LIVERMORE
CALIFORNIA

CITY COUNCIL

AGENDA
MONDAY, OCTOBER 24, 2022

REGULAR HYBRID MEETING – 7:00 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:
ATTENTION: Zoom update requirements found at the bottom of the agenda
https://us02web.zoom.us/j/82201145640

Zoom dial in phone number:
1 669 900 6833
Meeting ID: 822 0114 5640

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

Bob Woerner, Mayor
Regina Bonanno, Vice Mayor
Robert W Carling, Council Member
Brittni Kiick, Council Member
Trish Munro, Council Member

1. CLOSED SESSION - NONE.

2. CALL TO ORDER

ROLL CALL

Council Member Robert W. Carling
Council Member Brittni Kiick
Council Member Trish Munro
Vice Mayor Regina Bonanno
Mayor Bob Woerner

PLEDGE OF ALLEGIANCE

3. PROCLAMATIONS AND PRESENTATIONS

3.1 Proclamation recognizing October as National Domestic Violence Awareness Month presented to Maitri Finance & Accounting Manager, Tanuja Hegde.

Recommendation:
Staff recommends the City Council recognize October as National Domestic Violence Awareness Month.

Staff Report
Attachments:
1. Proclamation

3.2 Beautification Committee annual update presented by Vice Chair, Mark Gorallka.

Recommendation:
Staff recommends City Council accept the Beautification Committee annual update.

Staff Report

3.3 Presentation of the 2022 Beautification Awards.

Recommendation:
Staff recommends City Council accept the Beautification Committee Awards presentation.

Staff Report

4. CITIZEN'S FORUM

- In conformance with the Brown Act, no City Council action can occur on items presented during Citizen's 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).
- Citizen's Forum will conclude after 30 minutes; however, if there are additional speakers, Public 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 Approval of draft minutes - October 10, 2022 Regular Meeting.

Recommendation:
Staff recommends the City Council approve the draft minutes.

Staff Report
Attachments:
1. 2022-10-10 Draft Regular Meeting Minutes

5.2 Resolution approving the First Amendment to Subdivision Improvement Agreement with Livermore Associates LLC for the Republic Square Retail Center Development to memorialize a settlement between the parties related to public improvements; and accepting Parcel Map 10525 public improvements for permanent maintenance.

Recommendation:
Staff recommends the City Council adopt a resolution:
1. Approving the First Amendment to the Subdivision Improvement Agreement with Livermore Associates LLC for the Republic Square Retail Center Development to memorialize a settlement between the parties related to public improvements and authorizing the Mayor to execute the agreement;
2. Accepting Parcel Map 10525 (south of Freisman Road between Livermore Outlets Drive and Wolf House Drive) public improvements for permanent maintenance; and
3. Authorizing release of the surety bonds for these public improvements.

Staff Report
Attachments:
1. Attachment 1 - Vicinity Map
2. Attachment 2 - Site Plan
3. Resolution
4. Exhibit A - First Amend to SIA for PM10525

5.3 Resolution authorizing an increase in the construction contract change order allowance with EVRA Construction, Inc. by $10,000, for a total not-to-exceed amount of $60,000, for the Real

Time Awareness Center Project 2019-58 within the police building.

Recommendation:
Staff recommends the City Council adopt a resolution authorizing an increase in the construction contract change order allowance with EVRA Construction, Inc. by $10,000, to a cumulative not-to-exceed amount of $60,000, for the Real Time Awareness Center Project 2019-58, located within the police building.

Staff Report
Attachments:
1. Resolution

5.4 Resolution approving allocation of the Tourism and Special Event Grant monies for July 1, 2022-June 30, 2023 and authorizing the execution of grant agreements consistent with the City's Tourism and Special Events Grant Program.

Recommendation:
Staff recommends City Council adopt a resolution approving allocation of Tourism and Special Event Grant monies for July 1, 2022-June 30, 2023, and authorizing the City Manager to execute the Grant Agreements to Livermore Valley Winegrowers Association, Altamont Cruisers Car Club, Wente Family Foundation for Arts Education and Darcie Kent Winery LLC, and Rotary Club of Livermore in the not-to-exceed amount of $2,000 each.

Staff Report
Attachments:
1. Resolution
2. Exhibit A -Grant Agreement with Livermore Valley Winegrowers
3. Exhibit B- Grant Agreement with Altamont Cruisers
4. Exhibit C- Grant Agreement with Wente Foundation For Arts Education
5. Exhibit D- Grant Agreement with Rotary Club of Livermore

5.5 Resolution authorizing execution of a purchase order with CDW-G for the replacement of the City of Livermore’s (City) primary data backup system in an amount not-to-exceed $185,000

Recommendation:
Staff recommends the City Council adopt a resolution authorizing execution of a purchase order with CDW-G for the replacement of the City’s primary data backup system in an amount not-to-exceed $185,000.

Staff Report
Attachments:
1. CDW-G Quote MZLD146
2. Resolution

5.6 Resolution authorizing an agreement with Sun Ridge Systems, Inc. for continued software maintenance and support for the Public Safety Computer Aided Dispatch and Records Management software and related public safety software systems in an amount not-to-exceed $331,396.

Recommendation:
Staff recommends the City Council adopt a resolution authorizing the City Manager to sign an agreement with Sun Ridge Systems, Inc. for continued software maintenance and support for the Public Safety Computer Aided Dispatch and Records Management software and related public safety software systems in an amount not-to-exceed $331,396.

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

5.7 Resolution authorizing the display of the POW- MIA flag for the week of November 6-13, 2022

Recommendation:
Staff recommends the City Council adopt a resolution authorizing the display of the POW-MIA flag on the flagpole at the Civic Center Campus for the week of November 6-13, 2022.

Staff Report
Attachments:
1. Resolution

5.8 Resolution reauthorizing remote or hybrid teleconference meetings for City of Livermore's legislative bodies in accordance with Assembly Bill 361.

Recommendation:
Staff recommends City Council adopt a resolution reauthorizing remote or hybrid teleconference meetings for City of Livermore's legislative bodies in accordance with Assembly Bill 361.

Staff Report
Attachments:
1. Resolution

6. PUBLIC HEARINGS

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).

6.1 **Adoption of an ordinance** amending and revising the Building Code, Property Maintenance Code, Fire Code, Electrical Code, Mechanical Code, Plumbing Code, Residential Code, and the Green Building Standards Codes in the City's Municipal Code, to adopt by reference and amend the 2022 California Building Standards Code and the codes set forth therein.

Recommendation:
Staff recommends the City Council adopt an ordinance with an effective date of January 1, 2023:

1. Revising and amending Chapter 15.02 (Building Code), 15.04 (Property Maintenance Code), 15.06 (Fire Code), 15.08 (Electrical Code), 15.10 (Mechanical Code), 15.12 (Plumbing Code), 15.14 (Residential Code), and 15.26 (Green Building Standards Code) in The Livermore Municipal Code.
2. Adopting new Chapters 15.02 (Building Code), 15.06 (Fire Code), 15.08 (Electrical Code), 15.10 (Mechanical Code), 15.14 (Residential Code), and 15.26 (Green Building Standards Code) of the Livermore Municipal Code by adopting and amending the 2022 Editions of the California Building, Fire, Electrical, Mechanical, Plumbing, Residential, and Green Building Standards Codes.
3. Adopting new Chapter 15.04 (Property Maintenance Code) of the Livermore Municipal Code by adopting and amending the 2021 edition of the International Property Maintenance Code.

Staff Report
Attachments:
1. Ordinance
2. Exhibit A - Chapter 15.02 Building Code
3. Exhibit B - Chapter 15.04 Property Maintenance Code
4. Exhibit C- Chapter 15.06 Fire Code
5. Exhibit D - Chapter 15.08 Electrical Code
6. Exhibit E - Chapter 15.10 Mechanical Code
7. Exhibit F - Chapter 15.12 Plumbing Code
8. Exhibit G - Chapter 15.14 Residential Code
9. Exhibit H - Chapter 15.26 Green Code

6.2 Hearing to consider approving an Amended and Restated Disposition and Development Agreement with Red Bear Property Management, Inc. for development of downtown commercial uses, authorizing the City Manager to execute the agreement and all other necessary documents to implement that agreement, and to conform the Stockmen's Park easement to this project and others on the park site.

Recommendation:
Staff recommends the City Council adopt resolutions and direct the following:
1. Finding that the Amended and Restated Disposition and Development Agreement (DDA) with Red Bear Property Management, Inc., attached hereto as Exhibit A, is within the scope of the 2004 Downtown Specific Plan Environmental Impact Report and the 2009 Downtown Specific Plan Subsequent Environmental Impact Report and the addendums adopted by City Council on September 10, 2018 by Resolution 2018-153, May 13, 2019 by Resolution 2019-064, and October 26, 2020 by Resolution 2020-178, and determining that Assessor Parcel Numbers 098-0289-026 and 098-0289-027 are exempt from the Surplus Land Act as defined in Government Code Section 54234(a)(1); and
2. Authorizing the City Manager to execute the DDA and all other necessary documents to implement that agreement and to conform the Stockmen's Park easement to this project and other projects on the park site.

Staff Report
Attachments:

1. Resolution - CEQA and Exemption
2. Exhibit A - APN Map
3. Exhibit B-Surplus Land DDA Resolution
4. Exhibit C - Surplus Land - DA Ordinance No. 2106
5. Exhibit D - HCD Confirmation 9-28-22
6. Resolution - DDA
7. Exhibit A - Amended and Restated Disposition and Development Agreement.pdf

7. MATTERS FOR CONSIDERATION

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).

7.1 Update on the FY 2021-23 City Council Goals and Priorities and Equity and Inclusion workplan.

Recommendation:
Staff recommends City Council receive an update on the FY 2021-23 Goals and Priorities and Equity and Inclusion workplan.

Staff Report
Attachments:
1. FY 2021-23 City Council Priorities Report
2. FY 2021-23 Priorities Executive Summary
3. Equity and Inclusion Workplan Update

7.2 Discussion and direction regarding Livermore Development Code Chapter 4.06 Sign Standards for Temporary Signs.

Recommendation:
Staff recommends the City Council discuss the provisions in the Livermore Development Code regarding temporary signs placed on public property and in the designated public right-of-way and direct staff to address ongoing challenges with allowing temporary signs, including vandalism and theft.

Staff Report
Attachments:
1. July 27, 2020 Staff Report
2. Ordinance No. 2099

7.3 Discussion and direction on the City Council Subcommittee's recommended revisions to the City Council's Rules of Procedure and the City Council's Norms, Values and Principles of Governance

Recommendation:
The City Council Subcommittee recommends the City Council discuss and provide direction on the Subcommittee's recommended revisions to the City Council's Rules of Procedure and the City Council's Norms, Values, and Principles of Governance.

Staff Report

Attachments:

1. Proposed Revisions to Rules of Procedure
2. Proposed Revisions to Norms, Values, and Principles of Governance

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

9. ADJOURNMENT

To a Regular City Council meeting on Monday, November 14, 2022 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 Material.pdf

11. HOW TO PARTICIPATE IN YOUR CITY COUNCIL MEETING

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

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).

Citizen's 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

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

Zoom Webinar: https://us02web.zoom.us/j/82201145640
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: 822 0114 5640

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. 3.1**

DATE: October 24, 2022

TO: Honorable Mayor and City Council

FROM: Marianna Marysheva, City Manager

SUBJECT: Proclamation recognizing October as National Domestic Violence Awareness Month presented to Maitri Finance & Accounting Manager, Tanuja Hegde.

RECOMMENDED ACTION

Staff recommends the City Council recognize October as National Domestic Violence Awareness Month.

SUMMARY

DISCUSSION

ATTACHMENTS

1. Proclamation

Prepared by: Stephanie Egidio
Management Analyst

Approved by:

Marianna Marysheva
City Manager

Fiscal Review by:

Tina Olson
Administrative Services Director

Proclamation

of the

City of Livermore

Proclaiming

National Domestic Violence Awareness Month

October 2022

WHEREAS, *domestic violence affects people of all genders, sexual orientations, ages, racial, ethnic, cultural, social, religious, and economic groups in the United States and here in California; and*

WHEREAS, *there were 87 domestic violence related homicides in California in 2020, of which 70 of the fatalities were female and 17 were male, 7% of all homicides in 2020 were domestic violence related; and*

WHEREAS, *all survivors deserve access to culturally responsive programs and services to increase their safety and self-sufficiency; and*

WHEREAS, *domestic violence programs in California provide essential, lifesaving services for survivors, their children, and communities; and*

WHEREAS, *progress has been made toward preventing and ending domestic violence and providing support to survivors and their families, however, important work remains to be done. There is a need to provide education, awareness and understanding of domestic violence and its causes; and*

WHEREAS, *all communities deserve access to culturally responsive prevention programs and initiatives to improve overall community health and safety by challenging the societal norms that perpetuate violence;*

NOW, THEREFORE, *the City Council of the City of Livermore proclaims October 2022 as National Domestic Violence Awareness Month and encourages residents to support domestic violence prevention programs and domestic violence survivors.*

Mayor Bob Woerner

CORPORATE SEAL OF THE CITY OF LIVERMORE, CA.

Vice Mayor Gina Bonanno

Council Member Robert W. Carling

Council Member Brittni Kiick

Council Member Patricia K. Munro

LIVERMORE
CALIFORNIA

CITY COUNCIL STAFF REPORT **ITEM NO. 3.2**

DATE: October 24, 2022

TO: Honorable Mayor and City Council

FROM: Scott Lanphier, Public Works Director

SUBJECT: Beautification Committee annual update presented by Vice Chair, Mark Gorallka.

RECOMMENDED ACTION

Staff recommends City Council accept the Beautification Committee annual update.

SUMMARY

DISCUSSION

ATTACHMENTS

Prepared by: Laurie Tobias
Senior Clerk

Approved by:

Marianna Marysheva
City Manager

Fiscal Review by:

Tina Olson
Administrative Services Director

LIVERMORE
CALIFORNIA

CITY COUNCIL STAFF REPORT **ITEM NO. 3.3**

DATE: October 24, 2022

TO: Honorable Mayor and City Council

FROM: Scott Lanphier, Public Works Director

SUBJECT: Presentation of the 2022 Beautification Awards.

RECOMMENDED ACTION

Staff recommends City Council accept the Beautification Committee Awards presentation.

SUMMARY

DISCUSSION

ATTACHMENTS

Prepared by: Laurie Tobias
Senior Clerk

Approved by:

Marianna Marysheva
City Manager

Fiscal Review by:

Tina Olson
Administrative Services Director

LIVERMORE
CALIFORNIA

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

DATE: October 24, 2022

TO: Honorable Mayor and City Council

FROM: Tina Olson, Administrative Services Director

SUBJECT: Approval of draft minutes - October 10, 2022 Regular Meeting.

RECOMMENDED ACTION

Staff recommends the City Council approve the draft minutes.

SUMMARY

DISCUSSION

ATTACHMENTS

1. 2022-10-10 Draft Regular Meeting Minutes

Prepared by: Marie Weber
City Clerk

Approved by:

Marianna Marysheva
City Manager

Fiscal Review by:

Tina Olson
Administrative Services Director

LIVERMORE
CALIFORNIA

CITY COUNCIL REGULAR MEETING
OCTOBER 10, 2022

1. CLOSED SESSION – **NONE.**

2. CALL TO ORDER – The meeting of the City Council was called to order by Mayor Bob Woerner at 7:00 pm, held in person at 1016 S. Livermore Avenue and remotely using Zoom and YouTube.

ROLL CALL – Present: Mayor Bob Woerner, Vice Mayor Regina Bonanno and Council Members Robert W. Carling, Brittni Kiick and Trish Munro

PLEDGE OF ALLEGIANCE

3. PROCLAMATIONS AND PRESENTATIONS

3.1 Proclamation declaring October 2022 as Hindu American Awareness and Appreciation Month presented to Rajeev Singh of the Hindu American Foundation.

Recommendation: Staff recommends City Council declare October 2022 as Hindu American Awareness and Appreciation Month.

CM Munro presented the proclamation declaring October 2022 as Hindu American Awareness and Appreciation Month presented to Rajeev Singh of the Hindu American Foundation.

3.2 Human Services Commission Annual Update presented by Chairperson Marc Ross.

Recommendation: Staff recommends City Council accept the update.

Chairperson Marc Ross presented the update.

4. CITIZENS FORUM

Mayor Woerner opened the public comment period.

Greg Scott provided a comment.

Constance Kopps provided a comment.

Rick Nordyke provided a comment.

Alan Marling provided a comment.

Vladimir provided a comment.

Lisa Strange provided a comment.

Cody P provided a comment.

There were no more speakers and the public comment period was closed.

5. CONSENT CALENDAR

Mayor Woerner opened the public comment period.

There were no speakers and the public comment period was closed.

ON THE MOTION OF CM MUNRO, SECONDED BY CM CARLING, AND CARRIED ON A 5-0 VOTE, THE CITY COUNCIL APPROVED THE CONSENT CALENDAR.

5.1 Approval of draft minutes - May 31, 2022 Special Meeting, September 12, 2022 Regular Meeting, and September 27, 2022 Special Meeting.

Recommendation: Staff recommended the City Council approve the draft minutes.

5.2 Resolution 2022-164 authorizing the execution of an agreement with Insight Public Sector for the replacement of the City's primary data storage system in an amount not-to-exceed $142,000.

Recommendation: Staff recommended the City Council adopt a resolution authorizing the execution of an agreement with Insight Public Sector for the replacement of the City's primary data storage system in an amount not-to-exceed $142,000.

5.3 Resolution 2022-165 Resolution authorizing the City Manager to enter into a Memorandum of Understanding with the City of Pleasanton for joint Tri-Valley Cities legislative advocacy services in a not-to-exceed contract amount of $150,000 for a term of five years.

Recommendation: Staff recommended City Council adopt a resolution authorizing the City Manager to enter into a Memorandum of Understanding with the City of Pleasanton for joint Tri-Valley Cities legislative advocacy services through consultant Townsend Public Affairs in a not-to-exceed contract amount of $150,000 for a total term of five years. The City of Pleasanton is the fiduciary agent.

5.4 Resolution 2022-166 approving amendments to the City of Livermore Salary Plan to reflect previous agreements and a classification study.

Recommendation: Staff recommended the City Council adopt a resolution approving the City of Livermore Salary Plan as of October 10, 2022, in accordance with California Code of Regulations, Title 2, Section 570.5.

5.5 Resolution 2022-167 reauthorizing remote or hybrid teleconference meetings for City of Livermore's legislative bodies in accordance with Assembly Bill 361.

Recommendation: Staff recommends City Council adopt a resolution reauthorizing remote or hybrid teleconference meetings for City of Livermore's legislative bodies in accordance with Assembly Bill 361.

6. PUBLIC HEARINGS – NONE

6.1 THIS PREVIOUSLY NOTICED ITEM HAS BEEN CONTINUED TO THE OCTOBER 24, 2022 CITY COUNCIL MEETING

Hearing to approve an Amended and Restated Disposition and Development Agreement with Red Bear Property Management, Inc. for development of downtown commercial uses, authorizing the City Manager to execute the agreement and all other necessary documents to implement that agreement, and to conform the Stockmen's Park easement to this project and others on the park site.

6.2 Hearing to receive and consider protests related to the annual fire hazard abatement program and confirm the 2022 weed abatement assessments for collection on the County Assessor tax roll.

Recommendation: Staff recommends City Council consider all protests, and if Council finds appropriate, adopt a resolution overruling protests and confirming the 2022 weed abatement assessments and direct staff to file a certified copy of the assessment report with the County Auditor.

Mayor Woerner opened the public comment period.

Matt provided a comment.

There were no more speakers and the public comment period was closed.

ON THE MOTION OF MAYOR WOERNER, SECONDED CM MUNRO AND CARRIED ON A 5-0 VOTE, THE CITY COUNCIL ADOPTED THE FOLLOWING RESOLUTION AND DIRECTED STAFF TO REMOVE THE PROPERTY LOCATED ON CONCANNON BLVD FROM THE ASSESSMENT LIST:

Resolution 2022-168 overruled protests and confirmed the 2022 weed abatement

assessments and directed staff to file a certified copy of the assessment report with the County Auditor for the property located on Marylin Avenue.

7. MATTERS FOR CONSIDERATION

7.1 Discussion and direction regarding the 2022 Community Survey including selection of customized questions.

Recommendation: Staff recommended the City Council provide direction regarding the inclusion of specific, closed-end policy questions in the upcoming National Community Survey TM, which is scheduled for data collection during November through December 2022.

Mayor Woerner opened the public comment period.

Constance Kopps provided a comment.

There were no more speakers and the public comment period was closed.

CITY COUNCIL RECEIVED THE PRESENTATION AND APPROVED THE QUESTION CATEGORIES - GENERAL PLAN UPDATE, CLIMATE ACTION, AND COMMUNITY ENGAGEMENT.

7.2 Information requested regarding reproductive rights.

Recommendation: Staff recommends City Council receive information requested regarding reproductive rights.

Mayor Woerner opened the public comment period.

There were no speakers and the public comment period was closed.

CITY COUNCIL RECEIVED THE PRESENTATION AND DIRECTED STAFF TO CHECK IN WITH COMMUNITY PARTNERS TO FIND OUT IF THEY ARE SEEING ADDITIONAL NEEDS IN THE COMMUNITY REGARDING THE REPRODUCTIVE RIGHTS.

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

THE MAYOR AND CITY COUNCIL MEMBERS PROVIDED THE FOLLOWING SUMMARY OF RECENTLY ATTENDED EVENTS AND MEETINGS IN ADDITION TO THE INFORMATION PROVIDED IN THE SUPPLEMENTAL PACKET.

Livermore Airport Open House CM Kiick and CM Munro noted their attendance at the event on October 1, 2022.

Tri-Valley Cities Council Meeting CM Carling and CM Munro noted their attendance at meeting.

Livermore Police Department Swearing-In VM Bonanno and CM Munro noted their attendance at the event on September 29, 2022.

Taste of Africa CM Munro noted her attendance at the event on October 1, 2022.

Filipino Barrio Fiesta CM Munro noted her attendance at the event on October 2, 2022.

Art Walk CM Munro noted her attendance at the event on October 8, 2022.

Indigenous Peoples Day CM Munro recognized October 10 as indigenous people's day.

Climate Action Subcommittee VM Bonanno and CM Carling noted their attendance at subcommittee meetings.

