Staff recommends the City Council adopt a resolution authorizing the City Manager to execute a Subordination Agreement with Housing Trust Silicon Valley, in substantially the same form as the one attached to this resolution as Exhibit A, subject to the City Attorney's review and approval as to form and subject to the Risk Manager's review and approval as to insurance, to subordinate the City's Deed of Trust recorded on the Owl's Landing Apartments property located at 842 Herman Avenue.

Staff Report
Attachments:
1. Resolution
2. Exhibit A - Draft Form of Subordination Agreement with Housing Trust Silicon Valley

5.12 Resolution authorizing execution of a one-year agreement with Tri-Valley Community Television for local cable programming services for Fiscal Year 2023-24 in an amount not-to-exceed $184,705.

Recommendation:
Staff recommends the City Council adopt a resolution authorizing the execution of an agreement with Tri-Valley Community Television, in substantially the same form as the one attached to this resolution as Exhibit A, subject to the City Attorney's review and approval as to form and subject to the Risk Manager's review and approval as to insurance, for local cable programming services for Fiscal Year 2023-24 in an amount not-to-exceed $184,705.

Staff Report
Attachments:
1. Resolution
2. Exhibit A - Agreement with Tri-Valley Community Television Corporation

5.13 Resolution authorizing the acceptance for permanent maintenance and release of the security bonds, and execution of a Notice of Completion for the Police Facility Expansion Phase 1, Council Chambers Demolition, Project 2000-28.

Recommendation:
Staff recommends the City Council adopt a resolution authorizing the acceptance for permanent maintenance and release of the security bonds for the Police Facility Expansion Phase 1, Council Chambers Demolition, Project 2000-28 and authorize the City Manager to sign the Notice of Completion, a copy of which is attached as Exhibit A to the resolution.

Staff Report
Attachments:
1. Location Map
2. Resolution
3. Exhibit A - Notice of Completion

5.14 Resolution authorizing the acceptance for permanent maintenance and release of the security bonds for the public streetscape improvements on the south side of First Street between L Street and M Street constructed as part of First Street South Side Improvements - Downtown Streetscape Phase II Project 200827.

Recommendation:
Staff recommends the City Council adopt a resolution authorizing the acceptance for permanent maintenance and release of the security bonds for the public streetscape improvements on the south side of First Street between L Street and M Street constructed as part of First Street South Side Improvements - Downtown Streetscape Phase II Project 200827.

Staff Report
Attachments:
1. Location Map
2. Resolution

5.15 Resolution authorizing the acceptance for permanent maintenance, release of the security bonds and execution of a Notice of Completion for the Real Time Awareness Center, Project 2019-58.

Recommendation:
Staff recommends the City Council adopt a resolution authorizing the acceptance for permanent maintenance and release of the security bonds for the Real Time Awareness Center Project 2019-58 and authorizing the City Manager to sign the Notice of Completion, a copy of which is attached as Exhibit A to the resolution.

Staff Report
Attachments:
1. Location Map
2. Resolution
3. Exhibit A - Notice of Completion

5.16 Resolution to summarily vacate a public right-of-way, known as Lot 6 of Parcel Map 6986, and retain the rights of the existing public utility easement within Lot 6, located at Las Positas Road and Bennett Drive.

Recommendation:
Staff recommends the City Council adopt a resolution to summarily vacate a right-of-way known as Lot 6 of Parcel Map 6986 but retain the rights of the existing public utility easement within Lot 6 and authorize the City Manager to quitclaim Lot 6 (right-of-way) to TH Arroyo Vista LLC, a California Limited Liability Company.

Staff Report
Attachments:
1. Vicinity Map
2. Resolution
3. Exhibit A - Lot 6 (right-of-way) Plat & Legal Description

4. Exhibit B - Quitclaim Deed, TH Arroyo Vista LLC

5.17 Resolution establishing the Appropriations Limitation consistent with State law for FY 2023-24.

Recommendation:
Staff recommends the City Council re-adopt a resolution establishing the Appropriations Limit for FY 2023-24.

Staff Report
Attachments:
1. Resolution
2. Exhibit A - Appropriation Limit FY 2023-24

5.18 Resolution of continued local emergency.

Recommendation:
Staff recommends the City Council adopt a resolution of continued local emergency in response to impacts from a series of severe storm events earlier this year.

Staff Report
Attachments:
1. Resolution

5.19 Resolution authorizing execution of a two-year agreement with Independent Code Consultants Incorporated to provide planning assistant services in an amount not-to-exceed $208,000.

Recommendation:
Staff recommends the City Council adopt a resolution authorizing execution of an agreement with Independent Code Consultants Incorporated to provide planning assistant services for a term of two-years in an amount not-to-exceed $208,000.

Staff Report
Attachments:
1. Resolution
2. Agreement - Independent Code Consultants

5.20 Resolution amending the City of Livermore Salary Plan dated July 3, 2023, reclassifying the City's Cybersecurity Manager position to an IT Operations Manager position and rescinding Resolution 2022-049 that created the City's Cybersecurity Policy to allow staff to convert it to an Administrative Regulation.

Recommendation:
Staff recommends adopting a resolution amending the City of Livermore Salary Plan dated July 3, 2023, reclassifying the City's Cybersecurity Manager position to an IT Operations Manager position and rescinding Resolution 2022-049 that created the City's Cybersecurity Policy to allow staff to convert it to an Administrative Regulation.

Staff Report
Attachments:

1. Resolution
2. Exhibit A - Management Salary Schedule dated July 3, 2023 (amended)

6. PUBLIC HEARINGS - NONE.

Comments are limited to one comment per person per item regardless of format or time submitted (this includes email and e-comment submissions prior to the meeting as well as live comments during the meeting).

7. MATTERS FOR CONSIDERATION - NONE.

Comments are limited to one comment per person per item regardless of format or time submitted (this includes email and e-comment submissions prior to the meeting as well as live comments during the meeting).

8. COUNCIL COMMITTEE REPORTS AND MATTERS INITIATED BY CITY MANAGER, CITY ATTORNEY, AND COUNCIL MEMBERS

9. ADJOURNMENT

To a Regular City Council meeting on Monday, August 14, 2023 at 7:00 pm, Civic Center Meeting Hall, City Council Chambers, 1016 S. Livermore Avenue and virtually using Zoom.

10. SUPPLEMENTAL MATERIALS

10.1 Supplemental materials received prior to the meeting.

Staff Report
Attachments:
1. Supplemental Materials

10.2 Supplemental materials received at the meeting.
Staff Report
Attachments:
1. Items Received at the Meeting

11. HOW TO PARTICIPATE IN YOUR CITY COUNCIL MEETING

You can participate in the meeting in a number of ways:

Open Forum is an opportunity for the public to speak regarding items not listed on the agenda. Speakers are limited to a maximum of 3 minutes per person. To address the City Council in person, you must submit a speaker card to the City Clerk prior to the start of that item. To submit a comment using Zoom, you may use the 'raise hand' feature when the item begins. Please note that the City Council is prohibited by State law from taking action on any items that are not listed on the agenda. However, if your item requires action, the City Council may place it on a future agenda or direct staff to work with you and/or report to the City Council on the issue.

Public Hearings - The topic of the hearing is typically summarized by staff, followed by a presentation by the applicant, and questions from the City Council. The Mayor will then open the hearing to the public and offer an opportunity for public comments. Speakers are limited to

a maximum of 3 minutes per person. To address the City Council in person, you must submit a speaker card to the City Clerk prior to the start of the presentation of the item. To submit a comment using Zoom, you may use the 'raise hand' feature as soon as the item begins.

Other Agenda Items are also open for public input including Consent Calendar or Matters for Consideration items. These comments are also subject to the 3-minute limit.

Special Meetings, Workshops - The public will have the opportunity to address the City Council regarding the item that is the subject of the special meeting or workshop. Public comments are limited to a maximum of 3 minutes per person.

Platforms to Participate in Meetings:

Submission of Comments Prior to the Meeting:

Email Comments may be submitted by the public to the City Clerk's Office (cityclerk@LivermoreCA.gov). Items received no later than 12:00 pm on the day of the meeting will be provided to the City Council and available on the City website prior to the meeting. These items will NOT be read into the record.

eComments may be submitted by the public using the eComment link here. Comments may be up to 1000 characters in length and will be accepted up until 4:00 pm the day of the meeting. These items will NOT be read into the record and are viewable by the City Council and the public upon submittal.

Submission of Comments During the Meeting:

Speakers are limited to a maximum of 3 minutes per person. To submit a comment in person, you must complete a speaker card for each item. Speaker cards are available in the Civic Center Meeting Hall lobby. Indicate on the card the item number you wish to comment on and submit the card directly to the City Clerk prior to the start of the item. To submit a comment using Zoom, you may use the 'raise hand' feature. Please note that the City Council is prohibited by State law from taking action on any items that are not listed on the agenda. However, if your item requires action, the City Council may place it on a future agenda or direct staff to work with you and/or report to the City Council on the issue.

The City will be using YouTube and TV29 as two tools to provide the public access to view City Council meetings. No public comment will be accepted via YouTube.

TV29: tv29live.org Comcast Cable 29

YouTube: http://youtube.com/c/CityofLivermoreCalifornia

Zoom Webinar: https://us02web.zoom.us/j/88972523480
It is recommended residents use updated software to successfully join and participate in a meeting. Outdated versions may limit functionality and you may not be able to provide a public comment virtually. To download the most current version, visit zoom.us/download.

Zoom dial in phone number: 1 669 900 6833
Meeting ID: 889 7252 3480

If you would like to deliver written materials to the City Council as part of your public comments, and are commenting in person, please provide 10 copies to the City Clerk with your speaker card. If you are commenting using Zoom, the speaker must identify that intent in his or her comment and immediately email the materials to the City Clerk at cityclerk@LivermoreCA.gov.

The **City Council Agenda and Agenda Reports** are prepared by City staff and are available for public review on Tuesday evening, six days prior to the City Council meeting in the Civic Center Library, 1188 South Livermore Avenue, Livermore, and at the City Clerk's Office, 1052 South Livermore Avenue, Livermore. The Agenda is also available on the City's website, http://LivermoreCA.gov/agenda.

Under Government Code §54957.5, any **supplemental material** distributed to the members of the City Council after the posting of this agenda will be available for public review in the City Clerk's Office, 1052 South Livermore Avenue, Livermore, and included in the agenda packet available on the City's web site at http://LivermoreCA.gov/agenda.

PURSUANT TO TITLE II OF THE AMERICANS WITH DISABILITIES ACT (CODIFIED AT 42 UNITED STATES CODE SECTION 12101 AND 28 CODE OF FEDERAL REGULATIONS PART 35), AND SECTION 504 OF THE REHABILITATION ACT OF 1973, THE CITY OF LIVERMORE DOES NOT DISCRIMINATE ON THE BASIS OF RACE, COLOR, RELIGION, NATIONAL ORIGIN, ANCESTRY, SEX, DISABILITY, AGE OR SEXUAL ORIENTATION IN THE PROVISION OF ANY SERVICES, PROGRAMS, OR ACTIVITIES. TO ARRANGE AN ACCOMMODATION IN ORDER TO PARTICIPATE IN THIS PUBLIC MEETING, PLEASE CONTACT THE ADA COORDINATOR AT ADACOORDINATOR@LIVERMORECA.GOV OR CALL (925) 960-4170 (VOICE) OR (925) 960- 4104 (TDD) AT LEAST THREE (3) BUSINESS DAYS IN ADVANCE OF THE MEETING.

LIVERMORE
CALIFORNIA

CITY COUNCIL STAFF REPORT **ITEM NO. 5.1**

DATE: July 24, 2023

TO: Honorable Mayor and City Council

FROM: Paul Spence, Community Development Director

SUBJECT: Resolution authorizing supplemental appropriations of FEMA Storm Reimbursement (Fund 222) and delegation of authority to the City Manager to award construction contracts, in an amount not-to-exceed $2,800,000, for the 2023 Storm Damage Debris Removal Project S202300A and 2023 Storm Damage Permanent Repair Project S202300P.

RECOMMENDED ACTION

Staff recommends the City Council adopt a resolution:

1. Authorizing supplemental appropriations of FEMA Storm Reimbursement (Fund 222) in the amount of $1,700,000 to FY 2023-24 and $1,125,000 to FY 2024-25 for the 2023 Storm Damage Debris Removal Project S202300A;
2. Delegating authority to the City Manager to award construction contracts in a total amount not-to-exceed $2,800,000 for the 2023 Storm Damage Debris Removal Project S202300A and the 2023 Storm Damage Permanent Repair Project S202300P in substantially similar form to the draft contracts in Exhibit A and Exhibit B of the Resolution subject to the City Attorney approval to form of the final construction contracts and Risk Management approval of insurance; execute any change orders or amendments which do not exceed the not-to-exceed amount; reject all other bids, and take whatever actions are necessary and appropriate to carry out the purpose and intent of this resolution, including approving minor changes to the proposed agreement.

SUMMARY

2023 Storm Damage Repair projects will repair and stabilize seven locations shown in Attachment 1 that were damaged during the 2022-23 winter storms. Designs for the repairs, permit applications, and funding applications with FEMA were initiated immediately after the damage occurred. The projects will be advertised for bid in July and the permits for the work are also anticipated in July. Work in the creeks can begin in August, and needs to be completed by October 15, 2023, per regulatory permitting requirements. Because there are no Council meetings in August, staff recommends that the City Manager be authorized to sign construction contracts up to $2,800,000 so these critical repairs can be started in August. Supplemental appropriations of FEMA Storm Reimbursement (Fund 222) are needed

to complete this work. These funds will be reimbursed by FEMA after the repairs are completed.

DISCUSSION

The 2022-23 winter storms caused significant damage to public facilities along some of the creeks that flow through the City. On January 10, 2023, the City Council adopted a resolution ratifying the Proclamation of the Director of Emergency Services Concerning the Existence of a Local Emergency (Resolution No. 2023-001) in response to impacts from the series of severe storm events. The City Council adopted resolutions of continued local emergency on February 27, April 24, and June 12, 2023. Continuing the emergency proclamation allows staff to seek reimbursement of the eligible costs of this work from federal and state agencies through the public assistance program.

Attachment 1 shows the locations of the sites with the most significant damage that must be completed prior to this winter season contingent upon regulatory permit approval. If these projects are not completed there will be additional bank erosion and damage to public facilities, such as the pedestrian trail bridge over the Arroyo Mocho, and potential flooding. The goal of these projects is to stabilize trails and infrastructure that are heavily used by the public and to restore flow capacity at critical areas throughout the City that silted in during the 2022-23 winter storms to prepare for the next rainy season.

In order to expedite the repairs, the storm damage repairs will be split into two projects: work at the four locations along the Arroyo Mocho and work at the three other sites.

Work is summarized in the table below. LOP designates the FEMA grant application location number for each site.

FEMA List of Projects (LOP) No.	Location	Scope of Work
LOP 9	Arroyo Mocho at Stanley Blvd	Debris removal in stream
LOP 9	Arroyo Mocho at Stanley Blvd	Bank stabilization, trail repair
LOP 10	Arroyo Mocho near Native Gardens	Debris removal in stream
LOP 12	Arroyo Mocho at Holmes St	Sediment removal in stream
LOP 12	Arroyo Mocho at Holmes St	Bank stabilization
LOP 19	Arroyo Mocho at Concannon Blvd	Bank and bridge abutment stabilization
LOP 5	Arroyo Las Positas at Airway Blvd	Sediment removal in stream
LOP 37	LARPD Sycamore Grove Park Trail	Permanent repair
LOP 43	Drainage Channel at Golf Drive, Springtown	Debris removal

Additional debris removal at lower priority locations and permanent repairs at the high priority locations will be completed in FY 2024/25 and FY 2025/26 as part of 2023 Storm Damage - Debris Removal Project S202300A and 2023 Storm Damage Permanent Repair Project S202300P.

FISCAL AND ADMINISTRATIVE IMPACTS

The estimated project costs for high priority storm damage repairs in the summer/fall of 2023 could range up to $2,800,000. There is partial funding for these contracts in FY 2023-24 budgets for 2023 Storm

Damage Debris Removal Project S202300A and 2023 Storm Damage Permanent Repair Project S202300P in the 2023-2028 Capital Improvement Plan. A supplemental appropriation of FEMA Storm Reimbursement (Fund 222) in the amount of $1,700,000 to FY 2023-24 for 2023 Storm Damage - Debris Removal Project S202300A is required to cover the estimated costs of these construction contracts, permitting, engineering construction support, biological monitoring, project management, and design services for additional repairs in FY 2024-25. An additional supplemental appropriation of FEMA Storm Reimbursement (Fund 222) in the amount of $1,125,000 to FY 2024-25 for 2023 Storm Damage - Debris Removal Project S202300A is required to cover additional repairs constructed in the summer/fall of 2024. These funds will be reimbursed by FEMA after the repairs are completed.

The existing and proposed budgets for these projects are summarized in the tables below:

2023 Storm Damage- Debris Removal Project No. S202300A Current Budget

Fund No.	Fund name	FY 2023-24	FY 2024-25
220	Storm Water	$125,000	$95,000
607	State Grant	375,000	280,000
	TOTAL	$500,000	$375,000

2023 Storm Damage- Debris Removal Project No. S202300A Proposed Budget

Fund No.	Fund name	FY 2023-24	FY 2024-25
220	Storm Water	$125,000	$95,000
222	FEMA Storm Reimbursement	1,700,000	1,125,000
607	State Grant	375,000	280,000
	TOTAL	$2,200,000	$1,500,000

2023 Storm Damage Permanent Repair Project S202300P Current Budget

Fund No.	Fund name	FY 2023-24	FY 2024-25
220	Storm Water	$95,000	$100,000
222	FEMA Storm Reimbursement	1,125,000	1,625,000
607	State Grant	280,000	400,000
615	Federal Grant	0	1,200,000
651	Gas Tax- SB1	0	200,000
677	Measure B-Bike/Pedestrian	0	0
687	Measure BB-Bike/Pedestrian	0	75,000
688	Measure BB-Local St & Rd	0	75,000
	TOTAL	$1,500,000	$3,700,000

COMMUNITY PILLAR

5: A City that Works

GOAL

14: Develop, operate, and maintain the City's infrastructure.

ATTACHMENTS

1. Site Map
2. Resolution
3. Exhibit A - Draft Construction Contract Mocho
4. Exhibit B - Draft Construction Contract

Prepared by: Edward Reyes
Associate Civil Engineer

Approved by:



Marianna Marysheva
City Manager

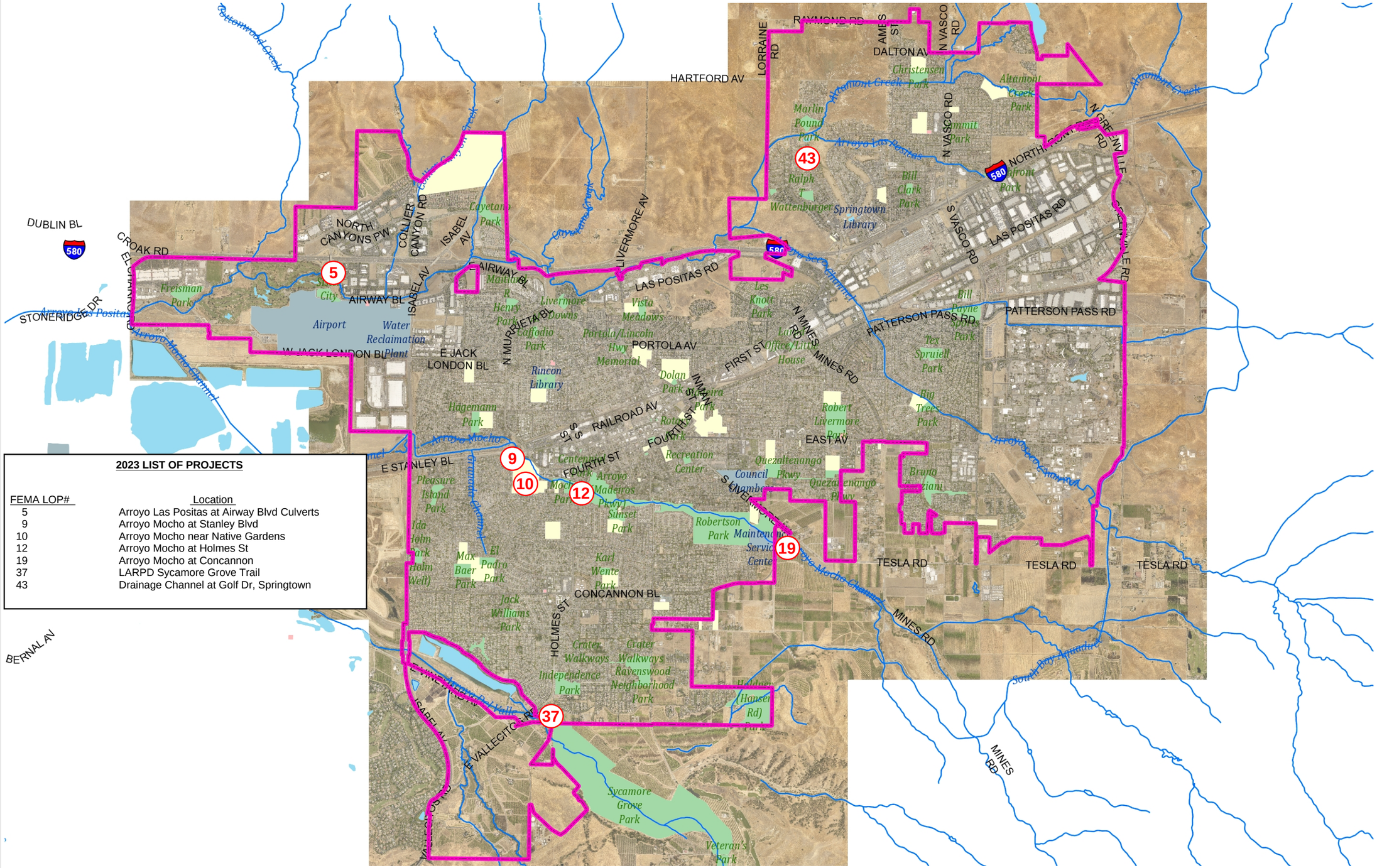
Fiscal Review by:



Tina Olson
Administrative Services Director

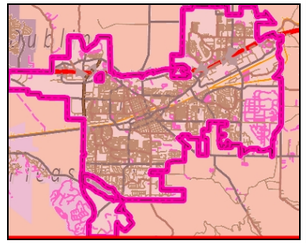
LIVERMORE CALIFORNIA

2023 Storm Damage Repair Site Map



2023 LIST OF PROJECTS

FEMA LOP#	Location
5	Arroyo Las Positas at Airway Blvd Culverts
9	Arroyo Mocho at Stanley Blvd
10	Arroyo Mocho near Native Gardens
12	Arroyo Mocho at Holmes St
19	Arroyo Mocho at Concannon
37	LARPD Sycamore Grove Trail
43	Drainage Channel at Golf Dr, Springtown



Legend

- City Limits
- Major Streets (> 62,500)
- Creeks
- Public Facilities (4500-100000)
- Park Names (4500-100,000)
- Lakes
- Creeks
- Public Facilities
  - Fire Station
  - Police Facility
  - Other Gov't Facility
- Schools
- Parks
- Airport
  - Fire Station
  - Police Facility
  - Other Gov't Facility

Date: 4/21/2023

1: 50,400

8,400.0 0 4,200.00 8,400.0 Feet

NAD_1983_2011_StatePlane_California_III_FIPS_0403_Ft_US
Information Technologies, GIS Division, City of Livermore

Notes

IN THE CITY COUNCIL OF THE CITY OF LIVERMORE, CALIFORNIA

A RESOLUTION AUTHORIZING SUPPLEMENTAL APPROPRIATIONS OF FEMA STORM REIMBURSEMENT (FUND 222) AND DELEGATION OF AUTHORITY TO THE CITY MANAGER TO AWARD CONSTRUCTION CONTRACTS

(2023 STORM DAMAGE – DEBRIS REMOVAL PROJECT S202300A & STORM DAMAGE PERMANENT REPAIR PROJECT S202300P)

2023 Storm Damage Repair projects will repair and stabilize seven locations that were damaged during the 2022/2023 winter storms. Designs for the repairs, permit applications, and funding applications with FEMA were initiated immediately after the damage occurred. The projects will be advertised for bid in July and the permits for the work are also anticipated in July. Work can begin in August and needs to be completed in the creeks by October 15, 2023. Because there are no Council meetings in August, Staff recommends that the City Manager be authorized to sign construction contracts up to $2,800,000 so these critical repairs can be started in August. Supplemental appropriations of FEMA Storm Reimbursement (Fund 222) are needed to complete this work. These funds will be reimbursed by FEMA after the repairs are completed.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Livermore that it hereby:

1. Authorizes supplemental appropriations of FEMA Storm Reimbursement (Fund 222) in the amount of $1,700,000 to FY 2023-24 and $1,125,000 to FY 2024-25 for the 2023 Storm Damage Debris Removal Project S202300A;

2. Delegates authority to the City Manager to award construction contracts in a total amount not-to-exceed $2,800,000 for the 2023 Storm Damage Debris Removal Project S202300A and the Storm Damage Permanent Repair Project S202300P in substantially the same form as the draft contracts attached to this resolution as Exhibit A and Exhibit B, subject to the City Attorney's review and approval as to form of the final construction contracts and subject to the Risk Manager's review and approval as to insurance; and to execute any change orders or amendments which do not exceed the not-to-exceed amount;

3. Delegates authority to the City Manager to reject all other bids; and,

4. Authorizes the City Manager to take whatever actions are necessary and appropriate to carry out the purpose and intent of this resolution, including approving minor changes to the proposed agreement.

On motion of Council Member _____, seconded by Council Member _____, the foregoing resolution was passed and adopted on July 24, 2023, by the following vote:

AYES: COUNCIL MEMBERS:
NOES: COUNCIL MEMBERS:
ABSENT: COUNCIL MEMBERS:
ABSTAIN: COUNCIL MEMBERS:

ATTEST:

_____
Marie Weber
City Clerk

APPROVED AS TO FORM:

/s/ Tara Mazzanti
Tara Mazzanti
Assistant City Attorney

Exhibit A – Draft Construction Contract Mocho
Exhibit B – Draft Construction Contract

CONTRACT

This public works contract ("Contract") is entered into by and between the City of Livermore, a California Municipal Corporation ("City") and {Name of Contractor}, {a/an} {list contractor's state of registration here} {identify type of entity here} eg: a California corporation("Contractor") for work on the 2023 Storm Damage Repair (Arroyo Mocho Sites) Debris Removal Project S202300A, and Permanent Repair Project No. S202300P ("Project").

The Parties Agree as Follows:

1. Award of Contract.

In response to the Notice Inviting Bids, Contractor has submitted a Bid Proposal to perform work on the Project, and on _____, 20___, as part of Resolution No. _____, City authorized award of this Contract to Contractor for the amount of Contractor's bid.

2. Contract Documents.

This Contract consists of all of the written representations and submissions made by Contractor as part of the Bid process and the following numbered and un-numbered component documents, as detailed on the table of contents of this Agreement:

a. Bidding requirements (consisting of the Notice Inviting Bids; Instructions to Bidders; Bid Proposal; Bid Schedule, Subcontractor List, Noncollusion Declaration, Bid Bond, Bidder's Questionnaire, Payment Bond, Performance Bond, Warranty Bond);

b. General Conditions;

c. Special Conditions;

d. Division One Technical Specifications;

e. Appendix;

f. Index of Defined Terms;

g. Project Drawings and Specifications;

h. Bid Addenda, if any;

i. Change Orders, if any;

j. ALB Notice;

k. Notice to Proceed;

l. City Standard Specifications and Details;

m. And the following: no other documents

3. Contractor's Obligations.

Contractor agrees to perform all of the Work required for the Project, as specified in the Contract Documents. Contractor must provide, furnish, and supply all things necessary and incidental for the timely performance and completion of the Work, including all necessary labor, materials, equipment, transportation, and utilities, unless otherwise specified in the Contract Documents. Contractor must use its best efforts to complete the Work in a professional and expeditious manner and to meet or exceed the performance standards required by the Contract Documents.

4. Payment.

As full and complete compensation for Contractor's timely performance and completion of the Work in strict accordance with the terms and conditions of the Contract Documents, City will pay Contractor _____ Dollars ($_____) (the "**Contract Price**"), in accordance with the payment provisions in the General Conditions.

5. Time for Completion.

5.1. Substantial Completion

Contractor must achieve Substantial Completion, as that term is defined in the General Conditions, of the Project Work within 21 Calendar Days from the commencement date stated in the Notice to Proceed. ("**Substantial Completion Deadline**."). For this project, the Contractor shall also incorporate 2 of average anticipated inclement Weather Days into their bid estimate. Contractor shall be solely responsible for the extended overhead and profit for these weather days and shall not be compensated by the City in any way, reference Section 10.3 of the General Conditions and Section 013200-4.3 Contract Schedules for additional weather day information. **It is critically important to this Project that all work within the creek banks shown on the Project Drawings be completed prior to October 15, 2023 as shown in the Contract Schedule ("Creek Work")** because the Regional Water Quality Control Board prohibits the City from undertaking creek work after this date.

5.2. Final Completion

Contractor must achieve Final Completion, as that term is defined in the General Conditions, of the Project Work within 14 Calendar Days after the date of substantial completion. ("**Final Completion Deadline**.")

5.3. Early Completion.

By signing below, Contractor expressly waives any claim for delayed early completion.

6. Liquidated Damages.

If Contractor fails to meet either the Substantial Completion Deadline or the Final Completion Deadline, City may assess liquidated damages according the provisions in the General Conditions of the Contract Documents in the following amounts for each day of Unexcused Delay, and the Contract Price shall be reduced accordingly.

6.1. Substantial Completion Deadline: Five thousand dollars ($ 5000) per day.

6.2. Final Completion Deadline: Five hundred dollars ($ 500) per day.

7. Labor Code Compliance.

This Contract is subject to all applicable requirements of Chapter 1 of Part 7 of Division 2 of the California Labor Code, including requirements pertaining to wages, working hours and workers' compensation insurance.

7.1. Prevailing Wages.

This Project is subject to the prevailing wage requirements applicable to the locality in which the Work is to be performed for each craft, classification or type of worker needed to perform the Work, including employer payments for health and welfare, pension, vacation, apprenticeship and similar purposes. The general prevailing wage rates for each craft, classification or type of covered work is available online at http://www.dir.ca.gov/DLSR.

7.2. DIR Registration.

City will not accept a Bid Proposal from or enter into the Contract with a bidder without proof that the bidder and its Subcontractors are registered with the California Department of Industrial Relations to perform public work under Labor Code, Section 1725.5, subject to limited legal exceptions allowed by the Labor Code.

8. Workers' Compensation Certification.

Under Labor Code, Section 1861, by signing this Contract, Contractor certifies as follows: "I am aware of the provisions of Labor Code, Section 3700 which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the Work on this Contract."

The successful bidder previous to the entering of the contract to do the said work shall take out and maintain in full force and effect worker's compensation insurance with an insurance carrier authorized to transact business in the State of California, covering the bidder's full liability for compensation to any persons employed who may be injured in the carrying out of said contract or the dependents thereof. Evidence of such worker's compensation insurance shall be furnished to the City of Livermore by certificate and waiver of subrogation in the City's electronic insurance certificate tracking system (PINS)

prior to the commencement of the work and said certificate shall contain a provision that the coverage thereunder will not be canceled until at least thirty (30) days prior written notice has been given to the City.

9. Notice.

Any notice, billing, or payment required by the Contract Documents must be made in writing, and sent to the other party by personal delivery, U.S. Mail, a reliable overnight delivery service, facsimile, or by email as a PDF (or comparable) file. Notice is deemed effective upon delivery unless otherwise specified. Notice for each party must be given as follows:

	City	Contractor
Name	Joel Waxdeck	
Address	1052 South Livermore Avenue	
City/state/zip	Livermore, CA 94550	
Phone	(925) 960-4527	
Fax	(925) 960-4505	
Attention	Acting City Engineer	
Email	jhwaxdeck@livermoreca.gov	
Copy to	eireyes@livermoreca.gov	

10. General Provisions.

The following items are repeated here as stated as part of Part 2, General Conditions, for emphasis:

10.1. Assignment and Successors.

Contractor may not assign its rights or obligations under this Contract, in part or in whole, without City's written consent. This Contract is binding on Contractor's successors and permitted assigns. A consolidation or merger of Contractor or a change in ownership of 25% or more of Contractor's capital stock constitutes an assignment by Contractor requiring the City's written consent.

10.2. Third Party Beneficiaries.

There are no intended third-party beneficiaries to this Contract except as expressly provided in the General Conditions or Special Conditions.

10.3. Governing Law and Venue.

This Contract will be governed by California law and venue will be in the Superior Court of the County in which the Project is located, and no other place.

10.4. Amendment.

No amendment or modification of this Contract will be binding unless it is in a writing duly authorized and signed by the parties to this Contract.

10.5. Integration; Severability.

This Contract and the Contract Documents incorporated herein, including authorized amendments or Change Orders thereto, constitute the final, complete, and exclusive terms of the agreement between City and Contractor. If any provision of the Contract Documents, or portion of a provision, is determined to be illegal, invalid, or unenforceable, the remaining provisions of the Contract Documents will remain in full force and effect.

11. Authorization.

Each individual signing below warrants that he or she is authorized to do so by the party that he or she represents, and that this Contract is legally binding on that party. If Contractor is a corporation, signatures from two officers of the corporation are required under California Corporation Code, Section 313.

The parties agree to this Contract as witnessed by the signatures below:

CITY	CONTRACTOR
City of Livermore, a California Municipal Corporation	_____
s/_____	s/_____
Marianna Marysheva, City Manager	Name/Title [print]
Date: _____	Date: _____
Approved as to form:	s/_____
	Name/Title [print]
_____	Date: _____
City of Livermore City Attorney	_____
	Contractor's Calif. License Number(s)
	Seal:

	_____ Expiration Date(s)

END OF DOCUMENT

CONTRACT

This public works contract ("Contract") is entered into by and between the City of Livermore, a California Municipal Corporation ("City") and {Name of Contractor}, {a/an} {list contractor's state of registration here} {identify type of entity here} eg: a California corporation("Contractor") for work on the 2023 Storm Damage Repair Debris Removal Project S202300A, & Permanent Repair Project S202300P ("Project").

The Parties Agree as Follows:

1. Award of Contract.

In response to the Notice Inviting Bids, Contractor has submitted a Bid Proposal to perform work on the Project, and on _____, 20___, as part of Resolution No. _____, City authorized award of this Contract to Contractor for the amount of Contractor's bid.

2. Contract Documents.

This Contract consists of all of the written representations and submissions made by Contractor as part of the Bid process and the following numbered and un-numbered component documents, as detailed on the table of contents of this Agreement:

a. Bidding requirements (consisting of the Notice Inviting Bids; Instructions to Bidders; Bid Proposal; Bid Schedule, Subcontractor List, Noncollusion Declaration, Bid Bond, Bidder's Questionnaire, Payment Bond, Performance Bond, Warranty Bond);

b. General Conditions;

c. Special Conditions;

d. Division One Technical Specifications;

e. Appendix;

f. Index of Defined Terms;

g. Project Drawings and Specifications;

h. Bid Addenda, if any;

i. Change Orders, if any;

j. ALB Notice;

k. Notice to Proceed;

l. City Standard Specifications and Details;

m. And the following: no other documents

3. Contractor's Obligations.

Contractor agrees to perform all of the Work required for the Project, as specified in the Contract Documents. Contractor must provide, furnish, and supply all things necessary and incidental for the timely performance and completion of the Work, including all necessary labor, materials, equipment, transportation, and utilities, unless otherwise specified in the Contract Documents. Contractor must use its best efforts to complete the Work in a professional and expeditious manner and to meet or exceed the performance standards required by the Contract Documents.

4. Payment.

As full and complete compensation for Contractor's timely performance and completion of the Work in strict accordance with the terms and conditions of the Contract Documents, City will pay Contractor _____ Dollars ($_____) (the "**Contract Price**"), in accordance with the payment provisions in the General Conditions.

5. Time for Completion.

5.1. Substantial Completion

Contractor must achieve Substantial Completion, as that term is defined in the General Conditions, of the Project Work within 27 Working Days from the commencement date stated in the Notice to Proceed. ("**Substantial Completion Deadline**."). For this project, the Contractor shall also incorporate 2 of average anticipated inclement Weather Days into their bid estimate. Contractor shall be solely responsible for the extended overhead and profit for these weather days and shall not be compensated by the City in any way, reference Section 10.3 of the General Conditions and Section 013200-4.3 Contract Schedules for additional weather day information. **It is critically important to this Project that all work within the creek banks shown on the Project Drawings be completed prior to October 15, 2023 as shown in the Contract Schedule ("Creek Work")** because the Regional Water Quality Control Board prohibits the City from undertaking creek work after this date.

5.2. Final Completion

Contractor must achieve Final Completion, as that term is defined in the General Conditions, of the Project Work within 15 Working Days after the date of substantial completion. ("**Final Completion Deadline**.")

5.3. Early Completion.

By signing below, Contractor expressly waives any claim for delayed early completion.

6. Liquidated Damages.

If Contractor fails to meet either the Substantial Completion Deadline or the Final Completion Deadline, City may assess liquidated damages according the provisions in the General Conditions of the Contract Documents in the following amounts for each day of Unexcused Delay, and the Contract Price shall be reduced accordingly.

6.1. Substantial Completion Deadline: One thousand dollars ($ 1000) per day.

6.2. Final Completion Deadline: Five hundred dollars ($ 500) per day.

7. Labor Code Compliance.

This Contract is subject to all applicable requirements of Chapter 1 of Part 7 of Division 2 of the California Labor Code, including requirements pertaining to wages, working hours and workers' compensation insurance.

7.1. Prevailing Wages.

This Project is subject to the prevailing wage requirements applicable to the locality in which the Work is to be performed for each craft, classification or type of worker needed to perform the Work, including employer payments for health and welfare, pension, vacation, apprenticeship and similar purposes. The general prevailing wage rates for each craft, classification or type of covered work are available online at http://www.dir.ca.gov/DLSR.

7.2. DIR Registration.

City will not accept a Bid Proposal from or enter into the Contract with a bidder without proof that the bidder and its Subcontractors are registered with the California Department of Industrial Relations to perform public work under Labor Code, Section 1725.5, subject to limited legal exceptions allowed by the Labor Code.

8. Workers' Compensation Certification.

Under Labor Code, Section 1861, by signing this Contract, Contractor certifies as follows: "I am aware of the provisions of Labor Code, Section 3700 which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the Work on this Contract."

The successful bidder previous to the entering of the contract to do the said work shall take out and maintain in full force and effect worker's compensation insurance with an insurance carrier authorized to transact business in the State of California, covering the bidder's full liability for compensation to any persons employed who may be injured in the carrying out of said contract or the dependents thereof. Evidence of such worker's compensation insurance shall be furnished to the City of Livermore by certificate and waiver of subrogation in the City's electronic insurance certificate tracking system (PINS) prior to the commencement of the work and said certificate shall contain a provision that

the coverage thereunder will not be canceled until at least thirty (30) days prior written notice has been given to the City.

9. Notice.

Any notice, billing, or payment required by the Contract Documents must be made in writing, and sent to the other party by personal delivery, U.S. Mail, a reliable overnight delivery service, facsimile, or by email as a PDF (or comparable) file. Notice is deemed effective upon delivery unless otherwise specified. Notice for each party must be given as follows:

	City	Contractor
Name	Joel Waxdeck	
Address	1052 South Livermore Avenue	
City/state/zip	Livermore, CA 94550	
Phone	(925) 960-4521	
Fax	(925) 960-4505	
Attention	Acting City Engineer	
Email	jhwaxdeck@livermoreca.gov	
Copy to	eireyes@livermoreca.gov	

10. General Provisions.

The following items are repeated here as stated as part of Part 2, General Conditions, for emphasis:

10.1. Assignment and Successors.

Contractor may not assign its rights or obligations under this Contract, in part or in whole, without City's written consent. This Contract is binding on Contractor's successors and permitted assigns. A consolidation or merger of Contractor or a change in ownership of 25% or more of Contractor's capital stock constitutes an assignment by Contractor requiring the City's written consent.

10.2. Third Party Beneficiaries.

There are no intended third-party beneficiaries to this Contract except as expressly provided in the General Conditions or Special Conditions.

10.3. Governing Law and Venue.

This Contract will be governed by California law and venue will be in the Superior Court of the County in which the Project is located, and no other place.

10.4. Amendment.

No amendment or modification of this Contract will be binding unless it is in a writing duly authorized and signed by the parties to this Contract.

10.5. Integration; Severability.

This Contract and the Contract Documents incorporated herein, including authorized amendments or Change Orders thereto, constitute the final, complete, and exclusive terms of the agreement between City and Contractor. If any provision of the Contract Documents, or portion of a provision, is determined to be illegal, invalid, or unenforceable, the remaining provisions of the Contract Documents will remain in full force and effect.

11. Authorization.

Each individual signing below warrants that he or she is authorized to do so by the party that he or she represents, and that this Contract is legally binding on that party. If Contractor is a corporation, signatures from two officers of the corporation are required under California Corporation Code, Section 313.

The parties agree to this Contract as witnessed by the signatures below:

CITY	CONTRACTOR
City of Livermore, a California Municipal Corporation	_____
s/_____	s/_____
Marianna Marysheva, City Manager	Name/Title [print]
Date: _____	Date: _____
Approved as to form:	s/_____
	Name/Title [print]
_____	Date: _____
City of Livermore City Attorney	_____
	Contractor's Calif. License Number(s)
	Seal:
	_____
	Expiration Date(s)

END OF DOCUMENT

LIVERMORE
CALIFORNIA

CITY COUNCIL STAFF REPORT **ITEM NO. 5.2**

DATE: July 24, 2023

TO: Honorable Mayor and City Council

FROM: Paul Spence, Community Development Director

SUBJECT: Resolution authorizing appropriations of $300,000 in HOME investment partnership program funds for a loan to Tri-Valley REACH, Inc., and authorizing execution of an affordable housing loan agreement, affordable housing regulatory agreement and all related documents between the City of Livermore and Tri-Valley REACH, Inc. for the acquisition of 772 Camden Common.

RECOMMENDED ACTION

Staff recommends the City Council adopt a resolution:

1. Authorizing and appropriating $300,000 in HOME Investment Partnership Program (HOME) funds (fund 671) for a loan to Tri-Valley REACH, Inc. to assist with the acquisition of 772 Camden Common;
2. Authorizing the City Manager to approve and execute the Affordable Housing Loan Agreement attached in substantial form as Exhibit A to the Resolution and the Affordable Housing Regulatory Agreement and Declaration of Restrictive Covenants attached in substantial form as Exhibit B to the Resolution, between the City of Livermore and Tri-Valley REACH, Inc. for 772 Camden Common, subject to final form approval by the City Attorney; and,
3. Authorizing the City Manager to execute related documents authorized and described in the loan agreements and necessary to appropriate and expend the HOME funds.

SUMMARY

Tri-Valley REACH, Inc. (REACH) has requested loan assistance from the City to purchase a 3-bedroom, Below Market Rate townhouse unit located at 772 Camden Common. REACH proposes to use the home as permanent, supportive, shared housing for extremely low-income individuals with disabilities in Livermore who are able to live independently. REACH is requesting the City's assistance with this project through a HOME loan of $300,000. If approved, the loan would be evidenced through an Affordable Housing Loan Agreement, and Promissory Note secured by a Deed of Trust.

Staff recommends the City Council authorize an appropriation of $300,000 in HOME funds for the

acquisition loan to REACH and authorize the City Manager to approve and execute the City loan agreements and all related documents described in those agreements and necessary to appropriate and expend the HOME funds.

DISCUSSION

The City of Livermore has partnered with Tri-Valley REACH, Inc. (REACH) on multiple projects to expand affordable housing opportunities for very low-income people with developmental disabilities in Livermore. REACH currently manages five supported group homes for developmentally disabled people in Livermore and six similar homes in Pleasanton. Through REACH, residents are able to live independently, work and volunteer in their communities. These projects help address the City's special needs housing goals in the Housing Element of the City's General Plan by expanding affordable housing and independent living opportunities for extremely low-income households with disabilities.

REACH has requested the City's assistance to purchase a 3-bedroom, Below Market Rate townhouse unit located at 772 Camden Common (the "Property") in the Artero development. The unit is currently resale restricted to low-income households through the City's Affordable Homeownership Program with a restricted sales price of $321,131. Under the resale restriction agreement, the unit may be transferred to non-profit ownership for an affordable housing purpose. REACH proposes to use the Property as permanent, supportive housing for individuals with disabilities in Livermore who are able to live independently. Because REACH serves extremely low-income individuals who are only able to afford very low rents, the organization has limited funds available to self-finance an acquisition.

REACH is requesting the City's assistance with this project through a HOME loan of $300,000. HOME dollars are limited to activities that either create or preserve housing opportunities. In recent years, the City has mostly funded tenant-based rental assistance programs through HOME. Use of the HOME fund balance on this acquisition would allow the City to spend down its HOME fund balance on an eligible permanent housing use.

If approved, the loan would be evidenced through an Affordable Housing Loan Agreement, and Promissory Note secured by a Deed of Trust. Under the proposed loan terms, payments are deferred for the 55-year term so that the organization may keep rents at extremely low levels (30% of Area Median Income) and divert available cash flow (if any) to fund operating and maintenance reserves for the Property. The City has a history of providing deferred payment acquisition financing for REACH and other affordable housing providers in order to encourage the creation of deeply affordable housing units to particularly vulnerable populations with extremely low incomes, such as people with developmental disabilities.

As a condition of receiving the City's loan funds, REACH will enter into an Affordable Housing Regulatory Agreement and Declaration of Restrictive Covenants (HOME Regulatory Agreement) for the property. The HOME Regulatory Agreement outlines affordable rent, tenant income, maximum occupancy and property management requirements by which REACH must abide for the fifty-five (55) year loan term. As the property owner, REACH oversees the long-term asset management of the house and has a property management agreement with Housing Consortium of the East Bay (HCEB) who is responsible for providing property management and resident services to the residents.

Staff recommends the City Council authorize a $300,000 acquisition loan to REACH for the 772 Camden Common property and authorize the City Manager to execute the Affordable Housing Loan Agreement,

Affordable Housing Regulatory Agreement and Declaration of Restrictive Covenants and all related documents described in those agreements and necessary to commit and expend the HOME funds. If approved, REACH and the current Property owner expect to close escrow on the sale in early August.

FISCAL AND ADMINISTRATIVE IMPACTS

HOME Investment Partnership Program ("HOME") funds are allocated to the City through the Alameda County HOME Consortium. The City receives approximately $148,000 through the HOME Consortium annually. The City has up to four years to expend funds on a project activity, and there is currently a fund balance of approximately $300,000 available to commit. The proposed loan will accrue three percent (3%) simple, annual interest for twenty (20) years, with the loan due at the end of a 55-year term. Any loan repayments would be accounted in the City's HOME fund (F671).

COMMUNITY PILLAR

1: A Safe Community that Thrives

GOAL

7: Expand and preserve the supply of affordable housing opportunities.

ATTACHMENTS

1. Resolution
2. Exhibit A - Loan Agreement
2. Exhibit B - Regulatory Agreement

Prepared by: Fran Reisner
Acting Housing and Human Services Manager

Approved by:



Marianna Marysheva
City Manager

Fiscal Review by:



Tina Olson
Administrative Services Director

IN THE CITY COUNCIL OF THE CITY OF LIVERMORE, CALIFORNIA

A RESOLUTION AUTHORIZING AND APPROPRIATING $300,000 IN HOME INVESTMENT PARTNERSHIP PROGRAM FUNDS FOR A LOAN TO TRI-VALLEY REACH, INC., EXECUTION OF AN AFFORDABLE HOUSING LOAN AGREEMENT, AFFORDABLE HOUSING REGULATORY AGREEMENT AND DECLARATION OF RESTRICTIVE COVENANTS, AND ALL RELATED DOCUMENTS BETWEEN THE CITY OF LIVERMORE AND TRI-VALLEY REACH, INC. FOR THE ACQUISITION OF 772 CAMDEN COMMON

HOME Investment Partnership Program ("HOME") funds are allocated to the City of Livermore ("City") through the Alameda County HOME Consortium. HOME dollars are limited to activities that either create or preserve housing opportunities. The City must allocate the funds by December 31, 2023, and has up to four years to expend funds on a project activity.

Tri-Valley REACH, Inc. has requested a loan from the City to assist with the purchase of a 3-bedroom townhouse unit located at 772 Camden Common (the "Property") for the purpose of permanent, supportive housing for individuals with disabilities in Livermore.

The City has agreed to provide a loan of HOME funds to Tri-Valley REACH, Inc., in the principal amount of $300,000. The deferred payment loan will assist Tri-Valley REACH, Inc. in acquiring the Property and will accrue simple interest at three percent (3%) for 20 years and mature at 55 years. The City and Tri-Valley REACH, Inc. will enter into a regulatory agreement which will restrict the use of the Property as special needs housing that will serve extremely low-income individuals with developmental disabilities.

The City and Tri-Valley REACH, Inc. now wish to enter into the agreements attached to this Resolution to execute this funding request.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Livermore that it hereby:

1. Authorizes and appropriates $300,000 in HOME Investment Partnership Program (HOME) funds (fund 671) for a loan to Tri-Valley REACH, Inc. to assist with the acquisition of 772 Camden Common;

2. Authorizes the City Manager to approve and execute the Affordable Housing Loan Agreement and Regulatory Agreement in substantially the same form as attached to this resolution as Exhibit A and Exhibit B, subject to the City Attorney's review and approval as to form and subject to the Risk Manager's review and approval as

to insurance, between the City of Livermore and Tri-Valley REACH, Inc. for 772 Camden Common; and,

3. Authorizes the City Manager to execute related documents authorized and described in the attached agreements and necessary to appropriate and expend the HOME funds.

On motion of Council Member _____, seconded by Council Member _____, the foregoing resolution was passed and adopted on July 24, 2023, by the following vote:

AYES: COUNCIL MEMBERS:
NOES: COUNCIL MEMBERS:
ABSENT: COUNCIL MEMBERS:
ABSTAIN: COUNCIL MEMBERS:

ATTEST:

_____
Marie Weber
City Clerk

APPROVED AS TO FORM:

/s/ Katherine Mirassou
Katherine Mirassou
Deputy City Attorney

Exhibit A – Form of Affordable Housing Loan Agreement
Exhibit B – Form of Affordable Housing Regulatory Agreement

AFFORDABLE HOUSING LOAN AGREEMENT
(HOME Funds)

by and between

THE CITY OF LIVERMORE

and

TRI-VALLEY REACH, Inc.

772 Camden Common

_____, 2023

THIS LOAN AGREEMENT (this "**Agreement**") is entered into effective as of _____, 2023 ("**Effective Date**") by and between the City of Livermore, a municipal corporation (**"City"**) and Tri-Valley REACH, Inc., a California nonprofit public benefit corporation ("**Borrower** "). The City and the Borrower are collectively referred to herein as the "**Parties**."

RECITALS

A. The Borrower has entered into a purchase and sale agreement for that certain three-bedroom residential townhouse condominium unit located within a multifamily residential building located at 772 Camden Common, Livermore, California, commonly known as Alameda County Assessor's Parcel Number 99-1388-42_____ (together with certain appurtenant rights and as more particularly described in Exhibit A attached hereto, the "**Property**").

B. Upon satisfaction of the conditions precedent set forth in this Agreement, City will provide a loan to assist in financing Buyer's acquisition of the Property.

C. Concurrently with the sale of the Property, among other documents, Borrower will execute: a secured promissory note to evidence Buyer's obligation to repay the loan City will provide to partially finance Buyer's acquisition of the Property, a deed of trust that will provide City with a security interest in the Property, and an Affordable Housing Regulatory Agreement and Declaration of Restrictive Covenants that will restrict rents and occupancy of the Property to eligible extremely low-income individuals for a term of not less than fifty-five (55) years.

D. City is a Participating Jurisdiction in the Alameda County HOME Consortium and a recipient of funds pursuant to the HOME Investment Partnership Act authorized under Title II of the Cranston-Gonzalez National Affordable Housing Act of 1990 (42 U.S.C. § 12721-12840) as amended, Catalog of Federal Domestic Assistance Number 14.239, otherwise known as the FY21-22 Home Fund Program for City.

E. City wishes to engage Borrower as a subrecipient to assist City in utilizing monies from the HOME Fund Program to support affordable housing activities that benefit extremely low-income Livermore residents.

F. On ____ the Livermore City Council approved Resolution No. ____ to award Borrower the amount of $____dollar amount ("Funds") from its HOME Fund ("Program") for the Loan.

G. City and Borrower understand that the Funds awarded from the Program shall be administered consistent with the procedures, standards, regulations, and guidelines for HOME Funds for those activities eligible under 24 C.F.R. Part 92 and consistent with Title 2 of the Code of Federal Regulations, Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards ("2 C.F.R. Part 200").

NOW, THEREFORE, in consideration of the mutual covenants contained herein and good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows.

ARTICLE I

DEFINITIONS; EXHIBITS

1.1 Definitions. The following terms shall have the meanings set forth below whenever used in this Agreement and the Exhibits attached hereto. Additional terms are defined in the Recitals and text of this Agreement.

"**Affordable Rent"** is defined in the Regulatory Agreement.

"**Applicable Laws**" is defined in Section 5.1.

"**Area Median Income"** is defined in the Regulatory Agreement.

"**Authorized Representative"** means, for each respective party, the City Manager of the City of Livermore, or his or her designee, and the Board Chairperson of Tri-Valley REACH.

"**Borrower**" means Tri-Valley REACH, Inc., a California nonprofit public benefit corporation.

"**Borrower's Permitted Exceptions**" is defined in Section 3.1.

"**City"** means the City of Livermore, California, a municipal corporation.

"**City Council"** means the City Council of the City of Livermore, California.

"**City Documents**" means collectively, this Agreement, the Seller Take-Back Note, the Deed of Trust, and the Regulatory Agreement.

"**City's Permitted Exceptions"** is defined in Section 3.7.

"**Claims**" is defined in Section 10.1.

"**Closing Date**" or "**Close of Escrow**" shall be the date that escrow closes for Buyer's acquisition of the Property.

"**Deed of Trust**" means the deed of trust to be recorded against the Property to secure repayment of the Seller Take-Back Loan.

"Eligible Household" is defined in the Regulatory Agreement.

"**Environmental Laws**" is defined in Section 6.9.2.

"Escrow Agent" is defined in Section 3.3.

"Financing Plan" is defined in Section 2.5.

"**Hazardous Material**" is defined in Section 6.9.1.

"**HOME Funds**" are defined in recital D.

"**Indemnitees**" is defined in Section 10.1.

"**Lender's Title Policy**" is defined in Section 3.7.

"**Official Records**" means the Official Records of Alameda County.

"**Owner's Title Policy**" is defined in Section 3.8.

"**Property**" is defined in Recital A and described in Exhibit A.

"Purchase Price" is defined in Section 3.2.

"**Regulatory Agreement**" is defined in Section 3.7.

"**Seller Take-Back Loan"** is defined in Section 4.1.

"Seller Take-Back Note" is defined in Section 4.1.

"Title Company" is defined in Section 3.3.

"**Title Report**" is defined in Section 3.1.

"**Transfer**" is defined in Section 7.2.

1.2 Exhibits. The following Exhibits are attached hereto and incorporated into this Agreement by this reference:

A	Legal Description of the Property
B	Form of Promissory Note
C	Form of Deed of Trust
D	Form of Regulatory Agreement (HOME)
E	Financing Plan
F	Insurance Requirements

ARTICLE II

REPRESENTATIONS; EFFECTIVE DATE

2.1 Borrower's Representations. Borrower covenants that until the expiration or earlier termination of this Agreement, upon learning of any fact or condition which would cause any of the warranties and representations in this Section 2.1 to be untrue, Borrower shall immediately give written notice of such fact or condition to City. Borrower acknowledges that City shall rely upon Borrower's representations made herein notwithstanding any investigation made by or on behalf of City. Borrower hereby represents, warrants, and covenants that the following are true and correct as of the Effective Date and shall be true and correct as of the Closing Date.

(a) Organization. Borrower is a nonprofit public benefit corporation, duly organized and in good standing under the laws of the State of California and tax-exempt under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended.

(b) Authority of Borrower. Borrower has full power and authority to execute and deliver this Agreement and all other documents or instruments executed and delivered by Borrower, or to be executed and delivered by Borrower pursuant to or in connection with this Agreement, and to perform and observe the terms and provisions of all of the foregoing.

(c) Authority of Persons Executing Documents. This Agreement and all other documents or instruments executed and delivered by Borrower, or to be executed and delivered by Borrower pursuant to or in connection with to this Agreement, have been executed and delivered, or will be executed and delivered, by persons who are duly authorized to execute and deliver the same for and on behalf of Borrower , and all actions required under Borrower 's organizational documents and applicable governing law for the authorization, execution, delivery and performance of this Agreement and all other documents or instruments executed and delivered by Borrower , or to be executed and delivered by Borrower pursuant to or in connection with this Agreement, have been duly taken or will have been duly taken (to the extent such actions are required) as of the date of execution and delivery of such documents.

(d) Valid and Binding Agreements. This Agreement and all other documents or instruments which have been executed and delivered by Borrower or will be executed and delivered by Borrower pursuant to or in connection with this Agreement constitute or, if not yet executed or delivered, will when so executed and delivered, constitute, legal, valid and binding obligations of Borrower , enforceable in accordance with their respective terms, subject to laws affecting creditors' rights and principles of equity.

(e) No Breach of Law or Agreement. Neither the execution nor delivery of this Agreement or any other documents or instruments executed and delivered by Borrower, or to be executed or delivered by Borrower pursuant to or in connection with this Agreement, nor the performance of any provision, condition, covenant or other term hereof or thereof, will conflict with or result in a breach of any statute, rule or regulation, or any judgment, decree or order of any court, board, commission or agency binding on Borrower, or any provision of the organizational documents of Borrower, or will conflict with or constitute a breach of or a default

under any agreement to which Borrower is a party, or will result in the creation or imposition of any lien upon any assets or property of Borrower, other than liens established pursuant hereto.

(f) Pending Proceedings. Except as disclosed in writing to the City prior to execution of this Agreement, Borrower is not in default under any law or regulation or under any order of any court, board, commission or agency whatsoever, and, to the best of its knowledge, there are no claims, actions, suits or proceedings pending or, to the knowledge of Borrower, threatened against or affecting Borrower or the Property, at law or in equity, before or by any court, board, commission or agency. Borrower is not the subject of a bankruptcy or insolvency proceeding.

2.2 City's Representations. City represents and warrants to Borrower that the statements set forth in this Section 2.2 are true and correct as of the Effective Date and shall be true and correct as of the Close of Escrow. City shall notify Borrower of any facts that would cause any of City's representations contained in this Agreement to be untrue as of the Close of Escrow.

(a) Authority of City. City has full power and authority to execute and deliver this Agreement and all other documents or instruments to be executed and delivered by City pursuant to or in connection with this Agreement, and to perform and observe the terms and provisions of all of the foregoing.

(b) Authority of Persons Executing Documents. This Agreement and all other documents or instruments to be executed and delivered by City pursuant to or in connection with to this Agreement, have been executed and delivered, or will be executed and delivered, by persons who are duly authorized to execute and deliver the same for and on behalf of City, and all actions required for the authorization, execution, delivery and performance of this Agreement and all other documents or instruments to be executed and delivered by Borrower pursuant to or in connection with this Agreement, have been duly taken or will have been duly taken (to the extent such actions are required) as of the date of execution and delivery of such documents.

(c) Valid and Binding Agreements. This Agreement and all other documents or instruments that will be executed and delivered by City pursuant to or in connection with this Agreement constitute or, if not yet executed or delivered, will when so executed and delivered, constitute, legal, valid and binding obligations of City, enforceable in accordance with their respective terms, subject to laws affecting creditors' rights and principles of equity.

(d) No Breach of Law or Agreement. Neither the execution nor delivery of this Agreement or any other documents or instruments to be executed or delivered by City pursuant to or in connection with this Agreement, nor the performance of any provision, condition, covenant or other term hereof or thereof, will conflict with or result in a breach of any statute, rule or regulation, or any judgment, decree or order of any court, board, commission or agency binding on City, or any provision of the organizational documents of City, or will conflict with or constitute a breach of or a default under any agreement to which City is a party, or will result in the creation or imposition of any lien upon any assets or property of City, other than liens established pursuant hereto.

(e) Pending Proceedings. Except as disclosed in writing to Borrower prior to execution of this Agreement, City is not in default under any law or regulation or under any order of any court, board, commission or agency whatsoever, and, to the best of its knowledge, there are no claims, actions, suits or proceedings pending or, to the knowledge of City, threatened against or affecting City, at law or in equity, before or by any court, board, commission or agency. City is not the subject of a bankruptcy or insolvency proceeding.

2.3 Effective Date. The obligations of Borrower and City hereunder shall be effective as of the Effective Date which date is set forth in the preamble to this Agreement.

2.4 Affordability and Occupancy Restrictions. As more particularly set forth in the Regulatory Agreement, the Property shall be used for occupancy by individuals that have a developmental disability as defined in subdivision 4512(a) of the California Welfare and Institutions Code, and Borrower will be required to provide or arrange for the provision of supportive services to the residents.

2.5 Financing Plan. Borrower shall submit for City review and approval Borrower 's plan for financing the acquisition and operation of the Property (the "**Financing Plan**"). The Financing Plan shall indicate all sources of funds necessary to pay acquisition and operating costs and shall be accompanied by evidence that all such funds are subject to binding commitments, in form acceptable to City, from Borrower, grantors, and lenders, subject only to commercially reasonable conditions. The Financing Plan shall include an operating pro forma that sets out in detail Borrower's plan for financing the costs of acquisition and operation of the Property.

City staff shall review the proposed Financing Plan, and acting through the Authorized Representative, the City shall approve such plan in writing within fifteen (15) business days following receipt provided that the plan conforms to the requirements of this Section. If the City does not approve the Financing Plan, the City shall set forth its objections in writing and notify Borrower of the reasons for its disapproval. If the City does not approve or provide written objections to Borrower within such fifteen (15) business day period, the Financing Plan shall be deemed rejected. Borrower shall thereafter submit a revised Financing Plan that addresses the reasons for disapproval, and the City shall grant Borrower a reasonable extension of the time deadlines set forth in this Agreement as required to restructure the Financing Plan. City's approval of the Financing Plan shall be a condition precedent to City's obligation to deliver Funds to Borrower. The approved Financing Plan shall be attached to this Agreement as Exhibit E.

2.6 Loan and Grant Documents. If applicable, Borrower shall submit to the City for its review and approval, copies of all other loan and/or grant documents that will be used to finance Borrower's acquisition of the Property.

ARTICLE III

CONDITIONS

PRECEDENT TO LOAN AND ESCROW CLOSING

3.1 Escrow. City and Borrower shall open escrow at the office of Chicago Title Company located at 1676 N. California Blvd., Suite 117, Walnut Creek, California, or such other title company as the Parties may agree upon ("**Escrow Agent**" or **"Title Company"**) in order to consummate the closing of escrow on City financing for the transaction contemplated hereby.

3.2 Costs of Closing and Escrow. Borrower shall pay all title insurance premiums for policies Borrower elects to purchase in connection with the acquisition of the Property, and Borrower shall pay all recording fees, transfer taxes, escrow fees and closing costs incurred in connection with the acquisition of the Property. Borrower shall pay for the cost of any lender's policy of title insurance that City elects to acquire in connection with the transactions contemplated hereby.

3.3 Deposits into Escrow; Closing. The Closing Date shall be a date that is mutually acceptable to the parties, and which shall occur within thirty (30) days following the Borrower's satisfaction or City's waiver of all conditions precedent to the delivery of the Loan for acquisition of the Property as set forth in Section 3.4. Prior to the Close of Escrow, Borrower shall deposit into escrow the City Documents to which Borrower is a party, executed and acknowledged as applicable, Borrower's share of closing costs, and such additional duly executed instruments and documents as the Escrow Agent may reasonably require. Provided that all conditions precedent to Close of Escrow have been satisfied or waived, City shall deposit into escrow the executed copies of the City Documents to which City is a party, and such additional duly executed instruments and documents as the Escrow Agent may reasonably require. On the Closing Date, the Escrow Agent shall cause the Regulatory Agreement and the Deed of Trust to be recorded in the Official Records in that order.

3.4 City's Conditions to Closing. City's obligation to deliver the loan to Borrower is conditioned upon the satisfaction of the terms and conditions set forth in this Section 3.4, unless any such condition is waived in writing by the City acting in the discretion of its Authorized Representative.

(a) No Default. There shall exist no condition, event or act which would constitute a material breach or default under this Agreement or any other City Document, or which, upon the giving of notice or the passage of time, or both, would constitute such a material breach or default.

(b) Representations. All representations and warranties of Borrower contained herein or in any other City Document or certificate delivered in connection with the transactions contemplated by this Agreement shall be true and correct in all material respects as of the Close of Escrow.

(c) Due Authorization and Good Standing. Borrower shall have delivered to City copies of all of the following, including updated versions of any of the following that have been amended or modified since the date of any prior delivery to City of such documents: (i) a certificate of good standing, certified by the Secretary of State, indicating that Borrower is

properly organized and authorized to do business in the State of California; (ii) copies of Borrower's articles of incorporation and bylaws, each certified by Borrower's corporate Secretary as accurate, complete, and in full force and effect; (iii) verification of Borrower's tax-exempt status; and (iv) a resolution certified by Borrower's corporate Secretary authorizing Borrower's execution of and performance under this Agreement and the other City Documents.

(d) Execution, Delivery and Recordation of Documents. Borrower shall have executed, acknowledged as applicable, and delivered to City this Agreement, and all other documents required in connection with the transactions contemplated hereby, including without limitation the Promissory Note, a deed of trust substantially in the form attached hereto as Exhibit C to secure repayment of the Promissory Note (the **"Deed of Trust**"), and an Affordable Housing Regulatory Agreement and Declaration of Restrictive Covenants substantially in the form attached hereto as Exhibit D (the "**Regulatory Agreement**"). Concurrently with the Closing, the Regulatory Agreement and the Deed of Trust shall be recorded in the Official Records.

(e) Lender's Title Policy. The Title Company shall, upon payment of the premium therefor, be ready to issue an ALTA Lender's Policy of Title Insurance for the benefit and protection of City ("**Lender's Title Policy"**) in the amount of the Loan, insuring that the Deed of Trust and the Regulatory Agreement are recorded subject only to title exceptions and such other defects, liens, conditions, encumbrances, restrictions, easements and exceptions as City may reasonably approve in writing (collectively, "**City's Permitted Exceptions**") and containing such endorsements as City may reasonably require.

(f) Financing Plan. City shall have approved the Financing Plan, including without limitation, the operating budget for the Project.

(g) Approval of Financing Documents; Evidence of Availability of Funds. City shall have approved any applicable loan and grant documents for all financing sources for Borrower's acquisition and operation of the Property. All other sources of acquisition financing shall have closed or shall close concurrently with the closing for the conveyance of the Property.

(h) Insurance. Borrower shall have provided evidence satisfactory to City that Borrower has obtained insurance coverage meeting the requirements set forth in Exhibit F.

(i) Other Documents. Borrower's delivery to City, and City approval of such other documents related to the acquisition and operation of the Property as City may reasonably request, including without limitation, an agreement with any agency that will refer Eligible Households for prospective occupancy of the Property.

(j) Federal Environmental Review and Clearance. Notwithstanding any other provision in this Agreement, the City shall have no obligation to provide the Loan to acquire the Property, and no transfer of title to the Borrower may occur, unless and until the City has provided the Developer with written notification that: (1) the City has completed a federally required environmental review pursuant to the National Environmental Policy Act ("NEPA") and the appropriate approvals and clearances necessary for the release of funds has been approved, with notification that (a) the purchase may proceed, or (b) the purchase may proceed

only if certain conditions to address issues in the environmental review are satisfied before or after the purchase of the Property; or (2) it has determined the purchase is exempt from federal environmental review pursuant to NEPA and a request for release of funds is not required. The City shall use its best efforts to conclude the environmental review pursuant to NEPA of the Property expeditiously.

3.5 Borrower's Conditions to Closing. Borrower's obligation to proceed with the acquisition of the Property is subject to the satisfaction or Borrower's waiver of the following conditions:

(a) No Default. City shall not be in default under the terms of this Agreement, and all representations and warranties of City contained herein shall be true and correct in all material respects;

(b) Execution of Documents. City shall have executed and acknowledged the Regulatory Agreement, and all other City Documents to which the City is a party, and shall have delivered such documents into escrow; and

(c) Owner's Title Policy. The Title Company shall, upon payment of the premium therefor, be ready to issue an Owner's Title Insurance Policy for the benefit and protection of Borrower ("**Owner's Title Policy**") showing title to the Property vested in Borrower, subject only to Buyer's Permitted Exceptions and containing such endorsements as Borrower may reasonably require, with the cost of such Owner's Title Policy to be paid by Borrower.

ARTICLE IV

CITY FINANCIAL ASSISTANCE

4.1 Seller Financing. In order to increase the affordability of the Property for prospective tenants, upon satisfaction of the conditions precedent set forth in Section 3.4, City agrees to provide to Borrower a loan in the amount of Three Hundred Thousand Dollars ($300,000.00) (the **"Loan"**), upon the terms and conditions and for the purposes set forth in this Agreement. Borrower's obligation to repay the Loan shall be evidenced by a secured promissory note executed by Borrower substantially in the form attached hereto as Exhibit B (the **"Note**").

4.2 Loan Terms. The outstanding principal balance of the Note will bear interest at a rate equal to three percent (3%) simple annual interest. Annual payments shall be deferred for a term of 55 years from the Closing Date. The entire outstanding principal balance and interest accrued on the Note shall be payable in full on the date which is the fifty-fifth (55th) anniversary of the Closing Date.

4.3 Security. Repayment of the Note shall be secured by a deed of trust that will be executed by Borrower for the benefit of City substantially in the form attached hereto as Exhibit

C and recorded against the Property on the Closing Date. The Deed of Trust may be subordinated only to such liens and encumbrances consistent with the approved Financing Plan as City shall approve in writing consistent with Section 8.2.

4.4 Prepayment; Acceleration.

(a) Prepayment. Borrower shall have the right to prepay the Loan at any time and from time to time, without penalty or premium, provided that any prepayment of principal must be accompanied by interest accrued but unpaid to the date of prepayment. Prepayments shall be applied first to accrued but unpaid interest and then to principal. Any such prepayment shall have no effect upon Borrower's obligations under the Regulatory Agreement which shall survive for the full term of the Regulatory Agreement.

(b) Due On Transfer or Encumbrance. Unless City agrees otherwise in writing, the entire unpaid principal balance and all interest and other sums accrued under the Note shall be due and payable upon the Transfer absent the prior written consent of City of all or any part of or interest in the Property except as otherwise permitted pursuant to this Agreement.

(c) Default. The City shall have the right to accelerate the Maturity Date and declare all sums payable under the Note immediately due and payable upon the expiration of all applicable cure periods following the occurrence of an Event of Borrower Default.

ARTICLE V

USE OF THE PROPERTY

5.1 Compliance with Laws. Borrower shall operate the Property in conformity with all applicable federal, state and local laws, rules, ordinances and regulations (**"Applicable Laws"**), including without limitation, procedures, standards, regulations, and guidelines for HOME Funds for those activities eligible under 24 C.F.R. Part 92 and consistent with Title 2 of the Code of Federal Regulations, Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards ("2 C.F.R. Part 200"), all applicable federal and state labor laws and standards, Section 3 of the Housing and Community Development Act of 1974, as amended (if applicable pursuant to financing sources used for the acquisition or operation of the Property), applicable provisions of the California Public Contracts Code, the City's zoning and development standards, building, plumbing, mechanical and electrical codes, all other provisions of the City's Municipal Code, and all applicable disabled and handicapped access requirements, including without limitation, the Americans with Disabilities Act, 42 U.S.C. Section 12101, *et seq*., Government Code Section 4450, *et seq*., Government Code Section 11135, *et seq*., and the Unruh Civil Rights Act, Civil Code Section 51, *et seq*.. Borrower shall indemnify, defend (with counsel approved by City) and hold harmless the Indemnitees from and against any and all Claims arising in connection with the breach of Borrower's obligations set forth in this Section whether or not any insurance policies shall have been determined to be applicable to any such Claims. It is further agreed that City does not and shall not waive any rights against Borrower which it may have by reason of this indemnity and hold harmless agreement because of the acceptance by City, or Borrower's deposit with City of

any of the insurance policies described in this Agreement. Borrower's indemnification obligations set forth in this Section shall not apply to Claims to the extent arising from the gross negligence or willful misconduct of the Indemnitees. Borrower's defense and indemnification obligations set forth in this Section 5.1 shall survive the expiration or earlier termination of this Agreement.

5.2 Liens and Stop Notices. Borrower shall not allow to be placed on the Property or any part thereof any lien or stop notice on account of materials supplied to or labor performed on behalf of Borrower. If a claim of a lien or stop notice is given or recorded affecting the Property or any part thereof, Borrower shall within twenty (20) days of such recording or service: (a) pay and discharge (or cause to be paid and discharged) the same; or (b) effect the release thereof by recording and delivering (or causing to be recorded and delivered) to the party entitled thereto a surety bond in sufficient form and amount; or (c) provide other assurance satisfactory to City that the claim of lien or stop notice will be paid or discharged.

5.3 Right of City to Satisfy Liens on the Property. If Borrower fails to satisfy or discharge any lien or stop notice on the Property or any part thereof pursuant to and within the time period set forth in Section 5.2 above, the City shall have the right, but not the obligation, to satisfy any such liens or stop notices at Borrower's expense and without further notice to Borrower and all sums advanced by City for such purpose shall be part of the indebtedness secured by the Deed of Trust. In such event Borrower shall be liable for and shall immediately reimburse City for such paid lien or stop notice. Alternatively, the City may require Borrower to immediately deposit with City the amount necessary to satisfy such lien or claim pending resolution thereof. The City may use such deposit to satisfy any claim or lien that is adversely determined against Borrower. Borrower shall file a valid notice of cessation or notice of completion upon cessation of construction work on the Property for a continuous period of thirty (30) days or more, and shall take all other reasonable steps to forestall the assertion of claims or liens against the Property. The City may (but has no obligation to) record any notices of completion or cessation of labor, or any other notice that the City deems necessary or desirable to protect its interest in the Property.

5.4 Insurance Requirements. Borrower shall maintain and shall cause its contractors to maintain all applicable insurance coverage specified in Exhibit F.

5.5 Affordable Housing. Borrower covenants and agrees for itself, its successors and assigns that the Property will be subject to recorded covenants that will restrict the Property for use as affordable housing for persons with developmental disabilities, and that for a term of not less than fifty-five (55) years, commencing on the Closing Date, the Property shall be available at Affordable Rent to Eligible Households whose income is no greater than thirty percent (30%) of Area Median Income. Borrower shall comply with rent and occupancy restrictions imposed by all applicable financing sources and regulatory agencies if such agencies impose requirements on that are more stringent than those set forth in this Agreement. As more particularly set forth in the Regulatory Agreement, Borrower shall be obligated to screen prospective tenants to establish that they qualify as Eligible Households and may contract with a qualified organization or agency that will provide referrals of Eligible Households for prospective occupancy of the Property. In addition, Borrower will be obligated to provide, or contract with a qualified organization for provision of, supportive social services to the residents of the Property.

Borrower will cooperate with the Regional Center of the East Bay with respect to tenant referrals and supportive services.

5.6 Maintenance. Commencing upon Borrower's acquisition of the Property, Borrower shall at its own expense, maintain the Property in good physical condition, in good repair, and in decent, safe, sanitary, habitable and tenantable living conditions in conformity with all Applicable Laws and with all applicable homeowner's association rules and regulations. Without limiting the foregoing, Borrower agrees to maintain the Property in a condition free of all waste, nuisance, debris, graffiti, disrepair, and illegal activity, and shall take all reasonable steps to prevent the same from occurring on the Property. Borrower shall prevent and/or rectify any physical deterioration of the Property and shall make all repairs, renewals and replacements necessary to keep the Property in good condition and repair.

5.7 Taxes and Assessments. Commencing upon Borrower's acquisition of the Property, Borrower shall pay all real and personal property taxes, assessments and charges and all franchise, income, payroll, withholding, sales, and other taxes assessed against the Property, at such times and in such manner as to prevent any penalty from accruing, or any lien or charge from attaching to the Property; provided, however, Borrower shall have the right to contest in good faith, any such taxes, assessments, or charges. In the event the Borrower exercises its right to contest any tax, assessment, or charge, the Borrower, on final determination of the proceeding or contest, shall immediately pay or discharge any decision or judgment rendered against it, together with all costs, charges and interest.

5.8 Obligation to Refrain from Discrimination. Borrower shall not restrict the rental, sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Property or any portion thereof, on the basis of race, color, religion, creed, sex, sexual orientation, disability, marital status, ancestry, or national origin of any person. Borrower covenants for itself and all persons claiming under or through it, and this Agreement is made and accepted upon and subject to the condition that there shall be no discrimination against or segregation of any person or group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Property or part thereof, nor shall Borrower or any person claiming under or through Borrower establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees in, of, or for the Property or part thereof. Borrower shall include such provision in all deeds, leases, contracts and other instruments executed by Borrower, and shall enforce the same diligently and in good faith. Nothing in this Section 5.8 is intended to prevent the reservation of residential units in the Property for occupancy by individuals that have a developmental disability as defined in subdivision 4512(a) of the California Welfare and Institutions Code.

All deeds, leases or contracts made or entered into by Buyer, its successors or assigns, as to any portion of the Property shall contain the following language:

(a) In Deeds, the following language shall appear:

"(1) Grantee herein covenants by and for itself, its successors and assigns, and all persons claiming under or through it, that there shall be no discrimination against or segregation of a person or of a group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the property herein conveyed nor shall the grantee or any person claiming under or through the grantee establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees in the property herein conveyed. The foregoing covenant shall run with the land.

"(2) Subdivision (d) of Section 51 and Section 6714 of the Civil Code and subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall apply to paragraph (1)."

(b) In Leases, the following language shall appear:

"(1) The lessee herein covenants by and for the lessee and lessee's heirs, personal representatives and assigns, and all persons claiming under the lessee or through the lessee, that this lease is made subject to the condition that there shall be no discrimination against or segregation of any person or of a group of persons on account of race, color, creed, religion, sex, sexual orientation, marital status, national origin, ancestry or disability in the leasing, subleasing, transferring, use, occupancy, tenure or enjoyment of the property herein leased nor shall the lessee or any person claiming under or through the lessee establish or permit any such practice or practices of discrimination of segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, sublessees, subtenants, or vendees in the property herein leased.

"(2) Subdivision (d) of Section 51 and Section 6714 of the Civil Code and subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall apply to paragraph (1)."

(c) In Contracts pertaining to operation or management of the Property, the following language shall appear:

"There shall be no discrimination against or segregation of any person or group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the property nor shall the transferee or any person claiming under or through the transferee establish or permit any such practice or practices of discrimination or segregation with reference to selection,

location, number, use or occupancy of tenants, lessee, subtenants, sublessees or vendees of the land."

ARTICLE VI

CONDITION OF THE SITE; ENVIRONMENTAL MATTERS

6.1 Borrower's Post-Closing Obligations. Borrower hereby covenants and agrees that:

(1) Borrower shall not knowingly permit the Property or any portion thereof to be a site for the use, generation, treatment, manufacture, storage, disposal or transportation of Hazardous Material or otherwise knowingly permit the presence or release of Hazardous Material in, on, under, about or from the Property with the exception of limited amounts of cleaning supplies and other materials customarily used in the use or maintenance of residential properties similar in nature to the Property, and used, stored and disposed of in compliance with Environmental Laws.

(2) Borrower shall keep and maintain the Property and each portion thereof in compliance with, and shall not cause or permit the Property or any portion of either to be in violation of, any Environmental Laws.

(3) Upon receiving actual knowledge of the same, Borrower shall immediately advise City in writing of: (i) any and all enforcement, cleanup, removal or other governmental or regulatory actions instituted, completed or threatened against the Borrower, or the Property pursuant to any applicable Environmental Laws; (ii) any and all claims made or threatened by any third party against the Borrower or the Property relating to damage, contribution, cost recovery, compensation, loss or injury resulting from any Hazardous Material; (iii) the presence or release of any Hazardous Material in, on, under, about or from the Property; or (iv) Borrower's discovery of any occurrence or condition on any real property adjoining or in the vicinity of the Property classified as "Border Zone Property" under the provisions of California Health and Safety Code, Sections 25220 *et seq.,* or any regulation adopted in connection therewith, that may in any way affect the Property pursuant to any Environmental Laws or cause it or any part thereof to be designated as Border Zone Property. The matters set forth in the foregoing clauses (i) through (iv) are hereinafter referred to as "**Hazardous Materials Claims**"). The City shall have the right to join and participate in, as a party if it so elects, any legal proceedings or actions initiated in connection with any Hazardous Materials Claim.

(4) Without the City's prior written consent, which shall not be unreasonably withheld or delayed, Borrower shall not take any remedial action in response to the presence of any Hazardous Material in, on, under, or about the Property (other than in emergency situations or as required by governmental agencies having jurisdiction in which case the City agrees to provide its consent), nor enter into any settlement agreement, consent decree, or other compromise in respect to any Hazardous Materials Claim. City shall have the right to join and participate in, as a party if it so elects, any legal proceedings or actions initiated in connection with any Hazardous Materials Claims and to have its reasonable attorneys' fees in connection therewith paid by Borrower.

6.2 Environmental Indemnity. To the greatest extent allowed by law, Borrower shall indemnify, defend (with counsel approved by City) and hold Indemnitees harmless from and against all Claims resulting, arising, or based directly or indirectly in whole or in part, upon (i) the presence, release, use, generation, discharge, storage or disposal of any Hazardous Material occurring on, under, in or about the Property after the Close of Escrow, or the transportation of any such Hazardous Material to or from, the Property after the Close of Escrow, or (ii) the failure of Borrower, Borrower's employees, agents, contractors, subcontractors, or any person acting on behalf of or as the invitee of any of the foregoing to comply with Environmental Laws, except to the extent caused by the City's gross negligence or willful misconduct.

Buyer's obligation to indemnify the Indemnitees shall not be limited or impaired by any of the following: (i) any amendment or modification of any City Document; (ii) any extensions of time for performance required by any City Document; (iii) any provision in any of the City Documents limiting City's recourse to property securing the Secured Obligations (as defined in the Deed of Trust), or limiting the personal liability of Borrower, or any other party for payment of all or any part of the Loan; (iv) the accuracy or inaccuracy of any representation and warranty made by Borrower under this Agreement or by Borrower or any other party under any City Document, (v) the release of Borrower or any other person, by City or by operation of law, from performance of any obligation under any City Document; (vi) the release or substitution in whole or in part of any security for the Loan; and (vii) City's failure to properly perfect any lien or security interest given as security for the Loan.

The provisions of this Section 6.2 shall be in addition to any and all other obligations and liabilities that Borrower may have under applicable law, and each Indemnitee shall be entitled to indemnification under this Section without regard to whether City or that Indemnitee has exercised any rights against the Property or any other security, pursued any rights against any guarantor or other party, or pursued any other rights available under the City Documents or applicable law. The obligations of Borrower to indemnify the Indemnitees under this Section shall survive any repayment or discharge of the Loan, any foreclosure proceeding, any foreclosure sale, any delivery of any deed in lieu of foreclosure, and any release of record of the lien of the Deed of Trust.

6.3 Definitions.

6.3.1 "**Hazardous Material**" means any chemical, compound, material, mixture, or substance that is now or may in the future be defined or listed in, or otherwise classified pursuant to any Environmental Laws (defined below) as a "hazardous substance",

"hazardous material", "hazardous waste", "extremely hazardous waste", infectious waste", toxic substance", toxic pollutant", or any other formulation intended to define, list or classify substances by reason of deleterious properties such as ignitability, corrosivity, reactivity, carcinogenicity, or toxicity. The term "hazardous material" shall also include asbestos or asbestos-containing materials, radon, chrome and/or chromium, polychlorinated biphenyls, petroleum, petroleum products or by-products, petroleum components, oil, mineral spirits, natural gas, natural gas liquids, liquefied natural gas, or synthetic gas usable as fuel, perchlorate, and methy tert butyl ether, whether or not defined as a hazardous waste or hazardous substance in the Environmental Laws.

6.3.2 "**Environmental Laws**" means any and all federal, state and local statutes, ordinances, orders, rules, regulations, guidance documents, judgments, governmental authorizations or directives, or any other requirements of governmental authorities, as may presently exist, or as may be amended or supplemented, or hereafter enacted, relating to the presence, release, generation, use, handling, treatment, storage, transportation or disposal of Hazardous Material, or the protection of the environment or human, plant or animal health, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 (42 U.S.C. § 9601), the Hazardous Materials Transportation Act (49 U.S.C. § 1801 *et seq*.), the Resource Conservation and Recovery Act (42 U.S.C. § 6901 *et seq*.), the Federal Water Pollution Control Act (33 U.S.C. § 1251 *et seq*.), the Clean Air Act (42 U.S.C. § 7401 *et seq*.), the Toxic Substances Control Act (15 U.S.C. § 2601 *et seq*.), the Oil Pollution Act (33 U.S.C. § 2701 *et seq*.), the Emergency Planning and Community Right-to-Know Act (42 U.S.C. § 11001 *et seq*.), the Porter-Cologne Water Quality Control Act (Cal. Water Code § 13000 *et seq*.), the Toxic Mold Protection Act (Cal. Health & Safety Code § 26100, *et seq*.), the Safe Drinking Water and Toxic Enforcement Act of 1986 (Cal. Health & Safety Code § 25249.5 *et seq*.), the Hazardous Waste Control Act (Cal. Health & Safety Code § 25100 *et seq*.), the Hazardous Materials Release Response Plans & Inventory Act (Cal. Health & Safety Code § 25500 *et seq*.), and the Carpenter-Presley-Tanner Hazardous Substances Account Act (Cal. Health and Safety Code, Section 25300 *et seq*.).

ARTICLE VII

LIMITATIONS ON CHANGE IN OWNERSHIP, MANAGEMENT AND CONTROL OF BORROWER

7.1 Identity of Borrower; Changes Only Pursuant to this Agreement. Borrower and its principals have represented that they possess the necessary expertise, skill and ability to carry out Borrower's obligations pursuant to this Agreement and the City Documents. The qualifications, experience, financial capacity and expertise of Borrower and its principals are of particular concern to the City. It is because of these qualifications, experience, financial capacity and expertise that the City has entered into this Agreement with Borrower. No voluntary or involuntary successor, assignee or transferee of Borrower shall acquire any rights or powers under this Agreement, except as expressly provided herein.

7.2 Prohibition on Transfer. Prior to the expiration of the term of the Regulatory

Agreement, Borrower shall not, except as expressly permitted by this Agreement, directly or indirectly, voluntarily, involuntarily or by operation of law make or attempt any total or partial sale, transfer, conveyance, assignment or lease (collectively, "**Transfer**") of the whole or any part of the Property or this Agreement, without the prior written approval of City which approval shall not be unreasonably withheld. Any such attempt to assign this Agreement without the City's consent shall be null and void and shall confer no rights or privileges upon the purported assignee. In addition to the foregoing, prior to the expiration of the term of the Regulatory Agreement, except as expressly permitted by this Agreement, Borrower shall not undergo any significant change of ownership without the prior written approval of City. For purposes of this Agreement, a "significant change of ownership" shall mean a transfer of the beneficial interest of more than twenty-five percent (25%) in aggregate of the present ownership and /or control of Borrower, taking all transfers into account on a cumulative basis..

7.3 Permitted Transfers. Notwithstanding any contrary provision hereof, the prohibitions set forth in this Article shall not be deemed to prevent: (i) the lease of individual residences to tenants for occupancy as their principal residence in accordance with the Regulatory Agreement; (ii) assignments creating security interests for the purpose of financing the acquisition or improvement of the Property in accordance with the approved Financing Plan as it may be updated with City approval, and subject to the requirements of Article VIII, or Transfers directly resulting from the foreclosure of, or granting of a deed in lieu of foreclosure of, such a security interest; or (iii) a Transfer to a tax-exempt entity under the direct control of, or under common control with, Borrower.

7.4 Requirements for Proposed Transfers. The City may, in the exercise of its sole discretion, consent to a proposed Transfer of this Agreement, the Property, or part thereof if all of the following requirements are met (provided however, the requirements of this Section 7.4 shall not apply to Transfers described in clauses (i) and (ii) of Section 7.3):

(i) The proposed transferee demonstrates to the City's satisfaction that it has the qualifications, experience and financial resources necessary and adequate as may be reasonably determined by the City to competently manage the Property and to otherwise fulfill the obligations undertaken by the Borrower under this Agreement.