Pride Month VM Bonanno recognized October as Pride Month and invited the community to participate in events happening throughout the month.

8. ADJOURNMENT – at 9:59 pm to a Regular City Council meeting on Monday, September 27, 2022 at 7:00 pm, Civic Center Meeting Hall, City Council Chambers, 1016 S. Livermore Avenue and virtually using Zoom.

APPROVED: _____
BOB WOERNER, MAYOR

ATTEST: _____
MARIE WEBER, CITY CLERK

LIVERMORE
CALIFORNIA

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

DATE: October 24, 2022

TO: Honorable Mayor and City Council

FROM: Paul Spence, Community Development Director

SUBJECT: Resolution approving the First Amendment to Subdivision Improvement Agreement with Livermore Associates LLC for the Republic Square Retail Center Development to memorialize a settlement between the parties related to public improvements; and accepting Parcel Map 10525 public improvements for permanent maintenance.

RECOMMENDED ACTION

Staff recommends the City Council adopt a resolution:

1. Approving the First Amendment to the Subdivision Improvement Agreement with Livermore Associates LLC for the Republic Square Retail Center Development to memorialize a settlement between the parties related to public improvements and authorizing the Mayor to execute the agreement;
2. Accepting Parcel Map 10525 (south of Freisman Road between Livermore Outlets Drive and Wolf House Drive) public improvements for permanent maintenance; and
3. Authorizing release of the surety bonds for these public improvements.

SUMMARY

On March 26, 2018, the City Council approved Parcel Map 10525 and executed a Subdivision Improvement Agreement for Parcel Map 10525, recorded under series no. 2018082467, dated April 25, 2018, Official Records of Alameda County, California (Agreement).

As part of the Agreement, the City of Livermore (City) reimbursed the Developer for the required infrastructure installed that exceeded the Developer's required shared cost obligation for the infrastructure designated in the El Charro Specific Plan and as required by the Development Agreement. The funding source for the El Charro Specific Plan Infrastructure Project 2007-20 in the FY 2021-23 Capital Improvement Plan was exhausted in October of 2021 prior to the completion of some of the required improvements for this project. Pursuant to Special Condition 3E of the Agreement, staff and Developer have agreed upon the following terms as part of the proposed First Amendment to the Subdivision Improvement Agreement:

- City agreed to eliminating a portion of the required landscape improvement obligations as shown on Exhibit C to the First Amendment.
- Developer has agreed to forfeit $500,000 of the reimbursable improvement costs as a community benefit.
- The City has satisfied any and all past, present and future reimbursement obligations to developer, including but not limited to those reimbursement obligations set forth in the Development Agreement DA07-007 and Amended Development Agreements DAAM08-004, DAA 12-006 and DAA 15-002 and the Original Subdivision Improvement Agreement. No further reimbursements to the developer are required.

Livermore Associates, LLC has fulfilled all of the obligations as described in the Conditions of Approval, the Subdivision Improvement Agreement for Parcel Map 10525, and the proposed First Amendment to Subdivision Improvement Agreement for Parcel Map 10525 to the satisfaction of the City Engineer.

Upon approval of the First Amendment to Subdivision Improvement Agreement for Parcel Map 10525, the City may accept Parcel Map 10525 for permanent maintenance, accept the offers of dedication that were previously rejected, and release the surety bonds for these public improvements as specified in the Subdivision Improvement Agreement and approved First Amendment to the Subdivision Improvement Agreement for Parcel Map 10525.

DISCUSSION

On February 7, 2017, the Planning Commission approved Vesting Tentative Parcel Map 10525 and Conditions of Approval. On November 17, 2017, the Planning Commission approved Amended Vesting Tentative Parcel Map 10525 to create four parcels of land with approximately 281,000 square feet of retail and hotel facilities.

On March 26, 2018, the Final Map for Parcel Map 10525 was approved by the City Council with a Subdivision Improvement Agreement (Agreement) and security for public improvements. At that meeting, the Council rejected the dedications made on Parcel Map 10525 for Livermore Outlets Drive, Wolf House Road, Public Utility Easement (PUE), and Emergency Vehicle Access Easement (EVAE). The City Council retained the right to accept the offers of dedication at a later date when the improvements were complete.

The developer, as a condition of this Parcel Map, is required to install a portion of the shared cost infrastructure designated in the El Charro Specific Plan as shown in Exhibit C of the Agreement which includes curb, gutter, medians, completion of Freisman Road, installation of Wolfhouse Road, Jack London Boulevard improvements and traffic signal, utilities, Freisman Park improvements, and landscaping. The estimated cost of these improvements was $4,394,244, which exceeds the developer's estimated required remaining obligation of shared infrastructure cost of $2,055,688.

Per Development Agreement DA07-007 and Amended Development Agreements DAAM08-004, DAA12-006, and DAA 15-002 T, the City is required to utilize payments received from various developers of property within the El Charro area to reimburse the developer the difference between the actual cost of the shared infrastructure improvements installed by the developer and the remaining obligation of the developer's fair share costs for shared infrastructure. The developer installed most of the required infrastructure; however, the actual cost of construction exceeded the estimated costs.

As a result, the developer agreed to negotiate a true-up settlement with the City per special conditions

paragraph 3.E of the Agreement. As part of the true-up settlement, the City agreed to eliminate some of the required landscape improvement obligations as shown on Exhibit C to the First Amendment in exchange for the developer forfeiting $500,000 of the improvement costs as a community benefit and agreeing that the City has satisfied any and all past, present and future reimbursement obligations to the developer including, but not limited to, those reimbursement obligations set forth in Development Agreement DA07-007 and Amended Development Agreements DAAM08-004, DAA 12-006 and DAA 15-002 and the Original Subdivision Improvement Agreement. No further reimbursements to the developer are required.

The First Amendment of Subdivision Improvement Agreement for Parcel Map 10525 memorializes the agreed upon true-up settlement. Livermore Associates, LLC has fulfilled all of the obligations as described in the Conditions of Approval, the Subdivision Improvement Agreement for Parcel Map 10525, and the First Amendment to Subdivision Improvement Agreement for Parcel Map 10525 to the satisfaction of the City Engineer.

Upon approval of the First Amendment of Subdivision Improvement Agreement for Parcel Map 10525, the City can accept the public improvements for permanent maintenance, accept the offers of dedication that were previously rejected, and authorize release of the surety bonds for these public improvements as specified in the Subdivision Improvement Agreement and approved First Amendment to the Subdivision Improvement Agreement for Parcel Map 10525.

FISCAL AND ADMINISTRATIVE IMPACTS

The Community Facilities District (CFD) 2012-1 El Charro Maintenance funds the operation, maintenance, and replacement of various public infrastructure, including landscape areas, streetscape such as landscaped medians, storm and creek drainage area, open space areas, park, and trail improvements. The annual operation, maintenance, and replacement costs of the new infrastructure to be maintained through the CFD are estimated to be $14,500. The CFD does not maintain other public infrastructure, including streetlights, roadways, curb, gutter, sidewalk, and utilities. The required annual operation, maintenance, and replacement funding for these improvements is estimated at $11,000 from sewer and water fees and $106,000 from the general fund which is derived from increased sales and property taxes generated from the new development.

The property owner will privately maintain the new vineyard buffer landscape improvements; however, if at any time in the future the property owner can no longer maintain this vineyard buffer landscaping, the property owner will be obligated to have the operation, maintenance, and replacement costs for these improvements added to their portion of the CFD assessment on their property. The estimated annual operation, maintenance, and replacement cost for the vineyard buffer is $2,000.

ATTACHMENTS

1. Attachment 1 - Vicinity Map
2. Attachment 2 - Site Plan
3. Resolution
4. Exhibit A - First Amend to SIA for PM10525

Prepared by: Mike Pato
Engineering Specialist

Approved by:



Marianna Marysheva
City Manager

Fiscal Review by:



Tina Olson
Administrative Services Director

LIVERMORE CALIFORNIA

VICINITY MAP



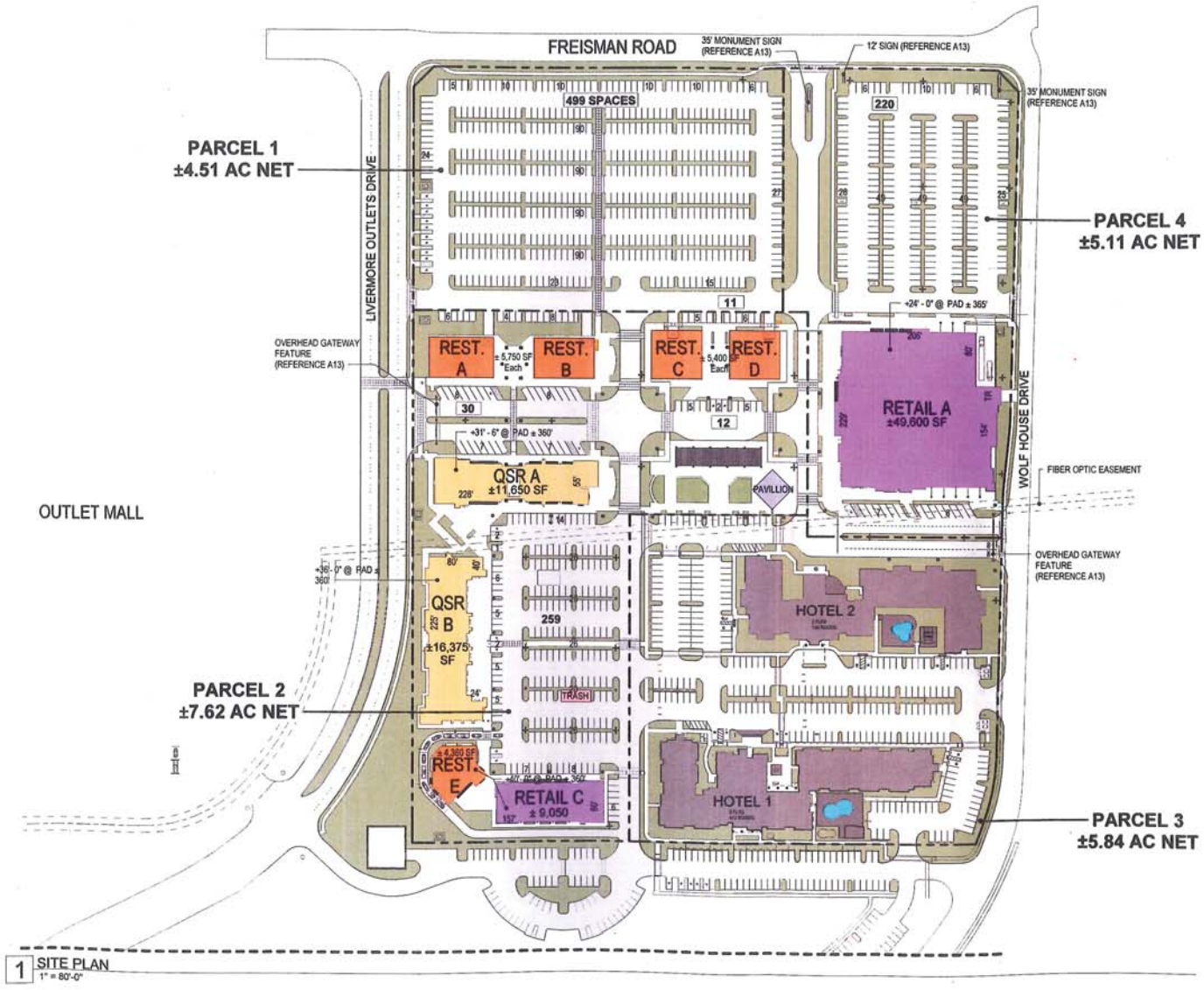
1,333.3 0 666.67 1,333.3 Feet

NAD_1983_StatePlane_California_III_FIPS_0403_Feet
Livermore IT, GIS Services

Scale: 1: 8,000

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.

Prepared:
3/1/2018 7:55:36 AM



SITE DATA

GROSS SITE AREA: ±24.1 AC
NET SITE AREA: ±23.1 AC
ZONING: PD - ECSP - RC
MAXIMUM FAR: .30
MAXIMUM ALLOWABLE AREA: ±301,871 SF
PROPOSED TOTAL GROSS FLOOR AREA: ±281,677 SF

PARCEL AREA SUMMARY

PARCEL 1	±4.51 AC NET
PARCEL 2	±7.62 AC NET
PARCEL 3	±5.84 AC NET
PARCEL 4	±5.11 AC NET
TOTAL	±23.1 AC NET

PARCEL	BUILDING DATA	GROSS AREA SF	PKG. REQ	PKG. PROV'D	PARCEL PKG. PROV'D
PARCEL 2	RESTAURANT A	±5,750	23	23	259
	RESTAURANT B	±5,750	23	23	
	RESTAURANT C	±5,400	22	22	
	RESTAURANT D	±5,400	22	22	
	RESTAURANT E	±4,360	17	18	
	RETAIL C	±9,050	37	37	
	QSR A	±11,650	47	47	
	QSR B	±16,375	66	67	
PARCEL 4	RETAIL A	±49,600	198	235	235
SUB TOTAL		±113,335	±455	±494*	
RATIO				*4.3/1000	
PARCEL 1	PARKING	-	-	499	499
PARCEL 3	HOTEL 1 (112 RMS)	±85,914	124	124	244
	HOTEL 2 (104 RMS)	±82,428	115	120	
TOTAL:		±281,677	694	1,237	1,237

* PARKING RATIO FOR PARCEL 1 AND HOTELS IS NOT INCLUDED.
PARKING RATIO EXCLUDING HOTELS ONLY = ±8.8/1000

PARKING BASIS (MIN.)

RETAIL/RESTAURANTS: 4 CARS / 1,000 SF
HOTELS: 1 CAR / ROOM + 1 CAR / 10 ROOMS

NOTE:
DESIGNATED PARKING FOR CLEAN AIR VEHICLES FOR 8 PERCENT OF TOTAL REQUIRED PARKING, TO BE DETERMINED PER CALGREEN 5.106.5.2

DESIGNATED PARKING FOR ELECTRIC VEHICLE (EV) CHARGING FOR 6 PERCENT OF TOTAL REQUIRED PARKING, TO BE DETERMINED PER CALGREEN 5.106.5.3.3

DESIGNATED PARKING FOR ACCESSIBLE (EV) CHARGING STATIONS WILL BE PROVIDED. NUMBER TO BE DETERMINED. CBC 11-228.3 AND 11B-812

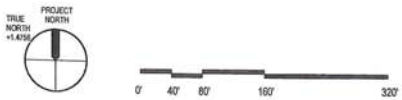
PARKING SIZES

STANDARD: 9' X 18'
COMPACT: 8' X 16'
ACCESSIBLE: 9' X 20'
DRIVEWAYS: 24' MINIMUM

NOTE:
PARCEL SIZES AS INDICATED ON PLAN ARE NET AREAS, MEASURED FROM OUTSIDE FACE OF CURBS (TYP.) @ PERIMETER ROADWAYS TO INTERIOR PROPERTY LINES.

COLORED LEGEND

- HOTEL
- QSR
- RETAIL
- RESTAURANT
- TRASH ENCLOSURES
- COMMUNITY SPACE



SITE PLAN

IN THE CITY COUNCIL OF THE CITY OF LIVERMORE, CALIFORNIA

A RESOLUTION APPROVING THE FIRST AMENDMENT TO SUBDIVISION IMPROVEMENT AGREEMENT WITH LIVERMORE ASSOCIATES, LLC FOR THE REPUBLIC SQUARE RETAIL CENTER DEVELOPMENT TO MEMORIALIZE A SETTLEMENT BETWEEN THE PARTIES ; ACCEPTING PARCEL MAP 10525 PUBLIC IMPROVEMENTS FOR PERMANENT MAINTENANCE AND RELEASE OF SECURITY

(Livermore Associates, LLC "Republic Square Retail Center Development" Parcel Map 10525)

On March 26, 2018, the City Council approved Parcel Map 10525 and executed a Subdivision Improvement Agreement recorded under series no. 2018082467, dated April 25, 2018, Official Records of Alameda County, California ("Agreement").

As part of the Agreement, the City reimbursed the Developer for the required infrastructure installed that exceeded the Developers required shared cost obligation for the infrastructure designated in the El Charro Specific Plan. The funding source for the El Charro Infrastructure in the City's Capital Improvement Program CIP No. 2007620, Fund 341, was exhausted in October of 2021, prior to the completion of some of the required shared cost landscape improvements for this project. Pursuant to Special Condition 3E of the Agreement, the City and Developer agreed upon a true up settlement. As a result, the City and the Developer agreed on the following true up settlement for Parcel Map 10525:

- City agreed to eliminate some of the required landscape improvement obligations as shown on Exhibit C to the First Amendment.
- Developer has agreed to forfeit $500,000 of the improvement costs as a community benefit.
- The City has satisfied any and all past, present, and future reimbursement obligations to Developer, including but not limited to those reimbursement obligations set forth in the Development Agreement (DA07-007) and Amended Development Agreements (DAAM08-004, DAA 12-006 and DAA 15-002), and the Original Subdivision Improvement Agreement. No further reimbursements to Developer are required.

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

1. The City Council approves the First Amendment to Subdivision Improvement Agreement for Parcel Map 10525 and authorizes the Mayor to execute said Amendment.

Livermore Associates, LLC has fulfilled all obligations as described in the Conditions of Approval, the Subdivision Improvement Agreement for Parcel Map 10525, and the First Amendment to Subdivision Improvement Agreement for Parcel Map 10525 to the satisfaction of the City Engineer. The City Engineer of the City of Livermore has filed with the City Clerk his report in writing that all work on Parcel Map 10525 has been completed to City standards.

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

2. Pursuant to Streets and Highways Code section 1806, the City Council hereby accepts the street(s) within Parcel Map 10525.

3. The City Council hereby accepts all public improvements required to have been constructed pursuant to the Subdivision Improvement Agreement for Parcel Map 10525, recorded under series no. 2018082467, dated April 25, 2018, Official Records of Alameda County, California, and the First Amendment to Subdivision Improvement Agreement for Parcel Map 10525 approved by the City Council on October 24, 2022.

4. The faithful performance bond guaranteeing the Subdivision Improvement Agreement is hereby released.

5. The labor and materials bond guaranteeing the Subdivision Improvement Agreement 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.

6. The security for the guarantee and warranty of the work under the Subdivision Improvement Agreement shall remain in effect for one year from the date of this resolution. The contractor/developer is required to reconstruct any deficiencies that occur and to repair or replace defective materials during the maintenance period.

7. Pursuant to Government Code sections 7050 and 66477.2, the City hereby rescinds its earlier action taken on March 26, 2018 and accepts the offer of dedication of Livermore Outlets Drive, Wolf House Road, Public Utility Easement (PUE), and Emergency Vehicle Access Easement (EVAE) on Final Parcel Map 10525, recorded in the office of the County Recorder on April 25, 2018, under Series Number 2018082466.

The City Clerk is directed to record this resolution in the office of the Alameda County Recorder.

On motion of Council Member _____, seconded by Council Member _____, the foregoing resolution was passed and adopted on October 24, 2022, 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 – First Amendment to Subdivision Improvement Agreement Parcel Map 10525

When Recorded Return to:
City Clerk
City of Livermore
1052 S. Livermore Avenue
Livermore, CA 94550

FIRST AMENDMENT TO
SUBDIVISION IMPROVEMENT AGREEMENT
Parcel Map 10525 Republic Square

This Amendment to Subdivision Improvement Agreement is entered into this _____ day of _____, 202__, between Livermore Associates, LLC, ("Developer"), and the CITY OF LIVERMORE ("City"), a municipal corporation of the State of California.

RECITALS

The Developer is the owner of real property located within the corporate limits of the City of Livermore and presented to the City Council of the City of Livermore a proposed subdivision, Parcel Map No. 10525 Recorded under Series No. 2018082466, dated April 25, 2018, Official Records of Alameda County, California ("Property").

On April 4, 2018, the parties entered into a Subdivision Improvement Agreement for Parcel Map 10525 Recorded under Series No. 2018082467, dated April 25, 2018, Official Records of Alameda County, California ("Original Agreement").

The funding source, El Charro Infrastrucure in the City's Capital Improvement Program CIP No. 2007620, Fund 341 for the required shared cost infrastructure designated in the El Charro Specific Plan has been exhausted prior to the completion of a portion of the required shared cost landscape improvements. As a result, the parties now wish to amend the Original Agreement to have the City revise the Developer's off-site shared cost landscape improvement infrastructure obligations in exchange for the Developer entering into a true up settlement with the City ("First Amendment").

NOW, THEREFORE, the parties hereby agree that the aforementioned recitals are true and correct and further agree as follows:

1. The Original Agreement is amended as follows:

A. Section 2 of the Original Agreement is amended to read as follows:

Performance of Improvements. The Developer shall perform all work as specified in the Engineering Considerations at Exhibit "A" of the Agreement, in strict accordance with all specifications, plans, applicable City standards, and to the satisfaction of the City Engineer. The Developer provided detailed improvement plans, for all on-site and off-

site improvements required by the Engineering Considerations at Exhibit "A". All required improvements shall be constructed in accordance with the approved improvement plans (dated Feb 28, 2018, sheets 1-69), and current City standard specifications and details all of which are on file in the office of the City Engineer except as revised on Exhibit C to the First Amendment attached hereto and incorporated herein by this reference.

B. Section 3 of the Original Agreement is amended to read as follows:
Special Conditions. The Developer shall be required to comply with the special conditions as follows:

A. Per Development Agreement DA07-007 and Amended Development Agreements DAAM08-004, DAA12-006, and DAA 15-002 the Developer is responsible for their fair share costs of all infrastructure improvements as designated in the El Charro Specific Plan based upon the actual net lot size for the Property, actual square footage of gross building floor area constructed but not less than 25% floor area ratio (FAR), and actual costs to implement the shared infrastructure improvements. The project entitlements, approved on November 7, 2017 (SUB17-001, SPDRM17-025), allow up to a total building area of 281,677 square feet, which equates to a FAR of 28 percent. The net lot size for the Project parcels is 23.063 acres as shown on Parcel Map 10525.

B. The Developer as a condition of this Parcel Map will be installing a portion of the shared cost infrastructure designated in the El Charro Specific Plan as shown in the Exhibit C of the Original Agreement which includes, but is not limited to, the following improvements: curb, gutter, medians, roadways, traffic signals, utilities, Freisman Park improvements, and landscaping. The Developer has satisfied this condition.