(ii) The Borrower and the proposed transferee shall submit for City review and approval all instruments and other legal documents proposed to effect any Transfer of all or any part of or interest in the Property or this Agreement together with such documentation of the proposed transferee's qualifications and development capacity as the City may reasonably request.

(iii) The proposed transferee shall expressly assume all of the rights and obligations of the Borrower under this Agreement and the other City Documents arising after the effective date of the Transfer and all obligations of Borrower arising prior to the effective date of the Transfer (unless Borrower expressly remains responsible for such obligations), and shall agree to be subject to and assume all of Borrower's obligations under the City Documents. The assumption of such obligations shall be documented in an assignment and assumption agreement in form approved by City.

(iv) The Transfer shall be effectuated pursuant to a written instrument satisfactory to the City in form recordable in the Official Records.

(v) The final form of the organizational documents of the proposed transferee, and any subsequent amendments that affect the City's economic interests under this Agreement or the City Documents shall be subject to the City's review and approval.

Consent to any proposed Transfer may be given by the City's Authorized Representative unless the Authorized Representative, in his or her discretion, refers the matter of approval to the City Council. If the City has not rejected a proposed Transfer or requested additional information regarding a proposed Transfer in writing within thirty (30) days following City's receipt of written request by Borrower, the proposed Transfer shall be deemed approved.

7.5 Effect of Transfer without City Consent.

7.5.1 In the absence of specific written agreement by the City, no Transfer by Borrower shall be deemed to relieve the Borrower or any other party from any obligation under this Agreement.

7.5.2 It shall be an Event of Borrower Default hereunder entitling City to pursue remedies including without limitation, termination of this Agreement and/or foreclosure under the Deed of Trust if without the prior written approval of the City, Borrower assigns or Transfers this Agreement or the Property, or any part thereof in violation of Article VII. This Section 7.5.2 shall not apply to Transfers described in clauses (i) and (ii) of Section 7.3).

7.6 Recovery of City Costs. Within ten (10) days following City's delivery to Borrower of an invoice detailing such costs, Borrower shall reimburse City for all City costs, including but not limited to reasonable attorneys' fees, incurred in reviewing instruments and other legal documents proposed to effect a Transfer of this Agreement, Borrower's interest in the Property or part thereof, and in reviewing the qualifications and financial resources of a proposed successor, assignee, or transferee.

ARTICLE VIII

SECURITY FINANCING AND RIGHTS OF MORTGAGEES

8.1 Mortgages and Deeds of Trust. Mortgages and deeds of trust, or any other reasonable security instrument are permitted to be placed upon the Property only for the purpose of securing loans for the purpose of financing the acquisition of the Property, and other expenditures reasonably necessary for the improvement or operation of the Property. Borrower shall not enter into any conveyance for such financing without the prior written approval of the Authorized Representative or his or her designee. As used herein, the terms "mortgage" and "deed of trust" shall mean any security instrument used in financing real estate acquisition, construction and land development.

8.2 Subordination. The City agrees that City will consider reasonable requests for subordination of the Deed of Trust and the Regulatory Agreement to deeds of trust provided for the benefit of lenders providing financing for the acquisition or improvement of the Property, provided that the instruments effecting such subordination include reasonable protections to the City in the event of default, including without limitation, extended notice and cure rights.

8.3 Notice of Default and Lender Right to Cure. Whenever City delivers any notice of default hereunder, City shall concurrently deliver a copy of such notice to each holder of record of any mortgage or deed of trust secured by the Property, provided that City has been provided with the address for delivery of such notice. City shall have no liability to any such holder for any failure by the City to provide such notice to such holder. Each such holder shall have the right, but not the obligation, at its option, to cure or remedy any such default or breach within the cure period provided to Borrower. In the event that possession of the Property (or any portion thereof) is required to effectuate such cure or remedy, the holder shall be deemed to have timely cured or remedied the default if it commences the proceedings necessary to obtain possession of the Property, as applicable, within the applicable cure period, diligently pursues such proceedings to completion, and after obtaining possession, diligently completes such cure or remedy. A holder who chooses to exercise its right to cure or remedy a default or breach shall first notify City of its intent to exercise such right prior to commencing to cure or remedy such default or breach.

8.4 City Right to Cure Defaults. In the event of a breach or default by Borrower under a mortgage or deed of trust secured by the Property, City may cure the default, without acceleration of the subject loan, following prior notice thereof to the holder of such instrument and Borrower. In such event, Borrower shall be liable for, and City shall be entitled to reimbursement from Borrower for all costs and expenses incurred by City associated with and attributable to the curing of the default or breach and such sum shall constitute a part of the indebtedness secured by the Deed of Trust.

8.5 Estoppel Certificates. Either Party shall, at any time, and from time to time, within fifteen (15) days after receipt of written request from the other Party, execute and deliver to such Party a written statement certifying that, to the knowledge of the certifying Party: (i) this Agreement is in full force and effect and a binding obligation of the Parties (if such be the case), (ii) this Agreement has not been amended or modified, or if so amended, identifying the amendments, and (iii) the requesting Party is not in default in the performance of its obligations under this Agreement, or if in default, describing the nature of any such defaults.

ARTICLE IX

DEFAULTS, REMEDIES AND TERMINATION

9.1 Event of Borrower Default. The following events shall constitute an event of default on the part of Borrower hereunder ("**Event of Borrower Default**"):

(a) Borrower fails to pay when due the principal and interest payable under the Note and such failure continues for thirty (30) days after City notifies Borrower thereof in writing;

(b) A Transfer occurs, either voluntarily or involuntarily, in violation of Article VII;

(c) Borrower fails to maintain insurance as required pursuant to this Agreement, and Borrower fails to cure such default within five (5) days;

(d) Borrower fails to pay prior to delinquency taxes or assessments due on the Property or fails to pay when due any other charge that may result in a lien on the Property, and Borrower fails to cure such default within twenty (20) days of the date of delinquency, but in all events prior to the date upon which the holder of any such lien has the right to foreclose thereon;

(e) A default arises under any loan secured by a mortgage, deed of trust or other security instrument recorded against the Property and remains uncured beyond any applicable cure period such that the holder of such security instrument has the right to accelerate repayment of such loan;

(f) Any Borrower representation or warranty contained in this Agreement or in any application, financial statement, certificate or report submitted to the City in connection with this Agreement proves to have been incorrect in any material and adverse respect when made and continues to be materially adverse to the City;

(g) If, pursuant to or within the meaning of the United States Bankruptcy Code or any other federal or state law relating to insolvency or relief of debtors ("**Bankruptcy Law**"), Borrower: (i) commences a voluntary case or proceeding; (ii) consents to the entry of an order for relief against Borrower in an involuntary case; (iii) consents to the appointment of a trustee, receiver, assignee, liquidator or similar official for Borrower; (iv) makes an assignment for the benefit of its creditors; or (v) admits in writing its inability to pay its debts as they become due;

(h) A court of competent jurisdiction shall have made or entered any decree or order (1) adjudging the Borrower to be bankrupt or insolvent, (2) approving as properly filed a petition seeking reorganization of the Borrower or seeking any arrangement for Borrower under bankruptcy law or any other applicable debtor's relief law or statute of the United States or any state or other jurisdiction, (3) appointing a receiver, trustee, liquidator, or assignee of the Borrower in bankruptcy or insolvency or for any of its properties, or (4) directing the winding up or liquidation of the Borrower, in each case if such decree, order, petition, or appointment is not removed or rescinded within sixty (60) days;

(i) Borrower shall have assigned its assets for the benefit of its creditors (other than pursuant to a mortgage loan) or suffered a sequestration or attachment of or execution on any substantial part of its property, unless the property so assigned, sequestered, attached or executed upon shall have been returned or released within sixty (60) days after such event (unless a lesser time period is permitted for cure pursuant to any other mortgage on the Property,

in which event such lesser time period shall apply under this subsection as well) or prior to any sooner sale pursuant to such sequestration, attachment, or execution;

(j) The Borrower shall have voluntarily suspended its business or Borrower shall have been dissolved or terminated;

(k) An event of default arises under any City Document and remains uncured beyond any applicable cure period; or

(l) Borrower defaults in the performance of any term, provision, covenant or agreement contained in this Agreement other than an obligation enumerated in this Section 9.1 and unless a shorter cure period is specified for such default, the default continues for ten (10) days in the event of a monetary default or thirty (30) days in the event of a nonmonetary default after the date upon which City shall have given written notice of the default to Buyer; provided however, if the default is of a nature that it cannot be cured within thirty (30) days, an Event of Borrower Default shall not arise hereunder if Borrower commences to cure the default within thirty (30) days and thereafter prosecutes the curing of such default with due diligence and in good faith to completion.

9.2 City Default. An event of default on the part of City ("**Event of City Default**") shall arise hereunder if City fails to keep, observe, or perform any of its covenants, duties, or obligations under this Agreement, and the default continues for a period of sixty (60) days after written notice thereof from Borrower to City, or in the case of a default which cannot with due diligence be cured within sixty (60) days, City fails to commence to cure the default within sixty (60) days of such notice and thereafter fails to prosecute the curing of such default with due diligence and in good faith to completion.

9.3 City's Right to Terminate Agreement. If an Event of Borrower Default shall occur and be continuing beyond any applicable cure period, then City shall, in addition to other rights available to it under law or this Agreement, have the right to terminate this Agreement. If City makes such election, City shall give written notice to Borrower and to any mortgagee entitled to such notice specifying the nature of the default and stating that this Agreement shall expire and terminate on the date specified in such notice, and upon the date specified in the notice, this Agreement and all rights of Borrower under this Agreement, shall expire and terminate.

9.4 City's Remedies and Rights Upon an Event of Borrower Default. Upon the occurrence of an Event of Borrower Default and the expiration of any applicable cure period, City shall have all remedies available to it under this Agreement or under law or equity, including, but not limited to the following, and City may, at its election, without notice to or demand upon Buyer, except for notices or demands required by law or expressly required pursuant to the City Documents, exercise one or more of the following remedies:

(a) Accelerate and declare the balance of the Note and interest accrued thereon immediately due and payable;

(b) Seek specific performance to enforce the terms of the City Documents;

(c) Foreclose on the Property pursuant to the Deed of Trust;

(d) Terminate this Agreement pursuant to Section 9.3;

(e) Pursue any and all other remedies available under this Agreement or under law or equity to enforce the terms of the City Documents and City's rights thereunder.

9.5 Borrower's Remedies Upon an Event of City Default. Upon the occurrence of an Event of City Default, Borrower's sole remedy shall be the right to bring an action for equitable relief seeking the specific performance of the terms and conditions of this Agreement, and/or enjoining, abating, or preventing any violation of such terms and conditions. In no event shall Borrower or its assignees or successors in interest be entitled to seek an award of damages in the event of City breach of this Agreement.

9.6 Remedies Cumulative; No Consequential Damages. Except as otherwise expressly stated in this Agreement, the rights and remedies of the Parties are cumulative, and the exercise by either Party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different time, of any other rights or remedies for the same or any other default by the other Party.

9.7 Inaction Not a Waiver of Default. No failure or delay by either Party in asserting any of its rights and remedies as to any default shall operate as a waiver of such default or of any such rights or remedies, nor deprive either Party of its rights to institute and maintain any action or proceeding which it may deem necessary to protect, assert or enforce any such rights or remedies in the same or any subsequent default.

9.8 Option to Purchase, Enter and Possess Upon Default. The City shall have the additional right at its option to purchase, enter and take possession of the Property (the "**Purchase Option**") if after conveyance of the Property, Borrower violates the restrictions on occupancy or affordability of the Property or otherwise breaches the provisions of the Regulatory Agreement and such default continues beyond the expiration of all applicable cure periods. If it exercises Purchase Option, the City shall pay to the Borrower cash in an amount equal to:

(i) The Purchase Price plus the fair market value of documented capital improvements to the Property; less

(ii) The value of any liens or encumbrances on the Property that the City assumes or takes subject to (including without limitation, the lien securing repayment of the Note; less

(iii) Any amounts owed to the City by Borrower and its successors pursuant to the City Documents or otherwise; less

(iv) All taxes, assessments and utility charges payable with respect to the Property for the period prior to the date the City acquires title to the Property; less

(v) The amount of any payments necessary to discharge or prevent from attaching any subsequent encumbrances or liens due to obligations, defaults, or acts of the Borrower, its successors or transferees; less

(vi) Any damages to which the City is entitled under this Agreement by reason of Borrower's default.

In order to exercise the Purchase Option, the City shall give Borrower written notice of such exercise, and Borrower shall, within thirty (30) days after receipt of such notice, provide City with documentation supporting the value of any capital improvements Borrower has made to the Property. Within thirty (30) days of City's receipt of such documentation, City shall pay into an escrow established for such purpose cash in the amount of all sums owing pursuant to this Section 9.8, and Borrower shall execute and deposit into such escrow a grant deed transferring to City all of Buyer's interest in the Property.

9.9 Treatment of Reserves. If City exercises its option to purchase the Property pursuant to Section 9.8, or acquires the Project by foreclosure or deed in lieu of foreclosure, the balances of the Project replacement reserve and operating reserve as of the date the City delivers notice of exercise shall be transferred to City and shall be credited toward the outstanding balance payable under the Note.

9.10 Rights of Mortgagees. Any rights of the City under this Article IX shall not defeat, limit or render invalid any mortgage or deed of trust permitted by this Agreement or any rights provided for in this Agreement for the protection of holders of such instruments. Any conveyance or return of the Property to the City pursuant to this Article IX shall be subject to mortgages and deeds of trust permitted by this Agreement.

9.11 Assignment. The City shall have the right to assign the Purchase Option to any other governmental entity or agency, or to a qualified nonprofit corporation.

ARTICLE X

INDEMNITY AND INSURANCE

10.1 Indemnity. Borrower shall indemnify, defend (with counsel approved by City) and hold the City and its elected and appointed officers, officials, employees, agents, consultants, and contractors (all of the foregoing, collectively, the "**Indemnitees**") harmless from and against any and all liability, loss, cost, expense (including without limitation attorneys' fees and costs of litigation), claim, demand, action, suit, judicial or administrative proceeding, penalty, deficiency, fine, order, and damage (all of the foregoing collectively "**Claims**") (including without limitation, Claims arising from any injury, death, illness, property damage, or loss of property) that directly or indirectly, in whole or in part, are caused by, arise in connection with, or are alleged to be caused by, or arise in connection with, the operation, ownership, management, or

maintenance of the Property, or any part thereof by Borrower or Borrower's contractors, subcontractors, agents, employees, tenants, invitees, or any other party acting for or on behalf of Borrower, or otherwise arising out of or in connection with Borrower's performance or failure to perform under this Agreement, including without limitation, Claims arising or alleged to have arisen in connection with any violation of Applicable Laws in connection with the ownership, operation, management, or maintenance of the Property, or relating to approval of this Agreement, whether or not any insurance policies shall have been determined to be applicable to any such Claims. Borrower's indemnification obligations under this Section 10.1 shall not extend to Claims to the extent arising from the gross negligence or willful misconduct of Indemnitees. The provisions of this Section 10.1 shall survive the expiration or earlier termination of this Agreement. It is further agreed that City does not and shall not waive any rights against Borrower that it may have by reason of this indemnity and hold harmless agreement because of the acceptance by City, or the deposit with City by Borrower, of any of the insurance policies described in this Agreement.

10.2 Liability, Workers Compensation, and Property Insurance. Borrower shall comply with all requirements set forth in Exhibit F attached hereto and incorporated herein.

ARTICLE XI

DAMAGE AND DESTRUCTION; CONDEMNATION.

11.1 Damage and Destruction. In the event of any damage or other loss to the Property, or any portion thereof, caused by fire or other casualty prior to the Close of Escrow in an amount not exceeding $50,000, Borrower shall not be entitled to terminate this Agreement, but shall be obligated to close the escrow and purchase the Property as provided in this Agreement, without abatement in the Purchase Price, provided that City shall: (i) assign and transfer to Borrower all of City's rights under any insurance policy covering the damage or loss, and all claims for monies payable from City's insurer(s) in connection with the damage or loss to the Property, and (ii) pay to Borrower at the Close of Escrow the amount of City's deductible under the insurance policy or policies covering the damage or loss. In the event of damage or destruction of the Property or any portion thereof prior to the Close of Escrow in an amount in excess of $50,000, Borrower may elect either to terminate this Agreement upon written notice to City, or to consummate the purchase of the Property, in which case City shall (i) assign and transfer to Borrower all of City's rights under any insurance policy covering the damage or loss, and all claims for monies payable from City's insurer(s) in connection with the damage or loss, and (ii) pay to Borrower at the Close of Escrow the amount of City's deductible under the insurance policy or policies covering the damage or loss. In the event Borrower elects to terminate this Agreement, all funds and documents deposited into escrow by or on behalf of Borrower shall be returned to Borrower, and all rights and obligations hereunder shall terminate except such rights and obligations that expressly survive termination of this Agreement.

ARTICLE XII

MISCELLANEOUS PROVISIONS

12.1 Enforced Delay; Extension of Times of Performance. The time for performance of provisions of this Agreement by either Party shall be extended for a period equal to the period of any delay directly affecting the Property or this Agreement which is caused by war, insurrection, strikes, lockouts, riots, floods, earthquakes, fires, casualties, acts of God, acts of a public enemy, epidemics, quarantine restrictions, freight embargoes, lack of transportation, suits filed by unrelated third parties concerning or arising out of this Agreement or unseasonable weather conditions ("**Force Majeure"**). An extension of time for any of the above-specified causes will be deemed granted only if written notice by the Party claiming such extension is sent to the other Party within ten (10) calendar days from the commencement of the cause.

Times of performance under this Agreement may also be extended in writing by the mutual agreement of Borrower and City (acting in the discretion of the Authorized Representative unless he or she determines in his or her discretion to refer such matter to the City Council). City and Borrower acknowledge that, notwithstanding any contrary provision of this Agreement, adverse changes in economic conditions, either of the affected Party specifically or the economy generally, changes in market conditions or demand, and/or inability to obtain financing shall not constitute grounds of enforced delay pursuant to this Section. Each Party expressly assumes the risk of such adverse economic or market changes and/or financial inability, whether or not foreseeable as of the Effective Date.

12.3 Notices. Except as otherwise specified in this Agreement, all notices to be sent pursuant to this Agreement or any other City Document shall be made in writing, and sent to the Parties at their respective addresses specified below or to such other address as a Party may designate by written notice delivered to the other Parties in accordance with this Section. All such notices shall be sent by: (i) personal delivery, in which case notice is effective upon delivery; (ii) certified or registered mail, return receipt requested, in which case notice shall be deemed delivered on receipt if delivery is confirmed by a return receipt; or (iii) nationally recognized overnight courier, with charges prepaid or charged to the sender's account, in which case notice is effective on delivery if delivery is confirmed by the delivery service.

City: City of Livermore
1052 S. Livermore Avenue
Livermore, CA 94550
Attention: Housing and Human Services Manager

With a copy to: City of Livermore
1052 S. Livermore Avenue
Livermore, CA 94550
Attention: City Manager

Borrower: Tri-Valley REACH, Inc.
P.O. Box 5564
Pleasanton, CA 94566

Attention: Board Chairperson

12.4 Attorneys' Fees. If either Party fails to perform any of its obligations under this Agreement, or if any dispute arises between the Parties concerning the meaning or interpretation of any provision hereof, then the prevailing Party in any proceeding in connection with such dispute shall be entitled to the costs and expenses it incurs on account thereof and in enforcing or establishing its rights hereunder, including, without limitation, court costs and reasonable attorneys' fees and disbursements.

12.5 Waivers; Modification. No waiver of any breach of any covenant or provision of this Agreement shall be deemed a waiver of any other covenant or provision hereof, and no waiver shall be valid unless in writing and executed by the waiving Party. An extension of time for performance of any obligation or act shall not be deemed an extension of the time for performance of any other obligation or act, and no extension shall be valid unless in writing and executed by the Party granting the extension. This Agreement may be amended or modified only by a written instrument executed by the Parties.

12.6 Binding on Successors. Subject to the restrictions on Transfers set forth in Article VII, this Agreement shall bind and inure to the benefit of the Parties and their respective permitted successors and assigns. Any reference in this Agreement to a specifically named Party shall be deemed to apply to any permitted successor and assign of such Party who has acquired an interest in compliance with this Agreement or under law.

12.7 Survival. All representations made by Borrower hereunder, Borrower 's obligations pursuant to Sections 5.1, 6.1, 6.2, 10.1 and 12.1, and all other provisions that expressly so state, shall survive the Close of Escrow, the transfer of the Property to Buyer, and the expiration or termination of this Agreement.

12.8 Headings; Interpretation; Statutory References. The section headings and captions used herein are solely for convenience and shall not be used to interpret this Agreement. The Parties acknowledge that this Agreement is the product of negotiation and compromise on the part of both Parties, and the Parties agree, that since both Parties have participated in the negotiation and drafting of this Agreement, this Agreement shall not be construed as if prepared by one of the Parties, but rather according to its fair meaning as a whole, as if both Parties had prepared it. All references in the City Documents to particular statutes, regulations, ordinances or resolutions of the United States, the State of California, or the City of Livermore shall be deemed to include the same statute, regulation, ordinance or resolution as hereafter amended or renumbered, or if repealed, to such other provisions as may thereafter govern the same subject.

12.9 Action or Approval. Whenever action and/or approval by City is required under this Agreement, the City's Authorized Representative or his or her designee may act on and/or approve such matter unless specifically provided otherwise, or unless the Authorized Representative determines in his or her discretion that such action or approval requires referral to City governing board for consideration.

12.10 Entire Agreement. This Agreement, including Exhibits A through F attached hereto and incorporated herein by this reference, together with the other City Documents contains the entire agreement between the Parties with respect to the subject matter hereof, and supersedes all prior written or oral agreements, understandings, representations or statements between the Parties with respect to the subject matter hereof. If the Exhibits to this Agreement are inconsistent with this Agreement, the more restrictive requirements shall control, as determined by the City's Authorized Representative. In the event of a conflict between this Agreement and the other City Documents, the more restrictive requirements shall control, as determined by the Authorized Representative.

12.11 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be an original and all of which taken together shall constitute one instrument. The signature page of any counterpart may be detached therefrom without impairing the legal effect of the signature(s) thereon provided such signature page is attached to any other counterpart identical thereto having additional signature pages executed by the other Party. Any executed counterpart of this Agreement may be delivered to the other Party by facsimile and shall be deemed as binding as if an originally signed counterpart was delivered.

12.12 Severability. If any term, provision, or condition of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement shall continue in full force and effect unless an essential purpose of this Agreement is defeated by such invalidity or unenforceability.

12.13 No Third Party Beneficiaries. Except as expressly set forth herein, nothing contained in this Agreement is intended to or shall be deemed to confer upon any person, other than the Parties and their respective successors and assigns, any rights or remedies hereunder.

12.14 Parties Not Co-Venturers; Independent Contractor; No Agency Relationship. Nothing in this Agreement is intended to or shall establish the Parties as partners, co-venturers, or principal and agent with one another. The relationship of Borrower and City is and shall remain solely that of a debtor and a creditor, and shall not be construed as a joint venture, equity venture, partnership or any other relationship. City neither undertakes nor assumes any responsibility or duty to Borrower (except as expressly provided in this Agreement) or to any third party with respect to the Property or the City financing described herein. Borrower and its employees are not employees of City but rather are, and shall always be considered independent contractors. Furthermore, Borrower and its employees shall at no time hold themselves out as employees or agents of City. Except as City may specify in writing, Borrower shall not have any authority to act as an agent of City or to bind City to any obligation.

12.15 Time of the Essence; Calculation of Time Periods. Time is of the essence for each condition, term, obligation and provision of this Agreement. Unless otherwise specified, in computing any period of time described in this Agreement, the day of the act or event after which the designated period of time begins to run is not to be included and the last day of the period so computed is to be included, unless such last day is not a business day, in which event the period shall run until the next business day. The final day of any such period shall be deemed to end at 5:00 p.m., local time at the Property. For purposes of this Agreement, a

"business day" means a day that is not a Saturday, Sunday, a federal holiday or a state holiday under the laws of the State of California.

12.16 Governing Law; Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of California without regard to principles of conflicts of laws. Any action to enforce or interpret this Agreement shall be filed and heard in the Superior Court of Alameda County, California or in the Federal District Court for the Northern District of California.

12.17 Inspection of Books and Records. Upon request, Borrower shall permit the City to inspect at reasonable times and on a confidential basis those books, records and all other documents of Borrower necessary to determine Buyer's compliance with the terms of this Agreement.

12.18 Political Activity. None of the funds, materials, property or services contributed by City to Borrower under this Agreement shall be used for any partisan political activity or the election or defeat of any candidate for public office.

12.19 Non-Liability of City Officials, Employees and Agents. No member, official, employee or agent of the City shall be personally liable to the Borrower in the event of any default or breach by the City or for any amount which may become due to the Borrower or its successor or on any obligation under the terms of this Agreement.

12.20 Conflict of Interest.

(a) Except for approved eligible administrative or personnel costs, no person described in subsection (b) below who exercises or has exercised any functions or responsibilities with respect to the activities funded pursuant to this Agreement or who is in a position to participate in a decision-making process or gain inside information with regard to such activities, may obtain a personal or financial interest or benefit from the activity, or have an interest in any contract, subcontract or agreement with respect thereto, or the proceeds thereunder, either for themselves or those with whom they have family or business ties, during, or at any time after, such person's tenure. The Borrower shall exercise due diligence to ensure that the prohibition in this Section is followed.

(b) In accordance with Government Code Section 1090 and the Political Reform Act, Government Code Section 87100 *et seq.,* no person who is a director, officer, partner, trustee or employee or consultant of the Borrower, or immediate family member of any of the preceding, shall make or participate in a decision, made by the City or a City board, commission or committee, if it is reasonably foreseeable that the decision will have a material effect on any source of income, investment or interest in real property of that person or the Borrower. Interpretation of this Section shall be governed by the definitions and provisions used in the Political Reform Act, Government Code Section 87100 *et seq.,* its implementing regulations manual and codes, and Government Code Section 1090.

IN WITNESS WHEREOF, the Parties have entered into this Agreement effective as of the date first written above.

BORROWER :

Tri-Valley REACH, Inc., a California nonprofit public benefit corporation

By:_____

Print Name:__Patrick O'Brien_____

Title:__Treasurer, Board of Directors_____

CITY:

City of Livermore, a municipal corporation

By: _____
City Manager

ATTEST:

_____
City Clerk

APPROVED AS TO FORM:

_____
City Attorney

EXHIBIT A
LEGAL DESCRIPTION

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF LIVERMORE, IN THE COUNTY OF ALAMEDA, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

Lots 28 as shown on the final map of Tract 7724 filed for record on August 10, 2015, in Book 333 of Maps, at Pages 48 through 52, inclusive, in the Official Records of the County of Alameda, State of California.

SECURED PROMISSORY NOTE

$300,000.00

772 Camden Common
Livermore, California

_____, 2023

FOR VALUE RECEIVED, Tri-Valley REACH, Inc., a California nonprofit public benefit corporation ("**Borrower**"), promises to pay to the City of Livermore, a municipal corporation (the "**City")**, in lawful money of the United States of America the principal sum of Three Hundred Thousand Dollars ($300,000.00) or so much thereof as may be advanced by City pursuant to the Loan Agreement referred to below, together with interest on the outstanding principal balance in accordance with the terms and conditions described herein. Interest shall accrue on the principal balance of this Note outstanding from time to time at the rate of three percent (3%) simple annual interest for 20 years from the date of this Note. Interest shall be calculated on the basis of a year of 365 days, and charged for the actual number of days elapsed.

This Secured Promissory Note (this "**Note**") has been executed and delivered pursuant to and in accordance with an Affordable Housing Loan Agreement, dated as of the date hereof, executed by and between City and Borrower (the "**Loan Agreement**"), and is subject to the terms and conditions of the Loan Agreement, which is by this reference incorporated herein and made a part hereof. Capitalized terms used but not defined herein shall have the meaning ascribed to such terms in the Loan Agreement.

This Note is secured by a Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing ("**Deed of Trust**") dated as of the date hereof, executed by Borrower for the benefit of City and encumbering the property described therein. City shall be entitled to the benefits of the security provided by the Deed of Trust and shall have the right to enforce the covenants and agreements contained herein, in the Deed of Trust, the Loan Agreement, and the other City Documents, including without limitation, that certain Affordable Housing Regulatory Agreement and Declaration of Restrictive Covenants dated as of the date hereof, executed by and between City and Borrower and recorded in the Official Records of Alameda County (the "**Regulatory Agreement"**). The rent restrictions and other requirements set forth in the Regulatory Agreement shall remain effective for the full term of the Regulatory Agreement and shall survive the repayment of this Note. The Loan Agreement, this Note, the Regulatory Agreement, and the Deed of Trust are collectively referred to herein as the "**City Documents**."

1. PAYMENTS.

1.1 PAYMENT DATES; MATURITY DATE. Annual payments on this Note shall be deferred for Term of the Loan. Payments shall be credited first to any unpaid late charges and other costs and fees then due, then to accrued interest, and then to principal. In no event shall any amount due under this Note become subject to any rights, offset, deduction or counterclaim on the part of Borrower. The entire outstanding principal balance of this Note, together with interest accrued thereon and all other sums accrued hereunder shall be payable in full on the date (the "**Maturity Date**") which is the fifty-fifth (55th) anniversary of the date hereof.

1.2 DUE ON SALE. The entire unpaid principal balance and all interest and other sums accrued hereunder shall be due and payable upon the Transfer (as defined in the Regulatory Agreement) absent City consent, of all or any part of the Property or any interest therein other than a Transfer permitted without City consent pursuant to the Regulatory Agreement. Without limiting the generality of the foregoing, this Note shall not be assumable without City's prior written consent, which consent may be granted or denied in City's sole discretion.

1.3 PREPAYMENT. Borrower may, without premium or penalty, at any time and from time to time, prepay all or any portion of the outstanding principal balance due under this Note, provided that each such prepayment is accompanied by accrued interest on the amount of principal prepaid calculated to the date of such prepayment. Prepayments shall be applied first to any unpaid late charges and other costs and fees then due, then to accrued but unpaid interest, and then to principal. The Regulatory Agreement shall remain in full force for the entire term thereof regardless of any prepayment of this Note.

1.4 MANNER OF PAYMENT. All payments of principal and interest on this Note shall be made to City at 1052 S. Livermore Avenue, Livermore, CA 94550, or such other place as City shall designate to Borrower in writing, or by wire transfer of immediately available funds to an account designated by City in writing.

2. DEFAULTS AND REMEDIES.

2.1 EVENTS OF DEFAULT. The occurrence of any one or more of the following events shall constitute an event of default hereunder ("**Event of Default**"):

(A) Borrower fails to pay when due the principal and interest payable hereunder and such failure continues for ten (10) days after City notifies Borrower thereof in writing.

(B) Pursuant to or within the meaning of the United States Bankruptcy Code or any other federal or state law relating to insolvency or relief of debtors ("**Bankruptcy Law**"), Borrower (i) commences a voluntary case or proceeding; (ii) consents to the entry of an order for relief against Borrower in an involuntary case; (iii) consents to the appointment of a trustee, receiver, assignee, liquidator or similar official for Borrower; (iv) makes an assignment for the benefit of its creditors; or (v) admits in writing its inability to pay its debts as they become due.

(C) A court of competent jurisdiction enters an order or decree under any Bankruptcy Law that (i) is for relief against Borrower in an involuntary case, (ii) appoints a trustee, receiver, assignee, liquidator or similar official for Borrower or substantially all of Borrower's assets, (iii) orders the liquidation of Borrower, or (iv) issues or levies a judgment, writ, warrant of attachment or similar process against the Property, and in each case the order or decree is not released, vacated, dismissed or fully bonded within ninety (90) days after its issuance.

(D) The occurrence of a Transfer in violation of the Loan Agreement or the Regulatory Agreement.

(E) The holder of any debt instrument secured by a mortgage or deed of trust on the Property declares a default, and such default remains uncured beyond any applicable cure period such that the holder of such instrument has the right to accelerate payment thereunder.

(F) Borrower fails to maintain insurance as required pursuant to the City Documents and Borrower fails to cure such default within five (5) days.

(G) Subject to Borrower's right to contest the following charges pursuant to the City Documents, if Borrower fails to pay taxes or assessments due on the Property or fails to pay any other charge that may result in a lien on the Property, and Borrower fails to cure such default within twenty (20) days, but in all events before the imposition of any such tax or other lien.

(H) If any representation or warranty contained in any City Document, or any certificate furnished in connection therewith, or in connection with any request for disbursement of the proceeds of the Loan proves to have been false or misleading in any material adverse respect when made and continues to be materially adverse to the City.

(I) An Event of Default shall have been declared under the Loan Agreement or any other City Document, including without limitation, the Regulatory Agreement, and remains uncured beyond the expiration of the applicable cure period.

2.2 REMEDIES. Upon the occurrence of an Event of Default hereunder, City may, at its option (i) by written notice to Borrower, declare the entire unpaid principal balance of this Note, together with all accrued interest thereon and all sums due hereunder, immediately due and payable regardless of any prior forbearance, (ii) exercise any and all rights and remedies available to it under applicable law, and (iii) exercise any and all rights and remedies available to City under this Note and the other City Documents, including without limitation the right to pursue foreclosure under the Deed of Trust. Borrower shall pay all reasonable costs and expenses incurred by or on behalf of City including, without limitation, reasonable attorneys' fees, incurred in connection with City's enforcement of this Note and the exercise of any or all of its rights and remedies hereunder and all such sums shall be a part of the indebtedness secured by the Deed of Trust. The rights and remedies of City under this Note shall be cumulative and not alternative.

2.3 DEFAULT RATE. Upon the occurrence of an Event of Default, interest shall automatically be increased without notice to the rate of the lesser of ten percent (10%) per annum or the maximum rate permitted by law (the "**Default Rate**"); provided however, if any payment due hereunder is not paid when due, the Default Rate shall apply commencing upon the due date for such payment. When Borrower is no longer in default, the Default Rate shall no longer apply, and the interest rate shall once again be the rate specified in the first paragraph of this Note. Notwithstanding the foregoing provisions, if the interest rate charged exceeds the maximum legal rate of interest, the rate shall be the maximum rate permitted by law. The imposition or acceptance of the Default Rate shall in no event constitute a waiver of a default under this Note or prevent City from exercising any of its other rights or remedies.

3. MISCELLANEOUS.

3.1 WAIVERS; AMENDMENTS; BORROWER'S WAIVERS. No waiver by City of any right or remedy under this Note shall be effective unless in a writing signed by City. Neither the failure nor any delay in exercising any right, power or privilege under this Note will operate as a waiver of such right, power or privilege, and no single or partial exercise of any such right, power or privilege by City will preclude any other or further exercise of such right, power or privilege or the exercise of any other right, power or privilege. No waiver that may be given by City will be applicable except in the specific instance for which it is given. No notice to or demand on Borrower will be deemed to be a waiver of any obligation of Borrower or of the right of City to take further action without notice or demand as provided in this Note. There shall be no amendment to or modification of this Note except by written instrument executed by Borrower and City.

To the maximum extent permitted by applicable law Borrower hereby waives presentment, demand, protest, notices of dishonor and of protest and all defenses and pleas on the grounds of any extension or extensions of the time of payment or of any due date under this Note, in whole or in part, whether before or after maturity and with or without notice.

3.2 NOTICES. Any notice required or permitted to be given hereunder shall be given in accordance with Section 12.3 of the Loan Agreement.

3.3 SEVERABILITY. If any provision in this Note is held invalid or unenforceable by any court of competent jurisdiction, the other provisions of this Note will remain in full force and effect. Any provision of this Note held invalid or unenforceable only in part or degree will remain in full force and effect to the extent not held invalid or unenforceable.

3.4 GOVERNING LAW; VENUE. This Note shall be governed by the laws of the State of California without regard to principles of conflicts of laws. Any legal action filed in connection with this Note shall be filed in the Superior Court of Alameda County, California, or in the Federal District Court for the Northern District of California.

3.5 PARTIES IN INTEREST. This Note shall bind Borrower and its successors and assigns and shall accrue to the benefit of City and its successors and assigns.

3.6 SECTION HEADINGS, CONSTRUCTION. The headings of Sections in this Note are provided for convenience only and will not affect its construction or interpretation.

3.7 RELATIONSHIP OF THE PARTIES. The relationship of Borrower and City under this Note is solely that of borrower and lender, and the loan evidenced by this Note and secured by the Deed of Trust will in no manner make City the partner or joint venturer of Borrower.

3.8 TIME IS OF THE ESSENCE. Time is of the essence with respect to every provision of this Note.

3.9 NONRECOURSE. Except as expressly provided in this Section 3.9, Borrower shall have no personal liability for payment of the principal of, or interest on, this Note, and the

sole recourse of City with respect to the payment of the principal of, and interest on, this Note shall be to the Property and any other collateral held by City as security for this Note; provided however, nothing contained in the foregoing limitation of liability shall: (A) impair the enforcement against all such security for the Loan of all the rights and remedies of the City under the Deed of Trust as such may be amended, modified, or restated from time to time; (B) impair the right of City to bring a foreclosure action, action for specific performance or other appropriate action or proceeding to enable City to enforce and realize upon the Deed of Trust, the interest in the Property created thereby and any other collateral given to City in connection with the indebtedness evidenced hereby and to name the Borrower as party defendant in any such action; (C) be deemed in any way to impair the right of the City to assert the unpaid principal amount of the Loan as a demand for money within the meaning of Section 431.70 of the California Code of Civil Procedure or any successor provision thereto; (D) constitute a waiver of any right which City may have under any bankruptcy law to file a claim for the full amount of the indebtedness owed to City hereunder or to require that the Property shall continue to secure all of the indebtedness owed to City hereunder in accordance with this Note and the Deed of Trust; or (E) limit or restrict the ability of City to seek or obtain a judgment against Borrower to (1) recover under any provision of the City Documents that obligates Borrower to indemnify City, or (2) recover from Borrower compensatory damages as well as other costs and expenses incurred by City (including without limitation reasonable attorneys' fees and expenses) arising as a result of the occurrence of any of the following: (a) any fraud or intentional misrepresentation on the part of the Borrower or any officer, director or authorized representative of Borrower in connection with the request for or creation of the Loan, or in any City Document, or in connection with any request for any action or consent by City in connection with the Loan; (b) any failure to maintain insurance as required pursuant to the City Documents; (c) failure to pay taxes, assessments or other charges which may become liens on the Property (subject to the right to contest as set forth in the Loan Agreement); (d) the violation of the Borrower's obligations under Article VI of the Loan Agreement or Section 7.11 of the Deed of Trust (pertaining to environmental matters), except as limited by the provisions of such agreements; (e) the occurrence of any act or omission of Borrower that results in waste to or of the Property and which has a material adverse effect on the value of the Property; (f) the removal or disposal of any personal property or fixtures or the retention of rents, insurance proceeds, or condemnation awards in violation of the Deed of Trust; (g) the material misapplication of the proceeds of any insurance policy or award resulting from condemnation or the exercise of the power of eminent domain or by reason of damage, loss or destruction to any portion of the Property; and (h) the failure of Borrower to pay all amounts payable under this Note in full if Borrower Transfers the Property in violation of the Loan Agreement or the Regulatory Agreement.

[SIGNATURES ON NEXT PAGE]

IN WITNESS WHEREOF, Borrower has executed this Secured Promissory Note as of the date first written above.

BORROWER:

Tri-Valley REACH, Inc., a California nonprofit public benefit corporation

By: _____

Print Name: _Patrick O'Brien_____

Title: _Treasurer, Board of Directors_____

Recording Requested by and when Recorded, return to:

City of Livermore
1052 South Livermore Avenue
Livermore, CA 94550
Attention: City Clerk

EXEMPT FROM RECORDING FEES PER GOVERNMENT CODE §§6103, 27383

APN: 99-1388-42

Space above this line for Recorder's use.

DEED OF TRUST, ASSIGNMENT OF RENTS, SECURITY AGREEMENT AND FIXTURE FILING

THIS DEED OF TRUST WITH ASSIGNMENT OF RENTS, SECURITY AGREEMENT AND FIXTURE FILING ("**Deed of Trust**") is made as of _____, 2023, by Tri-Valley REACH, a California nonprofit public benefit corporation ("**Trustor**") to Chicago Title Company as trustee ("**Trustee**"), for the benefit of the City of Livermore, a municipal corporation ("**Beneficiary**").

RECITALS

A. Trustor owns fee simple title to the land described in Exhibit A attached hereto and incorporated herein by this reference (the "**Land**"). The Land is located in the City of Livermore, Alameda County, California.

B. Beneficiary and Trustor have entered into an unrecorded Purchase and Sale and Loan Agreement dated as of the date hereof (the "**Loan Agreement**") pursuant to which Beneficiary is providing a loan to Trustor in the amount of Three Hundred Thousand Dollars ($300,000.00) (the "**Loan**") for the purpose of partially financing Trustor's acquisition of the Property. Trustor has issued to Beneficiary a secured promissory note dated as of the date hereof (the "**Note**") to evidence Trustor's obligation to repay the Loan. In addition, Trustor and Beneficiary have executed an Affordable Housing Regulatory Agreement and Declaration of Restrictive Covenants dated as of the date hereof (the "**Regulatory Agreement**") which imposes certain rent and occupancy restrictions and which shall be recorded substantially concurrently with this Deed of Trust. The Note, the Loan Agreement, the Regulatory Agreement and this Deed of Trust, as any of the foregoing instruments may be modified, supplemented, amended, renewed or extended, are hereinafter referred to as the "**City Documents**".

C. As a condition precedent to the making of the Loan, Beneficiary has required that Trustor enter into this Deed of Trust and grant to Trustee for the benefit of Beneficiary, a lien and security interest in the Property (defined below) to secure repayment of the Note and performance of Trustor's obligations under the Loan Agreement and the other City Documents.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, it is agreed as follows.

1. Grant in Trust. In consideration of the foregoing and for the purpose of securing payment and performance of the Secured Obligations defined and described in Section 2, Trustor hereby irrevocably and unconditionally grants, conveys, transfers and assigns to Trustee, in trust for the benefit of Beneficiary, with power of sale and right of entry and possession, all estate, right, title and interest which Trustor now has or may later acquire in and to the Land, and all of the following, whether presently owned or hereafter acquired:

a. All buildings, structures, and improvements, now or hereafter located or constructed on the Land ("**Improvements**");

b. All appurtenances, easements, rights of way, pipes, transmission lines or wires and other rights used in connection with the Land or the Improvements or as a means of access thereto, whether now or hereafter owned or constructed or placed upon or in the Land or Improvements and all existing and future privileges, rights, franchises and tenements of the Land, including all minerals, oils, gas and other commercially valuable substances which may be in, under or produced from any part of the Land, and all water rights, rights of way, gores or strips of land, and any land lying in the streets, ways, and alleys, open or proposed, in front of or adjoining the Land and Improvements (collectively, "**Appurtenances**");

c. All machinery, equipment, fixtures, goods and other personal property of the Trustor, whether moveable or not, now owned or hereafter acquired by the Trustor and now or hereafter located at or used in connection with the Land, the Improvements or Appurtenances, and all improvements, restorations, replacements, repairs, additions or substitutions thereto (collectively, "**Equipment**");

d. All existing and future leases, subleases, licenses, and other agreements relating to the use or occupancy of all or any portion of the Land or Improvements (collectively, "**Leases**"), all amendments, extensions, renewals or modifications thereof, and all rent, royalties, or other payments which may now or hereafter accrue or otherwise become payable thereunder to or for the benefit of Trustor, including but not limited to security deposits (collectively, "**Rents**");

e. All insurance proceeds and any other proceeds from the Land, Improvements, Appurtenances, Equipment, Leases, and Rents, including without limitation, all deposits made with or other security deposits given to utility companies, all claims or demands relating to insurance awards which the Trustor now has or may hereafter acquire, including all advance payments of insurance premiums made by Trustor, and all condemnation awards or payments now or later made in connection with any condemnation or eminent domain proceeding ("**Proceeds**");

f. All revenues, income, rents, royalties, payments and profits produced by the Land, Improvements, Appurtenances and Equipment, whether now owned or hereafter acquired by Trustor ("**Gross Revenues**");

g. All architectural, structural and mechanical plans, specifications, design documents and studies produced in connection with the rehabilitation of the Improvements (collectively, "**Plans**"); and

h. All interests and rights in any private or governmental grants, subsidies, loans or other financing provided in connection with the rehabilitation of the Improvements (collectively, "**Financing**").

All of the above-referenced interests of Trustor in the Land, Improvements, Appurtenances, Equipment, Leases, Rents, Proceeds, Gross Revenues, Plans and Financing as hereby conveyed to Trustee or made subject to the security interest herein described are collectively referred to herein as the "**Property**."

2. Obligations Secured. This Deed of Trust is given for the purpose of securing payment and performance of the following (collectively, the "**Secured Obligations**"): (i) all present and future indebtedness evidenced by the Note and any amendment thereof, including principal, interest and all other amounts payable under the terms of the Note; (ii) all present and future obligations of Trustor to Beneficiary under the City Documents; (iii) all additional present and future obligations of Trustor to Beneficiary under any other agreement or instrument acknowledged by Trustor (whether existing now or in the future) which states that it is or such obligations are, secured by this Deed of Trust; (iv) all obligations of Trustor to Beneficiary under all modifications, supplements, amendments, renewals, or extensions of any of the foregoing, whether evidenced by new or additional documents; and (v) reimbursement of all amounts advanced by or on behalf of Beneficiary to protect Beneficiary's interests under this Deed of Trust or any other City Document.

3. Assignment of Rents, Issues, and Profits. Trustor hereby irrevocably, absolutely, presently and unconditionally assigns to Beneficiary the Rents, royalties, issues, profits, revenue, income and proceeds of the Property. This is an absolute assignment and not an assignment for security only. Beneficiary hereby confers upon Trustor a license to collect and retain such Rents, royalties, issues, profits, revenue, income and proceeds as they become due and payable prior to any Event of Default hereunder. Upon the occurrence of any such Event of Default, Beneficiary may terminate such license without notice to or demand upon Trustor and without regard to the adequacy of any security for the indebtedness hereby secured, and may either in person, by agent, or by a receiver to be appointed by a court, enter upon and take possession of the Property or any part thereof, and sue for or otherwise collect such rents, issues, and profits, including those past due and unpaid, and apply the same, less costs and expenses of operation and collection, including reasonable attorneys' fees, to any indebtedness secured hereby, and in such order as Beneficiary may determine. Beneficiary's right to the rents, royalties, issues, profits, revenue, income and proceeds of the Property does not depend upon whether or not Beneficiary takes possession of the Property. The

entering upon and taking possession of the Property, the collection of such rents, issues, and profits, and the application thereof as aforesaid, shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice. If an Event of Default occurs while Beneficiary is in possession of all or part of the Property and/or is collecting and applying Rents as permitted under this Deed of Trust, Beneficiary, Trustee and any receiver shall nevertheless be entitled to exercise and invoke every right and remedy afforded any of them under this Deed of Trust and at law or in equity, including the right to exercise the power of sale granted hereunder. Regardless of whether or not Beneficiary, in person or by agent, takes actual possession of the Land or the Improvements, Beneficiary shall not be deemed to be a "mortgagee in possession," shall not be responsible for performing any obligation of Trustor under any Lease, shall not be liable in any manner for the Property, or the use, occupancy, enjoyment or operation of any part of it, and shall not be responsible for any waste committed by Trustor, lessees or any third parties, or for dangerous or defective condition of the Property or any negligence in the management, repair or control of the Property. Absent Beneficiary's written consent, Trustor shall not accept prepayment of Rents for any rental period exceeding one month.

4. Security Agreement. Trustor intends this Deed of Trust to create a lien on the Property, and an absolute assignment of the Rents and Leases, all in favor of Beneficiary. To the extent that any Property may be or be determined to be personal property, Trustor as debtor hereby grants to Beneficiary as secured party a security interest in all such Property to secure payment and performance of the Secured Obligations. This Deed of Trust constitutes a security agreement under the California Uniform Commercial Code, as amended or recodified from time to time (the "**UCC**"), covering all such Property. To the extent such Property is not real property encumbered by the lien granted above, and is not absolutely assigned by the assignment set forth above, Trustor intends that such Property shall constitute "proceeds, products, offspring, rents, or profits" (as defined in and for the purposes of Section 552(b) of the United States Bankruptcy Code, as such section may be modified or supplemented) of the Land and Improvements.

5. Financing Statements. Pursuant to the UCC, Trustor, as debtor, hereby authorizes Beneficiary, as secured party, to file such financing statements and amendments thereof and such continuation statements with respect thereto as Beneficiary may deem appropriate to perfect and preserve Beneficiary's security interest in the Property and Rents, without requiring any signature or further authorization by Trustor. If requested by Beneficiary, Trustor shall pay all fees and costs that Beneficiary may incur in filing such documents in public offices and in obtaining such record searches as Beneficiary may reasonably require. If any financing statement or other document is filed in the records normally pertaining to personal property, that filing shall not be construed as in any way derogating from or impairing this Deed of Trust or the rights or obligations of the parties under it.

6. Fixture Filing. This Deed of Trust is intended to be and constitutes a fixture filing pursuant to the provisions of the UCC with respect to all of the Property constituting fixtures, is being recorded as a fixture financing statement and filing under the UCC,

and covers property, goods and equipment which are or are to become fixtures related to the Land and the Improvements. Trustor covenants and agrees that this Deed of Trust is to be filed in the real estate records of Alameda County and shall also operate from the date of such filing as a fixture filing in accordance with Section 9502 and other applicable provisions of the UCC. This Deed of Trust shall also be effective as a financing statement covering minerals or the like (including oil and gas) and accounts subject to the UCC, as amended. Trustor shall be deemed to be the "debtor" and Beneficiary shall be deemed to be the "secured party" for all purposes under the UCC.

7. Trustor's Representations, Warranties and Covenants; Rights and Duties of the Parties.

7.1 Representations and Warranties. Trustor represents and warrants that: (i) Trustor lawfully possesses and holds a fee interest in the Land, (ii) Trustor has good and marketable title to all of the Property; (iii) other than as limited by the City Documents, Trustor has the full and unlimited power, right and authority to encumber the Property with this Deed of Trust and assign the Rents as contemplated herein; (iv) subject only to encumbrances of record and senior liens permitted pursuant to the City Documents, or otherwise approved in writing by Beneficiary ("**Permitted Encumbrances**"), this Deed of Trust creates a valid lien on Trustor's entire interest in the Property free and clear of all deeds of trust, mortgages, security agreements, reservations of title or conditional sales contracts, (v) there is no financing statement affecting the Property on file in any public office other than as disclosed in writing to Beneficiary; and (vi) the correct address of Trustor's chief executive office is specified in Section 10.2.

7.2 Condition of Property. Trustor represents and warrants that except as disclosed to Beneficiary in writing, as of the date hereof: (i) Trustor has not received any notice from any governmental authority of any threatened or pending zoning, building, fire, or health code violation or violation of other governmental regulations concerning the Property that has not previously been corrected, and (ii) all information that Trustor has delivered to Beneficiary, either directly or through Trustor's agents, is accurate and complete.

7.3 Authority. Trustor represents and warrants that this Deed of Trust and all other documents delivered or to be delivered by Trustor in connection herewith: (a) have been duly authorized, executed, and delivered by Trustor; (b) are binding obligations of Trustor; and (c) do not violate the provisions of any agreement to which Trustor is a party or which affects the Property. Trustor further represents and warrants that there are no pending, or to Trustor's knowledge, threatened actions or proceedings before any court or administrative agency which may adversely affect Trustor's ownership of, or interest in, the Property or part thereof.

7.4 Payment and Performance of Secured Obligations. Trustor shall promptly pay when due the principal and all interest due on the indebtedness evidenced by the Note, and shall promptly pay and perform all other obligations of Trustor arising in

connection with the Secured Obligations or the City Documents in accordance with the respective terms thereof.

7.5 Use of Loan Proceeds; Preservation and Maintenance of Property; Compliance with Laws. Trustor covenants that it shall use the proceeds of the Loan (the "**Loan Proceeds**") solely for purposes authorized by the City Documents. Trustor covenants that it shall keep the Land and Improvements in good repair and condition, and from time to time shall make necessary repairs, renewals and replacements thereto so that the Property shall be preserved and maintained. Trustor covenants that it shall comply with all federal, state and local laws, regulations, ordinances and rules applicable to the Property, including without limitation all applicable requirements of state and local building codes and regulations, all applicable Prevailing Wage Laws, and all applicable statutes and regulations relating to accessibility for the disabled. Trustor shall not remove, demolish or materially alter any Improvement without Beneficiary's consent, shall complete or restore promptly and in good and workmanlike manner any building, fixture or other improvement which may be constructed, damaged, or destroyed thereon, and shall pay when due all claims for labor performed and materials furnished therefor. Trustor shall use the Land and the Improvements solely for purposes authorized by the City Documents, shall not commit or allow waste of the Property, and shall not commit or allow any act upon or use of the Property which would violate any applicable law or order of any governmental authority, nor shall Trustor bring on or keep any article on the Property or cause or allow any condition to exist thereon which could invalidate or which would be prohibited by any insurance coverage required to be maintained on the Property pursuant to the City Documents.

7.6 Restrictions on Conveyance and Encumbrance; Acceleration. It shall be an Event of Default hereunder if the Property or any part thereof or interest therein is sold, assigned, conveyed, transferred, hypothecated, leased, licensed, or encumbered in violation of the City Documents or if any other Transfer (as defined in the Regulatory Agreement) occurs in violation of the City Documents. If any such Transfer shall occur in violation of such requirements, without limiting the provisions of Section 8 hereof, all obligations secured by this Deed of Trust, irrespective of the maturity dates of such obligations, shall at the option of Beneficiary, and without demand, immediately become due and payable, subject to any applicable cure period.

7.7 Inspections; Books and Records. Beneficiary and its agents and representatives shall have the right at any reasonable time upon reasonable notice to enter upon the Land and inspect the Property to ensure compliance with the City Documents. Trustor shall maintain complete and accurate books of account and other records (including copies of supporting bills and invoices) adequate to document the use of the Loan Proceeds and the operation of the Property, together with copies of all written contracts, Leases and other instruments which affect the Property. The books, records, contracts, Leases and other instruments shall be subject to examination and inspection by Beneficiary at any reasonable time following at least two (2) business days prior notice.

7.8 Charges, Liens, Taxes and Assessments. Trustor shall pay before delinquency all taxes, levies, assessments and other charges affecting the Property that are (or if not paid may become) a lien on all or part of the Property. Trustor may, at Trustor's expense, contest the validity or application of any tax, levy, assessment or charge affecting the Property by appropriate legal proceedings promptly initiated and conducted in good faith and with due diligence, provided that (i) Beneficiary is reasonably satisfied that neither the Property nor any part thereof or interest therein will be in danger of being sold, forfeited, or lost as a result of such contest, and (ii) Trustor shall have posted a bond or furnished other security as may reasonably be required from time to time by Beneficiary; and provided further that Trustor shall timely make any payment necessary to prevent a lien foreclosure, sale, forfeiture or loss of the Property.

7.9 Subrogation. Beneficiary shall be subrogated to the liens of all encumbrances, whether released of record or not, which are discharged in whole or in part by Beneficiary in accordance with this Deed of Trust.

7.10 Hazard, Liability and Workers' Compensation Insurance. At all times during the term hereof, at Trustor's expense, Trustor shall keep the Improvements and personal property now existing or hereafter located on the Property insured against loss by fire, vandalism and malicious mischief by a policy of standard fire and extended all-risk insurance. The policy shall be written on a full replacement value basis and shall name Beneficiary as loss payee as its interest may appear. The full replacement value of the improvements to be insured shall be determined by the company issuing the policy at the time the policy is initially obtained. Not more frequently than once every two (2) years, either the Trustor or the Beneficiary shall have the right to notify the other party that it elects to have the replacement value redetermined by the insurance company. Subject to the rights of any senior lienholder, the proceeds collected under any insurance policy may be applied by Beneficiary to any indebtedness secured hereby and in such order as Beneficiary may determine, or at the option of Beneficiary, the entire amount so collected or any part thereof may be released to Trustor. Such application or release shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice.

7.10.1 Trustor shall at all times during the term hereof, maintain insurance coverage in the amounts and in accordance with the requirements specified in the City Documents, and shall otherwise comply with all requirements pertaining to insurance specified in the City Documents.

7.10.2 Trustor shall file with Beneficiary prior to the commencement of the term hereof, certificates (or such other proof as Beneficiary may require, including without limitation, copies of the required insurance policies) evidencing each of the insurance policies and endorsements thereto as required by this Section, and such certificates (or policies) shall provide that at least thirty (30) days' prior written notice shall be provided to Beneficiary prior to the expiration, cancellation or change in coverage under each such policy.

7.10.3 If any insurance policy required hereunder is canceled or the coverage provided thereunder is reduced, Trustor shall, within five (5) days after receipt of written notice of such cancellation or reduction in coverage, but in no event later than the effective date of cancellation or reduction, file with Beneficiary a certificate showing that the required insurance has been reinstated or provided through another insurance company or companies. Upon failure to so file such certificate, Beneficiary may, with notice and at its option, procure such insurance coverage at Trustor's expense, and Trustor shall promptly reimburse Beneficiary for such expense upon receipt of billing from Beneficiary.

7.10.4 The insurance policies required hereunder shall be issued by insurance companies authorized to do business in the State of California with a financial rating of at least A VII status as rated in the most recent edition of Best's Key Rating Guide. Each policy of insurance shall contain an endorsement requiring the insurer to provide at least thirty (30) days written notice to Beneficiary prior to change in coverage, cancellation or expiration thereof.

7.11 Hazardous Materials. Trustor shall not cause or permit any Hazardous Material (as defined below) to be brought upon, kept, stored or used in, on, under, or about the Land by Trustor, its agents, employees, contractors or invitees except for incidental supplies ordinarily used in connection with the construction, rehabilitation, repair, and operation of multi-family residential developments and in compliance with all applicable laws, and shall not cause any release of Hazardous Materials into, onto, under or through the Land. If any Hazardous Material is discharged, released, dumped, or spilled in, on, under, or about the Land and results in any contamination of the Land or adjacent property, or otherwise results in the release or discharge of Hazardous Materials in, on, under or from the Land, Trustor shall promptly take all actions at its sole expense as are necessary to comply with all Environmental Laws (as defined below).

To the greatest extent permitted by law, Trustor shall indemnify, defend (with counsel reasonably acceptable to Beneficiary), and hold Beneficiary and its elected and appointed officials, officers, agents and employees (collectively, "**Indemnitees**") harmless from and against any and all loss, claim, liability, damage, demand, judgment, order, penalty, fine, injunctive or other relief, cost, expense (including reasonable fees and expenses of attorneys, expert witnesses, and other professionals advising or assisting Beneficiary), action, or cause of action (all of the foregoing, hereafter individually "**Claim**" and collectively "**Claims**") arising in connection with the breach of Trustor's covenants and obligations set forth in this Section 7.11 or otherwise arising in connection with the presence or release of Hazardous Materials in, on, under, or from the Property, provided that no Indemnitee shall be entitled to indemnification under this Section for matters caused by such Indemnitee's gross negligence or willful misconduct. The foregoing indemnity includes, without limitation, all costs of investigation, assessment, containment, removal, remediation of any kind, and disposal of Hazardous Materials, all costs of determining whether the Land is in compliance with Environmental Laws, all costs associated with bringing the Land into compliance with all applicable

Environmental Laws, and all costs associated with claims for damages or injury to persons, property, or natural resources.

Without limiting the generality of the foregoing, Trustor shall, at Trustor's own cost and expense, do all of the following:

a. pay or satisfy any judgment or decree that may be entered against any Indemnitee or Indemnitees in any legal or administrative proceeding incident to any matters against which Indemnitees are entitled to be indemnified under this Deed of Trust;

b. reimburse Indemnitees for any expenses paid or incurred in connection with any matters against which Indemnitees are entitled to be indemnified under this Deed of Trust; and

c. reimburse Indemnitees for any and all expenses, including without limitation out-of-pocket expenses and fees of attorneys and expert witnesses, paid or incurred in connection with the enforcement by Indemnitees of their rights under this Deed of Trust, or in monitoring and participating in any legal or administrative proceeding.

Trustor's obligation to indemnify the Indemnitees shall not be limited or impaired by any of the following or by any failure of Trustor to receive notice of or consideration for any of the following: (i) any amendment or modification of any City Document; (ii) any extensions of time for performance required by any City Document; (iii) any provision in any of the City Documents limiting Beneficiary's recourse to property securing the Secured Obligations, or limiting the personal liability of Trustor, or any other party for payment of all or any part of the Secured Obligations; (iv) the accuracy or inaccuracy of any representation and warranty made by Trustor under this Deed of Trust or by Trustor or any other party under any City Document, (v) the release of Trustor or any other person, by Beneficiary or by operation of law, from performance of any obligation under any City Document; (vi) the release or substitution in whole or in part of any security for the Secured Obligations; and (vii) Beneficiary's failure to properly perfect any lien or security interest given as security for the Secured Obligations.

Notwithstanding any contrary provision hereof, the indemnity provided in this Section 7.11 shall not apply to Claims arising in connection with or resulting from Hazardous Materials present on the Land or in the Improvements prior to the Effective Date except Claims resulting from or arising in connection with the negligent act or omission of Trustor.

The provisions of this Section 7.11 shall be in addition to any and all other obligations and liabilities that Trustor may have under applicable law, and each Indemnitee shall be entitled to indemnification under this Section without regard to whether Beneficiary or that Indemnitee has exercised any rights against the Property or any other security, pursued any rights against any guarantor or other party, or pursued any other rights available under any City Document or applicable law. The obligations

of Trustor to indemnify the Indemnitees under this Section shall survive any repayment or discharge of the Secured Obligations, any foreclosure proceeding, any foreclosure sale, any delivery of any deed in lieu of foreclosure, and any release of record of the lien of this Deed of Trust.

Without limiting any of the remedies provided in this Deed of Trust, Trustor acknowledges and agrees that each of the provisions in this Section 7.11 is an environmental provision (as defined in Section 736(f)(2) of the California Code of Civil Procedure) made by Trustor relating to real property security (the "**Environmental Provisions**"), and that Trustor's failure to comply with any of the Environmental Provisions will be a breach of contract that will entitle Beneficiary to pursue the remedies provided by Section 736 of the California Code of Civil Procedure ("**Section 736**") for the recovery of damages and for the enforcement of the Environmental Provisions. Pursuant to Section 736, Beneficiary's action for recovery of damages or enforcement of the Environmental Provisions shall not constitute an action within the meaning of Section 726(a) of the California Code of Civil Procedure or constitute a money judgment for a deficiency or a deficiency judgment within the meaning of Sections 580a, 580b, 580d, or 726(b) of the California Code of Civil Procedure.

"**Hazardous Materials**" means any substance, material or waste which is or becomes regulated by any federal, state or local governmental authority, and includes without limitation (i) petroleum or oil or gas or any direct or indirect product or by-product thereof; (ii) asbestos and any material containing asbestos; (iii) any substance, material or waste regulated by or listed (directly or by reference) as a "hazardous substance", "hazardous material", "hazardous waste", "toxic waste", "toxic pollutant", "toxic substance", "solid waste" or "pollutant or contaminant" in or pursuant to, or similarly identified as hazardous to human health or the environment in or pursuant to, the Toxic Substances Control Act [15 U.S.C. Section 2601, *et seq*.]; the Comprehensive Environmental Response, Compensation and Liability Act [42 U.S.C. Section 9601, *et seq*.], the Hazardous Materials Transportation Authorization Act [49 U.S.C. Section 5101, *et seq*.], the Resource Conservation and Recovery Act [42 U.S.C. Section 6901, *et seq*.], the Federal Water Pollution Control Act [33 U.S.C. Section 1251], the Clean Air Act [42 U.S.C. Section 7401, *et seq*.], the California Underground Storage of Hazardous Substances Act [California Health and Safety Code Section 25280, *et seq*.], the California Hazardous Substances Account Act [California Health and Safety Code Section 25300, *et seq*.], the California Hazardous Waste Act [California Health and Safety Code Section 25100, *et seq*.], the California Safe Drinking Water and Toxic Enforcement Act [California Health and Safety Code Section 25249.5, *et seq*.], and the Porter-Cologne Water Quality Control Act [California Water Code Section 13000, *et seq*.], as they now exist or are hereafter amended, together with any regulations promulgated thereunder; (iv) any substance, material or waste which is defined as such or regulated by any "Superfund" or "Superlien" law, or any Environmental Law; or (v) any other substance, material, chemical, waste or pollutant identified as hazardous or toxic and regulated under any other federal, state or local environmental law, including without limitation, asbestos, polychlorinated biphenyls, petroleum, natural gas and synthetic fuel products and by-products.

"**Environmental Law**" means all federal, state or local statutes, ordinances, rules, regulations, orders, decrees, judgments or common law doctrines, and provisions and conditions of permits, licenses and other operating authorizations regulating, or relating to, or imposing liability or standards of conduct concerning (i) pollution or protection of the environment, including natural resources; (ii) exposure of persons, including employees and agents, to any Hazardous Material (as defined above) or other products, raw materials, chemicals or other substances; (iii) protection of the public health or welfare from the effects of by-products, wastes, emissions, discharges or releases of chemical substances from industrial or commercial activities; (iv) the manufacture, use or introduction into commerce of chemical substances, including without limitation, their manufacture, formulation, labeling, distribution, transportation, handling, storage and disposal; or (iv) the use, release or disposal of toxic or hazardous substances or Hazardous Materials or the remediation of air, surface waters, groundwaters or soil, as now or may at any later time be in effect, including but not limited to the Toxic Substances Control Act [15 U.S.C. 2601, et seq.]; the Comprehensive Environmental Response, Compensation and Liability Act [42 U.S.C. Section 9601, et seq.], the Hazardous Materials Transportation Authorization Act [49 U.S.C. Section 5101, et seq.], the Resource Conservation and Recovery Act [42 U.S.C. 6901, et seq.], the Federal Water Pollution Control Act [33 U.S.C. Section 1251], the Clean Air Act [42 U.S.C. Section 7401, et seq.], the California Underground Storage of Hazardous Substances Act [California Health and Safety Code Section 25280, et seq.], the California Hazardous Substances Account Act [California Health and Safety Code Section 25300, et seq.], the California Hazardous Waste Act [California Health and Safety Code Section 25100, et seq.], the California Safe Drinking Water and Toxic Enforcement Act [California Health and Safety Code Section 25249.5, et seq.], and the Porter-Cologne Water Quality Control Act [California Water Code Section 13000, et seq.], as they now exist or are hereafter amended, together with any regulations promulgated thereunder.

7.12 Notice of Claims; Defense of Security; Reimbursement of Costs.

a. Notice of Claims. Trustor shall provide written notice to Beneficiary of any uninsured or partially uninsured loss affecting the Property through fire, theft, liability, or property damage in excess of an aggregate of Fifty Thousand Dollars ($50,000) within five business days of the occurrence of such loss. Trustor shall ensure that Beneficiary shall receive timely notice of, and shall have a right to cure, any default under any other financing document or other lien affecting the Property and shall use best efforts to ensure that provisions mandating such notice and allowing such right to cure shall be included in all such documents. Within three business days of Trustor's receipt thereof, Trustor shall provide Beneficiary with a copy of any notice of default Trustor receives in connection with any financing document secured by the Property or any part thereof.

b. Defense of Security. At Trustor's sole expense, Trustor shall protect, preserve and defend the Property and Trustor's interest in and right of possession of the Property, the security of this Deed of Trust and the rights and powers of Beneficiary and Trustee created under it, against all adverse claims.

c. Compensation; Reimbursement of Costs. Trustor agrees to pay all reasonable fees, costs and expenses charged by Beneficiary or Trustee for any service that Beneficiary or Trustee may render in connection with this Deed of Trust, including without limitation, fees and expenses related to provision of a statement of obligations or related to a reconveyance. Trustor further agrees to pay or reimburse Beneficiary for all costs, expenses and other advances which may be incurred or made by Beneficiary or Trustee in any efforts to enforce any terms of this Deed of Trust, including without limitation any rights or remedies afforded to Beneficiary or Trustee or both of them under Sections 7.18 and 8.2, whether or not any lawsuit is filed, or in defending any action or proceeding arising under or relating to this Deed of Trust, including reasonable attorneys' fees and other legal costs, costs of any disposition of the Property under the power of sale granted hereunder or any judicial foreclosure, and any cost of evidence of title.

d. Notice of Changes. Trustor shall give Beneficiary prior written notice of any change in the address of Trustor and the location of any property, including books and records pertaining to the Property.

7.13 Indemnification. To the greatest extent permitted by law, Trustor shall indemnify, defend (with counsel reasonably acceptable to Beneficiary), and hold harmless the Trustee and the Indemnitees (as defined in Section 7.11) from and against all Claims arising directly or indirectly in any manner in connection with or as a result of (a) any breach of Trustor's covenants under any City Document, (b) any representation by Trustor in any City Document which proves to be false or misleading in any material respect when made, (c) injury or death to persons or damage to property or other loss occurring on the Land or in any improvement located thereon, whether caused by the negligence or any other act or omission of Trustor or any other person or by negligent, faulty, inadequate or defective design, building, construction or maintenance or any other condition or otherwise, (d) any claim, demand or cause of action, or any action or other proceeding, whether meritorious or not, brought or asserted against any Indemnitee which relates to or arises out of the Property, or any City Document or any transaction contemplated thereby, or any failure of Trustor to comply with all applicable state, federal and local laws and regulations applicable to the Property; provided however, the indemnity provided hereunder shall not extend to Claims to the extent arising as a result of the gross negligence or willful misconduct of the Indemnitees. The obligations of Trustor under this Section shall survive the repayment of the Loan and shall be secured by this Deed of Trust. Notwithstanding any contrary provision contained herein, the obligations of Trustor under this Section shall survive any foreclosure proceeding, any foreclosure sale, any delivery of a deed in lieu of foreclosure, and any release or reconveyance of this Deed of Trust.

7.14. Limitation of Liability. Beneficiary shall not be directly or indirectly liable to Trustor or any other person as a consequence of any of the following: (i) Beneficiary's exercise of or failure to exercise any rights, remedies or powers granted to Beneficiary in this Deed of Trust; (ii) Beneficiary's failure or refusal to perform or discharge any obligation or liability of Trustor under any agreement related to the Property or under this Deed of Trust; (iii) any waste committed by Trustor, the lessees of the Property or

any third parties, or any dangerous or defective condition of the Property; or (iv) any loss sustained by Trustor or any third party resulting from any act or omission of Beneficiary in managing the Property after an Event of Default, except to the extent arising from the willful misconduct or gross negligence of Beneficiary. Trustor hereby expressly waives and releases all liability of the types described in this Section 7.14 and agrees that Trustor shall assert no claim related to any of the foregoing against Beneficiary.

7.15 Insurance and Condemnation Proceeds. Subject to the rights of any senior lienholders, any award of damages in connection with any condemnation for public use of, or injury to the Property or any part thereof is hereby assigned and shall be paid to Beneficiary who may apply such moneys to any indebtedness secured hereby in such order as Beneficiary may determine, or at the option of Beneficiary the entire amount so collected or any part thereof may be released to Trustor. Such application or release shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice.

7.16 Release, Extension, Modification. At any time and from time to time, without liability therefor and without notice, upon written request of Beneficiary and presentation of this Deed of Trust and the Note for endorsement, Trustee may release or reconvey all or any part of the Property, consent to the making of any map or plat of the Land or part thereof, join in granting any easement or creating any restriction affecting the Property, or join in any extension agreement or other agreement affecting the lien or charge hereof. At any time and from time to time, without liability therefor and without notice, Beneficiary may (i) release any person liable for payment of any Secured Obligation, (ii) extend the time for payment or otherwise alter the terms of payment of any Secured Obligation; (iii) accept additional real or personal property of any kind as security for any Secured Obligation, or (iv) substitute or release any property securing the Secured Obligations.

7.17 Reconveyance. Upon written request of Beneficiary stating that all of the Secured Obligations have been paid in full, and upon surrender of this Deed of Trust, and the Note, Trustee shall reconvey, without warranty, the Property or so much of it as is then held under this Deed of Trust. The recitals in any reconveyance executed under this Deed of Trust of any matters or facts shall be conclusive proof of the truthfulness thereof. Trustor shall pay all fees of Trustee and all recordation fees related to such reconveyance.

7.18 Cure; Protection of Security. Upon the occurrence of an Event of Default, either Beneficiary or Trustee may cure any breach or default of Trustor if Trustor fails to do so within the applicable cure period, and if it chooses to do so in connection with any such cure, Beneficiary or Trustee may also enter the Property and/or do any and all other things which it may in its sole discretion consider necessary and appropriate to protect the security of this Deed of Trust. Such other things may include: appearing in and/or defending any action or proceeding which purports to affect the security of, or the rights or powers of Beneficiary or Trustee under, this Deed of Trust; paying, purchasing, contesting or compromising any encumbrance, charge, lien or claim of lien which in

Beneficiary's or Trustee's sole judgment is or may be senior in priority to this Deed of Trust, such judgment of Beneficiary or Trustee to be conclusive as among Beneficiary, Trustee and Trustor; obtaining insurance and/or paying any premiums or charges for insurance required to be carried hereunder; otherwise caring for and protecting any and all of the Property; and/or employing counsel, accountants, contractors and other appropriate persons to assist Beneficiary or Trustee. Beneficiary and Trustee may take any of the actions permitted under this Section 7.18 either with or without giving notice, except for notices required under applicable law. Any amounts disbursed by Beneficiary pursuant to this paragraph shall become additional indebtedness secured by this Deed of Trust.

8. Default and Remedies.

8.1 Events of Default. Trustor acknowledges and agrees that an Event of Default shall occur under this Deed of Trust upon the occurrence of any one or more of the following events:

a. Beneficiary's declaration of an Event of Default under any City Document, subject to the expiration of any applicable cure period set forth in such document;

b. Trustor fails to perform any monetary obligation which arises under this Deed of Trust or any other City Document, and does not cure that failure within ten (10) days following written notice from Beneficiary or Trustee;

c. If Trustor's interest in the Property or any part thereof is voluntarily or involuntarily sold, transferred, leased, encumbered, or otherwise conveyed in violation of Section 7.6 hereof or if any other Transfer occurs in violation of the City Documents;

d. Trustor fails to maintain the insurance coverage required by the City Documents and fails to cure such default within five (5) days, or Developer otherwise fails to comply with the requirements pertaining to insurance set forth in Section 7.10 hereof or in the City Documents, and Trustor fails to cure such default within the applicable cure period specified in Section 7.10 or in the City Documents, as applicable;

e. Subject to Trustor's right to contest such charges as provided herein, Trustor fails to pay taxes or assessments due on the Land or the Improvements or fails to pay when due any other charge that may result in a lien on the Land or the Improvements, and Trustor fails to cure such default within twenty (20) days of the date of delinquency, but in all events prior to the date upon which the holder of any such lien has the right to pursue foreclosure thereof;

f. Any representation or warranty of Trustor contained in or made in connection with this Deed of Trust or in any other City Document, or made in connection with the execution and delivery of any certificate or statement furnished by or on behalf

of Trustor in connection with the Loan proves to have been false or misleading in any material adverse respect when made;

g. If, pursuant to or within the meaning of the United States Bankruptcy Code or any other federal or state law relating to insolvency or relief of debtors ("**Bankruptcy Law**"), Trustor (i) commences a voluntary case or proceeding; (ii) consents to the entry of an order for relief against Trustor in an involuntary case; (iii) consents to the appointment of a trustee, receiver, assignee, liquidator or similar official for Trustor; (iv) makes an assignment for the benefit of its creditors; or (v) admits in writing its inability to pay its debts as they become due;

h. If a court of competent jurisdiction enters an order or decree under any Bankruptcy Law that (i) is for relief against Trustor in an involuntary case, (ii) appoints a trustee, receiver, assignee, liquidator or similar official for Trustor or substantially all Trustor's assets, (iii) orders the liquidation of Trustor, or (iv) issues or levies a judgment, writ, warrant of attachment or similar process against the Property or any part thereof, and in each case the order or decree is not released, vacated, dismissed or fully bonded within ninety (90) days after its issuance;

i. The holder of any other debt instrument secured by a mortgage or deed of trust on the Property or part thereof declares an event of default thereunder and exercises a right to declare all amounts due under that debt instrument immediately due and payable, subject to the expiration of any applicable cure period set forth in such holder's documents; or

j. Trustor fails to perform any obligation arising under this Deed of Trust other than one enumerated in this Section 8.1, and does not cure that failure either within thirty (30) days after written notice from Beneficiary or Trustee in the event of a monetary default, or within sixty (60) days after such written notice in the event of a nonmonetary default, provided that in the case of a nonmonetary default that in Beneficiary's reasonable judgment cannot reasonably be cured within sixty (60) days, an Event of Default shall not arise hereunder if Trustor commences to cure such default within sixty (60) days and thereafter prosecutes such cure to completion with due diligence and in good faith.

8.2 Remedies. Subject to the applicable notice and cure provisions set forth herein, at any time after an Event of Default, Beneficiary and Trustee shall be entitled to invoke any and all of the rights and remedies described below, and may exercise any one or more or all, of the remedies set forth in any City Document, and any other remedy existing at law or in equity or by statute. All of Beneficiary's rights and remedies shall be cumulative, and the exercise of any one or more of them shall not constitute an election of remedies. Beneficiary shall be entitled to collect all expenses incurred in pursuing the remedies provided hereunder, including without limitation reasonable attorneys' fees and costs.

a. Acceleration. Beneficiary may declare any or all of the Secured Obligations, including without limitation all sums payable under the Note and this Deed of Trust, to be due and payable immediately.

b. Receiver. Beneficiary may apply to any court of competent jurisdiction for, and obtain appointment of, a receiver for the Property.

c. Entry. Beneficiary, in person, by agent or by court-appointed receiver, may enter, take possession of, manage and operate all or any part of the Property, and may also do any and all other things in connection with those actions that Beneficiary may in its sole discretion consider necessary and appropriate to protect the security of this Deed of Trust. Such other things may include: taking and possessing copies of all of Trustor's or the then owner's books and records concerning the Property; entering into, enforcing, modifying, or canceling Leases on such terms and conditions as Beneficiary may consider proper; obtaining and evicting tenants; fixing or modifying Rents; collecting and receiving any payment of money owing to Trustor; completing any unfinished construction; and/or contracting for and making repairs and alterations. If Beneficiary so requests, Trustor shall assemble all of the Property that has been removed from the Land and make all of it available to Beneficiary at the site of the Land. Trustor hereby irrevocably constitutes and appoints Beneficiary as Trustor's attorney-in-fact to perform such acts and execute such documents as Beneficiary in its sole discretion may consider to be appropriate in connection with taking these measures, including endorsement of Trustor's name on any instruments.

d. UCC Remedies. Beneficiary may exercise any or all of the remedies granted to a secured party under the UCC.

e. Judicial Action. Beneficiary may bring an action in any court of competent jurisdiction to foreclose this Deed of Trust in the manner provided by law for foreclosure of mortgages on real property and/or to obtain specific enforcement of any of the covenants or agreements of this Deed of Trust.

f. Power of Sale. Under the power of sale hereby granted, Beneficiary shall have the discretionary right to cause some or all of the Property, including any Property which constitutes personal property, to be sold or otherwise disposed of in any combination and in any manner permitted by applicable law.

8.3 Power of Sale. If Beneficiary elects to invoke the power of sale hereby granted, Beneficiary shall execute or cause the Trustee to execute a written notice of such default and of its election to cause the Property to be sold to satisfy the obligations hereof, and shall cause such notice to be recorded in the office of the Recorder of each County wherein the Property or some part thereof is situated as required by law and this Deed of Trust.

Prior to publication of the notice of sale, Beneficiary shall deliver to Trustee this Deed of Trust and the Note or other evidence of indebtedness which is secured hereby,

together with a written request for the Trustee to proceed with a sale of the Property, pursuant to the provisions of law and this Deed of Trust.

Notice of sale having been given as then required by law, and not less than the time then required by law having elapsed after recordation of such notice of default, Trustee, without demand on Trustor, shall sell the Property at the time and place fixed by it in the notice of sale, either as a whole or in separate parcels and in such order as it may determine, at public auction to the highest bidder for cash in lawful money of the United States, payable at time of sale. Trustee may, and at Beneficiary's request shall, postpone sale of all or any portion of the Property by public announcement at such time and place of sale, and from time to time thereafter may postpone such sale by public announcement at the time and place fixed by the preceding postponement. Trustee shall deliver to the purchaser its deed conveying the property so sold, but without any covenant or warranty, express or implied. The recitals in such deed of any matters or facts shall be conclusive proof of the truthfulness thereof. Any person, including Trustor, Trustee, or Beneficiary, may purchase at such sale.

After deducting all costs, fees, and expenses of Trustee and of the trust hereby created, including reasonable attorneys' fees in connection with sale, Trustee shall apply the proceeds of sale to payment of all sums advanced or expended by Beneficiary or Trustee under the terms hereof and all outstanding sums then secured hereby, and the remainder, if any, to the person or persons legally entitled thereto.

Without limiting the generality of the foregoing, Trustor acknowledges and agrees that regardless of whether or not a default has occurred hereunder, if an Event of Default has occurred under the City Documents, and if in connection with such Event of Default Beneficiary exercises its right to foreclose on the Property, then: (i) Beneficiary shall be entitled to declare all amounts due under the Note immediately due and payable, and (ii) the proceeds of any sale of the Property in connection with such foreclosure shall be used to pay all Secured Obligations, including without limitation, the outstanding principal balance and all other amounts due under the Note.

At any foreclosure sale, any person, including Trustor, Trustee or Beneficiary, may bid for and acquire the Property or any part of it to the extent permitted by then applicable law. Instead of paying cash for such property, Beneficiary may settle for the purchase price by crediting the sales price of the property against the following obligations:

a. First, the portion of the Secured Obligations attributable to the expenses of sale, costs of any action and any other sums for which Trustor is obligated to pay or reimburse Beneficiary or Trustee under Section 7.12(c); and

b. Second, the remaining balance of all other Secured Obligations in any order and proportions as Beneficiary in its sole discretion may choose.

8.4 Trustor's Right to Reinstate. Notwithstanding Beneficiary's acceleration of the sums secured by this Deed of Trust, Trustor shall have the right to have any

proceedings begun by Beneficiary to enforce this Deed of Trust discontinued at any time prior to five days before sale of the Property pursuant to the power of sale contained in this Deed of Trust or at any time prior to entry of a judgment enforcing this Deed of Trust if: (a) Trustor pays Beneficiary all sums which would be then due under the City Documents if the Secured Obligations had no acceleration provision; (b) Trustor cures all breaches of any other covenants or agreements of Trustor contained in this Deed of Trust; (c) Trustor pays all reasonable expenses incurred by Beneficiary and Trustee in enforcing the covenants and agreements of Trustor contained in this Deed of Trust, and in enforcing Beneficiary's and Trustee's remedies as provided herein, including, but not limited to, reasonable attorney's fees; and (d) Trustor takes such action as Beneficiary may reasonably require to assure that the lien of this Deed of Trust, Beneficiary's interest in the Property and Trustor's obligation to pay the sums secured by this Deed of Trust shall continue unimpaired. Upon such payment and cure by Trustor, this Deed of Trust and the obligations secured hereby shall remain in full force and effect as if no acceleration had occurred.

9. Trustor's Waivers. To the fullest extent permitted by law, Trustor waives: (a) all statutes of limitations as a defense to any action or proceeding brought against Trustor by Beneficiary; (b) the benefit of all laws now existing or which may hereafter be enacted providing for any appraisement, valuation, stay, extension, redemption or moratorium; (c) all rights of marshalling in the event of foreclosure; and (d) all presentments, demands for performance, notices of nonperformance, protests, notices of protest, notices of dishonor, notices of acceptance of this Deed of Trust and of the existence, creation, or incurring of new or additional indebtedness, and demands and notices of every kind.

10. Miscellaneous Provisions.

10.1 Additional Provisions. The City Documents grant further rights to Beneficiary and contain further agreements and affirmative and negative covenants by Trustor which apply to this Deed of Trust and the Property.

10.2 Notices. Trustor requests that a copy of notice of default and notice of sale be mailed to Trustor at the address set forth below. That address is also the mailing address of Trustor as debtor under the UCC. Beneficiary's address set forth below is the address for Beneficiary as secured party under the UCC. Except for any notice required under applicable law to be given in another manner, all notices to be sent pursuant to this Deed of Trust shall be made in writing, and sent to the parties at their respective addresses specified below or to such other address as a party may designate by written notice delivered to the other parties in accordance with this Section. All such notices shall be sent by: (a) personal delivery, in which case notice shall be deemed delivered upon receipt; (b) certified or registered mail, return receipt requested, in which case notice shall be deemed delivered two (2) business days after deposit, postage prepaid in the United States mail; or (c) nationally recognized overnight courier, in which case notice shall be deemed delivered one (1) day after deposit with such courier.

Beneficiary: City of Livermore
City Hall
1052 South Livermore Avenue
Livermore, CA 94550-4899
Attention: Housing and Human Services Manager

With a copy to: City of Livermore
City Hall
1052 South Livermore Avenue
Livermore, CA 94550-4899
Attention: City Manager

Trustor: Tri-Valley REACH, Inc.
P.O. Box 5564
Pleasanton, CA 94566
Attention: Board President

10.3 Binding on Successors. The terms, covenants and conditions of this Deed of Trust shall be binding upon and inure to the benefit of the heirs, administrators, executors, successors in interest, transferees, and assigns of the Trustor, Beneficiary and Trustee; provided however this Section 10.3 does not waive the provisions of Section 7.6.

10.4 Substitution of Trustee. Beneficiary may from time to time or at any time substitute a trustee or trustees to execute the trust hereby created, and when any such substitution has been filed for record in the office of the Recorder of Alameda County, it shall be conclusive evidence of the appointment of such trustee or trustees, and such new trustee or trustees shall succeed to all of the powers and duties of the Trustee named herein.

10.5 Attorneys' Fees and Costs. In any action or proceeding to foreclose this Deed of Trust or to enforce any right of Beneficiary or of Trustee, Trustor shall pay to Beneficiary and Trustee all costs of such action or proceeding, including reasonable attorneys' fees.

10.6 Governing Law; Severability; Interpretation. This Deed of Trust shall be governed by the laws of the State of California without regard to principles of conflicts of laws. Trustor agrees that any controversy arising under or in relation to this Deed of Trust shall be litigated exclusively in Alameda County, California. If any provision of this Deed of Trust is held unenforceable or void, that provision shall be deemed severable from the remaining provisions, and shall in no way affect the validity of this Deed of Trust. The captions used in this Deed of Trust are for convenience only and are not intended to affect the interpretation or construction of the provisions herein contained. In this Deed of Trust, whenever the context so requires, the singular number includes the plural.

10.7 Waiver, Modification and Amendment. Any waiver by Beneficiary of any obligation of Trustor hereunder must be in writing, and no waiver shall be construed as a continuing waiver. No waiver shall be implied from any delay or failure by Beneficiary or Trustee to take action on account of any default of Trustor. Consent by Beneficiary or Trustee to any act or omission by Trustor shall not be construed as a consent to any other or subsequent act or omission or to waive the requirement for Beneficiary's or Trustee's consent to be obtained in any future or other instance. No amendment to or modification of this Deed of Trust shall be effective unless and until such amendment or modification is in writing, executed by Trustor and Beneficiary. Without limiting the generality of the foregoing, Beneficiary's acceptance of payment of any sum secured hereby after its due date shall not constitute a waiver by Beneficiary of its right either to require prompt payment when due of all other sums so secured or to declare default for failure so to pay.

10.8 Action by Beneficiary. Except as may be otherwise specifically provided herein, whenever any approval, notice, direction, or consent by the Beneficiary is required or permitted under this Agreement, such action shall be in writing, and such action may be given, made or taken by Beneficiary's City Manager or by any person who shall have been designated by Beneficiary's City Manager, without further approval by the governing board of Beneficiary.

10.9 Joint and Several Liability. If Trustor consists of more than one person or entity, each shall be jointly and severally liable for the faithful performance of all of Trustor's obligations under this Deed of Trust.

10.10 Time is of the Essence. Time is of the essence for each provision of this Deed of Trust.

SIGNATURES ON FOLLOWING PAGE.

IN WITNESS WHEREOF, Trustor has executed this Deed of Trust as of the date first written above.

TRUSTOR:

Tri-Valley REACH, Inc., a California nonprofit public benefit corporation

By:_____

Print Name:_Patrick O'Brien_____

Title:__Treasurer, Board of Directors_

SIGNATURES MUST BE NOTARIZED.

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
) ss
County of Alameda)

On _____, before me, _____,
(Name of Notary)

notary public, personally appeared _____
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.
WITNESS my hand and official seal.