C. Per the Development Agreements referenced in Section 3.A. above, the Developer's frontage improvements are entirely the responsibility of the Developer and therefore, do not count against the Developer's fair share cost of shared infrastructure and shall not be eligible for reimbursement by the City. Developer's frontage improvements include but are not limited to the following work along the Developer's property frontage: curb, gutter, sidewalk, landscaping, street lighting, vineyard buffer, traffic signals on Premium Outlets Drive at the entrance to Friesman Park and at the entrance to the Developer's site, and pedestrian walkway to the San Francisco Premium Outlets site as depicted in Exhibit C to the Original Agreement. The Developer has satisfied this condition.

D. The Developer has requested an initial payment of their fair share cost of infrastructure that is attributed to a 25% FAR with a future payment of any additional fair share cost of infrastructure based upon actual square footage constructed for the Project at the time that a building permit is issued for Retail Building A on Parcel 4 of Parcel Map 10525. The Developer's fair share obligation based on 25% FAR is estimated at $6,000,272. The Planning Commision approved entitlements (SPDRM20-027/SUB20-009) for Parcel 4 on

September 21, 2021 maintaining the Developer's fair share cost obligation attributed to a 25% FAR.

E. The amount of the Developer's remaining obligation for their fair share cost of shared infrastructure shall be subject to the following true up settlement which has been negotiated by the parties:

1. The City has agreed to eliminate a portion of the required Developer shared cost infrastructure landscape improvement obilgations and to allow modified landscape in areas that previously called for stone clad walls as set forth in the attached Exhibit C to the First Amendment.
2. The amount owed to Developer has exceeded the amount of funds available in the City's Capital Improvement Program CIP No. 2007620, Fund 341.The City has reimbursed all available funds in Fund 341 to Developer.
3. The Developer has agreed to forfeit $500,000 of reimbursement for its fair share cost of infrastructure landscape improvements as a community benefit.
4. The City has satisfied any and all past, present and future reimbursement obligations to Developer, including but not limited to those reimbursement obligations set forth the Development Agreement DA07-007 and Amended Development Agreements DAAM08-004, DAA 12-006 and DAA 15-002 and the Original Subdivision Improvement Agreement. No further reimbursements to Developer are required.

C. The Developer has submitted all required documentation to receive reimbursements for the cost of the shared infrastructure installed by the that exceeds the Developer's obligation for shared infrastructure as set forth in Section 3(F)(i)-(iv) of the Original Agreement.

2. These amendments are prospective and only apply after execution of this Amendment. Unless otherwise stated herein, this Amendment does not relieve the parties of the terms and conditions of the Agreement as written and executed by the parties.

3. Except as amended above, the Agreement remains in full force and effect.

In concurrence and witness whereof, and in recognition of the mutual consideration provided therefore, the parties have executed this Amendment effective on the date first written above.

****

Signatures and Attachment List on the Next Page

DEVELOPER:
Livermore Associates, LLC

By: Michael Richard Van Every
Title: Manager

Dated: 9-30-2022

Mailing Address:

1098 Lincoln Ave., Suite 200
San Jose, CA 95125

(ALL SIGNATURES MUST BE NOTARIZED)

CITY OF LIVERMORE,
a municipal corporation

MAYOR

Dated:

ATTEST:

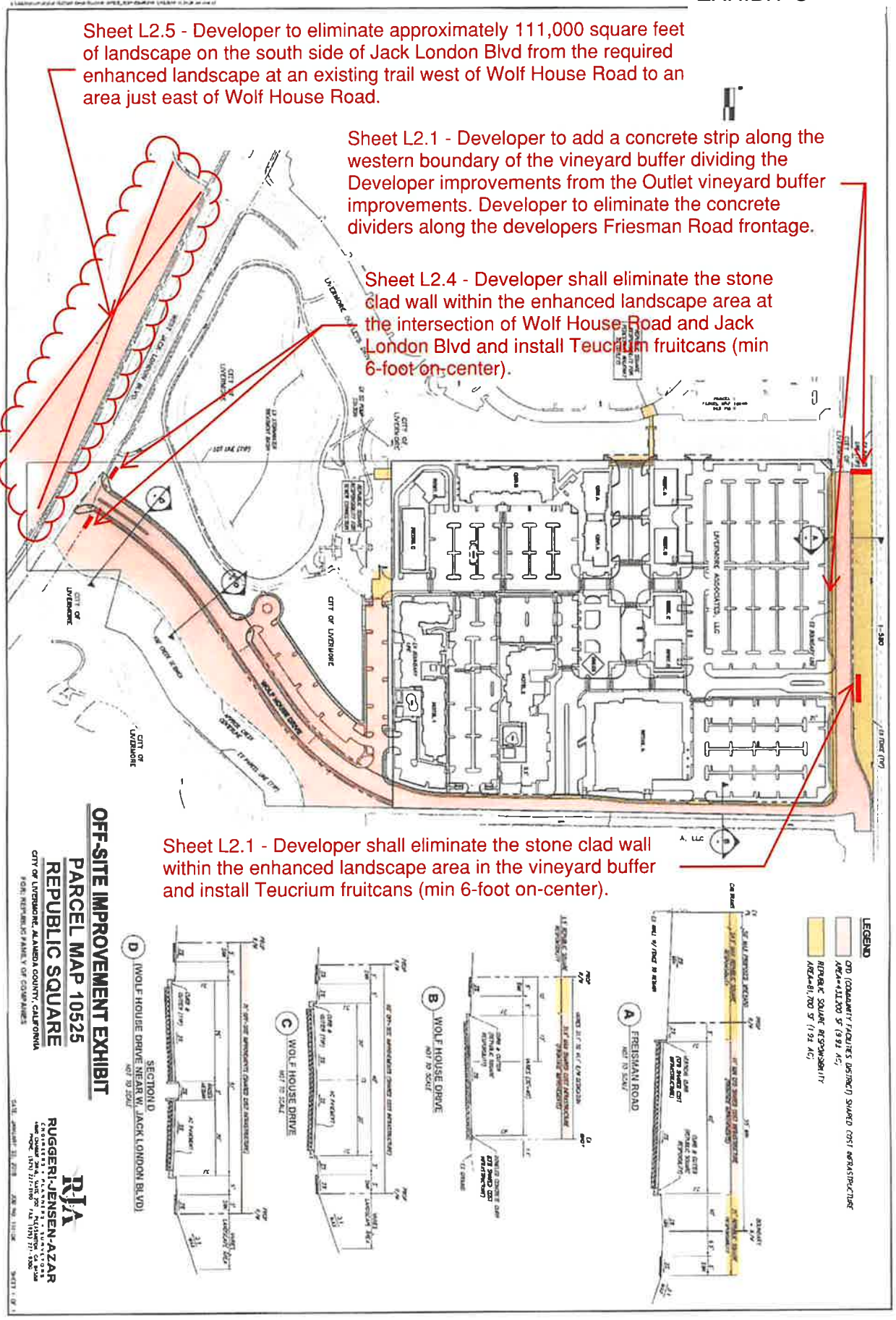
City Clerk

APPROVED AS TO FORM:

Assistant/City Attorney

Attachments:
Exhibit C – Off-Site Improvements

EXHIBIT C



BEST AVAILABLE COPY – ORIGINAL
LOCATED AT THE CHICAGO TITLE
3825 HOPYARD ROAD, SUITE 280
PLEASANTON, CA. 94588

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
County of Santa Clara)

On September 30, 2022 before me, Brian Yi, Notary Public
(insert name and title of the officer)

personally appeared Michael Richard Van Every ----------,
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.

BRIAN YI
Notary Public - California
Santa Clara County
Commission # 2261305
My Comm. Expires Nov 2, 2022

Signature _____ **(Seal)**

LIVERMORE
CALIFORNIA

CITY COUNCIL STAFF REPORT ITEM NO. 5.3

DATE: October 24, 2022

TO: Honorable Mayor and City Council

FROM: Paul Spence, Community Development Director

SUBJECT: Resolution authorizing an increase in the construction contract change order allowance with EVRA Construction, Inc. by $10,000, for a total not-to-exceed amount of $60,000, for the Real Time Awareness Center Project 2019-58 within the police building.

RECOMMENDED ACTION

Staff recommends the City Council adopt a resolution authorizing an increase in the construction contract change order allowance with EVRA Construction, Inc. by $10,000, to a cumulative not-to-exceed amount of $60,000, for the Real Time Awareness Center Project 2019-58, located within the police building.

SUMMARY

On December 13th, 2021, the City Council awarded the construction contract for the Real Time Awareness Center Project 2019-58 to EVRA Construction, Inc. This project involves converting a storage area in the Police building into a Real Time Awareness Center. This center will allow Police staff to monitor events in real time and support field activities. Work is nearing completion. One item that needs to be completed involves installing and commission the control system for the new HVAC system. This work needs to be completed as a change order because it was not in the original construction documents. The change order allowance for the project needs to be increased by $10,000 to complete this work.

DISCUSSION

The Real Time Awareness Center project was identified in the City Council's Fiscal Year 2019-21 Goals and Priorities (Emergency Management and Public Safety). The Police Department's Real Time Awareness Center will be a state-of-the-art tactical communications and real-time analysis policing facility. The Real Time Awareness Center, located within the Police building, will include a room with workstations for crime analysts to monitor a media wall of large displays, which will be capable of

streaming live video feeds from multiple sources. Most of the work has been completed on the project. One item that needs to be completed involves installing and commissioning that control system for the new HVAC equipment that was installed.

FISCAL AND ADMINISTRATIVE IMPACTS

The construction contract amount with EVRA Construction was for $472,000 plus a contingency amount of $50,000, in accordance with Livermore Municipal Code Section 2.68.560B. The project is nearly complete and the change order work to date is approximately $40,000. Additional change order work for installing and commissioning the control system for the new HVAC system will be approximately $19,000. In order to complete this extra work, the change order allowance needs to be increased by $10,000 to a not-to-exceed amount of $60,000. The budget for this project in the Fiscal Year 2021-23 Capital Improvement Plan covers this increase in change order allowance and does not need to be adjusted.

ATTACHMENTS

1. Resolution

Prepared by: Joel Waxdeck
Assistant City Engineer

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 INCREASING THE CONSTRUCTION CONTRACT CHANGE ORDER ALLOWANCE WITH EVRA CONSTRUCTION BY $10,000, FOR A TOTAL NOT-TO-EXCEED AMOUNT OF $60,000

(Real Time Awareness Center Project 2019-58)

On December 13th, 2021, the City Council awarded the construction contract for the Real Time Awareness Center Project 2019-58 to EVRA Construction, Inc. The construction contract amount with EVRA Construction was for $472,000, plus a contingency amount of $50,000, in accordance with Livermore Municipal Code Section 2.68.560B. This project involves converting a storage area at the police building into a Real Time Awareness Center. This center will allow Police staff to monitor events in real time and support field activities. Work is nearing completion. One item that needs to be completed involves installing and commissioning of the control system for the new HVAC system. This work needs to be completed as a change order because it was not in the original construction documents. This change order allowance for the project needs to be increased by $10,000 to complete this work.

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of Livermore that the construction contract change order allowance with EVRA Construction, Inc. is increased by $10,000, to a cumulative not-to-exceed amount of $60,000, for the Real Time Awareness Center Project 2019-58.

On motion of Council Member _____, seconded by Council Member _____, the foregoing resolution was passed and adopted on October 24, 2022 by the following vote:

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

ATTEST:

_____
Marie Weber
Assistant City Attorney

APPROVED AS TO FORM:

/s/ Tara M. Mazzanti
Tara Mazzanti
City Clerk

LIVERMORE
CALIFORNIA

CITY COUNCIL STAFF REPORT **ITEM NO. 5.4**

DATE: October 24, 2022

TO: Honorable Mayor and City Council

FROM: Brandon Cardwell, Innovation and Economic Development Director

SUBJECT: Resolution approving allocation of the Tourism and Special Event Grant monies for July 1, 2022-June 30, 2023 and authorizing the execution of grant agreements consistent with the City's Tourism and Special Events Grant Program.

RECOMMENDED ACTION

Staff recommends City Council adopt a resolution approving allocation of Tourism and Special Event Grant monies for July 1, 2022-June 30, 2023, and authorizing the City Manager to execute the Grant Agreements to Livermore Valley Winegrowers Association, Altamont Cruisers Car Club, Wente Family Foundation for Arts Education and Darcie Kent Winery LLC, and Rotary Club of Livermore in the not-to-exceed amount of $2,000 each.

SUMMARY

The purpose of the annual Tourism and Special Event Grant program is to provide financial assistance to organizations that promote Livermore as a destination and generate tourism that benefits the local and regional economy, including local merchants and the local wine industry. The application period for the 2022-23 Tourism and Special Event Grant Program is on a rolling basis. Grant requests must be for an event to occur between July 1, 2022, and June 30, 2023. Funding is recommended for the four applicants as indicated below, and the rest of the funding will be awarded as more applications are received.

DISCUSSION

The annual Tourism and Special Event Grant Program is allocated $10,000 from the General Fund to support organizations that directly benefit downtown businesses, local wineries, or promote Livermore as a destination. The purpose of the program is to provide financial support for events that:

- Add to Livermore's unique art, history, diversity, or character,
- Produce an economic benefit to the City by marketing Livermore as a destination,
- Appeal to broad audiences throughout the region, and/or
- Provide interest and opportunity for the community to gather as we continue to navigate the COVID-19 pandemic.

Qualifying events must meet one or more of the above program goals. Funds are to be paid out to selected grant awardees after the event has taken place and receipts for eligible expenses are submitted to the City. The amount to be paid to each organization will not exceed the $2,000 grant amount and will not exceed fifty percent (50%) of the eligible costs of organizing the event.

The availability of funds for the FY 2022-23 Tourism and Special Event Grant Program was announced and applications were solicited through a press release and posting on the City website and social media beginning in June 2022.

The City's Grant Agreement process was updated this year to include selected applicants entering into a grant agreement with the City; registering and having an active City of Livermore business license; and submitting documentation that they carry insurance that meets the City's requirements for events.

Staff reviewed five applications and found that four demonstrated consistencies with the program and policy criteria. Staff therefore recommends that a grant of $2,000 each be awarded to the following four eligible applicants:

Applicant, Event, Location, Date of Event
Livermore Valley Winegrowers Association, Taste our Terroir, Bella Rosa Event Center and Several Winery Locations, July 14, 2022
Altamont Cruisers Car Club, 33rd Annual Nostalgia Car Show, Downtown Livermore, October 8, 2022
Wente Family Foundation for Arts Education and Darcie Kent Winery LLC, Love Livermore Live, Darcie Kent Winery, October 8, 2022
Rotary Club of Livermore, Livermore Rodeo Parade, Downtown Livermore, June 10, 2023

Since the grant period started on July 1, 2022, three of the four events have already taken place. Upon City Council approval, payment of the grant will be made once all grant requirements are met by the applicant(s).

FISCAL AND AMINISTRATIVE IMPACTS

The adopted FY 2022-23 General Fund budget includes $10,000 for the Tourism and Special Event grant program, of which $8,000 is currently recommended for approval. If the Innovation and Economic Development Department receives and recommends additional eligible Tourism and Special Event grant applications for the remaining $2,000 for FY 2022-23, staff will bring a follow-up Resolution to Council.

No additional fiscal or administrative impacts are anticipated. A net positive economic impact from tourism and special event activities is expected to generate additional revenues in the form of sales tax and hotel occupancy tax.

ATTACHMENTS

1. Resolution
2. Exhibit A -Grant Agreement with Livermore Valley Winegrowers

3. Exhibit B- Grant Agreement with Altamont Cruisers
4. Exhibit C- Grant Agreement with Wente Foundation For Arts Education
5. Exhibit D- Grant Agreement with Rotary Club of Livermore

Prepared by: Theresa De La Vega
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 APPROVING ALLOCATION OF TOURISM AND SPECIAL EVENT GRANT MONIES FOR THE PERIOD OF JULY 1, 2022 – JUNE 30, 2023, AND AUTHORIZING THE EXECUTION OF GRANT AGREEMENTS WITH THE LIVERMORE VALLEY WINEGROWERS ASSOCIATION, THE ALTAMONT CRUISERS, THE WENTE FAMILY FOUNDATION FOR ARTS EDUCATION, AND THE ROTARY CLUB OF LIVERMORE, IN THE NOT-TO-EXCEED AMOUNT OF $2,000 EACH

In 1991, the City of Livermore ("City") established the Tourism and Special Event Grant program, which has been modified throughout the years. The program contains guidelines for the City's annual solicitation of applications for the award of City of Livermore Tourism and Special Event Grant funds. Grants awarded from the Tourism and Special Event Grant program are made to provide financial assistance to organizations that promote Livermore as a destination and generate tourism that benefits the local and regional economy. The City's approved operating budget in Fund 5001 for FY 2022-2023, includes $10,000 for the Tourism and Special Event Grant program.

Staff sought applications for FY 2022-2023 grant awards of up to $2,000 each, pursuant to the procedure described in the accompanying staff report and according to the Program guidelines.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Livermore, that the following applicants for the Tourism and Special Event Grant Program for the period of July 1, 2022 – June 30, 2023, are approved to receive grant funding in an amount not to exceed $2,000 each, and the City Manager is authorized to execute on behalf of the City of Livermore the grant agreements with each of the respective applicants attached as Exhibits A through D:

Applicant	Event	Location	Date of Event
Livermore Valley Winegrowers Association	Taste our Terroir	Bella Rosa Event Center and several winery locations	July 14, 2022
Altamont Cruisers	33rd Annual Nostalgia Car Show	Downtown Livermore	September 25, 2022
Wente Family Foundation for Arts Education, and Darcie Kent Winery LLC	Love Livermore Live	Darcie Kent Estate Winery	October 8, 2022
Rotary Club of Livermore	Livermore Rodeo Parade	Downtown Livermore	June 10, 2023

On motion of Council Member _____, seconded by Council member_____, the foregoing resolution was passed and adopted on October 24, 2022, by the following vote:

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

ATTEST: APPROVED AS TO FORM:

_____ */s/ Jason Alcala*
Marie Weber Jason Alcala
City Clerk City Attorney

Exhibit A- Grant Agreement with Livermore Valley Winegrowers Association
Exhibit B- Grant Agreement with Altamont Cruisers
Exhibit C- Grant Agreement with Wente Family Foundation for Arts Education
Exhibit D- Grant Agreement with Rotary Club of Livermore

GRANT AGREEMENT BETWEEN CITY OF LIVERMORE AND Livermore Valley Winegrowers Association

FOR FISCAL YEAR 2022/2023

THIS AGREEMENT, entered into this _____ day of _____, 2022 between the City of Livermore, a municipal corporation (**"City"**), and Livermore Valley Winegrowers Association, a Nonprofit Corporation (**"Grantee"**).

RECITALS

A. The City is entering into a grant agreement with Grantee for fiscal year 2022/2023.

B. The Grantee's mission is to advance, protect and promote the quality wines, vineyards and experiences of the Livermore Valley Wine Country.

C. The City has determined that the goals and activities of the Grantee are consistent with the Marketing and Economic Development goals of the City and therefore should be supported through the proposed grant of $2,000.00, which will enhance and support the City's marketing end economic development efforts, including by identifying the City as an underwriter of the Grantee's work.

AGREEMENT

NOW THEREFORE, the parties agree that the above recitals are true and correct and further agree as follows:

1. Grant Activities. Grantee is responsible for its continuing operations. As part of its continuing operations, Grantee will apply the Grant funds to market and promote the City's Downtown and historic Livermore Valley Wine region through Taste of Terroir event. The City shall not be listed as a sponsor of any grantee activity or event, but shall be listed only as an "underwriter" at all times. The Grant activities covered by this Agreement is the Taste of Terroir Event as outlined in Exhibit "A" **("Grant Activities").**

2. Grant Amount. The City will issue, and Grantee will use, funds in the amount of **$2,000.00** (the **"Grant Funds"**) to perform the activities consistent with the terms and conditions of this Grant Agreement. City will provide the Grant Funds to Grantee within 30 days of the date on which this Agreement is executed by both the City and Grantee.

3. Time for Performance. Grantee shall complete its Grant Activities prior to December 31, 2023.

4. Recognition of City Grant Funds Grantee shall acknowledge City's award of Grant Funds in all appropriate materials and media. The acknowledgment shall read, "Underwritten in part from the City of Livermore" or similar language, unless the City is a part of a list of other underwriters, in which case the City may be acknowledged as, "City of Livermore." Grantee shall display the City's logo whenever logos are displayed, and in accordance with the City logo use

guidelines, which are included as Exhibit "C" to this Grant Agreement.

5. Independent Contractor. Nothing contained in this Grant Agreement is intended to, nor shall be construed in any manner to, create or establish the relationship of employer/employee between the City and Grantee. The City shall have no role in approving, planning, sanctioning, authorizing or controlling the Grant Activities or any activity Grantee undertakes. Grantee shall at all times remain an independent contractor with respect to the services funded by this Grant Agreement. City shall be exempt from payment of all unemployment compensation, FICA, retirement, life and/or medical insurance, and Workers' Compensation Insurance stemming from any of Grantee's work, as Grantee is an independent contractor.

6. Documentation and Recordkeeping

(a) Grantee shall maintain records providing a full description of each such Grant Activity and the date(s) on which the activity occurred.

(b) Grantee shall retain all records pertinent to expenditures incurred in the performance of the Grant Activities under this Grant Agreement and expenditure of Grant Funds for a period of two (2) years after the end of any activity funded pursuant to this Grant Agreement.

7. Suspension, Termination, Return of Funds

(a) City may suspend or terminate this Grant Agreement if Grantee materially fails to comply with any term or condition of this Agreement, including but not limited to, the following: (1) failure, for any reason, of Grantee to fulfill in a timely and proper manner its obligations under this Agreement; or (2) ineffective or improper use of the Grant Funds provided under this Agreement.

(b) The City's notice of termination for cause must be provided in writing at least ten (10) calendar days before the effective date of termination.

(c) In the event the City terminates this Grant Agreement for cause, Grantee shall return all of the Grant Funds awarded which shall be submitted to the City's General Fund for reallocation.