_____
(Notary Signature)

Exhibit A

Legal Description

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF LIVERMORE, IN THE COUNTY OF ALAMEDA, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

Lots 28 as shown on the final map of Tract 7724 filed for record on August 10, 2015, in Book 333 of Maps, at Pages 48 through 52, inclusive, in the Official Records of the County of Alameda, State of California.

APN: 99-1388-42

RECORDING REQUESTED BY AND WHEN RECORDED MAIL TO: City of Livermore 1052 South Livermore Ave. Livermore, CA 94550 Attention: City Clerk EXEMPT FROM RECORDING FEES PER GOVERNMENT CODE §§6103, 27383	

Space above this line for Recorder's use.

APN: 99-1388-42

AFFORDABLE HOUSING REGULATORY AGREEMENT

AND

DECLARATION OF RESTRICTIVE COVENANTS

by and between

THE CITY OF LIVERMORE

and

TRI-VALLEY REACH, Inc.

_____, 2023

This Affordable Housing Regulatory Agreement and Declaration of Restrictive Covenants (this "**Agreement**") is entered into effective as of _____, 2023 ("**Effective Date**") by and between the City of Livermore, a municipal corporation ("**City**") and Tri-Valley REACH, Inc., a California nonprofit public benefit corporation ("**Owner**"). The City and the Owner are collectively referred to herein as the "**Parties**."

RECITALS

A. Owner is the owner of or has the right to acquire the real property located in the City of Livermore, Alameda County, California, consisting of one (1) townhouse condominium unit, located within a multifamily residential building located at 772 Camden Common, Livermore CA, known as Alameda County Assessor Parcel No. APN: 99-1388-42, and more particularly described in Exhibit A attached hereto (the "**Property**").

B. City and Owner have entered into an Affordable Housing Loan Agreement (HOME Funds), dated as of _____, 2023 (the "**Loan Agreement**"). The Loan Agreement provides that the Property will be required to be rented to Eligible Households at Affordable Rents in accordance with this Agreement for a period of not less than fifty-five (55) years.

C. Subject to the terms and conditions set forth in the Loan Agreement, City has agreed to provide a loan to Owner in the original principal amount of Three Hundred Thousand Dollars ($300,000.00) (the **"Loan")** in HOME funds to assist Owner in acquiring the Property. As a condition precedent to the funding of the Loan, City requires the Property to be subject to the terms, conditions and restrictions set forth herein.

D. Pursuant to the Loan Agreement, Owner shall execute and deliver to City a Secured Promissory Note (the "**Note"**) to evidence Owner's obligation to repay the Loan. The Note shall be secured by a Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing that shall be executed by Owner for the benefit of City (the "**Deed of Trust**") and recorded against the Property substantially concurrently herewith.

E. The purpose of this Agreement is to satisfy the affordability requirements of the HOME program and to regulate and restrict the occupancy and rents of the Property for the benefit of the Property's occupants. The Parties intend the covenants set forth in this Agreement to run with the land and to be binding upon Owner and Owner's successors and assigns for the full term of this Agreement.

NOW THEREFORE, in consideration of the foregoing, and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows.

1. Definitions. The following terms have the meanings set forth in this Section wherever used in this Agreement or the attached exhibits.

"**Affordable Rent**" means that the maximum rent for each tenant occupying an individual bedroom in the Property shall not exceed 75% of the HOME fair market rent (FMR) allowable for Extremely Low-Income households in a zero-bedroom studio unit as specified

further in the qualifications for rental housing for the HOME Program described under Title 24, Subtitle A, Part 92 Subpart F (CFR 92.252). In absence of HUD's published fair market rents, then Affordable Rent shall mean a monthly rent that does not exceed one-twelfth of thirty percent (30%) of Area Median Income, adjusted for a household of one (1) person, less a utility allowance and other fees and charges required to be paid by tenants of the Property on a non-optional basis. The affordable rent charged to each tenant shall be inclusive of basic utilities including electricity, gas, water, sewer and garbage, but not inclusive of telephone, cable or internet services. In any event, the total Affordable Rent received by the Owner for all tenants in the Property shall not exceed the Low HOME rent for a three-bedroom unit as applicable.

"**Area Median Income**" or "**AMI**" means the median income for Alameda County, California, as determined by HUD pursuant to Section 8 of the United States Housing Act of 1937 and as published from time to time by the State of California Department of Housing and Community Development ("HCD") in Section 6932 of Title 25 of the California Code of Regulations or successor provision published pursuant to California Health and Safety Code Section 50093(c).

"**City's Authorized Representative**" means the City Manager of the City of Livermore or her designee.

"**City Documents**" means the Loan Agreement, the Note, the Deed of Trust, and this Agreement.

"**Claims**" means collectively, liabilities, losses, costs, expenses (including without limitation attorneys' fees and costs of litigation), claims, demands, actions, suits, judicial or administrative proceedings, penalties, deficiencies, fines, orders, and damages.

"**Deed of Trust**" is defined in Recital D.

"**Developmental Disability**" shall have the meaning set forth in section 4512(a) of the California Welfare and Institutions Code.

"**Eligible Household**" means an individual that has a Developmental Disability and whose Gross Income upon initial occupancy does not exceed Extremely Low-Income.

"**Extremely Low-Income"** means thirty percent (30%) of Area Median Income, Adjusted for a household of one (1) person.

"**Gross Income"** shall have the meaning set forth for the HOME Program in (subsection) 5.611 of Title 24 of the Code of Federal Regulations as such Section may be revised from time to time.

"**HOME**" means the City's HOME program as a Participating Jurisdiction in the Alameda County HOME Consortium and a recipient of its funds under Title II of the Cranston-Gonzalez National Affordable Housing Act of 1990 (42 U.S.C. § 12721-12840) as amended, Catalog of Federal Domestic Assistance Number 14.239.

"**HUD"** means the U.S. Department of Housing and Urban Development.

"**Indemnitees"** means collectively, the City and its elected and appointed officers, officials, employees, agents, consultants, contractors, and designated volunteers.

"**Loan"** is defined in Recital C.

"**Loan Agreement"** is defined in Recital B.

"**Marketing and Management Plan"** is defined in Section 6.5.

"Note" is defined in Recital D.

"Official Records" means the Official Records of the Alameda County Recorder.

"**Very Low-Income"** means fifty percent (50%) of Area Median Income, Adjusted for a household of one (1) person.

2. Use and Affordability Restrictions. Owner hereby covenants and agrees, for itself and its successors and assigns, that throughout the term of this Agreement (as defined in Section 4.1 below), the Property shall be used solely for residential occupancy by Eligible Households in compliance with the Loan Agreement and the requirements set forth in this Agreement. Owner represents and warrants that it has not entered into any agreement that would restrict or compromise its ability to comply with the occupancy and affordability restrictions set forth in this Agreement, and Owner covenants that it shall not enter into any agreement that is inconsistent with such restrictions without the express written consent of City.

2.1 Special Needs Housing; Supportive Services. Owner has elected to operate the Property as special needs housing that will serve individuals with Developmental Disabilities, and as such will require the Property to be occupied or held available for occupancy by Eligible Households. To the extent applicable, the Property will be operated at all times in accordance with (a) the Unruh Act, including without limitation California Civil Code Sections 51.2, 51.3, and 51.4; (b) the federal Fair Housing Act, 42 U.S.C. Section 3607(b) and 24 CFR 100.304; (c) the California Fair Employment and Housing Act, Government Code Section 12900 *et seq*., and (d) all other applicable laws and regulations. Owner will indemnify, defend, and hold the Indemnitees harmless from all Claims arising out of Owner's failure to comply with applicable legal requirements related to housing for persons with Developmental Disabilities. The indemnity provisions of this paragraph shall survive the expiration or other termination of this Agreement.

Owner shall make supportive services available to residents of the Property and Owner shall provide or arrange for the provision of supportive services to residents of the Property in accordance with the Plan described in Section 6.5 below.

2.2 Affordability and Occupancy Requirements. Throughout the term of this Agreement (as defined in Section 4.1 below), the individual bedrooms in the Property shall be rented at Affordable Rents to Eligible Households.

2.3 Increased Income of Tenants. No tenant that qualifies as an Eligible Household shall be denied continued occupancy of the Property because, after admission, the Gross Income of such tenant increases to exceed the qualifying limit for Eligible Households. A tenant that at initial occupancy qualifies as an Eligible Household shall be treated as continuing to be an Eligible Household so long as the tenant's Gross Income does not exceed Very Low-Income.

2.4 Rental Agreements; Evictions. Owner shall use a lease or rental agreement in form approved by City. Tenants of the Property may only be evicted for good cause as described in 24 CFR Section 880.607.

2.5 Maximum Occupancy. Occupancy of each bedroom in the Property shall be limited to a maximum of one (1) person, and total occupancy of the Property shall be limited to a maximum of three (3) persons.

2.6 Non-Discrimination; Compliance with Fair Housing Laws.

2.6.1 Fair Housing; Section 8 Vouchers. Owner shall comply with state and federal fair housing laws in the marketing and rental of the Property. Owner shall accept as tenants, on the same basis as all other prospective tenants, persons who are recipients of federal certificates or vouchers for rent subsidies pursuant to the existing Section 8 program or any successor thereto.

2.6.2 Non-Discrimination. Owner covenants for itself, its successors and assigns, and all persons claiming under or through Owner, that there shall be no discrimination in the rental, sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Property, or any portion thereof, on the basis of race, color, religion, creed, sex, sexual orientation, disability, marital status, ancestry, or national origin, age, or gender identity of any person. Owner covenants for itself, its successors and assigns, and all persons claiming under or through Owner, that this Agreement is made and accepted upon and subject to the condition that there shall be no discrimination against or segregation of any person or group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the rental, sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Property or part thereof, nor shall Owner, its successors and assigns, or any person claiming under or through Owner, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees in, of, or for the Property or part thereof. Owner shall include such provision in all deeds, leases, contracts and other instruments executed by Owner, and shall enforce the same diligently and in good faith. Nothing in this Section 2.6.2 is intended to prevent the reservation of the Property for occupancy by individuals that have a Developmental Disability.

2.6.3 No Exclusion. Without limiting the generality of Sections 2.6.1 and 2.6.2, Owner will not exclude or discriminate against any person in the United States, on the grounds of race, color, religion, national origin, sex, sexual orientation, familial status, physical or mental

disability, age, or gender identity from participating in, or benefiting from, any program or activity related to the Property. Specifically, Owner will not, on the basis of any of the foregoing:

(i) Deny any service or other benefit provided under any program activity;

(ii) Provide any service or other benefit which is different, or is provided in a different form from that provided to others under any program or activity;

(iii) Subject to segregated or separate treatment in any facility in, or in any manner or process related to receipt of any service or benefit under any program or activity;

(iv) Restrict in any way the enjoyment of any advantage or privilege enjoyed by others receiving any service or benefit under any program or activity;

(v) Treat an individual differently from others in determining whether that individual satisfies any admission, enrollment, eligibility, membership, or other requirement or condition which individuals must meet in order to be provided any service or other benefit provided under any program or activity; or

(vi) Deny an opportunity to participate in any program or activity as an employee.

2.6.4 Mandatory Language in Subsequent Deeds, Leases, and Contracts. All deeds, leases, and contracts pertaining to management of the Project, made or entered into by Owner, its successors or assigns, as to any portion of the Property shall contain the following language:

In Deeds, the following language shall appear:

(1) Grantee herein covenants by and for itself, its successors and assigns, and all persons claiming under or through it, that there shall be no discrimination against or segregation of a person or of a group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the property herein conveyed nor shall the grantee or any person claiming under or through the grantee establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees in the property herein conveyed. The foregoing covenant shall run with the land."

(2) Subdivision (d) of Section 51 and Section 6714 of the Civil Code and subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall apply to paragraph (1).

In Leases, the following language shall appear:

(1) The lessee herein covenants by and for the lessee and lessee's heirs, personal representatives and assigns, and all persons claiming under the lessee or through the lessee, that this lease is made subject to the condition that there shall be no discrimination against or segregation of any person or of a group of persons on account of race, color, creed, religion, sex, sexual orientation, marital status, national origin, ancestry or disability in the leasing, subleasing, transferring, use, occupancy, tenure or enjoyment of the property herein leased nor shall the lessee or any person claiming under or through the lessee establish or permit any such practice or practices of discrimination of segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, sublessees, subtenants, or vendees in the property herein leased.

(2) Subdivision (d) of Section 51 and Section 6714 of the Civil Code and subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall apply to paragraph (1).

In Contracts pertaining to management of the Project, the following language, or substantially similar language prohibiting discrimination and segregation shall appear:

(1) There shall be no discrimination against or segregation of any person or group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the property nor shall the transferee or any person claiming under or through the transferee establish or permit any such practice or practices of discrimination or segregation with reference to selection, location, number, use or occupancy of tenants, lessee, subtenants, sublessees or vendees of the land.

(2) Subdivision (d) of Section 51 and Section 6714 of the Civil Code and subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall apply to paragraph (1).

3. Reporting Requirements; Access to Information; Inspections.

3.1 Tenant Certification. Owner or Owner's authorized agent shall obtain from each prospective tenant prior to initial occupancy of the Property, and on every anniversary thereafter, a written certificate containing all of the following in such format and with such supporting documentation as City may reasonably require:

(i) The identity of each household member;

(ii) The total household Gross Income calculated in accordance with HOME Program

regulations; and

(iii) The basis upon which the tenant or prospective tenant qualifies as an Eligible Household.

Owner shall retain such certificates for not less than five (5) years, and upon City's request, shall provide copies of such certificates to City and make the originals available for City inspection.

3.2 Annual Reports; Inspections. By not later than 180 days following the Effective Date, and thereafter by not later than May 31 of each year, Owner shall submit an annual report ("**Annual Report**") to the City in form attached hereto as Exhibit C, together with the additional information specified in this Section 3.2 and a certification that the Property is in compliance with the requirements of this Agreement. The Annual Report shall, at a minimum, include the following information for each occupant of the Property: (i) current rent, utility, and other charges; (ii) move-in date; (iii) documentation of source of household income; and (iv) the information required by Section 3.1. In addition, the Annual Report shall include the dates of any vacancies during the previous year.

Owner shall include with the Annual Report, an income recertification for each tenant, documentation verifying tenant eligibility, and such additional information as City may reasonably request from time to time in order to demonstrate compliance with this Agreement. The Annual Report shall conform to the format requested by City.

In addition to the information described above, the Annual Report shall include the following:

(i) A Property income and expense statement for the reporting period;

(ii) Proposed annual budget for the next fiscal year which sets forth Owner's estimate of operating income, operating expenses and debt service for the year, amounts payable to reserves and proposed rent adjustments;

(iii) A report on maintenance and other issues anticipated to affect the current budget needs of the Property as well as the amount in the Property's reserve accounts and the amount expected to be needed for major repairs or other needs during the new fiscal year;

(iv) Financial statements for the Property prepared in accordance with generally accepted accounting standards, and if requested by City, an audit by an independent certified public accountant.

(v) City may, in its reasonable discretion, from time to time request additional or different information, and Owner shall promptly supply such information in the reports required hereunder.

3.3. Maintenance of Records.

3.3.1 Owner shall maintain tenant leases, income certifications and other matters related to the leasing of the Property for a period of five (5) years after the final date of

occupancy by the tenant.

3.3.2 Records must be kept accurate and up-to-date. City shall notify Owner of any records it deems insufficient. Owner shall have fifteen (15) calendar days from such notice to correct any specified deficiency in the records, or, if more than fifteen (15) days shall be reasonably necessary to correct the deficiency, Owner shall begin to correct the deficiency within fifteen (15) days and diligently pursue the correction of the deficiency as soon as reasonably possible.

3.4 Access to Records; Inspections.

3.4.1 With at least 48-hours' notice, during normal business hours, Owner shall provide City and its authorized agents and representatives access to the books, documents, and records of the Property for the purpose of making audits, examinations, excerpts and transcriptions.

3.4.2 With at least 48-hours' notice, during normal business hours and as often as may be deemed necessary, City and its authorized agents and representatives shall be permitted access to and the right to examine the Property and to interview tenants for the purpose of verifying compliance with applicable regulations and compliance with the conditions of this Agreement and the other City Documents.

4. Term of Agreement.

4.1 Term of Restrictions. This Agreement shall remain in effect until the fifty-fifth (55th) anniversary of the Effective Date of this Agreement, unless the parties agree to extend the term pursuant to a recorded amendment to this Agreement.

4.2 Effectiveness Succeeds Conveyance of Property and Repayment of Loan. This Agreement shall remain effective and fully binding for the full term hereof regardless of (i) any sale, assignment, transfer, or conveyance of the Property or any part thereof or interest therein, (ii) any payment, prepayment or extinguishment of the Loan or the Note, or (iii) any reconveyance of the Deed of Trust.

4.3 Reconveyance. Upon the termination of this Agreement, the Parties agree to execute and record appropriate instruments to release and discharge this Agreement; provided, however, the execution and recordation of such instruments shall not be necessary or a prerequisite to the termination of this Agreement upon the expiration of the term.

5. Binding Upon Successors; Covenants to Run with the Land. Owner hereby subjects its interest in the Property to the covenants and restrictions set forth in this Agreement. The City and Owner hereby declare their express intent that the covenants and restrictions set forth herein shall be deemed covenants running with the land and shall be binding upon and inure to the benefit of the heirs, administrators, executors, successors in interest, transferees, and assigns of Owner and City, regardless of any sale, assignment, conveyance or transfer of the Property or any part thereof or interest therein. Any successor-in-interest to Owner, including without limitation

any purchaser, transferee or lessee of the Property (other than the tenants of the Property) shall be subject to all of the duties and obligations imposed hereby for the full term of this Agreement. Each and every contract, deed, ground lease or other instrument affecting or conveying the Property or any part thereof, shall conclusively be held to have been executed, delivered and accepted subject to the covenants, restrictions, duties and obligations set forth herein, regardless of whether such covenants, restrictions, duties and obligations are set forth in such contract, deed, ground lease or other instrument. If any such contract, deed, ground lease or other instrument has been executed prior to the date hereof, Owner hereby covenants to obtain and deliver to City an instrument in recordable form signed by the parties to such contract, deed, ground lease or other instrument pursuant to which such parties acknowledge and accept this Agreement and agree to be bound hereby. Owner agrees for itself and for its successors that in the event that a court of competent jurisdiction determines that the covenants herein do not run with the land, such covenants shall be enforced as equitable servitudes against the Property in favor of City.

6. Property Management; Repair and Maintenance; Marketing; Reserves; Supportive Services.

6.1 Management Responsibilities. Owner shall be responsible for all management functions with respect to the Property, including without limitation the selection of tenants, certification and recertification of household income and eligibility, evictions, collection of rents and deposits, maintenance, landscaping, routine and extraordinary repairs, replacement of capital items, and security. City shall have no responsibility for management or maintenance of the Property.

6.2 Management Entity; Social Services Provider; Referral Agency. City shall have the right to review and approve the qualifications of (i) the management entity, (ii) the social services provider, and (iii) any agency that will verify Developmental Disability status of prospective tenants of the Property, and shall have the right to review and approve any property management agreement, social services agreement, or similar agreement executed between Owner and such entities, which approval shall not be unreasonably withheld. The contracting of management services to a management entity shall not relieve Owner of its primary responsibility for proper performance of management duties. City hereby approves Housing Consortium of the East Bay, a California nonprofit public benefit corporation, as the initial management entity for the Property. Any subsequent management entity or social services provider shall be subject to City review and approval, which shall not be unreasonably withheld or delayed. Upon City determination and delivery of written notice to Owner that Owner has failed to operate the Property in accordance with this Agreement, City may require Owner to contract with a qualified management agent selected by City, to operate the Property, or to make such other arrangements as City deems necessary to ensure performance of the required functions.

6.3 Repair, Maintenance and Security. Throughout the term of this Agreement, Owner shall at its own expense, maintain the Property in good physical condition, in good repair, and in decent, safe, sanitary, habitable and tenantable living conditions in conformity with all applicable state, federal, and local laws, ordinances, codes, and regulations. Without limiting the foregoing, Owner agrees to maintain the Property (including without limitation, the common

areas) in a condition free of all waste, nuisance, debris, unmaintained landscaping, graffiti, disrepair, abandoned vehicles/appliances, and illegal activity, and shall take all reasonable steps to prevent the same from occurring on the Property. Owner shall prevent and/or rectify any physical deterioration of the Property and shall make all repairs, renewals and replacements necessary to keep the Property in good condition and repair. Owner shall provide adequate security measures for the Property, including without limitation, the installation of adequate lighting and deadbolt locks. All construction/rehabilitation work and professional services for the Property shall be performed by persons or entities licensed or otherwise authorized to perform the applicable work or service in the State of California and shall have a current City of Livermore business license if required under local law. Owner shall comply in all respects with the homeowners' association rules and regulations and all other rules and regulations applicable to the Property. Owner shall diligently work to resolve complaints related to noise, parking, litter or other neighborhood concerns.

6.4 City's Right to Perform Maintenance. In the event that Owner breaches any of the covenants contained in Section 6.3, and such default continues for a period of ten (10) days after written notice from City (with respect to graffiti, debris, and waste material) or thirty (30) days after written notice from City (with respect to landscaping, building improvements and general maintenance), then City, in addition to any other remedy it may have under this Agreement or at law or in equity, shall have the right, but not the obligation, to enter upon the Property and perform all acts and work necessary to protect, maintain, and preserve the improvements and the landscaped areas on the Property. All costs expended by City in connection with the foregoing, shall constitute an indebtedness secured by the Deed of Trust, and shall be paid by Owner to City upon demand. All such sums remaining unpaid thirty (30) days following delivery of City's invoice therefor shall bear interest at the lesser of 10% per annum or the highest rate permitted by applicable law.

6.5 Marketing and Management Plan. Owner shall submit for review and approval by the City, a plan for marketing and managing the Property ("**Marketing and Management Plan**" or "**Plan**"). The Marketing and Management Plan shall address in detail how Owner plans to market the Property to prospective Eligible Households in accordance with fair housing laws and this Agreement, Owner's tenant selection criteria, and how Owner plans to certify the eligibility of Eligible Households. The Plan shall also describe the management team and shall address how the Owner and the management entity plan to manage and maintain the Property. The Plan shall include the proposed management agreement and the form of rental agreement that Owner proposes to enter into with tenants of the Property. In addition, the Plan shall include: (i) information regarding the qualifications of the proposed social services provider that will provide services to residents of the Property, and a copy of the social services agreement, (ii) information regarding any organizations or agencies that will provide referrals of Eligible Households for prospective occupancy of the Property, and (iii) the supportive social services that will be provided to tenants of the Property. Owner shall abide by the terms of the Marketing and Management Plan in marketing, managing, and maintaining the Property, and throughout the term of this Agreement, shall submit proposed modifications to City for review and approval.

In addition to the foregoing, the Marketing and Management Plan shall address the following:

(a) The actions to be taken by Owner to affirmatively market the Property in compliance with fair housing laws and in compliance with City's policies and procedures, including the policies described in Section 2.6 above;

(b) Criteria for determining tenant eligibility, including certification of household income and size, Developmental Disability status or other qualifying criteria, and establishing reasonable occupancy standards (which shall not exceed the standards specified in Section 2.5, or if more restrictive, the standards established by state and federal fair housing laws and state housing and building codes), and procedures for screening prospective tenants, including obtaining credit reports, unlawful detainer reports, landlord references and criminal background investigations;

(c) A requirement that eligible tenants be selected based on order of application, lottery or other reasonable method approved by City;

(d) A requirement that eligible applicants be notified of eligibility and be provided an estimate regarding when a bedroom in the Property may be available for rent;

(e) A requirement that ineligible applicants be notified of the reason for their ineligibility;

(f) Specific procedures through which applicants deemed to be ineligible may appeal this determination;

(g) Maintenance of a waiting list of eligible applicants;

(h) Specific procedures for obtaining documentation regarding prospective tenants' incomes, as necessary, to certify that such income does not exceed income limits;

(i) Specific procedures for certification and recertification of household incomes and procedures for handling over-income tenants;

(j) A requirement that a written rental agreement (subject to City approval) be executed with each Eligible Household selected to occupy the Property;

(k) A detailed listing of reasonable rules of conduct and occupancy which shall be in writing, shall be consistent with federal and state law, and shall be provided to each tenant upon occupancy;

(l) Intentionally omitted.

(m) Intentionally omitted.

(n) Procedures for maintenance and management of the Property;

(o) Procedures for dealing with tenant or neighborhood issues or concerns;

(p) Procedures for maintaining a reserve account, budgeting for maintenance and repair needs as well as long-term rehabilitation needs, and handling net cash flow;

(q) Such other requirements and criteria/procedures as City may reasonably determine appropriate; and

(r) Owner's plan for educating tenants regarding, and ensuring compliance with, the homeowners' association rules and regulations and other regulations applicable to the Property, including without limitation, rules regarding parking, storage, and use of balconies.

6.6 Approval of Amendments. If City has not responded to any submission of the Management and Marketing Plan, the proposed management entity, the proposed management agreement, or a proposed amendment or change to any of the foregoing within sixty (60) days following City's receipt of such plan, proposal, agreement or amendment, the plan, proposal, agreement, or amendment shall be deemed approved by City.

6.7 Fees, Taxes, and Other Levies. Owner shall be responsible for payment of all fees, assessments, taxes, charges, liens and levies applicable to the Property, including without limitation possessory interest taxes, if applicable, imposed by any public entity, and shall pay such charges prior to delinquency. However, Owner shall not be required to pay any such charge so long as (a) Owner is contesting such charge in good faith and by appropriate proceedings, (b) Owner maintains reserves adequate to pay any contested liabilities, and (c) on final determination of the proceeding or contest, Owner immediately pays or discharges any decision or judgment rendered against it, together with all costs, charges and interest. The foregoing is not intended to impair Owner's ability to apply for any applicable exemption from property taxes or other assessments and fees.

6.8 Insurance Coverage. Throughout the term of this Agreement Owner shall comply with the insurance requirements set forth in Exhibit B, and shall, at Owner's expense, maintain in full force and effect insurance coverage as specified in Exhibit B.

6.9 Property Damage or Destruction. If any part of the Property is damaged or destroyed, Owner shall repair or restore the same, consistent with the occupancy and rent restriction requirements set forth in this Agreement. Such work shall be commenced as soon as reasonably practicable after the damage or loss occurs and shall be completed within one year thereafter or as soon as reasonably practicable, provided that insurance proceeds are available to be applied to such repairs or restoration within such period and the repair or restoration is financially feasible.

6.10 Required Reserves. Owner shall be obligated to establish and maintain an operating and replacement reserve account for the Property ("**Reserve"**). The Reserve may be

for the non-exclusive use of the Property and may include other properties in Livermore operated by the Borrower. Owner shall ensure that upon Close of Escrow, the Reserve is funded at Fifteen Thousand Dollars ($15,000). Reserve funds may be used solely for maintenance and operating expenses of the Property. Of the initial Fifteen Thousand Dollars ($15,000), Five Thousand Dollars ($5,000) must be maintained for maintenance and repair expenses as the minimum amount in the Reserve. The City's advance written consent, which shall not be unreasonably withheld, shall be required for withdrawals from the Reserve for non-routine operating and maintenance expenses exceeding the sum of Three Thousand Dollars ($3,000). The Reserve shall be replenished from Property net operating income so that beginning in the fifth (5th) year, at least Five Thousand Dollars ($5,000) is maintained annually in the Reserve. Any deficit that may occur in an operating year is to be made-up in subsequent operating years until the Five Thousand Dollar ($5,000) Reserve is achieved and maintained throughout the remaining term of the City's Loan. The maximum amount that can be held in the Reserve for the Property is two percent (2%) of the fair market value of the Property as determined by the City or such other amount approved by City. City may approve a pooled reserve for Livermore properties.

6.11 No Criminal Activity. Owner agrees that neither Owner nor any person residing on the Property, their guests or persons under their control, shall permit, engage in, or facilitate criminal activity within the Property, within the development in which the Property is located, or on the streets bordering such development. This includes, without limiting the foregoing: (i) the illegal manufacture, sale, distribution, use, or possession with the intent to manufacture, sell, distribute, or use a controlled substance as defined in Section 102 of the Controlled Substances Act (21 U.S.C. Section 802); (ii) the unlawful discharge of firearms; and (iii) all acts or threats of violence, harming, or intending to harm a person or property.

7. Recordation; Subordination. This Agreement shall be recorded in the Official Records. The City agrees that the City will not withhold consent to reasonable requests for subordination of this Agreement provided that the instruments effecting such subordination include reasonable protections to the City in the event of default, including without limitation, extended notice and cure rights.

8. Transfer and Encumbrance.

8.1 Restrictions on Transfer and Encumbrance. During the term of this Agreement, except as permitted pursuant to the Loan Agreement or this Agreement, Owner shall not directly or indirectly, voluntarily, involuntarily or by operation of law make or attempt any total or partial sale, transfer, conveyance, assignment or lease (collectively, "**Transfer**") of the whole or any part of the Property without the prior written consent of the City, which approval shall not be unreasonably withheld. In addition, prior to the expiration of the term of this Agreement, except as expressly permitted by this Agreement or the Loan Agreement, Owner shall not undergo any significant change of ownership without the prior written approval of City. For purposes of this Agreement, a "significant change of ownership" shall mean a transfer of the beneficial interest of more than twenty-five percent (25%) in aggregate of the present ownership and /or control of Owner, taking all transfers into account on a cumulative basis.

8.2 Permitted Transfers. Notwithstanding any contrary provision of the City Documents, the prohibitions on Transfer set forth herein shall not be deemed to prevent: (i) the lease of bedrooms within the Property to tenants for occupancy as their principal residence in accordance with this Agreement; (ii) assignments creating security interests for the purpose of financing the acquisition or improvement of the Property in accordance with the Financing Plan approved in accordance with the Loan Agreement as such may be updated with City Approval, or Transfers directly resulting from the foreclosure of, or granting of a deed in lieu of foreclosure of, such a security interest; or (iii) a Transfer to a tax-exempt entity under the direct control of, or under common control with, Owner.

8.3 Requirements for Proposed Transfers. The City may, in the exercise of its sole discretion, consent to a proposed Transfer of this Agreement, the Property, or part thereof if all of the following requirements are met (provided however, the requirements of this Section 8.3 shall not apply to Transfers described in clauses (i) and (ii) of Section 8.2.

(i) The proposed transferee demonstrates to the City's satisfaction that it has the qualifications, experience and financial resources necessary and adequate as may be reasonably determined by the City to competently manage the Property and to otherwise fulfill the obligations undertaken by the Owner under this Agreement.

(ii) The Owner and the proposed transferee shall submit for City review and approval all instruments and other legal documents proposed to effect any Transfer of all or any part of or interest in the Property or this Agreement together with such documentation of the proposed transferee's qualifications and development capacity as the City may reasonably request.

(iii) The proposed transferee shall expressly assume all of the rights and obligations of the Owner under this Agreement and the other City Documents arising after the effective date of the Transfer and all obligations of Owner arising prior to the effective date of the Transfer (unless Owner expressly remains responsible for such obligations), and shall agree to be subject to and assume all of Owner's obligations under the City Documents.

(iv) The final form of the organizational documents of the proposed transferee, and any subsequent amendments that affect the City's economic interests under this Agreement or the City Documents shall be subject to the City's review and approval.

(v) The Transfer and the assumption of Owner's obligations shall be effectuated pursuant to an assignment and assumption agreement in form approved by City and recorded in the Official Records.

Consent to any proposed Transfer may be given by the City's Authorized Representative unless the City's Authorized Representative, in his or her discretion, refers the matter of approval to the City Council. If the City has not rejected a proposed Transfer or requested additional information regarding a proposed Transfer in writing within thirty (30) days following City's receipt of written request by Owner, the proposed Transfer shall be deemed approved.

8.4 Effect of Transfer without City Consent. In the absence of specific written

agreement by the City, no Transfer of the Property shall be deemed to relieve the Owner or any other party from any obligation under this Agreement. It shall be an Event of Default hereunder entitling City to pursue remedies including without limitation, acceleration of the Loan and/or foreclosure under the Deed of Trust if without the prior written approval of the City, Owner assigns or Transfers this Agreement or the Property in violation of Section 8. This Section 8.4 shall not apply to Transfers described in clauses (i) and (ii) of Section 8.2.

8.5 Recovery of City Costs. Within ten (10) days following City's delivery to Owner of an invoice detailing such costs, Owner shall reimburse City for all City costs, including but not limited to reasonable attorneys' fees, incurred in reviewing instruments and other legal documents proposed to effect a Transfer of this Agreement, Owner's interest in the Property or part thereof, and in reviewing the qualifications and financial resources of a proposed successor, assignee, or transferee.

8.6 Encumbrances. Owner agrees to cooperate with City in good faith to ensure that all deeds of trust or other security instruments and any applicable subordination agreement recorded against the Property or part thereof for the benefit of a lender other than City ("**Third-Party Lender**") shall contain each of the following provisions: (i) Third-Party Lender shall use its best efforts to provide to City a copy of any notice of default issued to Owner concurrently with provision of such notice to Owner; (ii) City shall have the reasonable right, but not the obligation, to cure any default by Owner within the same period of time provided to Owner for such cure extended by an additional ninety (90) days; (iii) provided that City has cured any default under Third-Party Lender's deed of trust and other loan documents, City shall have the right to foreclose the Deed of Trust, and take title to the Property without acceleration of Third-Party Lender's debt; and (iv) City shall have the right to transfer the Property without acceleration of Third-Party Lender's debt to a nonprofit corporation or other entity which shall own and operate the Property as affordable rental housing, subject to the prior written consent of the Third-Party Lender. Owner agrees to provide to City a copy of any notice of default Owner receives from any Third-Party Lender within three (3) business days following Owner's receipt thereof.

8.7 Mortgagee Protection. No violation of any provision contained herein shall defeat or render invalid the lien of any mortgage or deed of trust made in good faith and for value upon all or any portion of the Property, and the purchaser at any trustee's sale or foreclosure sale shall not be liable for any violation of any provision hereof occurring prior to the acquisition of title by such purchaser. Unless this Agreement is subordinated in accordance with Section 7, such purchaser shall be bound by and subject to this Agreement from and after such trustee's sale or foreclosure sale. Promptly upon determining that a violation of this Agreement has occurred, City shall give written notice to the holders of record of any mortgages or deeds of trust encumbering the Property that such violation has occurred.

9. Default and Remedies.

9.1 Events of Default. The occurrence of any one or more of the following events shall constitute an event of default hereunder ("**Event of Default**"):

(i) The occurrence of a Transfer in violation of Section 8 hereof;

(ii) Owner's failure to maintain insurance on the Property as required hereunder, and the failure of Owner to cure such default within five (5) days;

(iii) Subject to Owner's right to contest the following charges, Owner's failure to pay taxes or assessments due on the Property or failure to pay any other charge that may result in a lien on the Property, and Owner's failure to cure such default within twenty (20) days of delinquency, but in all events prior to the date upon which the holder of any such lien has the right to foreclose thereon;

(iv) A default arises under any loan secured by a mortgage, deed of trust or other security instrument recorded against the Property and remains uncured beyond any applicable cure period such that the holder of such security instrument has the right to accelerate repayment of such loan;

(v) A default arises under the Loan Agreement, the Note, or the Deed of Trust and remains uncured beyond the expiration of any applicable cure period;

(vi) Owner's default in the performance of any term, provision or covenant under this Agreement (other than an obligation enumerated in this Section 9.1), and unless such provision specifies a shorter cure period for such default, the continuation of such default for thirty (30) days in the event of a monetary default or sixty (60) days in the event of a non-monetary default following the date upon which City shall have given written notice of the default to Owner, or if the nature of any such non-monetary default is such that it cannot be cured within sixty (60) days, Owner's failure to commence to cure the default within sixty (60) days and thereafter prosecute the curing of such default with due diligence and in good faith to completion.

9.2 Remedies. Upon the occurrence of an Event of Default and its continuation beyond any applicable cure period, City may proceed with any of the following remedies:

(i) Bring an action for equitable relief seeking the specific performance of the terms and conditions of this Agreement, and/or enjoining, abating, or preventing any violation of such terms and conditions, and/or seeking declaratory relief;

(ii) Accelerate and declare the balance of the Note and interest accrued thereon immediately due and payable and proceed with foreclosure under the Deed of Trust;

(iii) For violations of obligations with respect to rents for the Property, impose as liquidated damages a charge in an amount equal to the actual amount collected in excess of the Affordable Rent; or

(iv) Pursue any other remedy allowed under the City Documents or at law or in equity.

Each of the remedies provided herein is cumulative and not exclusive. The City may exercise from time to time any rights and remedies available to it under applicable law or in

equity, in addition to, and not in lieu of, any rights and remedies expressly provided in this Agreement.

10. Indemnity. To the greatest extent permitted by law, Owner shall indemnify, defend (with counsel approved by City) and hold the Indemnitees harmless from and against all Claims arising directly or indirectly, in whole or in part, as a result of or in connection with Owner's (or Owner's employees', agents', or contractors') management, or operation of the Property or any failure to perform any obligation as and when required by this Agreement. Owner's indemnification obligations under this Section 10 shall not extend to Claims to the extent resulting from the gross negligence or willful misconduct of Indemnitees. The provisions of this Section 10 shall survive the expiration or earlier termination of this Agreement.

10.1 Terms Applicable to Indemnity Provisions. The terms set forth in this Section 10.1 shall apply to all provisions of this Agreement that pertain to Owner's obligations to indemnify City and the other Indemnitees, including without limitation, Sections 2.1 and 10. In connection with each such provision, all of the following shall apply:

(a) City does not and shall not waive any rights against Owner that it may have by reason of any indemnity and hold harmless provision set forth in this Agreement because of the acceptance by City, or the deposit with City by Owner, of any of the insurance policies described in this Agreement.

(b) Owner's obligation to indemnify the Indemnitees shall not be limited or impaired by any of the following: (i) any amendment or modification of any City Document; (ii) any extensions of time for performance required by any City Document; (iii) any provision in any of the City Documents limiting City's recourse to property securing the Secured Obligations (as defined in the Deed of Trust), or limiting the personal liability of Owner, or any other party for payment of all or any part of the indebtedness evidenced by the Note; (iv) the accuracy or inaccuracy of any representation and warranty made by Owner under this Agreement or by Owner or any other party under any City Document, (v) the release of Owner or any other person, by City or by operation of law, from performance of any obligation under any City Document; (vi) the release or substitution in whole or in part of any security for repayment of the indebtedness evidenced by the Note; and (vii) City's failure to properly perfect any lien or security interest given as security for repayment of the indebtedness evidenced by the Note.

(c) The obligations of Owner to indemnify the Indemnitees shall survive any repayment or discharge of the indebtedness evidenced by the Note, any foreclosure proceeding, any foreclosure sale, any delivery of any deed in lieu of foreclosure, and any release of record of the lien of the Deed of Trust.

11. Miscellaneous.

11.1 Amendments. This Agreement may be amended or modified only by a written instrument signed by both Parties and recorded in the Official Records. City's Authorized Representative shall have the authority to approve amendments to this Agreement related to implementation of the HOME requirements, including but not limited to term, repayment,

monitoring requirements, affordability, occupancy, and rent restrictions.

11.2 No Waiver. Any waiver by City of any term or provision of this Agreement must be in writing. No waiver shall be implied from any delay or failure by City to take action on any breach or default hereunder or to pursue any remedy allowed under this Agreement or applicable law. No failure or delay by City at any time to require strict performance by Owner of any provision of this Agreement or to exercise any election contained herein or any right, power or remedy hereunder shall be construed as a waiver of any other provision or any succeeding breach of the same or any other provision hereof or a relinquishment for the future of such election.

11.3 Notices. Except as otherwise specified herein, all notices to be sent pursuant to this Agreement shall be made in writing, and sent to the Parties at their respective addresses specified below or to such other address as a Party may designate by written notice delivered to the other parties in accordance with this Section. All such notices shall be sent by: (i) personal delivery, in which case notice is effective upon delivery; (ii) certified or registered mail, return receipt requested, in which case notice shall be deemed delivered upon receipt if delivery is confirmed by a return receipt; or (iii) nationally recognized overnight courier, with charges prepaid or charged to the sender's account, in which case notice is effective on delivery if delivery is confirmed by the delivery service.

City: City of Livermore
Administration Building
1052 South Livermore Avenue
Livermore, CA 94550-4899
Attention: Housing and Human Services Manager

With a copy to:

City of Livermore
Administration Building
1052 South Livermore Avenue
Livermore, CA 94550-4899
Attention: City Manager

Owner: Tri-Valley REACH, Inc.
P.O. Box 5564
Pleasanton, CA 94566
Attention: Board President

11.4 Further Assurances. The Parties shall execute, acknowledge and deliver to the other such other documents and instruments, and take such other actions, as either shall reasonably request as may be necessary to carry out the intent of this Agreement.

11.5 Parties Not Co-Venturers; Independent Contractor; No Agency Relationship. Nothing in this Agreement is intended to or shall establish the Parties as partners, co-venturers, or principal and agent with one another. The relationship of Owner and City shall not be construed as a joint venture, equity venture, partnership or any other relationship. City neither undertakes nor assumes any responsibility or duty to Owner (except as expressly provided in this Agreement) or to any third party with respect to the Property. Owner and its employees are not employees of City but rather are, and shall always be considered independent contractors. Furthermore, Owner and its employees shall at no time pretend to be or hold themselves out as employees or agents of City. Except as City may specify in writing, Owner shall not have any authority to act as an agent of City or to bind City to any obligation.

11.6 Action by the City. Except as may be otherwise specifically provided herein, whenever any approval, notice, direction, consent or request by the City is required or permitted under this Agreement, such action shall be in writing, and such action may be given, made or taken by the City's Authorized Representative or by any person who shall have been designated by the City's Authorized Representative, without further approval by the City Council.

11.7 Non-Liability of City and City Officials, Employees and Agents. No member, official, employee or agent of the City shall be personally liable to Owner or any successor in interest, in the event of any default or breach by the City, or for any amount of money which may become due to Owner or its successor or for any obligation of City under this Agreement.

11.8 Headings; Construction; Statutory References. The headings of the sections and paragraphs of this Agreement are for convenience only and shall not be used to interpret this Agreement. The language of this Agreement shall be construed as a whole according to its fair meaning and not strictly for or against any Party. All references in this Agreement to particular statutes, regulations, ordinances or resolutions of the United States, the State of California, or the City of Livermore shall be deemed to include the same statute, regulation, ordinance or resolution as hereafter amended or renumbered, or if repealed, to such other provisions as may thereafter govern the same subject.

11.9 Time is of the Essence. Time is of the essence in the performance of this Agreement.

11.10 Governing Law; Venue. This Agreement shall be construed in accordance with the laws of the State of California without regard to principles of conflicts of law. Any action to enforce or interpret this Agreement shall be filed and heard in the Superior Court of Alameda County, California or in the Federal District Court for the Northern District of California.

11.11 Attorneys' Fees and Costs. If any legal or administrative action is brought to interpret or enforce the terms of this Agreement, the prevailing party shall be entitled to recover all reasonable attorneys' fees and costs incurred in such action.

11.12 Severability. If any provision of this Agreement is held invalid, illegal, or unenforceable by a court of competent jurisdiction, the validity, legality, and enforceability of the remaining provisions shall not be affected or impaired thereby.

11.13 Entire Agreement; Exhibits. This Agreement, together with the Loan Agreement, the Note, and the Deed of Trust contains the entire agreement of Parties with respect to the subject matter hereof, and supersedes all prior oral or written agreements between the Parties with respect thereto. Exhibits A through D, attached hereto are incorporated herein by this reference.

11.14 Survival. Owner's obligations pursuant to Sections 2.1, and 10, and all other provisions that expressly so state, shall survive the expiration or termination of this Agreement.

11.15 No Third Party Beneficiaries. Except as expressly set forth herein, nothing contained in this Agreement is intended to or shall be deemed to confer upon any person, other than the Parties and their respective successors and assigns, any rights or remedies hereunder.

11.16 Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be an original and all of which together shall constitute one agreement.

SIGNATURES ON FOLLOWING PAGE(S).

IN WITNESS WHEREOF, the Parties have executed this Affordable Housing Regulatory Agreement and Declaration of Restrictive Covenants as of the date first written above.

CITY:

City of Livermore, a municipal corporation

By: _____
City Manager

ATTEST: _____
City Clerk

APPROVED AS TO FORM:

_____
City Attorney

OWNER:

Tri-Valley REACH, Inc., a California nonprofit public benefit corporation

By:_____

Print Name: _Patrick O'Brien_____

Title: _Treasurer, Board of Directors_____

SIGNATURES MUST BE NOTARIZED.

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
) ss
County of _____)

On _____, before me,_____,
(Name of Notary)

notary public, personally appeared _____ who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

_____
(Notary Signature)

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
) ss
County of _____)

On _____, before me,_____,
(Name of Notary)

notary public, personally appeared _____ who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.
WITNESS my hand and official seal.

_____
(Notary Signature)

Exhibit A
LEGAL DESCRIPTION

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF LIVERMORE, IN THE COUNTY OF ALAMEDA, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

Lots 28 as shown on the final map of Tract 7724 filed for record on August 10, 2015, in Book 333 of Maps, at Pages 48 through 52, inclusive, in the Official Records of the County of Alameda, State of California.

Exhibit B

INSURANCE REQUIREMENTS
REGULATORY / LOAN AGREEMENTS

Minimum Scope and Limits of Insurance

Owner/Borrower shall maintain limits no less than:

1. **Commercial General Liability:**
   $1,000,000/$2,000,000 aggregate per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability or other form of insurance with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.

2. **Property Insurance:**
   Borrower is required to obtain and maintain property insurance coverage to cover full replacement value, to include improvements, and shall be written on an All Risk basis with a maximum deductible of $1,000 per property. The Property Insurance Policy shall also include a provision that protects the location and the City's interest if the Property is vacant and/or unoccupied for more than thirty (30) days. Borrower's policy must also include a business interruption provision to cover loan payments for twelve (12) to twenty-four (24) months if the property is damaged and cannot be sold or occupied. Additionally, the City must also be named as a Loss Payee by endorsement such as 438 BFU NS or similar.

Deductibles and Self-Insured Retention

All self-insured retentions (SIR) must be disclosed to Risk Management for approval and shall not reduce the limits of liability. Policies containing any SIR provision shall provide, or be endorsed to provide, that the SIR may be satisfied by either the named insured or the City of Livermore. The City of Livermore reserves the right to obtain a full certified copy of any insurance policy and endorsements. Failure to exercise this right shall not constitute a waiver of right to exercise later.

Acceptability of Insurers

Insurance is to be placed with insurers with a current A.M. Best rating of no less than A: VII and accepted to do business in the State of California, unless otherwise acceptable to the City of Livermore.

Other Insurance Provisions

The general liability policy is to contain, or be endorsed to contain, the following provisions:

1. The City of Livermore, its officers, officials, employees, and designated volunteers are to be covered as additional insureds as respects: liability arising out of activities performed by or on behalf of the Owner/Borrower. The coverage shall contain no special limitations on the scope of protection afforded to the City of Livermore, its officers, officials, employees, or volunteers.

2. The limits of insurance required in this agreement may be satisfied by a combination of primary and umbrella or excess insurance. The additional insured coverage under the Owner/Borrower policy shall be primary and non-contributory and will not seek contribution from the City's insurance or self-insurance and shall be at least as broad as ISO Form CG 20 10 04 13. Any umbrella or excess insurance shall contain or be endorsed to contain a provision that such coverage shall also apply on a primary and non-contributory basis for the benefit of the City of Livermore before the City's own insurance or self-insurance shall be called upon to protect it as a named insured.
3. Any failure to comply with reporting or other provisions of the policy, including breaches of warranties, shall not affect coverage provided to the City of Livermore, its officers, officials, employees, or volunteers.
4. The Owner/Borrower insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
5. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be canceled by either party before expiration of the policy unless notice is delivered in accordance with policy provisions.
6. It shall be a requirement under this agreement that any available insurance proceeds broader than, or in excess of, the specified minimum insurance coverage requirements and/or limits shall be available to the additional insured. Furthermore, the requirements for coverage and limits shall be (1) the minimum coverage and limits specified in this agreement; or (2) the broader coverage and maximum limits of coverage of any insurance policy or proceeds available to the named Insured; whichever is greater.
7. Certificate Holder section of the insurance certificate should read: City of Livermore, 1052 S. Livermore Avenue, Livermore, CA 94550

Verification of Coverage

Owner/Borrower shall furnish certificates of insurance and endorsement(s) effecting coverage to the City of Livermore for approval. The endorsements shall be on forms acceptable to the City of Livermore. All certificates and endorsements are to be received and approved by the City of Livermore before the agreement is executed. The City of Livermore reserves the right to require complete and certified copies of all insurance policies required by this Agreement.

EXHIBIT D

EXHIBIT A

Exhibit C

LIVERMORE CALIFORNIA

MULTI-FAMILY RENTAL PROJECT ANNUAL REPORT

PROJECT CONTACT INFORMATION

Property Information

Property Name	
Address	
Community Manager	
Phone	
Email	
Website (if applicable)	

Owner Information

Owner Name	
Company Name	
Owner Address	
City, State, Zip	
Phone	
Email	
Primary Contact	
Secondary Contact	

Management Agent Information

Company Name	
Address	
City, State, Zip	
Phone	
Email	
Primary Contact Name	
Secondary Contact Name	

Name of first point of contact for and on-site monitoring of the property:

EXHIBIT D **EXHIBIT A**

LIVERMORE CALIFORNIA

MULTI-FAMILY RENTAL PROJECT ANNUAL REPORT

Property Name & Address	
Person Completing Report	
Date	
Report Period	

Compliance with Required Number of Low Income Units

Total number of income restricted units which are currently occupied (or reserved and available for occupancy):	
Number of vacant income restricted units at the time of this report:	
I hereby certify that these units in the quantity listed above have been continuously designated as units for occupancy by low-income households during the reporting period:	
Name of Project Owner or Authorized Agent Title	

Compliance with Rent Limits

List below the current monthly rents of the units restricted for occupancy by low-income households as well as the prior rents (if increases were made during the report period):

Plan	Number of Bedrooms	Current Rent	Prior Rent	% Increase	Additional Fees Charged	Utility Allowance (if applicable) or Amount of Tenant Paid Utilities

I hereby certify that the rents in all units designated for low-income households did not exceed the levels authorized under the regulatory agreement/restrictive covenants with the City of Livermore during the reporting period:

Name of Project Owner or Authorized Agent Title

EXHIBIT D

EXHIBIT A

Restricted Unit Occupant Information

Unit #	Bdrms	Unit Income Level	Tenant Last Name	Move-In Date	# in Household	Reported Annual Income	Effective Date of Current Rent	Tenant Paid Rent	Section 8? (Y/N)

EXHIBIT D **EXHIBIT A**

LIVERMORE CALIFORNIA

MULTI-FAMILY RENTAL PROJECT ANNUAL REPORT

PROPERTY CONDITION REPORT

Property Name	
Address	
Name of Person Completing Report	
Reporting Period	

List any physical defects or major repair work undertaken within the reporting period:

Comments on any general management/performance issues within the reporting period:

Tri Valley REACH

Proforma for 772 Camden Commons, Livermore CA 94551

Sources - Acquisition	Amount
City of Livermore Acquisition Loan	$300,000
Tri-Valley REACH/Borrower Equity	$24,131
Total	**$324,131**

Uses	Amount
Purchase Price	$321,131
Broker, Escrow/Title, Taxes and Other Closing Costs	$3,000
Total	**$324,131**

Operating Budget & Cash Flow	772 Camden Common
Rental Income	$16,200
Expenses	
Homeowners Dues	$3,600
Property Taxes	$1,000
Water	$850
Garbage	$450
Janitorial	$700
Repairs	$1,200
Insurance	$250
Management	$7,500
total expenses	$15,550
Net Cash Flow available for Reserve	$650

Rent Assumption - 3 Tenants at $ 450 per month x 12 Months

Note: If a fourth bedroom can be created as was done at Gillette the additional rent of $ 450 per month would be added to the income.

INSURANCE REQUIREMENTS
REGULATORY / LOAN AGREEMENTS

Minimum Scope and Limits of Insurance
Owner/Borrower shall maintain limits no less than:

1. **Commercial General Liability:**
   $1,000,000/$2,000,000 aggregate per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability or other form of insurance with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.

2. **Property Insurance:**
   Borrower is required to obtain and maintain property insurance coverage to cover full replacement value, to include improvements, and shall be written on an All Risk basis with a maximum deductible of $1,000 per property. The Property Insurance Policy shall also include a provision that protects the location and the City's interest if the Property is vacant and/or unoccupied for more than thirty (30) days. Borrower's policy must also include a business interruption provision to cover loan payments for twelve (12) to twenty-four (24) months if the property is damaged and cannot be sold or occupied. Additionally, the City must also be named as a Loss Payee by endorsement such as 438 BFU NS or similar.

Deductibles and Self-Insured Retention
All self-insured retentions (SIR) must be disclosed to Risk Management for approval and shall not reduce the limits of liability. Policies containing any SIR provision shall provide, or be endorsed to provide, that the SIR may be satisfied by either the named insured or the City of Livermore. The City of Livermore reserves the right to obtain a full certified copy of any insurance policy and endorsements. Failure to exercise this right shall not constitute a waiver of right to exercise later.

Acceptability of Insurers
Insurance is to be placed with insurers with a current A.M. Best rating of no less than A: VII and accepted to do business in the State of California, unless otherwise acceptable to the City of Livermore.

Other Insurance Provisions
The general liability policy is to contain, or be endorsed to contain, the following provisions:

1. The City of Livermore, its officers, officials, employees, and designated volunteers are to be covered as additional insureds as respects: liability arising out of activities performed by or on behalf of the Owner/Borrower. The coverage shall contain no special limitations on the scope of protection afforded to the City of Livermore, its officers, officials, employees, or volunteers.

2. The limits of insurance required in this agreement may be satisfied by a combination of primary and umbrella or excess insurance. The additional insured coverage under the Owner/Borrower policy shall be primary and non-contributory and will not seek contribution from the City's insurance or self-insurance and shall be at least as broad as ISO Form CG 20 10 04 13. Any umbrella or excess insurance shall contain or be endorsed to contain a provision that such coverage shall also apply on a primary and non-contributory basis for the benefit of the City of Livermore before the City's own insurance or self-insurance shall be called upon to protect it as a named insured.
3. Any failure to comply with reporting or other provisions of the policy, including breaches of warranties, shall not affect coverage provided to the City of Livermore, its officers, officials, employees, or volunteers.
4. The Owner/Borrower insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
5. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be canceled by either party before expiration of the policy unless notice is delivered in accordance with policy provisions.
6. It shall be a requirement under this agreement that any available insurance proceeds broader than, or in excess of, the specified minimum insurance coverage requirements and/or limits shall be available to the additional insured. Furthermore, the requirements for coverage and limits shall be (1) the minimum coverage and limits specified in this agreement; or (2) the broader coverage and maximum limits of coverage of any insurance policy or proceeds available to the named Insured; whichever is greater.
7. Certificate Holder section of the insurance certificate should read: City of Livermore, 1052 S. Livermore Avenue, Livermore, CA 94550

Verification of Coverage

Owner/Borrower shall furnish certificates of insurance and endorsement(s) effecting coverage to the City of Livermore for approval. The endorsements shall be on forms acceptable to the City of Livermore. All certificates and endorsements are to be received and approved by the City of Livermore before the agreement is executed. The City of Livermore reserves the right to require complete and certified copies of all insurance policies required by this Agreement.

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

City of Livermore
1052 South Livermore Ave.
Livermore, CA 94550
Attention: City Clerk

EXEMPT FROM RECORDING FEES PER
GOVERNMENT CODE §§6103, 27383

Space above this line for Recorder's use.

APN: 99-1388-42

AFFORDABLE HOUSING REGULATORY AGREEMENT

AND

DECLARATION OF RESTRICTIVE COVENANTS

by and between

THE CITY OF LIVERMORE

and

TRI-VALLEY REACH, Inc.

_____, 2023

This Affordable Housing Regulatory Agreement and Declaration of Restrictive Covenants (this "**Agreement**") is entered into effective as of _____, 2023 ("**Effective Date**") by and between the City of Livermore, a municipal corporation ("**City**") and Tri-Valley REACH, Inc., a California nonprofit public benefit corporation ("**Owner**"). The City and the Owner are collectively referred to herein as the "**Parties**."

RECITALS

A. Owner is the owner of or has the right to acquire the real property located in the City of Livermore, Alameda County, California, consisting of one (1) townhouse condominium unit, located within a multifamily residential building located at 772 Camden Common, Livermore CA, known as Alameda County Assessor Parcel No. APN: 99-1388-42, and more particularly described in Exhibit A attached hereto (the "**Property**").

B. City and Owner have entered into an Affordable Housing Loan Agreement (HOME Funds), dated as of _____, 2023 (the "**Loan Agreement**"). The Loan Agreement provides that the Property will be required to be rented to Eligible Households at Affordable Rents in accordance with this Agreement for a period of not less than fifty-five (55) years.

C. Subject to the terms and conditions set forth in the Loan Agreement, City has agreed to provide a loan to Owner in the original principal amount of Three Hundred Thousand Dollars ($300,000.00) (the **"Loan")** in HOME funds to assist Owner in acquiring the Property. As a condition precedent to the funding of the Loan, City requires the Property to be subject to the terms, conditions and restrictions set forth herein.

D. Pursuant to the Loan Agreement, Owner shall execute and deliver to City a Secured Promissory Note (the "**Note"**) to evidence Owner's obligation to repay the Loan. The Note shall be secured by a Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing that shall be executed by Owner for the benefit of City (the "**Deed of Trust**") and recorded against the Property substantially concurrently herewith.

E. The purpose of this Agreement is to satisfy the affordability requirements of the HOME program and to regulate and restrict the occupancy and rents of the Property for the benefit of the Property's occupants. The Parties intend the covenants set forth in this Agreement to run with the land and to be binding upon Owner and Owner's successors and assigns for the full term of this Agreement.

NOW THEREFORE, in consideration of the foregoing, and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows.

1. Definitions. The following terms have the meanings set forth in this Section wherever used in this Agreement or the attached exhibits.

"**Affordable Rent**" means that the maximum rent for each tenant occupying an individual bedroom in the Property shall not exceed 75% of the HOME fair market rent (FMR) allowable for Extremely Low-Income households in a zero-bedroom studio unit as specified

further in the qualifications for rental housing for the HOME Program described under Title 24, Subtitle A, Part 92 Subpart F (CFR 92.252). In absence of HUD's published fair market rents, then Affordable Rent shall mean a monthly rent that does not exceed one-twelfth of thirty percent (30%) of Area Median Income, adjusted for a household of one (1) person, less a utility allowance and other fees and charges required to be paid by tenants of the Property on a non-optional basis. The affordable rent charged to each tenant shall be inclusive of basic utilities including electricity, gas, water, sewer and garbage, but not inclusive of telephone, cable or internet services. In any event, the total Affordable Rent received by the Owner for all tenants in the Property shall not exceed the Low HOME rent for a three-bedroom unit as applicable.

"**Area Median Income**" or "**AMI**" means the median income for Alameda County, California, as determined by HUD pursuant to Section 8 of the United States Housing Act of 1937 and as published from time to time by the State of California Department of Housing and Community Development ("HCD") in Section 6932 of Title 25 of the California Code of Regulations or successor provision published pursuant to California Health and Safety Code Section 50093(c).

"**City's Authorized Representative**" means the City Manager of the City of Livermore or her designee.

"**City Documents**" means the Loan Agreement, the Note, the Deed of Trust, and this Agreement.

"**Claims**" means collectively, liabilities, losses, costs, expenses (including without limitation attorneys' fees and costs of litigation), claims, demands, actions, suits, judicial or administrative proceedings, penalties, deficiencies, fines, orders, and damages.

"**Deed of Trust**" is defined in Recital D.

"**Developmental Disability**" shall have the meaning set forth in section 4512(a) of the California Welfare and Institutions Code.

"**Eligible Household**" means an individual that has a Developmental Disability and whose Gross Income upon initial occupancy does not exceed Extremely Low-Income.

"**Extremely Low-Income"** means thirty percent (30%) of Area Median Income, Adjusted for a household of one (1) person.

"**Gross Income"** shall have the meaning set forth for the HOME Program in (subsection) 5.611 of Title 24 of the Code of Federal Regulations as such Section may be revised from time to time.

"**HOME**" means the City's HOME program as a Participating Jurisdiction in the Alameda County HOME Consortium and a recipient of its funds under Title II of the Cranston-Gonzalez National Affordable Housing Act of 1990 (42 U.S.C. § 12721-12840) as amended, Catalog of Federal Domestic Assistance Number 14.239.

"**HUD"** means the U.S. Department of Housing and Urban Development.

"**Indemnitees"** means collectively, the City and its elected and appointed officers, officials, employees, agents, consultants, contractors, and designated volunteers.

"**Loan"** is defined in Recital C.

"**Loan Agreement"** is defined in Recital B.

"**Marketing and Management Plan"** is defined in Section 6.5.

"Note" is defined in Recital D.

"Official Records" means the Official Records of the Alameda County Recorder.

"**Very Low-Income"** means fifty percent (50%) of Area Median Income, Adjusted for a household of one (1) person.

2. Use and Affordability Restrictions. Owner hereby covenants and agrees, for itself and its successors and assigns, that throughout the term of this Agreement (as defined in Section 4.1 below), the Property shall be used solely for residential occupancy by Eligible Households in compliance with the Loan Agreement and the requirements set forth in this Agreement. Owner represents and warrants that it has not entered into any agreement that would restrict or compromise its ability to comply with the occupancy and affordability restrictions set forth in this Agreement, and Owner covenants that it shall not enter into any agreement that is inconsistent with such restrictions without the express written consent of City.

2.1 Special Needs Housing; Supportive Services. Owner has elected to operate the Property as special needs housing that will serve individuals with Developmental Disabilities, and as such will require the Property to be occupied or held available for occupancy by Eligible Households. To the extent applicable, the Property will be operated at all times in accordance with (a) the Unruh Act, including without limitation California Civil Code Sections 51.2, 51.3, and 51.4; (b) the federal Fair Housing Act, 42 U.S.C. Section 3607(b) and 24 CFR 100.304; (c) the California Fair Employment and Housing Act, Government Code Section 12900 *et seq*., and (d) all other applicable laws and regulations. Owner will indemnify, defend, and hold the Indemnitees harmless from all Claims arising out of Owner's failure to comply with applicable legal requirements related to housing for persons with Developmental Disabilities. The indemnity provisions of this paragraph shall survive the expiration or other termination of this Agreement.

Owner shall make supportive services available to residents of the Property and Owner shall provide or arrange for the provision of supportive services to residents of the Property in accordance with the Plan described in Section 6.5 below.

2.2 Affordability and Occupancy Requirements. Throughout the term of this Agreement (as defined in Section 4.1 below), the individual bedrooms in the Property shall be rented at Affordable Rents to Eligible Households.

2.3 Increased Income of Tenants. No tenant that qualifies as an Eligible Household shall be denied continued occupancy of the Property because, after admission, the Gross Income of such tenant increases to exceed the qualifying limit for Eligible Households. A tenant that at initial occupancy qualifies as an Eligible Household shall be treated as continuing to be an Eligible Household so long as the tenant's Gross Income does not exceed Very Low-Income.

2.4 Rental Agreements; Evictions. Owner shall use a lease or rental agreement in form approved by City. Tenants of the Property may only be evicted for good cause as described in 24 CFR Section 880.607.

2.5 Maximum Occupancy. Occupancy of each bedroom in the Property shall be limited to a maximum of one (1) person, and total occupancy of the Property shall be limited to a maximum of three (3) persons.

2.6 Non-Discrimination; Compliance with Fair Housing Laws.

2.6.1 Fair Housing; Section 8 Vouchers. Owner shall comply with state and federal fair housing laws in the marketing and rental of the Property. Owner shall accept as tenants, on the same basis as all other prospective tenants, persons who are recipients of federal certificates or vouchers for rent subsidies pursuant to the existing Section 8 program or any successor thereto.

2.6.2 Non-Discrimination. Owner covenants for itself, its successors and assigns, and all persons claiming under or through Owner, that there shall be no discrimination in the rental, sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Property, or any portion thereof, on the basis of race, color, religion, creed, sex, sexual orientation, disability, marital status, ancestry, or national origin, age, or gender identity of any person. Owner covenants for itself, its successors and assigns, and all persons claiming under or through Owner, that this Agreement is made and accepted upon and subject to the condition that there shall be no discrimination against or segregation of any person or group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the rental, sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Property or part thereof, nor shall Owner, its successors and assigns, or any person claiming under or through Owner, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees in, of, or for the Property or part thereof. Owner shall include such provision in all deeds, leases, contracts and other instruments executed by Owner, and shall enforce the same diligently and in good faith. Nothing in this Section 2.6.2 is intended to prevent the reservation of the Property for occupancy by individuals that have a Developmental Disability.

2.6.3 No Exclusion. Without limiting the generality of Sections 2.6.1 and 2.6.2, Owner will not exclude or discriminate against any person in the United States, on the grounds of race, color, religion, national origin, sex, sexual orientation, familial status, physical or mental

disability, age, or gender identity from participating in, or benefiting from, any program or activity related to the Property. Specifically, Owner will not, on the basis of any of the foregoing:

(i) Deny any service or other benefit provided under any program activity;

(ii) Provide any service or other benefit which is different, or is provided in a different form from that provided to others under any program or activity;

(iii) Subject to segregated or separate treatment in any facility in, or in any manner or process related to receipt of any service or benefit under any program or activity;

(iv) Restrict in any way the enjoyment of any advantage or privilege enjoyed by others receiving any service or benefit under any program or activity;

(v) Treat an individual differently from others in determining whether that individual satisfies any admission, enrollment, eligibility, membership, or other requirement or condition which individuals must meet in order to be provided any service or other benefit provided under any program or activity; or

(vi) Deny an opportunity to participate in any program or activity as an employee.

2.6.4 Mandatory Language in Subsequent Deeds, Leases, and Contracts. All deeds, leases, and contracts pertaining to management of the Project, made or entered into by Owner, its successors or assigns, as to any portion of the Property shall contain the following language:

In Deeds, the following language shall appear:

(1) Grantee herein covenants by and for itself, its successors and assigns, and all persons claiming under or through it, that there shall be no discrimination against or segregation of a person or of a group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the property herein conveyed nor shall the grantee or any person claiming under or through the grantee establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees in the property herein conveyed. The foregoing covenant shall run with the land."

(2) Subdivision (d) of Section 51 and Section 6714 of the Civil Code and subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall apply to paragraph (1).

In Leases, the following language shall appear:

> (1) The lessee herein covenants by and for the lessee and lessee's heirs, personal representatives and assigns, and all persons claiming under the lessee or through the lessee, that this lease is made subject to the condition that there shall be no discrimination against or segregation of any person or of a group of persons on account of race, color, creed, religion, sex, sexual orientation, marital status, national origin, ancestry or disability in the leasing, subleasing, transferring, use, occupancy, tenure or enjoyment of the property herein leased nor shall the lessee or any person claiming under or through the lessee establish or permit any such practice or practices of discrimination of segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, sublessees, subtenants, or vendees in the property herein leased.
>
> (2) Subdivision (d) of Section 51 and Section 6714 of the Civil Code and subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall apply to paragraph (1).

In Contracts pertaining to management of the Project, the following language, or substantially similar language prohibiting discrimination and segregation shall appear:

> (1) There shall be no discrimination against or segregation of any person or group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the property nor shall the transferee or any person claiming under or through the transferee establish or permit any such practice or practices of discrimination or segregation with reference to selection, location, number, use or occupancy of tenants, lessee, subtenants, sublessees or vendees of the land.
>
> (2) Subdivision (d) of Section 51 and Section 6714 of the Civil Code and subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall apply to paragraph (1).

3. Reporting Requirements; Access to Information; Inspections.

3.1 Tenant Certification. Owner or Owner's authorized agent shall obtain from each prospective tenant prior to initial occupancy of the Property, and on every anniversary thereafter, a written certificate containing all of the following in such format and with such supporting documentation as City may reasonably require:

(i) The identity of each household member;

(ii) The total household Gross Income calculated in accordance with HOME Program

regulations; and

(iii) The basis upon which the tenant or prospective tenant qualifies as an Eligible Household.

Owner shall retain such certificates for not less than five (5) years, and upon City's request, shall provide copies of such certificates to City and make the originals available for City inspection.

3.2 Annual Reports; Inspections. By not later than 180 days following the Effective Date, and thereafter by not later than May 31 of each year, Owner shall submit an annual report ("**Annual Report**") to the City in form attached hereto as Exhibit C, together with the additional information specified in this Section 3.2 and a certification that the Property is in compliance with the requirements of this Agreement. The Annual Report shall, at a minimum, include the following information for each occupant of the Property: (i) current rent, utility, and other charges; (ii) move-in date; (iii) documentation of source of household income; and (iv) the information required by Section 3.1. In addition, the Annual Report shall include the dates of any vacancies during the previous year.

Owner shall include with the Annual Report, an income recertification for each tenant, documentation verifying tenant eligibility, and such additional information as City may reasonably request from time to time in order to demonstrate compliance with this Agreement. The Annual Report shall conform to the format requested by City.

In addition to the information described above, the Annual Report shall include the following:

(i) A Property income and expense statement for the reporting period;

(ii) Proposed annual budget for the next fiscal year which sets forth Owner's estimate of operating income, operating expenses and debt service for the year, amounts payable to reserves and proposed rent adjustments;

(iii) A report on maintenance and other issues anticipated to affect the current budget needs of the Property as well as the amount in the Property's reserve accounts and the amount expected to be needed for major repairs or other needs during the new fiscal year;

(iv) Financial statements for the Property prepared in accordance with generally accepted accounting standards, and if requested by City, an audit by an independent certified public accountant.

(v) City may, in its reasonable discretion, from time to time request additional or different information, and Owner shall promptly supply such information in the reports required hereunder.

3.3. Maintenance of Records.

3.3.1 Owner shall maintain tenant leases, income certifications and other matters related to the leasing of the Property for a period of five (5) years after the final date of

occupancy by the tenant.

3.3.2 Records must be kept accurate and up-to-date. City shall notify Owner of any records it deems insufficient. Owner shall have fifteen (15) calendar days from such notice to correct any specified deficiency in the records, or, if more than fifteen (15) days shall be reasonably necessary to correct the deficiency, Owner shall begin to correct the deficiency within fifteen (15) days and diligently pursue the correction of the deficiency as soon as reasonably possible.

3.4 Access to Records; Inspections.

3.4.1 With at least 48-hours' notice, during normal business hours, Owner shall provide City and its authorized agents and representatives access to the books, documents, and records of the Property for the purpose of making audits, examinations, excerpts and transcriptions.

3.4.2 With at least 48-hours' notice, during normal business hours and as often as may be deemed necessary, City and its authorized agents and representatives shall be permitted access to and the right to examine the Property and to interview tenants for the purpose of verifying compliance with applicable regulations and compliance with the conditions of this Agreement and the other City Documents.

4. Term of Agreement.

4.1 Term of Restrictions. This Agreement shall remain in effect until the fifty-fifth (55th) anniversary of the Effective Date of this Agreement, unless the parties agree to extend the term pursuant to a recorded amendment to this Agreement.

4.2 Effectiveness Succeeds Conveyance of Property and Repayment of Loan. This Agreement shall remain effective and fully binding for the full term hereof regardless of (i) any sale, assignment, transfer, or conveyance of the Property or any part thereof or interest therein, (ii) any payment, prepayment or extinguishment of the Loan or the Note, or (iii) any reconveyance of the Deed of Trust.

4.3 Reconveyance. Upon the termination of this Agreement, the Parties agree to execute and record appropriate instruments to release and discharge this Agreement; provided, however, the execution and recordation of such instruments shall not be necessary or a prerequisite to the termination of this Agreement upon the expiration of the term.

5. Binding Upon Successors; Covenants to Run with the Land. Owner hereby subjects its interest in the Property to the covenants and restrictions set forth in this Agreement. The City and Owner hereby declare their express intent that the covenants and restrictions set forth herein shall be deemed covenants running with the land and shall be binding upon and inure to the benefit of the heirs, administrators, executors, successors in interest, transferees, and assigns of Owner and City, regardless of any sale, assignment, conveyance or transfer of the Property or any part thereof or interest therein. Any successor-in-interest to Owner, including without limitation

any purchaser, transferee or lessee of the Property (other than the tenants of the Property) shall be subject to all of the duties and obligations imposed hereby for the full term of this Agreement. Each and every contract, deed, ground lease or other instrument affecting or conveying the Property or any part thereof, shall conclusively be held to have been executed, delivered and accepted subject to the covenants, restrictions, duties and obligations set forth herein, regardless of whether such covenants, restrictions, duties and obligations are set forth in such contract, deed, ground lease or other instrument. If any such contract, deed, ground lease or other instrument has been executed prior to the date hereof, Owner hereby covenants to obtain and deliver to City an instrument in recordable form signed by the parties to such contract, deed, ground lease or other instrument pursuant to which such parties acknowledge and accept this Agreement and agree to be bound hereby. Owner agrees for itself and for its successors that in the event that a court of competent jurisdiction determines that the covenants herein do not run with the land, such covenants shall be enforced as equitable servitudes against the Property in favor of City.

6. Property Management; Repair and Maintenance; Marketing; Reserves; Supportive Services.

6.1 Management Responsibilities. Owner shall be responsible for all management functions with respect to the Property, including without limitation the selection of tenants, certification and recertification of household income and eligibility, evictions, collection of rents and deposits, maintenance, landscaping, routine and extraordinary repairs, replacement of capital items, and security. City shall have no responsibility for management or maintenance of the Property.

6.2 Management Entity; Social Services Provider; Referral Agency. City shall have the right to review and approve the qualifications of (i) the management entity, (ii) the social services provider, and (iii) any agency that will verify Developmental Disability status of prospective tenants of the Property, and shall have the right to review and approve any property management agreement, social services agreement, or similar agreement executed between Owner and such entities, which approval shall not be unreasonably withheld. The contracting of management services to a management entity shall not relieve Owner of its primary responsibility for proper performance of management duties. City hereby approves Housing Consortium of the East Bay, a California nonprofit public benefit corporation, as the initial management entity for the Property. Any subsequent management entity or social services provider shall be subject to City review and approval, which shall not be unreasonably withheld or delayed. Upon City determination and delivery of written notice to Owner that Owner has failed to operate the Property in accordance with this Agreement, City may require Owner to contract with a qualified management agent selected by City, to operate the Property, or to make such other arrangements as City deems necessary to ensure performance of the required functions.

6.3 Repair, Maintenance and Security. Throughout the term of this Agreement, Owner shall at its own expense, maintain the Property in good physical condition, in good repair, and in decent, safe, sanitary, habitable and tenantable living conditions in conformity with all applicable state, federal, and local laws, ordinances, codes, and regulations. Without limiting the foregoing, Owner agrees to maintain the Property (including without limitation, the common

areas) in a condition free of all waste, nuisance, debris, unmaintained landscaping, graffiti, disrepair, abandoned vehicles/appliances, and illegal activity, and shall take all reasonable steps to prevent the same from occurring on the Property. Owner shall prevent and/or rectify any physical deterioration of the Property and shall make all repairs, renewals and replacements necessary to keep the Property in good condition and repair. Owner shall provide adequate security measures for the Property, including without limitation, the installation of adequate lighting and deadbolt locks. All construction/rehabilitation work and professional services for the Property shall be performed by persons or entities licensed or otherwise authorized to perform the applicable work or service in the State of California and shall have a current City of Livermore business license if required under local law. Owner shall comply in all respects with the homeowners' association rules and regulations and all other rules and regulations applicable to the Property. Owner shall diligently work to resolve complaints related to noise, parking, litter or other neighborhood concerns.

6.4 City's Right to Perform Maintenance. In the event that Owner breaches any of the covenants contained in Section 6.3, and such default continues for a period of ten (10) days after written notice from City (with respect to graffiti, debris, and waste material) or thirty (30) days after written notice from City (with respect to landscaping, building improvements and general maintenance), then City, in addition to any other remedy it may have under this Agreement or at law or in equity, shall have the right, but not the obligation, to enter upon the Property and perform all acts and work necessary to protect, maintain, and preserve the improvements and the landscaped areas on the Property. All costs expended by City in connection with the foregoing, shall constitute an indebtedness secured by the Deed of Trust, and shall be paid by Owner to City upon demand. All such sums remaining unpaid thirty (30) days following delivery of City's invoice therefor shall bear interest at the lesser of 10% per annum or the highest rate permitted by applicable law.

6.5 Marketing and Management Plan. Owner shall submit for review and approval by the City, a plan for marketing and managing the Property ("**Marketing and Management Plan**" or "**Plan**"). The Marketing and Management Plan shall address in detail how Owner plans to market the Property to prospective Eligible Households in accordance with fair housing laws and this Agreement, Owner's tenant selection criteria, and how Owner plans to certify the eligibility of Eligible Households. The Plan shall also describe the management team and shall address how the Owner and the management entity plan to manage and maintain the Property. The Plan shall include the proposed management agreement and the form of rental agreement that Owner proposes to enter into with tenants of the Property. In addition, the Plan shall include: (i) information regarding the qualifications of the proposed social services provider that will provide services to residents of the Property, and a copy of the social services agreement, (ii) information regarding any organizations or agencies that will provide referrals of Eligible Households for prospective occupancy of the Property, and (iii) the supportive social services that will be provided to tenants of the Property. Owner shall abide by the terms of the Marketing and Management Plan in marketing, managing, and maintaining the Property, and throughout the term of this Agreement, shall submit proposed modifications to City for review and approval.

In addition to the foregoing, the Marketing and Management Plan shall address the following:

(a) The actions to be taken by Owner to affirmatively market the Property in compliance with fair housing laws and in compliance with City's policies and procedures, including the policies described in Section 2.6 above;

(b) Criteria for determining tenant eligibility, including certification of household income and size, Developmental Disability status or other qualifying criteria, and establishing reasonable occupancy standards (which shall not exceed the standards specified in Section 2.5, or if more restrictive, the standards established by state and federal fair housing laws and state housing and building codes), and procedures for screening prospective tenants, including obtaining credit reports, unlawful detainer reports, landlord references and criminal background investigations;

(c) A requirement that eligible tenants be selected based on order of application, lottery or other reasonable method approved by City;

(d) A requirement that eligible applicants be notified of eligibility and be provided an estimate regarding when a bedroom in the Property may be available for rent;

(e) A requirement that ineligible applicants be notified of the reason for their ineligibility;

(f) Specific procedures through which applicants deemed to be ineligible may appeal this determination;

(g) Maintenance of a waiting list of eligible applicants;

(h) Specific procedures for obtaining documentation regarding prospective tenants' incomes, as necessary, to certify that such income does not exceed income limits;

(i) Specific procedures for certification and recertification of household incomes and procedures for handling over-income tenants;

(j) A requirement that a written rental agreement (subject to City approval) be executed with each Eligible Household selected to occupy the Property;

(k) A detailed listing of reasonable rules of conduct and occupancy which shall be in writing, shall be consistent with federal and state law, and shall be provided to each tenant upon occupancy;

(l) Intentionally omitted.

(m) Intentionally omitted.

(n) Procedures for maintenance and management of the Property;

(o) Procedures for dealing with tenant or neighborhood issues or concerns;

(p) Procedures for maintaining a reserve account, budgeting for maintenance and repair needs as well as long-term rehabilitation needs, and handling net cash flow;

(q) Such other requirements and criteria/procedures as City may reasonably determine appropriate; and

(r) Owner's plan for educating tenants regarding, and ensuring compliance with, the homeowners' association rules and regulations and other regulations applicable to the Property, including without limitation, rules regarding parking, storage, and use of balconies.

6.6 Approval of Amendments. If City has not responded to any submission of the Management and Marketing Plan, the proposed management entity, the proposed management agreement, or a proposed amendment or change to any of the foregoing within sixty (60) days following City's receipt of such plan, proposal, agreement or amendment, the plan, proposal, agreement, or amendment shall be deemed approved by City.

6.7 Fees, Taxes, and Other Levies. Owner shall be responsible for payment of all fees, assessments, taxes, charges, liens and levies applicable to the Property, including without limitation possessory interest taxes, if applicable, imposed by any public entity, and shall pay such charges prior to delinquency. However, Owner shall not be required to pay any such charge so long as (a) Owner is contesting such charge in good faith and by appropriate proceedings, (b) Owner maintains reserves adequate to pay any contested liabilities, and (c) on final determination of the proceeding or contest, Owner immediately pays or discharges any decision or judgment rendered against it, together with all costs, charges and interest. The foregoing is not intended to impair Owner's ability to apply for any applicable exemption from property taxes or other assessments and fees.

6.8 Insurance Coverage. Throughout the term of this Agreement Owner shall comply with the insurance requirements set forth in Exhibit B, and shall, at Owner's expense, maintain in full force and effect insurance coverage as specified in Exhibit B.

6.9 Property Damage or Destruction. If any part of the Property is damaged or destroyed, Owner shall repair or restore the same, consistent with the occupancy and rent restriction requirements set forth in this Agreement. Such work shall be commenced as soon as reasonably practicable after the damage or loss occurs and shall be completed within one year thereafter or as soon as reasonably practicable, provided that insurance proceeds are available to be applied to such repairs or restoration within such period and the repair or restoration is financially feasible.

6.10 Required Reserves. Owner shall be obligated to establish and maintain an operating and replacement reserve account for the Property ("**Reserve"**). The Reserve may be

for the non-exclusive use of the Property and may include other properties in Livermore operated by the Borrower. Owner shall ensure that upon Close of Escrow, the Reserve is funded at Fifteen Thousand Dollars ($15,000). Reserve funds may be used solely for maintenance and operating expenses of the Property. Of the initial Fifteen Thousand Dollars ($15,000), Five Thousand Dollars ($5,000) must be maintained for maintenance and repair expenses as the minimum amount in the Reserve. The City's advance written consent, which shall not be unreasonably withheld, shall be required for withdrawals from the Reserve for non-routine operating and maintenance expenses exceeding the sum of Three Thousand Dollars ($3,000). The Reserve shall be replenished from Property net operating income so that beginning in the fifth (5th) year, at least Five Thousand Dollars ($5,000) is maintained annually in the Reserve. Any deficit that may occur in an operating year is to be made-up in subsequent operating years until the Five Thousand Dollar ($5,000) Reserve is achieved and maintained throughout the remaining term of the City's Loan. The maximum amount that can be held in the Reserve for the Property is two percent (2%) of the fair market value of the Property as determined by the City or such other amount approved by City. City may approve a pooled reserve for Livermore properties.

6.11 No Criminal Activity. Owner agrees that neither Owner nor any person residing on the Property, their guests or persons under their control, shall permit, engage in, or facilitate criminal activity within the Property, within the development in which the Property is located, or on the streets bordering such development. This includes, without limiting the foregoing: (i) the illegal manufacture, sale, distribution, use, or possession with the intent to manufacture, sell, distribute, or use a controlled substance as defined in Section 102 of the Controlled Substances Act (21 U.S.C. Section 802); (ii) the unlawful discharge of firearms; and (iii) all acts or threats of violence, harming, or intending to harm a person or property.

7. Recordation; Subordination. This Agreement shall be recorded in the Official Records. The City agrees that the City will not withhold consent to reasonable requests for subordination of this Agreement provided that the instruments effecting such subordination include reasonable protections to the City in the event of default, including without limitation, extended notice and cure rights.

8. Transfer and Encumbrance.

8.1 Restrictions on Transfer and Encumbrance. During the term of this Agreement, except as permitted pursuant to the Loan Agreement or this Agreement, Owner shall not directly or indirectly, voluntarily, involuntarily or by operation of law make or attempt any total or partial sale, transfer, conveyance, assignment or lease (collectively, "**Transfer**") of the whole or any part of the Property without the prior written consent of the City, which approval shall not be unreasonably withheld. In addition, prior to the expiration of the term of this Agreement, except as expressly permitted by this Agreement or the Loan Agreement, Owner shall not undergo any significant change of ownership without the prior written approval of City. For purposes of this Agreement, a "significant change of ownership" shall mean a transfer of the beneficial interest of more than twenty-five percent (25%) in aggregate of the present ownership and /or control of Owner, taking all transfers into account on a cumulative basis.

8.2 Permitted Transfers. Notwithstanding any contrary provision of the City Documents, the prohibitions on Transfer set forth herein shall not be deemed to prevent: (i) the lease of bedrooms within the Property to tenants for occupancy as their principal residence in accordance with this Agreement; (ii) assignments creating security interests for the purpose of financing the acquisition or improvement of the Property in accordance with the Financing Plan approved in accordance with the Loan Agreement as such may be updated with City Approval, or Transfers directly resulting from the foreclosure of, or granting of a deed in lieu of foreclosure of, such a security interest; or (iii) a Transfer to a tax-exempt entity under the direct control of, or under common control with, Owner.

8.3 Requirements for Proposed Transfers. The City may, in the exercise of its sole discretion, consent to a proposed Transfer of this Agreement, the Property, or part thereof if all of the following requirements are met (provided however, the requirements of this Section 8.3 shall not apply to Transfers described in clauses (i) and (ii) of Section 8.2.

(i) The proposed transferee demonstrates to the City's satisfaction that it has the qualifications, experience and financial resources necessary and adequate as may be reasonably determined by the City to competently manage the Property and to otherwise fulfill the obligations undertaken by the Owner under this Agreement.

(ii) The Owner and the proposed transferee shall submit for City review and approval all instruments and other legal documents proposed to effect any Transfer of all or any part of or interest in the Property or this Agreement together with such documentation of the proposed transferee's qualifications and development capacity as the City may reasonably request.

(iii) The proposed transferee shall expressly assume all of the rights and obligations of the Owner under this Agreement and the other City Documents arising after the effective date of the Transfer and all obligations of Owner arising prior to the effective date of the Transfer (unless Owner expressly remains responsible for such obligations), and shall agree to be subject to and assume all of Owner's obligations under the City Documents.

(iv) The final form of the organizational documents of the proposed transferee, and any subsequent amendments that affect the City's economic interests under this Agreement or the City Documents shall be subject to the City's review and approval.

(v) The Transfer and the assumption of Owner's obligations shall be effectuated pursuant to an assignment and assumption agreement in form approved by City and recorded in the Official Records.

Consent to any proposed Transfer may be given by the City's Authorized Representative unless the City's Authorized Representative, in his or her discretion, refers the matter of approval to the City Council. If the City has not rejected a proposed Transfer or requested additional information regarding a proposed Transfer in writing within thirty (30) days following City's receipt of written request by Owner, the proposed Transfer shall be deemed approved.

8.4 Effect of Transfer without City Consent. In the absence of specific written

agreement by the City, no Transfer of the Property shall be deemed to relieve the Owner or any other party from any obligation under this Agreement. It shall be an Event of Default hereunder entitling City to pursue remedies including without limitation, acceleration of the Loan and/or foreclosure under the Deed of Trust if without the prior written approval of the City, Owner assigns or Transfers this Agreement or the Property in violation of Section 8. This Section 8.4 shall not apply to Transfers described in clauses (i) and (ii) of Section 8.2.

8.5 Recovery of City Costs. Within ten (10) days following City's delivery to Owner of an invoice detailing such costs, Owner shall reimburse City for all City costs, including but not limited to reasonable attorneys' fees, incurred in reviewing instruments and other legal documents proposed to effect a Transfer of this Agreement, Owner's interest in the Property or part thereof, and in reviewing the qualifications and financial resources of a proposed successor, assignee, or transferee.

8.6 Encumbrances. Owner agrees to cooperate with City in good faith to ensure that all deeds of trust or other security instruments and any applicable subordination agreement recorded against the Property or part thereof for the benefit of a lender other than City ("**Third-Party Lender**") shall contain each of the following provisions: (i) Third-Party Lender shall use its best efforts to provide to City a copy of any notice of default issued to Owner concurrently with provision of such notice to Owner; (ii) City shall have the reasonable right, but not the obligation, to cure any default by Owner within the same period of time provided to Owner for such cure extended by an additional ninety (90) days; (iii) provided that City has cured any default under Third-Party Lender's deed of trust and other loan documents, City shall have the right to foreclose the Deed of Trust, and take title to the Property without acceleration of Third-Party Lender's debt; and (iv) City shall have the right to transfer the Property without acceleration of Third-Party Lender's debt to a nonprofit corporation or other entity which shall own and operate the Property as affordable rental housing, subject to the prior written consent of the Third-Party Lender. Owner agrees to provide to City a copy of any notice of default Owner receives from any Third-Party Lender within three (3) business days following Owner's receipt thereof.

8.7 Mortgagee Protection. No violation of any provision contained herein shall defeat or render invalid the lien of any mortgage or deed of trust made in good faith and for value upon all or any portion of the Property, and the purchaser at any trustee's sale or foreclosure sale shall not be liable for any violation of any provision hereof occurring prior to the acquisition of title by such purchaser. Unless this Agreement is subordinated in accordance with Section 7, such purchaser shall be bound by and subject to this Agreement from and after such trustee's sale or foreclosure sale. Promptly upon determining that a violation of this Agreement has occurred, City shall give written notice to the holders of record of any mortgages or deeds of trust encumbering the Property that such violation has occurred.

9. Default and Remedies.

9.1 Events of Default. The occurrence of any one or more of the following events shall constitute an event of default hereunder ("**Event of Default**"):

(i) The occurrence of a Transfer in violation of Section 8 hereof;

(ii) Owner's failure to maintain insurance on the Property as required hereunder, and the failure of Owner to cure such default within five (5) days;

(iii) Subject to Owner's right to contest the following charges, Owner's failure to pay taxes or assessments due on the Property or failure to pay any other charge that may result in a lien on the Property, and Owner's failure to cure such default within twenty (20) days of delinquency, but in all events prior to the date upon which the holder of any such lien has the right to foreclose thereon;

(iv) A default arises under any loan secured by a mortgage, deed of trust or other security instrument recorded against the Property and remains uncured beyond any applicable cure period such that the holder of such security instrument has the right to accelerate repayment of such loan;

(v) A default arises under the Loan Agreement, the Note, or the Deed of Trust and remains uncured beyond the expiration of any applicable cure period;

(vi) Owner's default in the performance of any term, provision or covenant under this Agreement (other than an obligation enumerated in this Section 9.1), and unless such provision specifies a shorter cure period for such default, the continuation of such default for thirty (30) days in the event of a monetary default or sixty (60) days in the event of a non-monetary default following the date upon which City shall have given written notice of the default to Owner, or if the nature of any such non-monetary default is such that it cannot be cured within sixty (60) days, Owner's failure to commence to cure the default within sixty (60) days and thereafter prosecute the curing of such default with due diligence and in good faith to completion.

9.2 Remedies. Upon the occurrence of an Event of Default and its continuation beyond any applicable cure period, City may proceed with any of the following remedies:

(i) Bring an action for equitable relief seeking the specific performance of the terms and conditions of this Agreement, and/or enjoining, abating, or preventing any violation of such terms and conditions, and/or seeking declaratory relief;

(ii) Accelerate and declare the balance of the Note and interest accrued thereon immediately due and payable and proceed with foreclosure under the Deed of Trust;

(iii) For violations of obligations with respect to rents for the Property, impose as liquidated damages a charge in an amount equal to the actual amount collected in excess of the Affordable Rent; or

(iv) Pursue any other remedy allowed under the City Documents or at law or in equity.

Each of the remedies provided herein is cumulative and not exclusive. The City may exercise from time to time any rights and remedies available to it under applicable law or in

equity, in addition to, and not in lieu of, any rights and remedies expressly provided in this Agreement.

10. Indemnity. To the greatest extent permitted by law, Owner shall indemnify, defend (with counsel approved by City) and hold the Indemnitees harmless from and against all Claims arising directly or indirectly, in whole or in part, as a result of or in connection with Owner's (or Owner's employees', agents', or contractors') management, or operation of the Property or any failure to perform any obligation as and when required by this Agreement. Owner's indemnification obligations under this Section 10 shall not extend to Claims to the extent resulting from the gross negligence or willful misconduct of Indemnitees. The provisions of this Section 10 shall survive the expiration or earlier termination of this Agreement.

10.1 Terms Applicable to Indemnity Provisions. The terms set forth in this Section 10.1 shall apply to all provisions of this Agreement that pertain to Owner's obligations to indemnify City and the other Indemnitees, including without limitation, Sections 2.1 and 10. In connection with each such provision, all of the following shall apply:

(a) City does not and shall not waive any rights against Owner that it may have by reason of any indemnity and hold harmless provision set forth in this Agreement because of the acceptance by City, or the deposit with City by Owner, of any of the insurance policies described in this Agreement.

(b) Owner's obligation to indemnify the Indemnitees shall not be limited or impaired by any of the following: (i) any amendment or modification of any City Document; (ii) any extensions of time for performance required by any City Document; (iii) any provision in any of the City Documents limiting City's recourse to property securing the Secured Obligations (as defined in the Deed of Trust), or limiting the personal liability of Owner, or any other party for payment of all or any part of the indebtedness evidenced by the Note; (iv) the accuracy or inaccuracy of any representation and warranty made by Owner under this Agreement or by Owner or any other party under any City Document, (v) the release of Owner or any other person, by City or by operation of law, from performance of any obligation under any City Document; (vi) the release or substitution in whole or in part of any security for repayment of the indebtedness evidenced by the Note; and (vii) City's failure to properly perfect any lien or security interest given as security for repayment of the indebtedness evidenced by the Note.

(c) The obligations of Owner to indemnify the Indemnitees shall survive any repayment or discharge of the indebtedness evidenced by the Note, any foreclosure proceeding, any foreclosure sale, any delivery of any deed in lieu of foreclosure, and any release of record of the lien of the Deed of Trust.

11. Miscellaneous.

11.1 Amendments. This Agreement may be amended or modified only by a written instrument signed by both Parties and recorded in the Official Records. City's Authorized Representative shall have the authority to approve amendments to this Agreement related to implementation of the HOME requirements, including but not limited to term, repayment,

monitoring requirements, affordability, occupancy, and rent restrictions.

11.2 No Waiver. Any waiver by City of any term or provision of this Agreement must be in writing. No waiver shall be implied from any delay or failure by City to take action on any breach or default hereunder or to pursue any remedy allowed under this Agreement or applicable law. No failure or delay by City at any time to require strict performance by Owner of any provision of this Agreement or to exercise any election contained herein or any right, power or remedy hereunder shall be construed as a waiver of any other provision or any succeeding breach of the same or any other provision hereof or a relinquishment for the future of such election.

11.3 Notices. Except as otherwise specified herein, all notices to be sent pursuant to this Agreement shall be made in writing, and sent to the Parties at their respective addresses specified below or to such other address as a Party may designate by written notice delivered to the other parties in accordance with this Section. All such notices shall be sent by: (i) personal delivery, in which case notice is effective upon delivery; (ii) certified or registered mail, return receipt requested, in which case notice shall be deemed delivered upon receipt if delivery is confirmed by a return receipt; or (iii) nationally recognized overnight courier, with charges prepaid or charged to the sender's account, in which case notice is effective on delivery if delivery is confirmed by the delivery service.

City: City of Livermore
Administration Building
1052 South Livermore Avenue
Livermore, CA 94550-4899
Attention: Housing and Human Services Manager

With a copy to:

City of Livermore
Administration Building
1052 South Livermore Avenue
Livermore, CA 94550-4899
Attention: City Manager

Owner: Tri-Valley REACH, Inc.
P.O. Box 5564
Pleasanton, CA 94566
Attention: Board President

11.4 Further Assurances. The Parties shall execute, acknowledge and deliver to the other such other documents and instruments, and take such other actions, as either shall reasonably request as may be necessary to carry out the intent of this Agreement.

11.5 Parties Not Co-Venturers; Independent Contractor; No Agency Relationship. Nothing in this Agreement is intended to or shall establish the Parties as partners, co-venturers, or principal and agent with one another. The relationship of Owner and City shall not be construed as a joint venture, equity venture, partnership or any other relationship. City neither undertakes nor assumes any responsibility or duty to Owner (except as expressly provided in this Agreement) or to any third party with respect to the Property. Owner and its employees are not employees of City but rather are, and shall always be considered independent contractors. Furthermore, Owner and its employees shall at no time pretend to be or hold themselves out as employees or agents of City. Except as City may specify in writing, Owner shall not have any authority to act as an agent of City or to bind City to any obligation.

11.6 Action by the City. Except as may be otherwise specifically provided herein, whenever any approval, notice, direction, consent or request by the City is required or permitted under this Agreement, such action shall be in writing, and such action may be given, made or taken by the City's Authorized Representative or by any person who shall have been designated by the City's Authorized Representative, without further approval by the City Council.

11.7 Non-Liability of City and City Officials, Employees and Agents. No member, official, employee or agent of the City shall be personally liable to Owner or any successor in interest, in the event of any default or breach by the City, or for any amount of money which may become due to Owner or its successor or for any obligation of City under this Agreement.

11.8 Headings; Construction; Statutory References. The headings of the sections and paragraphs of this Agreement are for convenience only and shall not be used to interpret this Agreement. The language of this Agreement shall be construed as a whole according to its fair meaning and not strictly for or against any Party. All references in this Agreement to particular statutes, regulations, ordinances or resolutions of the United States, the State of California, or the City of Livermore shall be deemed to include the same statute, regulation, ordinance or resolution as hereafter amended or renumbered, or if repealed, to such other provisions as may thereafter govern the same subject.

11.9 Time is of the Essence. Time is of the essence in the performance of this Agreement.

11.10 Governing Law; Venue. This Agreement shall be construed in accordance with the laws of the State of California without regard to principles of conflicts of law. Any action to enforce or interpret this Agreement shall be filed and heard in the Superior Court of Alameda County, California or in the Federal District Court for the Northern District of California.

11.11 Attorneys' Fees and Costs. If any legal or administrative action is brought to interpret or enforce the terms of this Agreement, the prevailing party shall be entitled to recover all reasonable attorneys' fees and costs incurred in such action.

11.12 Severability. If any provision of this Agreement is held invalid, illegal, or unenforceable by a court of competent jurisdiction, the validity, legality, and enforceability of the remaining provisions shall not be affected or impaired thereby.

11.13 Entire Agreement; Exhibits. This Agreement, together with the Loan Agreement, the Note, and the Deed of Trust contains the entire agreement of Parties with respect to the subject matter hereof, and supersedes all prior oral or written agreements between the Parties with respect thereto. Exhibits A through D, attached hereto are incorporated herein by this reference.

11.14 Survival. Owner's obligations pursuant to Sections 2.1, and 10, and all other provisions that expressly so state, shall survive the expiration or termination of this Agreement.

11.15 No Third Party Beneficiaries. Except as expressly set forth herein, nothing contained in this Agreement is intended to or shall be deemed to confer upon any person, other than the Parties and their respective successors and assigns, any rights or remedies hereunder.

11.16 Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be an original and all of which together shall constitute one agreement.

SIGNATURES ON FOLLOWING PAGE(S).

IN WITNESS WHEREOF, the Parties have executed this Affordable Housing Regulatory Agreement and Declaration of Restrictive Covenants as of the date first written above.

CITY:

City of Livermore, a municipal corporation

By: _____
City Manager

ATTEST: _____
City Clerk

APPROVED AS TO FORM:

_____
City Attorney

OWNER:

Tri-Valley REACH, Inc., a California nonprofit public benefit corporation

By:_____

Print Name: _Patrick O'Brien_____

Title: _Treasurer, Board of Directors_____

SIGNATURES MUST BE NOTARIZED.

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
) ss
County of _____)

On _____, before me,_____,
(Name of Notary)

notary public, personally appeared _____ who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

_____
(Notary Signature)

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
) ss
County of _____)

On _____, before me,_____,
(Name of Notary)

notary public, personally appeared _____ who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.
WITNESS my hand and official seal.

_____
(Notary Signature)

INSURANCE REQUIREMENTS
REGULATORY / LOAN AGREEMENTS

Minimum Scope and Limits of Insurance
Owner/Borrower shall maintain limits no less than:

1. **Commercial General Liability:**
   $1,000,000/$2,000,000 aggregate per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability or other form of insurance with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.

2. **Property Insurance:**
   Borrower is required to obtain and maintain property insurance coverage to cover full replacement value, to include improvements, and shall be written on an All Risk basis with a maximum deductible of $1,000 per property. The Property Insurance Policy shall also include a provision that protects the location and the City's interest if the Property is vacant and/or unoccupied for more than thirty (30) days. Borrower's policy must also include a business interruption provision to cover loan payments for twelve (12) to twenty-four (24) months if the property is damaged and cannot be sold or occupied. Additionally, the City must also be named as a Loss Payee by endorsement such as 438 BFU NS or similar.

Deductibles and Self-Insured Retention
All self-insured retentions (SIR) must be disclosed to Risk Management for approval and shall not reduce the limits of liability. Policies containing any SIR provision shall provide, or be endorsed to provide, that the SIR may be satisfied by either the named insured or the City of Livermore. The City of Livermore reserves the right to obtain a full certified copy of any insurance policy and endorsements. Failure to exercise this right shall not constitute a waiver of right to exercise later.

Acceptability of Insurers
Insurance is to be placed with insurers with a current A.M. Best rating of no less than A: VII and accepted to do business in the State of California, unless otherwise acceptable to the City of Livermore.

Other Insurance Provisions
The general liability policy is to contain, or be endorsed to contain, the following provisions:

1. The City of Livermore, its officers, officials, employees, and designated volunteers are to be covered as additional insureds as respects: liability arising out of activities performed by or on behalf of the Owner/Borrower. The coverage shall contain no special limitations on the scope of protection afforded to the City of Livermore, its officers, officials, employees, or volunteers.

2. The limits of insurance required in this agreement may be satisfied by a combination of primary and umbrella or excess insurance. The additional insured coverage under the Owner/Borrower policy shall be primary and non-contributory and will not seek contribution from the City's insurance or self-insurance and shall be at least as broad as ISO Form CG 20 10 04 13. Any umbrella or excess insurance shall contain or be endorsed to contain a provision that such coverage shall also apply on a primary and non-contributory basis for the benefit of the City of Livermore before the City's own insurance or self-insurance shall be called upon to protect it as a named insured.
3. Any failure to comply with reporting or other provisions of the policy, including breaches of warranties, shall not affect coverage provided to the City of Livermore, its officers, officials, employees, or volunteers.
4. The Owner/Borrower insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
5. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be canceled by either party before expiration of the policy unless notice is delivered in accordance with policy provisions.
6. It shall be a requirement under this agreement that any available insurance proceeds broader than, or in excess of, the specified minimum insurance coverage requirements and/or limits shall be available to the additional insured. Furthermore, the requirements for coverage and limits shall be (1) the minimum coverage and limits specified in this agreement; or (2) the broader coverage and maximum limits of coverage of any insurance policy or proceeds available to the named Insured; whichever is greater.
7. Certificate Holder section of the insurance certificate should read: City of Livermore, 1052 S. Livermore Avenue, Livermore, CA 94550

Verification of Coverage

Owner/Borrower shall furnish certificates of insurance and endorsement(s) effecting coverage to the City of Livermore for approval. The endorsements shall be on forms acceptable to the City of Livermore. All certificates and endorsements are to be received and approved by the City of Livermore before the agreement is executed. The City of Livermore reserves the right to require complete and certified copies of all insurance policies required by this Agreement.

EXHIBIT B

LIVERMORE
CALIFORNIA

MULTI-FAMILY RENTAL PROJECT ANNUAL REPORT

PROJECT CONTACT INFORMATION

Property Information

Property Name	
Address	
Community Manager	
Phone	
Email	
Website (if applicable)	

Owner Information

Owner Name	
Company Name	
Owner Address	
City, State, Zip	
Phone	
Email	
Primary Contact	
Secondary Contact	

Management Agent Information

Company Name	
Address	
City, State, Zip	
Phone	
Email	
Primary Contact Name	
Secondary Contact Name	

Name of first point of contact for and on-site monitoring of the property:

EXHIBIT B

LIVERMORE
CALIFORNIA

MULTI-FAMILY RENTAL PROJECT ANNUAL REPORT

Property Name & Address	
Person Completing Report	
Date	
Report Period	

Compliance with Required Number of Low Income Units

Total number of income restricted units which are currently occupied (or reserved and available for occupancy):	
Number of vacant income restricted units at the time of this report:	
I hereby certify that these units in the quantity listed above have been continuously designated as units for occupancy by low-income households during the reporting period:	
Name of Project Owner or Authorized Agent	Title

Compliance with Rent Limits

List below the current monthly rents of the units restricted for occupancy by low-income households as well as the prior rents (if increases were made during the report period):

Plan	Number of Bedrooms	Current Rent	Prior Rent	% Increase	Additional Fees Charged	Utility Allowance (if applicable) or Amount of Tenant Paid Utilities

I hereby certify that the rents in all units designated for low-income households did not exceed the levels authorized under the regulatory agreement/restrictive covenants with the City of Livermore during the reporting period:

Name of Project Owner or Authorized Agent Title

EXHIBIT B

Restricted Unit Occupant Information

Unit #	Bdrms	Unit Income Level	Tenant Last Name	Move-In Date	# in Household	Reported Annual Income	Effective Date of Current Rent	Tenant Paid Rent	Section 8? (Y/N)

EXHIBIT B

LIVERMORE
CALIFORNIA

MULTI-FAMILY RENTAL PROJECT ANNUAL REPORT

PROPERTY CONDITION REPORT

Property Name	
Address	
Name of Person Completing Report	
Reporting Period	

List any physical defects or major repair work undertaken within the reporting period:

Comments on any general management/performance issues within the reporting period:

LIVERMORE
CALIFORNIA

CITY COUNCIL STAFF REPORT **ITEM NO. 5.3**

DATE: July 24, 2023

TO: Honorable Mayor and City Council

FROM: Brandon Cardwell, Innovation and Economic Development Director

SUBJECT: Resolution authorizing appropriations of $307,697 from Business License Tax settlement funds and execution of an 18-month agreement with Rincon Consultants, Inc. to prepare an Environmental Impact Report for the East of Greenville Study Area in an in an amount not-to-exceed $307,697.

RECOMMENDED ACTION

Staff recommends the City Council adopt a resolution:

1. appropriating $307,697 from Business License Tax settlement funds to cover the contract cost
2. authorizing the City Manager to execute an agreement with Rincon Consultants, Inc. (Rincon) to prepare an Environmental Impact Report for the East of Greenville Study Area, over an 18-month term, in an in an amount not-to-exceed $307,697 in substantially similar form to the draft contract in Exhibit A of the Resolution subject to the City Attorney approval to form of the final construction contract and acceptance of insurance by the Risk Manager.

SUMMARY

On April 10, 2023, Council directed staff to add the East of Greenville focus area to the General Plan Update evaluation process. On June 14, 2023, the General Plan Advisory Committee reviewed draft land use alternatives for the East of Greenville focus area and requested additional, detailed, information associated with this unique focus area beyond what is currently scoped in the General Plan Update. Staff recommends the City Council authorize an agreement with Rincon Consultants, Inc. to prepare an Environmental Impact Report for the East of Greenville focus area, which will help inform future decisions.

DISCUSSION

BACKGROUND

The General Plan is the City's long-range policy document for growth, land use, sustainability, and resource and open space conservation. On March 1, 2021, the City Council identified the

Comprehensive General Plan Update as a priority. On June 28, 2021, City Council authorized a contract with PlaceWorks as the consultant team for the General Plan Update Project and directed staff to proceed with the formation of a General Plan Advisory Committee (Committee) comprised of representatives of the Livermore Community.

On September 12, 2022, City Council reviewed a series of draft land use alternatives that represent a range and mix of land use types and directed staff to evaluate the alternatives for the General Plan Update. On April 10, 2023, the City Council directed staff to add and study the East of Greenville focus area and limited the land uses for consideration to non-residential uses such as industrial, commercial, parks, open space, and agriculture.

On June 14, 2023, the Committee reviewed draft land use alternatives for the East of Greenville focus area. The Committee recommended requesting additional, detailed, information to better understand the tradeoffs associated with this unique focus area.

DISCUSSION

The purpose of the East of Greenville focus area is to facilitate non-residential land use types. Currently, the East of Greenville focus area is outside of Livermore City limits and the City's Urban Growth Boundary (UGB), which limits services to the area. Future development under any land use scenario would require annexation of the focus area into the City of Livermore. Additionally, development would require adjusting the UGB to allow the City to provide municipal services such as police, fire, water, and sewer. Adjustments to the UGB can only be accomplished through a vote of Livermore residents.

At their June 14th meeting, the Committee acknowledged the importance of comprehensively studying various land use alternatives as part of the General Plan Update. However, the Committee also recommended the project team conduct a detailed and thorough analysis of the focus area to better inform the community of tradeoffs, costs, and benefits, associated with development of the area and possible municipal and UGB changes.

Therefore, staff recommends preparing an Environmental Impact Report of the focus area in parallel with the General Plan land use alternatives evaluation. The report would supplement the General Plan Update, which evaluates land use at the citywide scale, with additional detailed information about the East of Greenville focus area, specifically. Further, the Environmental Impact Report could help inform future decisions regarding changes to the UGB and city limits. Due to the similarities and overlaps between the studies, staff will coordinate with both consultant teams to ensure consistency.

With staff’s input, Rincon Consultant. Inc. developed a scope of work, budget, schedule for preparing a detailed study of the East of Greenville focus area. Generally, the scope of work includes:

Public Noticing and Hearings. Rincon will prepare notices informing the public of key milestones in the preparation of the documents and present materials at public meetings.

Research and Analysis. Rincon will conduct research and analysis for various issue areas, describe existing conditions relevant to each topic, and identify impacts based on accepted criteria for determining significance. Research sources will include local and regional documents and studies, other recent and relevant environmental documents, and data provided by the General Plan team.

Preparation of an Administrative and Public Draft Environmental Impact Report. Rincon will prepare draft documents that describe the purpose of the study, characteristics relevant to the analysis (i.e., buildout projections, objectives, and discretionary approvals), and rational conclusions. The Environmental Impact Report will a contain sufficient degree of analysis to provide decision-makers with information regarding environmental consequences. The document will be a program-level Environmental Impact Report that considers the broad policy implications of the area and will focus on the macro-level impacts associated with total buildout.

ENVIRONMENTAL DETERMINATION

Authorization to execute a professional services contract is an administrative action, which does not qualify as a project under the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines section 15378. Therefore, no environmental review is required to authorize execution of the Agreement.

FISCAL AND ADMINISTRATIVE IMPACTS

Council directing staff to prepare a focused environmental study would require staff and consultant resources. Evaluating the technical, financial, and environmental aspects of land use changes in the area and extending infrastructure services requires consultant services of $307,697. This amount would cover the preparation of an Environmental Impact Report and includes a 10 percent contingency. These expenditures were not contemplated in the City's 2-Year Financial Plan for 2023-2025. Staff is requesting an appropriation of $263,000 from the General Fund (Fund 001) to 8152-43130 Planning Contract Services Private for fiscal year 2023-24 and $44,697 from the same funding source for fiscal year 2024-25.

The $307,697 will be funded through a portion of the $9.1 million one-time payment for past due business license taxes from Lawrence Livermore National Laboratory (LLNL) and Sandia National Laboratories. The balance of the one-time business license tax payment not required to cover administrative and discovery expenses related to the one-time payment will be used to prepay the City’s unfunded Other Post Employment Benefits (OPEB) as directed by City Council as part of the FY 2022-23 budget update.

COMMUNITY PILLAR

4: Inclusive and Inviting Spaces and Places

GOAL

4: Continue to complete the General Plan Update

ATTACHMENTS

1. Resolution
2. Exhibit A - Draft Professional Services Agreement

Prepared by: Andy Ross
Economic Development Manager

Approved by:



Marianna Marysheva
City Manager

Fiscal Review by:



Tina Olson
Administrative Services Director

IN THE CITY COUNCIL OF THE CITY OF LIVERMORE, CALIFORNIA

A RESOLUTION AUTHORIZING EXECUTION OF AN AGREEMENT WITH RINCON CONSULTANTS, INC. IN AN AMOUNT NOT-TO-EXCEED $307,697 TO PREPARE AN ENVIRONMENTAL IMPACT REPORT FOR THE EAST OF GREENVILLE FOCUS AREA

On March 1, 2021, the City Council identified the Livermore General Plan and Housing Element Update as a goal and priority.

On September 12, 2022, the City Council authorized a range of land use alternatives in four focus areas and directed staff to evaluate the land use alternatives as part of the General Plan Update.

On April 10, 2023, the City Council directed staff to add the East of Greenville focus area to the land use alternatives evaluation study as part of the General Plan Update.

On June 14, 2023, the General Plan Advisory Committee reviewed different land use alternatives for the East of Greenville focus area and recommended city staff conduct additional detailed analysis of the impacts and tradeoffs beyond what was scoped in the General Plan Update.

City staff requires a consultant to analyze the impacts and tradeoffs of possible future land use changes within the East of Greenville focus area.

City staff recommends the City Council adopt a resolution appropriating $307,697 from Business License Tax settlement funds to cover the consultant cost and authorizing the City Manager to execute an agreement with Rincon Consultants, Inc. to prepare an Environmental Impact Report for the East of Greenville Study Area, over an 18-month term, in an amount not-to-exceed $307,697 in substantially similar form to the draft contract attached hereto as Exhibit A, subject to the City Attorney approval as to form of the final contract and acceptance of insurance by the Risk Manager.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Livermore that it hereby:

1. Appropriates from the Business License Tax settlement funds the amount of $307,697.

2. Authorizes the City Manager to execute a professional services agreement with Rincon Consultants, Inc., to prepare an Environmental Impact Report for the East of Greenville study area in an amount not-to-exceed $307,697, in substantially similar form to the draft contract attached hereto as Exhibit A, subject to the City Attorney approval as to form of the final contract and acceptance of insurance by the Risk Manager.

On motion of Council Member_____, seconded by Council Member_____, the foregoing resolution was passed and adopted on July 24, 2023, by the following vote:

AYES: COUNCIL MEMBERS:
NOES: COUNCIL MEMBERS:
ABSENT: COUNCIL MEMBERS:
ABSTAIN: COUNCIL MEMBERS:

ATTEST:

_____
Marie Weber
City Clerk

APPROVED AS TO FORM:

/s/ Kimberly Cilley
Kimberly Cilley
Senior Assistant City Attorney

Exhibit A – Draft Professional Services Agreement

PROFESSIONAL SERVICES AGREEMENT

THIS AGREEMENT is made and entered into this ___ day of _____, 20 , by and between the City of Livermore ("City"), a municipal corporation, and Rincon Consultants, Inc. ("Consultant"),a California corporation.

RECITALS

City requires professional services to prepare an Environmental Impact Report for the East of Greenville General Plan focus area.

Consultant warrants it possesses the distinct professional skills, qualifications, experience, and resources necessary to timely perform the services described in this Agreement. Consultant acknowledges City has relied upon these warranties to retain Consultant.

AGREEMENT

NOW, THEREFORE, City and Consultant hereby agree that the aforementioned recitals are true and correct and further agree as follows:

1. Retention as Consultant. City hereby retains Consultant, and Consultant hereby accepts such engagement, to perform the services described in Section 3 below subject to the terms and conditions in this Agreement.

2. Relationship of Parties – Independent Contractors. The relationship of the parties shall be that of independent contractors. Consultant and its employees are not City officers or employees. Consultant is responsible for the supervision and management of its employees, including any workers compensation insurance, withholding taxes, unemployment insurance, and any other employer obligations associated with the delivery of the services contemplated by this Agreement.

3. Description of Services. Consultant shall provide the following professional services as more particularly set forth in Exhibit "A" (collectively "the Services"):

To prepare an Environmental Impact Report for the the East of Greenville General Plan focus area and evalutate the impacts associated with possible land use changes

4. Consultant's Responsibilities. Consultant shall:

(a) Diligently perform the Services in a manner commensurate with industry, professional, and community standards;

(b) Provide the resources necessary to complete the Services in a timely manner;

(c) Obtain a business license from the City of Livermore, and keep it in effect for the term of this Agreement;

(d) Obtain and keep in effect all necessary licenses, permits, qualifications, insurance, and approvals legally and professionally required for Consultant to practice its profession and to provide the Services;

(e) Comply with all laws in effect that are related to Consultant and the Services;

(f) Coordinate the Services with Andy Ross, Economic Development Manager ("Project Manager"), or such other person designated as the Project Manager by City;

(g) Be available to the Project Manager, and other parties referred to Consultant by the Project Manager, to answer questions or inquiries related to the Services;

(h) Only invoice City for the Services rendered. Consultant's invoice shall be in writing and describe the Services performed for the payment requested. Consultant shall not submit an invoice to City more frequently than once a calendar month;

(i) Keep and maintain invoices and records related to the Services in an organized manner. At a minimum, the records must be kept for at least 3 years from the date of final payment to Consultant and must include time sheets, work progress reports, and other documentation to adequately explain all the Services invoiced for payment. Consultant shall make the invoices and records immediately available to City upon delivery of a written request to examine, audit, or copy them at City's place of business during normal business hours. Consultant shall give City 30 calendar-days' written notice prior to destroying the invoices and records and allow City an opportunity to take possession. If City wants them, Consultant and City shall coordinate their delivery to City in the most efficient manner possible;

(j) Prepare and submit a written report to the Project Manager, within 3 business-days of the Project Manager's written request, that identifies the Services completed and in progress, the charges incurred to date, and the anticipated cost to complete the remaining Services;

(k) Consultant shall correct, at its own expense, all errors in the Services. Should Consultant fail to make such correction in a timely manner, City may make the correction and charge the cost thereof to Consultant;

(l) If applicable, Consultant shall ensure that all work for compensation is provided in compliance with the requirements of the California Labor Code including but not limited to hours of labor, nondiscrimination, payroll records, apprentices, worker's compensation and prevailing wages. If applicable, Consultant shall comply with all prevailing wage laws, such as sections 1773, 1773.8, 1775, 1776, 1777.5, 1777.6, and 1813 of the California Labor Code and any other applicable wage and hour law. If any violation of prevailing wage law associated with this Agreement is deemed to have occurred by any court or administrative authority, Consultant shall forfeit to the City, as a penalty, the sum of fifty dollars ($50.00) for each calendar day, or portion thereof, for each laborer, worker, or mechanic employed, paid less than the applicable prevailing rates for any work done to accomplish the purposes of this Agreement; and,

(m) Consultant's services provided pursuant to this Agreement shall comply with the Americans with Disabilities Act (ADA) of 1990, and all amendments thereto, as well as all applicable regulations and guidelines issued pursuant to the ADA.

5. Compensation and Payment.

(a) The total compensation payable by City to Consultant for the Services **SHALL NOT EXCEED** the sum of $307,696.62 ("not-to-exceed amount"). City shall compensate Consultant for the Services rendered at the hourly rates, task amounts or travel expenses set forth in Exhibit "A" up to the not-to-exceed amount. Except as provided in the body of this Agreement, the hourly rates, task amounts or travel expenses are intended to be Consultant's only compensation for the Services and is inclusive of all costs of labor, licensing, permitting, overhead and administrative costs, and any-and-all other costs, expenses, and charges incurred by Consultant, its agents, and employees to provide the Services.

(b) City shall pay Consultant no later than 30 days after City receives a written invoice from Consultant and verifies the Services were performed for the payment requested.

6. Term. The term of this Agreement commences on July 24, 2023, and terminates upon the completion of the Services or January 31, 2025, whichever occurs first.

7. Termination by City. City may terminate any portion or all of the Services by giving Consultant at least 30 calendar-days written notice. Upon receipt of a termination notice, Consultant shall immediately stop all work in progress on the Services except where necessary to preserve the benefit of the work, and then assemble the work on the Services for delivery to City on the termination date. All compensation for Services performed prior to the termination date shall be payable to Consultant in accordance with Section 5.

8. Ownership of Documents. All drawings, designs, data, photographs, reports and other items prepared or obtained by Consultant in the performance of the Services are City's property and Consultant shall deliver them to City upon demand.

9. Copyright and Right of Use. All items created by Consultant for City under this Agreement are works made for hire, and Consultant shall give City the copyright and all intellectual property rights to all items developed, prepared, and delivered as part of the Services. Consultant agrees that all aspects of the Services and items created thereby will be original works of creation and will not use, in whole or in part, any work created by any other party, except when expressly disclosed by Consultant to City and Consultant obtains a license to such items for the benefit of City. All licenses must be perpetual, world-wide, non-exclusive, and royalty free sufficient in scope to permit City's full use and enjoyment of its ownership rights in the items created by the Services.

10. Confidentiality. Consultant shall not disclose any confidential or proprietary information received from City to anyone except Consultant's employees who require access to the information to perform the Services. This obligation shall survive

termination and remain in full force and effect until the information, and any copies thereof, are destroyed or returned to City.

11. Defense, Indemnity, and Hold Harmless. To the fullest extent permitted by law, Consultant shall hold harmless, indemnify, and defend with counsel selected by the City or otherwise acceptable to the City, the City and its elected and appointed officials, officers, directors, employees, agents and designated volunteers from and against any and all liability, loss, damage, claims, expenses, and costs (including without limitation, attorney's fees and costs and fees of litigation) (collectively, "Liability") of every nature arising out of or in connection with Consultant's performance of the services contemplated by this Agreement, or in connection with Consultant's failure to comply with any of its obligations contained in this Agreement, except for such Liability caused by the sole active negligence or willful misconduct of City. Consultant's obligations to hold harmless, indemnify, and defend shall not be excused because of Consultant's inability to evaluate Liability or because Consultant evaluates Liability and determines that Consultant is not liable to the claimant. These obligations are independent of, and shall not in any way be limited by, the minimum insurance obligations contained in this Agreement. These obligations shall survive the completion or termination of this Agreement. Consultant must respond within 30 days to the tender of any claim for defense and indemnity by the City.

(a) Modification for Construction Contracts. To the extent this Agreement is a "construction contract" covered by California Civil Code section 2782, then Consultant's duty to indemnify shall not apply in a manner prohibited by California Civil Code section 2782.

(b) Modification for Design Professional Services. To the extent this Agreement is for "design professional services" defined in California Civil Code section 2782.8, then Consultant's duties to defend and indemnify shall only apply to the extent provided for in California Civil Code section 2782.8(a), unless section 2782.8(a) is not applicable for one of the reasons set forth in 2782.8(e).

12. Insurance. Consultant shall procure and maintain insurance during the term of this Agreement in the amounts and under the terms set forth in Exhibit "B" against claims that may arise from or in connection with this Agreement and performance of the Services. Upon reasonable written notice, Consultant shall comply with any changes in the amounts and terms of insurance as may be required from time-to-time by City's Risk Manager.

13. Acceptance of Final Payment. Consultant's acceptance of final payment will release City from any and all claims and liabilities for compensation under this Agreement.

14. Acceptance of Work. City's acceptance of, or payment to Consultant for, the Services does not release Consultant from its responsibility for the accuracy, completeness, or competency of the Services, nor do the actions constitute an assumption of Consultant's responsibility or liability by City for any defect or error in the Services.

15. Conflict of Interest. Consultant represents that no City employee or official has a financial interest in Consultant. Consultant shall not offer, encourage, or accept any financial interest in any part of Consultant's business by or from a City employee or official during the term of this Agreement or as a result of being awarded this Agreement. If any of the Services are paid by reimbursement from an agreement between City and a private party, Consultant represents that it has not performed any work for that private party during the 12-month period prior to the execution of this Agreement, and that it shall not negotiate, offer or accept any contract for services from that party during the term of this Agreement.

16. Economic Disclosure. Consultant shall comply with City's local conflict of interest code and the Political Reform Act, and prepare and file an economic disclosure statement if the Services involve making, or participation in making, decisions which may have a material effect on the Consultants' financial interest. While it is Consultant's sole responsibility to evaluate its conflicts of interest, the Consultant nevertheless agrees to prepare and file an economic disclosure statement if requested by City.

17. Non-Exclusive Agreement. This is a non-exclusive agreement. City reserves the right to provide, and to retain other consultants to provide, services that are the same or similar to the Services described in this Agreement.

18. No Assignment. Consultant shall not assign or subcontract any of the Services without City's prior written consent. For the purposes of this section, a change of fifty-percent or more in the ownership or control of Consultant constitutes an assignment.

19. Remedies. All remedies permitted or available under this Agreement, or at law or in equity, are cumulative and alternative, and the invocation of a right or remedy will not be construed to waive or elect a remedy with respect to any other available right or remedy. As a condition precedent to commencing legal action involving a claim or dispute against City arising from this Agreement, the Consultant must present a written claim to City in accordance with Chapter 3.42 of the Livermore Municipal Code.

20. Construction of Language. The terms and conditions in this Agreement have been arrived at through negotiation and each party had a full and fair opportunity to review and revise this Agreement with legal counsel. Any ambiguity in this Agreement will not be resolved against either party as the drafting party. In the event of an inconsistency or conflict between the language in the body of the Agreement and an attachment hereto, the language in the body of the Agreement controls.

21. Entire Agreement; Modification. This Agreement supersedes all other agreements, whether oral or written, between the parties with respect to the Services. Any modification to this Agreement must be in writing and signed by both parties. In the event the original of this Agreement is lost or destroyed, an archival copy maintained by City can be used in place of the original for all purposes with the same effect as if it was the original.

22. Notice. Notices under this Agreement must be delivered to the addresses below by deposit in the United States mail or by overnight delivery service, with postage prepaid and delivery confirmation:

TO CITY: Attention: Andy Ross
Economic Development Manager
1052 S Livermore Avenue
Livermore, California 94550

TO CONSULTANT: Attention: Abe Leider, AICP CEP
Rincon Consultants, Inc.
449 15th Street, Suite 303
Oakland, CA 94612

23. Waiver. Failure to insist upon the strict performance of any term or conditions in this Agreement, no matter how long the failure continues, is not a waiver of the term or condition and does not bar the right to subsequently demand strict performance. To be effective, a waiver must be in writing and signed by the non-breaching party.

24. Severability. If a court of competent jurisdiction determines a provision in this Agreement is invalid, void, or unenforceable, the remaining provisions will nevertheless continue in full force and effect without being impaired in any way.

25. Survival. The terms, conditions, and obligations in Sections 8, 9, 10, and 11 shall survive the completion or termination of this Agreement.

26. Electronic Signatures. By signing this document, you are agreeing that you have reviewed this disclosure information and consent to transact business using electronic communications, to receive notices and disclosures electronically, and to utilize electronic signatures in lieu of using paper documents. You are not required to receive notices and disclosures or sign documents electronically. If you prefer not to do so, you may request to receive paper copies and withdraw your consent at any time.

27. Counterparts. This Agreement may be executed and delivered in one or more counterparts, each of which will be deemed to be an original copy of this Agreement, and all of which, when taken together, will be deemed to constitute one and the same agreement. The facsimile, email, or other electronically delivered signatures of the Parties shall be deemed to constitute original signatures, and facsimile or electronic copies hereof shall be deemed to constitute duplicate originals and shall be valid and effective for all purposes.

****

Signatures and Attachment List on the Next Page

In concurrence and witness whereof, and in recognition of the mutual consideration provided therefore, the parties have executed this Agreement, effective on the date first written above.

CONSULTANT: **Dated:**

_____ _____

By: Abe Leider

Title: Principal

CITY OF LIVERMORE: **Dated:**

_____ _____

Marianna Marysheva
City Manager

APPROVED AS TO FORM:

_____

Assistant/City Attorney

APPROVED AS TO INSURANCE:

_____ Risk

Manager/Analyst

Attachments:

Exhibit A – Scope of Work
Exhibit B – Insurance Requirements

EXHIBIT A

Rincon Consultants, Inc.
449 15th Street, Suite 303
Oakland, California 94612
510-834-4455

July 7, 2023
Rincon Project No. 23-14603

Andy Ross, Economic Development Manager
City of Livermore
1052 South Livermore Avenue
Livermore, California 94550
Via email: aaross@LivermoreCA.gov

Subject: Revised Proposal to Prepare an Environmental Impact Report for the East of Greenville Study Area

The City of Livermore is seeking assistance with California Environmental Quality Act (CEQA) compliance for the East of Greenville Project. Based on our project understanding and discussions with City staff, Rincon Consultants, Inc. has prepared this proposal to prepare an Environmental Impact Report (EIR) for the project. We are enthusiastic about the opportunity to continue working with the City and have assembled a team of highly skilled environmental science and planning professionals who combine extensive technical qualifications and knowledge of CEQA with many years of experience.

Rincon Consultants is a full-service environmental consulting firm, with industry-leading certified land use and environmental planners, environmental scientists and engineers, sustainability and climate planning professionals, noise and air quality experts, geologists, biologists, and cultural and historical resource specialists. At Rincon, we are proud of our team's ability to work effectively with City staff, decision-makers and community groups to develop and implement innovative approaches and solutions to planning and environmental issues. We believe that our experience with CEQA statewide, our experience on land use projects specifically in Northern California, and our existing relationship with City of Livermore staff are critical and give us a unique understanding of and sensitivity to the range of issues that will be important to the success of this project. In 2022, we successfully completed the Supplemental EIR for the City's Urban Growth Boundary Initiative to allow for sewer expansion south of City limits, and we have worked on many complex programmatic CEQA documents for numerous agencies around the Bay Area and throughout California.

Leading the team will be Abe Leider, AICP, Principal, who manages Rincon's Oakland office and oversees Rincon's planning and environmental services in Livermore, and Aileen Mahoney, Senior Environmental Planner, who managed the South Livermore Sewer Expansion Project EIR, which was certified in 2022. Ms. Mahoney will serve as Project Manager in charge of day-to-day oversight and will be the City's primary contact.

This proposal includes: (1) our project understanding; (2) our proposed work scope; (3) our proposed schedule; and (4) our cost estimate.

Project Understanding

During preparation of the City's General Plan Update, the area east of Greenville Road outside of the city limits is being explored as an alternative location for displaced industrial land uses, to assist the City in meeting its Regional Housing Needs Assessment within the existing City boundaries and in achieving the City's long term economic goals. The project area consists of approximately 1,140 acres of land, mostly located east of Greenville Road, west of the aqueduct, and south of I-580. The project

area is currently primarily undeveloped or agricultural land with scattered industrial, public utilities, and rural residential uses.

A range of alternatives are being explored for the area. The project would modify the land use designations of the area for non-residential uses, including industrial, commercial, parks, open space, and agriculture.

We understand that the City Council must authorize annexation of the project area and approve placing a Council-sponsored initiative on the City's ballot to expand the Urban Growth Boundary to include the project area before these land uses could be realized. The Environmental Study would help inform this decision.

Scope of Work

The CEQA document will be a Program EIR pursuant to State CEQA Guidelines Section 15168. Although the legally required contents of a Program EIR are technically the same as those of a Project EIR, Program EIRs contain a broader discussion of impacts, alternatives, and mitigation measures than a Project EIR. Use of a Program EIR is intended to provide an opportunity to consider broad policy alternatives and program-wide mitigation measures with greater flexibility to address environmental issues and/or cumulative impacts on a comprehensive basis. Once a Program EIR has been certified, subsequent activities under the program (in this case the proposed land use designations) may be evaluated to determine what, if any, additional CEQA documentation needs to be prepared. If the Program EIR addresses the program's effects specifically and comprehensively, many subsequent activities may be found to be consistent with the Program EIR mitigation parameters and additional environmental documentation may not be required (CEQA Guidelines Section 15168). In this case, the Program EIR serves a valuable purpose as the first-tier environmental analysis that will assist in streamlining and possibly exempting future projects from CEQA.

It is anticipated that implementation of this scope of work will be completed in tandem with the General Plan Update team, with regular coordination meetings to ensure that consistent methodology is used in the General Plan Update EIR and the proposed EIR for the East of Greenville Project. It is intended that the EIR completed under this scope of work will be incorporated by reference in the General Plan Update EIR. However, as the General Plan Update process is currently under way and preliminary documentation is available, this proposal assumes that Rincon will have access to existing public documents associated with the to the General Plan Update to use as a starting point for the analysis in the East of Greenville EIR.

The Program EIR will address all components of the proposed land use changes (including a possible Urban Growth Boundary expansion), with a focus on streamlining future projects within the project area by including a broad discussion of impacts, alternatives, and mitigation measures. The Program EIR will consider broad policy alternatives and program-wide mitigation measures. Rincon also proposes to forgo preparation of an Initial Study in order to streamline the project timeline, as the City has already determined that an EIR will be required. The EIR will address the potential impacts of project buildout in the approximately 1,140-acre project area.

Task 0: Project Management

Rincon will provide project management services under this scope of work. Management efforts will consist of regular communications with City personnel on an as-needed basis via email and phone to provide updates on the progress of the reports and discuss any issues that arise over the course of the project. This task includes attendance at monthly project status meetings for the duration of the contract, as well as up to four (4) hours of meetings with the General Plan Update team to discuss the

East of Greenville EIR as it relates to the General Plan Update process. As part of this task, Rincon will provide project management and coordination with City staff to meet project requirements in an efficient and cost-effective manner. Rincon will provide regular updates to City staff regarding project needs, changes, schedule, budget, and deliverables. This task includes activities required to manage the various tasks that follow such as regular e-mail and telephone communications and other tasks associated with client coordination. This task includes internal coordination with the project team and ongoing project management responsibilities throughout the duration of the of the project, such as cost and schedule tracking, progress reporting, invoicing, and clerical work.

Task 1: Kickoff Meeting

Rincon will facilitate a virtual CEQA kickoff meeting with City staff. This meeting will serve as a forum to review and confirm study objectives and establish an operational protocol. The goals of the meeting will be to finalize the CEQA scope and discuss the overall schedule.

The kickoff meeting will also allow the City/consultant team an opportunity to discuss the approach to the environmental evaluation and potential EIR alternatives. Community concerns relevant to the CEQA analysis that have surfaced to date will be discussed. We will also have an opportunity to confirm the cumulative impact analysis approach. Rincon's principal in charge and project manager will attend the meeting virtually, which is anticipated to last up to one hour.

Task 2: Notice of Preparation

Rincon will prepare a draft Notice of Preparation (NOP) for City staff to review. The NOP will include all required details including project description, location, dates of public review and dates/location of the public scoping meeting. Rincon will submit a draft NOP in Microsoft Word format for City review. Upon receipt of one round of consolidated comments on the draft NOP, Rincon will prepare a final PDF copy of the NOP for City staff to post on its website and for distribution to public agencies. Rincon will prepare an NOP distribution list for the City to review. It is assumed that the City will be responsible for any direct mailing of printed copies of the NOP. Rincon will review and make suggestions regarding the list. Rincon will be responsible for filing the NOP with the State Clearinghouse/Office of Planning and Research and Alameda County Clerk.

The NOP and relevant correspondence received in response to the NOP will be attached as an Appendix to the Draft EIR. The scope of the EIR will be adjusted, if necessary, based on the comments received. Because we anticipate that the EIR will address all issues on the environmental checklist, we do not propose to prepare an initial study.

Task 3: Project Description

Rincon will prepare the EIR project description. Organization of this information is critical since it forms the basis for environmental evaluation under CEQA. The project description will focus on the overall boundary of the project area. This section will include a description of the project, focusing on characteristics relevant to the analysis (i.e., buildout projections provided by the City, proposed land use changes), project objectives, and required permits and discretionary approvals. The project description will include textual, tabular, and up to six graphics as needed to describe the project and form a basis for the environmental analysis. The project description will be submitted to the City in Microsoft Word format, and we will address one round of consolidated comments from the City. The scope of work, estimated schedule, and cost estimate in this proposal, assume that the buildout projections and land use pattern will not change following City acceptance of the project description.

Task 4: Scoping Meeting

Rincon will facilitate one public and agency scoping meeting associated with the release of the NOP. The Scoping Meeting will be held during the 30-day NOP review period to introduce the community and responsible agencies to the EIR process and obtain input on the EIR scope of work. Applicable agencies and interested parties would be invited to attend the scoping meeting. The meeting will include a brief presentation, followed by public comment and input from meeting attendees. Rincon will prepare a summary of relevant input gathered, which will be included in the Draft EIR along with relevant written public comments received during NOP comment period. Rincon assumes the Scoping Meeting will be held at a Planning Commission meeting, which the City will organize. For the purposes of this scope, we have assumed the scoping meeting will be held in person. Notice of the scoping meeting would be provided in the NOP.

Task 5: AB 52 and SB 18 Consultation Assistance

Under Assembly Bill (AB) 52 (California Government Code Section 21080.3.1[a]) and Senate Bill (SB) 18 (California Government Code Section 65352.3 and 65352.4), the City, as the CEQA lead agency, is required to begin consultation with California Native American Tribes that are traditionally and culturally affiliated with the project site, prior to the release of a negative declaration, mitigated negative declaration, or environmental impact report. Rincon will request an AB 52 and SB 18 consultation list from the NAHC and will assist the City with consultation under AB 52 and SB 18 by providing the City with letter templates, checklists, and detailed instructions to help ensure meaningful consultation with interested Native American groups. Typically, NAHC list requests are fulfilled within four (4) weeks. After receipt of letters, Native American Tribes have 30 days to reply to a request for consultation under AB 52 and 90 days under SB 18; the 30-day wait period for AB 52 is subsumed in the wait period for SB 18. This task does not include meetings, outreach, consultation or mailing letters to Tribal governments, although consultation support may be added for an additional cost if needed. Rincon assumes that the City will officially contact all applicable Tribes. Additionally, Rincon will include the consultation efforts in an assessment of impacts to Tribal Cultural Resources for the CEQA document.

Task 6: Administrative Draft EIR

Rincon will prepare an Administrative Draft EIR (ADEIR) in compliance with CEQA requirements and based on the project description approved by City staff (see Task 3). Consistent with CEQA requirements, the EIR will be prepared with a sufficient degree of analysis to provide decision-makers with information which enables them to make a decision which intelligently takes account of environmental consequences. An evaluation of the environmental effects of the project need not be exhaustive, but the sufficiency of an EIR is to be reviewed in light of what is reasonably feasible. The document will be a program EIR that considers the broad policy implications of the proposed project. To that end, it will focus on the macro-level impacts associated with total buildout. Where possible, Rincon will incorporate information from existing environmental and planning documents that apply to the project area.

The ADEIR will comprise the following sections:

Executive Summary

The EIR will contain a summary of the General Plan and associated environmental consequences. This section will include the following:

- A discussion of project objectives;

- A brief description of the project;
- A summary of the environmental setting for the project area;
- A summary of impacts;
- A summary of mitigation measures;
- A discussion of alternatives considered, and identification of the environmentally superior alternative among those studied; and
- Areas of controversy, and issues remaining to be resolved.

Introduction and Environmental Setting

These required introductory sections will lay the groundwork for and summarize the substantive analysis to follow. The introduction will describe the purpose and legal authority of the EIR, the scope and content of the EIR, a discussion of lead, responsible, and trustee agencies, and a synopsis of the CEQA process. The environmental setting will provide a general description of the existing geographic character of the project area. The environmental setting will also contain a discussion of the approach to the cumulative impact analysis.

Project Description

The Project Description section will consist of the project description prepared in Task 3.

Analysis, Impacts, and Mitigation Measures

Each environmental discussion will include the following:

- Setting
- Impact analysis
- Mitigation measures
- Level of significance after mitigation

The discussion for each issue area will begin with the setting, which will describe existing conditions relevant to the topic and provide the groundwork for impact analysis. Sources will include documents and studies prepared in support of the project, other relevant environmental documents prepared during the last five years, and data provided by the City.

The impact analysis will include a discussion of the methodology used to quantify or determine impacts and the criteria for judging significance. Where practicable, impacts will be quantified. If existing data does not allow definitive quantification, reasonable assumptions will be used to qualitatively forecast potential impacts.

Rincon typically orients analyses around clear impact statements that are separately highlighted in the text. This allows a more precise statement of the specific issue at hand and sets the stage for the technical discussion that follows. If the impact warrants mitigation measures, they are indexed to and immediately follow the numbered impact in question.

Rincon's technical approach to analyzing each environmental issue is described below under Proposed Approach to Technical Issues.

Alternatives Analysis

A range of alternatives will be considered in the ADEIR. CEQA Guidelines require consideration of the "No Project" Alternative. For purposes of this EIR, the No Project Alternative would be a continuation of the existing County land use designations of the project area without annexation into the City of Livermore. In addition to the No Project Alternative, Rincon will consider up to three (3) other alternatives (such as alternative land use scenarios), including at least one alternative crafted in coordination with City staff to reduce identified significant and unavoidable impacts. It is assumed that buildout assumptions for each alternative will either be provided or approved by the City. Evaluation of alternatives will be in less detail than for the proposed project, though the analysis will provide decision-makers and the public adequate information to decide between alternatives. This section will also identify the "environmentally superior alternative." If the No Project Alternative is determined to be environmentally superior, the ADEIR will identify the environmentally superior alternative among the remaining scenarios.

Cumulative Impacts

Consistent with Section 15130 of the CEQA Guidelines, cumulative impacts will be disclosed. These impacts would result from the program's impacts associated with full buildout of project area under the proposed project, combined with impacts of other projects and programs in the area, including surrounding jurisdictions' land use plans. Cumulative projections in the area will be derived in consultation with the City.

Other CEQA Sections

This portion of the EIR will discuss the growth-inducing effects of the project as well as significant irreversible changes associated with the proposed project. Drawing on the information provided in the environmental setting and preceding issue discussion, the growth-inducing impacts will address the potential for the project to directly induce economic growth and remove obstacles to growth in the area. The significant irreversible changes discussion will summarize the significant effects of the project, particularly the unavoidably significant effects.

References

This portion of the EIR will provide full citations for all in-text citations provided within the EIR. This section will identify all supporting documents that were used during preparation of the EIR which are not included as appendices to the EIR itself.

The ADEIR will be submitted to the City in Microsoft Word format, for ease of review.

Proposed Approach to Technical Issues

The technical approach to analyzing each potential environmental issue is described herein. Approaches to the impact analysis for the Program EIR will be discussed with City staff and will be consistent with the assumptions and methodologies used in recent CEQA documents in the City of Livermore to the extent possible. In general, the impact analysis will focus on the issues present in the project area and likely to be affected or impacted by the project. It is anticipated that the components of the project that would most likely result in environmental impacts include the proposed land use changes that would result in increased buildout, increased development intensity, increased building height/scale, or physical ground disturbance. All issue areas contained on the CEQA Guidelines Appendix G Checklist will be addressed in the EIR. Specific analysis details for each section are described below.

Aesthetics. Physical changes that could occur under the proposed land use changes would alter the aesthetic character of the project area. The aesthetic analysis will consider the alteration of public views, changes in visual character, and increased light and glare that could result from modifications to the land use scenario. Changes to allowable maximum building densities will also be considered. These modifications under the proposed project will be compared to the existing County General Plan design standards, building densities, and land use scenario. The analysis will be supported by photo documentation from public viewpoints of up to five key areas where future development from proposed land use changes would be facilitated by the project. The analysis will also consider consistency with relevant City documents addressing design and development standards. Policy-based mitigation measures will be developed as necessary.

Agriculture and Forestry Resources. Prime Farmland and Unique Farmland is located in the southern portion of the project area. The majority of the project area is designated as Large Parcel Agriculture by Alameda County. Similarly, the majority of the project area is zoned Agriculture (A) by the County. This section will describe agriculture resources and any Williamson Act and forestland within the project area. The analysis will evaluate the conversion of any State-designated prime, unique, or otherwise important farmland within the County resulting from the project.

Air Quality and Greenhouse Gas Emissions. The air quality and greenhouse gas (GHG) emissions analyses in the EIR will consider temporary construction and long-term operational emissions from buildout of the project area. The analysis will summarize the existing air quality conditions in the air basin using data from nearby air monitoring stations available from the California Air Resources Board and the Bay Area Air Quality Management District (BAAQMD). The state of the climate and relevant federal, state, and local climate change regulations will be described, with GHGs identified as an area of primary concern. This section will summarize federal, state, and local standards and regulatory review requirements pertinent to air quality and GHG emissions, calculate project buildout emissions of criteria pollutants and GHGs using the California Emissions Estimator Model (CalEEMod), and evaluate the significance of air quality and GHG impacts per the BAAQMD's 2022 CEQA Guidelines methodology for programmatic (plan-level) analyses. Construction emissions will be addressed qualitatively. This section will also evaluate potential odor impacts through buildout of the project area, which is typically associated with wastewater treatment, manufacturing, and industrial-type land uses; evaluate localized air quality impacts from toxic air contaminant (TAC) to sensitive receptors (no detailed air dispersion modeling is proposed as part of this scope); evaluate the project's compliance with applicable Air Quality Management Plans; evaluate the project's compliance with applicable State and local GHG reduction plans, policies, and regulations; and develop mitigation measures for identified potentially significant air quality and GHG impacts.

Biological Resources. The project area supports a mixture of low-density industrial development, agriculture, grasslands, and water infrastructure, and provides wildlife movement corridors between natural areas to the north and south. The project area likely supports several special-status species such as burrowing owl, California red-legged frog, vernal pool fairy shrimp, and rare plants, as well as large seasonal wetland complexes in the northern portion of the project area and Arroyo Seco in the southern portion. As part of the biological resources analysis, Rincon will collect regional background information on biological resources that could be affected by the project. The collected information will include database queries (e.g., California Natural Diversity Database [CNDDB], California Native Plant Society, U.S. Fish and Wildlife Service, National Wetland Inventory), reviews of regional planning documents (including the Alameda County Conservation Strategy), and information provided by City staff. The scope of work does not include a reconnaissance site visit.

The biological setting subsection will describe the regulatory framework, vegetation communities per the California Wildlife Habitat Relationships classifications, waters and wetlands, and special-status species occurrences and habitats. Rincon will compile results from database queries in an appendix

to the EIR and summarize the results and findings within the EIR section. The impact analysis will include a description of methodology and significance thresholds, a summary of land use changes that may result in impacts to biological resources, and avoidance and mitigation measures, as appropriate.

Cultural Resources. The cultural resources analysis will review the potential for historical resources and archaeological resources to occur within the project area and the potential impacts to those resources as a result of the project. To compile a listing of recognized significant historic and prehistoric resources, information will be obtained from the National Register of Historic Places (NRHP), the Built Environment Resources Directory (BERD), and local inventories, as appropriate. Archival research will be limited to a review of historical aerial images and maps to characterize the historical development of the plan area and the existing conditions. No fieldwork or a search of the California Historical Resources Information Center (CHRIS) will be conducted. If significant impacts are identified, programmatic mitigation measures will be provided.

Energy. This section will discuss current and projected energy supplies and demand, and qualitatively analyze energy demand associated with future construction and long-term project area buildout. This section will also compare consistency of the project with adopted state, regional, and local energy policies. Policy-based mitigation measures will be developed as necessary.

Geology and Soils. A portion of the project area is located within a designated Alquist-Priolo fault zone. This section will discuss the potential for geologic hazards present within the project area to adversely affect potential future development facilitated by the project. Hazards to be considered include fault rupture, ground shaking, landslides, liquefaction/slope stability, erosion, and subsidence. The analysis will rely on sources such as the California Geological Survey, United States Geological Survey, the California Division of Mines and Geology, and other CEQA documents that contain geology and soil information for the area. It is anticipated that the geology/soils work scope will entail a mapping exercise to identify areas where potential future development could be affected by known geologic hazards.

Rincon will present a paleontological resources assessment in the Geology and Soils section of the EIR that will summarize the project's potential to impact paleontological resources. The assessment will provide the results of the literature review and record search, discuss the regional geology and the geologic unit(s) located within the project site, characterize the paleontological sensitivity of the geologic unit(s) using the Society of Vertebrate Paleontology paleontological sensitivity classification system, assess the potential for significant impacts to scientifically important paleontological resources under state and federal guidelines, and provide management recommendations for avoiding or reducing impacts to paleontological resources from project development as necessary.

Hazards and Hazardous Materials. A number of listed hazardous materials sites are present within the project area, including open cleanup program sites, an open land disposal site, and permitted underground storage tanks. This section will discuss the potential for impacts relating to hazardous materials transport, storage, and use, as well as such hazards as wildland fires. The analysis will rely on readily available information sources, including online hazardous material databases, the Tri-Valley Hazard Mitigation Plan, and other environmental documents prepared for the City. The hazardous material analysis will involve qualitative discussions of the potential for new development to either create the potential for hazardous conditions or be adversely affected by existing hazards.

Hydrology and Water Quality. The project area includes areas that are within the 100- and 500-year FEMA-designated floodplains, and also includes the Patterson Dam and reservoir along the aqueduct. The hydrology and water quality analysis will evaluate potential impacts relating to hydrological conditions and flooding as well as potential impacts to surface and groundwater quality. The existing hydrologic setting of the project area will be described generally and potential impacts relating to new development will be discussed conceptually. The analysis will be qualitative in nature, relying on

existing regulations (in particular, the National Pollutant Discharge Elimination System [NPDES] and related City requirements) to address potential impacts.

Land Use and Planning. This section of the EIR will examine land use policy issues. Rincon will prepare an objective discussion of whether and how the proposed land use changes are consistent with both existing City and County policy documents and regional planning policies, including those of the local air quality plan, Plan Bay Area 2050, and the Alameda County Local Agency Formation Commission.

Mineral Resources. The project area contains active oil and gas wells and associated infrastructure. This section of the EIR will identify if areas designated for mineral resources occur in the project area and if they would be affected by the project.

Noise. The noise section of the EIR will be conducted in accordance with City of Livermore guidelines, standards, and ordinances. The existing setting will describe existing ambient and traffic noise levels, and a discussion of existing airport noise levels based on available data. No ambient noise measurements are proposed. The noise analysis will examine both temporary construction noise and long-term operational noise. Noise model calculations will be included as an appendix to the EIR, and the technical analysis will be summarized in the EIR section. Construction noise will be estimated based on information from the Federal Transit Administration and Federal Highway Administration. Traffic noise will be estimated based on traffic volume data used in the traffic analysis.

Noise impacts from non-transportation sources will be evaluated on a programmatic level, qualitatively based on local noise standards. Rincon will analyze noise impacts from non-transportation sources such as major commercial and industrial uses in terms of potential impacts to nearby noise-sensitive receptors and the noise limitations identified within the City's Municipal Code.

Rincon will provide a qualitative analysis for potential construction impacts associated with buildout of the project area. Future noise and vibration effects from construction activities will be discussed in terms of accepted standards from the U.S. Federal Transit Administration (FTA). Feasible mitigation measures will be identified to minimize noise and vibration impacts associated with buildout of the Plan.

Population and Housing. Single-family residences are present throughout the project area. This section will focus on the potential for the project to displace existing housing, necessitating the construction of housing elsewhere. Policy-based mitigation measures will be developed as necessary.

Public Services and Recreation. The public services section of the EIR will focus on potential impacts relating to police protection and fire protection services. The analysis of police and fire service will involve contact with the City of Livermore Police and Fire departments to determine service levels and existing and projected gaps in service. It is assumed that the City can facilitate coordination with these departments. This section will also analyze potential impacts associated with the future construction of new parks within the project area, consistent with the proposed land use scenario. It is not anticipated that existing parks would be directly affected by potential new development; therefore, the analysis will focus on the direct effects of proposed new parks and open space areas.

Transportation. This section of the EIR will rely on the VMT analysis provided by the City and prepared by a transportation engineering firm. The existing setting, project and cumulative impacts, and any suggested mitigation measures in the VMT study will be described and listed in the EIR section as appropriate. The analysis will identify key transportation system components and consider whether buildout of the project area would conflict with a program, plan, ordinance, or policy addressing the circulation system. Policy-based mitigation measures will be developed as necessary.

Tribal Cultural Resources. To inform the Tribal Cultural Resources section, Rincon will collect regional background information on tribal cultural resources that could be affected by the project. The collected

information will include Native American Heritage Commission (NAHC) Sacred Lands File Search, reviews of regional ethnographic information, information from relevant past projects, and information provided to the lead agency through government-to-government tribal consultation in accordance with AB 52 and SB 18.

Utilities and Service Systems. This section will discuss potential impacts to water supply and service systems, wastewater conveyance and treatment systems, wastewater/solid waste generation, and solid waste collection and disposal systems. Water, wastewater, and solid waste services are provided by Zone 7 Water Agency, individual septic systems, and the Alameda County Waste Program, respectively. The analysis of water supply developed for the EIR will rely upon information from Zone 7 Water Agency's latest (2020) UWMP, as well as other publicly available, published data. The EIR will consider the potential impacts of proposed land use changes on the demand for water supply and wastewater treatment services. Impacts to the City storm drain system will be addressed in the hydrology/water quality section. Impacts relating to solid waste generation will also be discussed.

Wildfire. The project area is primarily designated within a Moderate Fire Hazard Severity Zone in a State Responsibility Area, with some parcels designated as High Fire Hazard Severity Zone in the southern portion of the project area near Tesla Road. The High Fire Hazard Severity Zone is also partially designated as within the Wildland-Urban Interface. This section will describe the location of Fire Hazard Severity Zones within or near the project area. Wildfire risk will be assessed, consistent with OPR's lates guidelines related to wildfire hazards. As necessary, mitigation measures will be developed to address identified significant impacts.

Task 7: Screen Check Draft EIR

Rincon will address one round of City comments on the ADEIR and prepare a Screen Check Draft EIR. We assume that all comments from the City will be provided as a consolidated set of comments in editable electronic format (i.e., as tracked changes in Microsoft Word). If there are multiple reviewers, the City will be responsible for reconciling conflicting comments prior to sending to Rincon. To maintain momentum in the project schedule and provide cost efficiency, we assume City comments will focus on any new content in the previous version of the ADEIR, and new comments on previously submitted content will be minimal. The Screen Check Draft EIR will be submitted to the City in Microsoft Word with track changes retained.

Task 8: Public Draft EIR

Once the City approves the Screen Check Draft EIR, Rincon will prepare the Draft EIR for public circulation. Rincon will prepare required noticing forms, including the Notice of Completion (NOC), Notice of Availability (NOA), and OPR's Summary Form for Electronic Document Submittal, for City review. Rincon will address one round of comments on the forms. Rincon will be responsible for submitting documents through the digital CEQA Submit platform and filing the NOA with the Alameda County Clerk's office. It is assumed that the City will be responsible for newspaper ads and/or other public noticing of the document's availability required by CEQA, such as radius label mailing or on-site posting. As required by State law, the Public Draft EIR will require at least a 45-day public review period. Rincon will provide two printed copies of the Public Draft EIR for posting at the City offices and at one branch of the Livermore Public Library and will provide a digital version in Adobe PDF for posting to the City's website. Accessibility remediation of the Draft EIR is included as Task 15.

Task 9: Response to Comments and Administrative Final EIR

Upon receipt of public comments on the Draft EIR, Rincon will prepare draft response to comments and an Administrative Final EIR for review by the City. This scope of work assumes up to 20 comment

letters containing comments on the content of the CEQA document will be received. This includes five lengthy (over five pages) and/or substantive letters, that can be adequately responded to in a maximum of 100 professional staff hours. Comment letters that solely express support or opposition to the project would not count against the 20-letter estimate. The actual level of effort required to respond will depend on the length, detail, and sophistication of the comments, in addition to the number of letters received. We reserve the right to reevaluate the effort level and request a scope amendment upon close of the public comment period. If the number of comment letters and the effort to prepare responses is greater than anticipated, Rincon will notify City staff immediately and discuss options to amend our scope of work and budget as necessary.

Rincon will address one round of consolidated City comments, to be provided in editable format, on the draft Responses to Comments and prepare a Screen Check Responses to Comments, in Microsoft Word with edits shown in track changes. Upon City review and approval of the Screen Check, Rincon will submit the Final EIR for hearing.

Task 10: Mitigation Monitoring and Reporting Program

Concurrent with Task 9, Rincon will prepare a Mitigation Monitoring and Reporting Plan (MMRP), which will be bound separately from the Final EIR. The MMRP will be provided in a format designed for use by planners, environmental monitors, or code enforcement officers. Essentially, this plan will take the form of a detailed table that describes:

- Persons/agencies responsible for monitoring compliance with each condition
- Timing when monitoring must occur
- Frequency of monitoring
- Criteria to be used to determine compliance with conditions

Task 11: Final EIR

After receipt of City comments on the Administrative Final EIR (Task 9) and MMRP (Task 10), Rincon will prepare a Screen Check Final EIR for City staff review and confirmation followed by a Final Program EIR after incorporating comments from City staff. Rincon will prepare a draft Notice of Determination (NOD) for City approval. Rincon staff will file with the County Clerk and State Clearinghouse within five working days of project approval. It is assumed that the City will pay all applicable fees associated with filing the NOD at the County Clerk. Rincon will provide one printed copy of the Final EIR for City records. Accessibility remediation of the Final EIR is included as Task 15.

Task 12: CEQA Findings, Statement of Overriding Considerations, and Resolution

Rincon will prepare the CEQA Findings and Statement of Overriding Considerations (if a significant and unavoidable impact is identified) for the project based on the impact conclusions of the EIR, based on a template provided by the City. The Draft CEQA Findings will be submitted alongside the Final EIR, and will contain a discussion of alternatives, including the rationale for rejecting any of the analyzed alternatives, using in part the project objectives. This scope of work assumes if alternatives are determined to be infeasible due to financial considerations, or that the Statement of Overriding Considerations relies on specific economic or financial factors, corresponding financial data to support these conclusions will be provided by the City. This task will comply with CEQA Guidelines Sections 15091 and 15093 and will be submitted in a City-approved electronic format. Rincon will prepare an administrative draft version of the CEQA Findings for City review, will address one round of consolidated City comments, and submit a final document version digitally.

Rincon will also prepare the draft CEQA Resolution for City review and comment. The CEQA Resolution will be prepared in accordance with the City's required format. The CEQA Resolution will incorporate the CEQA Findings and, if applicable, the Statement of Overriding Considerations as attachments. Rincon will address one round of consolidated City comments and submit a final document version digitally.

Task 13: Administrative Record

Rincon will maintain the Administrative Record for this project. Maintenance of an accurate and comprehensive administrative record is important for the defensibility of the EIR, should it be challenged. Rincon will develop a work plan at the outset that instructs internal staff on the way in which the Administrative Record will be developed and maintained. As sources are referenced in each section of the report, they are logged in an index containing a hyper-linked cross-reference to the individual source files, copies of which are maintained on company servers. These include, for example, guidance documents, websites, correspondence, and technical memoranda. The index and source files will be supplied digitally alongside the Draft EIR.

Task 14: Planning Commission and City Council Meetings (3)

This task provides a budgeted allowance for the Rincon team, including Rincon's Principal-in-Charge and Project Manager, to attend up to three in-person public meetings with the Planning Commission and City Council.

Task 15: Accessibility Services

Rincon offers digital accessibility services to help make electronic and information technology accessible to people with disabilities. Rincon will make the Public Draft EIR (Task 8) and Final EIR (Task 11), including attached appendices, compatible with built-in Accessibility Checkers. To this end, Rincon will analyze and update the documents to pass the built-in accessibility checkers; review, assess, and report on text color contrast issues; remediate illogical reading order issues; remediate any styling issues for identification and navigation; check or apply usable bookmarks; and apply or remediate the alt text on images. Please note that this does not guarantee Section 508/WCAG compliance but does meet the requirement to attempt accessibility to the maximum extent possible given the undue financial and administrative burden accessibility may impose onto a public entity. Rincon's Digital Accessibility Manager will require approximately two minutes per page for remediation.

Deliverables

Administrative/working drafts will be provided in Microsoft Word and/or Adobe PDF format. Revised documents will be provided in Microsoft Word with edits shown in track changes. Adobe PDF documents will be provided for public draft and final documents and shared via email and through the SharePoint site as part of the final administrative record.

- Draft and Final Notice of Preparation (Microsoft Word and Adobe PDF)
- Scoping Meeting materials (e.g., presentation)
- Attendance (two Rincon staff members) at an in-person Scoping Meeting held by the Planning Commission
- ADEIR (Microsoft Word)
- Screen Check Draft EIR (Microsoft Word with track changes retained)
- Public Draft EIR (two hard copies, Adobe PDF copy with user-friendly cross-reference hyperlinks)

- Draft and Final CEQA Notices, including the NOC for the NOP submittal and the NOC, NOA, and OPR's Summary Form for the Public Draft Program EIR submittal
- Draft and Final Response to Comments (Microsoft Word)
- Draft and Final MMRP (Microsoft Word and Adobe PDF)
- Screen Check Final EIR (Microsoft Word with track changes retained)
- Final Program EIR (two hard copies, Adobe PDF copy with user-friendly cross-reference hyperlinks)
- Draft and Final CEQA Findings and Statement of Overriding Considerations (Microsoft Word and Adobe PDF)
- Attendance (two Rincon staff members) at up to three in-person Planning Commission and/or City Council Hearings
- Notice of Determination (Adobe PDF)

Assumptions

The above scope of work includes the following assumptions:

- A map depicting the limits of the project area will be provided at notice to proceed.
- The City will finalize the preferred land use scenario prior to publication of the Notice of Preparation and preparation of the EIR Project Description.
- No changes to the Project Description will occur once preparation of the CEQA document has commenced.
- A California Historical Resources Information System records search will not be conducted.
- Cultural resources and paleontological resources field surveys will not be conducted.
- The project is not subject to federal oversight and compliance with Section 106 of the National Historic Preservation Act is not required.
- No project-level analysis will be included, and the analysis will be tailored to the programmatic level.
- Rincon will address two round(s) of consolidated comments from the City on each deliverable, to be provided as tracked changes in Word. Any additional revisions will be completed on a time and materials basis in accordance with our standard fee schedule (attached).
- All comments from the City will be provided as a consolidated set of comments in editable electronic format (i.e., as tracked changes in MS Word). All comments will clearly indicate the requested changes. If there are multiple reviewers, the City will be responsible for reconciling conflicting comments prior to sending to Rincon.
- Addressing City comments on each deliverable will not require substantial additional, new analysis or field investigation.
- To maintain momentum in the project schedule and provide cost efficiency, we assume City comments will focus on any new content in the previous version of each deliverable, and new comments on previously submitted content will be minimal.
- Rincon's project manager will attend monthly project status meetings for the duration of the contract, assumed to be 14 months. Status meetings will be virtual and will not exceed one hour in length with no more than one hour of time for meeting preparation and writing/circulating notes from the status meeting.

- This scope of work assumes that up to 20 comment letters containing comments on the content of the CEQA document will be received and that these letters can be responded to in a maximum of 100 professional staff hours. These assumptions are based on our prior experience with CEQA reviews for other similar types of projects. The actual level of effort required to respond will depend on the length, detail, and sophistication of the comments, in addition to the number of letters received. We reserve the right to reevaluate the effort level and request a scope amendment upon close of the public comment period.
- The City will be responsible for payment of the CDFW filing fee.
- The City will be responsible for circulating the Draft EIR to commenting agencies and interested groups or individuals, for giving notice to all organizations and individuals who have expressed interest in receiving such notice, and for publishing CEQA notices in a local newspaper.
- Costs have been allocated to tasks based upon Rincon's proposed approach. Rincon may re-allocate costs among tasks and/or direct costs as circumstances warrant so long as the adjustments maintain the total price within its authorized amount.
- Standard rates are subject to a 3.5 percent annual escalation.

Schedule

Rincon Consultants has an excellent reputation for adhering to schedules and meeting milestones. Based on our project understanding and the analysis required, Rincon proposes to adhere to a schedule that allows for completion of the environmental review process in approximately 10 months depending on timing of our receipt of a complete and stable project description, City review times, and number and complexity of public comments.

Key Task/Milestone	Duration	Total Time Elapsed
Contract Executed	1 day	1 day
Task 1: Kickoff Meeting	1 day	1 week
Task 2: NOP and Task 3: Project Description[1]	3 weeks	4 weeks
City Review	2 weeks	6 weeks
Task 2: Final NOP and Task 3: Final Project Description	1 week	7 weeks
Task 5: AB 52 and SB 18 Consultation Assistance	6 weeks from Kickoff	8 weeks
NOP Scoping Period	30 days	11 weeks
Task 4: Scoping Meeting	1 day	11 weeks
Task 6: Administrative Draft EIR	12 weeks[2] from NOP publication	19 weeks
City Review	3 weeks	22 weeks
Task 7: Screen Check Draft EIR	3 weeks	25 weeks
City Review	2 weeks	27 weeks
Task 8: Public Draft EIR and Task 13: Administrative Record	2 weeks	28 weeks
Task 15: Accessibility Remediation	1 week	29 weeks
Public Comment Period	45 days	35 weeks
Task 9: Responses to Comments and Administrative Final EIR, Task 10: MMRP, and Task 12: CEQA Findings, Statement of Overriding Considerations, and Resolution	4 weeks[3]	39 weeks
City Review	2 weeks	41 weeks

Key Task/Milestone	Duration	Total Time Elapsed
Task 11: Screen Check Final EIR	2 weeks	43 weeks
City Review	1 week	44 weeks
Task 11: Public Final EIR and Task 12: Revised CEQA Findings, Statement of Overriding Considerations, and Resolution	1 week	45 weeks
Task 15: Accessibility Remediation	1 week	46 weeks
Public Hearings (3)	3 days	To be determined

[1] Assumes all necessary project information and buildout assumptions are provided at or before the Kickoff Meeting.

[2] Assumes the VMT and Traffic Analysis is completed and provided to Rincon at least four weeks prior to Administrative Draft EIR submittal. This also assumes that preliminary data (ADT segment volumes, vehicle mix, etc.) is provided at least 6 weeks prior to Administrative Draft EIR submittal.

[3] If more than 20 letters are received, or comment letters are of a complex, technical nature that requires substantial effort to address, additional time may be required.

Please also note that this schedule is contingent on the City's early determination of the preferred alternative, and the assumption that project details do not change following approval of the EIR Project Description.

Cost

Rincon can complete the proposed work program for a cost not to exceed **$279,724.20**,. We recommend including a **10 percent contingency** fee only to be released upon City approval, for a total contract value of **$307,696.62**. A breakdown of our cost by task is summarized below. All services would be provided on a time and expense reimbursement basis and will be billed in accordance with our standard fee schedule for professional services.

Task	Staff Hours	Budget
Task 0: Project Management	118	$26,719.00
Task 1: Kickoff Meeting	5	$1,090.00
Task 2: NOP	9	$1,751.00
Task 3: Project Description	24	$4,483.00
Task 4: Scoping Meeting	18	$4,840.85
Task 5: AB 52 and SB 18 Consultation Assistance	11	$2,192.00
Task 6: Administrative Draft EIR	854	$158,501.00
Task 7: Screen Check Draft EIR	66	$13,075.00
Task 8: Public Draft EIR	41	$7,642.80
Task 9: Responses to Comments and Administrative Final EIR	100	$19,659.00
Task 10: Mitigation Monitoring and Reporting Program	16	$3,306.00
Task 11: Final EIR	26	$4,752.55
Task 12: CEQA Findings, Statement of Overriding Considerations, and Resolution	26	$5,045.00
Task 13: Administrative Record	23	$4,629.00
Task 14: Planning Commission and City Council Meetings (3)	54	$16,198.00
Task 15: Accessibility Services	20	$5,840.00
Subtotal	**1,401**	**$279,724.20**
Total with Contingency	**10%**	**$307,696.62**

Thank you for your consideration and for this opportunity to support your project. If you have any questions regarding this proposal, please do not hesitate to reach out.

Sincerely,
Rincon Consultants, Inc.



Aileen Mahoney
Project Manager



Abe Leider, AICP CEP
Principal

Attachments

Attachment 1 2023 Fee Schedule (Effective July 1, 2023)

Standard Fee Schedule for Environmental Sciences and Planning Services

Professional, Technical, and Support Personnel*	2023 July 1 – December 31	2024 January 1 – December 31	2025 January 1 – December 31	2026 January 1 – December 31
Senior Principal	$308	$319	$330	$342
Principal	$297	$307	$318	$329
Director	$297	$307	$318	$329
Senior Supervisor II	$282	$292	$302	$313
Supervisor I	$263	$272	$282	$291
Senior Professional II	$246	$255	$264	$273
Senior Professional I	$230	$238	$246	$255
Professional IV	$204	$211	$218	$226
Professional III	$189	$196	$203	$210
Professional II	$168	$174	$180	$186
Professional I	$150	$155	$160	$166
Associate III	$126	$130	$135	$139
Associate II	$113	$117	$121	$125
Associate I	$105	$109	$113	$117
Field Technician	$91	$94	$97	$101
Data Solutions Architect	$189	$196	$203	$210
Senior GIS Specialist	$181	$187	$194	$200
GIS/CADD Specialist II	$161	$167	$173	$179
GIS/CADD Specialist I	$145	$150	$155	$161
Technical Editor	$142	$147	$152	$157
Project Accountant	$121	$125	$129	$134
Billing Specialist	$103	$107	$111	$115
Publishing Specialist	$116	$120	$124	$129
Clerical	$103	$107	$111	$115

* Professional classifications include environmental scientists, urban planners, biologists, geologists, marine scientists, GHG verifiers, sustainability experts, cultural resources experts, and other professionals. Expert witness services consisting of depositions or in-court testimony are charged at the hourly rate of $400.

Reimbursable Expenses

Direct Cost	Rates
Photocopies – B/W	$0.25 (single-sided), $0.45 (double-sided)
Photocopies – Color	$1.55 (single-sided), $3.10 (double-sided)
Photocopies – 11” by 17”	$0.55 (B/W), $3.40 (color)
Oversized Maps	$8.50/square foot
Digital Production	$15/CD, $20/flash drive
Light-Duty and Passenger Vehicles*	$90/day
4WD and Off-Road Vehicles*	$150/day

*Current IRS mileage rate for mileage over 50 and for all miles incurred in employee-owned vehicles.

Other direct costs associated with the execution of a project, that are not included in the hourly rates above, are billed at cost plus 16%. These may include, but are not limited to, laboratory and drilling services, subcontractor services, authorized travel expenses, permit charges and filing fees, mailings and postage, performance bonds, sample handling and shipment, rental equipment, and vehicles other than covered by the above charges.

Annual Escalation. Standard rates subject to 3.5% annual escalation, on Jan 1.

Payment Terms. All fees will be billed to Client monthly and shall be due and payable upon receipt or as indicated in the contract provisions for the assignment. Invoices are delinquent if not paid within 10 days from receipt or per the contractually required payment terms.

Effective July 1, 2023

Equipment	Rate
Environmental Site Assessment	
Soil Vapor Extraction Monitoring Equipment	$160
Four Gas Monitor	$137
Flame Ionization Detector	$110
Photo Ionization Detector	$82
Hand Auger Sampler	$62
Water Level Indicator, DC Purge Pump	$46
CAPDash	$7,500
Natural Resources Field Equipment	
UAS Drone	$276
Spotting or Fiberoptic Scope	$170
Pettersson Bat Ultrasound Detector/Recording Equipment	$170
Sound Level Metering Field Package (Anemometer, Tripod and Digital Camera)	$113
GPS (Submeter Accuracy)	$67
Infrared Sensor Digital Camera or Computer Field Equipment	$57
Scent Station	$23
Laser Rangefinder/Altitude	$11
Pitfall Traps, Spotlights, Anemometer, GPS Units, Sterilized Sample Jar	$9
Mammal Trap, Large/Small	$1.55/$0.55
Water and Marine Resources Equipment	
Boat (20-foot Boston Whaler or Similar)	$800
Multiparameter Sonde (Temperature, Conductivity, Turbidity, DO, pH) with GPS	$170
Water Quality Equipment (DO, pH, Turbidity, Refractometer, Temperature)	$62
Refractometer (Salinity) or Turbidity Meter	$38
Large Block Nets	$114
Minnow Trap	$98
Net, Hand/Large Seine	$57
Field Equipment Packages	
Standard Field Package (Digital Camera, GPS, Thermometer, Binoculars, Tablet, Safety Equipment, and Botanic Collecting Equipment)	$114
Remote Field Package (Digital Camera, GPS, Thermometer, Binoculars, Tablet and Mifi, Delorme Satellite Beacon, 24-Hour Safety Phone)	$144
Amphibian/Vernal Pool Field Package (Digital Camera, GPS, Thermometer, Decon Chlorine, Waders, Float Tube, Hand Net, Field Microscope)	$170
Fisheries Equipment Package (Waders, Wetsuits, Dip Nets, Seine Nets, Bubblers, Buckets)	$57
Underwater and Marine Sampling Gear (Photo/Video Camera, Scuba Equipment [Tanks, BCD, Regulators, Wetsuits, etc.])	$57/diver
Marine Field Package (Personal Flotation Devices, 100-foot Reel Tapes with Stainless Carabiners, Pelican Floats, Underwater Slates, Thermometer, Refractometer, Anemometer, Various Field Guides)	$100
Insurance, Hazard, and Fees	
Historic Research Fees	$55
L&H Dive Insurance	$57/diver
Level C Health and Safety	$70/person

EXHIBIT B

INSURANCE REQUIREMENTS

Minimum Scope and Limits of Insurance

Consultant/Contractor shall maintain limits no less than:

1. Commercial General Liability, including operations, products, and completed operations, as applicable:
   $1,000,000 per occurrence/**$2,000,000** aggregate for bodily injury, personal injury, and property damage. If Commercial General Liability or other form of insurance with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.
2. Automobile Liability:
   $1,000,000 per accident for bodily injury and property damage.
3. Workers' Compensation and Employer's Liability:
   Statutory limits as required by the State of California including **$1,000,000** Employers' Liability per accident, per employee for bodily injury or disease. A waiver of subrogation is required for Workers' Compensation insurance. If Consultant/Contractor is a sole proprietor, then they must sign "Contractor Release of Liability".
4. Professional Liability/Errors and Omissions:
   $1,000,000 per claim. Consultant/Contractor warrants that any retroactive date under this policy shall precede the effective date of this contract and, either continuous coverage will be maintained, or an extended discovery period will be exercised for a period of two years beginning at the time work under this contract is completed.

Deductibles and Self-Insured Retention

All self-insured retentions (SIR) must be disclosed to Risk Management for approval and shall not reduce the limits of liability. Policies containing any self-insured retention (SIR) provision shall provide, or be endorsed to provide, that the SIR may be satisfied by either the named insured or the City of Livermore. The City of Livermore reserves the right to obtain a full certified copy of any insurance policy and endorsements. Failure to exercise this right shall not constitute a waiver of right to exercise later.

Acceptability of Insurers

Insurance is to be placed with insurers with a current A.M. Best rating of no less than A: VII and accepted to do business in the State of California, unless otherwise acceptable to the City of Livermore.

Other Insurance Provisions

The general liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions:

1. The City of Livermore, its officers, officials, employees, and designated

volunteers are to be covered as additional insureds as respects: liability arising out of activities performed by or on behalf of the Consultant/Contractor; or automobiles owned, leased, hired or borrowed by the Consultant/Contractor. The coverage shall contain no special limitations on the scope of protection afforded to the City of Livermore, its officers, officials, employees, or volunteers.

2. The limits of insurance required in this agreement may be satisfied by a combination of primary and umbrella or excess insurance. The additional insured coverage under the Consultant's/Contractor's policy shall be primary and non-contributory and will not seek contribution from the City's insurance or self-insurance and shall be at least as broad as ISO Form CG 20 10 04 13. Any umbrella or excess insurance shall contain or be endorsed to contain a provision that such coverage shall also apply on a primary and non-contributory basis for the benefit of the City of Livermore before the City's own insurance or self-insurance shall be called upon to protect it as a named insured.
3. Any failure to comply with reporting or other provisions of the policy, including breaches of warranties, shall not affect coverage provided to the City of Livermore, its officers, officials, employees, or volunteers.
4. The Consultant's/Contractor's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
5. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be canceled by either party before expiration of the policy unless notice is delivered in accordance with policy provisions.
6. It shall be a requirement under this agreement that any available insurance proceeds broader than, or in excess of, the specified minimum insurance coverage requirements and/or limits shall be available to the additional insured. Furthermore, the requirements for coverage and limits shall be (1) the minimum coverage and limits specified in this agreement; or (2) the broader coverage and maximum limits of coverage of any insurance policy or proceeds available to the named Insured; whichever is greater.
7. Certificate Holder section of the insurance certificate should read: City of Livermore, 1052 S. Livermore Avenue, Livermore, CA 94550

Verification of Coverage

Consultant/Contractor shall furnish certificates of insurance and endorsement(s) effecting coverage to the City of Livermore for approval. The endorsements shall be on forms acceptable to the City of Livermore. All certificates and endorsements are to be received and approved by the City of Livermore before work commences. The City of Livermore reserves the right to require complete and certified copies of all insurance policies required by this Agreement.

LIVERMORE
CALIFORNIA

CITY COUNCIL STAFF REPORT **ITEM NO. 5.4**

DATE: July 24, 2023

TO: Honorable Mayor and City Council

FROM: Paul Spence, Community Development Director

SUBJECT: Resolution awarding and authorizing execution of an agreement for a duration not to exceed 180 working days with Terocons Inc. in an amount not-to-exceed $760,407, for the construction of the Crosswalk Improvement Project, No. 2022-06/2021-35.

RECOMMENDED ACTION

Staff recommends the City Council adopt a resolution authorizing the City Manager to execute a construction contract with Terocons Inc. in an amount not-to-exceed $760,407, for a contract duration not to exceed 180 working days, for construction of the Crosswalk Improvement Project, No. 2022-06/2021-35 in substantially similar form to the draft contract in Exhibit A of the Resolution subject to the City Attorney approval to form of the final construction contract and acceptance of insurance by the Risk Manager.

SUMMARY

The Crosswalk Improvement Project will construct safety improvements, access ramps, bulb-out extensions along with sidewalks, rectangular rapid flashing beacons, pavement striping for crosswalks, traffic signs, and all appurtenant work.