8. Hold Harmless. Grantee agrees to defend, indemnify, and hold City, elected officials, officers, directors, employees, agents, and designated volunteers harmless from and against any and all loss, liability, damage, including reasonable attorney's and expert fees and/or court costs, arising out of the performance of the Grant Activities under this Grant Agreement, except for the gross negligence and willful misconduct of City, its elected officials, officers, directors, employees, agents, and designated volunteers.

9. Insurance. Grantee shall procure and maintain insurance during the term of this Grant Agreement in the amounts and under the terms set forth in Exhibit "B" attached hereto against all claims that may arise from or in connection with this Grant Agreement. Upon reasonable written notice, Grantee shall comply with any changes in the amounts and terms of insurance as may be required from time-to-time by the City's Risk Manager.

10. Amendment. 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.

11. Notices. Any notice required or permitted under the terms of this Agreement shall be effective upon receipt in writing either by personal service upon the authorized agent for the party, or by mailing the notice via U.S. Mail to the party as follows:

TO CITY: City of Livermore
Attn: Brandon Cardwell,
Innovation and Economic Development Department
1052 S. Livermore Avenue
Livermore, California 94550

TO GRANTEE: Livermore Valley Winegrowers Association
Attn: Brandi Addington, Executive Director
3585 Greenville Road, Suite 4
Livermore, CA 94550

12. Waiver. Failure to insist upon the strict performance of any term or conditions in this Grant 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.

13. Severability. If a court of competent jurisdiction determines a provision in this Grant Agreement is invalid, void, or unenforceable, the remaining provisions will nevertheless continue in full force and effect without being impaired in any way.

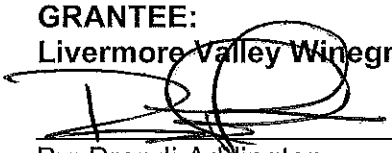
14. Counterparts. This Grant Agreement may be executed in counterpart by delivering a facsimile or secure electronic copy of the signed agreement to the other party, followed by delivery of the original documents bearing the original signatures. Failure to deliver the original documents does not affect the enforceability of this Agreement.

****

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 Grant Agreement, effective on the date first written above.

GRANTEE: **Dated:**
Livermore Valley Winegrowers Association



10/11/2022

By: Brandi Addington
Title: Executive Director
Federal Identification Number: 94-3070573

CITY OF LIVERMORE: **Dated:**

Brandon Cardwell
Director of Innovation and Economic Development

APPROVED AS TO FORM:

Assistant/City Attorney

Attachments:
Exhibit A – Grant Activities
Exhibit B – Insurance Requirements
Exhibit C – City Logo Use Guidelines

Tourism and Special Event Grant Request

Grant Period: July 1, 2022 - June 30, 2023

* Applicant Name
Ms. Brandi Addington

*** Email**
membership@lvwine.org

* Phone
(259) 980-3380

* Full Address
3585 Greenville Road Ste. 4
Livermore CA 94550

Sponsoring Non-Profit Organization
We are a non-profit

*** Name of Event**
Taste our Terroir

*** Event Date(s)**
07/14/2022

*** Description of Event**
Livermore Valley's premier food and wine affair spans four delectable days. Thursday July 14- Sunday, July 17, 2022. Thursday evening at Bella Rosa at Garre Vineyard and Winery is the Food and Wine pairing competition, dessert bar with additional wineries and silent auction.

*** Event Location**
Bella Rosa Event Center and several winery locations throughout the weekend

Previous event dates (if applicable)
Taste our Terroir has been our premier event for the past several years

*** How will grant be used?**
We will use it to increase tourism outside the boundries of the Tri-Valley to hieighten awareness of the award-winning wine region right here in Livermore

City contribution to prior events (if applicable)
1000.00 towards our old event Harvest Wine Celebration

*** Estimated attendance (please indicate basis for attendance)**
800-1000

*** Estimated percentage (%) of attendees from out of town**
40

*** Describe advertising or publicity directed at non-Livermore residents**
We would use Bay Area News Group, Targeted Facebook Ads and Instagram Ads, Advertising in SIlicon Valley Luxury Magazine

*** Describe how the event will benefit Livermore**
Having a premier, upscale wine event in Livermore allows us to showcase what makes Livermore special. It allows us to expand the perception some people have of being only a rodeo town and gives us an opportunity to embrace that history with an added luxury element that we believe creates the perfect backdrop for seeing all the wonderful things Livermore has to offer.

Additional comments
Thank you for considering our application

EXHIBIT B

INSURANCE REQUIREMENTS

Minimum Scope and Limits of Insurance
Consultant/Contractor shall maintain limits no less than:

Commercial General Liability, including operations, products and completed operations, as applicable: **$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.

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 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. 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.

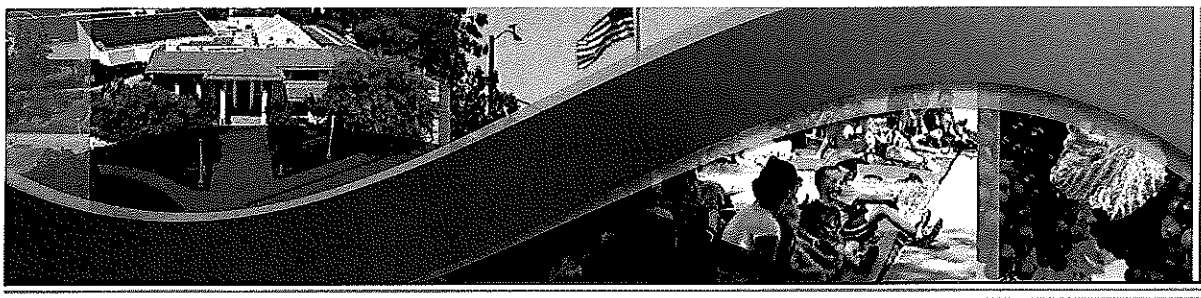


EXHIBIT A

LIVERMORE
CALIFORNIA

EXHIBIT C

BRAND GUIDELINES

CITY OF
LIVERMORE
CALIFORNIA

INTRODUCTION.....2

LOGO USAGE.....3

TYPOGRAPHY.....8

COLOR.....9

INTRODUCTION

As a unique community amongst over 400 California cities, the brand for the City of Livermore is critical—it builds recognition and trust, and it's a reflection of our spirit. Livermore has a rich history and a dynamic future—we honor both past and future by putting forth a consistent, engaging appearance for our communications and media. We are stewards of the Livermore brand. To make our communications strategy effective, we need our materials to express Livermore's core values:

RICH HISTORY ROOTED IN WESTERN HERITAGE

CONNECTION TO THE LAND THROUGH VITICULTURE AND OPEN SPACE PRESERVATION

EDUCATED AND FORWARD-THINKING COMMUNITY EXEMPLIFIED BY SCIENCE AND TECHNOLOGY

SHARING OF THE HUMAN SPIRIT THROUGH ARTS AND CULTURE

By communicating these values clearly and consistently, Livermore will benefit from a unique identity that resonates with residents, businesses, neighbors and visitors from near and far.

BRAND INTEGRITY

The way we communicate through visual, digital and written communications helps strengthen our connection with residents as well as the wider world. These Brand Guidelines are an important tool to ensure that a consistent tone, look and feel are conveyed. Ultimately, this means that the City's messaging will be more effective.

SUB-BRANDING

Sub-branding is the creation of visuals and materials that are unique to a given department, event or initiative, not fully reflecting the overall City brand appearance. For instance, the Livermore Police Department sub-brand.

Sub-branding must be in alignment with the City's overall brand. Such sub-branding may be requested for projects, events, committees or other special uses. Contact the Public Information Officer for any requests or questions regarding sub-branding.

Ultimately, it is people that maintain and protect the City's brand, so please join in the effort to uphold these guidelines. With everything the City of Livermore has to offer, each day is another chance to share that "There's More Here."

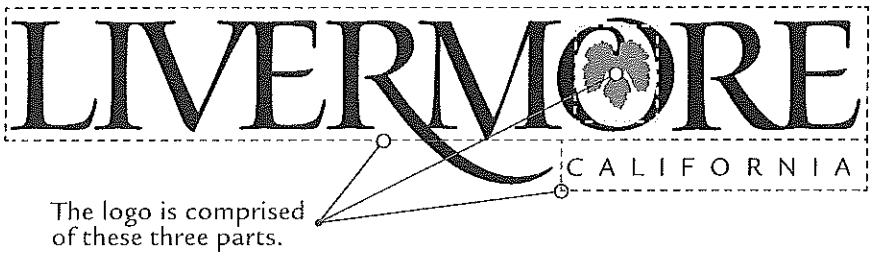
If you have any questions, please reach out to the Public Information Officer by contacting the City:

925-960-4000
communications@LivermoreCA.gov

LOGO USAGE

Standard Version

The logo is comprised of three parts: the capital letters "LIVERMORE", "CALIFORNIA" and a graphic grape leaf. The type is a customized combination of display caps and ITC Legacy Sans Serif fonts; the blue color telegraphs stability, trust and accessibility. The stylized leaf, illustrated in an earthy olive green, symbolizes the growth and vitality that lives throughout the City. The logo is incomplete if any of these elements are deleted.



Other Logo Configurations

There are special cases for which certain, approved variations are permitted for use.
These are described in more detail later in these guidelines.



Logo Coloring

The logo colors are periwinkle blue and olive green. The logo should be used in color whenever possible. Never alter colors or tints of the logo.

The medium for reproducing the logo (print vs. digital) determines which colors are specified. The printing process uses Pantone inks or 4-color process inks. Digital/web colors are based on RGB colors. The colors are shown to the right.

The color logo should be featured on a white background whenever possible to promote readability. This uncluttered look contributes to the specialness of the logo.

GREEN
PANTONE: 100% PMS 5845
4-C PROCESS: 35% cyan, 22% magenta, 76% yellow, 1% black
RGB: 174 red, 175 green, 95 blue / HEX: #aeaf5f

LIVERMORE
CALIFORNIA

BLUE
PANTONE: 100% PMS 5275
4-C PROCESS: 70% cyan, 62% magenta, 27% yellow, 6% black
RGB: 96 red, 100 green, 137 blue / HEX: #606489

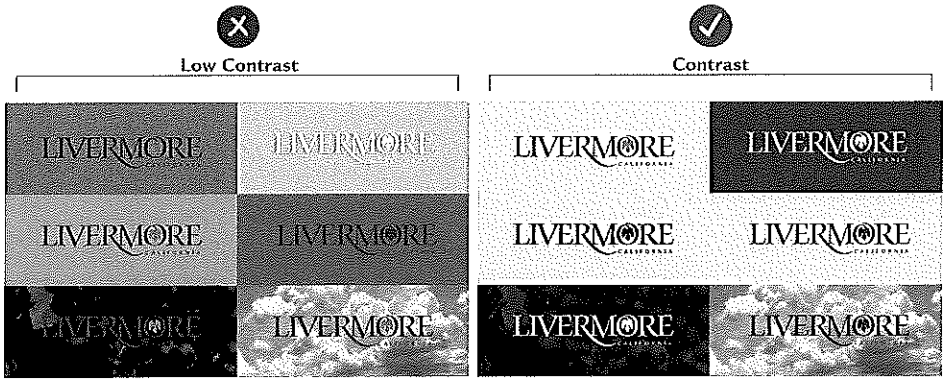
GRAY
PANTONE: 50% black
4-C PROCESS: 50% black
RGB: 153 red, 153 green, 153 blue / HEX: #90948c

LIVERMORE
CALIFORNIA

BLACK
PANTONE: 100% black
4-C PROCESS: 100% black
RGB: 51 red, 51 green, 51 blue / HEX: #050606

BACKGROUND CONTRAST

Contrast is an important part of visual accessibility. Depending on the background, a solid black logo or solid white logo is sometimes necessary. For dark backgrounds, use a white logo. For light backgrounds in which the blue/green logo does not have enough contrast, use a black logo. Consider avoiding complicated background photos. If necessary, underlay the logo with opaque box to increse contrast. When in doubt, err on the side of increasing contrast.



Expert note: for non-decorative elements, like text or information, foreground color should be roughly 4.5X brighter or darker than the background color to satisfy industry minimum WCAG AA recommendation. 7X brighter satisfies full AAA recommendation. Smaller text requires more contrast. There are numerous online tools to assist in measuring contrast.

Logo Integrity

Maintain the type font, size and spacing between the logo elements: text, icon and tagline. These elements should not be recolored or repositioned in any way other than specified in this guide.

MINIMUM SIZE

Size matters and using the logo too small compromises its integrity. Note the minimum width shown here for using the logos and icons at their smallest permissible sizes.



PROTECTIVE AREA AROUND THE LOGO

A generous protective space around the logo is an essential element of the logo's design and success. Never place another logo, type or graphic element in this clearspace. Do not place the logo on any complicated or photographic background.

The protective clearspace around the logo is determined by the height of the capital letter "L" as noted with an "x." This clearspace is required for all logo versions.



Same holds true for all logos.



VERTICALLY CENTERING THE LOGO

Note that the high visual "center of gravity" for the non-tagline logo. For cases where the non-tagline logo is vertically centered in space, note that the center line should fall in the vertical middle of the "LIVERMORE" text.



Vertically center on "Livermore" text.

Alternate Logo Configurations

STACKED

If the primary horizontal logo does not fit or look good in the available space, use the vertically stacked version.



OFFICIAL DOCUMENT VERSION

Note: "City of" text included

For use when the official name of the City of Livermore is required (e.g. financial documents, budget reports, etc.)



TAGLINE

Note: "There's More Here" text included

The tagline acts as a marketing message and should be used appropriately and discriminately when that message is indicated. This language reflects the opportunity for discovery and potential that awaits those unaware of or misguided in their impression of exploring the City. For consistency, the tagline should never be changed to a different message.



ICON OPTIONS

The Livermore brand leaf can be used decoratively, or as a stand-alone icon.



ARCHED

For very limited uses, an arched version is possible, but not encouraged. Please contact the Public Information Officer for permission.



Incorrect Logo use

Using the logo correctly as outlined in this guide ensures the strength of the logo and ultimately better represents the City of Livermore. There are many ways to misuse the logo and a few common examples are shown on this page.



✖ Do not rotate.



✖ Do not distort.

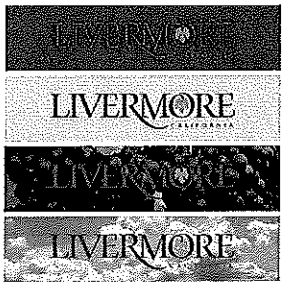


✖ Do not resize or move elements.

a



✖ Do not add special effects.



✖ Do not use low-contrast.



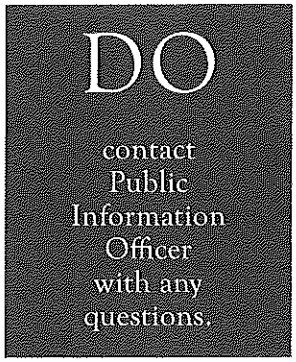
✖ Do not use too small.



✖ Do not change colors.



✖ Do not change fonts.



TYPOGRAPHY

Brand Fonts

MOST COMMONLY USED FOR PROFESSIONAL PRINTING. The City uses two fonts: Goudy, a serif font, and the ITC Legacy Sans sans-serif font family. These fonts support the overall identity and should be used whenever possible. Goudy is good for headers and special text sections, not for body text; do not use an italicized or bolded version. ITC Legacy Sans offers several weights, good for overall usage. Both font families may be used on the same piece of communication.

GOUDY

AaBbCcDdEeFfGgHhIiJjKkLlMmNnOoPpQqRrSsTtUuVvWwXxYyZz

Goudy: Regular (only) ... ALLCAPS permitted

ITC Legacy Sans

AaBbCcDdEeFfGgHhIiJjKkLlMmNnOoPpQqRrSsTtUuVvWwXxYyZz

Legacy Sans: Book	AaBbCcDdEeFfGgHhIiJjKkLlMmNnOoPpQqRrSsTtUuVvWwXxYyZz
Legacy Sans: Book Italic	*AaBbCcDdEeFfGgHhIiJjKkLlMmNnOoPpQqRrSsTtUuVvWwXxYyZz*
Legacy Sans: Medium	AaBbCcDdEeFfGgHhIiJjKkLlMmNnOoPpQqRrSsTtUuVvWwXxYyZz
Legacy Sans: Medium Italic	*AaBbCcDdEeFfGgHhIiJjKkLlMmNnOoPpQqRrSsTtUuVvWwXxYyZz*
Legacy Sans: Bold	**AaBbCcDdEeFfGgHhIiJjKkLlMmNnOoPpQqRrSsTtUuVvWwXxYyZz**

FONT ALTERNATES

MOST COMMONLY USED FOR DIGITAL OR OFFICE APPLICATIONS. Alternate fonts are identified here for cases where the the brand fonts are not technically available or advisable. The web-safe, office font Trebuchet MS is relatively consistent across devices, so is good for documents that are being shared (e.g. Microsoft Word docs or presentations). The web fonts Libre Baskerville and Nunito Sans are available free from Google and make for good fonts for the website and other applications like Canva.

Baskerville (web-safe font)

AaBbCcDdEeFfGgHhIiJjKkLlMmNnOoPpQqRrSsTtUuVvWwXxYyZz

Libre Baskerville (web font, Google, Canva)

AaBbCcDdEeFfGgHhIiJjKkLlMmNnOoPpQqRrSsTtUuVvWwXxYyZz

Trebuchet MS (web-safe font)

AaBbCcDdEeFfGgHhIiJjKkLlMmNnOoPpQqRrSsTtUuVvWwXxYyZz

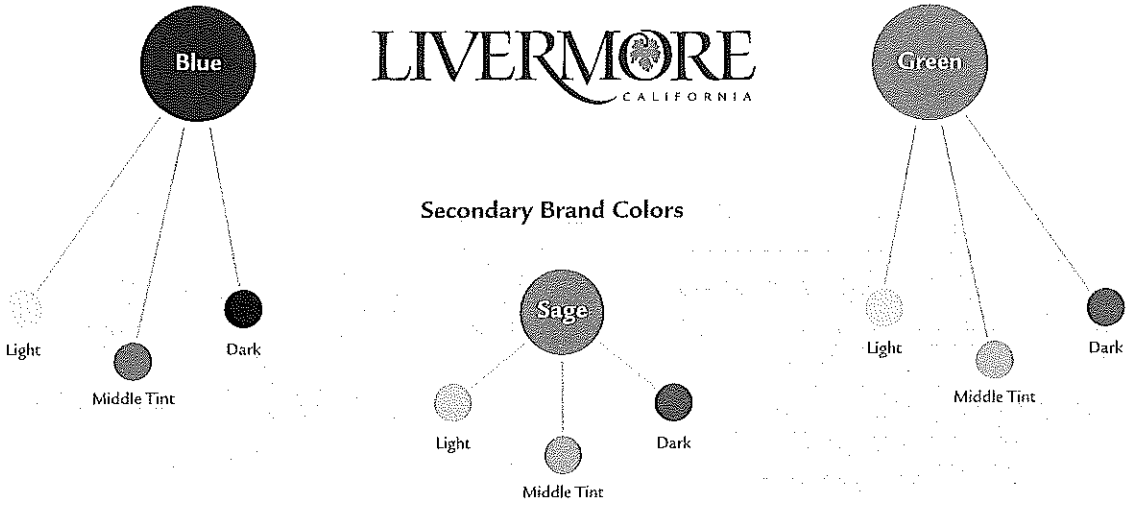
Nunito Sans (web font, Google, Canva)

AaBbCcDdEeFfGgHhIiJjKkLlMmNnOoPpQqRrSsTtUuVvWwXxYyZz

COLOR

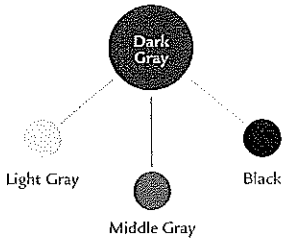
The **primary** Blue and Green signify the City's brand. They are the dominant colors and should be used in everything that represents the City. The **secondary** color palette provides the ancillary coloring that all together create the City's identifiable look and feel. The secondary colors are used in addition to the primary Blue and Green, not instead of them. The grays and neutrals identified here provide additional design flexibility. **Extra colors are provided to use sparingly,** when the existing brand colors simply aren't enough (e.g. as an accent when a strong highlight is needed, or when a whole spectrum is required).

Primary Brand Colors

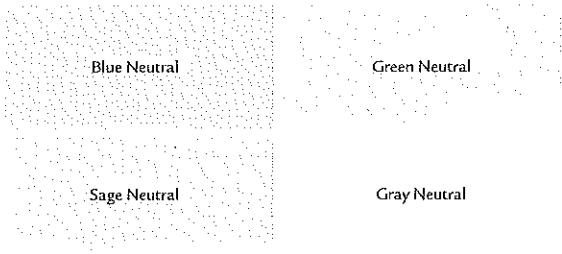


Secondary Brand Colors

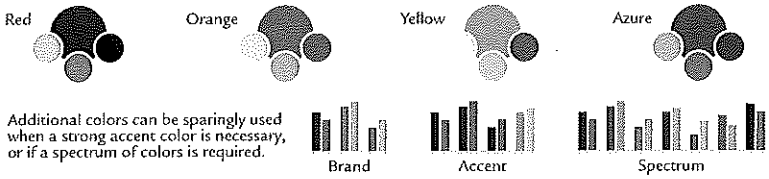
Grays



Neutrals



Extra Colors



Color Detail

The brand colors are defined here, for several different formats. Digital/web colors are based on RGB or Hex colors. The printing process uses Pantone inks or CMYK (4-color process) inks. PMS code 'C' indicates an ink used for coated (glossy) paper and 'U' indicates is used for non-coated finishes.