On June 20, 2023, eight bids were received for this project. Staff is preparing the construction contract package for the City Attorney's review. The process to finalize the contract package for the City Manager's signature and the final issuance of the executed contract by City Clerk's office may take approximately 4 weeks.

The crosswalk improvements for Portola Ave. at Enos Way are located at Lawrence Elementary School. To minimize any inconvenience to students, parents, and faculty it is ideal for the construction to begin in August 2023. Authorizing the City Manager to execute the final construction contract will allow this work to begin in August 2023. Otherwise, construction will start in October 2023 when school is in full session.

DISCUSSION

The Crosswalk Improvement Project will construct safety improvements at the following locations:

A. Crosswalk Safety Improvements 2022, Project Number 2022-06 - Portola Ave. at Enos Way. The work at this location includes construction of ADA-compliant curb ramps, sidewalk, rectangular rapid flashing beacons, yield markings, realignment of crosswalk, curb extensions, median island, thermoplastic pavement striping for crosswalks, and all appurtenant work. The rectangular rapid flashing beacons will increase driver awareness of pedestrians and increase driver compliance in yielding to pedestrians. The realignment of the crosswalk, curb extension, and median island will shorten the distance and time a pedestrian is in the roadway.

B. Crosswalk Safety Improvements 2022, Project Number 2022-06 - College Ave. at Fifth St. and College Ave. at Kingsbury Dr. The work at this location includes construction of ADA-compliant access curb ramps, installation of new rectangular rapid flashing beacons, thermoplastic pavement striping for crosswalks, and all appurtenant work. Improvements on College Ave. will improve crossing leading to two access points to the trails south of College Ave., one from Fifth St. and the other from Kingsbury Dr.

C. Concannon Blvd. at Robertson Park Rd. Crossing Enhancements, Project Number 2021-35 - Concannon Blvd. at Epson St. and Concannon Blvd. at Robertson Park Rd. The work at this location includes construction of ADA-compliant curb ramps, sidewalk, rectangular rapid flashing beacons, regular flashing beacons, curb extension, thermoplastic pavement striping for crosswalks, and all appurtenant work. Improvements on Concannon Blvd. at Robertson Park Rd. will provide better connectivity from the trail on the east side of Concannon Blvd. to Robertson Park Rd. and improvements on Concannon Blvd. at Epson St. will provide pedestrians a safer route from the residential neighborhood on the south side of Concannon Blvd. to Karl Wente Park and Sunset Elementary School on the north.

On June 20, 2023, bids for this project were received and opened with eight contractors submitting bids. The lowest responsible, responsive bidder was Terocons Inc. The following is a list of the bids received and the Engineer’s Estimate for the project:

Contractor	Location	Bid Amount
Terocons Inc.	San Francisco, CA	$ 760,407
Sposito	Livermore, CA	$ 899,965
Redgwick Construction Co.	Oakland, CA	$ 920,544
FBD Vanguard Construction Inc.	Livermore, CA	$ 962,138
Gradetech, Inc.	San Ramon, CA	$1,046,030
Golden Bay Construction, Inc.	Hayward, CA	$1,071,995
Kerex Engineering, Inc.	Martinez, CA	$1,082,942
Ray's Electric	Oakland, CA	$1,193,391
Engineer’s Estimate		$ 842,000

In accordance with Livermore Municipal Code Section 2.68.520 Modification of Public Works Contract, the City Manager is allowed to authorize a Change Order of $50,000 or 10% of the contract price, whichever is greater.

Staff has checked the references of Terocons Inc., and found they have performed similar work for other cities in a satisfactory manner.

FISCAL AND ADMINISTRATIVE IMPACTS

In FY 2022-24, $1,360,000 was budgeted for the project. Approximately a 20% project contingency was included in this budget to account for design variance and fluctuating bid climate. The bid climate was favorable and there were no design phase issues. The projected project budget is approximately $1.1M: $25K for city staff project management, $160K for design consultant services, $20K for consultant construction support service, $40K for city staff construction management, inspection and material testing, $840K for construction contract plus 10% contingency, and $15k for grant administration.

Funding for the Crosswalk Safety Improvements 2022, Project Number 2022-06 is included in the 2021-2023 Capital Improvement Plan and the 2023-2028 Capital Improvement Plan and no additional appropriation is required. Portola Ave. at Enos Way is funded by Alameda County Transportation Commission's Safe Routes to School Mini Grant (Fund 624) and Vehicle Registration Fee (Fund 681). College Ave. at 5th St. and College Ave. at Kingsbury Dr. is funded by Vehicle Registration Fee (Fund 681).

Crosswalk Safety Improvements, Project 2022-06 - Budget

Fund No.	Fund Name	FY 2022-2023	FY 2023-2024	Total
624	Local & Other Grant	$17,000	$84,000	$101,000
681	Vehicle Registration Fee	$133,000	$576,000	$709,000
Total		$150,000	$660,000	$810,000

Funding for the Concannon Blvd. at Robertson Park Rd. Crossing Enhancements, Project Number 2021-35 is included in the 2021-2023 Capital Improvement Plan and the 2023-2028 Capital Improvement Plan and no additional appropriation is required. Concannon Blvd. at Epson St. and Concannon Blvd. at Robertson Park Rd. is funded by the Alameda County Transportation Commission's 2022 Comprehensive Investment Plan Grant (Fund 624), Gas Tax – SB1 (Fund 651) and Measure BB – Local Streets and Roads (Fund 688).

Concannon Blvd. at Robertson Park Rd. Crossing Enhancements, Project 2021-35 - Budget

Fund No.	Fund Name	FY 2022-2023	FY 2023-2024	Total
624	Local & Other Grant		$242,000	$242,000
651	Gas Tax-SB1		$158,000	$158,000
688	Measure BB - Local St & Road	$150,000		$150,000
Total		$150,000	$400,000	$550,000

COMMUNITY PILLAR

1: A Safe Community that Thrives

GOAL CATEGORY

10: Work to make a safe and efficient local transportation network and address safety concerns

ATTACHMENTS

1. Location Map

2. Resolution
3. Exhibit A - Agreement

Prepared by: Mallika Ramachandran
Assistant City Engineer

Approved by:

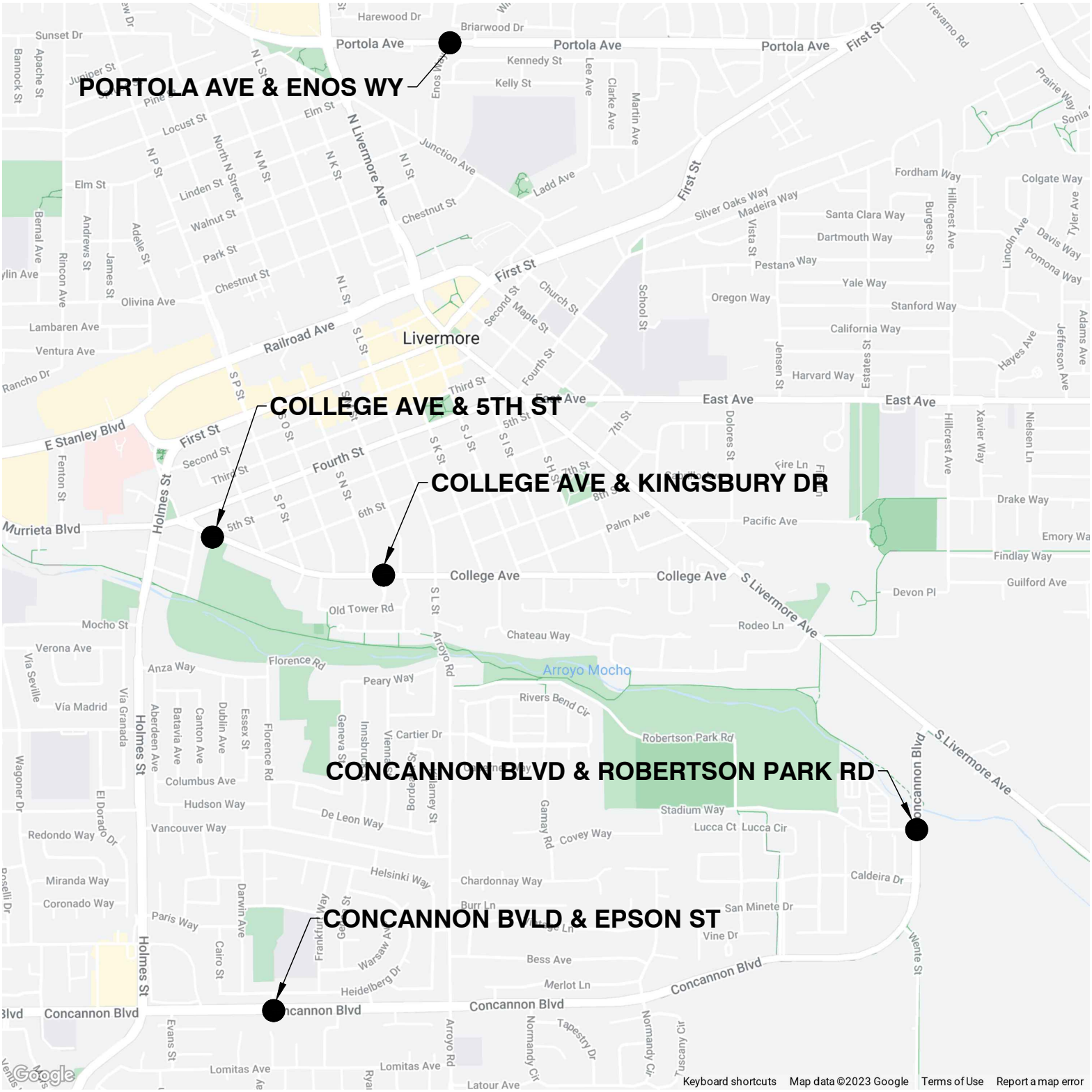


Marianna Marysheva
City Manager

Fiscal Review by:



Tina Olson
Administrative Services Director



PROJECT LOCATION MAP

NOT TO SCALE

IN THE CITY COUNCIL OF THE CITY OF LIVERMORE, CALIFORNIA

A RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE A CONSTRUCTION CONTRACT WITH TEROCONS INC., FOR A CONTRACT DURATION NOT TO EXCEED 180 WORKING DAYS, FOR THE CONSTRUCTION OF THE CROSSWALK IMPROVEMENT PROJECT, NO. 2022-06/2021-35 IN AN AMOUNT NOT-TO-EXCEED $760,407

(Crosswalk Improvement Project, No. 2022-06/2021-35)

The Crosswalk Improvement Project will conduct safety improvement projects and includes the construction of Americans with Disabilities Act (ADA) access ramps, bulb-out extensions along with sidewalks, rectangular rapid flashing beacons (RRFB) system, thermoplastic pavement striping for crosswalks, traffic signs, and all appurtenant work.

Eight bids for the Crosswalk Improvement Project were received on June 20, 2023.

After a thorough review of all bid submittals by the eight bidders, Staff recommends the City Council adopt a resolution authorizing the City Manager to execute a construction contract in substantially similar form to the draft contract in Exhibit A, subject to the City Attorney approval as to form of the final construction contract and approval as to insurance by the Risk Manager, with Terocons Inc., in an amount not-to-exceed $760,407, which has been determined to be the lowest responsible and responsive bid for the construction of the Crosswalk Improvement, Project No. 2022-06/2021-35.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Livermore that it hereby:

1. Authorizes the City Manager to execute a construction contract similar to the draft contract, attached hereto as Exhibit A, on behalf of the City of Livermore with Terocons Inc., in the amount of $760,407, here in above in accordance with the terms, specifications, and general provisions of the bid package for the project specified herein;

2. Rejects all other bids or proposals; and

3. Authorizes the City Manager to take whatever actions are necessary and appropriate to carry out the purpose and intent of this resolution, including approving minor changes to the proposed agreement.

On motion of Council Member _____, seconded by Council Member _____, the foregoing resolution was passed and adopted on July 24, 2023, by the following vote:

AYES: COUNCIL MEMBERS:
NOES: COUNCIL MEMBERS:
ABSENT: COUNCIL MEMBERS:
ABSTAIN: COUNCIL MEMBERS:

ATTEST:

_____
Marie Weber
City Clerk

APPROVED AS TO FORM:

/s/ Kimberly Cilley
Kimberly Cilley
Senior Assistant City Attorney

Exhibit A – Draft Construction Contract with Terocons Inc.

CONTRACT

This public works contract ("Contract") is entered into by and between the City of Livermore, a California Municipal Corporation ("City") and Terocons, Inc., a California corporation ("Contractor") for work on the Crosswalk Improvement Project ("Project").

The Parties Agree as Follows:

1. Award of Contract.

In response to the Notice Inviting Bids, Contractor has submitted a Bid Proposal to perform work on the Project, and on _____, 2023, as part of Resolution No. _____, City authorized award of this Contract to Contractor for the amount of Contractor's bid.

Contract Documents.

This Contract consists of all of the written representations and submissions made by Contractor as part of the Bid process and the following numbered and un-numbered component documents, as detailed on the table of contents of this Agreement:

a. Bidding requirements (consisting of the Notice Inviting Bids; Instructions to Bidders; Bid Proposal; Bid Schedule, Subcontractor List, Noncollusion Declaration, Bid Bond, Bidder's Questionnaire, Payment Bond, Performance Bond, Warranty Bond);

b. General Conditions;

c. Special Conditions;

d. Division One Technical Specifications;

e. Appendix;

f. Index of Defined Terms;

g. Project Drawings and Specifications;

h. Bid Addenda, if any;

i. Change Orders, if any;

j. ALB Notice;

k. Notice to Proceed;

l. City Standard Specifications and Details;

m. And the following:

Contractor's Obligations.

Contractor agrees to perform all of the Work required for the Project, as specified in the Contract Documents. Contractor must provide, furnish, and supply all things necessary and incidental for the timely performance and completion of the Work, including all necessary labor, materials, equipment, transportation, and utilities, unless otherwise specified in the Contract Documents. Contractor must use its best efforts to complete the Work in a professional and expeditious manner and to meet or exceed the performance standards required by the Contract Documents.

Payment.

As full and complete compensation for Contractor's timely performance and completion of the Work in strict accordance with the terms and conditions of the Contract Documents, City will pay Contractor Seven Hundred Sixty Thousand Four Hundred Seven and Four Tenths Dollars ($760,407.40) (the "**Contract Price**"), in accordance with the payment provisions in the General Conditions.

Time for Completion.

Substantial Completion

Contractor must achieve Substantial Completion, as that term is defined in the General Conditions, of the Project Work within 90 Working Days from the commencement date stated in the Notice to Proceed. **It is critically important to this Project that Portola Ave. and Enos Way Crosswalk Improvement to be completed prior to August 11, 2023**. ("**Substantial Completion Deadline**."). For this project, the Contractor shall also incorporate 10 number of average anticipated inclement Weather Days into their bid estimate. Contractor shall be solely responsible for the extended overhead and profit for these weather days and shall not be compensated by the City in any way, reference Section 10.3 of the General Conditions and Section 013200-4.3 Contract Schedules for additional weather day information.

Final Completion

Contractor must achieve Final Completion, as that term is defined in the General Conditions, of the Project Work within 20 Working Days after the date of substantial completion. ("**Final Completion Deadline**.")

Early Completion.

By signing below, Contractor expressly waives any claim for delayed early completion.

Liquidated Damages.

If Contractor fails to meet either the Substantial Completion Deadline or the Final Completion Deadline, City may assess liquidated damages according the provisions in

the General Conditions of the Contract Documents in the following amounts for each day of Unexcused Delay, and the Contract Price shall be reduced accordingly.

Substantial Completion Deadline: $500 per day.

Final Completion Deadline: $500 per day.

Labor Code Compliance.

This Contract is subject to all applicable requirements of Chapter 1 of Part 7 of Division 2 of the California Labor Code, including requirements pertaining to wages, working hours and workers' compensation insurance.

Prevailing Wages.

This Project is subject to the prevailing wage requirements applicable to the locality in which the Work is to be performed for each craft, classification or type of worker needed to perform the Work, including employer payments for health and welfare, pension, vacation, apprenticeship and similar purposes. The general prevailing wage rates for each craft, classification or type of covered work are available online at http://www.dir.ca.gov/DLSR.

DIR Registration.

City will not accept a Bid Proposal from or enter into the Contract with a bidder without proof that the bidder and its Subcontractors are registered with the California Department of Industrial Relations to perform public work under Labor Code, Section 1725.5, subject to limited legal exceptions allowed by the Labor Code.

Workers' Compensation Certification.

Under Labor Code, Section 1861, by signing this Contract, Contractor certifies as follows: "I am aware of the provisions of Labor Code, Section 3700 which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the Work on this Contract."

The successful bidder previous to the entering of the contract to do the said work shall take out and maintain in full force and effect worker's compensation insurance with an insurance carrier authorized to transact business in the State of California, covering the bidder's full liability for compensation to any persons employed who may be injured in the carrying out of said contract or the dependents thereof. Evidence of such worker's compensation insurance shall be furnished to the City of Livermore by certificate and waiver of subrogation in the City's electronic insurance certificate tracking system (PINS) prior to the commencement of the work and said certificate shall contain a provision that the coverage thereunder will not be canceled until at least thirty (30) days prior written notice has been given to the City.

Notice.

Any notice, billing, or payment required by the Contract Documents must be made in writing, and sent to the other party by personal delivery, U.S. Mail, a reliable overnight delivery service, facsimile, or by email as a PDF (or comparable) file. Notice is deemed effective upon delivery unless otherwise specified. Notice for each party must be given as follows:

	City	Contractor
Name	Juan Tenorio	
Address	1052 South Livermore Avenue	
City/state/zip	Livermore, CA 94550	
Phone	925-960-4554	
Fax	925-960-4505	
Attention	City Engineer	
Email	jtenorio@livermoreca.gov	
Copy to	xliu@livermoreca.gov	

General Provisions.

The following items are repeated here as stated as part of Part 2, General Conditions, for emphasis:

Assignment and Successors.

Contractor may not assign its rights or obligations under this Contract, in part or in whole, without City's written consent. This Contract is binding on Contractor's successors and permitted assigns. A consolidation or merger of Contractor or a change in ownership of 25% or more of Contractor's capital stock constitutes an assignment by Contractor requiring the City's written consent.

Third Party Beneficiaries.

There are no intended third party beneficiaries to this Contract except as expressly provided in the General Conditions or Special Conditions.

Governing Law and Venue.

This Contract will be governed by California law and venue will be in the Superior Court of the County in which the Project is located, and no other place.

Amendment.

No amendment or modification of this Contract will be binding unless it is in a writing duly authorized and signed by the parties to this Contract.

Integration; Severability.

This Contract and the Contract Documents incorporated herein, including authorized amendments or Change Orders thereto, constitute the final, complete, and exclusive terms of the agreement between City and Contractor. If any provision of the Contract

Documents, or portion of a provision, is determined to be illegal, invalid, or unenforceable, the remaining provisions of the Contract Documents will remain in full force and effect.

Authorization.

Each individual signing below warrants that he or she is authorized to do so by the party that he or she represents, and that this Contract is legally binding on that party. If Contractor is a corporation, signatures from two officers of the corporation are required under California Corporation Code, Section 313.

The parties agree to this Contract as witnessed by the signatures below:

CITY	CONTRACTOR
City of Livermore, a California Municipal Corporation s/_____ Marianna Marysheva, City Manager Date: _____ Approved as to form: _____ City of Livermore City Attorney	_____ s/_____ Name/Title [print] Date: _____ s/_____ Name/Title [print] Date: _____ _____ Contractor's Calif. License Number(s) Seal: _____ Expiration Date(s)

LIVERMORE
CALIFORNIA

CITY COUNCIL STAFF REPORT **ITEM NO. 5.5**

DATE: July 24, 2023

TO: Honorable Mayor and City Council

FROM: Paul Spence, Community Development Director

SUBJECT: Resolution awarding and authorizing execution of an agreement for a duration not-to-exceed 70 working days, in an amount not-to-exceed $365,670, with Gradetech Inc. for repairing 0.8 centerline miles of three trails and constructing a new bypass segment at Robertson Park, Project 2018-20

RECOMMENDED ACTION

Staff recommends the City Council adopt a resolution:

1. Awarding a construction contract to Gradetech Inc., in an amount not-to-exceed $365,670, for construction of the Multi-Use Trail Repairs - 2020 Project 2018-20, and authorizing the City Manager to sign the agreement as Exhibit A to the resolution; and
2. Rejecting all other bids or proposals; and
3. Authorizing the City Manager to take whatever actions are necessary and appropriate to carry out the purpose and intent of this resolution including approving minor changes to the proposed agreement.

SUMMARY

The 2020 Multi-Use Trail Repair, Project 2018-20, will repair and rehabilitate 0.80 centerline miles of three damaged trail sections and make minor alterations to improve safety. This project will also construct a new trail segment at Robertson Park to bypass a portion of trail that was damaged by the 2022-23 winter storms. Five bids were received for the project on June 13, 2023. Gradetech Inc. submitted a bid of $365,670 and is the lowest responsible and responsive bidder.

DISCUSSION

The 2020 Multi-Use Trail Repair Project will restore the pavement on three trail segments (see Location Map, Attachment 1). These trail segments were selected based on their deteriorating condition and potential risks they posed to pedestrians and cyclists due to tree roots. The initial assessment of these trail segments was recorded in a study conducted by AMS Consulting in April 2022. The rehabilitation process will involve root pruning, base repairs, and application of a 1.5 to 2-inch layer of asphalt

concrete.

Additionally, this project will include the construction a new trail segment at Robertson Park. Severe damage and debris accumulation occurred during the winter storms of 2022-23. This was the third major damage incident within the past five years at this location. The existing trail configuration is next to the creek, thus prone to storm damage. To reduce the burden of repairs, this project includes the creation of a new bypass trail, connecting the Arroyo Mocho Trail through this area away from the creek.

The City will receive reimbursement for this work with a grant from the Transportation Development Act (TDA).

Staff advertised the project on May 23, 2023, and opened bids June 13, 2023. The City received five bids for the project. The lowest responsible and responsive bid was received from Gradetech Inc. for $365,670. Gradetech Inc. is based in Castro Valley and has previously worked for the City on the Decorative Wall Replacement Project. Gradetech's workmanship and performance was satisfactory.

The following is a list of bids received and the Engineer's Estimate for the project:

2020 Multi-Use Trail Repair Project, Project 2018-20 Bid Results

Contractor	Location	Bid Amount
Gradetech Inc.	Castro Valley	$365,670
Terocons	San Francisco	$374,400
Marshall Brothers	Livermore	$496,391
Granite Rock	San Jose	$559,127
O'Grady Paving	Mountain View	$594,986
Engineer's Estimate		$436,879

In accordance with Livermore Municipal Code, Section 2.68.560B the City Manager can authorize change orders up to a cumulative amount of $50,000.

FISCAL AND ADMINISTRATIVE IMPACTS

The construction contract award amount is $365,670. Funding for this agreement, change orders, inspections, construction management, material testing and other project costs are included in the project budget for the Multi-Use Trail Repairs -2020 Project 2018-20 in the Fiscal Year 2023-2028 Capital Improvement Plan and no additional funding is needed. The project is funded with TDA Grant (Fund 674) and Measure BB (Fund 688).

COMMUNITY PILLAR

1: A Safe Community That Thrives

GOAL

10: Work to maintain a safe and efficient local transportation network and address safety concerns

GUIDING DOCUMENT

Active Transportation Plan

ATTACHMENTS

1. Location Map
2. Resolution
3. Exhibit A - Agreement

Prepared by: Saurabh Nijhawan
Associate Engineer

Approved by:



Marianna Marysheva
City Manager

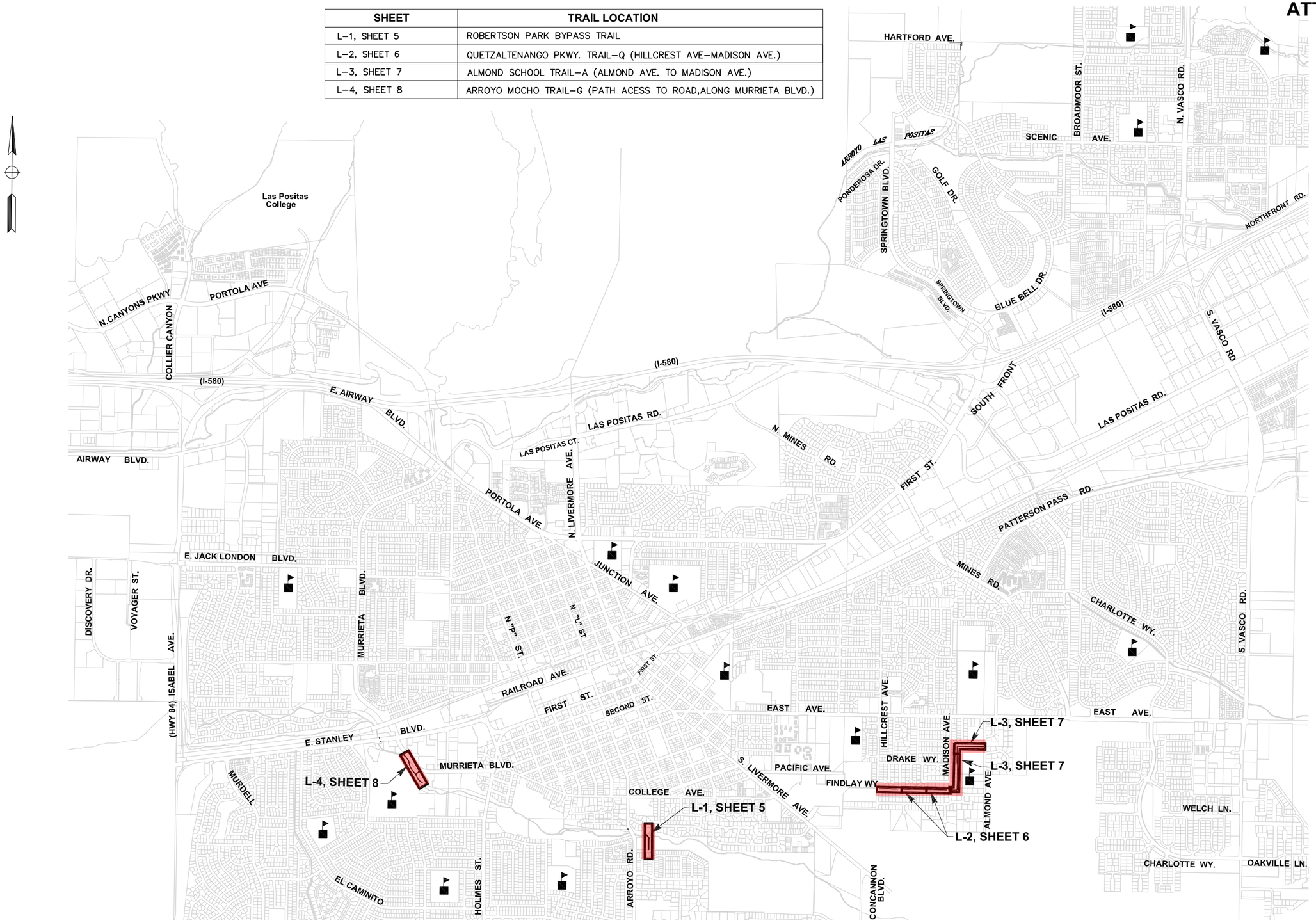
Fiscal Review by:



Tina Olson
Administrative Services Director

ATTACHMENT 1

SHEET	TRAIL LOCATION
L–1, SHEET 5	ROBERTSON PARK BYPASS TRAIL
L–2, SHEET 6	QUETZALTENANGO PKWY. TRAIL–Q (HILLCREST AVE–MADISON AVE.)
L–3, SHEET 7	ALMOND SCHOOL TRAIL–A (ALMOND AVE. TO MADISON AVE.)
L–4, SHEET 8	ARROYO MOCHO TRAIL–G (PATH ACESS TO ROAD,ALONG MURRIETA BLVD.)



Inch 1 0

1-800-227-2600 CALL BEFORE YOU DIG USA UNDERGROUND SERVICE ALERT

REGISTERED PROFESSIONAL ENGINEER SAURABH NIJHAWAN No. 84814 Exp. 03-31-24 CIVIL STATE OF CALIFORNIA

Saurabh Nijhawan 5/15/22

APPROVED BY	DATE
DESIGNED BY: HI/SN	
DRAWN BY: HI	
CHECKED BY: SN/MR	

NO.	DATE	BY	REVISIONS
1			

CITY OF LIVERMORE CALIFORNIA

COMMUNITY DEVELOPMENT DEPARTMENT - ENGINEERING DIVISION

City Project No. 2018-20

MULTI-USE TRAIL REPAIRS - 2020

KEY MAP

K-1

Sheet 2

Of 11

Scale: NONE

IN THE CITY COUNCIL OF THE CITY OF LIVERMORE, CALIFORNIA

A RESOLUTION AWARDING A CONSTRUCTION CONTRACT WITH GRADETECH INC., FOR A CONTRACT DURATION NOT TO EXCEED 70 WORKING DAYS, FOR CONSTRUCTION OF THE MULI-USE TRAIL REPAIRS - 2020, PROJECT NO. 2018-20, IN AN AMOUNT NOT-TO-EXCEED $365,670

(Multi-Use Trail Repairs - 2020, Project 2018-20)

The City of Livermore (City) advertised on May 23, 2023, and opened five bids on June 13, 2023, for the construction of the Multi-Use Trail Repairs – 2020 Project 2018-20 ("Project"). The Project involves repairing 0.80 centerline miles of three trail segments and constructing a new bypass segment at Robertson Park.

City staff recommends awarding the Project to Gradetech Inc., the lowest responsible and responsive bidder for the Project.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Livermore that it hereby:

1. Awards a construction contract to Gradetech Inc., in an amount not-to-exceed $365,670, for construction of the Multi-Use Trail Repairs - 2020 Project 2018-20, and authorizes the City Manager to execute the agreement, attached hereto as Exhibit A and incorporated by this reference;

2. Rejects all other bids or proposals; and

3. Authorizes the City Manager to take whatever actions are necessary and appropriate to carry out the purpose and intent of this resolution, including approving minor changes to the proposed agreement.

On motion of Council Member _____, seconded by Council Member _____, the foregoing resolution was passed and adopted on July 24, 2023, by the following vote:

AYES: COUNCIL MEMBERS:
NOES: COUNCIL MEMBERS:
ABSENT: COUNCIL MEMBERS:
ABSTAIN: COUNCIL MEMBERS:

ATTEST:

_____
Marie Weber
City Clerk

APPROVED AS TO FORM:

/s/ Molly O'Toole
Molly O'Toole
Deputy City Attorney

Exhibit A- Construction Contract with Gradetech Inc.

CONTRACT

This public works contract ("Contract") is entered into by and between the City of Livermore, a California Municipal Corporation ("City") and Gradetech Inc.("Contractor") for work on the 2020 Multi Use Trail Repair Project, CIP No. 2018-20 ("Project").

The Parties Agree as Follows:

1. Award of Contract.

In response to the Notice Inviting Bids, Contractor has submitted a Bid Proposal to perform work on the Project, and on _____, 20___, as part of Resolution No. _____, City authorized award of this Contract to Contractor for the amount of Contractor's bid.

2. Contract Documents.

This Contract consists of all of the written representations and submissions made by Contractor as part of the Bid process and the following numbered and un-numbered component documents, as detailed on the table of contents of this Agreement:

a. Bidding requirements (consisting of the Notice Inviting Bids; Instructions to Bidders; Bid Proposal; Bid Schedule, Subcontractor List, Noncollusion Declaration, Bid Bond, Bidder's Questionnaire, Payment Bond, Performance Bond, Warranty Bond);

b. General Conditions;

c. Special Conditions;

d. Division One Technical Specifications;

e. Appendix;

f. Index of Defined Terms;

g. Project Drawings and Specifications;

h. Bid Addenda, if any;

i. Change Orders, if any;

j. ALB Notice;

k. Notice to Proceed;

l. City Standard Specifications and Details;

m. And the following: No Other Documents

3. Contractor's Obligations.

Contractor agrees to perform all of the Work required for the Project, as specified in the Contract Documents. Contractor must provide, furnish, and supply all things necessary and incidental for the timely performance and completion of the Work, including all necessary labor, materials, equipment, transportation, and utilities, unless otherwise specified in the Contract Documents. Contractor must use its best efforts to complete the Work in a professional and expeditious manner and to meet or exceed the performance standards required by the Contract Documents.

4. Payment.

As full and complete compensation for Contractor's timely performance and completion of the Work in strict accordance with the terms and conditions of the Contract Documents, City will pay Contractor Three Hundred Sixty Five Thousand Six Hundred and Seventy Dollars ($365,670) (the "**Contract Price**"), in accordance with the payment provisions in the General Conditions.

5. Time for Completion.

5.1. Substantial Completion

Contractor must achieve Substantial Completion, as that term is defined in the General Conditions, of the Project Work within 35 Working Days from the commencement date stated in the Notice to Proceed. ("**Substantial Completion Deadline**."). For this project, the Contractor shall also incorporate 5 Working Days of average anticipated inclement Weather Days into their bid estimate. Contractor shall be solely responsible for the extended overhead and profit for these weather days and shall not be compensated by the City in any way, reference Section 10.3 of the General Conditions and Section 013200-4.3 Contract Schedules for additional weather day information.

5.2. Final Completion

Contractor must achieve Final Completion, as that term is defined in the General Conditions, of the Project Work within 22 Working Days Working Days after the date of substantial completion. ("**Final Completion Deadline**.")

5.3. Early Completion.

By signing below, Contractor expressly waives any claim for delayed early completion.

6. Liquidated Damages.

If Contractor fails to meet either the Substantial Completion Deadline or the Final Completion Deadline, City may assess liquidated damages according the provisions in the General Conditions of the Contract Documents in the following amounts for each day of Unexcused Delay, and the Contract Price shall be reduced accordingly.

6.1. Substantial Completion Deadline: Five Hundred ($ 500) per day.

6.2. Final Completion Deadline: Five Hundred ($ 500) per day.

7. Labor Code Compliance.

This Contract is subject to all applicable requirements of Chapter 1 of Part 7 of Division 2 of the California Labor Code, including requirements pertaining to wages, working hours and workers' compensation insurance.

7.1. Prevailing Wages.

This Project is subject to the prevailing wage requirements applicable to the locality in which the Work is to be performed for each craft, classification or type of worker needed to perform the Work, including employer payments for health and welfare, pension, vacation, apprenticeship and similar purposes. The general prevailing wage rates for each craft, classification or type of covered work are available online at http://www.dir.ca.gov/DLSR.

7.2. DIR Registration.

City will not accept a Bid Proposal from or enter into the Contract with a bidder without proof that the bidder and its Subcontractors are registered with the California Department of Industrial Relations to perform public work under Labor Code, Section 1725.5, subject to limited legal exceptions allowed by the Labor Code.

8. Workers' Compensation Certification.

Under Labor Code, Section 1861, by signing this Contract, Contractor certifies as follows: "I am aware of the provisions of Labor Code, Section 3700 which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the Work on this Contract."

The successful bidder previous to the entering of the contract to do the said work shall take out and maintain in full force and effect worker's compensation insurance with an insurance carrier authorized to transact business in the State of California, covering the bidder's full liability for compensation to any persons employed who may be injured in the carrying out of said contract or the dependents thereof. Evidence of such worker's compensation insurance shall be furnished to the City of Livermore by certificate and waiver of subrogation in the City's electronic insurance certificate tracking system (PINS) prior to the commencement of the work and said certificate shall contain a provision that the coverage thereunder will not be canceled until at least thirty (30) days prior written notice has been given to the City.

9. Notice.

Any notice, billing, or payment required by the Contract Documents must be made in writing, and sent to the other party by personal delivery, U.S. Mail, a reliable overnight delivery service, facsimile, or by email as a PDF (or comparable) file. Notice is deemed effective upon delivery unless otherwise specified. Notice for each party must be given as follows:

	City	Contractor
Name	Bob Vinn	Sam Rivinius
Address	1052 South Livermore Avenue	PO Box 1728
City/state/zip	Livermore, CA 94550	San Ramon, CA, 94583
Phone	925-960-4500	510-733-0390
Fax	925-960-4504	510-733-0389
Attention	City Engineer	President
Email	bgvinn@livermoreca.gov	gradetinc@sbcglobal.net
Copy to	snijhawan@livermoreca.gov	

10. General Provisions.

The following items are repeated here as stated as part of Part 2, General Conditions, for emphasis:

10.1. Assignment and Successors.

Contractor may not assign its rights or obligations under this Contract, in part or in whole, without City's written consent. This Contract is binding on Contractor's successors and permitted assigns. A consolidation or merger of Contractor or a change in ownership of 25% or more of Contractor's capital stock constitutes an assignment by Contractor requiring the City's written consent.

10.2. Third Party Beneficiaries.

There are no intended third party beneficiaries to this Contract except as expressly provided in the General Conditions or Special Conditions.

10.3. Governing Law and Venue.

This Contract will be governed by California law and venue will be in the Superior Court of the County in which the Project is located, and no other place.

10.4. Amendment.

No amendment or modification of this Contract will be binding unless it is in a writing duly authorized and signed by the parties to this Contract.

10.5. Integration; Severability.

This Contract and the Contract Documents incorporated herein, including authorized amendments or Change Orders thereto, constitute the final, complete, and exclusive

terms of the agreement between City and Contractor. If any provision of the Contract Documents, or portion of a provision, is determined to be illegal, invalid, or unenforceable, the remaining provisions of the Contract Documents will remain in full force and effect.

11. Authorization.

Each individual signing below warrants that he or she is authorized to do so by the party that he or she represents, and that this Contract is legally binding on that party. If Contractor is a corporation, signatures from two officers of the corporation are required under California Corporation Code, Section 313.

The parties agree to this Contract as witnessed by the signatures below:

CITY	CONTRACTOR
City of Livermore, a California Municipal Corporation	GradeTech Inc.
s/_____	s/ Michelle Wright
Marianna Marysheva, City Manager	Michelle Wright V.P. Name/Title [print]
Date: _____	Date: 06/22/2023
Approved as to form:	s/ SR Sam Rivinius - Pres. Name/Title [print]
_____ City of Livermore City Attorney	Date: 6-22-23
	628365 Contractor's Calif. License Number(s)
	Seal:
	09/30/2023 Expiration Date(s)

END OF DOCUMENT

CALIFORNIA ALL-PURPOSE ACKNOWLEDGEMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document, to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA)

COUNTY OF Alameda)

On 6-22-23 (DATE) before me, Lori Barry - Notary Public (INSERT NAME, TITLE OF OFFICER – E.G., "JANE DOE, NOTARY PUBLIC")

personally appeared, Michelle Wright and Sam Rivinius

,

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

L B (SEAL)

NOTARY PUBLIC SIGNATURE

LORI BARRY
COMM. # 2441726
NOTARY PUBLIC - CALIFORNIA
ALAMEDA COUNTY
COMM. EXPIRES APR. 16, 2027

OPTIONAL INFORMATION

THIS OPTIONAL INFORMATION SECTION IS NOT REQUIRED BY LAW BUT MAY BE BENEFICIAL TO PERSONS RELYING ON THIS NOTARIZED DOCUMENT.

TITLE OR TYPE OF DOCUMENT Contract

DATE OF DOCUMENT _____ NUMBER OF PAGES _____

SIGNERS(S) OTHER THAN NAMED ABOVE _____

SIGNER'S NAME _____ SIGNER'S NAME _____

RIGHT THUMBPRINT	RIGHT THUMBPRINT

To order supplies, please contact McGlone Insurance Services, Inc. at (916) 484 0804.

LIVERMORE
CALIFORNIA

CITY COUNCIL STAFF REPORT **ITEM NO. 5.6**

DATE: July 24, 2023

TO: Honorable Mayor and City Council

FROM: Paul Spence, Community Development Director

SUBJECT: Resolution authorizing execution of a two-year agreement with Interwest Consulting Group to provide planning technical services in an amount not-to-exceed $326,400.

RECOMMENDED ACTION

Staff recommends the City Council adopt a resolution authorizing the City Manager to execute an agreement with Interwest Consulting Group to provide planning technical services for the period of July 24, 2023, through July 24, 2025, in an amount not-to-exceed $326,400.

SUMMARY

The Planning Division continues to manage several large scale, multi-year programs including the General Plan Update and Development Code Update. The City has also seen an increase in private development applications and expects that trend to continue for the next several years, particularly in the Isabel Neighborhood Specific Plan area. The frequency and volume of in-person inquiries for land use and zoning information at the Permit Center's public counter remains high. Electronic inquiries via e-mail, phone, and through the city's website are increasing as these channels are more convenient for the general public.

This agreement will enable Interwest Consulting Group (Consultant) to provide full-time technical planning services in-person at the public counter and respond to electronic inquiries. Staff anticipates the Consultant will also process minor entitlement applications for signs, accessory structures and residential construction projects, and non-residential additions.

Supplementing staffing resources in the Planning Division for a one-year period with an option to extend for an additional year will facilitate progress on the City's high-profile programs and complex projects and enable the Division to continue providing high-quality customer service and meet required timelines for processing of private development applications.

DISCUSSION

City staff continues to implement significant programs to update the City's General Plan and Development Code. The Development Code Update will respond to State housing legislation and include objective development standards. Other projects include funding and design coordination for extending sewer service into the South Livermore Valley, managing the short-term rental program, and processing an annexation and development project for land within the City's Urban Growth Boundary near the Oaks Business Park. In addition, downtown project implementation, responding to Alameda County referrals, and participation in regional planning efforts with the Association of Bay Area Governments/Metropolitan Transportation Commission continue to be priorities.

At the same time, the Planning Division continues to experience significant development interest from property owners in the Isabel Neighborhood Specific Plan (INSP) area. The City Council has already approved three applications for property in the INSP and have three more applications currently in review. Staff anticipates additional applications for property in the INSP area in the coming one to two years. Applications to redevelop the mixed-use sites at Rincon Avenue and Pine Street and Pacific Avenue (former Nob Hill site) have also been submitted and require staff time to process.

The proposed Consultant will provide permit technician services for the Planning Division to supplement ongoing staffing at the public counter and via electronic channels until funding for additional staffing is available in Fiscal Year 2025-26. The planning services proposed under the Agreement will enable the Planning Division staff to focus internal efforts on priority projects and maintain appropriate levels of customer service in response to the high volume of private project applications the City has been receiving and expects to continue to receive over the next 24 months. This Agreement covers up to $326,400 through July 24, 2025.

FISCAL AND ADMINISTRATIVE IMPACTS

The term of the agreement is from July 24, 2023 to July 24, 2025, in an amount not-to-exceed $326,400. The Planning Division’s budget includes sufficient funds to cover consultant contract costs for the next two fiscal years (2023-24 and 2024-25); therefore, no additional appropriation is necessary. Utilization of city staff time will be necessary to administer the consultant agreement and provide supervisory oversight of the Consultant's day-to-day performance.

COMMUNITY PILLAR

1: A Safe Community that Thrives

GOAL

6: Provide efficient and effective permit processing services

GUIDING DOCUMENTS

General Plan and Development Code

ATTACHMENTS

1. Resolution
2. Exhibit A - Interwest Consulting Group Professional Services Agreement

Prepared by: Steve Stewart
Acting Assistant Community Development Director

Approved by:



Marianna Marysheva
City Manager

Fiscal Review by:



Tina Olson
Administrative Services Director

IN THE CITY COUNCIL OF THE CITY OF LIVERMORE, CALIFORNIA

RESOLUTION AUTHORIZING EXECUTION OF AN AGREEMENT WITH INTERWEST CONSULTING GROUP IN AN AMOUNT NOT-TO-EXCEED $326,400 TO PROVIDE TECHNICAL PLANNING SERVICES

The Planning Division in the Community Development Department requires a consultant to provide permit technician services at the public counter and via electronic channels, in addition to processing minor entitlement applications. The planning services proposed under the Agreement will enable the Planning Division staff to focus internal efforts on priority projects and maintain appropriate levels of customer service.

The proposed agreement with Interwest Consulting Group allows for services to commence on July 24, 2023, and terminate upon completion of services, or on July 24, 2025, whichever occurs first.

Authorization to execute a professional services agreement is an administrative action, which does not qualify as a project under the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines section 15378. Therefore, no environmental review is required.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Livermore that it hereby authorizes the City Manager to execute the Agreement with Interwest Consulting Group in an amount not-to-exceed $326,400, for technical planning services.

On motion of Council Member _____, seconded by Council Member _____, the foregoing Resolution was passed and adopted on July 24, 2023, by the following vote:

AYES: COUNCIL MEMBERS:
NOES: COUNCIL MEMBERS:
ABSENT: COUNCIL MEMBERS:
ABSTAIN: COUNCIL MEMBERS:

ATTEST:

_____
Marie Weber
City Clerk

APPROVED AS TO FORM:

/s/ Kimberly Cilley
Kimberly Cilley
Senior Assistant City Attorney

Exhibit A – Interwest Consulting Group Professional Services Agreement

RESOLUTION NO. _____

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PROFESSIONAL SERVICES AGREEMENT

THIS AGREEMENT is made and entered into this ___ day of _____, 20__, by and between the City of Livermore ("City"), a municipal corporation, and Interwest Consulting Group ("Consultant"), A California Corporation.

RECITALS

City requires professional services to provide planning technical services at the public counter and via telephone and e-mail, and assist with routine entitlement applications.

Consultant warrants it possesses the distinct professional skills, qualifications, experience, and resources necessary to timely perform the services described in this Agreement. Consultant acknowledges City has relied upon these warranties to retain Consultant.

AGREEMENT

NOW, THEREFORE, City and Consultant hereby agree that the aforementioned recitals are true and correct and further agree as follows:

1. Retention as Consultant. City hereby retains Consultant, and Consultant hereby accepts such engagement, to perform the services described in Section 3 below subject to the terms and conditions in this Agreement.

2. Relationship of Parties – Independent Contractors. The relationship of the parties shall be that of independent contractors. Consultant and its employees are not City officers or employees. Consultant is responsible for the supervision and management of its employees, including any workers compensation insurance, withholding taxes, unemployment insurance, and any other employer obligations associated with the delivery of the services contemplated by this Agreement.

3. Description of Services. Consultant shall provide the following professional services as more particularly set forth in Exhibit "A" (collectively "the Services"):

Planning technical services at the public counter and via telephone and e-mail, and assist with routine entitlement applications. Drafting conditions of approval, agreements, and staff reports to City Council which shall be finalized by City staff. May attend meetings between staff, developers, planners and others.

These services shall be ordered as needed pursuant to individual written project orders issued by the City and approved by the Planning Manager. Project assignments will include a scope of work and budget to provide standards to determine when City will deem that project complete. City reserves the right not to order any services or expend any moneys pursuant to this Agreement.

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4. Consultant's Responsibilities. Consultant shall:

(a) Diligently perform the Services in a manner commensurate with industry, professional, and community standards;

(b) Provide the resources necessary to complete the Services in a timely manner;

(c) Obtain a business license from the City of Livermore, and keep it in effect for the term of this Agreement;

(d) Obtain and keep in effect all necessary licenses, permits, qualifications, insurance, and approvals legally and professionally required for Consultant to practice its profession and to provide the Services;

(e) Comply with all laws in effect that are related to Consultant and the Services;

(f) Coordinate the Services with Steve Stewart, Planning Manager ("Project Manager"), or such other person designated as the Project Manager by City;

(g) Be available to the Project Manager, and other parties referred to Consultant by the Project Manager, to answer questions or inquiries related to the Services;

(h) Only invoice City for the Services rendered. Consultant's invoice shall be in writing and describe the Services performed for the payment requested. Consultant shall not submit an invoice to City more frequently than once a calendar month;

(i) Keep and maintain invoices and records related to the Services in an organized manner. At a minimum, the records must be kept for at least 3 years from the date of final payment to Consultant and must include time sheets, work progress reports, and other documentation to adequately explain all the Services invoiced for payment. Consultant shall make the invoices and records immediately available to City upon delivery of a written request to examine, audit, or copy them at City's place of business during normal business hours. Consultant shall give City 30 calendar-days' written notice prior to destroying the invoices and records and allow City an opportunity to take possession. If City wants them, Consultant and City shall coordinate their delivery to City in the most efficient manner possible;

(j) Prepare and submit a written report to the Project Manager, within 3 business-days of the Project Manager's written request, that identifies the Services completed and in progress, the charges incurred to date, and the anticipated cost to complete the remaining Services;

(k) Consultant shall correct, at its own expense, all errors in the Services. Should Consultant fail to make such correction in a timely manner, City may make the correction and charge the cost thereof to Consultant;

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(l) If applicable, Consultant shall ensure that all work for compensation is provided in compliance with the requirements of the California Labor Code including but not limited to hours of labor, nondiscrimination, payroll records, apprentices, worker's compensation and prevailing wages. If applicable, Consultant shall comply with all prevailing wage laws, such as sections 1773, 1773.8, 1775, 1776, 1777.5, 1777.6, and 1813 of the California Labor Code and any other applicable wage and hour law. If any violation of prevailing wage law associated with this Agreement is deemed to have occurred by any court or administrative authority, Consultant shall forfeit to the City, as a penalty, the sum of fifty dollars ($50.00) for each calendar day, or portion thereof, for each laborer, worker, or mechanic employed, paid less than the applicable prevailing rates for any work done to accomplish the purposes of this Agreement; and,

(m) Consultant's services provided pursuant to this Agreement shall comply with the Americans with Disabilities Act (ADA) of 1990, and all amendments thereto, as well as all applicable regulations and guidelines issued pursuant to the ADA.

5. Compensation and Payment.

(a) The total compensation payable by City to Consultant for the Services **SHALL NOT EXCEED** the sum of $326,400 ("not-to-exceed amount"). City shall compensate Consultant for the Services rendered at the hourly rates, task amounts or travel expenses set forth in Exhibit "A" up to the not-to-exceed amount. Except as provided in the body of this Agreement, the hourly rates, task amounts or travel expenses are intended to be Consultant's only compensation for the Services and is inclusive of all costs of labor, licensing, permitting, overhead and administrative costs, and any-and-all other costs, expenses, and charges incurred by Consultant, its agents, and employees to provide the Services.

(b) City shall pay Consultant no later than 30 days after City receives a written invoice from Consultant and verifies the Services were performed for the payment requested.

6. Term. The term of this Agreement commences on July 10, 2023, and terminates upon the completion of the Services or July 10, 2025, whichever occurs first.

7. Termination by City. City may terminate any portion or all of the Services by giving Consultant at least 30 calendar-days written notice. Upon receipt of a termination notice, Consultant shall immediately stop all work in progress on the Services except where necessary to preserve the benefit of the work, and then assemble the work on the Services for delivery to City on the termination date. All compensation for Services performed prior to the termination date shall be payable to Consultant in accordance with Section 5.

8. Ownership of Documents. All drawings, designs, data, photographs, reports and other items prepared or obtained by Consultant in the performance of the Services are City's property and Consultant shall deliver them to City upon demand.

9. Copyright and Right of Use. All items created by Consultant for City under this Agreement are works made for hire, and Consultant shall give City the copyright and all

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intellectual property rights to all items developed, prepared, and delivered as part of the Services. Consultant agrees that all aspects of the Services and items created thereby will be original works of creation and will not use, in whole or in part, any work created by any other party, except when expressly disclosed by Consultant to City and Consultant obtains a license to such items for the benefit of City. All licenses must be perpetual, world-wide, non-exclusive, and royalty free sufficient in scope to permit City's full use and enjoyment of its ownership rights in the items created by the Services. For the avoidance of doubt, nothing in this Agreement shall be understood to grant City rights to pre-existing intellectual property of Consultant, including Consultant software and licensed software, or to any improvements thereto. Consultant shall have no liability arising from the use of any items for any purposes or on any project other than that for which it was produced

10. Confidentiality. Consultant shall not disclose any confidential or proprietary information received from City to anyone except Consultant's employees who require access to the information to perform the Services. This obligation shall survive termination and remain in full force and effect until the information, and any copies thereof, are destroyed or returned to City.

11. Defense, Indemnity, and Hold Harmless. To the fullest extent permitted by law, Consultant shall hold harmless, indemnify, and defend with counsel selected by the City and from Consultant's insurance carrier's panel counsel or otherwise acceptable to the City, the City and its elected and appointed officials, officers, directors, employees, agents and designated volunteers from and against any and all third party liability, loss, damage, claims, expenses, and costs (including without limitation, attorney's fees and costs and fees of litigation) (collectively, "Liability") of every nature to the extent arising out of or in connection with Consultant's performance of the services contemplated by this Agreement, or in connection with Consultant's failure to comply with any of its obligations contained in this Agreement, except for such Liability caused by the sole or active negligence or willful misconduct of City. Consultant's obligations to hold harmless, indemnify, and defend shall not be excused because of Consultant's inability to evaluate Liability or because Consultant evaluates Liability and determines that Consultant is not liable to the claimant. These obligations are independent of, and shall not in any way be limited by, the minimum insurance obligations contained in this Agreement. These obligations shall survive the completion or termination of this Agreement. Consultant must respond within 30 days to the tender of any claim for defense and indemnity by the City. Except for cumis counsel provided to the City and except for the City's own defense counsel, Consultant shall control the defense and settlement of any action for which indemnification is sought, provided that it shall not enter into any settlement that requires an admission of wrongdoing by any indemnitee without that indemnitee's approval. Consultant's obligations under this Agreement are contingent upon timely receipt of notice of the claim for which indemnification is sought, such that defense of the claim is not prejudiced, and the reasonable assistance of the indemnitee in connection with the defense of the claim.

(a) Modification for Construction Contracts. To the extent this Agreement is a "construction contract" covered by California Civil Code section 2782, then Consultant's duty to indemnify shall not apply in a manner prohibited by California Civil Code section 2782.

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(b) Modification for Design Professional Services. To the extent this Agreement is for "design professional services" defined in California Civil Code section 2782.8, then Consultant's duties to defend and indemnify shall only apply to the extent provided for in California Civil Code section 2782.8(a), unless section 2782.8(a) is not applicable for one of the reasons set forth in 2782.8(e).

12. Insurance. Consultant shall procure and maintain insurance during the term of this Agreement in the amounts and under the terms set forth in Exhibit "B" against claims that may arise from or in connection with this Agreement and performance of the Services. Upon reasonable written notice, Consultant shall comply with any changes in the amounts and terms of insurance as may be required from time-to-time by City's Risk Manager.

13. Acceptance of Final Payment. Consultant's acceptance of final payment will release City from any and all claims and liabilities for compensation under this Agreement.

14. Acceptance of Work. City's acceptance of, or payment to Consultant for, the Services does not release Consultant from its responsibility for the accuracy, completeness, or competency of the Services, nor do the actions constitute an assumption of Consultant's responsibility or liability by City for any defect or error in the Services.

15. Conflict of Interest. Consultant represents that no City employee or official has a financial interest in Consultant. Consultant shall not offer, encourage, or accept any financial interest in any part of Consultant's business by or from a City employee or official during the term of this Agreement or as a result of being awarded this Agreement. If any of the Services are paid by reimbursement from an agreement between City and a private party, Consultant represents that it has not performed any work for that private party during the 12-month period prior to the execution of this Agreement, and that it shall not negotiate, offer or accept any contract for services from that party during the term of this Agreement.

16. Economic Disclosure. Consultant shall comply with City's local conflict of interest code and the Political Reform Act, and prepare and file an economic disclosure statement if the Services involve making, or participation in making, decisions which may have a material effect on the Consultants' financial interest. While it is Consultant's sole responsibility to evaluate its conflicts of interest, the Consultant nevertheless agrees to prepare and file an economic disclosure statement if requested by City.

17. Non-Exclusive Agreement. This is a non-exclusive agreement. City reserves the right to provide, and to retain other consultants to provide, services that are the same or similar to the Services described in this Agreement.

18. No Assignment. Consultant shall not assign or subcontract any of the Services without City's prior written consent which shall not be unreasonably delayed or withheld. For the purposes of this section, a change of fifty-percent or more in the ownership or control of Consultant constitutes an assignment.

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19. Remedies. All remedies permitted or available under this Agreement, or at law or in equity, are cumulative and alternative, and the invocation of a right or remedy will not be construed to waive or elect a remedy with respect to any other available right or remedy. As a condition precedent to commencing legal action involving a claim or dispute against City arising from this Agreement, the Consultant must present a written claim to City in accordance with Chapter 3.42 of the Livermore Municipal Code.

20. Construction of Language. The terms and conditions in this Agreement have been arrived at through negotiation and each party had a full and fair opportunity to review and revise this Agreement with legal counsel. Any ambiguity in this Agreement will not be resolved against either party as the drafting party. In the event of an inconsistency or conflict between the language in the body of the Agreement and an attachment hereto, the language in the body of the Agreement controls.

21. Entire Agreement; Modification. This Agreement supersedes all other agreements, whether oral or written, between the parties with respect to the Services. Any modification to this Agreement must be in writing and signed by both parties. In the event the original of this Agreement is lost or destroyed, an archival copy maintained by City can be used in place of the original for all purposes with the same effect as if it was the original.

22. Notice. Notices under this Agreement must be delivered to the addresses below by deposit in the United States mail or by overnight delivery service, with postage prepaid and delivery confirmation:

TO CITY: Attention: Steve Stewart
City of Livermore
1052 S Livermore Avenue
Livermore, California 94550

TO CONSULTANT: Attention: Richard Smeaton, AICP
Interwest Consulting Group
39355 California Street, Suite 200
Fremont, CA 94538

23. Waiver. Failure to insist upon the strict performance of any term or conditions in this Agreement, no matter how long the failure continues, is not a waiver of the term or condition and does not bar the right to subsequently demand strict performance. To be effective, a waiver must be in writing and signed by the non-breaching party.

24. Severability. If a court of competent jurisdiction determines a provision in this Agreement is invalid, void, or unenforceable, the remaining provisions will nevertheless continue in full force and effect without being impaired in any way.

25. Survival. The terms, conditions, and obligations in Sections 8, 9, 10, and 11 shall survive the completion or termination of this Agreement.

26. Electronic Signatures. By signing this document, you are agreeing that you have reviewed this disclosure information and consent to transact business using electronic

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communications, to receive notices and disclosures electronically, and to utilize electronic signatures in lieu of using paper documents. You are not required to receive notices and disclosures or sign documents electronically. If you prefer not to do so, you may request to receive paper copies and withdraw your consent at any time.

27. Counterparts. This Agreement may be executed and delivered in one or more counterparts, each of which will be deemed to be an original copy of this Agreement, and all of which, when taken together, will be deemed to constitute one and the same agreement. The facsimile, email, or other electronically delivered signatures of the Parties shall be deemed to constitute original signatures, and facsimile or electronic copies hereof shall be deemed to constitute duplicate originals and shall be valid and effective for all purposes.

****

Signatures and Attachment List on the Next Page

EXHIBIT A

In concurrence and witness whereof, and in recognition of the mutual consideration provided therefore, the parties have executed this Agreement, effective on the date first written above.

CONSULTANT: **Dated:**

DocuSigned by:
Paul Meschino
03B869CBC892409...

7/13/2023 | 3:17 PM PDT

By: Paul Meschino
Title: President of Operations

CITY OF LIVERMORE: **Dated:**

Marianna Marysheva
City Manager

APPROVED AS TO FORM:

DocuSigned by:
Kimberly Cilley
70AABF2D2EAC450...

Assistant/City Attorney

APPROVED AS TO INSURANCE:

DocuSigned by:
Jas Sidhu
492639AA373F4CA...

Risk Manager/Analyst

Attachments:

Exhibit A – Scope of Work
Exhibit B – Insurance Requirements

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EXHIBIT A

June 2, 2023

Mr. Steve Stewart
Planning Manager
City of Livermore, Community Development Department
1052 S. Livermore Avenue
Livermore, CA. 94550

Subject: Scope of Work for Planning Assistance

Dear Mr. Stewart,

Interwest Consulting Group (Interwest) appreciates the opportunity to submit this scope of work to assist the City of Livermore with On-Call Planning Assistance.

Interwest Consulting Group (Interwest) appreciates the opportunity to submit this scope of work to the City of Livermore. Our understanding of the work that the City currently interested in contracting for a planning tech that would be assisting at the planning counter and assisting with other planning projects. This would be full-time for 40 hours a week for one-year and a possible one-year extension.

Our Project Manager Richard Smeaton, AICP, has provided professional planning services for more than 25 years and brings a wealth of experience in all aspects of project management, entitlement, urban planning, zoning, architecture, and community development. Contact information for Richard is provided below:

Richard Smeaton, AICP
Project Manager | Primary Contact
408.430.2203 | rsmeaton@interwestgrp.com

Interwest is proposing to have Emily LaDue to fill the role of Planning Tech for the City.

A copy of Rick's and Emily's resumes are attached to this scope of work.

As President of Operations of Interwest Consulting Group, I am authorized to sign any agreements that may result from this proposal. Acceptance of the terms and conditions is subject to review by Interwest's legal team.

Should any questions arise during the proposal review process, please do not hesitate to reach out to Richard Smeaton whose contact information is provided above. We appreciate the opportunity to present this proposal to the City of Livermore and look forward to serving the City.

Respectfully Submitted,

Paul Meschino
President of Operations

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City of Livermore
Interwest Consulting Group

Scope of Services

- Assist the public and project applicants at the planning counter.
- Process various types of land use entitlement applications as needed through the City's review process.
- Prepare recommendations for action by City staff, Planning Commission and / or City Council.
- Coordinate interdepartmental discretionary review of entitlement applications.
- Review applications and proposed projects and prepare documents as needed for compliance with the California Environmental Quality Act (CEQA).
- Assist the City in conducting planning related research and studies.
- Process General Plan Amendments and Zoning Code Amendments as needed.
- Attend meetings of the City Council, Planning Commission, City staff, public officials, community leaders, developers, contractors and the general public as directed.
- Complete Planning reviews of building permits and tract maps.
- Conduct inspections for approved planning projects and monitor and evaluate implementation of conditions of approval as needed.
- Update planning regulations to meet current State law Requirements.
- Other planning-related duties as assigned by the Planning Director or their designee.

The majority of the work in this scope will be performed on-site. There is the potential, at the City's discretion, for work to be conducted remotely.

The City of Livermore will be responsible for the costs of any printing, public notice expenses, or other physical materials that need to be produced that are required for the processing of public notices, applications, or public meetings.

Personnel

Richard Smeaton will serve as the Project Manager, primary point of contract for questions about the contract. Emily LaDue will be the main staff responsible for ensuring the completion of the work on-site. If needed, additional staff may be requested by the city on an as-needed basis.

Compensation / Payment Schedule

The fee for the services as outlined in this Scope of Work would be $160,000 for the first year and $166,400 for the optional second year. This anticipates 14-days of holidays and PTO.

The rates displayed in the fee schedule below reflect Interwest's current fees. Beginning on the 1st anniversary of the Effective Date of the Agreement and annually thereafter on January 1st, the hourly rates listed below shall be automatically increased based upon the annual increase in the Department of Labor, Bureau of Labor Statistics or successor thereof, Consumer Price Index (United States City Average, All Items (CPI-U), Not Seasonally adjusted, All Urban Consumers, referred to herein as the "CPI"). Such increase shall

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not exceed 4% per annum. The increase will become effective upon publication of the applicable CPI data. If the index decreases, the rates listed shall remain unchanged.

Classification	Hourly Billing Rate
Planning Services	
Community Development Director	$ 200
Planning Manager	185
Principal Planner	170
Senior Planner	155
Associate Planner	125
Assistant Planner	100
Planning Tech	80

Our invoices shall reference the project title, entitlement project or tracking number, and list charges by task, worker classification hours, billing rate, and totals.

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EXHIBIT B

INSURANCE REQUIREMENTS

Minimum Scope and Limits of Insurance

Consultant/Contractor shall maintain limits no less than:

1. Commercial General Liability, including operations, products, and completed operations, as applicable:
   $2,000,000 per occurrence/**$4,000,000** aggregate for bodily injury, personal injury, and property damage. If Commercial General Liability or other form of insurance with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.
2. Automobile Liability:
   $1,000,000 per accident for bodily injury and property damage.
3. Workers' Compensation and Employer's Liability:
   Statutory limits as required by the State of California including **$1,000,000** Employers' Liability per accident, per employee for bodily injury or disease. A waiver of subrogation is required for Workers' Compensation insurance. If Consultant/Contractor is a sole proprietor, then they must sign "Contractor Release of Liability."
4. Professional Liability/ Cyber Liability/Errors and Omissions:
   $2,000,000 per claim. Consultant/Contractor warrants that any retroactive date under this policy shall precede the effective date of this contract and, either continuous coverage will be maintained, or an extended discovery period will be exercised for a period of two years beginning at the time work under this contract is completed.

Deductibles and Self-Insured Retention

All self-insured retentions (SIR) must be disclosed to Risk Management for approval and shall not reduce the limits of liability. Policies containing any self-insured retention (SIR) provision shall provide, or be endorsed to provide, that the SIR may be satisfied by either the named insured or the City of Livermore. The City of Livermore reserves the right to obtain a full certified copy of any insurance policy and endorsements. Failure to exercise this right shall not constitute a waiver of right to exercise later.

Acceptability of Insurers

Insurance is to be placed with insurers with a current A.M. Best rating of no less than A: VII and accepted to do business in the State of California, unless otherwise acceptable to the City of Livermore.

Other Insurance Provisions

The general liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions:

1. The City of Livermore, its officers, officials, employees, and designated

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volunteers are to be covered as additional insureds as respects: liability arising out of activities performed by or on behalf of the Consultant/Contractor; or automobiles owned, leased, hired or borrowed by the Consultant/Contractor. The coverage shall contain no special limitations on the scope of protection afforded to the City of Livermore, its officers, officials, employees, or volunteers.

2. The limits of insurance required in this agreement may be satisfied by a combination of primary and umbrella or excess insurance. Except with respect to Worker's Comensation coverage The additional insured coverage under the Consultant's/Contractor's policy shall be primary and non-contributory and will not seek contribution from the City's insurance or self-insurance and shall be at least as broad as ISO Form CG 20 10 04 13. Any umbrella or excess insurance shall contain or be endorsed to contain a provision that such coverage shall also apply on a primary and non-contributory basis for the benefit of the City of Livermore before the City's own insurance or self-insurance shall be called upon to protect it as a named insured.
3. Any failure to comply with reporting or other provisions of the policy, including breaches of warranties, shall not affect coverage provided to the City of Livermore, its officers, officials, employees, or volunteers.
4. The Consultant's/Contractor's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
5. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be canceled by either party before expiration of the policy unless notice is delivered in accordance with policy provisions.
6. It shall be a requirement under this agreement that any available insurance proceeds broader than, or in excess of, the specified minimum insurance coverage requirements and/or limits shall be available to the additional insured. Furthermore, the requirements for coverage and limits shall be (1) the minimum coverage and limits specified in this agreement; or (2) the broader coverage and maximum limits of coverage of any insurance policy or proceeds available to the named Insured; whichever is greater.
7. Certificate Holder section of the insurance certificate should read: City of Livermore, 1052 S. Livermore Avenue, Livermore, CA 94550

Verification of Coverage

Consultant/Contractor shall furnish certificates of insurance and endorsement(s) effecting coverage to the City of Livermore for approval. The endorsements shall be on forms acceptable to the City of Livermore. All certificates and endorsements are to be received and approved by the City of Livermore before work commences. The City of Livermore reserves the right to require complete and certified copies of all insurance policies required by this Agreement.

LIVERMORE
CALIFORNIA

CITY COUNCIL STAFF REPORT **ITEM NO. 5.7**

DATE: July 24, 2023

TO: Honorable Mayor and City Council

FROM: Paul Spence, Community Development Director

SUBJECT: Resolution authorizing execution of a five-year license agreement with Trilateral LLC to allow the public to park in the parking lot of the former Bank of the West building at 2287 Second Street.

RECOMMENDED ACTION

Staff recommends the City Council adopt a resolution authorizing the City Manager to execute a license agreement with Trilateral LLC to allow the public to park in the parking lot of the former Bank of the West building located at 2287 Second Street.

SUMMARY

Trilateral LLC is the new owner of the property at 2287 Second Street which contains the former Bank of the West building and a parking lot with 27 spaces. This license agreement will allow the public to use this parking lot. The City will pay Trilateral LLC $100 per month for each parking space for a total of $2,700 per month. This agreement begins on August 1, 2023, and will terminate after five years on July 31, 2028, unless extended by both parties. Both parties can terminate at any time with 60 days written notice.

DISCUSSION

On January 30, 2018, the City Council approved the downtown core development plan and directed staff to maintain the existing parking supply during all phases of downtown development. This lease agreement with Trilateral LLC will provide additional public parking during major downtown development activities such as the construction of the L Street Garage, the expansion of Blacksmith Square, and construction of Eden Housing. These development activities will temporarily displace parking. The lease agreement with Trilateral LLC will provide 27 public parking spaces. Attachment 1 shows the location of the Trilateral LLC property. These parking spaces are south of First Street in an area that currently has limited public parking. The I Street Garage is now open north of the movie theater; however, this location is further from the businesses south of First Street.

On March 13, 2023, the City Council considered an earlier version of the license agreement that included

the City paying to expand the parking lot from 27 to 50 spaces. The City Council did not approve that agreement and provided direction to remove terms requiring the City to expand the parking lot. These terms have been removed from the agreement. The parking lot will be used by the public in its current condition with only a couple of Public Parking signs to be installed by the City's Maintenance Division.

The City will pay $100 per month per space for a total of $2,700 per month for the 27 spaces. Payments will begin in August 2023 and extend for five years through July 2028. If agreed by both parties, the agreement can be extended. With 60 days written notice, the agreement can also be terminated by either party. The City will maintain the parking lot and Trilateral LLC will be responsible for the maintenance of the landscaping and lighting.

ENVIRONMENTAL DETERMINATION

Entering into the license agreement is not a “project” as defined in CEQA Guidelines Section 15378 since it has no potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment. However, even if it were considered a "project" it would be exempt from CEQA under Guidelines Section 15301 (Existing Facilities) in that any improvements permitted under the license agreement would constitute a minor alteration of an existing facility involving negligible or no expansion of existing or former use.

FISCAL AND ADMINISTRATIVE IMPACTS

Monthly payments for this lease agreement will be $2,700 per month. Costs associated with the parking lease agreement are included in the budget for Downtown Surface Parking Project 2021-20 in the 2023-2028 Capital Improvement Plan. The project is funded with General Funds (Fund 001) and Parking in Lieu Fees (Fund 335). The City will maintain the parking lot during the term of the lease, with costs funded from the operating budget with Facilities Rehabilitation Program Fees (Fund 740).

COMMUNITY PILLAR

4: Inclusive & Inviting Spaces & Places

GOAL

3: Continue to implement the Downtown Specific Plan

GUIDING DOCUMENT

Downtown Specific Plan

ATTACHMENTS

1. Location Map
2. Resolution
3. Exhibit A - License Agreement

Prepared by: Joel Waxdeck
Acting City Engineer

Approved by:



Marianna Marysheva
City Manager

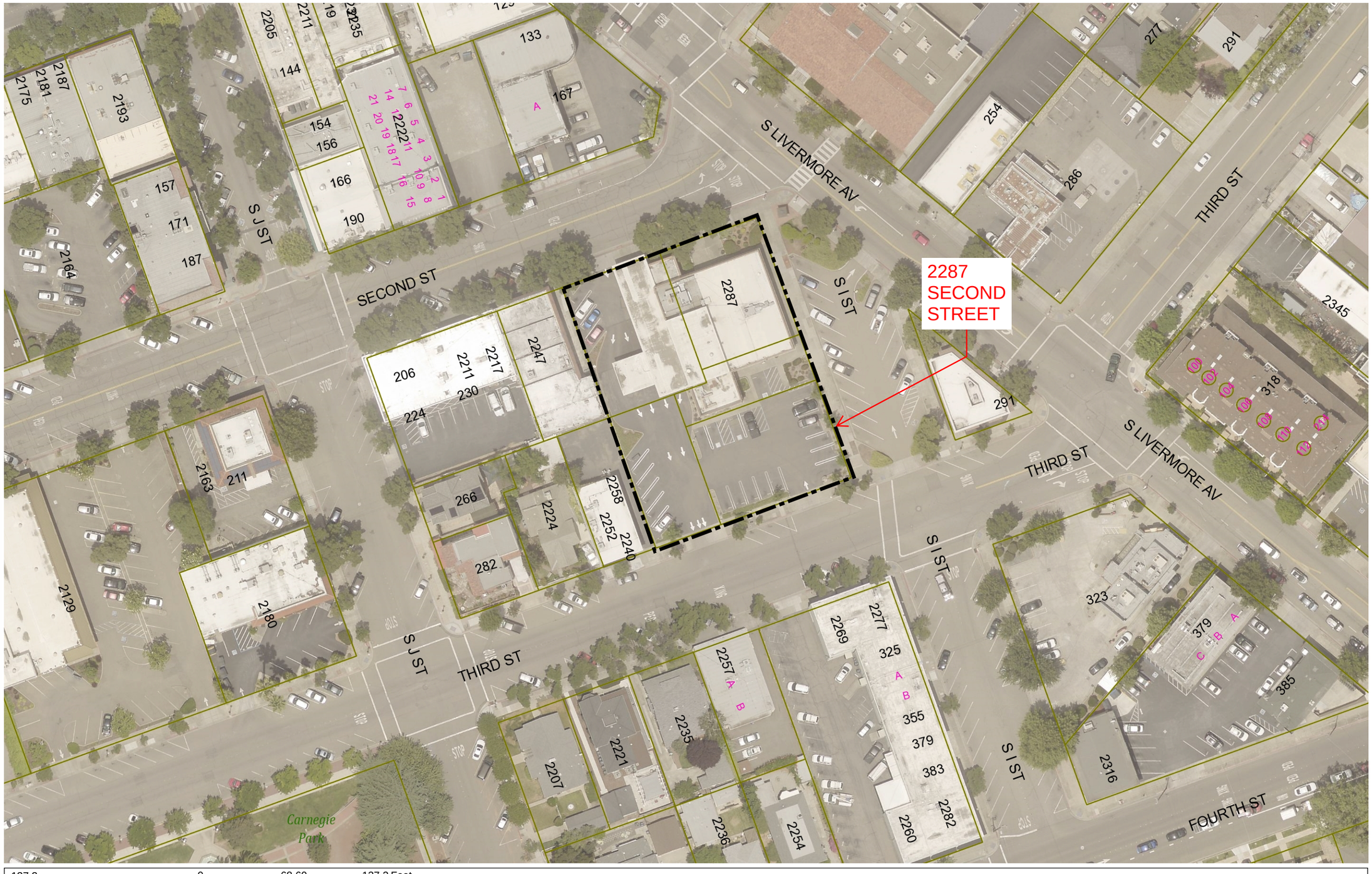
Fiscal Review by:

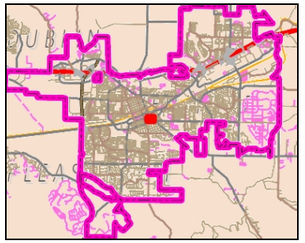


Tina Olson
Administrative Services Director

LIVERMORE CALIFORNIA

2287 Second Street Site Map





Legend

- City Limits
- AddressPt (0-1250)
  - No
  - Yes
- Street Names (0-2500)
- Golf Labels
- Creeks
- Public Facilities 0-4500)
- Park Names (0-4500)
- School Names (0-4500)
- Parcels

1: 823

137.2 0 68.60 137.2 Feet

NAD_1983_2011_StatePlane_California_III_FIPS_0403_Ft_US
Information Technologies, GIS Division, City of Livermore

Date Printed: 2/10/2023

This map is a user generated static output from an Internet mapping site and is for reference only. Data layers that appear on this map may or may not be accurate, current, or otherwise reliable. The City of Livermore is not responsible for misuse or errors or omissions on this map. All information should be confirmed.

Notes

IN THE CITY COUNCIL OF THE CITY OF LIVERMORE, CALIFORNIA

A RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE A LICENSE AGREEMENT WITH TRILATERAL LLC TO ALLOW THE PUBLIC TO PARK IN THE PARKING LOT OF THE FORMER BANK OF THE WEST BUILDING LOCATED AT 2287 SECOND STREET

Trilateral LLC is the property owner of real property, located at 2287 Second Street, which contains the former Bank of the West building and a parking lot with 27 spaces. Pursuant to the terms of a license agreement between Trilateral LLC and the City of Livermore ("City"), attached hereto as Exhibit A, Trilateral LLC will allow the public to use this parking lot. The City will pay Trilateral LLC $100 per month for each space in the parking lot for a total of $2,700 per month. The license agreement commences on August 1, 2023, and will terminate after five years, on July 31, 2028, unless extended in writing by both parties.

Entering into the license agreement is not a "project" under CEQA Guidelines Section 15378 since it has no potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment. Even if it were considered a "project" under CEQA, it would be exempt under Guidelines Section 15301 (Existing Facilities) in that any improvements permitted under the license agreement would constitute a minor alteration of an existing facility involving negligible or no expansion of existing or former use.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Livermore that entering into the license agreement is not a "project" as defined in CEQA Guidelines Section 15378. Alternatively, if it were considered a "project" under CEQA, it would be exempt under Guidelines Section 15301 (Existing Facilities).

NOW, THEREFORE, BE IT FURTHER RESOLVED that the City Council of the City of Livermore hereby adopts a resolution authorizing the City Manager to execute a license agreement with Trilateral LLC, attached hereto as Exhibit A, to allow the public to park in the parking lot of the former Bank of the West building located at 2287 Second Street.

On motion of Council Member _____, seconded by Council Member _____, the foregoing resolution was passed and adopted on July 24, 2023, by the following vote:

AYES: COUNCIL MEMBERS:
NOES: COUNCIL MEMBERS:
ABSENT: COUNCIL MEMBERS:
ABSTAIN: COUNCIL MEMBERS:

ATTEST:

_____
Marie Weber
City Clerk

APPROVED AS TO FORM:

/s/ Kimberly Cilley
Kimberly Cilley
Senior Assistant City Attorney

Exhibit A – Trilateral LLC License Agreement

DocuSign Envelope ID: E381A845-AAE0-4B05-8D67-0ABEF359412E

LICENSE AGREEMENT
(Parking)

This License Agreement ("**Agreement**") is dated, _____ 2023, for reference purposes only, and is made by and between Trilateral LLC ("**Licensor**") and the City of Livermore ("**Licensee**").

RECITALS

A. Licensor is the owner of certain real property in the City of Livermore, California ("**Trilateral Property**") commonly known as 2287 Second Street, Livermore, California. The Trilateral Property is improved with an approximate 7,676 square foot bank building, a drive through structure, and parking areas. The Trilateral Property is improved with twenty-seven (27) paved parking spaces.

B. Licensee desires to obtain an exclusive license from Licensor for the use of the twenty-seven (27) paved parking spaces on the Trilateral Property, and Licensor is willing to grant a license to Licensee, subject to the terms and conditions of this Agreement.

C. These Recitals shall be incorporated into and made a part of this Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants and promises set forth herein, and other good and valuable consideration, the receipt of which and sufficiency of which is hereby acknowledged, Licensor and Licensee hereby agree as follows:

1. Grant of License. Subject to the terms and conditions of this Agreement, Licensor hereby grants to Licensee a license to use the twenty-seven (27) paved parking spaces for public parking on the Trilateral Property ("**Trilateral Parking Area**") as shown on the diagram attached hereto and incorporated by reference as **Exhibit A**.

2. Term of License Agreement. Except as otherwise provided herein, the term of the License ("**Term**") shall commence on August 1, 2023, and shall terminate on July 31, 2028. Either Licensee or Licensor can terminate this agreement with a 60-day written notice to the other party at the addresses set forth in Section 16 of this Agreement. If Licensor and Licensee agree to extend the Term of this Agreement (without any obligation to do so), any such extension shall be in writing and signed by Licensor and Licensee in order to be effective.

3. Monthly Payments. In consideration of the grant of the License, Licensee agrees to pay Licensor the sum of Two Thousand Seven Hundred and No/100 Dollars ($2700), per month, beginning the first month after the agreement is signed by both parties ("**Monthly Payment**") payable by the first (1st) business day of each month and prorated for any partial month. Monthly Payments shall be made payable to Licensor and shall be payable at the Licensor address set forth in Section 16 of this Agreement. If the Monthly Payment is not received by the fifth (5th) day of the month, then a late fee of Two Hundred and No/100 Dollars ($200.00) shall be due and payable. If Licensor provides the appropriate banking information to Licensee, Licensee may, but shall not be required to, make the Monthly Payment by electronic transfer directly into Licensor's bank account.

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4. Operation of Trilateral Parking Area. During the Term of this Agreement, Licensee, at Licensee's expense, shall be responsible: 1) for the operation, maintenance and repair of the Trilateral Parking Area in compliance with this Agreement and all applicable laws; 2) to pay for all operating, maintenance and repair expenses relating to the Trilateral Parking Area; and 3) for any damages caused by the use of the 27 parking spaces in the Trilateral Parking Area by Licensee or Licensee's agents, employees, representatives or invitees.

Licensor shall be responsible for any damages caused by the use of the 27 parking spaces in the Trilateral Parking Area by Licensor or Licensor's agents, employees, representatives, or invitees. Licensor shall also be solely responsible for the maintenance of all landscaping and lighting in the Trilateral Parking Area, including but not limited to landscape water usage and lighting and electricity usage.

5. Condition of Property; Improvements; Legal Compliance.

(a) Licensee acknowledges and agrees that for purposes of the public parking uses to be conducted on the Trilateral Parking Area under this Agreement: (i) the Licensee and the general public are entering on the Trilateral Parking Area at their own risk; (ii) the Licensee and the general public are accepting and entering upon the Trilateral Parking Area in its presently existing condition, "AS IS," with all faults; (iii) Licensor has made no representations regarding the safety or suitability of the Trilateral Parking Area for the proposed use and has no obligation to improve, alter, secure or make safe the Trilateral Parking Area for purposes of the proposed use or to correct any unsafe or other conditions existing on any portion of the Trilateral Parking Area; and (iv) Licensor shall have no liability or obligation to Licensee or to the public for any injury to persons (including death or disease) or damage to property arising in the course of the public's use of the Trilateral Parking Area as a result of any physical conditions existing on the Trilateral Parking Area, except for injuries or damage to property arising in the course of use of the Trilateral Parking area by the tenants of the 2287 Second Street building.. Licensee shall not be required to restore the premises to its original condition but at the end of the term shall abide by all the terms in this Agreement.

(b) Throughout the term of this Agreement, Licensee shall maintain the Trilateral Parking Area in a clean condition, free of debris. Licensee shall maintain the adjoining public street areas, free of any dirt or construction debris attributable to the Trilateral Parking Area or to the vehicles and equipment using the Trilateral Parking Area. Licensee shall be permitted to install adequate signage or markings designating 27 parking spaces for public use. Licensee shall also have the right to construct, at Licensee's sole cost any minor restriping, patch-work , or recoating required for ADA compliance. Any such required ADA improvements shall be constructed by Licensee in a workmanlike and professional manner, in accordance with all applicable laws and requirements. No later than 72 hours prior to commencement of any construction of ADA improvements, Licensee shall notify Licensor at the Licensor address in Section 16 of this Agreement that construction will be commenced. Licensee shall not be required to maintain any landscape, walkways, medians, lighting, or similar improvements near or adjacent to the Trilateral Parking Area.

(c) If any permits, licenses, or other approvals are required under applicable law to be obtained from any governmental authority in connection with the construction of improvements and/or use of the Trilateral Parking Area by Licensee, Licensee shall be solely responsible for obtaining such permits, licenses, or other approvals at its sole cost.

(d) Licensee shall keep the Trilateral Parking Area free and clear from any and all liens arising out of or in connection with the construction of any temporary improvements or any other work performed by Licensee or Licensee's contractors on or about the Trilateral Parking Area. If any lien

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is filed or asserted against the Property based on Licensee's use of the Trilateral Parking Area, Licensee shall promptly (and in all events within 20 days after receiving notice that such lien has been filed) take all actions necessary to discharge such lien. If Licensee fails to discharge any such lien in a timely manner, Licensor shall have the right, but not the obligation, to expend all sums reasonably necessary to discharge the lien and Licensee shall reimburse Licensor, within 10 days after written demand by Licensor, for all sums expended by Licensor in discharging the lien, including, without limitation, attorneys' fees, plus interest on such sums from the date expended by Licensor until reimbursed by Licensee at the maximum interest rate permitted under California law.

6. Licensee Insurance. The City of Livermore is self-insured for General and Auto Liability up to a self-insured retention (SIR) of $750,000 and for Workers' Compensation up to a SIR of $500,000. The City is a member of California Joint Powers Risk Management Authority (CJPRMA), an excess insurance pool for General and Auto Liability, and of Local Agency Workers' Compensation Excess (LAWCX), an excess insurance pool for Workers' Compensation for claims that exceed the SIR.

Copies of Memoranda of Coverage with the insurance pools or certificates of insurance are available upon request.

7. Effective Waiver. No waiver by a party of any provision in this Agreement shall be considered a waiver of any other provision or any subsequent breach of the same or any other provision including the time for performance of any such provision. The exercise by a party of any remedy provided in this Agreement or at law shall not prevent the exercise by that party of any other remedy provided in this Agreement or at law.

8. Amendments. This Agreement may be amended at any time and from time to time, but any amendment shall be in writing and signed by both Licensee and Licensor.

9. Governing Law. This Agreement is executed and intended to be performed in the State of California, and the laws of that state shall govern its interpretation and effect. In the event of any litigation or legal proceedings concerning this Agreement, venue shall be in Alameda County.

10. Severability. If any term, provision, covenant, or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the rest of the Agreement shall remain in full force and effect and shall in no way be affected, impaired, or invalidated.

11. Entire Agreement. This instrument contains the entire agreement of the parties relating to the rights granted and obligations assumed in this instrument. Any oral representations or modifications concerning this instrument shall be of no force or effect unless contained in a subsequent written modification signed by the party to be charged. There are no third-party beneficiaries of this Agreement.

12. Duty to Implement This Agreement. Each party hereto will execute and deliver any and all additional instruments and documents, and perform such further acts, as may be reasonably necessary to make effective the terms and conditions of this Agreement.

13. Legal Expenses. In the event of any action at law or in equity, including an action for declaratory relief, between the parties arising from or in connection with this Agreement, then the prevailing party ("**Prevailing Party**") in such action shall be entitled to recover from the other party a reasonable sum as attorneys' fees and costs plus interest at the maximum rate allowed by the law from the date any payment should have been paid until the time at which it is paid. The Prevailing Party shall be determined in accordance with Civil Code Section 1717(b)(1) or any successor statute.

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14. Time of Essence. Time is of the essence of each and every provision of this Agreement.

15. Authority. Each person signing this Agreement on behalf of either Licensor or Licensee warrants and represents to Licensor and Licensee, as applicable, that such person is duly and fully authorized to enter into this Agreement on behalf of such entity, that this Agreement will be binding upon such entity and that the execution of this Agreement has been approved and ratified as required by the organizational documents of such entity**.**

16. Notice. All notices, requests and demands to be made hereunder to the parties hereto shall be made in writing to the addresses set forth below and shall be given by any of the following means: (a) personal service, (b) Federal Express or other nationally recognized courier or delivery service with guaranteed overnight delivery, or (c) by FAX or electronic transmission. Such addresses may be changed by notice to the other parties given in the same manner as provided above. Any notice, demand or request sent in the manner described herein shall be deemed received upon the actual delivery thereof. Refusal to accept delivery of any notice, request or demand shall be deemed to be delivery thereof.

To Licensor: Trilateral LLC
c/o Charles Hahn
58 Live Oak Drive
Danville, California 94506
Phone: (510) 695-0674
E-Mail: hahncharles@gmail.com

To Licensee: City of Livermore
c/o Bob Vinn, City Engineer
1052 South Livermore Avenue
Livermore, CA 94550
Phone : (925) 960-4500
E-Mail: bgvinn@cityoflivermore.net

IN WITNESS WHEREOF, Licensor and Licensee have executed this License Agreement per below:

LICENSOR:

Trilateral LLC

DocuSigned by:

By: _____
9F8697244785437...

Name Printed: **Charles Hahn**

Title: **Owner and Principal**

Date: 6/22/2023 | 2:17 PM PDT

LICENSEE:

City of Livermore

By: _____

Name Printed: **Marianna Marysheva**

Title: **City Manager**

Date: _____

Approved As to Form:

DocuSigned by:

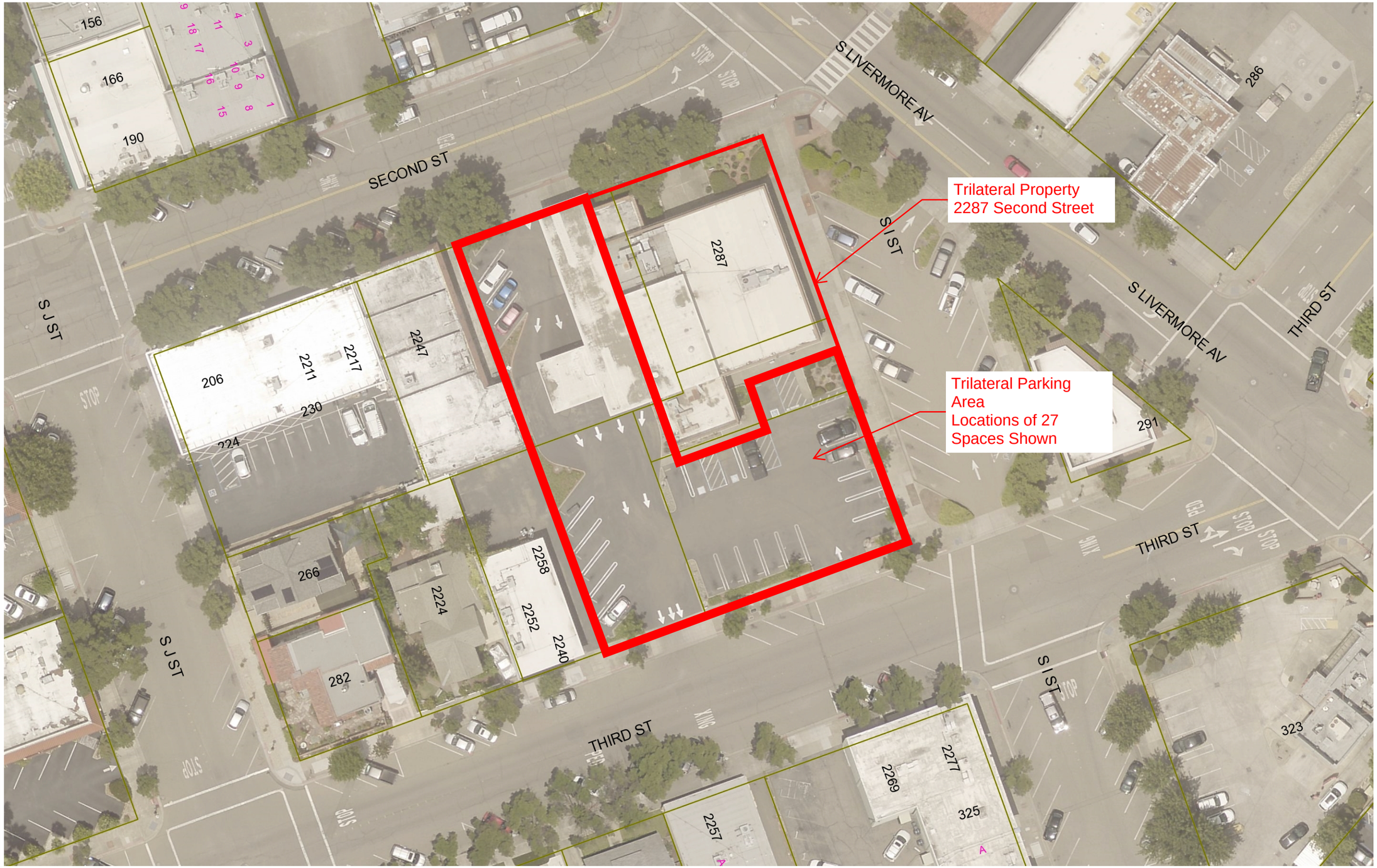
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Senior / Assistant / City Attorney

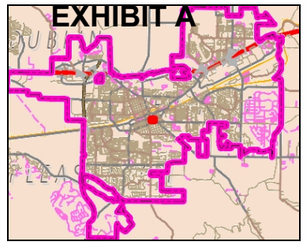
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LIVERMORE CALIFORNIA

EXHIBIT A
PARKING LICENSE AGREEMENT LOCATION





1: 530

88.3 0 44.17 88.3 Feet

NAD_1983_2011_StatePlane_California_III_FIPS_0403_Ft_US
Information Technologies, GIS Division, City of Livermore

Date Printed: 4/18/2023

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Notes

LIVERMORE
CALIFORNIA

CITY COUNCIL STAFF REPORT **ITEM NO. 5.8**

DATE: July 24, 2023

TO: Honorable Mayor and City Council

FROM: Jeramy Young, Police Chief

SUBJECT: Resolution authorizing the City Manager to execute the second amendment to the standard services agreement with the County of Alameda accepting grant funding for Horizons Family Counseling, for the term of July 1, 2023 to December 31, 2023, in the total amount not-to-exceed $310,000.

RECOMMENDED ACTION

Staff recommends the City Council adopt a resolution authorizing the City Manager to execute the Second Amendment to the Standard Services Agreement with the County of Alameda accepting grant funding for Horizons Family Counseling for the term of July 1, 2023 to December 31, 2023, in the total amount not-to-exceed $310,000.

SUMMARY

Over the past three years, the City of Livermore received an annual funding of $620,000 from County of Alameda, Probation Department for services to partially fund Horizons Family Counseling. Horizons Family Counseling was awarded as a recipient of a new contract that was supposed to begin as of July 1st, but that was postponed due to an external agency submitting a Bid Protest. Therefore, Horizons Family Counseling was awarded an extension of the current Master Contract 901499 with the County of Alameda for the term of July 1, 2023 through December 31, 2023.

Horizons Family Counseling has collaborated with County of Alameda for over 15 years to provide therapeutic counseling, diversion, case management, community outreach, and crisis intervention for the target population-which consists of at-promise and system involved youth in Alameda County ages 8-18 and youth at risk of becoming wards of the court.

DISCUSSION

Since 1973, Horizons Family Counseling has been dedicated to addressing the mental health needs and strengthening the relationship skills of youth and families in the Tri-Valley by providing effective, high quality, and strength-based counseling programs and services. These services include individual/family counseling, case management, crisis intervention, and diversion services.

FISCAL AND ADMINISTRATIVE IMPACTS

The grant shall not exceed $310,000 which funds a portion of Horizons Family Counseling personnel cost and supplies and is included in the FYs 2023-24 and 2024-25 budget. This funding decreases the General Fund contribution to Horizons Family Counseling Division.

COMMUNITY PILLAR

1: A Safe Community That Thrives

GOAL

4: Partner with the community to enhance collaborative problem solving and to improve the quality of life in Livermore

ATTACHMENTS

1. Resolution
2. Exhibit A - Notice of Intent
3. Exhibit B - Agreement

Prepared by: Asceneth Paez-Arroyo
Youth and Family Services Manager - Clinical

Approved by:



Marianna Marysheva
City Manager

Fiscal Review by:



Tina Olson
Administrative Services Director

IN THE CITY COUNCIL OF THE CITY OF LIVERMORE, CALIFORNIA

A RESOLUTION AUTHORIZING EXECUTION OF A SECOND AMENDMENT TO STANDARD SERVICES AGREEMENT BETWEEN THE CITY OF LIVERMORE AND THE COUNTY OF ALAMEDA FOR THE TERM OF JULY 1, 2023 TO DECEMBER 31, 2023 IN AN AMOUNT NOT-TO-EXCEED $310,000

The City of Livermore has been awarded $310,000 from the County of Alameda for the period of July 1, 2023 to December 31, 2023. Previous to this award, the City was awarded a 2-year grant of $620,000 for a total of $1,860,000 from July 2021 to June 2023 in grant funds from the County of Alameda to further its commitment to addressing the mental health needs of youth and families in the Tri-Valley by providing effecting counseling programs and services.

This amendment is an extension of the current Master Contract with the County of Alameda that expires on June 30, 2023. Due to a vendor requesting a protest to the RFP bid, it has delayed the implementation of the new contract that was originally scheduled to be effective July 1, 2023, as per the Notice of Intent, attached hereto as Exhibit A. Therefore, the Second Amendment to Standard Services Agreement was created.

Our relationship with Alameda County has been very successful over the years. Meeting our goals of serving 342 youth and families per year over the past 2 years has influenced this 6 month extension from July 1, 2023 to December 31, 2023 with a total additional contract amount not-to-exceed $310,000.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Livermore, that it hereby authorizes the City Manager to execute in substantially the same form as the one attached to this resolution as Exhibit B, subject to the City Attorney's review and approval as to form and subject to the Risk Manager's review and approval as to insurance, a Second Amendment to Standard Services Agreement between the City of Livermore and the County of Alameda for the extended term of July 1, 2023 through December 31, 2023, in an additional amount not-to-exceed $310,000.

On motion of Council Member _____, seconded by Council Member _____, the foregoing resolution was passed and adopted on July 24, 2023 by the following vote:

AYES: COUNCIL MEMBERS:
NOES: COUNCIL MEMBERS:
ABSENT: COUNCIL MEMBERS:
ABSTAIN: COUNCIL MEMBERS:

ATTEST:

_____
Marie Weber
City Clerk

APPROVED AS TO FORM:

/s/ Katherine Mirassou
Katherine Mirassou
Deputy City Attorney

Exhibit A - Notice of Intent
Exhibit B – Draft Agreement

KIMBERLY GASAWAY, Director
1401 LAKESIDE DRIVE, OAKLAND, CALIFORNIA 94612 510 208 9600 FAX 510 208 9711 HTTPS://GSA.ACGOV.ORG/

May 23, 2023

Asceneth Paez-Arroyo
City of Livermore
1052 South Livermore Ave.
Livermore, CA 95377

Dear Asceneth Paez-Arroyo:

SUBJECT: NOTICE OF INTENT TO AWARD A CONTRACT FOR YOUTH SERVICE CENTER, REQUEST FOR PROPOSAL (RFP) NO. 902171

Thank you for your participation and interest in the County of Alameda. Pending successful contract negotiations and Board approval, the County is pleased to accept your RFP response to provide the County of Alameda with its requirements as specified in RFP No. 902171 Addendum No. 1 and Addendum No. 2; and accompanying Specifications, Terms and Conditions.

Below is a list of bidders who submitted a response to RFP No. 902171 that has been accepted and, if a contract can be successfully negotiated, will be recommended for award:

1. Alameda Family Services; Service Area 1 (Alameda, CA)
2. East Bay Agency for Children, Service Area 2 and Service Area 4 (Oakland, CA)
3. Berkeley Youth Alternatives; Service Area 3 (Berkeley, CA)
4. Eden Counseling Services; Service Area 5 (Castro Valley, CA)
5. City of Fremont; Service Area 6 (Fremont, CA)
6. Seneca Family of Agencies; Service Area 7 (Oakland, CA)
7. City of Hayward; Service Area 8 (Hayward, CA)
8. City of Livermore; Service Area 9 (Livermore, CA)
9. City of Union City; Service Area 10 (Union City, CA)

Once contracts are approved, the County will provide its departments/agencies with the list of the nine contracted services to be rendered to vendors. Departments/agencies will contact vendors directly to place orders for their individual needs.

Below is a list of all bidders who submitted a response to RFP No. 902171 for Youth Service Center:

1. Seneca Family of Agencies (Oakland, CA)

2. Catholic Charities of the East Bay (Oakland, CA)
3. Alameda Family Services (Alameda, CA)
4. Eden Counseling Services (Castro Valley, CA)
5. City of Hayward (Hayward, CA)
6. City of Fremont (Fremont, CA)
7. Carl B Metoyer Center for Family (Oakland, CA)
8. City of Livermore (Livermore,CA)
9. Berkeley Youth Alternatives (Berkeley, CA)
10. City of Union City (Union City, CA)
11. Global Communication Education Art – GCEA (Oakland, CA)
12. Ruby's Place (Castro Valley, CA)
13. East Bay Agency for Children (Oakland, CA)
14. Student Program for Academic & Athletic Transitioning (SPAAT) (Oakland, CA)
15. Global Communication Education Art – GCEA (Oakland, CA)
16. Ms Bev Addiction Counseling and Consulting Services (San Leandro, CA)

The evaluation abstract and redacted copies of all bids received for this project will be available to be sent via email upon request no later than five days before the Board meeting at which this recommendation will be considered. A notice of the Board meeting date will be sent to you once contract negotiations are completed.

For information on other contracting opportunities, please visit our website at **Alameda County Current Contracting Opportunities**.

Respectfully yours,

DocuSigned by:
Tarana Malmirchegini
E83A3640D6647E...
Tarana Malmirchegini
Procurement & Contracts Specialist, GSA-Procurement

5/31/2023

Please signify your acknowledgment of the County's acceptance of your bid response by signing below and returning this letter.

ACKNOWLEDGED BY: _____ DATE: 5/31/2023

STANDARD SERVICES AGREEMENT (SECOND/SUBSEQUENT AMENDMENT)
SUPERVISOR REMOVAL ONLY DURING QC: DOC REV. DATE 8/22/22

SECOND AMENDMENT TO STANDARD SERVICES AGREEMENT

This Second Amendment to Agreement ("Second Amendment") is made by the County of Alameda ("County") and City of Livermore, ("Contractor") with respect to that certain agreement entered by them on June 25, 2018 and that certain First (June 29, 2021) Amendment to Contract, (collectively referred to herein as the "Contract") pursuant to which Contractor provides delinquency prevention network services to County.

County and Contractor, for valuable consideration, the receipt and sufficiency of which are hereby acknowledged, agree as follows:

1. Except as otherwise stated in this Second Amendment, the terms and provisions of this Amendment will be effective as of the date this Second Amendment is executed by the County ("Effective Date").

2. The term of the Agreement is currently scheduled to expire on June 30, 2023. As of the Effective Date, the term of the Agreement is extended through December 31, 2023.

3. In consideration for Contractor's additional services, the County shall pay Contractor in an additional amount not to exceed Three Hundred Ten Thousand dollars ($310,000). As a result of these additional services the not to exceed amount has increased from Three Million One Hundred Thousand dollars ($3,100,000) to Three Million Four Hundred Ten Thousand dollars ($3,410,000) over the term of the Agreement and any amendments.

4. Paragraph 20 of the Standard Services Agreement has been amended by changing the shall not exceed amount in the last sentence to $3,410,000.

5. Item 5 of Exhibit B-1 is deleted and replaced with the following:

   Total payment under the terms of this Agreement will not exceed the total amount of $3,410,000. This cost includes all taxes and all other charges.

6. Attached hereto is Exhibit D-2, a current Debarment and Suspension Certificate executed by Contractor.

7. Attached hereto is Exhibit F-2, THE IRAN CONTRACTING ACT (ICA) OF 2010 For Procurements of $1,000,000 statement executed by Contractor.

8. Except as expressly modified by this Second Amendment, all of the terms and conditions of the Contract are and remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have executed this Amendment.

COUNTY OF ALAMEDA	CITY OF LIVERMORE
By: _____ Signature	By: _____ Signature
Name: Detra Dillon	Name: Marianna Marysheva
Title: Procurement Administrator	Title: City Manager
Date: _____	Date: _____

EXHIBIT D-2

COUNTY OF ALAMEDA
DEBARMENT AND SUSPENSION CERTIFICATION

(Applicable to all agreements funded in part or whole with federal funds and contracts over $25,000).

The Contractor, under penalty of perjury, certifies that, except as noted below, contractor, its principals, and any named or unnamed subcontractor:

- **Is not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any federal agency;**
- **Has not been suspended, debarred, voluntarily excluded or determined ineligible by any federal agency within the past three years;**
- **Does not have a proposed debarment pending; and**
- **Has not been indicted, convicted, or had a civil judgment rendered against it by a court of competent jurisdiction in any matter involving fraud or official misconduct within the past three years.**

If there are any exceptions to this certification, insert the exceptions in the following space. For any exception noted above, indicate below to whom it applies, initiating agency, and dates of action.

☐ **Check if continued on the attached page.**

Notes: Providing false information may result in criminal prosecution or administrative sanctions. The above certification is part of the Amendment to the Standard Services Agreement. Signing the Amendment to Standard Services Agreement on the signature portion thereof shall also constitute the signature of this Certification.

CONTRACTOR: _____

PRINCIPAL: _____ TITLE: _____

SIGNATURE: _____DATE: _____

EXHIBIT F-2

COUNTY OF ALAMEDA
THE IRAN CONTRACTING ACT (ICA) OF 2010

For Procurements of $1,000,000 or more

The California Legislature adopted the Iran Contracting Act (ICA) to respond to policies of Iran in a uniform fashion (PCC § 2201(q)). The ICA prohibits persons engaged in investment activities in Iran from bidding on, submitting proposals for, or entering into or renewing contracts with public entities for goods and services of one million dollars ($1,000,000) or more (PCC § 2203(a)). A person who "engages in investment activities in Iran" is defined in either of two ways:

1. The person provides goods or services of twenty million dollars ($20,000,000) or more in the energy sector of Iran, including a person that provides oil or liquefied natural gas tankers, or products used to construct or maintain pipelines used to transport oil or liquefied natural gas, for the energy sector of Iran; or

2. The person is a financial institution (as that term is defined in 50 U.S.C. § 1701) that extends twenty million dollars ($20,000,000) or more in credit to another person, for 45 days or more, if that person will use the credit to provide goods or services in the energy sector in Iran and is identified on a list created by the California Department of General Services (DGS) pursuant to PCC § 2201(b) as a person engaging in the investment activities described in paragraph 1 above.

By signing below, I hereby certify that as of the time of bidding or proposing for a new contract or renewal of an existing contract, neither I nor the company I own or work for are identified on the DGS list of ineligible persons and neither I nor the company I own or work for are engaged in investment activities in Iran in violation of the Iran Contracting Act of 2010.

If either I or the company I own or work for are ineligible to bid or submit a proposal or to renew a contract, but I believe I or it qualifies for an exception listed in PCC § 2202(c), I have described in detail the nature of the exception: _____

_____

_____

CONTRACTOR: _____

PRINCIPAL: _____ TITLE: _____

SIGNATURE: _____ DATE: _____

LIVERMORE
CALIFORNIA

CITY COUNCIL STAFF REPORT **ITEM NO. 5.9**

DATE: July 24, 2023

TO: Honorable Mayor and City Council

FROM: Jeramy Young, Police Chief

SUBJECT: Resolution authorizing an agreement with the Livermore Valley Joint Unified School District (LVJUSD) for Horizons Family Counseling to provide mental health related services to LVJUSD students, for the term of November 15, 2022 through June 30, 2024, with a total amount not-to-exceed $240,000.

RECOMMENDED ACTION

Staff recommends the City Council adopt a resolution authorizing the City Manager to execute an agreement with the Livermore Valley Joint Unified School District (LVJUSD) for Horizons Family Counseling to provide mental health related services to LVJUSD students, for the term of November 15, 2022 through June 30, 2024, with a total amount not-to-exceed $240,000.

SUMMARY

The City of Livermore has been awarded annual funding of $120,000 for two years from Livermore Valley Joint Unified School District to provide school-based services such as individual/group counseling, classroom presentations, and continued collaboration amongst Livermore schools. This funding allows Horizons Family Counseling to provide direct services for children at designated K-5 schools that are not funded with other sources. This younger population receives fewer school-based mental health services and resources due to the lack of school counselors at the elementary level.

DISCUSSION

For over 20 years, Horizons Family Counseling and the Livermore Valley Joint Unified School District (LVJUSD) have had a strong, collaborative relationship contributing to the mental well-being of Livermore families. LVJUSD has awarded annual funding of $120,000 to Horizons Family Counseling to further enhance this relationship by allowing Horizons to provide direct services for children at designated K-5 schools such as individual/group counseling and classroom presentations.

Additionally, the funding would allow children to receive services that can provide assessment, prevention, and intervention at an earlier age, which can help the individual receive the additional support that may be needed.

FISCAL AND ADMINISTRATIVE IMPACTS

This funding shall not exceed $120,000 annually and not exceed a total amount of $240,000 for the term from November 15, 2022 through June 30, 2024. This funding would fund a portion of Horizons Family Counseling personnel cost and supplies allowing us to increase services with minimal impact to General Funds. Other services provided are offset by our grant with County of Alameda therefore decreasing General Fund contribution. The $240,000 is included in the FYs 2023-24 and 2024-25 budget.

COMMUNITY PILLAR

1: A Safe Community that Thrives

GOAL

4: Partner with the community to enhance collaborative problem solving and to improve the quality of life in Livermore

ATTACHMENTS

1. Resolution
2. Exhibit A - Agreement

Prepared by: Asceneth Paez-Arroyo
Youth and Family Services Manager - Clinical

Approved by:

Marianna Marysheva
City Manager

Fiscal Review by:

Tina Olson
Administrative Services Director

IN THE CITY COUNCIL OF THE CITY OF LIVERMORE, CALIFORNIA

A RESOLUTION AUTHORIZING EXECUTION OF A STANDARD SERVICES AGREEMENT BETWEEN THE CITY OF LIVERMORE AND LIVERMORE VALLEY JOINT UNIFIED SCHOOL DISTRICT FOR THE TERM OF NOVEMBER 15, 2022 TO JUNE 30, 2024 IN AN AMOUNT NOT-TO-EXCEED $240,000

The City of Livermore ("City") has been awarded $240,000 from Livermore Valley Joint Unified School District for the period of November 15, 2022 to June 30, 2024, to provide school-based services such as individual/group counseling, classroom presentations, and continued collaboration amongst Livermore schools.

Due to the increased level of need amongst Livermore students over the past few years, LVJUSD would like to increase collaboration with the City of Livermore and offer equitable and accessible mental health services for Livermore families. Approval of this funding would allow the City, through Horizons Family Counseling, to expand services to those individuals that would not or may not be able to receive mental health related services outside of school.

Approval of these funds would not increase the general fund contribution to the budget.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Livermore that it hereby authorizes the City Manager to execute in substantially the same form as the one attached to this resolution as Exhibit A, subject to the City Attorney's review and approval as to form and subject to the Risk Manager's review and approval as to insurance, the Standard Services Agreement between the City of Livermore and Livermore Valley Joint Unified School District for the term of November 15, 2022 through June 30, 2024, in an amount not-to-exceed $240,000.

On motion of Council Member _____, seconded by Council Member _____, the foregoing resolution was passed and adopted on July 24, 2023, by the following vote:

AYES: COUNCIL MEMBERS:
NOES: COUNCIL MEMBERS:
ABSENT: COUNCIL MEMBERS:
ABSTAIN: COUNCIL MEMBERS:

ATTEST:

_____
Marie Weber
City Clerk

APPROVED AS TO FORM:

/s/ Katherine Mirassou
Katherine Mirassou
Deputy City Attorney

Exhibit A- Agreement

DocuSign Envelope ID: 14E4E74B-DA7C-445B-9DC9-2F48ACC79F10

HORIZONS FAMILY COUNSELING SERVICES AGREEMENT BETWEEN THE LIVERMORE VALLEY JOINT UNIFIED SCHOOL DISTRICT AND CITY OF LIVERMORE

THIS AGREEMENT is made and entered into this _____ day of _____, 2023, between the Livermore Valley Joint Unified School District ("LVJUSD") and the City of Livermore, a municipal corporation ("City" hereinafter referred to as "Horizons Family Counseling").

RECITALS

Horizons Family Counseling, a division of the Livermore Police Department, provides counseling, advocacy, and educational services to youth and families of the Tri-Valley.

LVJUSD desires to utilize the services of Horizons Family Counseling to provide mental health related services for LVJUSD students.

AGREEMENT

NOW, THEREFORE, LVJUSD and Horizons Family Counseling hereby agree as follows:

1. Description of Services. Horizons Family Counseling shall provide to designated LVJUSD schools individual and group counseling services, described in the attached Exhibit A (collectively, the "Services").

2. Term. The term of this Agreement commences on November 15, 2022 and terminates on June 30, 2024.

3. Payment.

(a) The total compensation payable by LVJUSD to Horizons Family Counseling for the Services shall not exceed $240,000 ("not to exceed amount").

(b) LVJUSD shall pay Horizons Family Counseling no later than 30 days after LVJUSD receives a written invoice from Horizons Family Counseling and verifies the Services performed for the payment requested. Payment shall be paid in two equal installments by LVJUSD on January 15 and June 15, after delivery of an invoice from Horizons Family Counseling to LVJUSD for services rendered.

DocuSign Envelope ID: 14E4E74B-DA7C-445B-9DC9-2F48ACC79F10

4. Records. Horizons Family Counseling will create and maintain a separate confidential file for students who receive counseling services. Information regarding counseling services may only be released to school personnel with proper authorization from the student's parent or legal guardian. These records are retained by Horizons Family Counseling until the student turns 25 years old.

5. Authorization. This Agreement is authorized solely for the 2022/2023-2023/2024 academic school year.

6. Recipients of Services. Services under this Agreement shall be provided to LVJUSD students from designated school sites referred for services by LVJUSD Administration staff, COST Teams, and other school personnel.

7. Termination. Either party may terminate any portion or all of the Services provided by Horizons Family Counseling by providing the other party at least 30 calendar-days written notice. Upon receipt of a termination notice, Horizons Family Counseling shall immediately stop all work in progress on the Services, except where disruption of the client-counselor relationship may require additional time to transition to another service provider, and provide an invoice to LVJUSD for Services performed prior to the termination date, which shall be payable within 30 days of receipt.

8. Confidentiality. Horizons Family Counseling shall not disclose any confidential or proprietary information received from LVJUSD or from recipients of Services under this Agreement to anyone except Horizons Family Counseling's employees who require access to the information to perform the Services. This obligation shall survive termination and remain in full force and effect until the information, and any copies thereof, are destroyed or returned to LVJUSD. Horizons Family Counseling may disclose general information (without identifying personal information of the student) to school personnel for administrative purposes such as statistics.

9. Entire Agreement; Modification. This Agreement supersedes all other agreements, whether oral or written, between the parties with respect to the Services. Any modification to this Agreement must be in writing and signed by both parties. In the event the original of this Agreement is lost or destroyed, an archival copy maintained by Horizons Family Counseling can be used in place of the original for all purposes with the same effect as if it was the original.

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10. Notice. Notices under this Agreement must be delivered to the addresses below by deposit in the United States mail or by overnight delivery service, with postage prepaid and delivery confirmation:

TO HORIZONS FAMILY COUNSELING:
Attention: Asceneth Paez-Arroyo
City of Livermore
1110 S. Livermore Ave.
Livermore, California 94550

TO LVJUSD:
Attention: Kelly Manke
Livermore Valley Joint Unified School District
680 East Jack London Blvd.
Livermore, CA 94551

11. Waiver. Failure to insist upon the strict performance of any term or conditions in this Agreement, no matter how long the failure continues, is not a waiver of the term or condition and does not bar the right to subsequently demand strict performance. To be effective, a waiver must be in writing and signed by the non-breaching party.

12. Severability. If a court of competent jurisdiction determines a provision in this Agreement is invalid, void, or unenforceable, the remaining provisions will nevertheless continue in full force and effect without being impaired in any way.

13. Counterparts. This Agreement may be executed in counterpart by delivering a facsimile or secure electronic copy of the signed agreement to the other party, followed by delivery of the original documents bearing the original signatures. However, failure to deliver the original documents does not affect the enforceability of this Agreement.

****

Signatures and Attachment List on the Next Page

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In concurrence and witness whereof, and in recognition of the mutual consideration provided therefore, the parties have executed this Agreement, effective on the date first written above.

LIVERMORE VALLEY JOINT UNIFIED SCHOOL DISTRICT: **Dated:**

DocuSigned by:
Kelly Manke
0243D4262D3F489...

6/26/2023 | 3:49 PM PDT

By: Kelly Manke
Title: Superintendent

HORIZONS FAMILY COUNSELING
CITY OF LIVERMORE: **Dated:**

Marianna Marysheva
City Manager

APPROVED AS TO FORM:

DocuSigned by:
Katherine Mirassou
D48B9A0C4E674...

DS

Assistant/City Attorney

Attachment:
Exhibit A – Scope of Services

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EXHIBIT A

SCHOOL BASED COUNSELING, EDUCATIONAL SERVICES

Horizons Family Counseling will be partnering with Livermore Valley Joint Unified School District.

A. Mental Health Related Services
   - Providing individual and/or group counseling up to 10 sessions
   - Providing at least 3 Mental Health Related classroom trainings/presentations for LVJUSD students during each academic year
   - Participate in COST meeting at designated schools within LVJUSD if requested
   - Collaboration with LHS Wellness Center

B. Horizons Family Counseling Responsibilities:
   - The Clinical Manager will act as the liaison between Horizons Family Counseling and Liisa Hanninen-Danner, lead school psychologist
   - Provide up to 20 hours of counseling support a week during each school year
     i. Provide counseling services at designated schools assigned by LVJUSD
   - As mandated reporters, submit reports to Children and Family Services as necessary. Horizons Family Counseling must maintain copies of these reports. As a courtesy to the school, Horizons Family Counseling will follow the school's protocol of when a CPS report has been made
   - All records are confidential and ***will not be part of the child's school record.*** We work collaboratively with school personnel, but will not release details about the specific content of the youth's counseling without written consent from a legal guardian
   - Maintain a standard of professionalism and behavior consistent with the expectations of LVJUSD
   - Provide a summary of stats/generic data at the end of the year
   - Notify the school site staff if Horizons Family Counseling will be late or absent on assigned day; or of any staff changes
   - To the extent possible and in collaboration with the school site staff, provide services that do not interfere with classroom work or disrupt the normal activities of the school site

C. LVJUSD School Site Responsibilities:
   - School personnel such as the COST Teams, school administrators, school counselors to provide appropriate referrals and collaborate with Horizons Family Counseling to determine student referral process and criteria for student referral

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EXHIBIT A

SCHOOL BASED COUNSELING, EDUCATIONAL SERVICES

- Provide a designated staff person at each school site responsible for implementing and maintaining communication with Horizons Family Counseling in a timely and regular manner
- Provide school policies and procedures, including but not limited to consent and confidentiality policies.
- Provide reasonable space, as agreed upon by school and Horizons Family Counseling, to facilitate services to students
- Provide the use of reasonable resources (i.e.: telephone, voicemail, copiers…)
- Provide ongoing support as needed to facilitate the provision of services
- Collaborate with Horizons Family Counseling to determine student referral process and criteria for student referral.
- Submit documentation of all students receiving services, except as limited by confidentiality

D. Criminal Background Checks

Horizons Family Counseling staff who will provide counseling services on any school site have had a criminal background check and fingerprinting, performed, and approved

E. Payment of Services

- LVJUSD may be charged for up to 10 sessions of a LVJUSD student receiving services provided by Horizons Family Counseling within 1 academic year. These sessions will be funded from LVJUSD through The Federal American Rescue Plan Act/ Mental Health Student Services Act and/or the Student Behavioral Health Incentive Program
- These services are funded by Alameda County Probation Department (Contract No. 16465)
- Any additional school-based sessions up to 10 sessions will be charged to either the County of Alameda, Master Contract No. 901499 or directly to the guardian/family of the individual.

LIVERMORE
CALIFORNIA

CITY COUNCIL STAFF REPORT **ITEM NO. 5.10**

DATE: July 24, 2023

TO: Honorable Mayor and City Council

FROM: Paul Spence, Community Development Director

SUBJECT: Resolution approving a new master property agreement with the Livermore Area Recreation and Park District for joint use properties and facilities.

RECOMMENDED ACTION

Staff recommends the City Council adopt a resolution approving a new master property agreement with the Livermore Area Recreation and Park District for joint use properties and facilities and authorizing the City Manager to sign the agreement.

SUMMARY

The City and the Livermore Area Recreation and Park District have worked cooperatively to develop parks, plazas, open space, trails, and recreational facilities throughout Livermore. In 2010, the City of Livermore and LARPD entered into a Master Property Agreement (MPA) to set out an operational structure for the acquisition, responsibility, and maintenance of shared properties (owned by one and operated/maintained by the other). The parties wish to continue with the working relationship but seek to change the agreement to update provisions, remove terms, and amend/clarify rights and responsibilities. The primary change sought by the parties is to make the MPA a perpetual agreement which allows the parties to continue working together and to seek amendments and/or changes to the document as the need for those changes arise. The changes also allow for addition/removal of properties without termination or additional review. Another change from the prior MPA is a focus on reciprocity and providing for the possibility of properties LARPD owns to be operated by the City should the need ever arise. Terms were included to add clarity that reflects current the understanding and practice between the parties.

DISCUSSION

The Livermore Area Recreation and Park District is an independent special district organized under the provision of Chapter 4, Division 5, Public Resources Code, State of California (5700 series). As such, it is a political subdivision of the State – a completely independent governmental agency. The District was originally organized as the Livermore Area Park, Recreation and Parkway District. In a special election on Tuesday, June 10, 1947, Livermore voters ratified a resolution of the Alameda County Board of

Supervisors to form the Livermore Area Park, Recreation and Parkway District. In 1959, the Board of Directors changed the name of the District to the Livermore Area Recreation and Park District (LARPD). LARPD's mission includes: 1) Organizing, promoting and conducting community recreation programs 2) Establishing an operational system of recreation and facilities 3) Acquiring land and facilities for recreation usage.

The City and LARPD have worked cooperatively to develop parks, plazas, open space, trails, and recreational facilities throughout Livermore. In 2010, the City of Livermore and LARPD entered into a Master Property Agreement (MPA) to set out an operational structure for the acquisition, responsibility, and maintenance of shared properties (owned by one and operated/maintained by the other). This agreement expired in 2020. Because the parties wish to continue with the working relationship but seek to change the agreement to update provisions, remove terms, and amend/clarify rights and responsibilities, staff negotiated terms for a new MPA, attached as Exhibit A to the Resolution.

The LARPD Board of Directors approved the new MPA at their regular meeting on May 31, 2023.

Highlights of the Proposed Agreement:
The proposed MPA is a perpetual agreement which allows the parties to continue working together and to seek amendments and/or changes to the document as the need for those changes arises. The proposed MPA allows for the addition or removal of properties without termination or additional review. The proposed MPA has a focus on reciprocity and providing for the possibility of properties LARPD owns to be operated by the City should the need ever arise. In addition, the proposed MPA includes provisions that reflect current understanding and practice between the parties.

Term - The Term of the agreement has been changed to be perpetual in nature, with periodic reviews (every 10 years) to ensure that the needs of the parties and the community are being met.

Termination - If the parties determine this agreement should be discontinued, the parties agree to meet and confer to mutually create processes to affect the termination of the agreement (winddown period).

Exhibits - The need for exhibits has been eliminated. The new MPA allows the maps and tables regarding the shared properties to be held electronically by the parties and requires updates after additions or modifications to shared property or facilities have been accepted by both the City Council and the LARPD Board. The duty of each entity is outlined in the MPA, including alerting the other of changes and designating the party responsibility for updates and modifications.

Special provisions have also been updated for properties with separate lease agreements, such as the Robert Livermore Community Center, Ravenswood, Carnegie, etc. In the proposed MPA, it is recognized that the separate lease agreements are not perpetual but are to be recorded in the property data matrix, which assists in agreement management. The MPA also allows special properties to be folded into and governed by the MPA in the future, if agreed to by both parties. This provides more flexibility without need to amend the MPA itself.

Insurance Requirements - The property owner of each property is required to maintain property damage insurance and liability insurance. Given the perpetual nature of the proposed agreement, no specific coverage amounts are identified. This section reflects the intent of both parties to work together to resolve claims made against either party.

Amendments - The proposed MPA clarifies that changes to the agreement that “alter the intent and terms” of the agreement will require formal authorization by the LARPD Board and City Council.

Hold Harmless and Indemnification: This section includes the City’s standard hold harmless and indemnification requirements with the addition that the other party’s comparative negligence is not indemnified. In addition, if both parties are negligent with respect to a specific claim, one party is not liable for the other party’s negligence.

Given the perpetual nature of the proposed MPA, the definition of Capital Rehabilitation Projects includes examples of project types rather than monetary thresholds. The Capital Project type will determine who is responsible for financing the work; the property owner is accountable for Capital Rehabilitation Projects, while the operator of the property is accountable for routine maintenance, utilities, etc.

The proposed MPA requires compliance with LARPD's Right of Entry process and maintains City requirements for those renting properties from LARPD.

Maintenance - The scope of responsibility for trail maintenance is clarified in the proposed MPA. Ten feet on either side of a trail or up to the bank of the arroyo is within the area of responsibility. Outside of that portion, the property owner is responsible. References to specific codes, manuals, and standards have been eliminated to allow for flexibility in the agreement so that material changes and new negotiations are unnecessary when sources/standards evolve. Instead of relying upon negotiation or reference to specific sources, the parties are required to adhere to current maintenance codes and standards applicable to the type of property involved.

Minimum Park Size - Language from the 2010 agreement that outlined the right of LARPD to “reject any park offered for dedication and acceptance which is less than six acres in size for purposes of maintenance” has been eliminated. There is no longer a minimum size requirement.

Alternate Dispute Resolution - The provisions outlined have been updated to include a good faith negotiation requirement, procedures for selecting a mediator, and a provision for court determination as to which, if either, party is entitled to attorney's fees and other costs.

FISCAL AND ADMINISTRATIVE IMPACTS

This agreement clarifies fiscal and administrative responsibilities for the acquisition, responsibility, and maintenance of shared properties to be consistent with current practice. No added fiscal or administrative impacts are expected.

COMMUNITY PILLAR

5: A City That Works

GOAL

14: Develop, operate, and maintain the City's infrastructure

ATTACHMENTS

1. Location Map - Parks
2. Location Map - Trails

3. Resolution
4. Exhibit A - Agreement

Prepared by: Joel Waxdeck
Acting City Engineer

Approved by:



Marianna Marysheva
City Manager

Fiscal Review by:



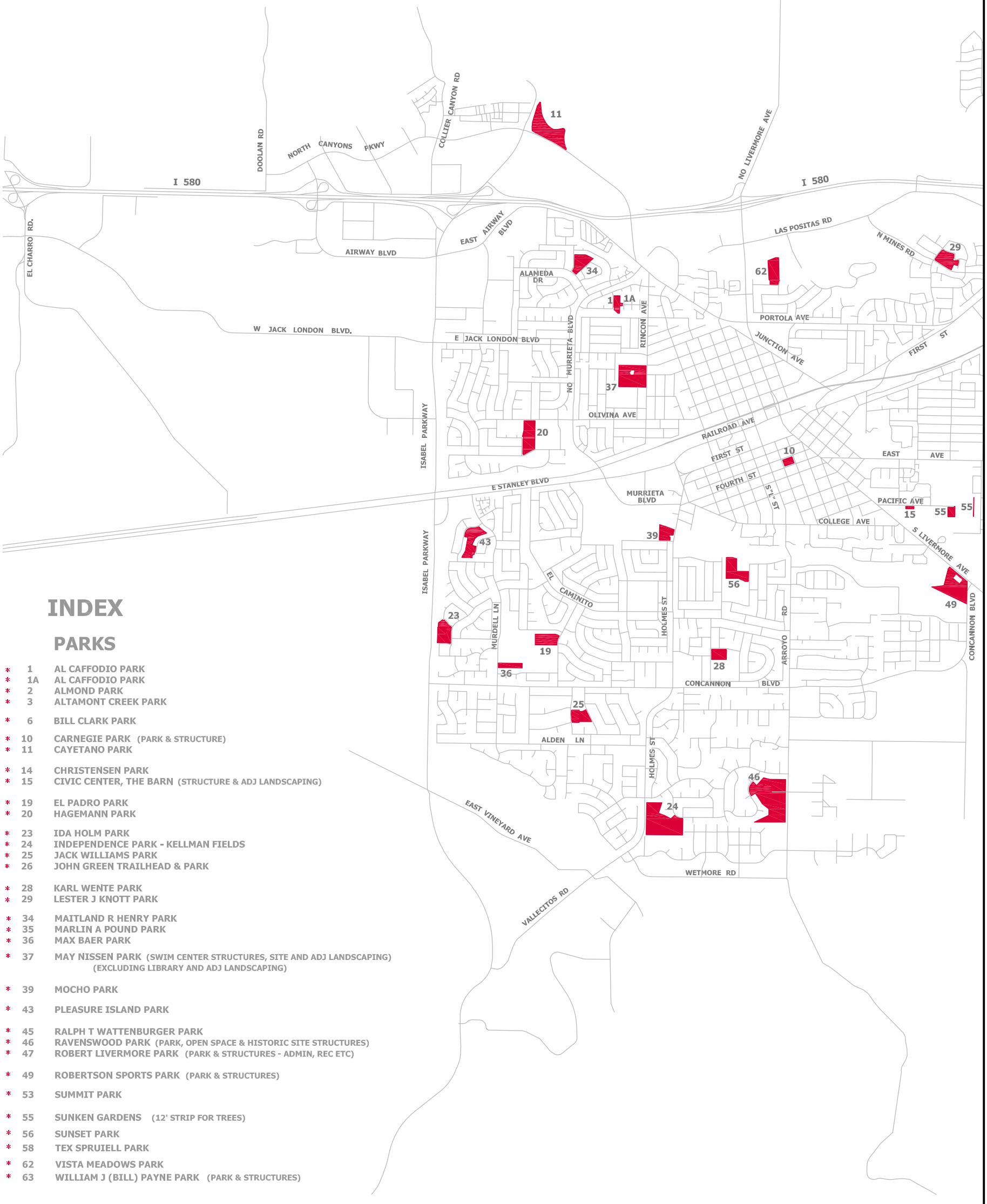
Tina Olson
Administrative Services Director

MASTER PROPERTY AGREEMENT

PARKS

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INDEX

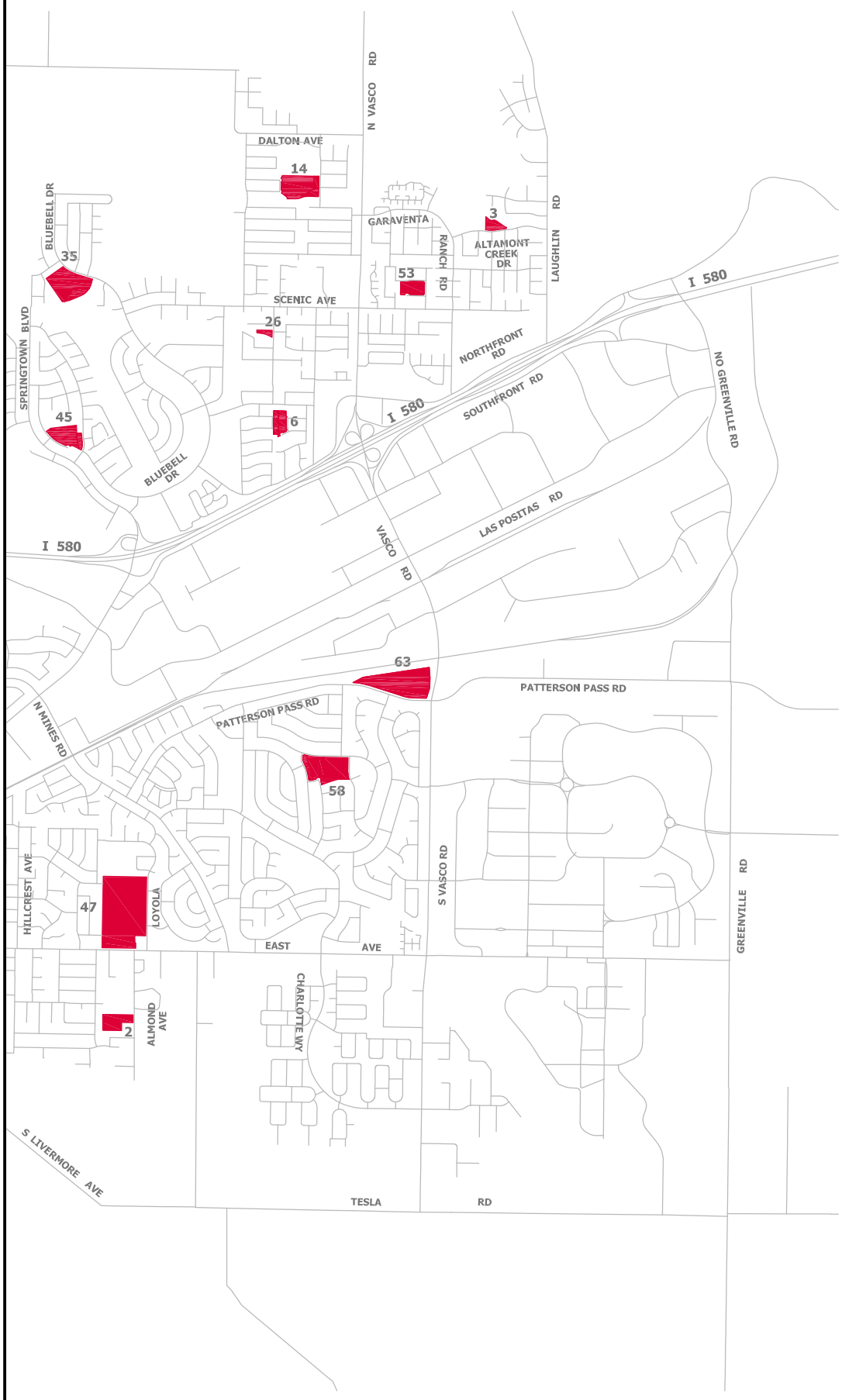
PARKS

*	1	AL CAFFODIO PARK
*	1A	AL CAFFODIO PARK
*	2	ALMOND PARK
*	3	ALTAMONT CREEK PARK
*	6	BILL CLARK PARK
*	10	CARNEGIE PARK (PARK & STRUCTURE)
*	11	CAYETANO PARK
*	14	CHRISTENSEN PARK
*	15	CIVIC CENTER, THE BARN (STRUCTURE & ADJ LANDSCAPING)
*	19	EL PADRO PARK
*	20	HAGEMANN PARK
*	23	IDA HOLM PARK
*	24	INDEPENDENCE PARK - KELLMAN FIELDS
*	25	JACK WILLIAMS PARK
*	26	JOHN GREEN TRAILHEAD & PARK
*	28	KARL WENTE PARK
*	29	LESTER J KNOTT PARK
*	34	MAITLAND R HENRY PARK
*	35	MARLIN A POUND PARK
*	36	MAX BAER PARK
*	37	MAY NISSEN PARK (SWIM CENTER STRUCTURES, SITE AND ADJ LANDSCAPING) (EXCLUDING LIBRARY AND ADJ LANDSCAPING)
*	39	MOCHO PARK
*	43	PLEASURE ISLAND PARK
*	45	RALPH T WATTENBURGER PARK
*	46	RAVENSWOOD PARK (PARK, OPEN SPACE & HISTORIC SITE STRUCTURES)
*	47	ROBERT LIVERMORE PARK (PARK & STRUCTURES - ADMIN, REC ETC)
*	49	ROBERTSON SPORTS PARK (PARK & STRUCTURES)
*	53	SUMMIT PARK
*	55	SUNKEN GARDENS (12' STRIP FOR TREES)
*	56	SUNSET PARK
*	58	TEX SPRUIELL PARK
*	62	VISTA MEADOWS PARK
*	63	WILLIAM J (BILL) PAYNE PARK (PARK & STRUCTURES)

* CITY OWNED/LARPD MAINTAINED

MAP REVISED 7-11-23

SHEET 1 OF 2



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W E
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NO SCALE:

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* **CITY OWNED/LARPD MAINTAINED**

PARKS & RECREATION

PARKS

CITY OWNED & LARPD MAINTAINED

MASTER PROPERTY AGREEMENT

PARKS

MAP REVISED 7-11-23

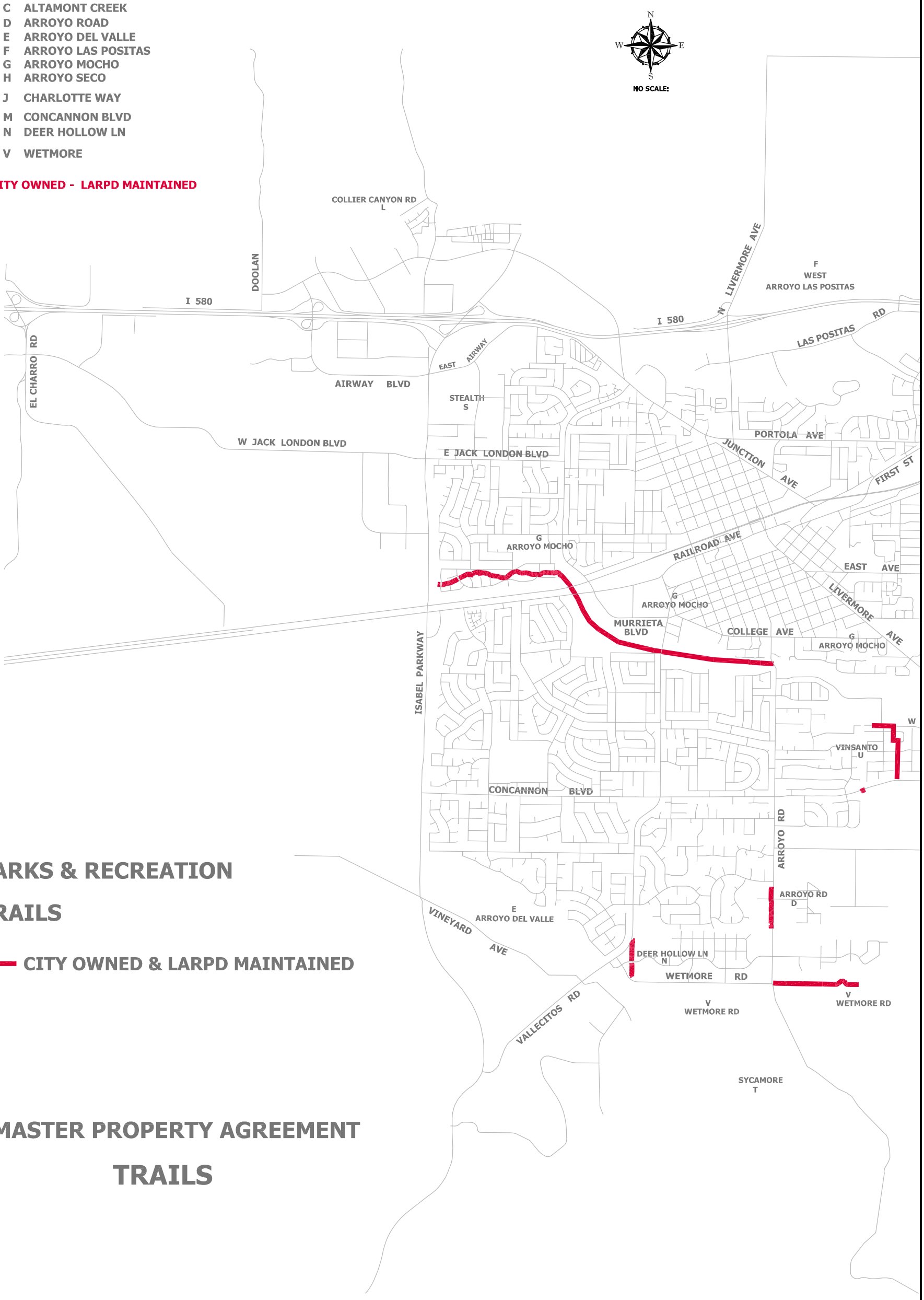
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* H ARROYO SECO
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* M CONCANNON BLVD
* N DEER HOLLOW LN
* V WETMORE

* CITY OWNED - LARPD MAINTAINED



PARKS & RECREATION

TRAILS

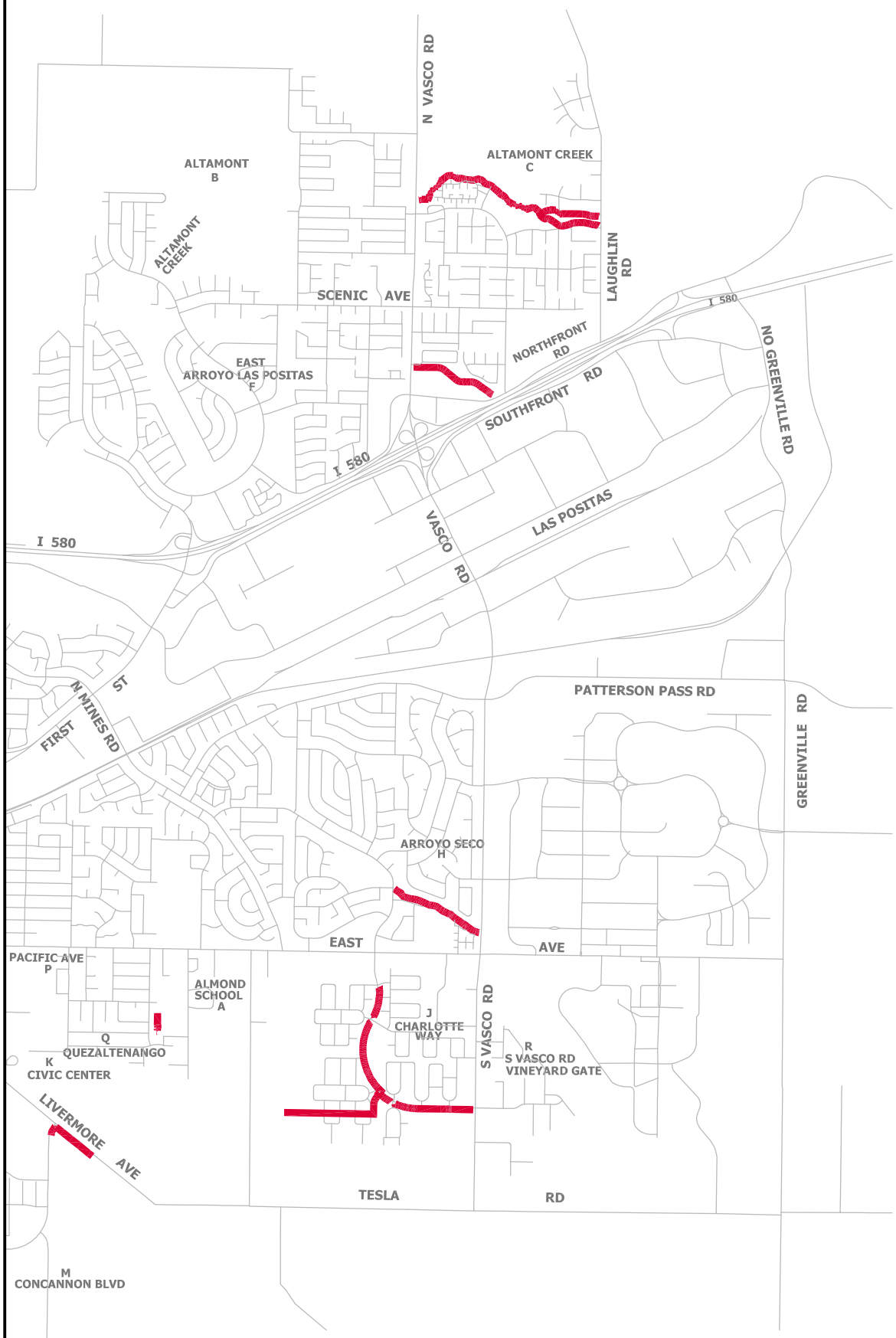
— CITY OWNED & LARPD MAINTAINED

MASTER PROPERTY AGREEMENT

TRAILS

MAP REVISED 7-11-23

SHEET 1 OF 2





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SHEET 2 OF 2

IN THE CITY COUNCIL OF THE CITY OF LIVERMORE, CALIFORNIA

A RESOLUTION AUTHORIZING EXECUTION OF A MASTER PROPERTY AGREEMENT BETWEEN THE CITY OF LIVERMORE AND THE LIVERMORE AREA RECREATION AND PARK DISTRICT

The City of Livermore ("City") and the Livermore Area Recreation and Park District (LARPD) are separate governmental entities that have worked cooperatively to develop parks, plazas, open space, trails, and recreational facilities throughout Livermore.

In 2010, the City of Livermore and LARPD entered into a Master Property Agreement (original MPA) to establish an operational structure for the acquisition, responsibility, and maintenance of shared properties (owned by one and operated/maintained by the other). That agreement expired in 2020.

Even though the original MPA expired, the City and LARPD want to continue their working relationship and adopt a new MPA to update provisions, remove terms, and amend/clarify the rights and responsibilities that staff negotiated terms for in the original MPA.

The primary change sought by the parties is for the new MPA to include a perpetual clause that avoids unexpected terminations and allows them to continue working together and to seek amendments and/or changes to the document as the need for those changes arise. The changes to the original MPA will also allow for addition/removal of properties without termination or additional review. Unlike the original MPA, the new MPA also focuses on reciprocity and providing for the possibility of properties owned by LARPD to be operated by the City should the need ever arise.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Livermore that the City Manager is authorized to execute the Master Property Agreement with the Livermore Area Recreation and Parks District, attached hereto as Exhibit A, to establish an operational structure for the acquisition, responsibility, and maintenance of shared properties.

On motion of Council Member _____, seconded by Council Member _____, the foregoing resolution was passed and adopted on July 24, 2023, by the following vote:

AYES: COUNCIL MEMBERS:
NOES: COUNCIL MEMBERS:
ABSENT: COUNCIL MEMBERS:
ABSTAIN: COUNCIL MEMBERS

ATTEST:

_____
Marie Weber
City Clerk

APPROVED AS TO FORM:

/s/ Jason R. Alcala
Jason R. Alcala
City Attorney

Exhibit A – Master Property Agreement

MASTER PROPERTY AGREEMENT
BETWEEN THE CITY OF LIVERMORE AND
THE LIVERMORE AREA RECREATION AND PARK DISTRICT

This Agreement is entered into effective _____, 2023, between the City of Livermore (City) and the Livermore Area Recreation and Park District (LARPD).

RECITALS

A. LARPD is an independent special district providing park development, maintenance and recreational program services under the Recreation and Park District Law of California (Public Resources Code § 5780, et. seq.). The LARPD service area includes an approximately 240-square mile portion of eastern Alameda County and encompasses the City of Livermore.

B. The City is a municipal corporation, organized under the laws of the State of California.

C. There has been a long-standing, mutually beneficial relationship between the City and LARPD (hereinafter "Parties"), including the development of park and recreation facilities and programs within the City of Livermore. The purpose of this relationship is and has been to provide the communities served by the Parties with the benefit of outdoor spaces, recreational facilities, and event venues to increase the quality of life for both residents and visitors to Livermore.

D. The City and LARPD have cooperated in the acquisition, use and maintenance of properties in the City, including buildings, parks, and trail properties. The acquisition of the park and trail properties has primarily been the responsibility of the City, which has generally given possession of these properties to LARPD for the purpose of development and maintenance.

E. In 1970, both Parties entered into the Joint Acquisition and Development of Parks Agreement. This document was amended several times and in 2010 was replaced by a Master Property Agreement, dated September 27, 2010, which was to clarify and consolidate the Parties' understanding regarding the duties and responsibilities relative to the acquisition, ownership, operation, and maintenance of buildings, parks, and trail properties within the City of Livermore and the maintenance of certain Landscape Maintenance Districts. At this time, the Parties wish to reaffirm their present understanding and enter into a Master Property Agreement that is perpetual in nature with flexibility to make minor adjustments, as needed, without amending or reworking the overall agreement between the Parties.

F. This Agreement is not intended to, and does not, convey fee title of any property from one entity to the other. Any such conveyance the Parties may agree to will be handled and recorded by separate legal instrument. However, in an effort to retain local control over local recreational and park assets, the Parties agree that whenever either party to this Agreement transfers an interest in real property to the other party, the deed, easement or other document granting the interest shall contain a reversion in interest to the grantor should the property interest conveyed cease being used for its intended purpose.

G. Given the ever-changing status of the state's economy and the budgetary constraints facing the State of California, special districts and municipalities, the Parties are particularly aware of the likelihood that periodic budget shortfalls and related cutbacks will result during the term of this Agreement. The Parties also recognize that periods of drought affecting the State of California will impact the Parties' budgets as well as likely require adjustment in the management of its properties as a response to water concerns and restrictions. Accordingly, the Parties acknowledge that careful and considered decisions will need to be made in the future relative to the trade-off between an acceptable standard of park and trail maintenance

and continued expansion of the park and trail system without adequate resources for additional maintenance.

Now, therefore, subject to the mutual covenants and conditions contained herein, the Parties agree as follows:

1. Definitions.

1.1 Capital Rehabilitation Projects. "Capital Rehabilitation Projects" shall mean any major replacement, rehabilitation or repair including, by way of example, such items as the replacement of a roof or the heating/ventilation/air conditioning (HVAC) system or structural repairs, foundation repairs, seismic upgrades, fire code compliance, removal of hazardous materials previously incorporated into the structure (i.e. lead paint and asbestos), Americans with Disabilities Act compliance, and water main and sewer repair/replacement. Items not considered to be Capital Rehabilitation Projects include, by way of example, such recurring maintenance or minor repairs as graffiti removal and abatement, repair of broken glass windows or doors, repair of minor plumbing problems (i.e., leaky faucets or toilets), cleanout and general maintenance of piping systems, and the maintenance and removal of trees.

1.2 Community Facilities Districts (CFD). "Community Facility Districts" or "CFDs" shall mean a special tax assessment district created in California to finance local infrastructure or services including maintenance services.

1.3 Facilities. "Facilities" shall mean all equipment, playground and sports furnishings, grounds, buildings, improvements, and infrastructure serving a park or trail property subject to the Master Property Agreement, including landscaping and hardscaping.

1.4 Landscape Maintenance District. "Landscape Maintenance District" or "LMD" shall mean those districts formed pursuant to the Landscape and Lighting Act of 1972 for the maintenance of landscaping improvements.

1.5 Parkways. "Parkways" shall mean the area within the public right-of-way lying between the curb and sidewalk.

1.6 Property Matrix Database. "Property Matrix Database" shall mean an electronic file containing a spreadsheet or other table or list of information regarding all of the properties under this Agreement that are owned by one party and maintained by the other and shall contain, as applicable, a listing of the property's name, location, owner, operator, lessee, easement/encumbrance, trail segment number, Alameda County Recorder's series number and/or APN, whether property is governed under this agreement ("MPA") or a Special Agreement with end date ("Special – date"), and maintenance provider. This file shall be maintained and updated by LARPD conforming to the requirements of Sections 2.3 and 15.2 herein.

1.7 Trails. "Trails" shall mean an unpaved or paved path of travel utilized by pedestrians, equestrians and/or bicyclists. Notwithstanding the foregoing, this Agreement shall not apply to unpaved trails used exclusively for hiking, owned by either the City or LARPD.

1.8 Designated Volunteers. "Designated Volunteers" shall mean any individual who performs a service for City or LARPD without renumeration for such services.

2. Properties Subject to this Agreement.

2.1 General. The properties that are subject to this Agreement are all properties and trails within the City of Livermore which are:

a. Owned by the City in either fee title or held in easement, and are licensed, leased, operated, maintained, or staffed by LARPD. These properties may include, but are not limited to parks, trails, parkways, landscape maintenance districts, landscape easements, recreational facilities, and other associated facilities; and

b. Owned by LARPD in either fee title or held in easement and are licensed, leased, operated, maintained or staffed by the City.

Collectively, these properties shall be referred to as "Properties" or "Property."

2.2 Maps of the Properties. The City shall maintain and update maps depicting all of the Properties under this Agreement. These property maps shall be held in an electronic form/format and one map shall depict the parks and another depict the trails. Each electronic map shall clearly indicate which properties are City owned and LARPD maintained and which are LARPD owned and City maintained. At the City's discretion, the maps may also include properties owned by a Party to this Agreement but maintained by the owning party or an individual or entity not party to this Agreement provided those properties are clearly designated.

The City shall update the maps upon additions, deletions, or changes in responsibility, ownership, and other items as needed pursuant to LARPD and City approval processes and in conjunction with related changes to the Property Matrix Database. Prior to making any changes a backup of the existing maps will be created and stored by City and available upon request to LARPD. LARPD shall have read-only access to the electronically maintained maps and shall be responsible for alerting the City to any needed changes to the maps in a timely manner and in no event later than two (2) weeks following the perceived need for the change.

2.3 Property Matrix Database. LARPD shall maintain and update a Property Matrix Database of all Properties under this Agreement that are owned by one party and maintained by the other. This property matrix shall contain, as applicable, a listing of the property's name, location, owner, operator, lessee, easement/encumbrance, trail segment number, Alameda County Recorder's series number and/or APN, whether property is governed under this agreement ("MPA") or a Special Agreement with end date ("Special – date"), and maintenance provider. The City will assist in the creation and initial population of information required for the Property Matrix Database.

LARPD shall update the Property Matrix Database upon additions, deletions, or changes in responsibility, ownership, and other items as needed pursuant to LARPD and City approval processes and in conjunction with related changes to the electronic maps. Prior to making any changes a backup of the existing property matrix will be created and stored by LARPD and available upon request to City. City shall have read-only access to the electronically maintained property matrix and shall be responsible for alerting LARPD to

any needed changes to the Property Matrix Database in a timely manner and in no event later than two (2) weeks following the perceived need for the change.

2.4 Future Acquisitions. The Parties intend to continue their relationship in which generally the City acquires, or assists in acquiring, Properties that will be improved, maintained and operated by LARPD. Regarding trails, either Party may acquire Properties in fee or by easement, which will be improved, maintained and operated by the Parties consistent with the master planning documents adopted, updated, or amended by the Parties. It is the Parties' intent to have all future acquired properties and re-zoned properties which would fall within the purview of subparagraph 2.1 herein to be subject to this Agreement effective, if applicable, upon acceptance of an offer of dedication of that property.

2.5 Reciprocal Reversion Provisions. The Parties agree that, as of the effective date of this Agreement, any grant deed, grant of easement, dedication or other legal document granting an interest in real property between the Parties for recreation and park purposes and situated within the City's limits, shall contain a provision providing for a reversion in interest to the granter in the event the property were to cease being used by the grantee for its stated purpose. To the extent possible, any document granting an interest in real property subject to the terms of this paragraph shall contain a clear statement of the intended use for the property being transferred. The party possessing the reversionary interest shall have the option to accept or reject the reversion at the time it is exercised or has become enforceable. By way of example and with no intent to limit the applicability of this section, if the City offered a parcel of land which was accepted by LARPD to be improved as a park, the City would include a provision in the grant deed providing for a reversion to the City (a clause stating that the City has the right to take back the land) in the event LARPD ceased to operate the park or ceased operations as a special district.

3. Special Agreements/Provisions. The Parties acknowledge that there exist properties that fall within the parameters of this agreement, but which are governed by special agreements between the parties. Where a special agreement applies to a property which otherwise would fall within the scope of this Agreement, the provisions within that agreement supersede any more general provisions contained herein. However, these properties are to be included in the electronic maps and Property Matrix Database maintained by the Parties.

The Parties acknowledge that the properties governed by special agreements each have features or attributes distinct from the other properties. The determination as to whether any property has a unique feature/attribute which would require a special agreement or provisions beyond the general provisions contained herein shall be made jointly by the Parties.

4. Licenses. For each Property identified in Section 2 above the electronic property maps and the Property Matrix Database and denoted as "City owned-LARPD maintained and LARPD owned-City maintained," the owner hereby grants a license to use the Property to the agency that maintains the Property. There is no monetary charge for the license given. The maintaining party's interest in each Property shall be subordinated to the lien of any mortgage, deed of trust, easement, or other encumbrance placed upon the Property by the owning party.

5. Use of Properties.

5.1 Public Uses. LARPD may use City Property licensed to LARPD under this Agreement for any reasonable public park or recreational purpose. LARPD shall have

custody and control over these Properties and shall have the right and responsibility to impose and enforce its Rules and Regulations.

5.2 Parking. Parking for any Property must conform to the City's parking requirements and to any LARPD requirements, as amended or renumbered.

5.3 Nuisance or Unsafe Conditions. The Parties shall not commit or permit any waste or nuisance to exist on a Property subject to this Agreement, nor shall it commit or permit any condition which endangers the Property, any persons, or an adjoining property. The Parties agree to comply, and require all other users to comply, with the federal, state, county and local laws and regulations.

6. Term of Agreement; Termination Provision.

6.1 Perpetual Agreement; Winddown Period. It is the intention of the Parties to create an Agreement that will continue for an indefinite duration until one or both Parties seek a substantial change in the working relationship between the Parties as to the Properties or the maintenance of the Properties. The Parties further acknowledge that discontinuation of the relationship between them will require an amount of time to cease operations, change/refund reservations and use permits, and/or change maintenance responsibilities at the Properties and to mitigate the potential impact to the employees of the Parties and the communities they serve. Therefore, the Parties intend to meet and confer to mutually create a winddown procedure should either or both Parties seek to terminate this Agreement.

6.2 Term of Agreement; Periodic Review. The Parties intend this Agreement to have an open-ended term and continue until either party provides the other with written notice of termination. Other than to increase or reduce the number or boundaries of Properties as stated herein, the Parties may agree to renegotiate this Agreement and any changes/amendments to this Agreement will require execution of a new Master Property Agreement which will rescind this Agreement. Due to its long-term nature, the Parties each agree to internally review this Agreement at least every ten (10) years to ensure that the needs of the Parties and the communities they serve are met by sustaining the continued viability, safety, and aesthetics of the Properties subject to this Agreement. As need arises, either Party may request a meeting to discuss this Agreement and any changes or amendments which might be needed.

6.3 Termination. Either party may terminate this Agreement by giving written notice to the other party. However, if either party ceases to be a legal entity or is precluded by law from meeting the responsibilities contained herein, this Agreement will terminate at that time or following a negotiated winddown process, whichever is sooner; termination shall only be considered "for cause" if either party ceases to be a legal entity or is precluded by law. At the time of any proposed termination other than for cause, the Parties shall meet in an attempt to resolve the differences leading to the termination or to arrange dissolution of the relationship between the Parties, to transition maintenance responsibilities, to determine any potential responsibility for future use and maintenance of the Properties, and to agree upon reimbursement for improvements in the form of facilities, hardscape, and/or landscape associated with the Properties consistent with Section 7.3 below.

6.4 Reduction/Partial Termination. Notwithstanding the foregoing, in the event either Party wishes to terminate or reduce its obligations to operate and maintain a Park or Trail (or a segment thereof) or related facility due to hardship, including, but not limited to,

funding sources, lack of ability to hire adequate manpower, and constraints created by law, the Party seeking to alter its obligations shall provide written notice to the other; within thirty (30) days of notice, the Parties agree to meet and confer relative to the fiscal viability and priority of maintaining existing Properties.

6.5 Surrender. Following termination of this Agreement or an agreed upon reduction/partial termination as stated in Section 6.4, a Party, if requested by the other Party in writing, shall surrender any property owned by the other in a condition consistent with all state and federal regulations applicable to the use and operation of the park, trail, and/or facility as practicable, excluding normal wear and tear unless the reason for surrender is due to the inability to perform the duties and obligations under the provisions of this Agreement, termination for cause, or the Parties have agreed pursuant to a different allocation of costs or responsibilities. The Parties agree to meet and confer to determine whether, consistent with Section 7.3, any reimbursement for the value of the improvements made is warranted.

7. City's Reservations and Responsibilities.

7.1 Inspection, Notice and Repair. The City, or any other easement holder, reserves the right to enter its Property at any reasonable time, to inspect, to supply necessary services, to survey or for any legitimate purpose so long as an application to obtain a Right of Entry from LARPD is submitted at least ten (10) calendar days prior to the proposed entry and all efforts, including, but not limited to changing/delaying the time of entry, are made to avoid disruption of program or facility management or operation; LARPD will make all reasonable efforts to approve City's Right of Entry application in a timely fashion. Emergency access will not require any prior notice. The City also reserves the right to install, construct, repair or maintain any public facility on City owned property and agrees to repair any damage caused by its activities to its previous state or one agreed upon by LARPD. The City agrees to meet and confer with LARPD relative to the location of any new facilities to be installed on the property and to obtain a Right of Entry from LARPD in advance of construction. The City and any other easement holder are subject to the direct cost of LARPD fees where a Right of Entry is required; LARPD may waive these fees at its sole discretion.

7.2 Removal of Park/Trail Properties from Agreement. Subject to the reimbursement provisions of Section 7.3 the City also reserves the right to remove any City-owned Park or Trail Property identified in the electronic maps and the Property Matrix Database from the provisions of this Agreement, following an ample opportunity to meet and confer about such removal has been afforded to LARPD, in no case less than six (6) months.

7.3 Reimbursable Improvements. In the event of sale or other transfer and/or relinquishment of title to any of the Properties (City owned-LARPD maintained) listed in Section 2, above, by the City to a third party, the City shall reimburse LARPD for the assessed value of its investments, including construction, rehabilitation, remodeling, or repairs, made to those Properties. Prior to making said reimbursement, the Parties agree to meet and confer relative to the value of those investments and any improvements, alterations or changes made pursuant to Section 8.6.

7.4 City Budget Review. Upon request, the City agrees to provide a copy of its draft annual operating and capital budget to LARPD's General Manager or designee at the earliest opportunity but in no event later than when the document first becomes available

for dissemination to the public pursuant to the Ralph M. Brown Act (CA Gov. Code § 54950, et. seq.) and prior to adoption by the City Council.

7.5 LMD & CFD Maintenance Funding. With respect to the funding of the maintenance costs of the LMDs and CFDs, the City agrees to provide the budgeted pass-through amount identified in the annual Engineer's report and approved by the City Council, which such amounts will be distributed by the City to LARPD on an annual basis. The City agrees to meet and confer with LARPD about the proposed pass-through amounts not less than 60 days prior to the adoption of the annual Engineer's report.

7.6 Utilities. City shall pay all utilities for the Properties it controls/maintains, including but not limited to, water, sewer, electricity, gas, telephone, and cable.

8. LARPD's Reservations and Responsibilities.

8.1 Utilities. LARPD shall pay all utilities for the Properties it controls/maintains, including but not limited to, water, sewer, electricity, gas, telephone, and cable.

8.2 Solid Waste, Compostable Material, and Recyclable Collection. As of the effective date of this Agreement, solid waste, compostable material, and recyclable collection services are provided by the City's franchise waste hauler and administered through a franchise agreement between the City and the franchise waste hauler. The Parties agree that LARPD may retain any and all monies, refunds, and/or rebates received from the disposal or sale of recyclable materials. To the extent that any provision of this Agreement relative to the solid waste, recyclable material, and compostable materials collection, processing and disposal services conflicts with either the franchise agreement (either currently written or as may be amended in the future) or the Livermore Municipal Code (LMC) provisions governing the collection, processing and disposal of waste, the terms of the franchise agreement and the LMC shall supersede.

8.3 Care and Maintenance. LARPD is responsible for undertaking, as well as for payment of the costs of the following:

a. all reasonable care, maintenance and repair of equipment, playground and sports facilities, grounds, reasonable daily maintenance of buildings and infrastructure immediately adjacent thereto and serving the Property, landscape and hardscape now on or later placed on the Properties ("Facilities") such that these Facilities will remain serviceable and will not deteriorate unreasonably from their current condition, normal wear and tear excepted;

b. compliance with all current maintenance codes and standards applicable to the subject Properties;

c. maintenance of equipment installed on the property in accordance with the applicable manufacturer's recommendations, warranties and instructions;

d. necessary and ordinary custodial, janitorial, gardening, and other services for the Properties; and

e. compliance with all county, state, and federal regulations applicable to the use and activity undertaken with the Facility or on the Property.

The Parties understand and acknowledge that the level of maintenance may be subject to funding constraints outside the control of either party which may dictate, in any given year, the extent to which Properties can be maintained to the standards and expectations set forth herein. It is the Parties' express intent that the relationship of the Parties is such that LARPD will be responsible for the day-to-day maintenance of the Facilities to such a degree that the Facilities do not deteriorate significantly from their current condition, normal wear and tear excepted. The Parties understand and agree that the nature of repairs and maintenance envisioned by this section include, by way of example, such recurring maintenance or minor repairs as graffiti removal and abatement, repair of broken glass windows or doors, repair of minor plumbing problems (i.e., leaky faucets or toilets), cleanout and general maintenance of piping systems, and the maintenance and removal of trees.

8.4 Removal of Park/Trail Properties from Agreement. LARPD also reserves the right to remove any LARPD-owned Park or Trail Property identified in the electronic maps and the Property Matrix Database from the provisions of this Agreement, following an ample opportunity to meet and confer about such removal has been afforded to the City, in no case less than six (6) months.

8.5 LARPD Budget Review. Upon request, LARPD agrees to provide a copy of its draft annual operating and capital budget when the document first becomes available for dissemination to the public pursuant to the Ralph M. Brown Act (Gov. Code § 54950, et. seq.) to the City's Public Works Director and City Engineer, or their designees, prior to the adoption of the budget by LARPD's Board of Directors.

8.6 Improvements, Alterations or Changes in Use. LARPD shall obtain written approval from the City Manager or his or her designee, and obtain all required permits (from federal, state, or local agencies), before making any improvement or doing any construction or alterations to City Facilities (excluding routine maintenance) or before changing the use of the Property. LARPD is subject to the direct cost of City fees where improvements, construction or alterations require City permit authority. The City may waive these fees for minor alterations at the City's sole discretion. Such improvements or alterations shall be the property of the City and shall remain and be surrendered with the Property upon the termination of this Agreement subject to the provisions of Section 6 and the reimbursement provisions of Paragraph 7.3.

9. City and LARPD Joint Responsibilities.

9.1 Historic Properties. The Parties acknowledge that a number of the Properties may house historic structures and features in various stages of integrity and condition. The Parties agree that maintenance of these historic structures and features shall conform to Secretary of the Interior Standards. The Parties also acknowledge that the cost to upgrade these facilities through Capital Rehabilitation Projects (see definition in § 1.1) may be significant and possibly cost prohibitive. The responsibility for Capital Improvement Projects related to historic structures and features is to be the responsibility of the owner of the property, but the Parties shall work together to find and jointly pursue funding sources for these projects. The Parties agree to meet and confer as the need arises to develop a sequence or sequences of Capital Rehabilitation Projects and financing programs for these historic structures and features.

9.2 Property Maintenance. The Parties acknowledge that major maintenance and/or upgrades to existing Facilities which would constitute Capital Rehabilitation Projects as defined in Section 1.1 under this Agreement may be necessitated by changes in the law, the needs of the community, evolving use of the Properties, major repair/replacement, or other circumstances. For Properties without historic structures or features, it is the responsibility of the owner of the Facility to fund the required major maintenance and/or upgrade(s), but nothing in this section obligates that Party to undertake the cost of any project or precludes the other Party from seeking to share or fund the project to ensure it occurs. Likewise, instead of undertaking the project, the Parties may agree to preclude the use of or close the Facility or Property.

9.3 Insurance and Risk Management Procedure. LARPD and the City shall maintain property damage insurance for properties each owns and liability insurance for the properties it operates or controls belonging to the other party. Upon receipt of any third-party claim or potential legal action related to the Properties covered by this Agreement, the receiving Party will promptly notify the other.

LARPD and the City will confer on any claim that may affect the Parties' reservations, responsibilities, or liability under this Agreement in order to retain resolution possibilities for potential future claims. No Party will prejudice the rights of another Party until after the Parties confer on the claim.

9.4 Trail Maintenance and Costs. For purposes of trail maintenance, which has been difficult in the past due to the checkerboard nature of trail ownership, the Parties agree that each shall be responsible for the maintenance (including maintenance costs) of segments of trail as depicted on the electronically maintained trail map(s) and listed in the Property Matrix Database. Each party shall determine whether the work to be performed on its segment of Trail will be conducted by its staff or by a contractor. In the event a contractor is, or contractors are, retained for purposes of uniform trail maintenance, the cost shall be divided proportionately between the Parties relative to each party's linear feet of trail maintained. It is the responsibility of the party that operates and maintains the section of trail to routinely inspect the trail to ensure standards and/or agreements are met. The owner of each section of trail is allowed to periodically inspect that section of trail to ensure that the trail is being maintained pursuant to present maintenance standards and/or agreements. If a Party believes the standards and/or agreements are not being met, that Party is to notify the maintaining party that correction is needed.

All Trails will be included in the City's Pavement Management Program. As to each linear foot of trail maintained, the maintaining party shall only be responsible for a maximum area of ten (10) feet on each side of the trail. However, if the property line is less than ten (10) feet from the side of the trail, the party is only required to maintain up to the property line. Additionally, if a waterway (such as an arroyo, stream, or creek) or its bank is less than ten (10) feet from the side of the trail and would require a permit or other certification which the maintaining party does not possess, the maintenance area to the side of the trail ends at the waterway or its bank.

9.5 Meet and Confer. In order to ensure compatibility between Facilities owned by LARPD and Facilities owned by the City, the Parties agree to make a reasonable effort to meet and confer before amending their respective standards to optimize compatibility and cost-effectiveness of the equipment and materials utilized by each of the Parties. However,

agreement following the meet and confer process is not required before a Party may amend its standards regarding its Facilities.

10. LARPD Reservations. LARPD reserves the right to reject any park or other entitlements offered for dedication and acceptance until the time that the park or entitlement has been improved and constructed in conformance with the plans, specifications, and requirements approved by the LARPD Board of Directors. Upon intending to make an offer of a park or other entitlements, City staff shall meet with LARPD staff to determine mutually acceptable standards (including location, design and construction criteria), the timing of construction, and LARPD-revenue sources for maintenance and Facilities to be included ("park improvements"). The Parties agree to meet and confer relative to the park improvements in a timely manner in an effort to comply with the requirements of the California Permit Streamlining Act (Govt. Code § 65920, et. seq.). Following agreement by staff relative to the park improvements, LARPD staff will endeavor to secure approval of these park improvements from LARPD's applicable committee and Board of Directors. Once the LARPD Board approves the park improvements, the Parties agree that there shall be no amendment of the park improvement plans unless both Parties agree to the amendment.

LARPD shall not be obliged to accept any park or other entitlement offered for dedication and acceptance, until the park has been finished and constructed in conformance with the approved plans, specifications, and requirements. Upon written notice of the filing of a Notice of Completion with the County of Alameda by the City, LARPD shall set the acceptance of the park or other entitlement on the agenda for the next meeting of the LARPD Board of Directors unless the notice is not received in time to place it on that agenda in which case it will be placed on the agenda for the following meeting. The LARPD Board of Directors shall review the finished park or other entitlement and related reports and shall accept it upon verifying that it was finished and constructed in conformance with the approved plans.

11. No Assignment. Except for routine Facilities maintenance and rentals, LARPD may not assign, transfer, sublet or otherwise encumber any rights or responsibilities under this Agreement to a third party without the prior written consent of the City Manager. Except for routine maintenance, the City may not assign, transfer, sublet or otherwise encumber any rights or responsibilities under this Agreement to a third party without the prior written consent of LARPD's General Manager.

12. Taxes. Because this license Agreement is between two public agencies, no possessory interest subject to property taxation is created. (Revenue and Taxation Code § 107.6.)

13. Hold Harmless and Indemnification; Liens or Assessments; Prevailing Wages.

13.1 Hold Harmless and Indemnification.

a. To the fullest extent permitted by law LARPD shall hold harmless, indemnify, and defend the City and its elected and appointed officials, officers, directors, employees, independent contractors, agents and Designated Volunteers from and against any and all liability, loss, damage, claims, expenses, and costs (including without limitation, attorney's fees and costs and fees of litigation) (collectively, "Liability") of every nature arising out of or in connection with this Agreement, or in connection with LARPD's failure to comply with any of its obligations contained in this Agreement, except for such Liability caused by the sole active negligence or willful misconduct of City; however, this shall not be interpreted to mean that the indemnifying party is responsible for the other's comparative negligence. LARPD's obligations to hold harmless, defend, and indemnify shall not be excused because of LARPD's inability to evaluate Liability or because LARPD evaluates Liability and determines that LARPD is not liable to the claimant. These obligations shall survive the completion

or termination of this Agreement. LARPD must respond within 30 days to the tender of any claim for defense and indemnity by the City.

b. To the fullest extent permitted by law City shall hold harmless, indemnify, and defend LARPD and its elected and appointed officials, officers, directors, employees, independent contractors, agents and Designated Volunteers from and against any and all liability, loss, damage, claims, expenses, and costs (including without limitation, attorney's fees and costs and fees of litigation) (collectively, "Liability") of every nature arising out of or in connection with this Agreement, or in connection with City's failure to comply with any of its obligations contained in this Agreement, except for such Liability caused by the sole active negligence or willful misconduct of LARPD; however, this shall not be interpreted to mean that the indemnifying party is responsible for the other's comparative negligence. The City's obligations to hold harmless, defend, and indemnify shall not be excused because of City's inability to evaluate Liability or because City evaluates Liability and determines that City is not liable to the claimant. These obligations shall survive the completion or termination of this Agreement. City must respond within 30 days to the tender of any claim for defense and indemnity by LARPD.

13.2 Liens or Assessments. LARPD and City, when making improvements to the Property, will keep the Property, including any improvements thereon, free and clear of any assessment or lien resulting from work done by them or on their behalf.

13.3 Prevailing Wages. LARPD and City shall indemnify, hold harmless and defend (with counsel reasonably acceptable to the other party) the other party against any claim for damages, compensation, fines, penalties or other amounts arising out of the failure or alleged failure of any person or entity (including employees, contractors and subcontractors) to pay prevailing wages as required by law.

14. Alternative Dispute Resolution.

14.1 Written Notice. Any controversies or claims between LARPD and the City regarding this Agreement must first be put in writing and delivered to the other Party pursuant to Section 15.1 herein. After a written claim is delivered, the Parties will promptly arrange to meet in good faith to attempt to resolve the issue*(s)* in question. If the Parties fail to come to an agreement on the resolution of an issue, all required administrative procedures, if any, must be followed.

14.2 Mediation. If the Parties are unable to resolve one or more controversy or claim after complying with the provisions of section 14.1, either Party may request mediation by submitting a written request to the other; this request is to state the issue or issues still in controversy and that Party's understanding of the position of each as to the remaining issue(s). The Parties hereby agree to submit the matter to mediation within thirty (30) calendar days after the written request or as soon thereafter as possible pursuant to the mediator's schedule. The mediation session shall not exceed one (1) workday of eight (8) hours absent a mutual written agreement signed by both Parties clearly stating the amount of additional time permitted. The Parties further agree that the mediation session will be attended by an officer, agent, or other person with authority to bind the Party to any settlement reached during the mediation session unless the law requires ratification of the settlement by a governing body; in such a circumstance, the Party shall use its best efforts to obtain that ratification.

14.3 Mediator. The Parties agree to work in good faith to select one mediator. If the parties cannot agree upon a mediator, a mediator with whom neither Party has worked and who has expertise in the subject area in controversy shall be selected from the Alameda County Superior Court's approved Mediator Panel. The mediator may require submission of the controversy in writing prior to the mediation session and the Parties agree to provide a copy of any such submission to the other Party at the same time the writing is provided to the mediator.

14.4 Costs of Mediation. Mediation under this section is a condition precedent to filing an action in any court. Costs of any mediation or other form of alternative dispute resolution shall be borne equally by the Parties.

14.5 Further Procedures. Only after the dispute resolution attempts set out above have failed to resolve a dispute between the Parties may one or both of the Parties file suit in the appropriate civil court.

14.6 Attorney's Fees. If either Party begins an action against the other to enforce this Agreement, the prevailing party is entitled to reasonable and necessary attorney's fees, costs of suit, investigation and discovery costs, including costs of appeal. The Parties agree that the court will determine whether either party is to be considered prevailing and what, if any, costs and fees are reasonable and necessary; each party shall be permitted to submit evidence of settlement offers to assist the court in its findings on this issue.

15. Miscellaneous Provisions.

15.1 Notices. Whenever a notice is required under this Agreement, unless otherwise specified, the notice shall be given in writing and either delivered personally or mailed to the other party by U.S. Postal Service to the named individuals (or by e-mail to the named individuals if otherwise specified or permitted in the Agreement):

City Manager
City of Livermore
1052 South Livermore Avenue
Livermore, CA 94550

General Manager
Livermore Area Recreation and Park District
4444 East Avenue
Livermore, CA 94550

15.2 Amendment. Upon approval of this Agreement by the City Council and LARPD's Board of Directors, this Agreement may be amended from time to time as the Parties find necessary by written agreement signed by both the City Manager and the LARPD General Manager. Amendments that alter the intent and terms of this Agreement shall require formal authorization by the LARPD Board and City Council.

15.3 Governing Law. California law shall govern any legal action pursuant to this Agreement with venue for all claims in the Superior Court of the County of Alameda, or where applicable, in the Federal District Court of California, Northern District.

15.4 Force Majeure. Neither party shall be responsible for delays or failures in performance resulting from acts of God, acts of civil or military authority, terrorism, fire, flood, strikes, war, epidemics, pandemics, shortage of power or other acts or causes reasonably beyond the control of that party. The party experiencing the force majeure event agrees to give the other party notice promptly following the occurrence of a force majeure event, and to use diligent efforts to re-commence performance as promptly as commercially practicable.

15.5 Authority. The individual(s) executing this Agreement represent and warrant that they have the legal capacity and authority to do so on behalf of their respective legal entities.

15.6 Cost Sharing. In the event provisions of this Agreement reference studies or processes to be jointly undertaken by the Parties, it is the Parties' intent to bear the costs of such studies equally, unless noted otherwise in this Agreement.