PRIMARY	PROMINENCE	HEX	R	G	B	C	M	Y	K	PANTONE C	PANTONE U
Blue		#606489	96	100	137	70	62	27	6	5275 C	5275 U
❖ Green		#A5A837	165	168	55	35	22	76	0	5845 C	5845 U
SECONDARY											
Sage		#8CAEA2	140	174	162	41	11	31	6	5565 C	5565 U
❖ Sage Dark		#6D8877	109	136	119	9	36	56	4	n/a	n/a
Sage Mid		#ABCLB9	171	193	18S	24	10	19	0	50%	50%
Sage Lt		#C2DLCA	194	209	202	24	14	27	0	15%	15%
BLUE SHADE & TINTS											
❖ Blue Dark		#4F4174	79	65	116	79	83	27	12	n/a	n/a
Blue Mid		#9194B6	145	148	182	56	39	13	0	50%	50%
❖ Blue Lt		#E2E8F1	226	232	241	10	6	2	0	15%	15%
GREEN SHADE & TINTS											
Green Dark		#8B8F36	139	143	54	48	31	100	8	n/a	n/a
Green Mid		#C9CA87	201	202	135	23	12	57	0	50%	50%
Green Lt		#E4E5C3	228	229	195	11	4	27	0	15%	15%
EXTRA COLORS FOR ACCENT OR FLEXIBILITY											
Red		#B7LF3C	182	31	59	20	100	77	10	1945 C	1935 U
Red Dk		#990D31	153	13	49	12	100	69	23	n/a	n/a
Red Mid		#D48A83	212	138	131	10	50	39	5	50%	50%
Red Lt		#F0CFC9	240	207	201	4	20	15	0	15%	15%
Orange		#F47721	244	119	33	4	54	100	0	152 C	152 U
Orange Dk		#D6782A	214	120	42	15	63	100	0	n/a	n/a
Orange Mid		#FCC288	252	194	136	0	27	50	0	50%	50%
Orange Lt		#FFE4CA	255	228	202	0	11	20	0	15%	15%
Yellow		#FBB416	251	180	22	0	32	100	0	130 C	130 U
Yellow Dk		#C37FL3	195	127	19	7	45	100	30	n/a	n/a
Yellow Mid		#FFCE7B	255	206	123	0	20	60	0	50%	50%
Yellow Lt		#FFEFCF	255	239	207	0	5	20	0	15%	15%
Azure		#4D8BBE	77	139	190	71	37	7	0	285 C	285 U
Azure Dk		#4377BB	67	119	187	77	51	0	0	n/a	n/a
Azure Mid		#80A5CE	128	165	206	50	26	5	0	50%	50%
Azure Lt		#B5C6DC	181	198	220	28	15	5	0	15%	15%

BLACKS, GRAYS & NEUTRALS	HEX	R	G	B	C	M	Y	K	PANTONE C	PANTONE U
Black	#333333	51	51	51	0	0	0	100	PMS Black	PMS Black
Superblack	#000000	0	0	0	60	30	30	100	n/a	n/a
❖ Gray Dk	#435148	67	81	72	70	51	64	38	80%	80%
❖ Gray Mid	#6B737D	107	115	125	61	48	40	11	60%	60%
Gray Lt	#E0E0DD	224	224	221	7	5	7	4	8%	8%
Gray Neutral	#F3F3F3	243	243	243	0	0	0	5	5%	5%
Blue Neutral	#F1F3F8	241	243	248	7	5	7	4	10%	10%
Green Neutral	#F1F2E1	241	242	225	0	0	4	4	10%	10%
Sage Neutral	#E0E8E5	224	232	229	n/a				8%	8%

WEBSITE COLORS	HEX	R	G	B
❖ Blue Dark	#4F4174	79	65	116
❖ Green	#A5A837	165	168	55
❖ Sage Dark	#6D8877	109	136	119
❖ Blue Lt	#E2E8F1	226	232	241
❖ Gray Dk	#435148	67	81	72
❖ Gray Mid	#6B737D	107	115	125

Note: web site colors are a subset of City brand colors selected for online appearance and contrast.

GRANT AGREEMENT BETWEEN CITY OF LIVERMORE AND Altamont Cruisers

FOR FISCAL YEAR 2022/2023

THIS AGREEMENT, entered into this _____ day of _____, 2022 between the City of Livermore, a municipal corporation (**"City"**), and Altamont Cruisers, a Nonprofit Corporation (**"Grantee"**).

RECITALS

A. The City is entering into a grant agreement with Grantee for fiscal year 2022/2023.

B. The Grantee's mission is to raise money for many worthy community causes, primarily to raise money to benefit the young people of the local community and help them avoid drugs and to carry on other charitable activities as allowed by law.

C. The City has determined that the goals and activities of the Grantee are consistent with the Marketing and Economic Development goals of the City and therefore should be supported through the proposed grant of $2,000.00, which will enhance and support the City's marketing end economic development efforts, including by identifying the City as an underwriter of the Grantee's work.

AGREEMENT

NOW THEREFORE, the parties agree that the above recitals are true and correct and further agree as follows:

1. Grant Activities. Grantee is responsible for its continuing operations. As part of its continuing operations, Grantee will apply the Grant funds to market and promote the City's Downtown and historic Livermore Valley Wine region through the 33rd Annual Nostalgia Day Car Show event. The City shall not be listed as a sponsor of any grantee activity or event, but shall be listed only as an "underwriter" at all times. The Grant activities covered by this Agreement is the 33rd Annual Nostalgia Day Car Show as outlined in Exhibit "A" **("Grant Activities").**

2. Grant Amount. The City will issue, and Grantee will use, funds in the amount of **$2,000.00** (the **"Grant Funds"**) to perform the activities consistent with the terms and conditions of this Grant Agreement. City will provide the Grant Funds to Grantee within 30 days of the date on which this Agreement is executed by both the City and Grantee.

3. Time for Performance. Grantee shall complete its Grant Activities prior to December 31, 2023.

4. Recognition of City Grant Funds Grantee shall acknowledge City's award of Grant Funds in all appropriate materials and media. The acknowledgment shall read, "Underwritten in part from the City of Livermore" or similar language, unless the City is a part of a list of other underwriters, in which case the City may be acknowledged as, "City of Livermore." Grantee shall

display the City's logo whenever logos are displayed, and in accordance with the City logo use guidelines, which are included as Exhibit "C" to this Grant Agreement.

5. Independent Contractor. Nothing contained in this Grant Agreement is intended to, nor shall be construed in any manner to, create or establish the relationship of employer/employee between the City and Grantee. The City shall have no role in approving, planning, sanctioning, authorizing or controlling the Grant Activities or any activity Grantee undertakes. Grantee shall at all times remain an independent contractor with respect to the services funded by this Grant Agreement. City shall be exempt from payment of all unemployment compensation, FICA, retirement, life and/or medical insurance, and Workers' Compensation Insurance stemming from any of Grantee's work, as Grantee is an independent contractor.

6. Documentation and Recordkeeping

(a) Grantee shall maintain records providing a full description of each such Grant Activity and the date(s) on which the activity occurred.

(b) Grantee shall retain all records pertinent to expenditures incurred in the performance of the Grant Activities under this Grant Agreement and expenditure of Grant Funds for a period of two (2) years after the end of any activity funded pursuant to this Grant Agreement.

7. Suspension, Termination, Return of Funds

(a) City may suspend or terminate this Grant Agreement if Grantee materially fails to comply with any term or condition of this Agreement, including but not limited to, the following: (1) failure, for any reason, of Grantee to fulfill in a timely and proper manner its obligations under this Agreement; or (2) ineffective or improper use of the Grant Funds provided under this Agreement.

(b) The City's notice of termination for cause must be provided in writing at least ten (10) calendar days before the effective date of termination.

(c) In the event the City terminates this Grant Agreement for cause, Grantee shall return all of the Grant Funds awarded which shall be submitted to the City's General Fund for reallocation.

8. Hold Harmless. Grantee agrees to defend, indemnify, and hold City, elected officials, officers, directors, employees, agents, and designated volunteers harmless from and against any and all loss, liability, damage, including reasonable attorney's and expert fees and/or court costs, arising out of the performance of the Grant Activities under this Grant Agreement, except for the gross negligence and willful misconduct of City, its elected officials, officers, directors, employees, agents, and designated volunteers.

9. Insurance. Grantee shall procure and maintain insurance during the term of this Grant Agreement in the amounts and under the terms set forth in Exhibit "B" attached hereto against all claims that may arise from or in connection with this Grant Agreement. Upon reasonable written notice, Grantee shall comply with any changes in the amounts and terms of insurance

as may be required from time-to-time by the City's Risk Manager.

10. Amendment. 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.

11. Notices. Any notice required or permitted under the terms of this Agreement shall be effective upon receipt in writing either by personal service upon the authorized agent for the party, or by mailing the notice via U.S. Mail to the party as follows:

TO CITY: City of Livermore
Attn: Brandon Cardwell,
Innovation and Economic Development Department
1052 S. Livermore Avenue
Livermore, California 94550

TO GRANTEE: 33rd Annual Nostalgia Day Car Show
Attn: Ken Reichmuth, Grant Chairperson and Tom Duprey, Board Treasurer
4266 Oleander Street, PO Box 2144
Livermore, CA 94551

12. Waiver. Failure to insist upon the strict performance of any term or conditions in this Grant 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.

13. Severability. If a court of competent jurisdiction determines a provision in this Grant Agreement is invalid, void, or unenforceable, the remaining provisions will nevertheless continue in full force and effect without being impaired in any way.

14. Counterparts. This Grant 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. Failure to deliver the original documents does not affect the enforceability of this Agreement.

****

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 Grant Agreement, effective on the date first written above.

GRANTEE: **Dated:**
Altamont Cruisers

Thomas Duprey — 10-12-2022

By: Tom Duprey
Title: Board Treasurer
Federal Identification Number: 01-0854022

CITY OF LIVERMORE: **Dated:**

_____ _____

Brandon Cardwell
Director of Innovation and Economic Development

APPROVED AS TO FORM:

_____
Assistant/City Attorney

Attachments:
- Exhibit A – Grant Activities
- Exhibit B – Insurance Requirements
- Exhibit C – City Logo Use Guidelines

Tourism and Special Event Grant Request

Grant Period: July 1, 2022 - June 30, 2023

* Applicant Name
KENNETH REICHMUTH

* **Email**
KAM4266@aol.COM

* Phone
(510) 693-0917

* Full Address
4266 OLEANDER ST
PO BOX 2144
Livermore CA 94551

Sponsoring Non-Profit Organization
ALTAMONT CRUISERS CAR CLUB

* **Name of Event**
33rd ANNUAL NOSTALGIA DAY CAR SHOW

* **Event Date(s)**
SEPTEMBER 25,2022

* **Description of Event**
CLASSIC CAR CELEBRATING NOSTALGIA CARS & FUNDRAISING FOR OUR VARIOUS CHARITIES IN THE TRI VALLEY COMMUNITY.

* **Event Location**
DOWNTOWN LIVERMORE

Previous event dates (if applicable)
9-26-21

* **How will grant be used?**
OFF SET COST OF SHOW WHICH WIL RESULT IN MORE FUNDS BEING DONATED TO CHARITIES IN OUR COMMUNITY.

City contribution to prior events (if applicable)
GRACIOUSLY GIVEN GRANTS TO HELP US SUCCEED WITH OUR SHOW

* **Estimated attendance (please indicate basis for attendance)**
19000..... VARIOUS ADVERTISING, HELP FROM DOWNTOWN INC AND PARTICIPANTS AND THEIR FAMILIES ATTENDING.

* **Estimated percentage (%) of attendees from out of town**
75

* **Describe advertising or publicity directed at non-Livermore residents**
WEBSITE, BANNERS, FLYERS, POSTERS MAILINGS, MONTHLY CRUISE IN IN LIVERMORE AND FLYERS PASSED OUT AT OTHER CAR SHOWS (EX : AMERICAN GRAFITTI CAR AND GOOD GUYS)

* **Describe how the event will benefit Livermore**
2021 WE DONATED APPOX 18,000.00 TO OUR CHARITIES IN OUR COMMUNITY. ALSO BRING MANY NON-LIVERMORE RESIDENTS INTO LIVERMORE TO ENJOY OUR RESTUARNATS AND COMMUNITY

Additional comments
ALL PROCEED FROM THE ALTAMON CRUISERS NOSTAGLIA DAY CAR SHOW GO TO CHARITIES IN OUR COMMUNITY. THESE CHARITIES ARE OPEN HEART KITCHEN, LIVERMORE POLICE DEPT EVERY 15 MINUTES PROGRAM, GRAD NIGHTS AT BOTH LIVERMORE HIGH & GRANADA HIGH. WE PROMOTE & BUY FROM ALL OUR DOWNTOWN MERCHANTS LIKE BETA PRINTING, & ALL RESTUARNATS MOTEL HOTEL TO SEE OUR GREAT COMMUNITY

EXHIBIT B

INSURANCE REQUIREMENTS

Minimum Scope and Limits of Insurance
Consultant/Contractor shall maintain limits no less than:

Commercial General Liability, including operations, products and completed operations, as applicable: **$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.

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 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. 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.

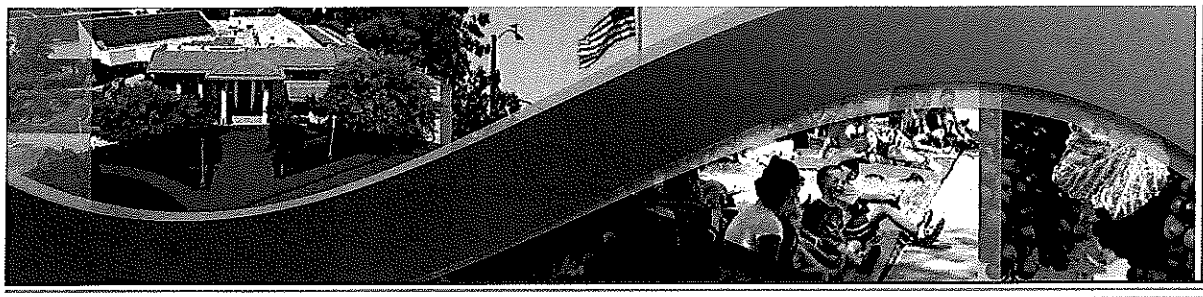


EXHIBIT B

LIVERMORE
CALIFORNIA

EXHIBIT C

BRAND GUIDELINES

CITY OF
LIVERMORE
CALIFORNIA

INTRODUCTION.....2

LOGO USAGE.....3

TYPOGRAPHY.....8

COLOR.....9

INTRODUCTION

As a unique community amongst over 400 California cities, the brand for the City of Livermore is critical—it builds recognition and trust, and it's a reflection of our spirit. Livermore has a rich history and a dynamic future—we honor both past and future by putting forth a consistent, engaging appearance for our communications and media. We are stewards of the Livermore brand. To make our communications strategy effective, we need our materials to express Livermore's core values:

RICH HISTORY ROOTED IN WESTERN HERITAGE	CONNECTION TO THE LAND THROUGH VITICULTURE AND OPEN SPACE PRESERVATION	EDUCATED AND FORWARD-THINKING COMMUNITY EXEMPLIFIED BY SCIENCE AND TECHNOLOGY	SHARING OF THE HUMAN SPIRIT THROUGH ARTS AND CULTURE

By communicating these values clearly and consistently, Livermore will benefit from a unique identity that resonates with residents, businesses, neighbors and visitors from near and far.

BRAND INTEGRITY

The way we communicate through visual, digital and written communications helps strengthen our connection with residents as well as the wider world. These Brand Guidelines are an important tool to ensure that a consistent tone, look and feel are conveyed. Ultimately, this means that the City's messaging will be more effective.

SUB-BRANDING

Sub-branding is the creation of visuals and materials that are unique to a given department, event or initiative, not fully reflecting the overall City brand appearance. For instance, the Livermore Police Department sub-brand.

Sub-branding must be in alignment with the City's overall brand. Such sub-branding may be requested for projects, events, committees or other special uses. Contact the Public Information Officer for any requests or questions regarding sub-branding.

Ultimately, it is people that maintain and protect the City's brand, so please join in the effort to uphold these guidelines. With everything the City of Livermore has to offer, each day is another chance to share that "There's More Here."

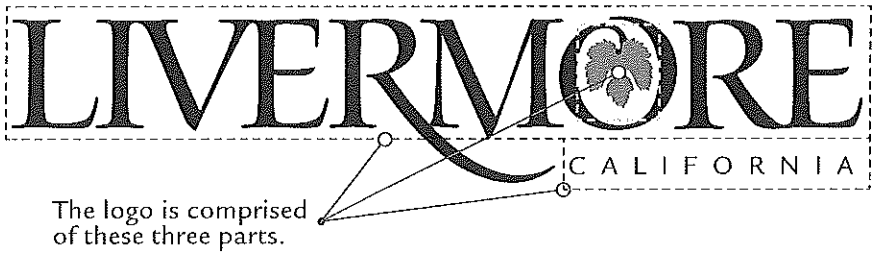
If you have any questions, please reach out to the Public Information Officer by contacting the City:

925-960-4000
communications@LivermoreCA.gov

LOGO USAGE

Standard Version

The logo is comprised of three parts: the capital letters "LIVERMORE", "CALIFORNIA" and a graphic grape leaf. The type is a customized combination of display caps and ITC Legacy Sans Serif fonts; the blue color telegraphs stability, trust and accessibility. The stylized leaf, illustrated in an earthy olive green, symbolizes the growth and vitality that lives throughout the City. The logo is incomplete if any of these elements are deleted.



Other Logo Configurations

There are special cases for which certain, approved variations are permitted for use.
These are described in more detail later in these guidelines.



Logo Coloring

The logo colors are periwinkle blue and olive green. The logo should be used in color whenever possible. Never alter colors or tints of the logo.

The medium for reproducing the logo (print vs. digital) determines which colors are specified. The printing process uses Pantone inks or 4-color process inks. Digital/web colors are based on RGB colors. The colors are shown to the right.

The color logo should be featured on a white background whenever possible to promote readability. This uncluttered look contributes to the specialness of the logo.

GREEN
PANTONE: 100% PMS 5845
4-C PROCESS: 35% cyan, 22% magenta, 76% yellow, 1% black
RGB: 174 red, 175 green, 95 blue / HEX: #aeaf5f

LIVERMORE
CALIFORNIA

BLUE
PANTONE: 100% PMS 5275
4-C PROCESS: 70% cyan, 62% magenta, 27% yellow, 6% black
RGB: 96 red, 100 green, 137 blue / HEX: #606489

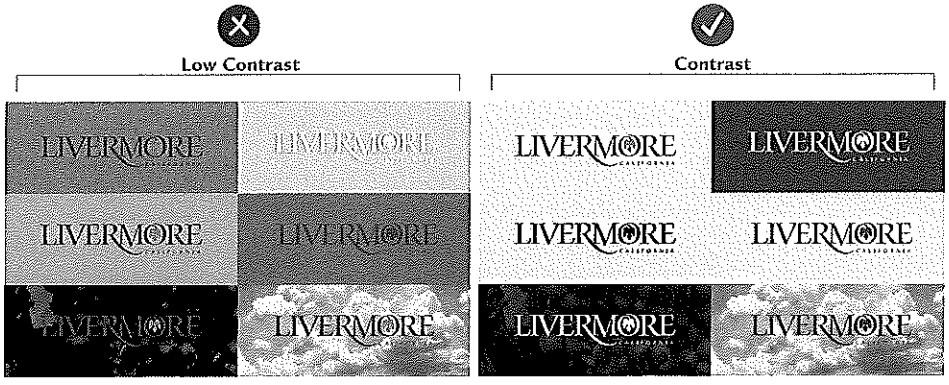
GRAY
PANTONE: 50% black
4-C PROCESS: 50% black
RGB: 153 red, 153 green, 153 blue / HEX: #90948c

LIVERMORE
CALIFORNIA

BLACK
PANTONE: 100% black
4-C PROCESS: 100% black
RGB: 51 red, 51 green, 51 blue / HEX: #050606

BACKGROUND CONTRAST

Contrast is an important part of visual accessibility. Depending on the background, a solid black logo or solid white logo is sometimes necessary. For dark backgrounds, use a white logo. For light backgrounds in which the blue/green logo does not have enough contrast, use a black logo. Consider avoiding complicated background photos. If necessary, underlay the logo with opaque box to increse contrast. When in doubt, err on the side of increasing contrast.



Expert note: for non-decorative elements, like text or information, foreground color should be roughly 4.5X brighter or darker than the background color to satisfy industry minimum WCAG AA recommendation. 7X brighter satisfies full AAA recommendation. Smaller text requires more contrast. There are numerous online tools to assist in measuring contrast.

Logo Integrity

Maintain the type font, size and spacing between the logo elements: text, icon and tagline. These elements should not be recolored or repositioned in any way other than specified in this guide.

MINIMUM SIZE

Size matters and using the logo too small compromises its integrity. Note the minimum width shown here for using the logos and icons at their smallest permissible sizes.



PROTECTIVE AREA AROUND THE LOGO

A generous protective space around the logo is an essential element of the logo's design and success. Never place another logo, type or graphic element in this clearspace. Do not place the logo on any complicated or photographic background.

The protective clearspace around the logo is determined by the height of the capital letter "L" as noted with an "x." This clearspace is required for all logo versions.



Same holds true for all logos.



VERTICALLY CENTERING THE LOGO

Note that the high visual "center of gravity" for the non-tagline logo. For cases where the non-tagline logo is vertically centered in space, note that the center line should fall in the vertical middle of the "LIVERMORE" text.



Vertically center on "Livermore" text.

Alternate Logo Configurations

STACKED

If the primary horizontal logo does not fit or look good in the available space, use the vertically stacked version.

OFFICIAL DOCUMENT VERSION

Note: "City of" text included

For use when the official name of the City of Livermore is required (e.g. financial documents, budget reports, etc.)

TAGLINE

Note: "There's More Here" text included

The tagline acts as a marketing message and should be used appropriately and discriminately when that message is indicated. This language reflects the opportunity for discovery and potential that awaits those unaware of or misguided in their impression of exploring the City. For consistency, the tagline should never be changed to a different message.

ICON OPTIONS

The Livermore brand leaf can be used decoratively, or as a stand-alone icon.

ARCHED

For very limited uses, an arched version is possible, but not encouraged. Please contact the Public Information Officer for permission.

Incorrect Logo use

Using the logo correctly as outlined in this guide ensures the strength of the logo and ultimately better represents the City of Livermore. There are many ways to misuse the logo and a few common examples are shown on this page.



✖ Do not rotate.



✖ Do not distort.

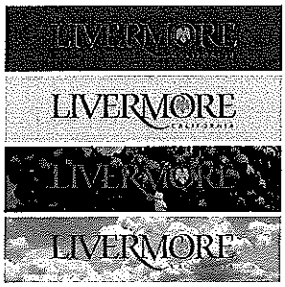


✖ Do not resize or move elements.

a



✖ Do not add special effects.



✖ Do not use low-contrast.