15.7 Recordation. This Agreement may be subject to the recordation requirements of Government Code section 37393. If recordation is necessary or desirable, the Parties may record a Memorandum of Agreement.

15.8 Interpretation. Neither party shall be considered the drafting party for the interpretation of this Agreement. Therefore, the convention construing this Agreement in favor of one party or against another shall not apply. Specifically, the Parties agree that the terms of Civil Code § 1654 shall not apply as to any interpretation of this Agreement.

16. Signatures.

CITY OF LIVERMORE	LIVERMORE AREA RECREATION AND PARK DISTRICT
By: _____ Marianna Marysheva, City Manager	By: _____ Mathew Fuzie, General Manager
Authorized by City Council Resolution No. _____	Authorized by LARPD Board Resolution No. 2786
Date: _____	Date: 6/13/23
Approved as to form:	Approved as to form:
By: _____ Jason Alcala, City Attorney	By: _____ Thomas Terpstra, Neumiller and Beardslee

LIVERMORE
CALIFORNIA

CITY COUNCIL STAFF REPORT **ITEM NO. 5.11**

DATE: July 24, 2023

TO: Honorable Mayor and City Council

FROM: Paul Spence, Community Development Director

SUBJECT: Resolution authorizing the execution of a subordination agreement with Housing Trust Silicon Valley (HTSV) that will allow the City's Deed of Trust recorded on property to take a lower lien position than new first mortgage financing to be provided by HTSV, for the Owl's Landing Apartments property located at 842 Herman Way.

RECOMMENDED ACTION

Staff recommends the City Council adopt a resolution authorizing the City Manager to execute a Subordination Agreement with Housing Trust Silicon Valley, in substantially the same form as the one attached to this resolution as Exhibit A, subject to the City Attorney's review and approval as to form and subject to the Risk Manager's review and approval as to insurance, to subordinate the City's Deed of Trust recorded on the Owl's Landing Apartments property located at 842 Herman Avenue.

SUMMARY

In 1998, the former Redevelopment Agency of the City of Livermore ("former RDA") provided a $4,240,000 loan to assist Eden Housing (via Livermore Associates, L.P.) with the development of Owl's Landing, a 72-unit affordable, family apartment community in Livermore. The former RDA recorded a Deed of Trust and Regulatory Agreement on the property to evidence the loan and restrict the units for rent to lower income households. The City assumed this loan following the State's dissolution of Redevelopment Agencies in 2011. Now, Eden has requested that the City subordinate its Deed of Trust to a new first mortgage of $5,700,000 from Housing Trust Silicon Valley which will be used to refinance the existing mortgage, fund rehabilitation of the buildings, and replenish a property operating reserve for future repairs and replacement.

DISCUSSION

In 1998, the former Redevelopment Agency of the City of Livermore provided a $4,240,000 loan of RDA housing set-aside funds to Eden Housing (through their limited partnership, Livermore Associates, L.P.) for the property acquisition, design and construction of Owl's Landing, a 72-unit affordable family housing development located at 842 Herman Avenue, Livermore. The loan accrues three percent (3%) interest annually and is due 55 years from issuance or upon default. Annual payments of principal and interest

on the City's loan are required based on the availability of excess cash flow after all monthly operating expenses and private mortgage debts are satisfied.

A deed of trust to secure the City's loan, and a regulatory agreement were recorded on the property. The regulatory agreement restricts all units to lower income households (defined as earning less than 50%, 60% and 90% of Area Median Income). The City's regulatory agreement also established a term of 55 years from recording.

Eden wishes to secure a $5,700,000 loan from Housing Trust Silicon Valley to refinance their first mortgage and make critical building repairs and upgrades that were identified in a comprehensive property needs assessment. Approximately $472,000 of the funds will replenish the property's replacement and operating reserves. The new first mortgage offers a 30-year amortization, with a 7-year repayment term at a 4.30% fixed interest rate. A balloon payment is due at the end of the 7-year term however Eden anticipates undergoing a re-syndication to secure new tax credit funding for the project that will allow for a refinancing and more substantial property renovation. These terms are reasonable and affordable for Eden. Housing Trust Silicon Valley requests that the City subordinate its Deed of Trust to the new first mortgage which is a typical and customary condition among private lenders. The City's existing Regulatory Agreement controlling the affordability restrictions would not be subordinated to the new financing.

Staff recommends City Council authorize the City Manager to execute a subordination agreement with Housing Trust Silicon Valley in substantially the same form as the one attached to this resolution as Exhibit A, with the final forms of those documents subject to City Attorney approval. If approved, Eden wishes to close on the new financing immediately thereafter.

FISCAL AND ADMINISTRATIVE IMPACTS

There will be no additional fiscal impact created by approval of the subordination of the existing Deed of Trust for the project. The City will remain in second position to receive annual loan payments from residual cash flow, following amortized monthly payments which would be prioritized to the new first lender.

The City has received six annual payments that have been applied to accrued interest owed since loan issuance in 1998. The City has not received any payments since 2020, due to pandemic-related cash flow reductions coupled with expensive property repairs. The new first mortgage financing will address the immediate financial needs of the property. A future re-syndication for additional tax credits will provide an opportunity to explore more refinancing options for the project, including the possible repayment of the City's loan.

COMMUNITY PILLAR

1: A Safe Community that Thrives

GOAL

7: Expand and preserve the supply of affordable housing opportunities.

ATTACHMENTS

1. Resolution

2. Exhibit A - Draft Form of Subordination Agreement with Housing Trust Silicon Valley

Prepared by: Fran Reisner
Acting Housing and Human Services Manager

Approved by:



Marianna Marysheva
City Manager

Fiscal Review by:



Tina Olson
Administrative Services Director

IN THE CITY COUNCIL OF THE CITY OF LIVERMORE, CALIFORNIA

A RESOLUTION AUTHORIZING A SUBORDINATION AGREEMENT WITH HOUSING TRUST SILICON VALLEY REGARDING CITY DEED OF TRUST ON 842 HERMAN WAY

In 1998, the former Redevelopment Agency of the City of Livermore ("former RDA") provided a $4,240,000 loan to assist Eden Housing (through the Livermore Associates, L.P.) with the development of Owl's Landing, a 72-unit affordable family apartment community in Livermore. The former RDA recorded a Deed of Trust and Regulatory Agreement on the property to evidence the former RDA's loan and restrict the units for rent to lower income households. The City of Livermore ("City") assumed this loan following the State's dissolution of Redevelopment Agencies in 2011.

Now, Eden has requested that the City subordinate its Deed of Trust to a new first mortgage of $5,700,000 from Housing Trust Silicon Valley which will be used to refinance the existing mortgage, fund rehabilitation of the buildings and help establish a property operating reserve for future repairs and replacement.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Livermore that it hereby authorizes he City Manager to execute a Subordination Agreement with Housing Trust Silicon Valley, in substantially the same form as the one attached to this resolution as Exhibit A, subject to the City Attorney's review and approval as to form and subject to the Risk Manager's review and approval as to insurance, for the City's Deed of Trust on 842 Herman Way.

On motion of Council Member _____, seconded by Council Member _____, the foregoing resolution was passed and adopted on July 24, 2023, by the following vote:

AYES: COUNCIL MEMBERS:
NOES: COUNCIL MEMBERS:
ABSENT: COUNCIL MEMBERS:
ABSTAIN: COUNCIL MEMBERS:

ATTEST: APPROVED AS TO FORM:

_____ */s/ Katherine Mirassou*

Marie Weber
City Clerk

Katherine Mirassou
Deputy City Attorney

Exhibit A – Draft Form of Subordination Agreement with Housing Trust Silicon Valley

RECORDING REQUESTED BY AND WHEN RECORDED MAIL TO:

HOUSING TRUST SILICON VALLEY
75 E. Santa Clara Street, Suite 1350
San Jose, CA 95113
Attn: Multifamily Housing Dept.

Ref: Owl's Landing
Livermore, California

SUBORDINATION AGREEMENT

NOTICE: THIS SUBORDINATION AGREEMENT RESULTS IN YOUR SECURITY INTEREST IN THE PROPERTY BECOMING SUBJECT TO AND OF LOWER PRIORITY THAN THE LIEN OF SOME OTHER OR LATER SECURITY INSTRUMENT

THIS **SUBORDINATION AGREEMENT** (this "**Agreement**") is dated as of _____, by and among **HOUSING TRUST SILICON VALLEY**, a California nonprofit public benefit corporation ("**Lender**"), the **CITY OF LIVERMORE**, a public body corporate and politic ("**Subordinate Lender**"), and **LIVERMORE HOUSING ASSOCIATES, A CALIFORNIA LIMITED PARTNERSHIP** ("**Borrower**").

RECITALS:

A. Contemporaneously herewith, Lender has made a loan in the amount of $[5,700,000] (the "**Senior Loan**") to the Borrower, as evidenced by that certain Promissory Note Secured by Deed of Trust dated of even date herewith (the "**Senior Note**"), executed by Borrower and payable to the order of Lender, and secured by, among other things, that certain Deed of Trust with Assignment of Rents, Security Agreement, and Fixture Filing of even date herewith (the "**Senior Deed of Trust**"), covering the property described in Exhibit A attached hereto and incorporated herein by this reference, together with all improvements thereon and personal property used relative thereto, all as more particularly described in the Senior Deed of Trust (the "**Collateral**") (the Senior Note, the Senior Deed of Trust and any and all other documents evidencing or securing the Senior Loan as the same may be from time to time amended, extended, restated, replaced, supplemented, increased, consolidated, decreased, renewed or otherwise modified are hereinafter collectively referred to as the "**Senior Loan Documents**").

B. Subordinate Lender has made a loan in the aggregate amount of $4,240,000 (the "**Subordinate Loan**") to Borrower, as evidenced by that certain Loan Agreement dated January 12, 1998, and that certain Promissory Note (the "**Subordinate Note**") dated January 12, 1998, executed by Borrower and payable to the order of Subordinate Lender, and secured by, among other things, that certain Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filling dated January 12, 1998 and recorded on January 29, 1998 in the Official Records of Alameda County as Instrument Number 9832966 (the "**Subordinate Deed of Trust**"), covering the property described in Exhibit A attached hereto and incorporated herein by this reference, together with the Collateral. In addition to the Subordinate Deed of Trust, Subordinate Lender has recorded a Declaration of Restrictive Covenants on January 12, 1998 in the Official Records of Alameda County as Instrument Number 9832967 (the "**Restrictive Covenants**") . The Subordinate Deed of Trust and the Subordinate Note, together with the unrecorded loan documents executed by Owner in connection with the Subordinate Loan, shall be collectively referred to herein as the "**Subordinate Loan Documents**."

C. It is a condition precedent to making the Senior Loan, that the Senior Loan Documents and Senior Lender's' rights to payments under the Senior Loan Documents shall unconditionally be and remain at all times a lien or charge upon the Collateral, prior and superior to the Subordinate Loan Documents and any and all rights, restrictions, agreements, liens and charges in favor of Subordinate Lender and the Subordinate Lender's right to payments under the Subordinate Loan Documents.

D. Senior Lender is willing to make its Senior Loan, provided the condition precedent described above is satisfied and that Subordinate Lender will specifically and unconditionally subordinate the Subordinate Loan Documents (for the avoidance of doubt, the Restrictive Covenants shall remain senior in priority to the Senior Deed of Trust), the Subordinate Lender's right to payments under the Subordinate Loan Documents (except payments of regular interest and/or principal prior to a default under the Subordinate Loan Documents are permitted, as set forth in Section 3(e) below), and any and all other rights, agreements, liens and charges in favor of Subordinate Lender to the liens and charges of the Senior Loan Documents and Senior Lender's right to payments under the Senior Loan Documents.

AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Lender and Subordinate Lender do herein and hereby agree as follows:

1. Certification by Subordinate Lender. Subordinate Lender hereby certifies and warrants to Lender that the following information is true and complete as of the date hereof:

(a) The Subordinate Deed of Trust (and the UCC-1 financing statements recorded and filed in connection therewith) are the only documents securing the Subordinate Loan and the Subordinate Regulatory Agreement is the only document restricting the use of the Collateral;

(b) Subordinate Lender has never assigned any interest (whether collateral or otherwise) in or to the Subordinate Deed of Trust and/or the Subordinate Regulatory Agreement;

(c) No default or event of default has been declared by Subordinate Lender under the Subordinate Deed of Trust;

(d) The term of the Subordinate Loan does not end before the stated term of the Senior Loan; and

(e) The Subordinate Loan Documents have not been amended, modified, assigned or superseded.

2. Reliance. Lender would not make the Senior Loan to the Borrower without this Agreement. Accordingly, Subordinate Lender intentionally and unconditionally enters into the covenants and agreements as set forth herein, and understands that, in reliance upon and in consideration of such covenants and agreements, the Senior Loan shall be made and, as part and parcel thereof, specific monetary and other obligations have been, are being and shall be entered into which would not be made or entered into but for such reliance.

3. Priority of Senior Note and Senior Deed of Trust. Notwithstanding the time of the recording of the Senior Deed of Trust, and notwithstanding anything to the contrary whatsoever contained

in the Subordinate Deed of Trust, all of Subordinate Lender's rights and remedies under the Subordinate Deed of Trust are hereby expressly made subject and subordinate in all respects including, without limitation, subordinate in lien, operation, and distribution, and subordinate in payment to the Senior Note and the Senior Deed of Trust (including, without limitation, any future advances by Lender to protect the Collateral or Lender's lien thereon or rights thereto), and to all of Lender's rights and remedies under the Senior Loan Documents and to the Collateral. In addition, in furtherance of and without limiting the foregoing, Subordinate Lender agrees that:

(a) All rights of Subordinate Lender under the Subordinate Deed of Trust and under any of the other Subordinate Loan Documents in and to the Collateral and the proceeds thereof (including, without limitation, any rights with respect to leases, rents, insurance proceeds and condemnation awards) shall be expressly subject and subordinate to the rights of Senior Lender in and to the Collateral and the proceeds thereof (including, without limitation, any rights with respect to leases, rents, insurance proceeds and condemnation), and to any other expenses incurred under and as permitted in the Senior Loan Documents.

(b) Subordinate Lender declares, agrees and acknowledges that Subordinate Lender consents to and approves all provisions of the Senior Note, the Senior Deed of Trust and each of the other Senior Loan Documents.

(c) Subordinate Lender hereby expressly consents to and authorizes, at the option of Lender and without any further consent of or notice to Subordinate Lender, the amendment, extension, restatement, refinance, or other modification, in whole or in part, of all or any of the Senior Loan Documents, including without limitation, decreasing the stated principal amount of the Senior Note, decreasing the interest rate payable under the Senior Note or altering any other payment terms under the Senior Note. Notwithstanding the foregoing or any contrary provision of this Agreement, Lender agrees that it will not execute any written amendment to the Senior Loan Documents without Subordinate Lender's prior written consent (which consent shall not be unreasonably withheld, conditioned or delayed) with respect to any amendment that would (a) change the "Maturity Date" to a date earlier than the "Maturity Date" set forth in the Senior Note, (b) increase the principal amount of the Senior Loan (other than for increases made pursuant to protective advances or similar advances by Lender), or (c) increase the interest rate payable under the Senior Note. Notwithstanding any provision of this Agreement to the contrary, any reference herein to the "Senior Deed of Trust," "Senior Loan Documents" or "Senior Note" is deemed to include and refer to any renewal, replacement, amendment, modification, refinancing, extension, substitution or consolidation thereof whether by Lender, any successor or assign of Lender, or any other person or entity.

(d) Subordinate Lender hereby agrees that Subordinate Lender shall not agree to, and the Subordinate Deed of Trust shall not be deemed to be evidence of approval by Lender of, any encumbrance on the Collateral or any increases in the amount evidenced by the Subordinate Deed of Trust. No further advances shall be provided by Subordinate Lender to the Borrower whether pursuant to the Subordinate Deed of Trust or otherwise.

(e) If, notwithstanding the provisions of this Agreement, any payment, distribution or security of any character (whether in cash, securities or other property) shall be received by the Subordinate Lender out of or in connection with the Subordinate Deed of Trust before all of the Senior Loan shall have been paid in full, such payment, distribution or security, as applicable, shall not be commingled with any asset of Subordinate Lender, shall be held in trust for the benefit of, and shall be delivered over or delivered and transferred to, Lender or its representative, for application to the payment of the Senior Loan remaining

unpaid, until all of the Senior Loan shall have been paid in full. Subordinate Lender is not and shall not be permitted to receive or apply payments against the Subordinate Deed of Trust until such time as all obligations under the Senior Loan Documents have been fully satisfied and the Senior Loan has been paid in full (the "**Release Event**"). Anything hereinabove to the contrary notwithstanding, Subordinate Lender shall be entitled to any regular installments of principal and interest under the Subordinate Note in accordance with the terms of the Subordinate Note. Subordinate Lender agrees that from and after such time as it has received from either Lender or Borrower written notice that a default or Event of Default (as defined under the Senior Loan Documents) then exists (which has not been expressly waived in writing by Lender) or otherwise has actual knowledge of such a default or Event of Default, Subordinate Lender shall not receive or accept any payments under the Subordinate Loan.

(f) Subordinate Lender shall be bound by any consents or waivers made by Lender, and Subordinate Lender, hereby waives any and all rights of consent or approval with regard to any matters covered by or under the terms of the Senior Loan Documents.

(g) In the event of an extension of the term of the Senior Loan, Subordinate Lender hereby agrees to extend the term of the Subordinate Loan for a corresponding or greater period of time.

(h) Subordinate Lender hereby agrees to deliver to Lender copies of any and all notices received by it or its agents in connection with the Subordinate Deed of Trust. Subordinate Lender hereby grants to Lender the right, but not the obligation, to cure any default under the Subordinate Deed of Trust within thirty (30) days of the Subordinate Lender's delivery of the default notice to the Lender, and the Subordinate Lender also accepts all such performance by Lender.

4. Certain Actions Regarding Subordinate Deed of Trust and Restrictive Covenants. Until the Release Event has occurred, Subordinate Lender shall not take any of the following actions with respect to the Subordinate Deed of Trust and the Restrictive Covenants, as applicable, without the prior written consent of Lender:

(a) Declare a default under the Subordinate Deed of Trust or the other Subordinate Loan Documents, accelerate all or any portion of any monies due pursuant to the Subordinate Deed of Trust or the other Subordinate Loan Documents, or exercise any of its remedies under the Subordinate Deed of Trust;

(b) Commence any legal proceedings against the Borrower;

(c) Exercise any other rights or remedies it may have under the Subordinate Loan Documents, including, but not limited to, accelerating the Subordinate Loan (and enforcing any "due on sale" provision included in the Subordinate Loan Documents), collecting rents, appointing (or seeking the appointment of) a receiver, or exercising any other rights or remedies thereunder for a period of ninety (90) days from the date of delivery to Lender of a written notice of a default under the Subordinate Loan Documents; provided, however, that such limitation on the remedies of Subordinate Lender shall not limit Subordinate Lender's rights to (i) send all pre-notice of default letters, default notices (other than a recorded statutory notice of default under Civil Code Section 2924c) and/or other notices to Borrower or other persons, including without limitation any such notices or letters determined by Subordinate Lender as being necessary or desirable to get any and all pre-cure, cure, or other periods running and/or taking any and all other actions necessary to satisfy any and all other preconditions to an Event of Default under the Subordinate Loan Documents, or (ii) compute interest on all amounts due and payable under the

Subordinate Loan Documents at the default rate described in the Subordinate Loan Documents and computing prepayment premiums, if any, and late charges thereunder.

(c) Consent to any amendment, extension, restatement, replacement, supplement, increase, consolidation, renewal or modification of the Subordinate Deed of Trust or the Restrictive Covenants;

(d) Assign, convey, sell, hypothecate or transfer any interest whatsoever in the Subordinate Deed of Trust or the Restrictive Covenants directly or indirectly (including, without limitation, by means of a transfer of ownership interests in Subordinate Lender), whether such interest be collateral in nature (e.g., pledges or grants of security interests) or absolute;

(e) Commence or consent to any bankruptcy, insolvency, reorganization or similar proceeding by or against the Borrower; or

(f) Except as set forth in Section 3(e) above, accept any payments under the Subordinate Deed of Trust.

Any consent required of Lender in this Agreement may be given or withheld in the sole and absolute discretion of Lender. The Subordinate Lender shall have no rights to any proceeds of a refinancing of the Senior Loan in which rights under the Senior Loan Documents are sold or transferred or the Senior Loan is replaced, until such time as the entire indebtedness evidenced or secured by the Senior Loan Documents and all other sums evidenced or secured by the Senior Loan Documents have been paid in full. The Subordinate Lender acknowledges and agrees that any assignment or assignments of the Senior Loan and/or the Senior Loan Documents in connection with a sale by Lender of the Senior Loan (by itself or with other loans) shall not be deemed to be a repayment of the Senior Loan for purposes of this Agreement.

5. Bankruptcy Issues.

(a) This Agreement shall be applicable both before and after commencement, whether voluntary or involuntary, of any case by or against the Borrower under the United States Bankruptcy Code (as amended from time to time, the "**Bankruptcy Code**") and all references herein to the Borrower shall be deemed to apply to the Borrower as a debtor-in-possession and to any trustee in bankruptcy for the estate of the Borrower.

(b) In the event Lender is required under any bankruptcy or other law to return to the Borrower, Borrower's bankrupt estate, any third party or any trustee, receiver or other similar representative of the Borrower any payment or distribution of assets, whether in cash, property or securities, including, without limitation any Collateral or any proceeds of the Collateral previously received by Lender on account of the Senior Loan Documents (a "**Reinstatement Distribution**"), then to the maximum extent permitted by law, this Agreement and the subordination of the Subordinate Note shall be reinstated with respect to any such Reinstatement Distribution. Lender shall not be required to contest its obligation to return such Reinstatement Distribution.

(c) The Subordinate Lender hereby agrees that the Subordinate Lender shall not make any election, give any consent, commence any action or file any motion or take any other action in any case by or against Borrower under the Bankruptcy Code without the prior written consent of Lender.

6. Subordinate Lender Notice and Cure. Lender hereby agrees to deliver to the Subordinate Lender copies of any default notice given by it or its agents in connection with the Senior Deed of Trust. Lender hereby grants to the Subordinate Lender the right, but not the obligation, to cure any default under the Senior Deed of Trust within thirty (30) days of Senior Lender's delivery of a default notice to the Subordinate Lender, and the Senior Lender also accepts all such performance by the Subordinate Lender.

7. Lender Notice and Cure. Subordinate Lender hereby agrees to deliver to Lender copies of any default notice given by it or its agents in connection with the Subordinate Deed of Trust. Subordinate Lender hereby grants to Lender the right, but not the obligation, to cure any default under the Subordinate Deed of Trust within thirty (30) days of Subordinate Lender's delivery of a default notice to Lender, and the Subordinate Lender also accepts all such performance by Lender.

8. Miscellaneous Provisions:

(a) Entire Agreement; Amendment; Severability. This Agreement contains the entire agreement between the parties respecting the matters herein set forth and supersedes all prior agreements, whether written or oral, between the parties respecting such matters. Any amendments or modifications hereto, in order to be effective, shall be in writing and executed by the parties hereto. A determination that any provision of this Agreement is unenforceable or invalid shall not affect the enforceability or validity of such provision as it may apply to any other persons or circumstances.

(b) Governing Law; Jurisdiction. This Agreement shall be governed by and construed in accordance with the laws of the State of California, except to the extent that the applicability of any of such laws may now or hereafter be preempted by federal law, in which case such federal law shall so govern and be controlling. Subordinate Lender, to the full extent permitted by law, hereby knowingly, intentionally and voluntarily, with and upon the advice of competent counsel, (i) submits to personal jurisdiction in the State of California over any suit, action or proceeding by any person arising from or relating to this Agreement, (ii) agrees that any such action, suit or proceeding may be brought in any state or federal court of competent jurisdiction sitting in Alameda County, California, (iii) submits to the jurisdiction of such courts, and (iv) to the fullest extent permitted by law, agrees that it will not bring any action, suit or proceeding in any other forum (but nothing herein shall affect the right of lender to bring any action, suit or proceeding in any other forum). Subordinate Lender hereby further irrevocably and unconditionally waives, to the fullest extent permitted by law, any objection which it may now or hereafter have to the laying of venue of any of the aforesaid actions, suits or proceedings arising out of or in connection with this agreement sitting in Alameda County, California, and hereby further irrevocably and unconditionally waives and agrees not to plead or claim in any such court that any such action, suit or proceeding brought in any such court has been brought in an inconvenient forum.

(c) Assigns. The terms, provisions and conditions of this Agreement shall be binding upon Subordinate Lender, Lender and the successors and assigns of either; provided, however, nothing in this Section 6(c) shall be deemed to limit or diminish in any respect Subordinate Lender's obligations pursuant to Section 4(d) above.

(d) Further Assurances. Subordinate Lender agrees, within ten (10) days after request by Lender, to execute such other documents (whether in recordable form or otherwise) as may be requested by Lender to further evidence the subordination and other agreements effectuated hereby.

(e) No Third Party Beneficiaries; Securitization. It is expressly agreed and understood that each and every certificate and agreement of Subordinate Lender in this Agreement are for the benefit

of Lender and subsequent owners or holder of the Senior Loan Documents. No third party shall be entitled to rely on any agreements or certifications provided herein to any extent whatsoever.

(f) Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be effective only upon delivery and thereafter shall be deemed an original, and all of which shall be taken to be one and the same instrument, for the same effect as if all parties hereto had signed the same signature page. Any signature of this Agreement may be detached from any counterpart of this Agreement without impairing the legal effect of any signatures thereon and may be attached to another counterpart of this Agreement identical in form hereto but having attached to it one or more additional signature pages.

(g) WAIVER OF JURY TRIAL. SUBORDINATE LENDER, TO THE FULL EXTENT PERMITTED BY LAW, HEREBY KNOWINGLY, INTENTIONALLY AND VOLUNTARILY, WITH AND UPON THE ADVICE OF COMPETENT COUNSEL, WAIVES AND RELINQUISHES THE RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING BASED UPON, ARISING OUT OF, OR IN ANY WAY RELATING TO THIS AGREEMENT OR ANY CONDUCT, ACT OR OMISSION OF LENDER OR SUBORDINATE LENDER OR ANY OF THEIR DIRECTORS, OFFICERS, PARTNERS, MEMBERS, EMPLOYEES, AGENTS OR ATTORNEYS, OF ANY OTHER PERSONS AFFILIATED WITH LENDER OR SUBORDINATE LENDER IN EACH OR THE FOREGOING CASES, WHETHER SOUNDING IN CONTRACT, TORT OR OTHERWISE.

(h) Estoppel Certificates. Subordinate Lender agrees that it shall, from time to time, upon the demand of Lender, furnish Lender with estoppel certificates pursuant to which the Subordinate Lender shall certify to Lender the matters set forth in Section 1 above and such other matters as Lender may reasonably require.

(i) [Intentionally Omitted].

(j) No Partnership. This Agreement shall not in any respect be interpreted, deemed or construed as making Subordinate Lender a partner or joint venturer with any other person or entity, including, without limitation, Lender or Borrower, nor shall it be construed as making Subordinate Lender the agent or representative of Lender or Borrower nor Lender or Borrower the agent or representative of Subordinate Lender.

(k) Severability. In the event that any provision of this Agreement or the application hereof to any party hereto shall, to any extent, be invalid or unenforceable, under any applicable statute, regulation or rule of law, then such provision shall be deemed inoperative to the extent that it may conflict therewith and shall be deemed modified to conform to such statute, regulation or rule of law, and the remainder of this Agreement and the application of any such invalid or unenforceable provisions to parties, jurisdictions or circumstances other than to whom or to which it is held, invalid or unenforceable, shall not be affected thereby nor shall same affect the validity of enforceability of any other provision of this Agreement.

(l) Conflict. In the event of any conflict between the provisions of this Agreement on the one hand, and the Subordinate Deed of Trust on the other hand, the provisions of this Agreement shall control.

[REMAINDER OF PAGE LEFT INTENTIONALLY BLANK –
SIGNATURES ON FOLLOWING PAGES]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date hereinabove written.

SUBORDINATE LENDER:

CITY OF LIVERMORE,
a public body corporate and politic

By: _____
Name: Marianna Marysheva
Its: City Manager

ATTEST:

_____
City Clerk

APPROVED AS TO FORM:

_____
City Attorney

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of the document.

State of _____
County of _____

On _____, 20__ before me,_____ , Notary Public, personally appeared_____ who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature:_____
Name:_____
(typed or printed) (Seal)

[signatures continue on following pages.]

LENDER:

HOUSING TRUST SILICON VALLEY,
a California nonprofit public benefit corporation

By: _____
Name: _____
Its: _____

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of the document.

State of California
County of _____

On _____, 20__ before me,_____ , Notary Public, personally appeared_____ who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature:_____
Name:_____
(typed or printed) (Seal)

[signatures continue on following pages.]

BORROWER:

LIVERMORE HOUSING ASSOCIATES,
A CALIFORNIA LIMITED PARTNERSHIP

By:_____
Name:_____
Title:_____

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of the document.

State of California
County of _____

On _____, 20__ before me,_____ , Notary Public, personally appeared_____ who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature:_____
Name:_____
(typed or printed) (Seal)

EXHIBIT A

(Legal Description)

The land referred to herein is situated in the State: of California, County of ALAMEDA, City of LIVERMORE. and is described as follows:

PORTION OF THE NORTH 1 /2 OF THE SOUTHEAST 1 /4 OF SECTION 35, IN TOWNSHIP 2 SOUTH, RANGE 2 EAST, MOUNT DIABLO BASE AND MERIDIAN, DESCRIBED AS-FOLLOWS:

BEGINNING AT A POINT IN THE CENTER LINE OF ROAD 40 FEET WIDE KNOWN AS HERMAN AVENUE, DISTANT THEREON 660 FEET SOUTHERLY FROM THE CENTER LINE OF ROAD 40 FEET WIDE KNOWN AS SCENIC AVENUE; AND RUNNING THENCE ALONG SAID LINE OF HERMAN AVENUE SOUTHERLY 220 FEET; THENCE AT RIGHT ANGLES WESTERLY 990 FEET; THENCE AT RIGHT ANGLES NORTHERLY 220 FEET; AND THENCE AT RIGHT ANGLES EASTERLY 990 FEET POINT OF BEGINNING.

EXCEPTING THEREFROM, THE EASTERN 20 FEET THEREOF. BEING THAT PORTION THEREOF LYING WITHIN THE LINES OF SAID HERMAN AVENUE.

A.P. NO.: 998-5351-14

LIVERMORE
CALIFORNIA

CITY COUNCIL STAFF REPORT **ITEM NO. 5.12**

DATE: July 24, 2023

TO: Honorable Mayor and City Council

FROM: Christine Martin, Assistant City Manager

SUBJECT: Resolution authorizing execution of a one-year agreement with Tri-Valley Community Television for local cable programming services for Fiscal Year 2023-24 in an amount not-to-exceed $184,705.

RECOMMENDED ACTION

Staff recommends the City Council adopt a resolution authorizing the execution of an agreement with Tri-Valley Community Television, in substantially the same form as the one attached to this resolution as Exhibit A, subject to the City Attorney's review and approval as to form and subject to the Risk Manager's review and approval as to insurance, for local cable programming services for Fiscal Year 2023-24 in an amount not-to-exceed $184,705.

SUMMARY

Community television stations provide transparency and access for residents and business owners by broadcasting local government meetings and programming. Tri-Valley Community Television (TVCTV) cannot use public, educational, governmental (PEG) fees paid by cable subscribers for operational uses due to federal and state law. Therefore, the cities of Dublin, Livermore, and Pleasanton provide operational funding. The City of Livermore's share for Fiscal Year 2023-24 is $184,705, and this funding for local programming services was included in the City's Fiscal Year 2023-24 Budget approved by the City Council on June 12, 2023.

DISCUSSION

Tri-Valley Community Television (TVCTV) serves the educational and government access needs for the cities of Dublin, Livermore, and Pleasanton via Channels 28, 29, and 30. It televises local City Council and School Board meetings, high school sports games, and other local events like holiday parades. TVCTV also produces local programming like "Slice of Life" and provides outreach opportunities for the cities, local law enforcement, businesses, and non-profits.

The City has provided annual subsidy funding to TVCTV since 1999. As part of the 2023 biennial budget process, the City recently reviewed funding requirements for various organizations receiving City money

and identified areas where enhancements are needed in order to conform more closely with industry best practices. Formal contractual agreements with organizations receiving annual subsidies were one of the areas identified. In line with financial best practices, it is essential to formalize the scope of services and contractual agreement between the City and TVCTV. This will help ensure transparency, accountability, and alignment of expectations between the City of Livermore and TVCTV, as well as be in compliance with the City's Purchasing Policy.

In addition to the operational funding, $30,000 is budgeted for City Council and special meeting video services. Historically, public, educational, governmental (PEG) funds were also able to be reimbursed to TVCTV for capital expenses. PEG funds are received from the cable television franchise for use on public, education, and government access. They can only be used for capital expenses, not operations. Staff has begun an internal analysis of how PEG funding has been utilized by TVCTV over the past five years and will make a recommendation regarding PEG funding once that analysis is complete.

The cities of Dublin, Livermore, and Pleasanton continue to support federal legislation that would eliminate the restriction on PEG fee uses. If such legislation modified language in current law, then operational expenses could be shifted from Livermore's General Fund to its PEG Special Revenue Fund. However, all federal legislative efforts supported by local governments and other organizations have failed for the last several years.

FISCAL AND ADMINISTRATIVE IMPACTS

The TVCTV funding was included as part of the General Fund appropriation in the FY 2023-24 Budget approved by the City Council on June 12, 2023. The City's Municipal Code Chapter 2.68, Contracts and Purchasing, requires approval for commitments in excess of $100,000. No additional appropriation is necessary.

COMMUNITY PILLAR

5. A City That Works

GOAL

6. Provide effective communication to and coordinate engagement with the community

ATTACHMENTS

1. Resolution
2. Exhibit A - Agreement with Tri-Valley Community Television Corporation

Prepared by: Marie Weber
Deputy City Manager/City Clerk

Approved by:



Marianna Marysheva
City Manager

Fiscal Review by:



Tina Olson
Administrative Services Director

IN THE CITY COUNCIL OF THE CITY OF LIVERMORE, CALIFORNIA

A RESOLUTION AUTHORIZING THE EXECUTION OF A ONE YEAR AGREEMENT WITH TRI-VALLEY COMMUNITY TELEVISION FOR LOCAL CABLE PROGRAMMING SERVICES FOR FISCAL YEAR 2023-24, IN AN AMOUNT NOT-TO-EXCEED $184,705

The City of Livermore ("City") collects public, educational, governmental ("PEG") fees from cable tv providers for local programming, but state and federal law restrict those funds to capital expenses. On July 26, 1982, the City Council adopted Resolution No. 170-82 whereby it designated the successor to Tri-Valley Community Television ("TVCTV") as the recipient for the City's PEG fees.

The City has directed its PEG fees to TVCTV, but TVCTV cannot use PEG fees for operational expenses. The Cities of Dublin and Pleasanton also direct their PEG fees to TVCTV, and all three cities provide operational funding from their general fund budgets for TVCTV's operating expenses. The City of Livermore's share of the annual operating funds for TVCTV is $184,705, which pays for local programming services.

The City has provided annual subsidy funding to TVCTV since 1999 for operating expenses. As part of the 2023 biennial budget process, the City recently reviewed funding requirements for various organizations receiving City money and identified areas where enhancements are needed to conform more closely with industry best practices.

Consistent with financial best practices, it is essential to define the scope of services through a contractual agreement between the City and TVCTV. This will help ensure transparency, accountability, and alignment of expectations between the City and TVCTV, as well as ensure compliance with the City's Purchasing Policy.

Operating funds for TVCTV were included as part of the General Fund appropriation in the FY 2023-24 Financial Plan approved by the City Council on June 12, 2023. The City's Municipal Code Chapter 2.68, *Contracts and Purchasing*, requires City Council approval for expenditures exceeding $100,000. Staff recommended the City Council authorize the City Manager to execute an agreement with TVCTV to expend the $184,705 budgeted for cable programming services. No additional appropriation is necessary for Fiscal Year 2023-24.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Livermore that it hereby authorizes the City Manager, on behalf of the City of Livermore, to execute a professional production and broadcasting services agreement with TVCTV, in substantially the same form as the one attached to this resolution as Exhibit A, subject to the City Attorney's review and approval as to form and subject to the Risk Manager's review and approval as to insurance, in an amount not-to-exceed $184,705 as part of the General Fund for local cable programming by Tri-Valley Community Television for Fiscal Year 2023-24.

On motion of Council Member _____, seconded by Council Member _____, the foregoing resolution was passed and adopted on July 24, 2023, by the following vote:

AYES: COUNCIL MEMBERS:
NOES: COUNCIL MEMBERS:
ABSENT: COUNCIL MEMBERS:
ABSTAIN: COUNCIL MEMBERS:

ATTEST:

_____
Marie Weber
City Clerk

APPROVED AS TO FORM:

/s/ Jason R. Alcala
Jason R. Alcala
City Attorney

Exhibit A - Agreement with Tri-Valley Community Television Corporation

AGREEMENT BETWEEN CITY OF LIVERMORE AND TRI-VALLEY COMMUNITY TELEVISION FY 2023-2024

THIS AGREEMENT, is entered into this _____ day of _____, 2023 between the City of Livermore, a municipal corporation ("City") and Tri-Valley Community Television Corporation ("Recipient").

RECITALS

A. The City along with the Cities of Dublin and Pleasanton participates in Tri-Valley Community Television, which provides shared services for Government, Community and Educational programming to Livermore and surrounding cities. Content may include public meetings, events and key City and community programs

B. Recipient is a non-profit corporation organized and incorporated in 1982 and designated, as provided for in the Telecommunications Act of 1934, to administer government and community television services in the Tri-Valley area.

C. The City has partnered with Recipient since 1972 to technically operate and produce content for local community television to the City of Livermore which is televised exclusively on Comcast channels 28, 29 and 30 and AT& T U-Verse.

D. The City, along with the cities of Dublin and Pleasanton provide a portion of the operating funds for the Recipient. At the May 8, 2023 Tri-Valley Community Television Board of Directors meeting, the Board of Directors approved the 2023-2024 Operating Budget for the Recipient. The City of Livermore's proportionate share of the Budget is $184,705 for operational and administration services of the broadcast facilities.

AGREEMENT

NOW, THEREFORE, City and Recipient hereby agree that the aforementioned recitals are true and correct and further agree as follows:

I. SCOPE OF WORK

A. Services

Recipient shall provide professional production and broadcasting services to the City as more particularly set forth in Exhibit “A” (“the Services”).

B. Budget

The City will issue, and Recipient will use, funds in the amount of $184,705 (the "Funds") to perform the Services consistent with the terms and conditions of this Agreement. The City has not committed any funds to Recipient beyond Fiscal Year 2023-24.

II. TIME OF PERFORMANCE

Recipient shall provide the Services during the fiscal year period beginning July 1, 2023 and terminating June 30, 2024.

III. PAYMENT

Upon written request by Recipient, the City shall disburse $184,705 of the subsidy amount within 10 working days of the request.

IV. NOTICES

Notices under this Agreement must be delivered to the addresses below by deposit in the United States mail or by overnight delivery service, with postage prepaid and delivery confirmation:

To City: Attn: Marie Weber, Deputy City Manager/City Clerk
City of Livermore
1052 S. Livermore Avenue
Livermore, California 94550

To Recipient: Attn: Melissa Tench-Stevens
Tri-Valley Community Television (TV30)
4663 Bernal Avenue, Suite B
Pleasanton, CA 94566

V. ADMINISTRATIVE REQUIREMENTS

A. Documentation, Recordkeeping, Reporting and Monitoring

1. *Documentation*: Recipient shall document and maintain the following records including, but not limited to:

a. Records providing a full description of the Services provided and the date(s) on which each of the Services occurred; and

b. Records demonstrating that each of the Services undertaken meets of the objectives of this agreement.

2. *Retention Period*: Recipient shall retain all records pertinent to

expenditures incurred in the performance of the Services under this Agreement for a period of two (2) years after the termination of all services funded under this Agreement.

3. *Annual Reporting:* Recipient shall provide:

a. Annual Report – an Annual Report will be provided upon request summarizing the work completed and describing the accomplishments of Tri-Valley Community Television during the 2023-2024 program year.

4. *Monitoring:* The City will generally monitor the Recipient's performance during the year. Monitoring may include a formal semi-annual review of the services/accomplishments and of the financial records of Recipient.

VI. GENERAL CONDITIONS

A. Relationship of Parties – Independent Contractors

The relationship of the parties shall be that of independent contractors. Recipient and its employees are not City officers or employees. Recipient is responsible for the supervision and management of its employees, including any workers compensation insurance, withholding taxes, unemployment insurance, and any other employer obligations associated with the delivery of the Services contemplated by this Agreement.

B. Hold Harmless and Indemnity

Recipient shall defend, indemnify and hold City, its elected officials, officers, directors, employees, agents, and designated volunteers harmless from and against any and all loss, liability, damage, including but not limited to reasonable attorney, consultant and expert fees and court costs arising out of or in connection with this Agreement, except for the gross negligence and willful misconduct of City, its elected officials, officers, directors, employees, agents, and designated volunteers.

C. Amendments

City or Recipient may amend this Agreement at any time provided that such amendments make specific reference to this Agreement, and are executed in writing, signed by a duly authorized representative of Recipient, and approved by the City. Such amendments shall not invalidate this Agreement, nor relieve or release Recipient or City from its obligations under this Agreement.

D. Licenses and Permits

Recipient shall be responsible for obtaining all required City permits, licenses, etc., and for complying with all City Codes and Ordinances, as needed.

Signatures on Next Page

IN WITNESS THEREOF, the Parties have executed this Agreement as of the date first written above.

Tri-Valley Community Television Corp. .
A 501(c)3 Non Profit Corporation
“Recipient”

DATED: _____

BY:_____
Melissa Tench-Stevens
Executive Director

Federal Identification Number:
94-2932324

CITY OF LIVERMORE
A Municipal Corporation
“City”

DATED: _____

BY: _____
Marianna Marysheva
City Manager

APPROVED AS TO FORM:

_____
ASSISTANT/CITY ATTORNEY

Exhibit A - Scope of Work

EXHIBIT A - SCOPE OF WORK

Tri-Valley Community Television Corporation (TVCTV) will provide the following production and broadcasting services to the city:

Broadcasting:

1) Provide the technical infrastructure to receive and send programming to the head end for televised broadcast to Comcast and AT&T U-Verse all three channels to cover government and community events.
2) Ensure the technical signal, content, and all other obligations meet regulatory compliance. This includes but is not limited to video and audio specifications and emergency broadcast ability as determined by the government, Federal Communications Commission and telecommunications industry.
3) Broadcast 24/7 on TV28, TV29 and TV30. Should technical difficulties arise, TVCTV will troubleshoot and provide a solution or an estimated time of repair. If the outage will impede the ability to broadcast or impact the budget, TVCTV will inform the City as soon as possible that a problem exists and provide an estimated timeframe for repair. If an outage occurs that impacts the ability to broadcast a City Council meeting live, notification will be provided as soon as possible prior to the meeting start time.

Production:

1) Produce, edit and broadcast regular bi-weekly or monthly programming to include:
    a. *The Mayors Report (*half hour program interviewing the Mayor of the City on current topics*),*
    b. *Slice of Life* (magazine program that covers people and events in Livermore each month),
    c. *Conversations with Mel* McKay (Public affairs talk half hour currently hosted by KKIQ Radio personality. Guests and information may support the City and/or non-profits in the Livermore area),
    d. *Tri-Valley Sports* Final (weekly High School sports highlight program designed for community engagement and support).
    e. *Slipstream* (studio produced local government and community news program highlighting past and upcoming events including. Segments include: Government, Community, Education, Food/Recreation and Entertainment)
    f. Capture various City events researched by TVCTV or requested by the City and determined by TVCTV to be included into regular programming
    g. * Record, edit and broadcast
        i. *Livermore Sights and Sounds Parade*
        ii. *State of the City* address.

2) Produce regular press releases regarding programming, city events and marketing programs.
3) Maintain various social media platforms with frequent updates to help promote programming.
4) Simulcast televised broadcasts which includes meetings and all programming on web domains: tv30.org, tv30live.org, tv28live.org, tv29live.org
5) Post the viewing schedule to tv30.org, and provide to Comcast for their guide.
6) Provide closed captioning on all programming broadcasting on Comcast TV28 and 29 or simulcasting on TV28 and 29.
7) Maintain a streaming engine that can handle an infinite number of users with low latency.
8) During an emergency, provide a lower third crawl across all broadcasting on TV30. This can include but is not limited to: locations of cooling or warming centers, pandemic emergencies, flooded roads and sand bag locations.

Infrastructure/Operational:

1) The City's proportionate share will partially cover the base operational expenses and broadcast the three channels for the fiscal year 2023-2024. These expenses include but are not limited to insurance, employee expenses, and business operating expenses.

LIVERMORE
CALIFORNIA

CITY COUNCIL STAFF REPORT **ITEM NO. 5.13**

DATE: July 24, 2023

TO: Honorable Mayor and City Council

FROM: Paul Spence, Community Development Director

SUBJECT: Resolution authorizing the acceptance for permanent maintenance and release of the security bonds, and execution of a Notice of Completion for the Police Facility Expansion Phase 1, Council Chambers Demolition, Project 2000-28.

RECOMMENDED ACTION

Staff recommends the City Council adopt a resolution authorizing the acceptance for permanent maintenance and release of the security bonds for the Police Facility Expansion Phase 1, Council Chambers Demolition, Project 2000-28 and authorize the City Manager to sign the Notice of Completion, a copy of which is attached as Exhibit A to the resolution.

SUMMARY

On February 13, 2023, the City Council awarded the contract for construction of the Police Facility Expansion Phase 1, Council Chambers Demolition, Project 2000-28 to Penkor Wrecking. The contract was substantially completed on June 19, 2023, and can be accepted for permanent maintenance. The process to release the contractor's bonds can begin.

DISCUSSION

The Police Facility Expansion Phase 1, Council Chambers Demolition, Project 2000-28 involved demolishing the old Council Chambers located at 3575 Pacific Avenue and constructing a six-foot tall decorative steel fence and two decorative rolling gates around the perimeter of the lot. The project was completed in accordance with the contract documents in a manner acceptable to the City Engineer and can now be accepted for permanent maintenance.

At time of award, the contractor provided a faithful performance bond guaranteeing completion of the project, and that bond must now be released. Six months after the date of the resolution accepting the project, the labor and materials bond guaranteeing the improvements should be reduced to an amount equal to any claims filed and of which notice has been given. The balance of the bond will be released upon the settlement of all claims and obligations for which the security was given. All claims for this project have been settled. The security for the guarantee and warranty of work shall remain in effect for

one year from the date of the resolution.

FISCAL AND ADMINISTRATIVE IMPACTS

The original construction contract amount was $126,000, plus a $50,000 contingency for change orders. The final contract amount is $126,000, which is the original contract based on final bid item quantities anticipated, and no change orders.

This project involves the removal of a building and therefore does not increase operations and maintenance costs.

COMMUNITY PILLAR
5: A City that Works

GOAL
14: Develop, operate, and maintain the city's infrastructure

GUIDING DOCUMENT
2023-2028 Capital Improvement Plan

ATTACHMENTS

1. Location Map
2. Resolution
3. Exhibit A - Notice of Completion

Prepared by: Mike Stamm
Construction Inspection Manager

Approved by:

Marianna Marysheva
City Manager

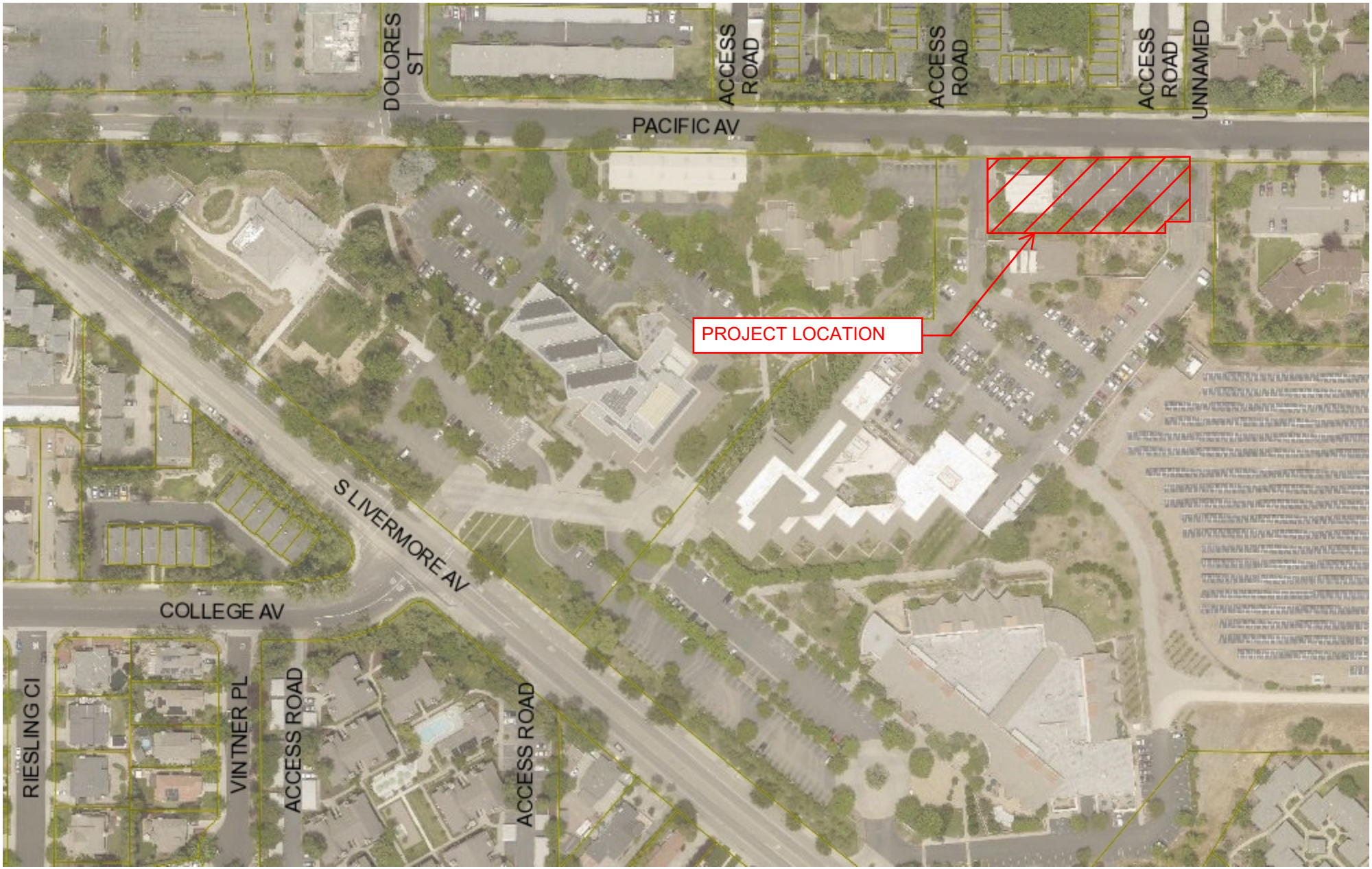
Fiscal Review by:

Tina Olson
Administrative Services Director

LIVERMORE
CALIFORNIA

Project Location Map

ATTACHMENT 1



333.3 0 166.67 333.3 Feet

NAD_1983_2011_StatePlane_California_III_FIPS_0403_Ft_US
Livermore IT, GIS Services

1: 2,000

This map is based on City of Livermore GIS Information and reflects the most current information at the time of this printing. The map is intended for reference purposes only and the City and its staff is not responsible for errors or omissions.

Notes

IN THE CITY COUNCIL OF THE CITY OF LIVERMORE, CALIFORNIA

A RESOLUTION AUTHORIZING ACCEPTANCE FOR PERMANENT MAINTENANCE, RELEASE OF SECURITY BONDS, AND EXECUTION OF A NOTICE OF COMPLETION FOR THE POLICE FACILITY EXPANSION PHASE 1, COUNCIL CHAMBER DEMOLITION, PROJECT 2000-28

The City Engineer of the City of Livermore ("City") has filed with the City Clerk a report in writing that all work on the Police Facility Expansion Phase 1, Council Chamber Demolition, Project 2000-28 ("Project"), has been completed to City standards. The Project is ready for acceptance by the City of Livermore for routine maintenance.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Livermore that:

1. The faithful performance bond guaranteeing the Project is hereby released;

2. The labor and materials bond guaranteeing the Project shall, six months after the date of this resolution, be reduced to an amount equal to the amount of all claims filed and of which notice has been given. The balance of the bond shall be released upon the settlement of all such claims and obligations for which the security was given;

3. The security for the guarantee and warranty of work shall remain in effect for one year from the date of this resolution. The contractor is required to reconstruct any deficiencies that occur and to repair or replace defective materials during the maintenance period;

4. The City hereby accepts the improvements; and

5. The City Manager is authorized to sign the Notice of Completion, a copy of which is attached hereto as Exhibit A and incorporated by this reference.

On motion of Council Member _____, seconded by Council Member _____, the foregoing resolution was passed and adopted on July,24 2023, by the following vote:

AYES: COUNCIL MEMBERS:
NOES: COUNCIL MEMBERS:
ABSENT: COUNCIL MEMBERS:
ABSTAIN: COUNCIL MEMBERS:

ATTEST: APPROVED AS TO FORM:

_____ */s/ Katherine Mirassou*
Marie Weber Katherine Mirassou
City Clerk Deputy City Attorney

Exhibit A – Notice of Completion

RESOLUTION NO. _____

NOTICE OF COMPLETION

City's Project No. 2000-28 Date: July 25,2023

Project: Police Facility Expansion Phase 1, Council Chamber Demolition

Contractor: Penkor General Contractors Inc.

Contract For Construction of: Police Facility Expansion Phase 1, Council Chamber Demolition

Project or Specified Part Shall Include: All that work as set forth in the Bid Schedule(s) of the Bid Forms, as awarded by the City of Livermore pursuant to the Contract Documents for Public Works Project No. 2000-28

Document located at: 1052 S. Livermore Ave., Livermore, CA 94550 Contract Date: February 13,2023

The work performed under this contract was inspected by authorized representatives of the City, Contractor, and Engineer, and determined to be Substantially Complete on June 19, 2023. The project reached Final Completion on June 26, 2023, which is within the number of working days required per Section 5.2 of the contract. The City elects to accept the Project and will record the Notice of Completion.

ENGINEERING DIVISION
Engineer

By _____
Mike Stamm, Const Insp Manager

The Contractor hereby accepts the above Notice of Completion

Penkor General Contractors Inc.
Contractor

By _____
Valentin Pena, CEO

The City accepts the project or specified area of the project to have reached final completion and will assume full possession of the Project or specified area of the Project at 8:00 am, on July 25, 2023. The responsibility for heat, utilities, security, and insurance under the Contract Documents will be assumed by the City after that date. Nature of interest of owner: Fee.

I certify (declare) under the penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Owner:
City of Livermore
1052 S. Livermore Ave.
Livermore, CA 94550

FOR THE CITY OF LIVERMORE

By _____
Marianna Marysheva, City Manager Date

LIVERMORE
CALIFORNIA

CITY COUNCIL STAFF REPORT **ITEM NO. 5.14**

DATE: July 24, 2023

TO: Honorable Mayor and City Council

FROM: Paul Spence, Community Development Director

SUBJECT: Resolution authorizing the acceptance for permanent maintenance and release of the security bonds for the public streetscape improvements on the south side of First Street between L Street and M Street constructed as part of First Street South Side Improvements - Downtown Streetscape Phase II Project 200827.

RECOMMENDED ACTION

Staff recommends the City Council adopt a resolution authorizing the acceptance for permanent maintenance and release of the security bonds for the public streetscape improvements on the south side of First Street between L Street and M Street constructed as part of First Street South Side Improvements - Downtown Streetscape Phase II Project 200827.

SUMMARY

Livermore Mulitfamily Owner LLC entered into Development Agreement 18-002 with the City on June 25, 2018. The provisions of the Development Agreement outlined the requirements for constructing the downtown streetscape improvements on the south side of First Street between L Street and M Street. The site location is shown in Attachment 1. To secure the construction of the First Street south side public improvements, Livermore Mulitfamily Owner LLC entered into a Public Improvement Agreement with the City on November 25, 2019, and provided security bonds.

The Developer has completed these public improvements. The City Council can now accept the First Street south side improvements for permanent maintenance. The process to release the Developer's bonds can begin.

DISCUSSION

Development Agreement 18-002 was approved by City Council on June 25, 2018. The provisions of the Development Agreement outline the requirements for constructing the downtown streetscape improvements on the south side of First Street by Livermore Multifamily Owner, LLC. The improvements consist of downtown streetscape construction, including sidewalks, trellises, flex zone parking, lighting, and landscaping along the south side of First Street between L Street and M Street. Other improvements

included full reconstruction of First Street pavement, reconfiguring the traffic signal at First and L Street, and upgrades to accessible ramps at the corners.

On November 25, 2019, the City Council approved a Public Improvement Agreement with Livermore Multifamily Owner, LLC for constructing these First Street streetscape improvements with bonds to secure the installation.

The Developer has fulfilled all of the obligations as described in the Public Improvement Agreement to the satisfaction of the City Engineer. The City can now accept the First Street south side improvements for permanent maintenance. The Developer provided a faithful performance bond guaranteeing completion of the project, and that bond must now be released. Six months after the date of the resolution accepting the project, the labor and materials bond guaranteeing the improvements should be reduced to an amount equal to any claims filed and of which notice has been given. The balance of the bond will be released upon the settlement of all claims and obligations for which the security was given. The security for the guarantee and warranty of work shall remain in effect for one year from the date of the resolution.

FISCAL AND ADMINISRATIVE IMPACTS

The final amount of the reimbursements to Livermore Multifamily Owner, LLC for the First Street south side improvements will total $2,161,000. In accordance with Development Agreement 18-002, the City agreed to reimburse the Developer for the construction of the First Street south side improvements in 3 installments that correspond to various stages of the project. Funding for these reimbursements is included in the budget for Downtown Streetscape Phase II Project 2008-27 in the 2023-2028 Capital Improvement Plan and no additional funding is needed. The project is funded with Gas Taxes (Fund 651), Measure B (Fund 678), and Measure BB (Fund 688). To date, the Developer has received 2 reimbursement installments for a total amount of $1,399,000. The remaining estimated reimbursement amount of $762,000 is contingent upon the City accepting the public improvements for permanent maintenance.

The estimated annual operations, maintenance, and replacement costs for the public infrastructure, including sidewalk, curb, gutter, pavement, streetlights, sewer, and storm drain lines is approximately $40,000. The Downtown Landscape Maintenance District will provide the funding to maintain the First Street streetscape that has been installed with this project. The water system belongs to California Water Service, and they will cover the cost of maintaining the water system.

COMMUNITY PILLAR
4: Inclusive and Inviting Spaces and Places

GOAL
3: Continue to implement the Downtown Specific Plan

GUIDING DOCUMENT
Downtown Specific Plan

ATTACHMENTS

1. Location Map

2. Resolution

Prepared by: Debbie Salgado
Senior Civil Engineer

Approved by:



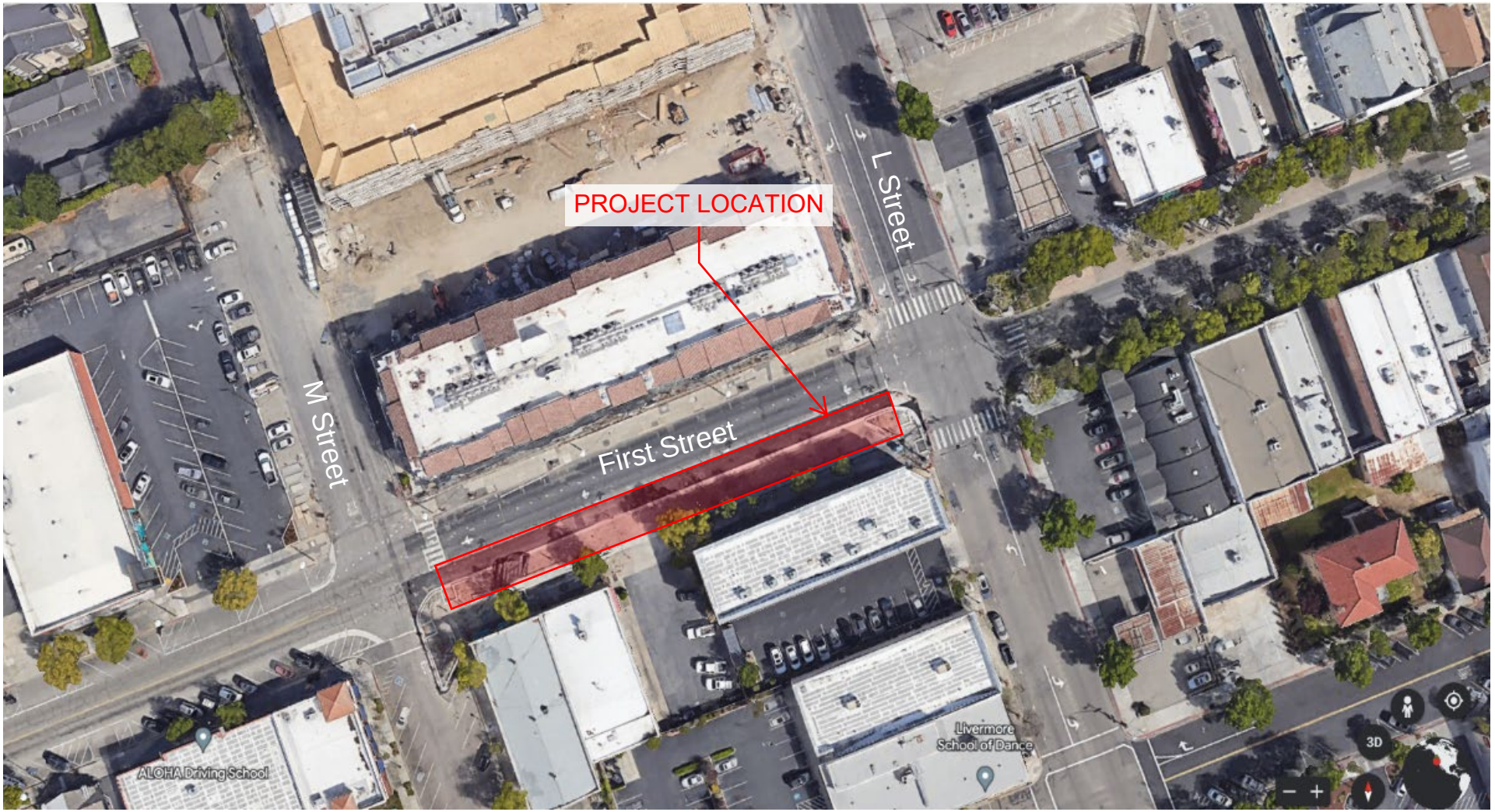
Marianna Marysheva
City Manager

Fiscal Review by:



Tina Olson
Administrative Services Director

PROJECT LOCATION MAP



IN THE CITY COUNCIL OF THE CITY OF LIVERMORE, CALIFORNIA

A RESOLUTION AUTHORIZING ACCEPTANCE FOR PERMANENT MAINTENANCE, AND RELEASE OF SECURITY BONDS FOR THE FIRST STREET SOUTH SIDE IMPROVEMENTS

(First Street South Side Improvements - Downtown Streetscape Phase II, Project No. 2008-27)

The City Engineer of the City of Livermore ("City") has filed with the City Clerk a report in writing that all work on the First Street South Side Improvements, Downtown Streetscape Phase II, Project No. 2008-27 ("Project"), has been completed to City standards. The Project is ready for acceptance by the City of Livermore for routine maintenance.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Livermore that:

1. The faithful performance bond guaranteeing the Project is hereby released;

2. The labor and materials bond guaranteeing the Project shall, six months after the date of this resolution, be reduced to an amount equal to the amount of all claims filed and of which notice has been given. The balance of the bond shall be released upon the settlement of all such claims and obligations for which the security was given;

3. The security for the guarantee and warranty of work shall remain in effect for one year from the date of this resolution. The contractor is required to reconstruct any deficiencies that occur and to repair or replace defective materials during the maintenance period; and

4. The City hereby accepts the improvements.

On motion of Council Member _____, seconded by Council Member _____, the foregoing resolution was passed and adopted on July 24, 2023, by the following vote:

AYES: COUNCIL MEMBERS:
NOES: COUNCIL MEMBERS:
ABSENT: COUNCIL MEMBERS:
ABSTAIN: COUNCIL MEMBERS:

ATTEST: APPROVED AS TO FORM:

_____ */s/ Molly O'Toole*
Marie Weber Molly O'Toole
City Clerk Deputy City Attorney

RESOLUTION NO. _____

LIVERMORE
CALIFORNIA

CITY COUNCIL STAFF REPORT **ITEM NO. 5.15**

DATE: July 24, 2023

TO: Honorable Mayor and City Council

FROM: Paul Spence, Community Development Director

SUBJECT: Resolution authorizing the acceptance for permanent maintenance, release of the security bonds and execution of a Notice of Completion for the Real Time Awareness Center, Project 2019-58.

RECOMMENDED ACTION

Staff recommends the City Council adopt a resolution authorizing the acceptance for permanent maintenance and release of the security bonds for the Real Time Awareness Center Project 2019-58 and authorizing the City Manager to sign the Notice of Completion, a copy of which is attached as Exhibit A to the resolution.

SUMMARY

On December 13, 2021, the City Council awarded the contract for construction of the Real Time Awareness Center to Evra Construction, Inc. The contract was substantially completed on August 16, 2022, and can be accepted for permanent maintenance. The process to release the contractor's bonds can begin.

DISCUSSION

This project consisted of converting the bike storage room at the Police Building into a Real Time Awareness Center (RTAC) facility. Attachment 1 shows the location of the Police Building. Renovations included new interior finishes, new lighting, upgrades to HVAC mechanical system, installation of new interior partitions, new sliding doors, a swing door, new door hardware, electrical upgrades and new door access controls. The project was completed in accordance with the contract documents in a manner acceptable to the City Engineer and can now be accepted for permanent maintenance.

At time of award, the contractor provided a faithful performance bond guaranteeing completion of the project, and that bond must now be released. Six months after the date of the resolution accepting the project, the labor and materials bond guaranteeing the improvements should be reduced to an amount equal to any claims filed and of which notice has been given. The balance of the bond will be released upon the settlement of all claims and obligations for which the security was given. All claims for this

project have been settled. The security for the guarantee and warranty of work shall remain in effect for one year from the date of the resolution.

FISCAL AND ADMINISTRATIVE IMPACTS

The original construction contract amount was $472,000, plus a $50,000 contingency for change orders. On October 24, 2022, City Council authorized an increase in the change order contingency to $60,000. The final contract amount is $528,316, which is 11.2 percent above the original contract based on final bid item quantities, and 9 change orders. The total value of change orders was $56,316 which consisted primarily of unforeseen conditions due to obsolete electrical panels and HVAC controls system. The final bid quantities were as anticipated.

It is estimated that operations and maintenance costs for the Real Time Awareness Center will be $215,000 per year for software and $10,000 per year for upkeep of the tenant improvements. Software costs will be funded from the Police Department Operating Budget. The tenant improvement maintenance costs will be funded from the Public Works Operating Budget.

COMMUNITY PILLAR

1: A Safe Community That Thrives

GOAL

2: Provide proactive and effective public safety and crime prevention through direct enforcement, education, and partnerships

GUIDING DOCUMENT

2023-2028 Capital Improvement Plan

ATTACHMENTS

1. Location Map
2. Resolution
3. Exhibit A - Notice of Completion

Prepared by: Joe Kuderca
Associate Engineering Technician

Approved by:

Marianna Marysheva
City Manager

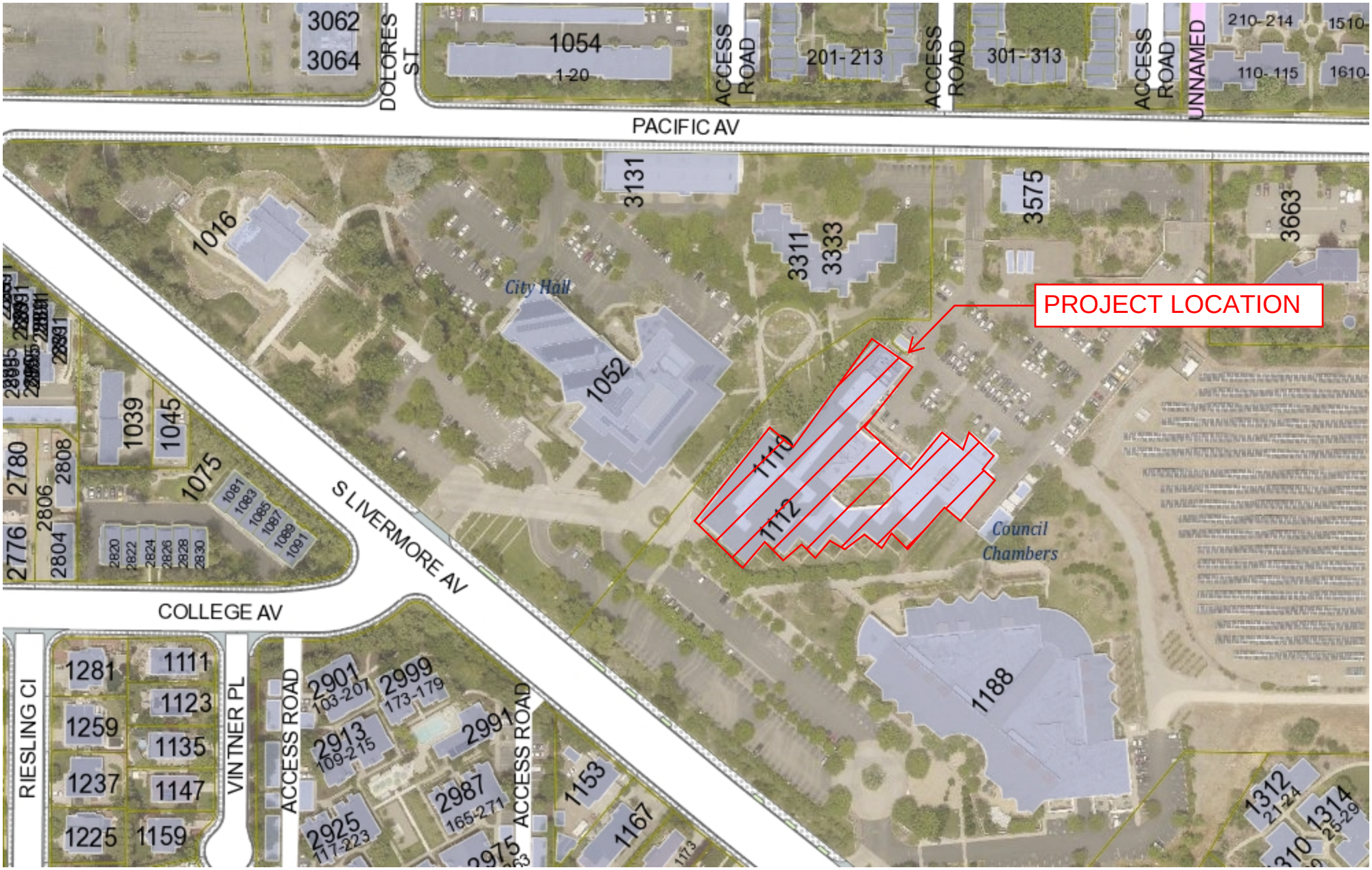
Fiscal Review by:

Tina Olson
Administrative Services Director

LIVERMORE
CALIFORNIA

Project Location Map

ATTACHMENT 1



333.3 0 166.67 333.3 Feet

NAD_1983_2011_StatePlane_California_III_FIPS_0403_Ft_US
Livermore IT, GIS Services

1: 2,000

This map is based on City of Livermore GIS Information and reflects the most current information at the time of this printing. The map is intended for reference purposes only and the City and its staff is not responsible for errors or omissions.

Notes

IN THE CITY COUNCIL OF THE CITY OF LIVERMORE, CALIFORNIA

A RESOLUTION AUTHORIZING ACCEPTANCE FOR PERMANENT MAINTENANCE, RELEASE OF SECURITY BONDS, AND EXECUTION OF A NOTICE OF COMPLETION FOR THE REAL TIME AWARENESS CENTER

(Real Time Awareness Center, Project No. 2019-58)

The City Engineer of the City of Livermore ("City") has filed with the City Clerk a report in writing that all work on the Real Time Awareness Center, Project No. 2019-58 ("Project"), has been completed to City standards. The Project is ready for acceptance by the City of Livermore for routine maintenance.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Livermore that:

1. The faithful performance bond guaranteeing the Project is hereby released;

2. The labor and materials bond guaranteeing the Project shall, six months after the date of this resolution, be reduced to an amount equal to the amount of all claims filed and of which notice has been given. The balance of the bond shall be released upon the settlement of all such claims and obligations for which the security was given;

3. The security for the guarantee and warranty of work shall remain in effect for one year from the date of this resolution. The contractor is required to reconstruct any deficiencies that occur and to repair or replace defective materials during the maintenance period;

4. The City hereby accepts the improvements; and

5. The City Manager is authorized to sign the Notice of Completion, a copy of which is attached hereto as Exhibit A, and incorporated by this reference.

On motion of Council Member _____, seconded by Council Member _____, the foregoing resolution was passed and adopted on July 24, 2023, by the following vote:

AYES: COUNCIL MEMBERS:
NOES: COUNCIL MEMBERS:
ABSENT: COUNCIL MEMBERS:
ABSTAIN: COUNCIL MEMBERS:

ATTEST:

_____
Marie Weber
City Clerk

APPROVED AS TO FORM:

/s/ Molly O'Toole
Molly O'Toole
Deputy City Attorney

Exhibit A – Notice of Completion

RESOLUTION NO. _____

NOTICE OF COMPLETION

City's Project No. 2019-58 Date: July 25, 2023

Project: Real Time Awareness Center

Contractor: Evra Construction, Inc.

Contract For Construction of: Real Time Awareness Center

Project or Specified Part Shall Include: All that work as set forth in the Bid Schedule(s) of the Bid Forms, as awarded by the City of Livermore pursuant to the Contract Documents for Public Works Project No. 2019-58

Document located at: 1052 S. Livermore Ave., Livermore, CA 94550 Contract Date: December 13, 2021

The work performed under this contract was inspected by authorized representatives of the City, Contractor, and Engineer, and determined to be substantially complete on August 16, 2022. The project reached Final Completion on February 16, 2023 which is within the number of working days required per Section 5.2 of the contract. The city elects to accept the Project and will record the Notice of Completion.

ENGINEERING DIVISION
Engineer

By _____
Mike Stamm, Const Insp Manager

The Contractor hereby accepts the above Notice of Completion

Evra Construction, Inc.
Contractor

By _____
Alex Yunak, Project Manager

The city accepts the project or specified area of the project to have reached final completion and will assume full possession of the Project or specified area of the Project at 8:00 am, on 7/25/23. The responsibility for heat, utilities, security, and insurance under the Contract Documents will be assumed by the City after that date. Nature of interest of owner: Fee.

I certify (declare) under the penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Owner:
City of Livermore
1052 S. Livermore Ave.
Livermore, CA 94550

FOR THE CITY OF LIVERMORE

By _____
Marianna Marysheva, City Manager Date

LIVERMORE
CALIFORNIA

CITY COUNCIL STAFF REPORT **ITEM NO. 5.16**

DATE: July 24, 2023

TO: Honorable Mayor and City Council

FROM: Paul Spence, Community Development Director

SUBJECT: Resolution to summarily vacate a public right-of-way, known as Lot 6 of Parcel Map 6986, and retain the rights of the existing public utility easement within Lot 6, located at Las Positas Road and Bennett Drive.

RECOMMENDED ACTION

Staff recommends the City Council adopt a resolution to summarily vacate a right-of-way known as Lot 6 of Parcel Map 6986 but retain the rights of the existing public utility easement within Lot 6 and authorize the City Manager to quitclaim Lot 6 (right-of-way) to TH Arroyo Vista LLC, a California Limited Liability Company.

SUMMARY

Staff proposes to vacate a right-of-way known as Lot 6 of Parcel Map 6986 as depicted in the vicinity map (Attachment 1) and as described in the Plat and Legal Description, Exhibit A to the resolution. This vacation fulfills the City's obligation noted on Parcel Map 6986 that states after the realigned streets of Las Positas Road and Bennett Drive are constructed, the City shall deed Lot 6 to the owner of Lot 5, retaining the rights of the existing public utility easements within Lot 6.

The roadway improvements realigning the intersection of Las Positas Road and Bennett Drive have been completed and this right-of-way is no longer needed. Therefore, the City can summarily vacate the right-of-way known as Lot 6 of Parcel Map 6986 and authorize the execution of the quitclaim deed releasing the right-of-way to TH Arroyo Vista LLC, a California Limited Liability Company (Property Owner of Lot 5), retaining the rights of the existing public utility easements within Lot 6.

DISCUSSION

On July 24, 2017, the City Council approved Vesting Tentative Tract Map 8379 Arroyo Vista for the development of 435 residential units. The first phase of the tentative map, consisting of 86 single family homes and 109 row townhome units, is located on the west side of the Arroyo Seco Channel along Las Positas Road. The second phase of the tentative map, consisting of 132 row townhomes and 108 duet flats, is located on the east side of the Arroyo Seco Channel for the Arroyo Vista subdivision along Las

Positas Road and Bennett Drive.

The tentative map conditions of approval include the requirement that the City vacate Lot 6 of Parcel Map 6986 (public right-of-way) located at the intersection of Las Positas Road and Bennett Drive, retaining the rights of the existing public utility easements within Lot 6. Parcel Map 6986 states after the realignment of Las Positas Road and Bennett Drive are constructed, the City shall deed Lot 6 to the owner of Lot 5, retaining the rights of the existing public utility easements within Lot 6. This right-of-way is no longer needed due to the completion of the realignment of Las Positas Road and Bennett Drive. Lot 6 right-of-way conflicts with building footprints and walkways approved as part of the second phase of the tentative map for the Arroyo Vista project. The vacation of this right-of-way will facilitate the development of the second phase of the tentative map.

Government Code Section 65402(a) requires that if a General Plan has been adopted, no real property or easements used for public purposes shall be acquired or disposed of until the location, purpose, and extent of such acquisition or disposition has been reported upon by the planning agency (e.g. Planning Commission) as to conformity with its adopted General Plan. This includes vacation of public right-of-way needed for public purposes in whole or in part.

On June 6, 2023, the Planning Commission adopted a resolution approving Consistency Determination (CD) 23-001, finding that the right-of-way known as Lot 6 is no longer needed for public highway purposes and that the vacation of this right-of-way is consistent with the General Plan.

FISCAL AND ADMINISTRATIVE IMPACTS

The financial burden to maintain this unused public right-of-way in a safe condition is greater than its public value. By vacating the property, the City eliminates the need to maintain the property and reduces associated liability resulting in a minor financial benefit to the City.

COMMUNITY PILLAR

2: A Safe Community that Thrives

GOAL

9: Facilitate new residential development consistent with the City's General Plan

ATTACHMENTS

1. Vicinity Map
2. Resolution
3. Exhibit A - Lot 6 (right-of-way) Plat & Legal Description
4. Exhibit B - Quitclaim Deed, TH Arroyo Vista LLC

Prepared by: Hamm Inthavong
Senior Engineering Technician

Approved by:

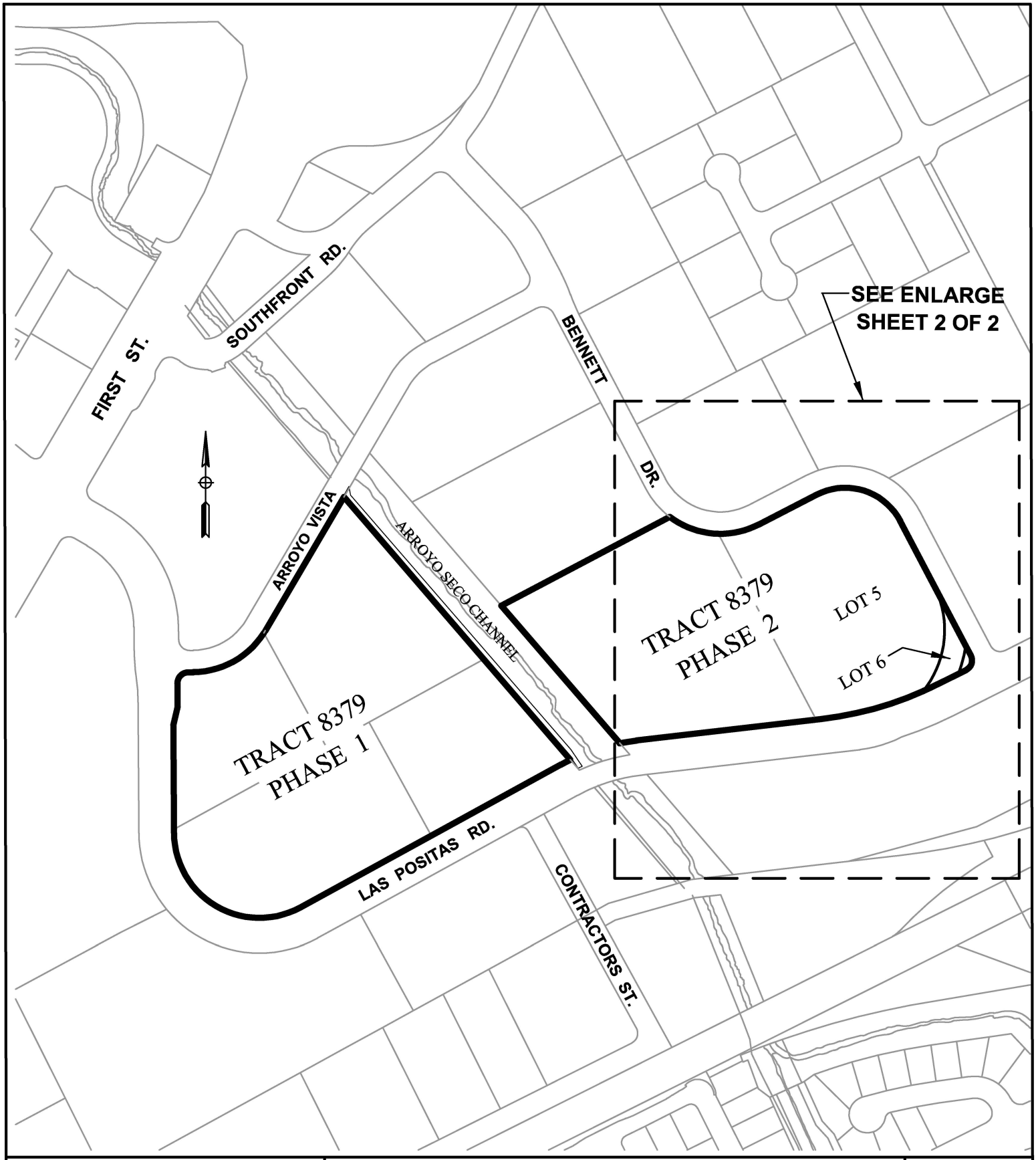


Marianna Marysheva
City Manager

Fiscal Review by:



Tina Olson
Administrative Services Director



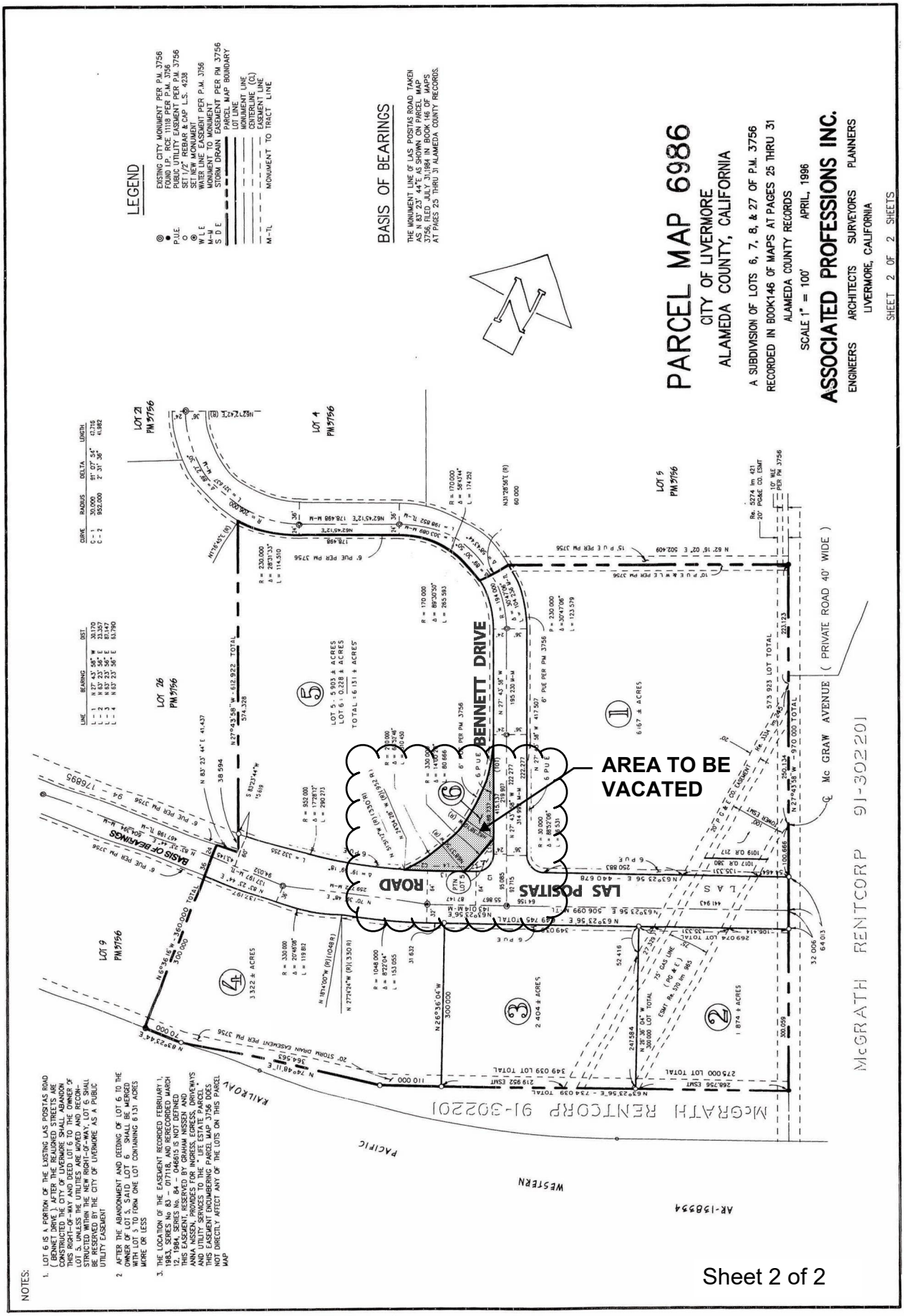
CITY OF LIVERMORE CALIFORNIA
COMMUNITY DEVELOPMENT DEPARTMENT - ENGINEERING DIVISION

ATTACHMENT 1

VICINITY MAP - TRACT 8379

Sheet 1
Of 2
Scale: NONE

Sheet 1 of 2


PARCEL MAP 6986
CITY OF LIVERMORE
ALAMEDA COUNTY, CALIFORNIA
A SUBDIVISION OF LOTS 6, 7, 8, & 27 OF P.M. 3756
RECORDED IN BOOK146 OF MAPS AT PAGES 25 THRU 31
ALAMEDA COUNTY RECORDS
SCALE 1" = 100'
APRIL, 1996
ASSOCIATED PROFESSIONS INC.
ENGINEERS ARCHITECTS SURVEYORS PLANNERS
LIVERMORE, CALIFORNIA
SHEET 2 OF 2 SHEETS
LEGEND
BASIS OF BEARINGS
THE MONUMENT LINE OF LAS POSITAS ROAD TAKEN AS N 83° 23' 44"E AS SHOWN ON PARCEL MAP 3756, FILED JULY 31,1984 IN BOOK 146 OF MAPS AT PAGES 25 THRU 31 ALAMEDA COUNTY RECORDS.
NOTES:
1. LOT 6 IS A PORTION OF THE EXISTING LAS POSITAS ROAD (BENNETT DRIVE) AFTER THE RELOCATED STREETS ARE CONSTRUCTED. THE CITY OF LIVERMORE SHALL ABANDON THIS RIGHT-OF-WAY AND DEED LOT 6 TO THE OWNER OF LOT 5. UNLESS THE UTILITIES ARE MOVED AND RECONSTRUCTED WITHIN THE NEW RIGHT-OF-WAY, LOT 6 SHALL BE RESERVED BY THE CITY OF LIVERMORE AS A PUBLIC UTILITY EASEMENT
2. AFTER THE ABANDONMENT AND DEEDING OF LOT 6 TO THE OWNER OF LOT 5, SAID LOT 6 SHALL BE MERGED WITH LOT 5 TO FORM ONE LOT CONTAINING 6.131 ACRES MORE OR LESS
3. THE LOCATION OF THE EASEMENT RECORDED FEBRUARY 1, 1983, SERIES No 83 - 017118, AND RERECORDED MARCH 12, 1984, SERIES No. 84 - 046615 IS NOT DEFINED THIS EASEMENT, RESERVED BY GRAHAM NISSEN AND ANNA NISSEN, HIS WIFE, FOR INGRESS, EGRESS, DRIVEWAYS AND UTILITY SERVICES TO THE " LIFE ESTATE PARCEL". THIS EASEMENT ENCUMBERING PARCEL MAP 3756 DOES NOT DIRECTLY AFFECT ANY OF THE LOTS ON THIS PARCEL MAP
AREA TO BE VACATED
BENNETT DRIVE
LAS POSITAS ROAD
Mc GRAW AVENUE (PRIVATE ROAD 40' WIDE)
McGRATH RENTCORP 91-302201
AR-138334

Sheet 2 of 2

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL
TO:

CITY CLERK
CITY OF LIVERMORE
1052 S. LIVERMORE AVENUE
LIVERMORE, CA 94550

EXEMPT FROM FILING FEES
PURSUANT TO GOV.
CODE § 27383

Space Above This Line for Recorder's Use Only

IN THE CITY COUNCIL OF THE CITY OF LIVERMORE, CALIFORNIA

A RESOLUTION SUMMARILY VACATING A PORTION OF PUBLIC RIGHT-OF-WAY KNOWN AS LOT 6 OF PARCEL MAP 6986, RETAINING THE RIGHTS OF EXISTING PUBLIC UTILITY EASEMENT WITHIN LOT 6, AND AUTHORIZING EXECUTION OF QUITCLAIM DEED

On July 24, 2017, the City Council adopted Resolution No. 2017-136 approving Vesting Tentative Tract Map (VTTM) 8379 Arroyo Vista for the development of 435 residential units.

The tentative map conditions of approval include the requirement that the City vacate and quitclaim Lot 6 of Parcel Map 6986, located at the intersection of Las Positas Road and Bennett Drive, per the requirements noted in the owner's statement of Parcel Map 6986.

Parcel Map 6986 requires the City to abandon the right-of-way known as Lot 6 of Parcel Map 6986 and deed Lot 6 of said map to the property owner of Lot 5 of said map upon the completion of the realignment of the roadway intersection of Las Positas Road and Bennett Drive. This realignment was completed as part of the overall improvement of the parcel map and therefore Lot 6 is no longer needed as a public right-of-way. The property owner of Lot 5 is TH Arroyo Vista LLC, a California limited liability company and is also the developer for the Arroyo Vista residential development.

The City will retain the rights of the existing public utility easement within Lot 6 to provide future utilities to the Arroyo Vista development and surrounding areas. The vacation is also consistent with the Livermore General Plan Infrastructure and Public Services Element because it ensures that the utilities are available to support new development.

Streets and Highways Code section 8334 allows the legislative body of a local agency to summarily vacate an excess right-of-way of a street or highway not required for street or highway purposes.

On June 6, 2023, the Planning Commission adopted a resolution approving Consistency Determination (CD) 23-001, finding that Lot 6 is no longer needed for present or prospective public use and that the vacation of the Lot 6 right-of-way is consistent with the City of Livermore General Plan.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Livermore that to the extent the quitclaim of the right-of-way to be vacated constitutes a project pursuant to the California Environmental Quality Act ("CEQA"), this action is exempt from CEQA pursuant to 14 California Code of Regulations, section 15061 because it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment and the area to be vacated is being substituted for in a manner that adequately maintains the function of the right of way and consistency with City Standards.

BE IT FURTHER RESOLVED by the City Council of the City of Livermore that:

1. Under Division 9, Part 3, Chapter 4 of the Streets and Highways Code, the City Council vacates the public right of way known as Lot 6 of Parcel Map 6986 as shown and described in Exhibit A attached hereto and as described below, while retaining the rights of the existing public utility easements within Lot 6.

   The public right of way known as Lot 6 of Parcel Map 6986 is no longer required for street or highway purposes because the realignment of the intersection of Las Positas Road and Bennett Drive, constructed as part of Parcel Map 6986, is complete. Lot 6 is no longer needed for the intersection of Las Positas Road and Bennett Drive. (Streets and Highways Code section 8334*.).*

2. The City Clerk is directed to file a certified copy of this resolution of vacation with associated legal description with the Alameda County Recorder's Office.

3. From and after the date this resolution is recorded, the public right of way known as Lot 6 of Parcel Map 6986 is vacated and no longer constitutes a public right-of-way.

4. The City Manager is authorized to execute, on behalf of the City of Livermore, the Quitclaim Deed, attached hereto as Exhibit B, and retain the rights of the existing public utility easement within Lot 6.

On motion of Council Member_____, seconded by Council Member_____, the foregoing resolution was passed and adopted on July 24, 2023, by the following vote:

AYES: COUNCIL MEMBERS:
NOES: COUNCIL MEMBERS:
ABSENT: COUNCIL MEMBERS:
ABSTAIN: COUNCIL MEMBERS:

ATTEST:

_____
Marie Weber
City Clerk

APPROVED AS TO FORM:

/s/ Molly O'Toole
Molly O'Toole
Deputy City Attorney

Exhibit A – Lot 6 (right-of-way) Plat & Legal Description
Exhibit B – Quitclaim Deed, TH Arroyo Vista LLC

JUNE 16, 2023
JOB NO.: 1297-010

EXHIBIT A
LEGAL DESCRIPTION
LOT 6, PARCEL MAP 6986 (229 M 89)
CITY OF LIVERMORE, COUNTY OF ALAMEDA, CALIFORNIA

REAL PROPERTY, SITUATE IN THE INCORPORATED TERRITORY OF THE CITY OF LIVERMORE, COUNTY OF ALAMEDA, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

BEING ALL OF LOT 6, AS SAID LOT 6 IS SHOWN AND SO DESIGNATED ON THAT CERTAIN PARCEL MAP ENTITLED "PARCEL MAP 6986" FILED FOR RECORD MAY 19, 1997 IN BOOK 229 OF MAPS AT PAGE 89, OFFICIAL RECORDS OF ALAMEDA COUNTY.

CONTAINING 9,910 SQUARE FEET OR 0.228 ACRES OF LAND, MORE OR LESS.

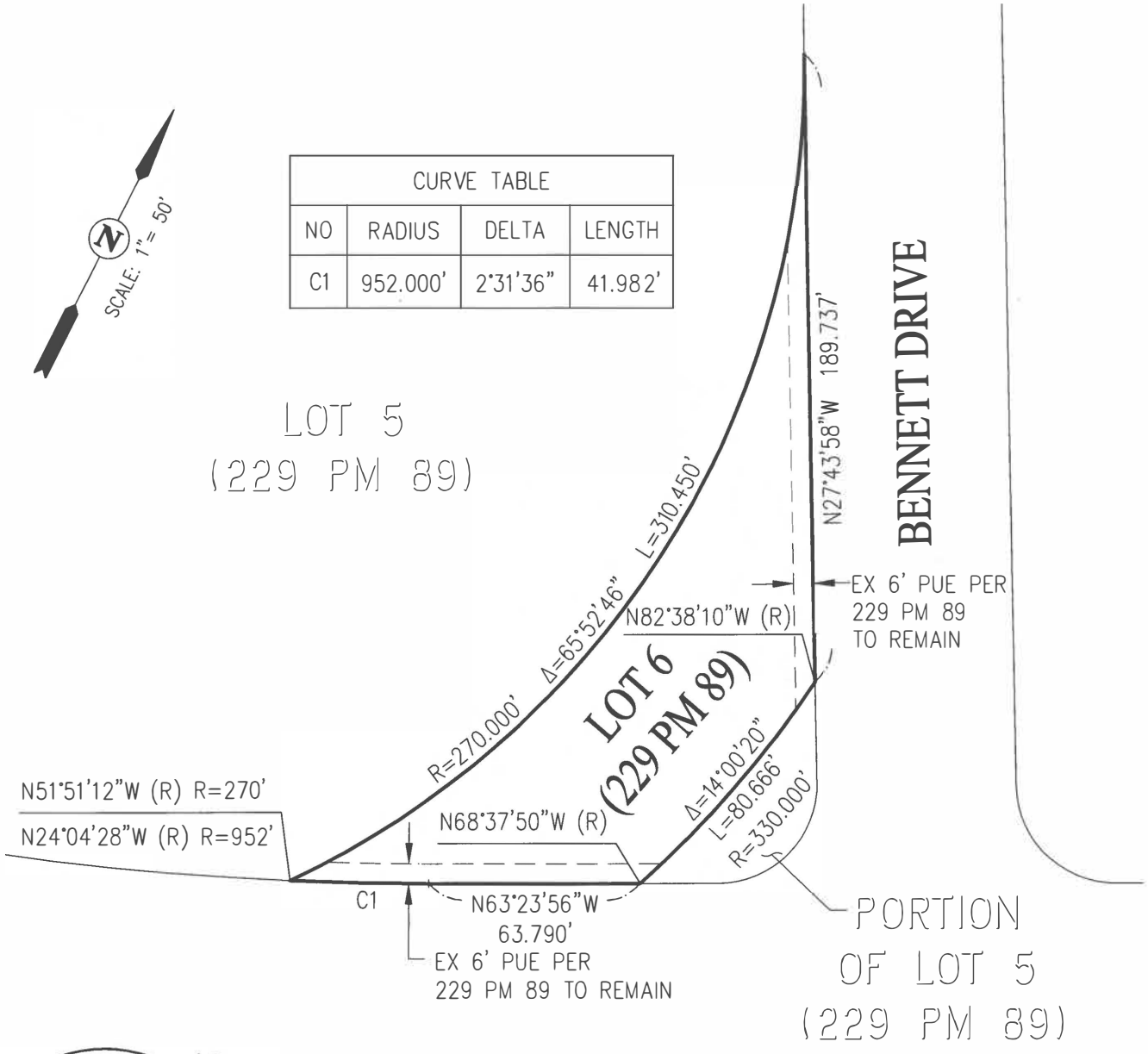
ATTACHED HERETO IS A PLAT (EXHIBIT B) TO ACCOMPANY LEGAL DESCRIPTION, AND BY THIS REFERENCE MADE A PART HEREOF.

END OF DESCRIPTION

LICENSED LAND SURVEYOR
MARK H. WEHBER
No. 7960
STATE OF CALIFORNIA

6/16/2023

MARK WEHBER, P.L.S.
L.S. NO. 7960



LICENSED LAND SURVEYOR
MARK H. WEIBEL
7962
STATE OF CALIFORNIA
6/16/2023

EXHIBIT B

PLAT TO ACCOMPANY LEGAL DESCRIPTION

LOT 6, PARCEL MAP 6986 (229 M 89)
ALAMEDA COUNTY, CALIFORNIA

JUNE 16, 2023

SHEET 1 OF 1

Carlson, Barbee & Gibson, Inc.
CIVIL ENGINEERS • SURVEYORS • PLANNERS
SAN RAMON • (925) 866 - 0322
WEST SACRAMENTO • (916) 375 - 1877

6/16/2023 9:02 AM

RECORDING REQUESTED BY:
AND
WHEN RECORDED MAIL TO:

City Clerk
City of Livermore
1052 South Livermore Avenue
Livermore, CA 94550

ABOVE THIS LINE FOR RECORDER'S USE

MAIL TAX STATEMENTS TO:

SAME AS ABOVE

The Undersigned grantor(s) declare(s):
CITY TRANSFER TAX $0.00
DOCUMENTARY TRANSFER TAX $ Release of easement
SURVEY MONUMENT FEE $0.00
R&T Code 11911 Value or consideration is less than $100
Computed on the consideration or value or property conveyed; OR computed on the consideration or value less liens or encumbrances remaining at time of sale.

APN's
099-01325-091 (portion)

Exempt from filing fees per Government Code Section §§ 27383 & 6103

QUITCLAIM DEED

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged,

CITY OF LIVERMORE, a Municipal Corporation, "Grantor,"

hereby remises, releases and quitclaims to TH Arroyo Vista LLC, a California Limited Liability Company, ("Grantee") all right, title, and interest in and to those certain portions of a non-exclusive right-of-way located in the City of Livermore (City), County of Alameda, State of California on the real property held by TH Arroyo Vista LLC Corporation and more particularly identified in Exhibit A and Exhibit B (Legal Description and Plat). This Quitclaim Deed is executed, delivered, and accepted for the purpose of terminating the Quitclaimed right-of-way.

By recording this Quitclaim Deed, Grantee agrees to release and indemnify the Grantor from any and all liability associated with or arising out of the past, current, or future use of the Quitclaimed right-of-way, except to the extent caused by the sole negligence or willful misconduct of the City, its agents, or its employees.

SEE EXHIBITS "A" and "B" ATTACHED HERETO AND MADE A PART HEREOF

GRANTOR:

City of Livermore, a municipal corporation

_____ Date:_____
Signature:
By: Marianna Marysheva
Its: City Manager

JUNE 16, 2023
JOB NO.: 1297-010

EXHIBIT A
LEGAL DESCRIPTION
LOT 6, PARCEL MAP 6986 (229 M 89)
CITY OF LIVERMORE, COUNTY OF ALAMEDA, CALIFORNIA

REAL PROPERTY, SITUATE IN THE INCORPORATED TERRITORY OF THE CITY OF LIVERMORE, COUNTY OF ALAMEDA, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

BEING ALL OF LOT 6, AS SAID LOT 6 IS SHOWN AND SO DESIGNATED ON THAT CERTAIN PARCEL MAP ENTITLED "PARCEL MAP 6986" FILED FOR RECORD MAY 19, 1997 IN BOOK 229 OF MAPS AT PAGE 89, OFFICIAL RECORDS OF ALAMEDA COUNTY.

CONTAINING 9,910 SQUARE FEET OR 0.228 ACRES OF LAND, MORE OR LESS.

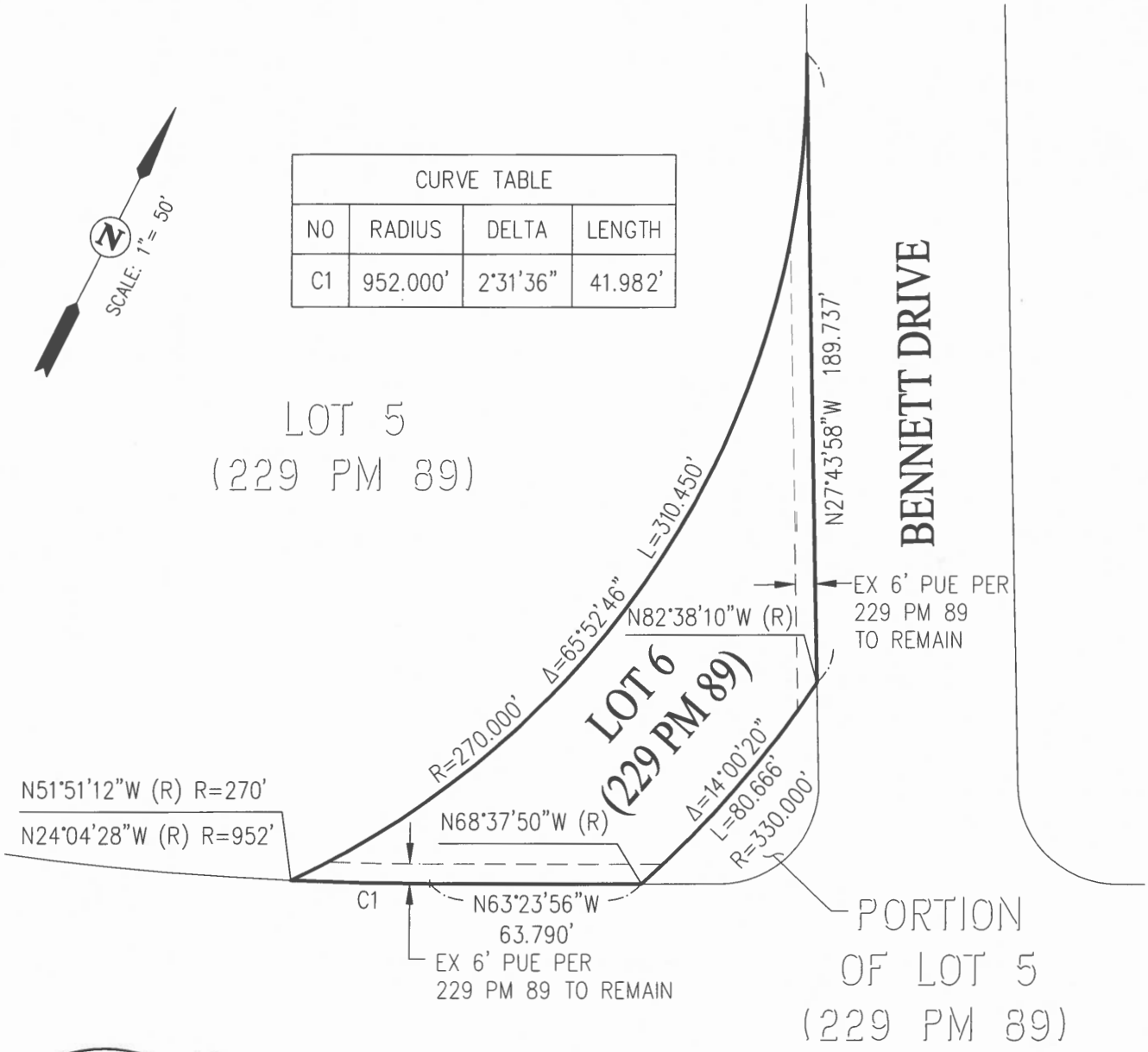
ATTACHED HERETO IS A PLAT (EXHIBIT B) TO ACCOMPANY LEGAL DESCRIPTION, AND BY THIS REFERENCE MADE A PART HEREOF.

END OF DESCRIPTION



6/16/2023

MARK WEHBER, P.L.S.
L.S. NO. 7960



LICENSED LAND SURVEYOR
MARK H. WEBER
7960
STATE OF CALIFORNIA

6/16/2023

EXHIBIT B

PLAT TO ACCOMPANY LEGAL DESCRIPTION

LOT 6, PARCEL MAP 6986 (229 M 89)
ALAMEDA COUNTY, CALIFORNIA

JUNE 16, 2023

SHEET 1 OF 1

Carlson, Barbee & Gibson, Inc.
CIVIL ENGINEERS • SURVEYORS • PLANNERS
SAN RAMON • (925) 866 - 0322
WEST SACRAMENTO • (916) 375 - 1877

6/16/2023 9:02 AM

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of _____)
County of _____)

On _____ before me, _____, Notary Public (here insert name and title of the officer), personally appeared _____
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ (Seal)

LIVERMORE
CALIFORNIA

CITY COUNCIL STAFF REPORT **ITEM NO. 5.17**

DATE: July 24, 2023

TO: Honorable Mayor and City Council

FROM: Tina Olson, Administrative Services Director

SUBJECT: Resolution establishing the Appropriations Limitation consistent with State law for FY 2023-24.

RECOMMENDED ACTION

Staff recommends the City Council re-adopt a resolution establishing the Appropriations Limit for FY 2023-24.

SUMMARY

Pursuant to Article XIIIB of the California Constitution, the City is required to establish an annual appropriation limit. The appropriation subject to limitations is to be based on the 1978-79 appropriations adjusted for the changes in the cost of living and population. California Government Code Section 7910 requires every local government to establish its appropriation limit by resolution for the upcoming fiscal year when the budget is adopted. Fifteen days prior to the meeting, documentation used in the determination of the appropriations limit and other necessary determinations needs to be made available to the public.

At the June 12, 2023 City Council meeting, Council approved and adopted the resolution approving the FY 2023-24 annual appropriation limit at $457,826,732. Prior to that meeting Staff did not produce a fifteen-day public notice in advance as required by California Government Code Section 7910. Staff has completed the required public notice 15 days prior to the July 24, 2023 meeting. Staff is recommending that City Council re-adopt the resolution approving the FY 2023-24 annual appropriations limit at $457,826,732.

DISCUSSION

Article XIII B of the California State Constitution was approved by California voters effective in 1980. Also known as the Gann Spending-Limitation Initiative, this article is actually a limitation on tax revenues rather than a direct limitation on appropriations. All proceeds from taxes received in excess of the appropriations limit are required to be returned through refund or revisions in tax rates.

The City of Livermore's Appropriations Limit is based upon FY 1978-79 appropriations which have been adjusted each year for population and inflation factors. Effective in FY 1990-91, Proposition 111 and SB 88 (Chapter 60/90) modified the manner in which the Appropriations Limit is calculated by providing alternative adjustment factors intended to make the Appropriations Limit more responsive to local growth issues and requires the annual election of cost-of-living adjustment factor and a population factor. The population factors may be either the change in city population or change in county population. The cost-of-living factors may be either the change in California per capita income or the change in City of Livermore non-residential new construction valuation. Typically, an agency selects the factors which provide for the largest growth to the limit.

The City's FY 2023-24 appropriations limit has been calculated by analyzing inflation and population factors provided by the California State Department of Finance and the City's property tax consultants, HDL. For FY 2023-24, the population factor chosen will be the reduction within the County as it was less of a reduction than within the City. The cost-of-living factor selected by Livermore is the percentage change in California per capita income because it exceeded the assessed value in the preceding year due to new non-residential construction.

Based on the calculation factors mentioned above, the Limit of Appropriations for FY 2023-24 is $457,826,732. Appropriations subject to this limit are $108,965,618. A summary of the last twenty years of the City's appropriation limit, population and cost-of-living factors is provided as Exhibit A to the resolution.

FISCAL AND ADMINISTRATIVE IMPACTS

There is no budget impact associated with tonight's recommendation. The Fiscal Year 2023-24 adopted expenditure budget is well within the Appropriation Limit of $457,826,732.

COMMUNITY PILLAR
5: A City that Works

GOAL
16: Help preserve public resources and the community's confidence in the City's governance and operation by ensuring the City fulfills its legal obligations and makes well-informed policy decisions

ATTACHMENTS

1. Resolution
2. Exhibit A - Appropriation Limit FY 2023-24

Prepared by: Erik Peterson
Finance Manager

Approved by:



Marianna Marysheva
City Manager

Fiscal Review by:



Tina Olson
Administrative Services Director

IN THE CITY COUNCIL OF THE CITY OF LIVERMORE, CALIFORNIA

A RESOLUTION ESTABLISHING THE APPROPRIATIONS LIMIT FOR THE CITY OF LIVERMORE FOR FISCAL YEAR 2023-24

The Gann Limit initiative approved by the voters of the State of California on November 6, 1979, and a subsequent amendment approved by the voters on June 6, 1990, (Propositions 4 and 111, respectively, codified as Government Code Sections 7900, et seq.), place various limitations on the fiscal powers of state and local government. As a result, the governing body of each local jurisdiction must establish an annual appropriations limit.

Government Code Section 7901(b) provides that the City Council may choose to use the change in population within the City of Livermore or within Alameda County to calculate the appropriations limit.

Furthermore, California Constitution Article XIII B, Section 8(e)(2) provides that the City Council must select either of the following to calculate the change in cost of living to be used to determine the appropriations limit:

1. The percentage change in California per capita personal income from the preceding year; or

2. The percentage change in the local assessment roll from the preceding year for the City of Livermore (City) due to the addition of local non-residential new construction.

As required by Government Code Section 7910, the City posted public notice of its intent to adopt a resolution establishing an appropriations limit at its regularly scheduled meeting on July 24, 2023. The public notice stated that the documentation used to determine the appropriations limit was available for public inspection.

On June 12, 2023, the City Council adopted Resolution No. 2023-106 approving the FY 2023-24 annual appropriations limits. However, staff did not complete the required public notice prior to its adoption. That has been corrected and this resolution is intended to supersede Resolution No. 2023-106.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Livermore that:

1. The change in population within the County of Alameda was selected to calculate the City's appropriations limit for Fiscal Year 2023-24;

2. The percentage change in California per capita personal income from the preceding year was selected to calculate the City's appropriations limit for Fiscal Year 2023-24; and

3. Using the formula set forth in Government Code section 7900, et seq., the appropriations limit for Fiscal Year 2023-24 for the City of Livermore is established at $457,826,732 as set forth in Exhibit A, attached to this resolution.

BE IT FURTHER RESOLVED by the City Council of the City of Livermore that this resolution supersedes Resolution No. 2023-106 adopted on June 12, 2023.

On motion of Council Member _____, seconded by Council Member _____, the foregoing resolution was passed and adopted on July 24, 2023, by the following vote:

AYES: COUNCIL MEMBERS:
NOES: COUNCIL MEMBERS:
ABSENT: COUNCIL MEMBERS:
ABSTAIN: COUNCIL MEMBERS:

ATTEST:

_____
Marie Weber
City Clerk

APPROVED AS TO FORM:

/s/ Jason R. Alcala
Jason Alcala
City Attorney

Exhibit A – Appropriations Limit FY 2023-24

Exhibit A

City of Livermore
Appropriation Limit Last Twenty Fiscal Years

Year of Limit	Cost-of-Living Factor **	Population Factor ***	Ratio of Change	Appropriations Limit	Appropriations Subject to Limit	Variance
FY 2004-05	8.65%	1.30%	1.1006	$104,045,966	$42,453,745	$61,592,221
FY 2005-06	12.09%	2.81%	1.1524	$119,899,145	$46,033,324	$73,865,821
FY 2006-07	6.78%	1.39%	1.0826	$129,808,537	$49,354,549	$80,453,988
FY 2007-08	4.42%	1.32%	1.0580	$147,883,090	$52,286,879	$95,596,210
FY 2008-09	5.85%	1.32%	1.0725	$147,883,090	$52,286,879	$95,596,210
FY 2009-10	7.49%	1.25%	1.0884	$160,959,709	$52,205,834	$108,753,875
FY 2010-11	-1.18%	1.10%	0.9991	$160,818,675	$45,302,801	$115,515,874
FY 2011-12	2.51%	0.97%	1.0350	$166,454,513	$46,488,786	$119,965,727
FY 2012-13	16.47%	1.05%	1.1769	$195,898,928	$49,307,270	$146,591,658
FY 2013-14*	23.36%	1.21%	1.2490	$244,677,761	$67,044,881	$177,632,880
FY 2014-15	4.87%	1.74%	1.0669	$261,046,703	$77,044,976	$184,001,727
FY 2015-16	3.82%	1.39%	1.0526	$274,777,760	$72,336,243	$202,441,517
FY 2016-17	5.37%	2.05%	1.0753	$295,468,759	$76,706,573	$218,762,186
FY 2017-18	3.69%	1.63%	1.0538	$311,365,413	$68,632,305	$242,733,108
FY 2018-19	9.35%	1.06%	1.1051	$344,087,147	$67,435,856	$276,651,291
FY 2019-20	6.20%	0.75%	1.0700	$368,161,204	$74,420,994	$293,740,210
FY 2020-21	4.22%	0.46%	1.0470	$385,462,616	$78,774,574	$306,688,042
FY 2021-22	5.73%	0.15%	1.0589	$408,160,948	$76,546,934	$331,614,014
FY 2022-23	8.58%	-0.62%	1.0791	$440,433,435	$105,628,659	$334,804,776
FY 2023-24	4.44%	-0.47%	1.0395	$457,826,732	$108,965,618	$348,861,114

*Amended June 9, 2014

** Cost of Living Factor is the larger of the percentage change in California per capita income versus the percent change in the City of Livermore assessed value due to new non-residential construction.

*** Population Factor is the larger of the percentage change in City population versus the percentage change in County population.

LIVERMORE
CALIFORNIA

CITY COUNCIL STAFF REPORT **ITEM NO. 5.18**

DATE: July 24, 2023

TO: Honorable Mayor and City Council

FROM: Christine Martin, Assistant City Manager

SUBJECT: Resolution of continued local emergency.

RECOMMENDED ACTION

Staff recommends the City Council adopt a resolution of continued local emergency in response to impacts from a series of severe storm events earlier this year.

SUMMARY

On January 10, 2023, the City Council adopted a resolution ratifying the Proclamation of the Director of Emergency Services Concerning the Existence of a Local Emergency (Resolution No. 2023-001) in response to impacts from a series of severe storm events.

On February 27, April 24, and June 12, 2023, the City Council adopted resolutions of continued local emergency. California Government Code section 8630 directs the City Council to review the need for continuing the local emergency at least once every 60 days.

DISCUSSION

On January 4, 2023, the Executive Department of the State of California issued Executive Order N-2-23 proclaiming a State of Emergency for the Atmospheric River that started on December 27, 2022. On January 10, 2023, the City Council ratified a proclamation by the Emergency Services Director of the existence of a local emergency due to conditions of extreme peril to the safety of persons and property that arose within the City of Livermore caused by a series of severe rainstorms and high wind commencing in December 2022 and continuing through January 2023.

Proclamation 23-01 was ratified, as required, by the City Council within seven days (Resolution No. 2023-001). Once ratified, California Government Code section 8630 directs the City Council to review the need for continuing the local emergency at least once every 60 days. On February 27, 2023, the City Council adopted a resolution of continued local emergency (Resolution No. 2023-06).

On March 1, 2023, the Executive Department of the State of California issued a proclamation of State of

Emergency due to a severe winter storm event beginning in February 2023 bringing damaging winds and historic precipitation that caused federal and state highways and road closures, and continued to threaten critical infrastructures, power outages, etc.

On March 24, 2023, the Alameda County Director of Emergency Services proclaimed a state of emergency due to conditions of continuing peril that have been presented by winter storms that resumed on February 23, 2023, continuing through March 2023, causing extensive damage and local expenses throughout the County.

On February 27, April 24, and June 12 2023, the City Council adopted resolutions of continued local emergency (Resolution Nos. 2023-026, and 2023-072, and 2023-111 respectively).

Staff recommends that the City Council continue the emergency proclamation to reflect the fact that emergency repairs have not been fully implemented and on-going work is required to recover from the damage. Continuing the emergency proclamation allows staff to seek reimbursement of the eligible costs of this work from federal and state agencies through the public assistance program.

Work includes removing sediment and debris from creeks and trails, repairing creek banks that have been washed away, repairing damaged trails, and pedestrian bridge abutments. While the repair projects are still under evaluation, staff estimates about 30 damaged sites totaling approximately $9,000,000.

FISCAL AND ADMINISTRATIVE IMPACTS

The continuance of a Local Emergency allows the City to access federal, state and county resources, including potential financial reimbursements.

COMMUNITY PILLAR

1: A Safe Community That Thrives

GOAL

1: Oversee the City's emergency preparedness, management, and response efforts

ATTACHMENTS

1. Resolution

Prepared by: Herbert Cole
Management Analyst

Approved by:

Marianna Marysheva
City Manager

Fiscal Review by:

Tina Olson
Administrative Services Director

IN THE CITY COUNCIL OF THE CITY OF LIVERMORE, CALIFORNIA

A RESOLUTION OF CONTINUED LOCAL EMERGENCY

On January 10, 2023, the City Council adopted a resolution, *Ratifying the Proclamation of the Director of Emergency Services Concerning the Existence of a Local Emergency* (Resolution No. 2023-001). The emergency services proclamation concerns conditions of extreme peril to the safety of persons and property which have arisen within the City of Livermore caused by a series of severe rainstorms and high winds commencing in December 2022, and continuing through January 2023. On February 27, 2023, the City Council adopted a resolution of continued local emergency (Resolution No. 2023-026).

On March 1, 2023, California Governor, Gavin Newsom, proclaimed a state of emergency due to the severe winter storms that struck in late February as the result of an atmospheric river system forecast to continue through mid-March. The Governor issued his proclamation in response to a series of atmospheric river systems that impacted the State since late December 2022, that forced closures and damaged highways and roads, and caused other impacts that local agencies did not have time to mitigate, and that the continuing storms were expected to exacerbate those conditions. The Governor adopted a subsequent proclamation on March 28, 2023, to apply his March 1st proclamation to Alameda County. The Governor's proclamation directed the California Office of Emergency Services to provide assistance to local governments for the protection of public health and the environment, allowed for the mobilization of the California National Guard, allowed for state-owned properties to be made available for staging debris, and modified the hours-of-service limits in the California Vehicle Code and California Code of Regulations for fuel transportation and relief efforts.

Given the declaration of emergency by the State of California and Alameda County, and the existing damage and impacts from the prior storms, and in anticipation of additional storms and wind, and the need for continued debris removal, emergency response and protective measures, and permanent repairs, continue to present conditions that are likely to be beyond the control of the services, personnel, equipment, and facilities of the City of Livermore.

On March 24, 2023, the Alameda County Director of Emergency Services proclaimed a state of emergency due to conditions of continuing peril that have been presented by winter storms that resumed on February 23, 2023, continuing through March 2023, causing extensive damage and local expenses throughout the Alameda County Operational Area.

Although efforts have been made to remedy the emergency conditions, City staff report that the emergency conditions identified by the proclamation still exist. City staff recommends continuing the declaration of emergency since it is required to be active in order to remain eligible to apply for and receive funding for costs to respond to and repair damages caused by the storm events.

Once a proclamation of local emergency is adopted, California Government Code section 8630 directs the City Council to review the need for continuing the local emergency at least once every 60 days.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Livermore that it has reviewed the January 4, 2023 proclamation of local emergency that the City Council ratified on January 10, 2023 (Resolution No. 2023-001) and continued on February 27, 2023 (Resolution No. 2023-026) and on April 24, 2023 (Resolution No. 2023-072), and on June 12, 2023 (Resolution No. 2023-111), as well as the subsequent proclamations of emergency in March by both the State of California and the County of Alameda due to the continuing systems of storms affecting the State and local areas, and hereby finds that conditions warrant continued maintenance of that proclamation of local emergency.

On motion of Council Member _____, seconded by Council Member _____, the foregoing resolution was passed and adopted on July 24, 2023, by the following vote:

AYES: COUNCIL MEMBERS:
NOES: COUNCIL MEMBERS:
ABSENT: COUNCIL MEMBERS:
ABSTAIN: COUNCIL MEMBERS:

ATTEST:

_____
Marie Weber
City Clerk

APPROVED AS TO FORM:

/s/ Jason R. Alcala
Jason R. Alcala
City Attorney

LIVERMORE
CALIFORNIA

CITY COUNCIL STAFF REPORT **ITEM NO. 5.19**

DATE: July 24, 2023

TO: Honorable Mayor and City Council

FROM: Paul Spence, Community Development Director

SUBJECT: Resolution authorizing execution of a two-year agreement with Independent Code Consultants Incorporated to provide planning assistant services in an amount not-to-exceed $208,000.

RECOMMENDED ACTION

Staff recommends the City Council adopt a resolution authorizing execution of an agreement with Independent Code Consultants Incorporated to provide planning assistant services for a term of two-years in an amount not-to-exceed $208,000.

SUMMARY

The Planning Division continues to manage several large-scale, multi-year programs including the General Plan Update and Development Code Update. The City has also seen an increase in private development applications and expects that trend to continue, particularly in the Isabel Neighborhood Specific Plan area, for the next several years. The frequency and volume of in-person inquiries for land use and zoning information at the Permit Center's public counter remains high. Electronic inquiries via e-mail, phone, and through the city's website are increasing as these channels are more convenient for the general public.

This agreement will enable Independent Code Consultants Incorporated (Consultant) to provide part-time technical planning services in-person at the public counter and respond to electronic inquiries. Staff anticipates the Consultant will also process minor entitlement applications for signs, accessory structures and residential construction projects, and non-residential additions.

Supplementing staffing resources in the Planning Division for a two-year period will facilitate progress on the City's high-profile programs and complex projects, enable the division to continue providing high-quality customer service, and meet required timelines for the processing of private development applications.

DISCUSSION

City staff continues to implement significant programs to update the City's General Plan and Development Code. The Development Code Update will respond to State housing legislation and include objective development standards. Other projects include funding and design coordination for extending sewer service into the South Livermore Valley, managing the short-term rental program, and processing an annexation and development for land within the City's Urban Growth Boundary near the Oaks Business Park. Downtown project implementation, responding to Alameda County referrals, and participation in regional planning efforts with the Association of Bay Area Governments/Metropolitan Transportation Commission continue to be priorities.

At the same time, the Planning Division continues to experience significant development interest from property owners in the Isabel Neighborhood Specific Plan (INSP) area. The City Council has already approved three applications for property in the INSP and have three more applications currently in review. Staff anticipates additional applications for property in the INSP area in the coming one to two years. Applications to redevelop the mixed-use sites at Rincon Avenue and Pine Street and Pacific Avenue (former Nob Hill site) have also been submitted and require staff time to process.

The proposed Consultant will provide permit technician and planning assistant services for the Planning Division to supplement ongoing staffing at the public counter and via electronic channels until funding for a permanent full time permit technician is available in Fiscal Year 2025-26. The planning services proposed under the Agreement will enable the Planning Division staff to focus internal efforts on priority projects and maintain appropriate levels of customer service in response to the high volume of private project applications the City has been receiving and expects to continue to receive over the next 24 months.

FISCAL AND ADMINISTRATIVE IMPACTS

The term of the agreement is two years in an amount not-to-exceed $208,000. The Planning Division’s budget includes sufficient funds to cover consultant contract costs for the next two fiscal years (2023-24 and 2024-25); therefore, no additional appropriation is necessary. Utilization of city staff time will be necessary to administer the consultant agreement and provide supervisory oversight of the Consultant's day-to-day performance.

COMMUNITY PILLAR

1: A Safe Community that Thrives

GOAL

6: Provide efficient and effective permit processing services

ATTACHMENTS

1. Resolution
2. Agreement - Independent Code Consultants

Prepared by: Steve Stewart
Acting Assistant Community Development Director

Approved by:



Marianna Marysheva
City Manager

Fiscal Review by:



Tina Olson
Administrative Services Director

IN THE CITY COUNCIL OF THE CITY OF LIVERMORE, CALIFORNIA

A RESOLUTION AUTHORIZING EXECUTION OF AN AGREEMENT WITH INDEPENDENT CODE CONSULTANTS INCORPORATED TO PROVIDE PLANNING ASSISTANT SERVICES IN AN AMOUNT NOT-TO-EXCEED $208,000

The Planning Division in the Community Development Department requires a consultant to provide planning assistant services at the public counter and via electronic channels and process minor land use entitlements. The services proposed under the Agreement will enable the Planning Division staff to focus internal efforts on priority projects and programs and maintain appropriate levels of customer service.

The proposed agreement with Independent Code Consultants Incorporated is for a two-year term.

Authorization to execute a professional services agreement is an administrative action, which does not qualify as a project under the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines section 15378. Therefore, no environmental review is required.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Livermore that it hereby authorizes the City Manager to sign the Agreement with Independent Code Consultants Incorporated in an amount not-to-exceed $208,000 to provide planning assistant services.

On motion of Council Member _____, seconded by Council Member _____, the foregoing Resolution was passed and adopted on July 24, 2023, by the following vote:

AYES: COUNCIL MEMBERS:
NOES: COUNCIL MEMBERS:
ABSENT: COUNCIL MEMBERS:
ABSTAIN: COUNCIL MEMBERS:

ATTEST:

_____
Marie Weber
City Clerk

APPROVED AS TO FORM:

/s/ Kimberly Cilley
Kimberly Cilley
Senior Assistant City Attorney

Exhibit A – Independent Code Consultants Incorporated Agreement

RESOLUTION NO. _____

DocuSign Envelope ID: 2B0BA7A0-9F70-4B3B-AA4C-6F1B8544EB12

PROFESSIONAL SERVICES AGREEMENT

THIS AGREEMENT is made and entered into this ___ day of _____, 20 , by and between the City of Livermore ("City"), a municipal corporation, and Independent Code Consultants Incorporated ("Consultant"),a California C corporation.

RECITALS

City requires professional services to perform permit technician and planning assistant duties, review of plans and related documents for compliance, provide customer consultation.

Consultant warrants it possesses the distinct professional skills, qualifications, experience, and resources necessary to timely perform the services described in this Agreement. Consultant acknowledges City has relied upon these warranties to retain Consultant.

AGREEMENT

NOW, THEREFORE, City and Consultant hereby agree that the aforementioned recitals are true and correct and further agree as follows:

1. Retention as Consultant. City hereby retains Consultant, and Consultant hereby accepts such engagement, to perform the services described in Section 3 below subject to the terms and conditions in this Agreement.

2. Relationship of Parties – Independent Contractors. The relationship of the parties shall be that of independent contractors. Consultant and its employees are not City officers or employees. Consultant is responsible for the supervision and management of its employees, including any workers compensation insurance, withholding taxes, unemployment insurance, and any other employer obligations associated with the delivery of the services contemplated by this Agreement.

3. Description of Services. Consultant shall provide the following professional services as more particularly set forth in Exhibit "A" (collectively "the Services"):

Perform permit technician and planning assitant duties, review of plans and related documents for compliance, provide customer consultation. All work shall be reviewed and finalized by City staff.

4. Consultant's Responsibilities. Consultant shall:

(a) Diligently perform the Services in a manner commensurate with industry, professional, and community standards;

(b) Provide the resources necessary to complete the Services in a timely manner;

DocuSign Envelope ID: 2B0BA7A0-9F70-4B3B-AA4C-6F1B8544EB12

(c) Obtain a business license from the City of Livermore, and keep it in effect for the term of this Agreement;

(d) Obtain and keep in effect all necessary licenses, permits, qualifications, insurance, and approvals legally and professionally required for Consultant to practice its profession and to provide the Services;

(e) Comply with all laws in effect that are related to Consultant and the Services;

(f) Coordinate the Services with Steve Stewart, Planning Manager ("Project Manager"), or such other person designated as the Project Manager by City;

(g) Be available to the Project Manager, and other parties referred to Consultant by the Project Manager, to answer questions or inquiries related to the Services;

(h) Only invoice City for the Services rendered. Consultant's invoice shall be in writing and describe the Services performed for the payment requested. Consultant shall not submit an invoice to City more frequently than once a calendar month;

(i) Keep and maintain invoices and records related to the Services in an organized manner. At a minimum, the records must be kept for at least 3 years from the date of final payment to Consultant and must include time sheets, work progress reports, and other documentation to adequately explain all the Services invoiced for payment. Consultant shall make the invoices and records immediately available to City upon delivery of a written request to examine, audit, or copy them at City's place of business during normal business hours. Consultant shall give City 30 calendar-days' written notice prior to destroying the invoices and records and allow City an opportunity to take possession. If City wants them, Consultant and City shall coordinate their delivery to City in the most efficient manner possible;

(j) Prepare and submit a written report to the Project Manager, within 3 business-days of the Project Manager's written request, that identifies the Services completed and in progress, the charges incurred to date, and the anticipated cost to complete the remaining Services;

(k) Consultant shall correct, at its own expense, all errors in the Services. Should Consultant fail to make such correction in a timely manner, City may make the correction and charge the cost thereof to Consultant;

(l) If applicable, Consultant shall ensure that all work for compensation is provided in compliance with the requirements of the California Labor Code including but not limited to hours of labor, nondiscrimination, payroll records, apprentices, worker's compensation and prevailing wages. If applicable, Consultant shall comply with all prevailing wage laws, such as sections 1773, 1773.8, 1775, 1776, 1777.5, 1777.6, and 1813 of the California Labor Code and any other applicable wage and hour law. If any violation of prevailing wage law associated with this Agreement is deemed to have occurred by any court or administrative authority, Consultant shall forfeit to the City, as a

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penalty, the sum of fifty dollars ($50.00) for each calendar day, or portion thereof, for each laborer, worker, or mechanic employed, paid less than the applicable prevailing rates for any work done to accomplish the purposes of this Agreement; and,

(m) Consultant's services provided pursuant to this Agreement shall comply with the Americans with Disabilities Act (ADA) of 1990, and all amendments thereto, as well as all applicable regulations and guidelines issued pursuant to the ADA.

5. Compensation and Payment.

(a) The total compensation payable by City to Consultant for the Services **SHALL NOT EXCEED** the sum of $208,000 ("not-to-exceed amount"). City shall compensate Consultant for the Services rendered at the hourly rates, task amounts or travel expenses set forth in Exhibit "A" up to the not-to-exceed amount. Except as provided in the body of this Agreement, the hourly rates, task amounts or travel expenses are intended to be Consultant's only compensation for the Services and is inclusive of all costs of labor, licensing, permitting, overhead and administrative costs, and any-and-all other costs, expenses, and charges incurred by Consultant, its agents, and employees to provide the Services.

(b) City shall pay Consultant no later than 30 days after City receives a written invoice from Consultant and verifies the Services were performed for the payment requested.

6. Term. The term of this Agreement commences on June 30, 2023, and terminates upon the completion of the Services or June 30, 2025, whichever occurs first.

7. Termination by City. City may terminate any portion or all of the Services by giving Consultant at least 30 calendar-days written notice. Upon receipt of a termination notice, Consultant shall immediately stop all work in progress on the Services except where necessary to preserve the benefit of the work, and then assemble the work on the Services for delivery to City on the termination date. All compensation for Services performed prior to the termination date shall be payable to Consultant in accordance with Section 5.

8. Ownership of Documents. All drawings, designs, data, photographs, reports and other items prepared or obtained by Consultant in the performance of the Services are City's property and Consultant shall deliver them to City upon demand.

9. Copyright and Right of Use. All items created by Consultant for City under this Agreement are works made for hire, and Consultant shall give City the copyright and all intellectual property rights to all items developed, prepared, and delivered as part of the Services. Consultant agrees that all aspects of the Services and items created thereby will be original works of creation and will not use, in whole or in part, any work created by any other party, except when expressly disclosed by Consultant to City and Consultant obtains a license to such items for the benefit of City. All licenses must be perpetual, world-wide, non-exclusive, and royalty free sufficient in scope to permit City's full use and enjoyment of its ownership rights in the items created by the Services.

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10. Confidentiality. Consultant shall not disclose any confidential or proprietary information received from City to anyone except Consultant's employees who require access to the information to perform the Services. This obligation shall survive termination and remain in full force and effect until the information, and any copies thereof, are destroyed or returned to City.

11. Defense, Indemnity, and Hold Harmless. To the fullest extent permitted by law, Consultant shall hold harmless, indemnify, and defend with counsel selected by the City or otherwise acceptable to the City, the City and its elected and appointed officials, officers, directors, employees, agents and designated volunteers from and against any and all liability, loss, damage, claims, expenses, and costs (including without limitation, attorney's fees and costs and fees of litigation) (collectively, "Liability") of every nature arising out of or in connection with Consultant's performance of the services contemplated by this Agreement, or in connection with Consultant's failure to comply with any of its obligations contained in this Agreement, except for such Liability caused by the sole active negligence or willful misconduct of City. Consultant's obligations to hold harmless, indemnify, and defend shall not be excused because of Consultant's inability to evaluate Liability or because Consultant evaluates Liability and determines that Consultant is not liable to the claimant. These obligations are independent of, and shall not in any way be limited by, the minimum insurance obligations contained in this Agreement. These obligations shall survive the completion or termination of this Agreement. Consultant must respond within 30 days to the tender of any claim for defense and indemnity by the City.

(a) Modification for Construction Contracts. To the extent this Agreement is a "construction contract" covered by California Civil Code section 2782, then Consultant's duty to indemnify shall not apply in a manner prohibited by California Civil Code section 2782.

(b) Modification for Design Professional Services. To the extent this Agreement is for "design professional services" defined in California Civil Code section 2782.8, then Consultant's duties to defend and indemnify shall only apply to the extent provided for in California Civil Code section 2782.8(a), unless section 2782.8(a) is not applicable for one of the reasons set forth in 2782.8(e).

12. Insurance. Consultant shall procure and maintain insurance during the term of this Agreement in the amounts and under the terms set forth in Exhibit "B" against claims that may arise from or in connection with this Agreement and performance of the Services. Upon reasonable written notice, Consultant shall comply with any changes in the amounts and terms of insurance as may be required from time-to-time by City's Risk Manager.

13. Acceptance of Final Payment. Consultant's acceptance of final payment will release City from any and all claims and liabilities for compensation under this Agreement.

14. Acceptance of Work. City's acceptance of, or payment to Consultant for, the Services does not release Consultant from its responsibility for the accuracy, completeness, or competency of the Services, nor do the actions constitute an

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assumption of Consultant's responsibility or liability by City for any defect or error in the Services.

15. Conflict of Interest. Consultant represents that no City employee or official has a financial interest in Consultant. Consultant shall not offer, encourage, or accept any financial interest in any part of Consultant's business by or from a City employee or official during the term of this Agreement or as a result of being awarded this Agreement. If any of the Services are paid by reimbursement from an agreement between City and a private party, Consultant represents that it has not performed any work for that private party during the 12-month period prior to the execution of this Agreement, and that it shall not negotiate, offer or accept any contract for services from that party during the term of this Agreement.

16. Economic Disclosure. Consultant shall comply with City's local conflict of interest code and the Political Reform Act, and prepare and file an economic disclosure statement if the Services involve making, or participation in making, decisions which may have a material effect on the Consultants' financial interest. While it is Consultant's sole responsibility to evaluate its conflicts of interest, the Consultant nevertheless agrees to prepare and file an economic disclosure statement if requested by City.

17. Non-Exclusive Agreement. This is a non-exclusive agreement. City reserves the right to provide, and to retain other consultants to provide, services that are the same or similar to the Services described in this Agreement.

18. No Assignment. Consultant shall not assign or subcontract any of the Services without City's prior written consent. For the purposes of this section, a change of fifty-percent or more in the ownership or control of Consultant constitutes an assignment.

19. Remedies. All remedies permitted or available under this Agreement, or at law or in equity, are cumulative and alternative, and the invocation of a right or remedy will not be construed to waive or elect a remedy with respect to any other available right or remedy. As a condition precedent to commencing legal action involving a claim or dispute against City arising from this Agreement, the Consultant must present a written claim to City in accordance with Chapter 3.42 of the Livermore Municipal Code.

20. Construction of Language. The terms and conditions in this Agreement have been arrived at through negotiation and each party had a full and fair opportunity to review and revise this Agreement with legal counsel. Any ambiguity in this Agreement will not be resolved against either party as the drafting party. In the event of an inconsistency or conflict between the language in the body of the Agreement and an attachment hereto, the language in the body of the Agreement controls.

21. Entire Agreement; Modification. This Agreement supersedes all other agreements, whether oral or written, between the parties with respect to the Services. Any modification to this Agreement must be in writing and signed by both parties. In the event the original of this Agreement is lost or destroyed, an archival copy maintained by City can be used in place of the original for all purposes with the same effect as if it was the original.

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22. Notice. Notices under this Agreement must be delivered to the addresses below by deposit in the United States mail or by overnight delivery service, with postage prepaid and delivery confirmation:

TO CITY: Attention: Steve Stewart, Planning Manager
City of Livermore
1052 S Livermore Avenue
Livermore, California 94550

TO CONSULTANT: Attention: Abigail Obligacion
5870 Stoneridge Mall Road, Suite 200
Pleasanton, CA 94558

23. Waiver. Failure to insist upon the strict performance of any term or conditions in this Agreement, no matter how long the failure continues, is not a waiver of the term or condition and does not bar the right to subsequently demand strict performance. To be effective, a waiver must be in writing and signed by the non-breaching party.

24. Severability. If a court of competent jurisdiction determines a provision in this Agreement is invalid, void, or unenforceable, the remaining provisions will nevertheless continue in full force and effect without being impaired in any way.

25. Survival. The terms, conditions, and obligations in Sections 8, 9, 10, and 11 shall survive the completion or termination of this Agreement.

26. Electronic Signatures. By signing this document, you are agreeing that you have reviewed this disclosure information and consent to transact business using electronic communications, to receive notices and disclosures electronically, and to utilize electronic signatures in lieu of using paper documents. You are not required to receive notices and disclosures or sign documents electronically. If you prefer not to do so, you may request to receive paper copies and withdraw your consent at any time.

27. Counterparts. This Agreement may be executed and delivered in one or more counterparts, each of which will be deemed to be an original copy of this Agreement, and all of which, when taken together, will be deemed to constitute one and the same agreement. The facsimile, email, or other electronically delivered signatures of the Parties shall be deemed to constitute original signatures, and facsimile or electronic copies hereof shall be deemed to constitute duplicate originals and shall be valid and effective for all purposes.

****

Signatures and Attachment List on the Next Page

EXHIBIT A

In concurrence and witness whereof, and in recognition of the mutual consideration provided therefore, the parties have executed this Agreement, effective on the date first written above.

CONSULTANT: **Dated:**

DocuSigned by:
DB5A248ACA3E428...

5/30/2023 | 11:40 AM EDT

By: Abigail Obligacion
Title: President

CITY OF LIVERMORE: **Dated:**

Marianna Marysheyva
City Manager

APPROVED AS TO FORM:

DocuSigned by:
kimberly Cilley
...
Assistant City Attorney

APPROVED AS TO INSURANCE:

DocuSigned by:
Janet Hamilton
...
Risk Manager/Analyst

Attachments:

Exhibit A – Scope of Work
Exhibit B – Insurance Requirements

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EXHIBIT A

INDEPENDENT CODE CONSULTANTS
INCORPORATED

5870 Stoneridge Mall Road, Suite 200
Pleasanton, CA 94588
T | 925.264.9559

January 27, 2023

Mr. Steve Stewart | Planning Manager
City of Livermore
1052 S. Livermore Avenue
Livermore, CA 94550

RE: Proposal for Permit Technician Services

Dear Mr. Stewart:

Independent Code Consultants, Inc. (ICCI) is pleased to submit our proposal for planning services. As of January 2018, ICCI has been re-established and is comprised of a team of highly qualified and dedicated professionals that have worked together with a collective plan review experience of 20 years for various Building Divisions and Community Development Departments.

It is our understanding that the City of Livermore is looking for temporary permit technician and a planning assistant for the next two (2) fiscal years. ICCI believes Mr. CJ Nasol will be able to support the Planning Division's needs. Mr. CJ Nasol has over 31 years of planning and building support experience in the public sector. CJ is responsive to inter-nal and external clients and is attentive to details.

ICCI does not have a planning permit technician available at this time, but continues to seek individuals with the required skill sets and will notify the City upon availability.

Thank you for the opportunity to submit our proposal and hope that we can fulfill your building and safety service needs. Should you have any questions or require additional information, please do not hesitate to contact me at 925.264.9559 or by e-mail at aobligacion@independentcodeconsultants.com.

Respectfully Submitted,

Abigail Obligacion | President
Independent Code Consultants, Inc.

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PROPOSED SCHEDULES

It is ICCI's understanding that the City of Livermore's Planning Division is seeking a counter techniican and an assistant planner to help provide information to the public and prepare written reports/recommendations regardign the City's planning program, investigates and enforces zoning regulations.

DAY	KEY PERSONNEL / LOCATION	HOURS
Monday:	CJ Nason in-house	5
Tuesday:	CJ Nason in-house	5
Wednesday:	CJ Nason in-house	5
Thursday:	CJ Nason in-house	5
	TOTAL HOURS PER WEEK PROPOSED:	20

ICCI understands the Planning Division's needs will change and fluctuate on a monthly sometimes weekly or even on a daily basis. The above proposed schedules and duties can be re-arranged to accommodate our Clients' needs

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PRICING & TIMELINES

FEE SCHEDULE

Building Plan Review Services	Unit Rate	Unit
Complete Plan Review Fee (first submittal plus two (2) additional subsequent submittal)	65% of Plan Review Fee	
All other Building, Safety Plan Review Submittals	$145.00	Hour
Structural Only Review	$145.00	Hour
Non-Structural Review	$115.00	Hour
Fire Review	$145.00	Hour
CASp Only Review	$145.00	Hour
Building Department Support Staff	**Unit Rate**	**Unit**
On-Site Plans Examiner/Engineer	$145.00	Hour
Building Inspector I	$80.00	Hour
Building Inspector II	$90.00	Hour
Senior Building Inspector	$100.00	Hour
CASp Inspector	*Rate varies by building	
Building and Planning Permit Technician	$70.00	Hour
Planning Assistant	$100.00	Hour

Basis of Charges	Unit Rate
Work over 8 hours a day	Time and One-Half
Work over 12 hours, Monday through Friday	Double Time
Work on Saturdays	Time and One-Half
Work over 8 hours on Saturday	Double Time
Work on Sundays/Holidays	Double Time
Reimbursables	Cost

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PLAN REVIEW TIMELINE

Independent Code Consultants will meet your plan review needs, which includes attending meetings and workshops when necessary. We also are able to meet or exceed the following timelines for plan review services:

Small to Mid-Scale Projects		Larger to More Complex Projects	
Standard Turnaround Times:		Standard Turnaround Times:	
First Submittals:	10 days	First Submittals:	15 days
Subsequent Submittals:	5 days	Subsequent Submittals:	10 days

Small to Mid-Scale Projects		Larger to More Complex Projects	
Expedited Turnaround Times**:		Expedited Turnaround Times**:	
First Submittals:	5 days	First Submittals:	10 days
Subsequent Submittals:	3 days	Subsequent Submittals:	7 days

** Expedited Turnaround Times will be subject to discussion by all concerned parties to ensure milestones are met and completed on-time and on-schedule.

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EXHIBIT B

INSURANCE REQUIREMENTS

Minimum Scope and Limits of Insurance

Consultant/Contractor shall maintain limits no less than:

1. Commercial General Liability, including operations, products, and completed operations, as applicable:
   $1,000,000 per occurrence/**$2,000,000** aggregate for bodily injury, personal injury, and property damage. If Commercial General Liability or other form of insurance with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.
2. Automobile Liability:
   $1,000,000 per accident for bodily injury and property damage.
3. Workers' Compensation and Employer's Liability:
   Statutory limits as required by the State of California including **$1,000,000** Employers' Liability per accident, per employee for bodily injury or disease. A waiver of subrogation is required for Workers' Compensation insurance. If Consultant/Contractor is a sole proprietor, then they must sign "Contractor Release of Liability".
4. Professional Liability/Errors and Omissions:
   $1,000,000 per claim. Consultant/Contractor warrants that any retroactive date under this policy shall precede the effective date of this contract and, either continuous coverage will be maintained, or an extended discovery period will be exercised for a period of two years beginning at the time work under this contract is completed.

Deductibles and Self-Insured Retention

All self-insured retentions (SIR) must be disclosed to Risk Management for approval and shall not reduce the limits of liability. Policies containing any self-insured retention (SIR) provision shall provide, or be endorsed to provide, that the SIR may be satisfied by either the named insured or the City of Livermore. The City of Livermore reserves the right to obtain a full certified copy of any insurance policy and endorsements. Failure to exercise this right shall not constitute a waiver of right to exercise later.

Acceptability of Insurers

Insurance is to be placed with insurers with a current A.M. Best rating of no less than A: VII and accepted to do business in the State of California, unless otherwise acceptable to the City of Livermore.

Other Insurance Provisions

The general liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions:

1. The City of Livermore, its officers, officials, employees, and designated

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volunteers are to be covered as additional insureds as respects: liability arising out of activities performed by or on behalf of the Consultant/Contractor; or automobiles owned, leased, hired or borrowed by the Consultant/Contractor. The coverage shall contain no special limitations on the scope of protection afforded to the City of Livermore, its officers, officials, employees, or volunteers.

2. The limits of insurance required in this agreement may be satisfied by a combination of primary and umbrella or excess insurance. The additional insured coverage under the Consultant's/Contractor's policy shall be primary and non-contributory and will not seek contribution from the City's insurance or self-insurance and shall be at least as broad as ISO Form CG 20 10 04 13. Any umbrella or excess insurance shall contain or be endorsed to contain a provision that such coverage shall also apply on a primary and non-contributory basis for the benefit of the City of Livermore before the City's own insurance or self-insurance shall be called upon to protect it as a named insured.
3. Any failure to comply with reporting or other provisions of the policy, including breaches of warranties, shall not affect coverage provided to the City of Livermore, its officers, officials, employees, or volunteers.
4. The Consultant's/Contractor's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
5. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be canceled by either party before expiration of the policy unless notice is delivered in accordance with policy provisions.
6. It shall be a requirement under this agreement that any available insurance proceeds broader than, or in excess of, the specified minimum insurance coverage requirements and/or limits shall be available to the additional insured. Furthermore, the requirements for coverage and limits shall be (1) the minimum coverage and limits specified in this agreement; or (2) the broader coverage and maximum limits of coverage of any insurance policy or proceeds available to the named Insured; whichever is greater.
7. Certificate Holder section of the insurance certificate should read: City of Livermore, 1052 S. Livermore Avenue, Livermore, CA 94550

Verification of Coverage

Consultant/Contractor shall furnish certificates of insurance and endorsement(s) effecting coverage to the City of Livermore for approval. The endorsements shall be on forms acceptable to the City of Livermore. All certificates and endorsements are to be received and approved by the City of Livermore before work commences. The City of Livermore reserves the right to require complete and certified copies of all insurance policies required by this Agreement.

LIVERMORE
CALIFORNIA

CITY COUNCIL STAFF REPORT **ITEM NO. 5.20**

DATE: July 24, 2023

TO: Honorable Mayor and City Council

FROM: Tina Olson, Administrative Services Director

SUBJECT: Resolution amending the City of Livermore Salary Plan dated July 3, 2023, reclassifying the City's Cybersecurity Manager position to an IT Operations Manager position and rescinding Resolution 2022-049 that created the City's Cybersecurity Policy to allow staff to convert it to an Administrative Regulation.

RECOMMENDED ACTION

Staff recommends adopting a resolution amending the City of Livermore Salary Plan dated July 3, 2023, reclassifying the City's Cybersecurity Manager position to an IT Operations Manager position and rescinding Resolution 2022-049 that created the City's Cybersecurity Policy to allow staff to convert it to an Administrative Regulation.

SUMMARY

In the fall of 2020, the City hired a Cybersecurity Manager to develop a cybersecurity program for the City. On April 11, 2022, City Council adopted the City's Cybersecurity Policy (Resolution 2022-049). The City of Livermore's Cybersecurity Policy established guiding principles for the City's cybersecurity program and assigned cybersecurity responsibilities to City staff. Since then, the City's Cybersecurity Manager resigned from City employment, and the City's cybersecurity program has been folded into the Information Technology (IT) Division, reflecting the fact that cybersecurity efforts have become more operational than a few years ago. The Cybersecurity Manager classification does not include managing cybersecurity operations. In addition, the City's IT Division does not have a manager dedicated to managing daily operations and the City's IT technicians, which requires the IT Manager to oversee day-to-day operations in addition to other programmatic responsibilities. As such, staff proposes to reclassify the Cybersecurity Manager to an IT Operations Manager that will manage the IT Help Desk and IT technicians as well as oversee cybersecurity operations. Staff also determined that the City's Cybersecurity Policy should be an Administrative Regulation rather than a Council adopted policy since it primarily relates to program definition and staff roles and responsibilities. As a result, staff recommends rescinding Resolution 2022-049 to allow staff to convert it to an Administrative Regulation.

DISCUSSION

In addition to the City's Cybersecurity Policy, the City developed a cybersecurity strategic plan that led to the implementation of several systems that prevents potential cyber-attacks and alerts the City of attempted cyber-attacks. As such, at this time, the City's staff are primarily focused on monitoring the City's cybersecurity systems for potential threats and responding to identified vulnerabilities. Responsibility for those efforts resides in the City's Information Technology Division and, as a result, with the resignation of the City's Cybersecurity Manager, the Cybersecurity Manager position will be reclassified to an IT Operations Manager with the responsibility to oversee IT operations, including cybersecurity. The City's IT Manager will be responsible for the City's cybersecurity program oversight and communications that the Cybersecurity Manager was responsible for.

The Cybersecurity Policy provides an overview of the City's Cybersecurity Program, focusing on staff roles and responsibilities. Policies such as these are normally Administrative Regulations the City Manager signs since the focus is implementation and not setting policy. To create a Cybersecurity Administrative Regulation, City Council needs to rescind Resolution 2022-049 that established the Cybersecurity Policy.

FISCAL AND ADMINISTRATIVE IMPACTS

Reclassifying the Cybersecurity Manager position to an IT Operations Manager and rescinding the City's Cybersecurity Policy will not have a financial impact.

COMMUNITY PILLAR

5. A City That Works

GOAL

12. Identify cyber risks and develop and implement mitigation measures to reduce the City's and its residents' exposure to cyber-attacks.

ATTACHMENTS

1. Resolution
2. Exhibit A - Management Salary Schedule dated July 3, 2023 (amended)

Prepared by: Tina Olson
Administrative Services Director

Approved by:

Marianna Marysheva
City Manager

Fiscal Review by:

Tina Olson
Administrative Services Director

IN THE CITY COUNCIL OF THE CITY OF LIVERMORE, CALIFORNIA

A RESOLUTION AMENDING THE CITY OF LIVERMORE SALARY PLAN DATED JULY 3, 2023, IN ACCORDANCE WITH CALIFORNIA CODE OF REGULATIONS, TITLE 2, SECTION 570.5, AND RESCINDING RESOLUTION 2022-049 THAT ADOPTED A CYBERSECURITY POLICY

The proposed City of Livermore Salary Plan, attached hereto as Exhibit A, is intended to make the following amendments:

- Retitle Cybersecurity Manager (Class Code 269) to IT Operations Manager

Staff recommends City of Livermore's Cybersecurity Policy be an Administrative Regulation rather than a Council adopted policy since it primarily relates to program definition and staff roles and responsibilities. Rescinding Resolution 2022-049 that created the City of Livermore's Cybersecurity Policy will allow staff to convert it to an Administrative Regulation.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Livermore that the amended Salary Plan dated July 3, 2023, to retitle position for Cybersecurity Manager (Class Code 269) to IT Operations Manager as set forth in Exhibit A, attached hereto, is hereby approved in accordance with California Code of Regulations, Title 2, Section 570.5, effective July 25, 2023.

BE IT FURTHER RESOLVED that the City Council of the City of Livermore hereby rescinds Resolution 2022-049 and directs the City Manager to develop an administrative regulation for cybersecurity.

On motion of Council Member _____, seconded by Council Member _____, the foregoing resolution was passed and adopted on July 24, 2023, by the following vote:

AYES: COUNCIL MEMBERS:
NOES: COUNCIL MEMBERS:
ABSENT: COUNCIL MEMBERS:
ABSTAIN: COUNCIL MEMBERS:

ATTEST: APPROVED AS TO FORM:

_____ */s/ Jason R. Alcala*
Marie Weber Jason R. Alcala
City Clerk City Attorney

Exhibit A – Management Salary Schedule dated July 3, 2023 (amended)

CITY OF LIVERMORE
MANAGEMENT SALARY SCHEDULE
$7,730 - $17,650/month
Effective July 3, 2023

EXHIBIT A

Class Code	Classification	Monthly Salary Range		
		$14,095.31	-	$17,619.14
119	Assistant Administrative Services Director			
100	Assistant City Attorney			
132	Assistant Community Development Director			
129	Assistant Public Works Director			
124	City Engineer			
		$13,112.20	-	$16,390.25
250	Assistant City Engineer			
289	Building Official			
218	Finance Manager			
125	Maintenance and Golf Operations Manager			
118	Planning Manager			
449	Water Resources Division Manager			
		$12,465.09	-	$15,581.36
123	Housing & Human Services Manager			
		$12,335.20	-	$15,419.00
246	Senior Transportation Engineer			
		$11,836.61	-	$14,795.76
283	Permit Center Manager			
		$11,812.81	-	$14,766.01
253	Senior Civil Engineer			
		$11,671.70	-	$14,589.63
269	IT Operations Manager*			
268	Information Technology Manager			
		$11,480.26	-	$14,350.33
127	Risk Manager			
		$11,331.75	-	$14,164.69
472	Airport Manager			
136	City Clerk			
134	Housing Programs Manager			
135	Human Services Programs Manager			
297	Police Support Services Manager			
259	Principal Planner			
951	Youth and Family Services Manager - Clinical			
		$10,698.76	-	$13,373.45
137	Assistant Finance Manager			
130	Assistant Library Director			
120	Economic Development Manager			
278	Inspection & Neighborhood Preservation Manager			
450	Water Resources Operations Manager			
474	Water Resources Technical Programs Manager			
953	Youth and Family Services Manager - Programs			

CITY OF LIVERMORE
MANAGEMENT SALARY SCHEDULE
$7,730 - $17,650/month
Effective July 3, 2023

EXHIBIT A

Class Code	Classification	Monthly Salary Range		
		$10,170.15	-	$12,712.69
217	Accounting Supervisor			
232	Information Technology Coordinator			
148	Management Analyst, Senior			
133	Public Works Manager			
270	Systems Administrator			
468	Water Distribution Operations Manager			
		$10,062.21	-	$12,577.76
272	Construction Inspection Manager			
		$10,016.28	-	$12,520.35
128	Deputy City Attorney			
295	Police Business Services Manager			
293	Police Facility & Equipment Manager			
		$9,505.31	-	$11,881.64
131	Assistant City Clerk			
150	Management Analyst II			
298	Police Media & Community Relations Analyst			
126	Public Works Supervisor			
		$7,730.03	-	$9,662.54
207	Deputy City Clerk			
152	Management Analyst I			
264	Supervising Librarian			
466	Water Resources Communications Representative			

* New IT Operations Manager Classification

LIVERMORE
CALIFORNIA

CITY COUNCIL STAFF REPORT **ITEM NO. 10.1**

DATE: July 24, 2023

TO: Honorable Mayor and City Council

FROM: Marianna Marysheva, City Manager

SUBJECT: Supplemental materials received prior to the meeting.

RECOMMENDED ACTION

SUMMARY

These materials were posted online and made available to the public at the same time that they were distributed to the City Council.

4.0	Open Forum Material: Public Comment Received
8.0	Council Committee Reports and Matters Initiated by City Manager, City Attorney, Staff, and Council Members Material: Council Reports

DISCUSSION

ATTACHMENTS

1. Supplemental Materials

Prepared by: Debbie Elam
Acting Assistant City Clerk

Approved by:



Marianna Marysheva
City Manager

Fiscal Review by:



Tina Olson
Administrative Services Director

From:	fziomek[redacted]
To:	City Clerk; John Marchand; Brittni Kiick; Barrientos, Ben; Evan Branning; Robert Carling; Michael Musca; Scott Lanphier; Angela Hescher; Marianna Marysheva
Subject:	Email comment for 7/24/23 City Council meeting
Date:	Sunday, July 23, 2023 5:27:52 PM
Attachments:	image001.png image002.png image003.png

Good day Mayor Marchand, City Council, Ms. Marysheva, Mr. Lanphier, and Mr. Musca,
This email is to urge the City to contract with an independent, outside contractor to test children living within 1 ½ miles of Livermore Airport for blood lead levels. Also test children living outside this distance from the airport, as a comparison. And then take action on the results, if it's found that the children living near the airport have blood lead levels above normal, and it's found the cause is the leaded aviation fuel continuing to be sold at Livermore Airport. Children living in similar age houses, but who are greater distance from Livermore Airport (therefore not exposed to leaded aviation fuel) should also be tested for comparison (to rule in, or rule out, the cause-and-effect relationship).

One family living on Arlington Road, approximately 0.82 miles from the airport (straight line distance) learned about the Reid-Hillview Airport blood lead level study results, and were worried. So they had their child's blood lead level tested a couple of weeks ago. They found their child's blood lead level was above normal, and have now decided to sell their house, so they can move away from Livermore Airport as soon as possible. It should be known that they previously had all their faucets replaced, and their child only drinks filtered water. So it's unlikely that exposure to lead-containing water is the cause of the elevated blood lead level found.
Their house is located under the flight path that most airplanes use to land at Livermore Airport.
Please see the Flightradar screen shots I caught last Friday just after 1pm, of multiple flights by one plane, right over Arlington Road, very close to their house.
It should be noted that lead in blood and soft tissues has an estimated half-life of 28 days (the time required for the substance to decrease by half its original value).
It should also be noted this family previously had all their faucets replaced, and they report that their child drinks only filtered water.
So these details may rule out leaded faucets and lead in the water, as the cause of the above normal blood lead levels in their child.
It should be noted the CDC states: "No safe blood lead level in children has been identified. Even low levels of lead in blood have been shown to affect IQ, ability to pay attention, and academic achievement."
If residents live within a 1 ½ mile radius of Livermore Airport, there's a good chance they and their children are being exposed to harmful levels of lead from aviation fuel.
It would be incorrect to conclude (without further research) that elevated blood lead levels in children living near Livermore Airport are being caused by old faucets or by drinking water that has lead in it.

I've previously sent you links to the peer-reviewed study performed by Mountain Data Group which

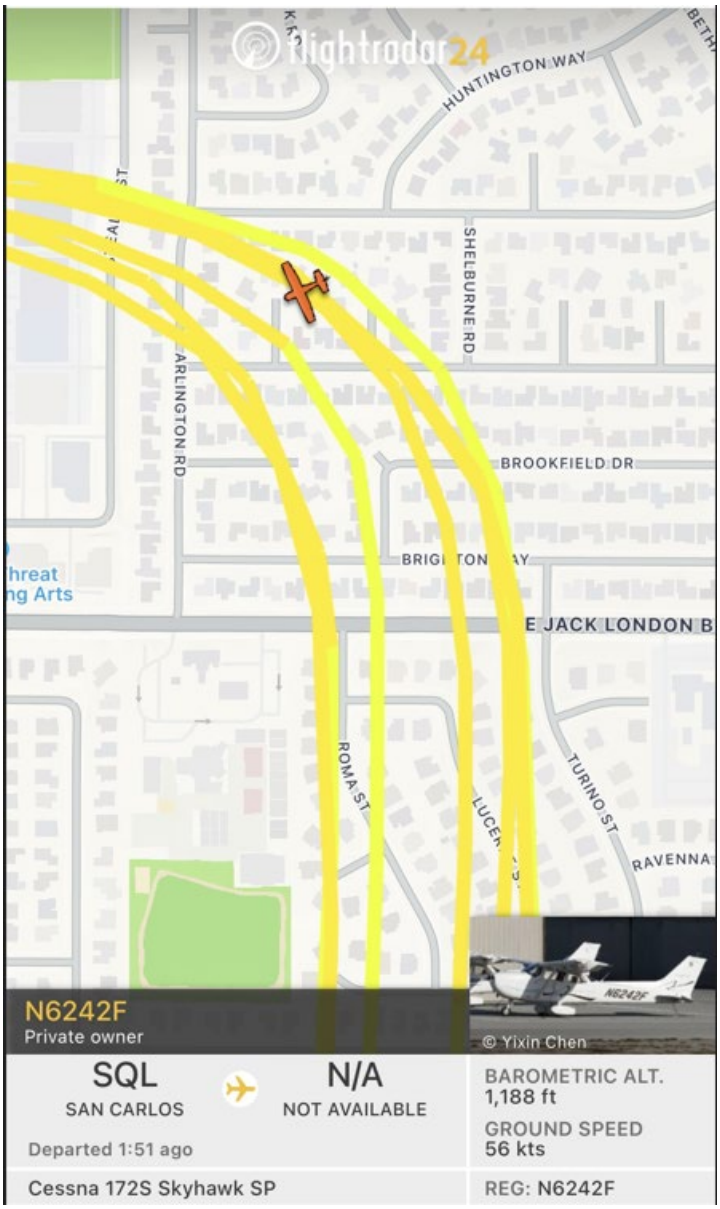
found that children residing less than ½ mile from Reid-Hillview Airport had blood lead levels higher than the levels found in children during the Flint, Michigan water system failures. Children residing ½ to 1 ½ miles away had a modest increase in blood lead levels.

Here's my application of the Scientific Method to this collection of information:

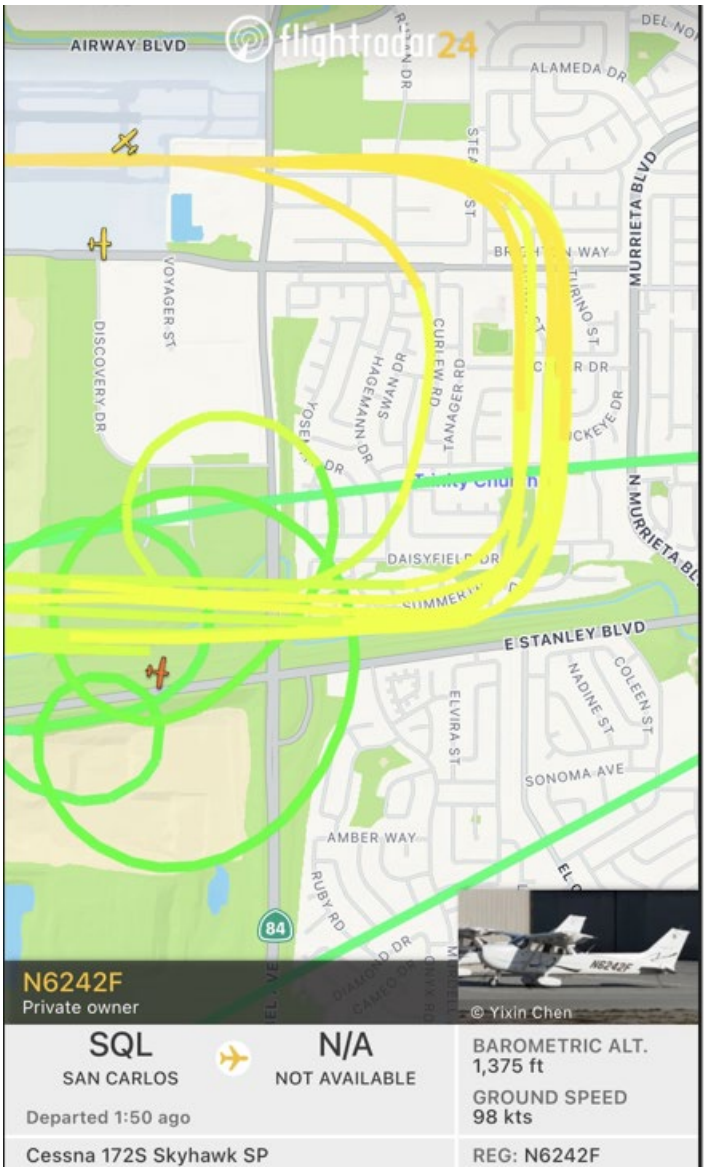
1. Observe (my observations): blood lead level of a child residing approx. 0.82 miles from the airport was found to be above normal. Their house previously had all their faucets replaced, and their child drinks only filtered water. Their house is in the flight path of most airplanes landing at Livermore Airport.
2. Question (identify a problem): Is the exposure to leaded aviation fuel the cause of the elevated blood lead level in their child?
3. Research (search for existing answers or solutions): The study performed regarding children living within 1 ½ miles of Reid-Hillview Airport found they had increased blood lead levels. No safe blood lead level in children has been identified. Even low levels of lead in blood have been shown to affect IQ, ability to pay attention, and academic achievement.
4. Hypothesize (formulate hypothesis): my hypothesis is that blood lead levels of children who live within 1 ½ miles of Livermore Airport have elevated blood lead levels that might be affecting their IQ and academic achievement.
5. Experiment (design and perform an experiment): my suggestion is to hire an independent, outside contractor to test children living within 1 ½ miles of Livermore Airport for blood lead levels. Also test children living further away from the Airport. And try to find families in both groups with similar age houses (to account for the variable of lead present in older paint).
6. Test Hypothesis (accept or reject hypothesis): analyze the blood lead level data collected by the independent, outside contractor, to determine if there's a relationship between blood lead levels and residence distance from Livermore Airport.
7. Draw Conclusions (make conclusions based on the hypothesis): after analyzing the blood lead level data (children's blood lead levels with residence location), draw a conclusion whether the children who live within 1 ½ miles of Livermore Airport are experiencing elevated blood lead levels.

There are too many children living in neighborhoods within 1 ½ miles of Livermore Airport to trivialize or minimize this issue. The neighborhoods include: Sage, Montage, Somerset, and the planned Isabel Neighborhood Specific Plan.
And there are several Preschools and K-8 Grade Schools within 1 ½ miles of Livermore Airport. The children in these schools may also be negatively impacted by this issue.

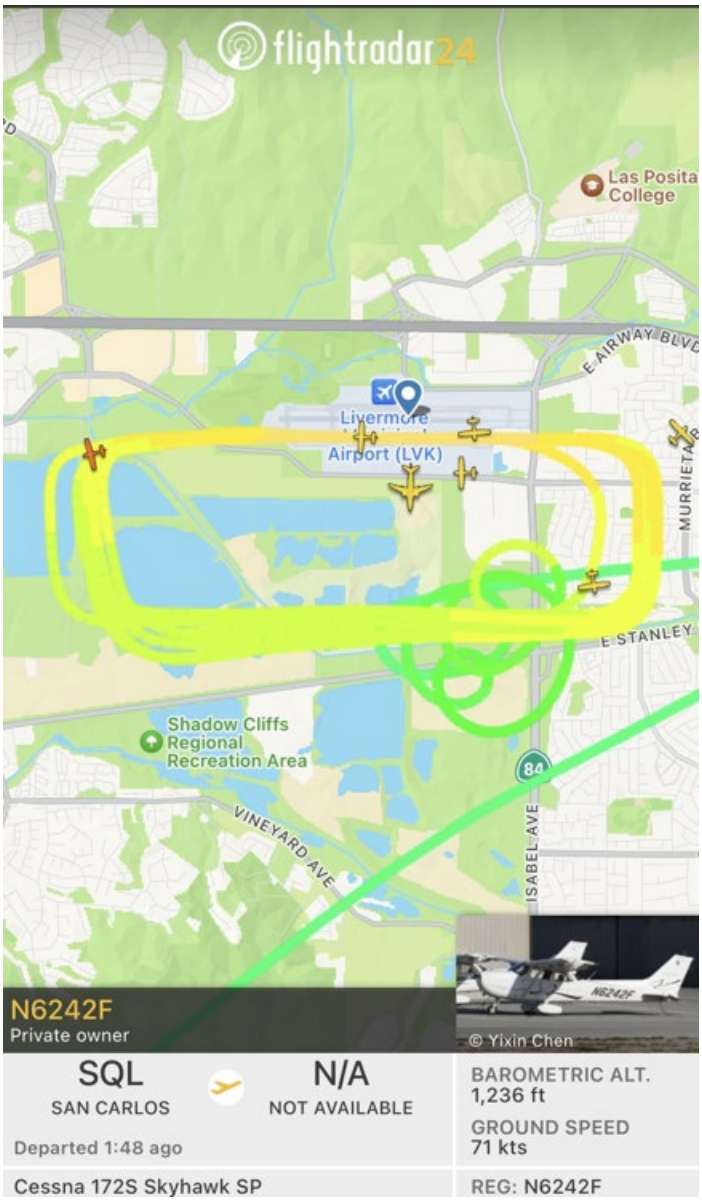
Fri., 7/21/23 at 1:24pm, multiple flights by one plane over Arlington Rd. in Livermore (where the child with the elevated blood lead level lives)



<u>Fri., 7/21/23 at 1:22pm</u>, view of various residential areas near Livermore Airport where the multiple flights flew over, by the same plane



<u>Fri., 7/21/23 at 1:20pm</u>, higher level view of the MULTIPLE circling flights by this one same plane, over this area.



Thank you.
Felicia Ziomek
Livermore, CA

Council Member	Date of Meeting or Event	Committee or Organization	Meeting or Event Type (ex. board meeting or ribbon cutting)	Summary of Meeting or Event
Mayor Marchand	7/12/2023	Alameda County Mayors Conference	Mayors conference	Made appointments to the Commission on Aging and the EBRCS. Heard a presentation on the merger of ABAG and MTC and the services they provide.
Mayor Marchand	7/13/2023	Stanford Health Care Tri-Valley	Tour	Grand opening and tour of the Byers Eye Institute
Mayor Marchand	7/13/2023	Chamber of Commerce	Ribbon cutting	New business,"PoweredxYou, LLC
Mayor Marchand	7/13/2023	LAFCO	Commission meeting	Heard draft report and provided comments to the draft South Livermore Valley Special Study and the Initial Feasibility analysis for potential incorporation of Castro Valley, Ashland and other communities.
Mayor Marchand	7/13/2023	Axis Healthcare	Ground breaking	Attended the groundbreaking, took a tour and spoke at the event celebrating the acquisition and eventual opening of a new Axis clinic in Livermore.
Mayor Marchand	7/14/2023	Innovation Tri-Valley	Symposium	Presentation on the State of the East Bay
Mayor Marchand	7/15/2023	Lily of the Valley School	Ribbon-cutting	Attended the opening of a new school.
Mayor Marchand	7/17/2023	City Council	Meeting	Joint meeting with the City Council and the Planning Commission to review roles, responsibilities, norms, values and the Five-Year Strategic Plan.
Mayor Marchand	7/18/2023	Chamber of Commerce	Ribbon-cutting	Celebrated the one-year anniversary of the Grocery Outlet.
Mayor Marchand	7/19/2023	Local 104	Orientation and tour	Attended the orientation for future apprentices for the sheet metal workers.
Mayor Marchand	7/19/2023	Livermore Lab Foundation/Chamber of Commerce	Business networking	Update on the activities of the Lab Foundation and networked with local businesses.
Mayor Marchand	7/21/2023	Housing Base	Meeting	Met with a representative from Housing Base on metrics regarding affordable housing and homelessness.
Mayor Marchand	7/24/2023	Gillig Bus	Meeting and tour	Toured the facility and met with their executive team.

Council Member	Date of Meeting or Event	Committee or Organization	Meeting or Event Type (ex. board meeting or ribbon cutting)
Council Member Carling	7/13/2023	StopWaste	Board Meeting
Council Member Carling	7/13/2023		Ribbon cutting for PoweredxYou
Council Member Carling	7/13/2023		Axis Health ground breaking
Council Member Carling	7/18/2023	Livermore Downtown Inc	Board Meeting

LIVERMORE
CALIFORNIA

CITY COUNCIL STAFF REPORT **ITEM NO. 10.2**

DATE: July 24, 2023

TO: Honorable Mayor and City Council

FROM: Marianna Marysheva, City Manager

SUBJECT: Supplemental materials received at the meeting.

RECOMMENDED ACTION

SUMMARY

DISCUSSION

ATTACHMENTS

1. Items Received at the Meeting

Prepared by: Debbie Elam
Acting Assistant City Clerk

Approved by:

Marianna Marysheva
City Manager

Fiscal Review by:

Tina Olson
Administrative Services Director

Copied to the City Council and City Manager's Office
Copied to Council meeting of: 7/24/23

VP-99B-5212-1

SCENIC AVE. TO BE DEDICATED

FERRERI & BLAU
APN # 99B-5212-1
SCENIC AVE. TO BE DEDICATED
LIVERMORE, CA. 94550

PERIOD	DATE	CHECK #	AMOUNT	CUMUL.
1ST INSTALLMENT 03-04	12-05-03	2013	$90.59	$90.59
2ND INSTALLMENT 03-04	03-04-04	2121	$90.59	$181.18
1ST INSTALLMENT 04-05	11-17-04	2224	$91.31	$272.49
2ND INSTALLMENT 04-05	03-16-05	2279	$91.31	$363.80
1ST INSTALLMENT 05-06	11-11-05	2298	$152.18	$515.98
2ND INSTALLMENT 05-06	03-01-06	2304	$152.18	$668.16
1ST INSTALLMENT 06-07	11-05-06	2318	$152.73	$820.89
2ND INSTALLMENT 06-07	03-03-07	2322	$152.73	$973.62
1ST INSTALLMENT 07-08	11-11-07	2326	$153.01	$1,126.63
2ND INSTALLMENT 07-08	03-13-08	2328	$153.01	$1,279.64
1ST INSTALLMENT 08-09	11-03-08	2340	$99.73	$1,379.37
2ND INSTALLMENT 08-09	03-27-09	2341	$99.73	$1,479.10
1ST INSTALLMENT 09-10	11-04-09	2346	$100.03	$1,579.13
2ND INSTALLMENT 09-10	03-18-10	2348	$100.03	$1,679.16
1ST INSTALLMENT 10-11	11-26-10	2349	$109.33	$1,788.49
2ND INSTALLMENT 10-11	01-08-11	2350	$109.33	$1,897.82
1ST INSTALLMENT 11-12	11-02-11	2351	$109.64	$2,007.46
2ND INSTALLMENT 11-12	01-02-12	2352	$109.64	$2,117.10
1ST INSTALLMENT 12-13	11-17-12	2355	$109.94	$2,227.04
2ND INSTALLMENT 12-13	03-11-13	2357	$109.94	$2,336.98
1ST INSTALLMENT 13-14	11-19-13	2358	$110.27	$2,447.25
2ND INSTALLMENT 13-14	02-08-14	2359	$110.27	$2,557.52
1ST INSTALLMENT 14-15	11-20-14	2360	$110.59	$2,668.11
2ND INSTALLMENT 14-15	03-24-15	2361	$110.59	$2,778.70