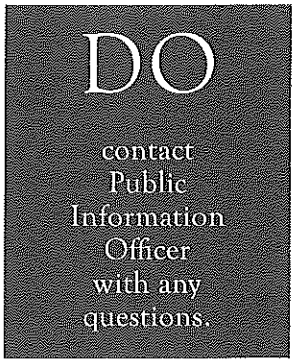
✖ Do not use too small.



✖ Do not change colors.



✖ Do not change fonts.



TYPOGRAPHY

Brand Fonts

MOST COMMONLY USED FOR PROFESSIONAL PRINTING. The City uses two fonts: Goudy, a serif font, and the ITC Legacy Sans sans-serif font family. These fonts support the overall identity and should be used whenever possible. Goudy is good for headers and special text sections, not for body text; do not use an italicized or bolded version. ITC Legacy Sans offers several weights, good for overall usage. Both font families may be used on the same piece of communication.

GOUDY

AaBbCcDdEeFfGgHhIiJjKkLlMmNnOoPpQqRrSsTtUuVvWwXxYyZz

Goudy: Regular (only) ... ALLCAPS permitted

ITC Legacy Sans

AaBbCcDdEeFfGgHhIiJjKkLlMmNnOoPpQqRrSsTtUuVvWwXxYyZz

Legacy Sans: Book	AaBbCcDdEeFfGgHhIiJjKkLlMmNnOoPpQqRrSsTtUuVvWwXxYyZz
Legacy Sans: Book Italic	*AaBbCcDdEeFfGgHhIiJjKkLlMmNnOoPpQqRrSsTtUuVvWwXxYyZz*
Legacy Sans: Medium	AaBbCcDdEeFfGgHhIiJjKkLlMmNnOoPpQqRrSsTtUuVvWwXxYyZz
Legacy Sans: Medium Italic	*AaBbCcDdEeFfGgHhIiJjKkLlMmNnOoPpQqRrSsTtUuVvWwXxYyZz*
Legacy Sans: Bold	**AaBbCcDdEeFfGgHhIiJjKkLlMmNnOoPpQqRrSsTtUuVvWwXxYyZz**

FONT ALTERNATES

MOST COMMONLY USED FOR DIGITAL OR OFFICE APPLICATIONS. Alternate fonts are identified here for cases where the the brand fonts are not technically available or advisable. The web-safe, office font Trebuchet MS is relatively consistent across devices, so is good for documents that are being shared (e.g. Microsoft Word docs or presentations). The web fonts Libre Baskerville and Nunito Sans are available free from Google and make for good fonts for the website and other applications like Canva.

Baskerville (web-safe font)

AaBbCcDdEeFfGgHhIiJjKkLlMmNnOoPpQqRrSsTtUuVvWwXxYyZz

Libre Baskerville (web font, Google, Canva)

AaBbCcDdEeFfGgHhIiJjKkLlMmNnOoPpQqRrSsTtUuVvWwXxYyZz

Trebuchet MS (web-safe font)

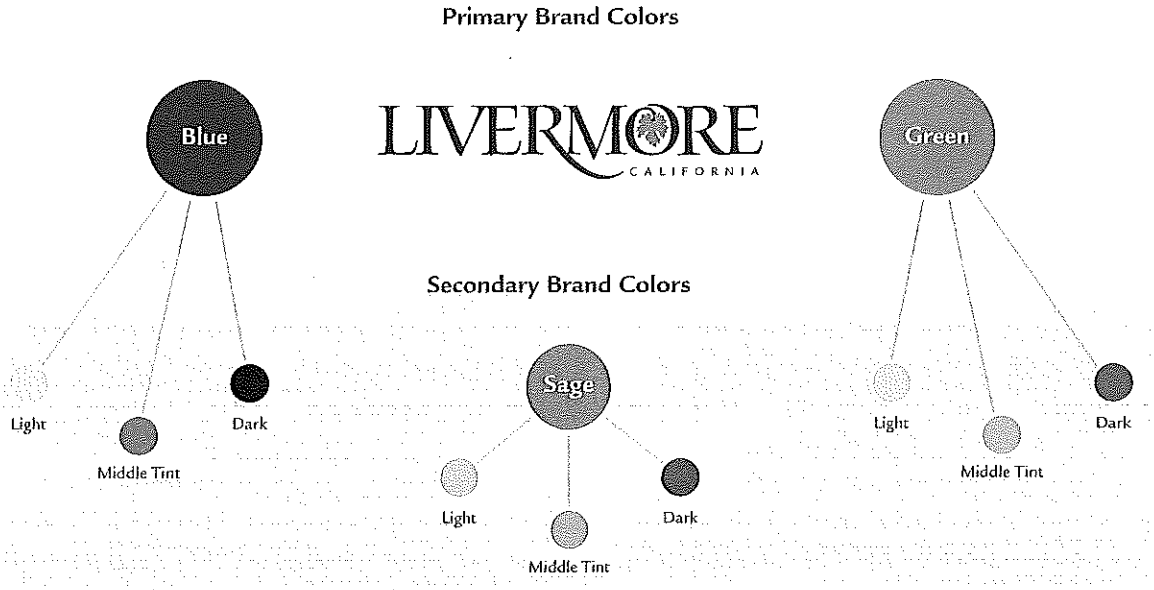
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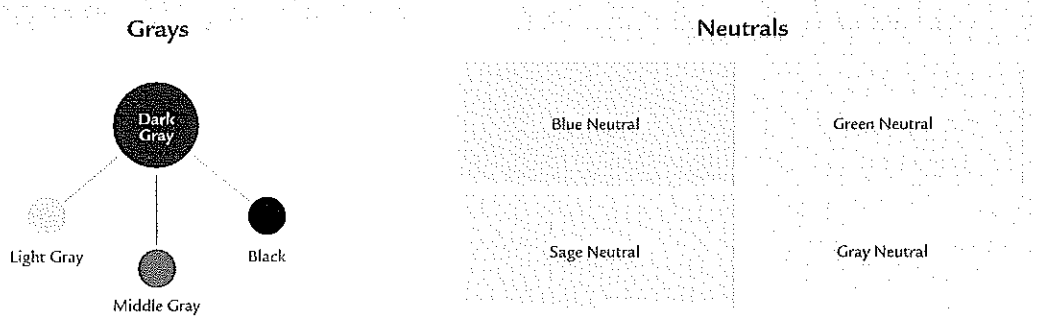
Nunito Sans (web font, Google, Canva)

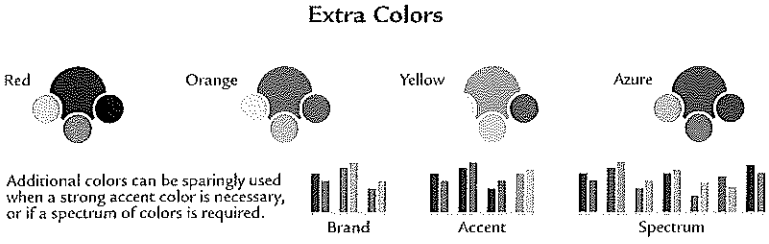
AaBbCcDdEeFfGgHhIiJjKkLlMmNnOoPpQqRrSsTtUuVvWwXxYyZz

COLOR

The **primary** Blue and Green signify the City's brand. They are the dominant colors and should be used in everything that represents the City. The **secondary** color palette provides the ancillary coloring that all together create the City's identifiable look and feel. The secondary colors are used in addition to the primary Blue and Green, not instead of them. The grays and neutrals identified here provide additional design flexibility. **Extra colors are provided to use sparingly,** when the existing brand colors simply aren't enough (e.g. as an accent when a strong highlight is needed, or when a whole spectrum is required).







Color Detail

The brand colors are defined here, for several different formats. Digital/web colors are based on RGB or Hex colors. The printing process uses Pantone inks or CMYK (4-color process) inks. PMS code 'C' indicates an ink used for coated (glossy) paper and 'U' indicates is used for non-coated finishes.

PRIMARY	PROMINENCE	HEX	R	G	B	C	M	Y	K	PANTONE C	PANTONE U
Blue		#606489	96	100	137	70	62	27	6	5275 C	5275 U
❖ Green		#A5A837	165	168	55	35	22	76	0	5845 C	5845 U
SECONDARY											
Sage		#8CAEA2	140	174	162	41	11	31	6	5565 C	5565 U
❖ Sage Dark		#6D8877	109	136	119	9	36	56	4	n/a	n/a
Sage Mid		#ABCLB9	171	193	18S	24	10	19	0	50%	50%
Sage Lt		#C2DLCA	194	209	202	24	14	27	0	15%	15%
BLUE SHADE & TINTS											
❖ Blue Dark		#4F4174	79	65	116	79	83	27	12	n/a	n/a
Blue Mid		#9194B6	145	148	182	56	39	13	0	50%	50%
❖ Blue Lt		#E2E8F1	226	232	241	10	6	2	0	15%	15%
GREEN SHADE & TINTS											
Green Dark		#8B8F36	139	143	54	48	31	100	8	n/a	n/a
Green Mid		#C9CA87	201	202	135	23	12	57	0	50%	50%
Green Lt		#E4E5C3	228	229	195	11	4	27	0	15%	15%
EXTRA COLORS FOR ACCENT OR FLEXIBILITY											
Red		#B7LF3C	182	31	59	20	100	77	10	1945 C	1935 U
Red Dk		#990D31	153	13	49	12	100	69	23	n/a	n/a
Red Mid		#D48A83	212	138	131	10	50	39	5	50%	50%
Red Lt		#F0CFC9	240	207	201	4	20	15	0	15%	15%
Orange		#F47721	244	119	33	4	54	100	0	152 C	152 U
Orange Dk		#D6782A	214	120	42	15	63	100	0	n/a	n/a
Orange Mid		#FCC288	252	194	136	0	27	50	0	50%	50%
Orange Lt		#FFE4CA	255	228	202	0	11	20	0	15%	15%
Yellow		#FBB416	251	180	22	0	32	100	0	130 C	130 U
Yellow Dk		#C37FL3	195	127	19	7	45	100	30	n/a	n/a
Yellow Mid		#FFCE7B	255	206	123	0	20	60	0	50%	50%
Yellow Lt		#FFEFCF	255	239	207	0	5	20	0	15%	15%
Azure		#4D8BBE	77	139	190	71	37	7	0	285 C	285 U
Azure Dk		#4377BB	67	119	187	77	51	0	0	n/a	n/a
Azure Mid		#80A5CE	128	165	206	50	26	5	0	50%	50%
Azure Lt		#B5C6DC	181	198	220	28	15	5	0	15%	15%

BLACKS, GRAYS & NEUTRALS	HEX	R	G	B	C	M	Y	K	PANTONE C	PANTONE U
Black	#333333	51	51	51	0	0	0	100	PMS Black	PMS Black
Superblack	#000000	0	0	0	60	30	30	100	n/a	n/a
❖ Gray Dk	#435148	67	81	72	70	51	64	38	80%	80%
❖ Gray Mid	#6B737D	107	115	125	61	48	40	11	60%	60%
Gray Lt	#EOEODD	224	224	221	7	5	7	4	8%	8%
Gray Neutral	#F3F3F3	243	243	243	0	0	0	5	5%	5%
Blue Neutral	#F1F3F8	241	243	248	7	5	7	4	10%	10%
Green Neutral	#F1F2E1	241	242	225	0	0	4	4	10%	10%
Sage Neutral	#E0E8E5	224	232	229	n/a				8%	8%

WEBSITE COLORS	HEX	R	G	B
❖ Blue Dark	#4F4174	79	65	116
❖ Green	#A5A837	165	168	55
❖ Sage Dark	#6D8877	109	136	119
❖ Blue Lt	#E2E8F1	226	232	241
❖ Gray Dk	#435148	67	81	72
❖ Gray Mid	#6B737D	107	115	125

Note: web site colors are a subset of City brand colors selected for online appearance and contrast.

GRANT AGREEMENT BETWEEN CITY OF LIVERMORE AND Wente Family Foundation for Arts Education and Darcie Kent Winery, LLC

FOR FISCAL YEAR 2022/2023

THIS AGREEMENT, entered into this _____ day of _____, 2022 between the City of Livermore, a municipal corporation **("City")**, Wente Family Foundation for Arts Education, a California Nonprofit Corporation ("Grantee"), and Darcie Kent Winery LLC, a California Limited Liability Corporation ("Organizer").

RECITALS

A. The City is entering into a grant agreement with Grantee and Organizer for fiscal year 2022/2023.

B. The Grantee's mission is to raise money to support arts education programs in the Livermore Valley. The Grantee has partnered with Organizer in delivering the Love Livermore Live Music Festival event. The Grantee will be the recipient of all the grant funds, while the Organizer will be providing the location, insurance requirements, and will be submitting the required receipts at the culmination of the event.

C. The City has determined that the goals and activities of the Grantee are consistent with the Marketing and Economic Development goals of the City and therefore should be supported through the proposed grant of $2,000.00, which will enhance and support the City's marketing end economic development efforts, including by identifying the City as an underwriter of the Grantee's work.

AGREEMENT

NOW THEREFORE, the parties agree that the above recitals are true and correct and further agree as follows:

1. Grant Activities. Grantee is responsible for its continuing operations. As part of its continuing operations, Grantee will apply the Grant funds to market and promote the City's Downtown and historic Livermore Valley Wine region through the Love Livermore Live Annual Music Festival event. The City shall not be listed as a sponsor of any grantee activity or event, but shall be listed only as an "underwriter" at all times. The Grant activities covered by this Agreement is the Love Livermore Live event as outlined in Exhibit "A" **("Grant Activities").**

2. Grant Amount. The City will issue, and Grantee will use, funds in the amount of **$2,000.00** (the **"Grant Funds**") to perform the activities consistent with the terms and conditions of this Grant Agreement. City will provide the Grant Funds to Grantee within 30 days of the date on which this Agreement is executed by both the City and Grantee.

3. Time for Performance. Grantee shall complete its Grant Activities prior to December 31,

2023.

4. Recognition of City Grant Funds Grantee shall acknowledge City's award of Grant Funds in all appropriate materials and media. The acknowledgment shall read, "Underwritten in part from the City of Livermore" or similar language, unless the City is a part of a list of other underwriters, in which case the City may be acknowledged as, "City of Livermore." Grantee shall display the City's logo whenever logos are displayed, and in accordance with the City logo use guidelines, which are included as Exhibit "C" to this Grant Agreement.

5. Independent Contractor. Nothing contained in this Grant Agreement is intended to, nor shall be construed in any manner to, create or establish the relationship of employer/employee between the City and Grantee. The City shall have no role in approving, planning, sanctioning, authorizing or controlling the Grant Activities or any activity Grantee undertakes. Grantee shall at all times remain an independent contractor with respect to the services funded by this Grant Agreement. City shall be exempt from payment of all unemployment compensation, FICA, retirement, life and/or medical insurance, and Workers' Compensation Insurance stemming from any of Grantee's work, as Grantee is an independent contractor.

6. Documentation and Recordkeeping

(a) Grantee shall maintain records providing a full description of each such Grant Activity and the date(s) on which the activity occurred.

(b) Grantee shall retain all records pertinent to expenditures incurred in the performance of the Grant Activities under this Grant Agreement and expenditure of Grant Funds for a period of two (2) years after the end of any activity funded pursuant to this Grant Agreement.

7. Suspension, Termination, Return of Funds

(a) City may suspend or terminate this Grant Agreement if Grantee materially fails to comply with any term or condition of this Agreement, including but not limited to, the following: (1) failure, for any reason, of Grantee to fulfill in a timely and proper manner its obligations under this Agreement; or (2) ineffective or improper use of the Grant Funds provided under this Agreement.

(b) The City's notice of termination for cause must be provided in writing at least ten (10) calendar days before the effective date of termination.

(c) In the event the City terminates this Grant Agreement for cause, Grantee shall return all of the Grant Funds awarded which shall be submitted to the City's General Fund for reallocation.

8. Hold Harmless. Grantee agrees to defend, indemnify, and hold City, elected officials, officers, directors, employees, agents, and designated volunteers harmless from and against any and all loss, liability, damage, including reasonable attorney's and expert fees and/or court costs, arising out of the performance of the Grant Activities under this Grant Agreement, except for the gross negligence and willful misconduct of City, its elected officials, officers, directors, employees, agents, and designated volunteers.

9. Insurance. Organizer shall procure and maintain insurance during the term of this Grant Agreement in the amounts and under the terms set forth in Exhibit "B" attached hereto against all claims that may arise from or in connection with this Grant Agreement. Upon reasonable written notice, Organizer shall comply with any changes in the amounts and terms of insurance as may be required from time-to-time by the City's Risk Manager.

10. Amendment. 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.

11. Notices. Any notice required or permitted under the terms of this Agreement shall be effective upon receipt in writing either by personal service upon the authorized agent for the party, or by mailing the notice via U.S. Mail to the party as follows:

TO CITY:
City of Livermore
Attn: Brandon Cardwell, Director
Innovation and Economic Development Department
1052 S. Livermore Avenue
Livermore, California 94550

TO GRANTEE:
Wente Family Foundation for Arts Education
Attn: Christine Wente, President
5565 Tesla Road
Livermore, CA 94550

TO ORGANIZER:
Darcie Kent Winery, LLC
Attn: David B. Kent, Manager
7000 Tesla Road
Livermore, CA 94550

12. Waiver. Failure to insist upon the strict performance of any term or conditions in this Grant 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.

13. Severability. If a court of competent jurisdiction determines a provision in this Grant Agreement is invalid, void, or unenforceable, the remaining provisions will nevertheless continue in full force and effect without being impaired in any way.

14. Counterparts. This Grant 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. Failure to deliver the original documents does not affect the enforceability of this Agreement.

****

In concurrence and witness whereof, and in recognition of the mutual consideration provided therefore, the parties have executed this Grant Agreement, effective on the date first written above.

GRANTEE:
Wente Foundation for Arts Education

Christine Wente
By:Christine Wente
Title:President
Federal Identification Number: 45-4429851

Dated: 9/20/22

ORGANIZER:
Darcie Kent Winery LLC

By: David Kent
Title: Manager
Federal Identification Number: 85-3519193

Dated: 20 SEP 2022

CITY OF LIVERMORE:

Brandon Cardwell
Director of Innovation and Economic Development

Dated: _____

APPROVED AS TO FORM:

Assistant/City Attorney

Attachments:
- Exhibit A – Grant Activities
- Exhibit B – Insurance Requirements
- Exhibit C – City Logo Use Guidelines

Exhibit A

Tourism and Special Event Grant Request

Grant Period: July 1, 2022 - June 30, 2023

* Applicant Name
Jonny Williams

* **Email**
jondanwill@gmail.com

* Phone
(925) 548-4533

* Full Address
2217 Shiraz Common
Livermore CA 94550

Sponsoring Non-Profit Organization
Darcie Kent Estate Winery - The Wente Foundation for the Arts

* **Name of Event**
Love Livermore Live

* **Event Date(s)**
Saturday, October 8, 2022

* **Description of Event**
Love Livermore Live is an annual music festival fundraising event for Livermore Schools. The event is a day of community, culture, and connection, bringing local businesses, vendors, musicians, and community members together to enjoy local music and raise money for Livermore Schools. The event puts a spotlight on Livermore's exquisite local musicians, businesses, wine, community and culture. In partnership with the Wente Foundation for the Arts, we have been able to raise over $30,000 in contributions to Livermore Schools, which have helped to purchase band uniforms, musical instruments, and choral risers at our high schools. Our 2022 event will be our 4th annual. More information can be found at www.lovelivermorelive.com.

* **Event Location**
Darcie Kent Estate Winery 7000 Tesla Rd, Livermore, CA 94550

Previous event dates (if applicable)
October 9th, 2021, September 12th, 2020(live stream event, not in-person), September 7th, 2019

* **How will grant be used?**
We plan to use the grant to help cover expenses for renting staging, hiring Primetime Entertainment to bring and run the sound for 3 stages, and help to pay local musicians to perform.

City contribution to prior events (if applicable)
None needed, though collaboration is welcomed. Advertisement is appreciated.

* **Estimated attendance (please indicate basis for attendance)**
Our 2019 event had 417 tickets purchased and a total of 512 attendees. Last year, in 2021 we capped the attendance at 250 due to the pandemic and we sold out. We aim to sell 400 tickets this year, but have a max attendance of 500 (guests, employees, musicians...) In 2019 13% of attendees were not Livermore residents. In 2021 40% of attendees were not Livermore residents. We plan again to reach the 35%-40% mark of total attendees being from out of town.

* **Estimated percentage (%) of attendees from out of town**
40

* **Describe advertising or publicity directed at non-Livermore residents**
We have a robust marketing platform. We have an Instagram handle @lovelivermorelive with 1,425 followers. "Love Livermore" who are a partnership of local realtors have a following of 3,692 on Instagram @lovelivermore. Love Livermore also has a Facebook group of 14.2k members. They also have a mailing list that reaches thousands focused on selling the magic that is Livermore and offering prospective home buyers an in depth taste of what our beautiful community has to offer. Many of these recipients are not local residents, rather prospective residents.

* **Describe how the event will benefit Livermore**
I am a product of Livermore Schools, a local elementary teacher at Arroyo Seco, and a local musician (business owner). The arts and music programs in our schools currently are not as robust as the opportunities that were afforded to me as a student many years ago. Our hope is to not only raise more money for music and the arts in school, but also give a stage to local musicians to showcase their original art. Our hopes are that students will be able to envision themselves performing their original art on our stage one day, continuing the cycle of local growth and giving back to local original art. This event benefits Livermore as it gets to showcase all of our rich culture to the broader bay-area; local food, wine, original music. Our mantra for the festival is "A celebration of community, culture, and connection."

Additional comments
Thanks for your consideration. Please contact me with any questions you may have. We feel that we are a strong candidate for this grant and we thank you for the opportunity. With love, Jonny and the Love Livermore Live Team

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. Liquor Liability:
   $1,000,000 per occurrence.

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.

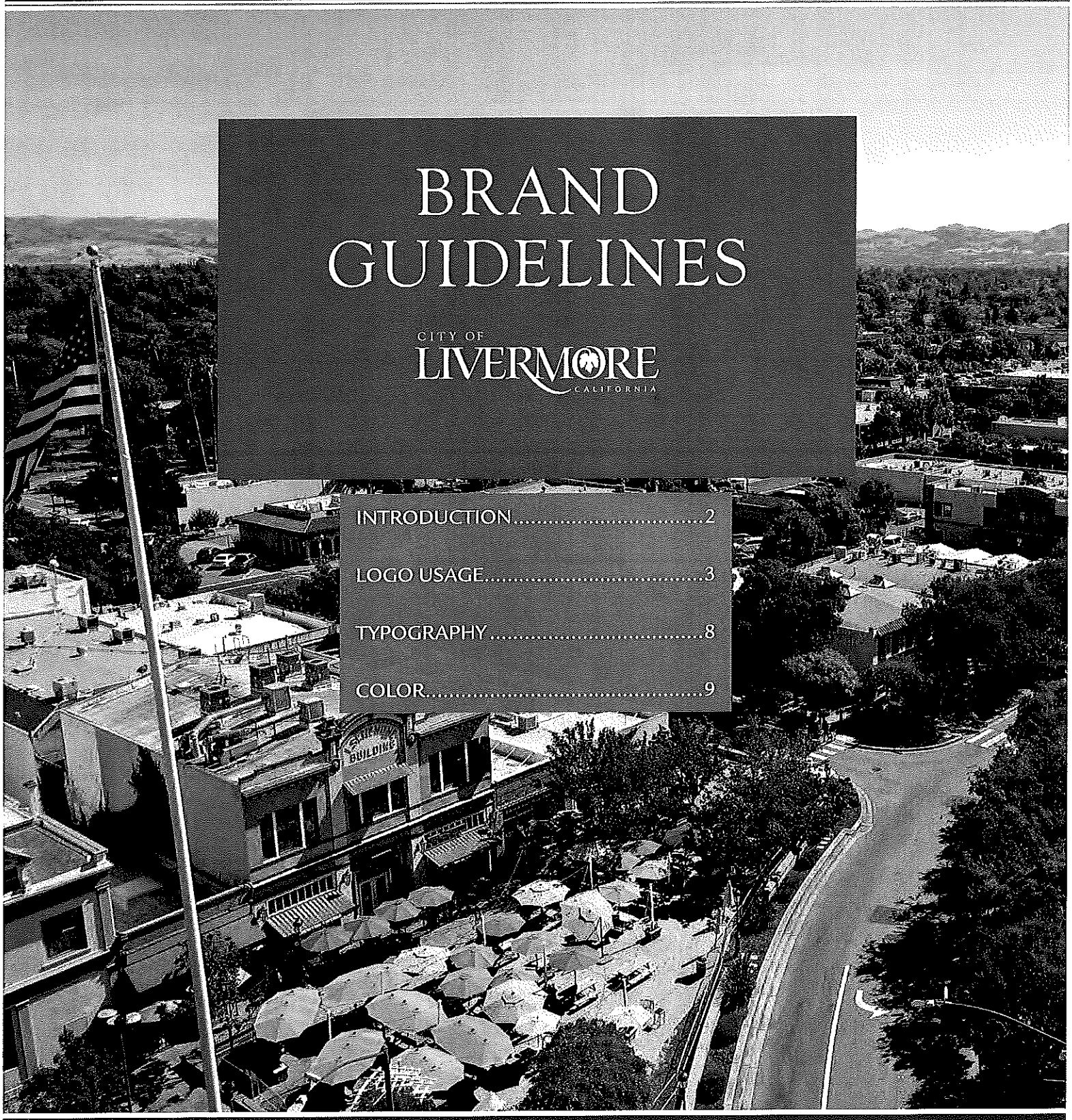
3. Any failure to comply with reporting or other provisions of the policy, including breaches of warranties, shall not affect coverage provided to the City of Livermore, its officers, officials, employees, or volunteers.
4. The Consultant's/Contractor's insurance shall apply separately to each insured 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.

EXHIBIT C

LIVERMORE
CALIFORNIA



BRAND GUIDELINES

CITY OF
LIVERMORE
CALIFORNIA

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INTRODUCTION

As a unique community amongst over 400 California cities, the brand for the City of Livermore is critical—it builds recognition and trust, and it's a reflection of our spirit. Livermore has a rich history and a dynamic future—we honor both past and future by putting forth a consistent, engaging appearance for our communications and media. We are stewards of the Livermore brand. To make our communications strategy effective, we need our materials to express Livermore's core values:

RICH HISTORY ROOTED IN WESTERN HERITAGE

CONNECTION TO THE LAND THROUGH VITICULTURE AND OPEN SPACE PRESERVATION

EDUCATED AND FORWARD-THINKING COMMUNITY EXEMPLIFIED BY SCIENCE AND TECHNOLOGY

SHARING OF THE HUMAN SPIRIT THROUGH ARTS AND CULTURE

By communicating these values clearly and consistently, Livermore will benefit from a unique identity that resonates with residents, businesses, neighbors and visitors from near and far.

BRAND INTEGRITY

The way we communicate through visual, digital and written communications helps strengthen our connection with residents as well as the wider world. These Brand Guidelines are an important tool to ensure that a consistent tone, look and feel are conveyed. Ultimately, this means that the City's messaging will be more effective.

SUB-BRANDING

Sub-branding is the creation of visuals and materials that are unique to a given department, event or initiative, not fully reflecting the overall City brand appearance. For instance, the Livermore Police Department sub-brand.

Sub-branding must be in alignment with the City's overall brand. Such sub-branding may be requested for projects, events, committees or other special uses. Contact the Public Information Officer for any requests or questions regarding sub-branding.

Ultimately, it is people that maintain and protect the City's brand, so please join in the effort to uphold these guidelines. With everything the City of Livermore has to offer, each day is another chance to share that "There's More Here."

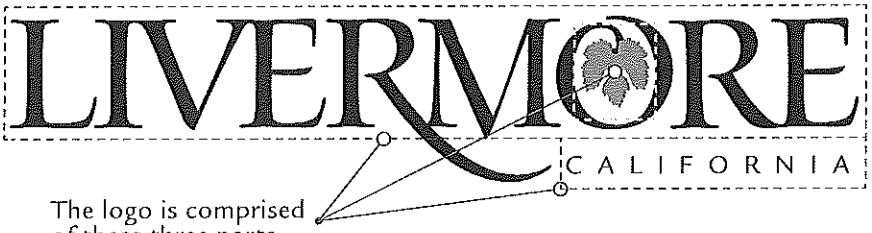
If you have any questions, please reach out to the Public Information Officer by contacting the City:

925-960-4000
communications@LivermoreCA.gov

LOGO USAGE

Standard Version

The logo is comprised of three parts: the capital letters "LIVERMORE", "CALIFORNIA" and a graphic grape leaf. The type is a customized combination of display caps and ITC Legacy Sans Serif fonts; the blue color telegraphs stability, trust and accessibility. The stylized leaf, illustrated in an earthy olive green, symbolizes the growth and vitality that lives throughout the City. The logo is incomplete if any of these elements are deleted.



Other Logo Configurations

There are special cases for which certain, approved variations are permitted for use.
These are described in more detail later in these guidelines.



Logo Coloring

The logo colors are periwinkle blue and olive green. The logo should be used in color whenever possible. Never alter colors or tints of the logo.

The medium for reproducing the logo (print vs. digital) determines which colors are specified. The printing process uses Pantone inks or 4-color process inks. Digital/web colors are based on RGB colors. The colors are shown to the right.

The color logo should be featured on a white background whenever possible to promote readability. This uncluttered look contributes to the specialness of the logo.

GREEN
PANTONE: 100% PMS 5845
4-C PROCESS: 35% cyan, 22% magenta, 76% yellow, 1% black
RGB: 174 red, 175 green, 95 blue / HEX: #aeaf5f

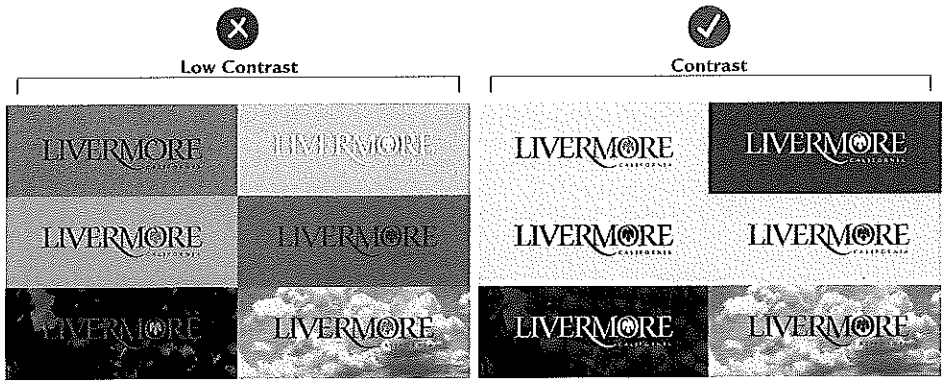
BLUE
PANTONE: 100% PMS 5275
4-C PROCESS: 70% cyan, 62% magenta, 27% yellow, 6% black
RGB: 96 red, 100 green, 137 blue / HEX: #606489

GRAY
PANTONE: 50% black
4-C PROCESS: 50% black
RGB: 153 red, 153 green, 153 blue / HEX: #90948c

BLACK
PANTONE: 100% black
4-C PROCESS: 100% black
RGB: 51 red, 51 green, 51 blue / HEX: #050606

BACKGROUND CONTRAST

Contrast is an important part of visual accessibility. Depending on the background, a solid black logo or solid white logo is sometimes necessary. For dark backgrounds, use a white logo. For light backgrounds in which the blue/green logo does not have enough contrast, use a black logo. Consider avoiding complicated background photos. If necessary, underlay the logo with opaque box to increse contrast. When in doubt, err on the side of increasing contrast.



Expert note: for non-decorative elements, like text or information, foreground color should be roughly 4.5X brighter or darker than the background color to satisfy industry minimum WCAG AA recommendation. 7X brighter satisfies full AAA recommendation. Smaller text requires more contrast. There are numerous online tools to assist in measuring contrast.

Logo Integrity

Maintain the type font, size and spacing between the logo elements: text, icon and tagline. These elements should not be recolored or repositioned in any way other than specified in this guide.

MINIMUM SIZE

Size matters and using the logo too small compromises its integrity. Note the minimum width shown here for using the logos and icons at their smallest permissible sizes.



PROTECTIVE AREA AROUND THE LOGO

A generous protective space around the logo is an essential element of the logo's design and success. Never place another logo, type or graphic element in this clearspace. Do not place the logo on any complicated or photographic background.

The protective clearspace around the logo is determined by the height of the capital letter "L" as noted with an "x." This clearspace is required for all logo versions.



Same holds true for all logos.

VERTICALLY CENTERING THE LOGO

Note that the high visual "center of gravity" for the non-tagline logo. For cases where the non-tagline logo is vertically centered in space, note that the center line should fall in the vertical middle of the "LIVERMORE" text.



Vertically center on "Livermore" text.

Alternate Logo Configurations

STACKED

If the primary horizontal logo does not fit or look good in the available space, use the vertically stacked version.



OFFICIAL DOCUMENT VERSION

Note: "City of" text included

For use when the official name of the City of Livermore is required (e.g. financial documents, budget reports, etc.)



TAGLINE

Note: "There's More Here" text included

The tagline acts as a marketing message and should be used appropriately and discriminately when that message is indicated. This language reflects the opportunity for discovery and potential that awaits those unaware of or misguided in their impression of exploring the City. For consistency, the tagline should never be changed to a different message.



ICON OPTIONS

The Livermore brand leaf can be used decoratively, or as a stand-alone icon.



ARCHED

For very limited uses, an arched version is possible, but not encouraged. Please contact the Public Information Officer for permission.



Incorrect Logo use

Using the logo correctly as outlined in this guide ensures the strength of the logo and ultimately better represents the City of Livermore. There are many ways to misuse the logo and a few common examples are shown on this page.



✖ Do not rotate.



✖ Do not distort.

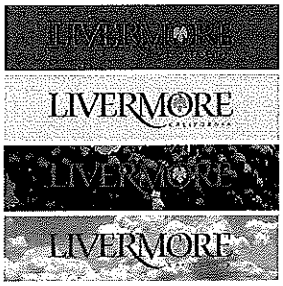


✖ Do not resize or move elements.

a



✖ Do not add special effects.



✖ Do not use low-contrast.



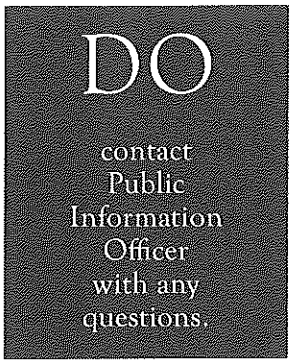
✖ Do not use too small.



✖ Do not change colors.



✖ Do not change fonts.



TYPOGRAPHY

Brand Fonts

MOST COMMONLY USED FOR PROFESSIONAL PRINTING. The City uses two fonts: Goudy, a serif font, and the ITC Legacy Sans sans-serif font family. These fonts support the overall identity and should be used whenever possible. Goudy is good for headers and special text sections, not for body text; do not use an italicized or bolded version. ITC Legacy Sans offers several weights, good for overall usage. Both font families may be used on the same piece of communication.

GOUDY

AaBbCcDdEeFfGgHhIiJjKkLlMmNnOoPpQqRrSsTtUuVvWwXxYyZz

Goudy: Regular (only) ... ALLCAPS permitted

ITC Legacy Sans

AaBbCcDdEeFfGgHhIiJjKkLlMmNnOoPpQqRrSsTtUuVvWwXxYyZz

Legacy Sans: Book	AaBbCcDdEeFfGgHhIiJjKkLlMmNnOoPpQqRrSsTtUuVvWwXxYyZz
Legacy Sans: Book Italic	*AaBbCcDdEeFfGgHhIiJjKkLlMmNnOoPpQqRrSsTtUuVvWwXxYyZz*
Legacy Sans: Medium	AaBbCcDdEeFfGgHhIiJjKkLlMmNnOoPpQqRrSsTtUuVvWwXxYyZz
Legacy Sans: Medium Italic	*AaBbCcDdEeFfGgHhIiJjKkLlMmNnOoPpQqRrSsTtUuVvWwXxYyZz*
Legacy Sans: Bold	**AaBbCcDdEeFfGgHhIiJjKkLlMmNnOoPpQqRrSsTtUuVvWwXxYyZz**

FONT ALTERNATES

MOST COMMONLY USED FOR DIGITAL OR OFFICE APPLICATIONS. Alternate fonts are identified here for cases where the the brand fonts are not technically available or advisable. The web-safe, office font Trebuchet MS is relatively consistent across devices, so is good for documents that are being shared (e.g. Microsoft Word docs or presentations). The web fonts Libre Baskerville and Nunito Sans are available free from Google and make for good fonts for the website and other applications like Canva.

Baskerville (web-safe font)

AaBbCcDdEeFfGgHhIiJjKkLlMmNnOoPpQqRrSsTtUuVvWwXxYyZz

Libre Baskerville (web font, Google, Canva)

AaBbCcDdEeFfGgHhIiJjKkLlMmNnOoPpQqRrSsTtUuVvWwXxYyZz

Trebuchet MS (web-safe font)

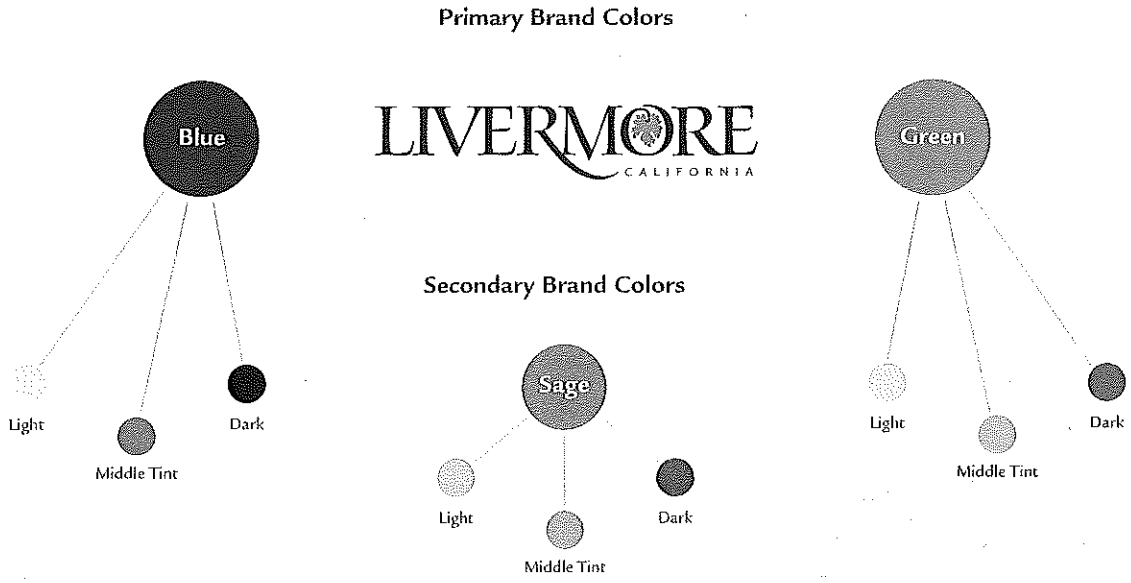
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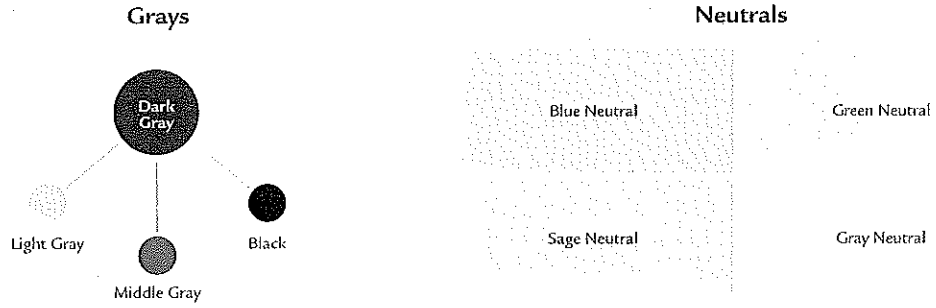
Nunito Sans (web font, Google, Canva)

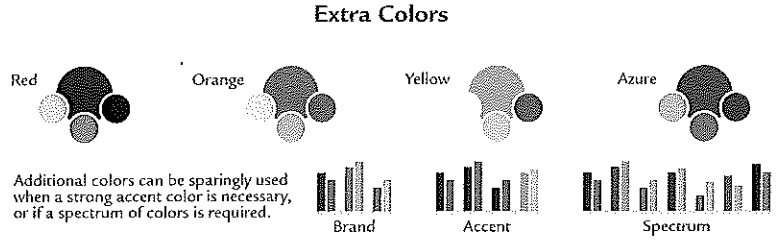
AaBbCcDdEeFfGgHhIiJjKkLlMmNnOoPpQqRrSsTtUuVvWwXxYyZz

COLOR

The **primary** Blue and Green signify the City's brand. They are the dominant colors and should be used in everything that represents the City. The **secondary** color palette provides the ancillary coloring that all together create the City's identifiable look and feel. The secondary colors are used in addition to the primary Blue and Green, not instead of them. The grays and neutrals identified here provide additional design flexibility. **Extra colors are provided to use sparingly,** when the existing brand colors simply aren't enough (e.g. as an accent when a strong highlight is needed, or when a whole spectrum is required).







Color Detail

The brand colors are defined here, for several different formats. Digital/web colors are based on RGB or Hex colors. The printing process uses Pantone inks or CMYK (4-color process) inks. PMS code 'C' indicates an ink used for coated (glossy) paper and 'U' indicates is used for non-coated finishes.

PRIMARY	PROMINENCE	HEX	R	G	B	C	M	Y	K	PANTONE C	PANTONE U
Blue		#606489	96	100	137	70	62	27	6	5275 C	5275 U
❖ Green		#A5A837	165	168	55	35	22	76	0	5845 C	5845 U
SECONDARY											
Sage		#8CAEA2	140	174	162	41	11	31	6	5565 C	5565 U
❖ Sage Dark		#6D8877	109	136	119	9	36	56	4	n/a	n/a
Sage Mid		#ABCLB9	171	193	18S	24	10	19	0	50%	50%
Sage Lt		#C2DLCA	194	209	202	24	14	27	0	15%	15%
BLUE SHADE & TINTS											
❖ Blue Dark		#4F4174	79	65	116	79	83	27	12	n/a	n/a
Blue Mid		#9194B6	145	148	182	56	39	13	0	50%	50%
❖ Blue Lt		#E2E8F1	226	232	241	10	6	2	0	15%	15%
GREEN SHADE & TINTS											
Green Dark		#8B8F36	139	143	54	48	31	100	8	n/a	n/a
Green Mid		#C9CA87	201	202	135	23	12	57	0	50%	50%
Green Lt		#E4E5C3	228	229	195	11	4	27	0	15%	15%
EXTRA COLORS FOR ACCENT OR FLEXIBILITY											
Red		#B7LF3C	182	31	59	20	100	77	10	1945 C	1935 U
Red Dk		#990D31	153	13	49	12	100	69	23	n/a	n/a
Red Mid		#D48A83	212	138	131	10	50	39	5	50%	50%
Red Lt		#F0CFC9	240	207	201	4	20	15	0	15%	15%
Orange		#F47721	244	119	33	4	54	100	0	152 C	152 U
Orange Dk		#D6782A	214	120	42	15	63	100	0	n/a	n/a
Orange Mid		#FCC288	252	194	136	0	27	50	0	50%	50%
Orange Lt		#FFE4CA	255	228	202	0	11	20	0	15%	15%
Yellow		#FBB416	251	180	22	0	32	100	0	130 C	130 U
Yellow Dk		#C37FL3	195	127	19	7	45	100	30	n/a	n/a
Yellow Mid		#FFCE7B	255	206	123	0	20	60	0	50%	50%
Yellow Lt		#FFEFCF	255	239	207	0	5	20	0	15%	15%
Azure		#4D8BBE	77	139	190	71	37	7	0	285 C	285 U
Azure Dk		#4377BB	67	119	187	77	51	0	0	n/a	n/a
Azure Mid		#80A5CE	128	165	206	50	26	5	0	50%	50%
Azure Lt		#B5C6DC	181	198	220	28	15	5	0	15%	15%

BLACKS, GRAYS & NEUTRALS	HEX	R	G	B	C	M	Y	K	PANTONE C	PANTONE U
Black	#333333	51	51	51	0	0	0	100	PMS Black	PMS Black
Superblack	#000000	0	0	0	60	30	30	100	n/a	n/a
❖ Gray Dk	#435148	67	81	72	70	51	64	38	80%	80%
❖ Gray Mid	#6B737D	107	115	125	61	48	40	11	60%	60%
Gray Lt	#EOEODD	224	224	221	7	5	7	4	8%	8%
Gray Neutral	#F3F3F3	243	243	243	0	0	0	5	5%	5%
Blue Neutral	#F1F3F8	241	243	248	7	5	7	4	10%	10%
Green Neutral	#F1F2E1	241	242	225	0	0	4	4	10%	10%
Sage Neutral	#E0E8E5	224	232	229	n/a				8%	8%

WEBSITE COLORS	HEX	R	G	B
❖ Blue Dark	#4F4174	79	65	116
❖ Green	#A5A837	165	168	55
❖ Sage Dark	#6D8877	109	136	119
❖ Blue Lt	#E2E8F1	226	232	241
❖ Gray Dk	#435148	67	81	72
❖ Gray Mid	#6B737D	107	115	125

Note: web site colors are a subset of City brand colors selected for online appearance and contrast.

GRANT AGREEMENT BETWEEN CITY OF LIVERMORE AND Rotary Club of Livermore

FOR FISCAL YEAR 2022/2023

THIS AGREEMENT, entered into this _____ day of _____, 2022 between the City of Livermore, a municipal corporation **("City")**, and Rotary Club of Livermore, a Nonprofit Corporation (**"Grantee"**).

RECITALS

A. The City is entering into a grant agreement with Grantee for fiscal year 2022/2023.

B. The Grantee's mission is to honor our Town's "Western Heritage", support the "Livermore Rodeo", and to provide a "Fun Event" to our community.

C. The City has determined that the goals and activities of the Grantee are consistent with the Marketing and Economic Development goals of the City and therefore should be supported through the proposed grant of $2,000.00, which will enhance and support the City's marketing end economic development efforts, including by identifying the City as an underwriter of the Grantee's work.

AGREEMENT

NOW THEREFORE, the parties agree that the above recitals are true and correct and further agree as follows:

1. Grant Activities. Grantee is responsible for its continuing operations. As part of its continuing operations, Grantee will apply the Grant funds to market and promote the City's Downtown and historic Livermore Valley Wine region through Livermore Rotary Parade event. The City shall not be listed as a sponsor of any grantee activity or event, but shall be listed only as an "underwriter" at all times. The Grant activities covered by this Agreement is the Livermore Rodeo Parade as outlined in Exhibit "A" **("Grant Activities").**

2. Grant Amount. The City will issue, and Grantee will use, funds in the amount of **$2,000.00** (the **"Grant Funds"**) to perform the activities consistent with the terms and conditions of this Grant Agreement. City will provide the Grant Funds to Grantee within 30 days of the date on which this Agreement is executed by both the City and Grantee.

3. Time for Performance. Grantee shall complete its Grant Activities prior to December 31, 2023.

4. Recognition of City Grant Funds Grantee shall acknowledge City's award of Grant Funds in all appropriate materials and media. The acknowledgment shall read, "Underwritten in part from the City of Livermore" or similar language, unless the City is a part of a list of other underwriters, in which case the City may be acknowledged as, "City of Livermore." Grantee shall display the City's logo whenever logos are displayed, and in accordance with the City logo use

guidelines, which are included as Exhibit "C" to this Grant Agreement.

5. Independent Contractor. Nothing contained in this Grant Agreement is intended to, nor shall be construed in any manner to, create or establish the relationship of employer/employee between the City and Grantee. The City shall have no role in approving, planning, sanctioning, authorizing or controlling the Grant Activities or any activity Grantee undertakes. Grantee shall at all times remain an independent contractor with respect to the services funded by this Grant Agreement. City shall be exempt from payment of all unemployment compensation, FICA, retirement, life and/or medical insurance, and Workers' Compensation Insurance stemming from any of Grantee's work, as Grantee is an independent contractor.

6. Documentation and Recordkeeping

(a) Grantee shall maintain records providing a full description of each such Grant Activity and the date(s) on which the activity occurred.

(b) Grantee shall retain all records pertinent to expenditures incurred in the performance of the Grant Activities under this Grant Agreement and expenditure of Grant Funds for a period of two (2) years after the end of any activity funded pursuant to this Grant Agreement.

7. Suspension, Termination, Return of Funds

(a) City may suspend or terminate this Grant Agreement if Grantee materially fails to comply with any term or condition of this Agreement, including but not limited to, the following: (1) failure, for any reason, of Grantee to fulfill in a timely and proper manner its obligations under this Agreement; or (2) ineffective or improper use of the Grant Funds provided under this Agreement.

(b) The City's notice of termination for cause must be provided in writing at least ten (10) calendar days before the effective date of termination.

(c) In the event the City terminates this Grant Agreement for cause, Grantee shall return all of the Grant Funds awarded which shall be submitted to the City's General Fund for reallocation.

8. Hold Harmless. Grantee agrees to defend, indemnify, and hold City, elected officials, officers, directors, employees, agents, and designated volunteers harmless from and against any and all loss, liability, damage, including reasonable attorney's and expert fees and/or court costs, arising out of the performance of the Grant Activities under this Grant Agreement, except for the gross negligence and willful misconduct of City, its elected officials, officers, directors, employees, agents, and designated volunteers.

9. Insurance. Grantee shall procure and maintain insurance during the term of this Grant Agreement in the amounts and under the terms set forth in Exhibit "B" attached hereto against all claims that may arise from or in connection with this Grant Agreement. Upon reasonable written notice, Grantee shall comply with any changes in the amounts and terms of insurance as may be required from time-to-time by the City's Risk Manager.

10. Amendment. 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.

11. Notices. Any notice required or permitted under the terms of this Agreement shall be effective upon receipt in writing either by personal service upon the authorized agent for the party, or by mailing the notice via U.S. Mail to the party as follows:

TO CITY:
City of Livermore
Attn: Brandon Cardwell,
Innovation and Economic Development Department
1052 S. Livermore Avenue
Livermore, California 94550

TO GRANTEE:
Livermore Rodeo Parade
Attn: Sblend A. Sblendorio, President
Rotary Club of Livermore
P.O. Box 845
Livermore, CA 94551

12. Waiver. Failure to insist upon the strict performance of any term or conditions in this Grant 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.

13. Severability. If a court of competent jurisdiction determines a provision in this Grant Agreement is invalid, void, or unenforceable, the remaining provisions will nevertheless continue in full force and effect without being impaired in any way.

14. Counterparts. This Grant 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. Failure to deliver the original documents does not affect the enforceability of this Agreement.

****

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 Grant Agreement, effective on the date first written above.

GRANTEE:
Rotary Club of Livermore

Dated:

9-14-22

By: Sblend Sblendorio
Title: President
Federal Identification Number: 94-6107859

CITY OF LIVERMORE:

Dated:

Brandon Cardwell
Director of Innovation and Economic Development

APPROVED AS TO FORM:

Assistant/City Attorney

Attachments:

Exhibit A – Grant Activities
Exhibit B – Insurance Requirements
Exhibit C – City Logo Use Guidelines

Exhibit A

Tourism and Special Event Grant Request

Grant Period: July 1, 2022 - June 30, 2023

* Applicant Name
Rotary Club of Livermore Paul Szmyd, DDS

*** Email**
Livermoreparade@yahoo.com

* Phone
(924) 447-7892

* Full Address
Livermore Rodeo Parade
P.O. Box 845
Livermore CA 94551

Sponsoring Non-Profit Organization
Rotary Club of Livermore

*** Name of Event**
Livermore Rotary Rodeo Parade

*** Event Date(s)**
June 10th 2023

*** Description of Event**
This will be the 105 Livermore Rodeo Parade. In 2022, the Livermore Police Dept. estimated the parade have 15,000 people attend.

*** Event Location**
Downtown Livermore, on 2nd Street between Livermore Avenue and P Street

Previous event dates (if applicable)
Always on the 2nd Saturday of June .

*** How will grant be used?**
To offset the cost of Advertising, Equipment, Office Supplies, Decorations, Cleanup, and Public Safety.

City contribution to prior events (if applicable)
We are scheduled to receive $2000 from the Cities 2021 Tourism Grant

*** Estimated attendance (please indicate basis for attendance)**
Greater them 15,000 people

*** Estimated percentage (%) of attendees from out of town**
13

*** Describe advertising or publicity directed at non-Livermore residents**
Radio, Newspaper, Internet, Posters, Banners, and Direct Mail

*** Describe how the event will benefit Livermore**
The Livermore Rodeo Parade is a major City Event each year. The Parade promotes our communities Western Heritage, supports the Livermore Rodeo, and provides a Fun, Family event showcasing our Community

Additional comments
The Livermore Rotary Rodeo Parade is held each year on the second Saturday of June in conjunction with the Livermore Rodeo. With the advent of the Livermore Rodeo starting in 1918, the Rodeo Parade has run simultaneous ever since. Beginning in 1977, the Rotary Club of Livermore has taken over hosting the now; Livermore Rotary Rodeo Parade. The Parade occurs along Second Street in downtown Livermore and will begin promptly at 10:00 AM. The parade includes an eclectic mix of marching bands, equestrian units, clowns, local businesses, color guard units, Cub & Boy Scout packs, Brownies & Girl Scouts, antique vehicles, dance groups, military personnel and much, much more! The Rodeo Parade is funded entirely by entry fees and contributions from sponsors and operates as a non-profit group under the auspices of the Rotary Club of Livermore. The parade entries vary from year to year and average over Two Thousand parade participants. According to the Livermore Police Department, parade spectators average from twelve to eighteen thousand spectators. The Parade ends around 12:00 noon. Many of the spectators and participants go to the local downtown restaurants to have lunch and also shop downtown following the parade. We want people to have plenty of time eat and shop before going to the Livermore Rodeo which starts in the afternoon. The Rodeo Parade is an event with historical significance to the community. Our major focus for this event is to create a community/family fun event. The Rodeo Parade directly benefits the Downtown business district core by attracting an estimated twelve to sixteen thousand people into the area. As previously stated, the parade ends at around 12:00. Some of our parade entries and spectators come to Livermore from out of town on the day of the parade. Following the parade

they also enjoy our downtown then go to the Livermore Rodeo, expanding their economic impact on the area.

EXHIBIT B

INSURANCE REQUIREMENTS

Minimum Scope and Limits of Insurance
Consultant/Contractor shall maintain limits no less than:

Commercial General Liability, including operations, products and completed operations, as applicable: **$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.

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 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. 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.

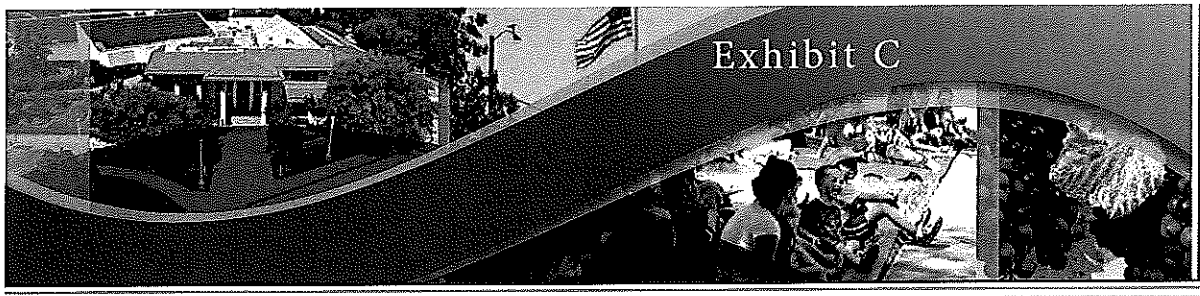


EXHIBIT D

LIVERMORE
CALIFORNIA

BRAND GUIDELINES

CITY OF
LIVERMORE
CALIFORNIA

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INTRODUCTION

As a unique community amongst over 400 California cities, the brand for the City of Livermore is critical—it builds recognition and trust, and it's a reflection of our spirit. Livermore has a rich history and a dynamic future—we honor both past and future by putting forth a consistent, engaging appearance for our communications and media. We are stewards of the Livermore brand. To make our communications strategy effective, we need our materials to express Livermore's core values:

RICH HISTORY ROOTED IN WESTERN HERITAGE

CONNECTION TO THE LAND THROUGH VITICULTURE AND OPEN SPACE PRESERVATION

EDUCATED AND FORWARD-THINKING COMMUNITY EXEMPLIFIED BY SCIENCE AND TECHNOLOGY

SHARING OF THE HUMAN SPIRIT THROUGH ARTS AND CULTURE

By communicating these values clearly and consistently, Livermore will benefit from a unique identity that resonates with residents, businesses, neighbors and visitors from near and far.

BRAND INTEGRITY

The way we communicate through visual, digital and written communications helps strengthen our connection with residents as well as the wider world. These Brand Guidelines are an important tool to ensure that a consistent tone, look and feel are conveyed. Ultimately, this means that the City's messaging will be more effective.

SUB-BRANDING

Sub-branding is the creation of visuals and materials that are unique to a given department, event or initiative, not fully reflecting the overall City brand appearance. For instance, the Livermore Police Department sub-brand.

Sub-branding must be in alignment with the City's overall brand. Such sub-branding may be requested for projects, events, committees or other special uses. Contact the Public Information Officer for any requests or questions regarding sub-branding.

Ultimately, it is people that maintain and protect the City's brand, so please join in the effort to uphold these guidelines. With everything the City of Livermore has to offer, each day is another chance to share that "There's More Here."

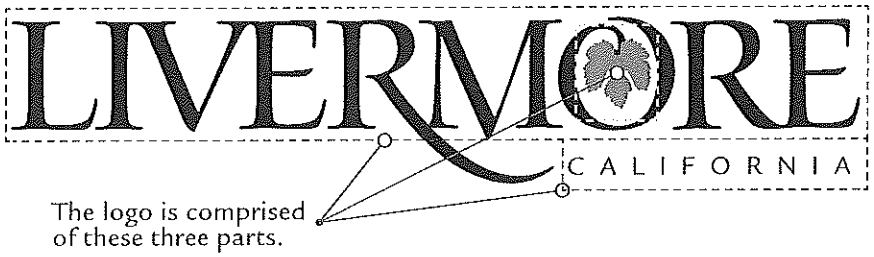
If you have any questions, please reach out to the Public Information Officer by contacting the City:

925-960-4000
communications@LivermoreCA.gov

LOGO USAGE

Standard Version

The logo is comprised of three parts: the capital letters "LIVERMORE", "CALIFORNIA" and a graphic grape leaf. The type is a customized combination of display caps and ITC Legacy Sans Serif fonts; the blue color telegraphs stability, trust and accessibility. The stylized leaf, illustrated in an earthy olive green, symbolizes the growth and vitality that lives throughout the City. The logo is incomplete if any of these elements are deleted.



Other Logo Configurations

There are special cases for which certain, approved variations are permitted for use.
These are described in more detail later in these guidelines.



Logo Coloring

The logo colors are periwinkle blue and olive green. The logo should be used in color whenever possible. Never alter colors or tints of the logo.

The medium for reproducing the logo (print vs. digital) determines which colors are specified. The printing process uses Pantone inks or 4-color process inks. Digital/web colors are based on RGB colors. The colors are shown to the right.

The color logo should be featured on a white background whenever possible to promote readability. This uncluttered look contributes to the specialness of the logo.

GREEN
PANTONE: 100% PMS 5845
4-C PROCESS: 35% cyan, 22% magenta, 76% yellow, 1% black
RGB: 174 red, 175 green, 95 blue / HEX: #aeaf5f

LIVERMORE
CALIFORNIA

BLUE
PANTONE: 100% PMS 5275
4-C PROCESS: 70% cyan, 62% magenta, 27% yellow, 6% black
RGB: 96 red, 100 green, 137 blue / HEX: #606489

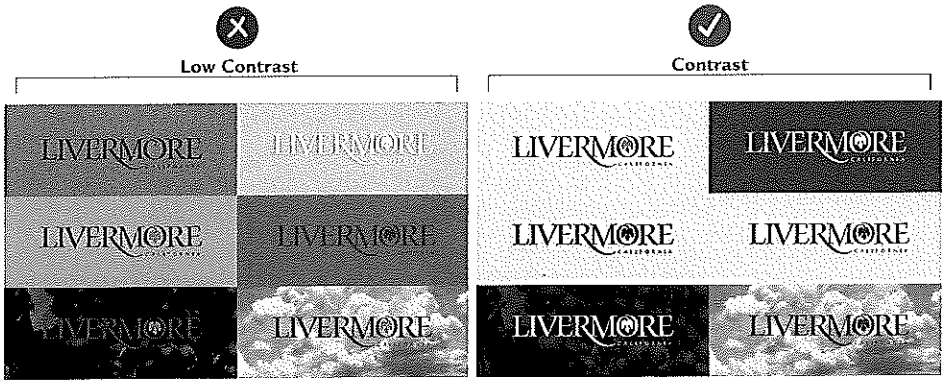
GRAY
PANTONE: 50% black
4-C PROCESS: 50% black
RGB: 153 red, 153 green, 153 blue / HEX: #90948c

LIVERMORE
CALIFORNIA

BLACK
PANTONE: 100% black
4-C PROCESS: 100% black
RGB: 51 red, 51 green, 51 blue / HEX: #050606

BACKGROUND CONTRAST

Contrast is an important part of visual accessibility. Depending on the background, a solid black logo or solid white logo is sometimes necessary. For dark backgrounds, use a white logo. For light backgrounds in which the blue/green logo does not have enough contrast, use a black logo. Consider avoiding complicated background photos. If necessary, underlay the logo with opaque box to increse contrast. When in doubt, err on the side of increasing contrast.



Expert note: for non-decorative elements, like text or information, foreground color should be roughly 4.5X brighter or darker than the background color to satisfy industry minimum WCAG AA recommendation. 7X brighter satisfies full AAA recommendation. Smaller text requires more contrast. There are numerous online tools to assist in measuring contrast.

Logo Integrity

Maintain the type font, size and spacing between the logo elements: text, icon and tagline. These elements should not be recolored or repositioned in any way other than specified in this guide.

MINIMUM SIZE

Size matters and using the logo too small compromises its integrity. Note the minimum width shown here for using the logos and icons at their smallest permissible sizes.



PROTECTIVE AREA AROUND THE LOGO

A generous protective space around the logo is an essential element of the logo's design and success. Never place another logo, type or graphic element in this clearspace. Do not place the logo on any complicated or photographic background.

The protective clearspace around the logo is determined by the height of the capital letter "L" as noted with an "x." This clearspace is required for all logo versions.



Same holds true for all logos.

VERTICALLY CENTERING THE LOGO

Note that the high visual "center of gravity" for the non-tagline logo. For cases where the non-tagline logo is vertically centered in space, note that the center line should fall in the vertical middle of the "LIVERMORE" text.



Vertically center on "Livermore" text.

Alternate Logo Configurations

STACKED

If the primary horizontal logo does not fit or look good in the available space, use the vertically stacked version.



OFFICIAL DOCUMENT VERSION

Note: "City of" text included

For use when the official name of the City of Livermore is required (e.g. financial documents, budget reports, etc.)



TAGLINE

Note: "There's More Here" text included

The tagline acts as a marketing message and should be used appropriately and discriminately when that message is indicated. This language reflects the opportunity for discovery and potential that awaits those unaware of or misguided in their impression of exploring the City. For consistency, the tagline should never be changed to a different message.



ICON OPTIONS

The Livermore brand leaf can be used decoratively, or as a stand-alone icon.



ARCHED

For very limited uses, an arched version is possible, but not encouraged. Please contact the Public Information Officer for permission.



Incorrect Logo use

Using the logo correctly as outlined in this guide ensures the strength of the logo and ultimately better represents the City of Livermore. There are many ways to misuse the logo and a few common examples are shown on this page.



✖ Do not rotate.



✖ Do not distort.

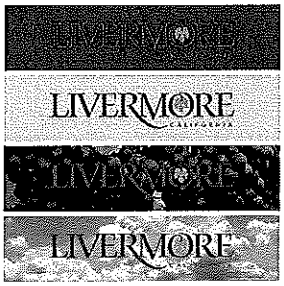


✖ Do not resize or move elements.

a



✖ Do not add special effects.



✖ Do not use low-contrast.



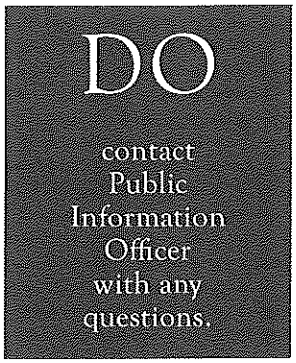
✖ Do not use too small.



✖ Do not change colors.



✖ Do not change fonts.



TYPOGRAPHY

Brand Fonts

MOST COMMONLY USED FOR PROFESSIONAL PRINTING. The City uses two fonts: Goudy, a serif font, and the ITC Legacy Sans sans-serif font family. These fonts support the overall identity and should be used whenever possible. Goudy is good for headers and special text sections, not for body text; do not use an italicized or bolded version. ITC Legacy Sans offers several weights, good for overall usage. Both font families may be used on the same piece of communication.

GOUDY

AaBbCcDdEeFfGgHhIiJjKkLlMmNnOoPpQqRrSsTtUuVvWwXxYyZz

Goudy: Regular (only) ... ALLCAPS permitted

ITC Legacy Sans

AaBbCcDdEeFfGgHhIiJjKkLlMmNnOoPpQqRrSsTtUuVvWwXxYyZz

Legacy Sans: Book	AaBbCcDdEeFfGgHhIiJjKkLlMmNnOoPpQqRrSsTtUuVvWwXxYyZz
Legacy Sans: Book Italic	*AaBbCcDdEeFfGgHhIiJjKkLlMmNnOoPpQqRrSsTtUuVvWwXxYyZz*
Legacy Sans: Medium	AaBbCcDdEeFfGgHhIiJjKkLlMmNnOoPpQqRrSsTtUuVvWwXxYyZz
Legacy Sans: Medium Italic	*AaBbCcDdEeFfGgHhIiJjKkLlMmNnOoPpQqRrSsTtUuVvWwXxYyZz*
Legacy Sans: Bold	**AaBbCcDdEeFfGgHhIiJjKkLlMmNnOoPpQqRrSsTtUuVvWwXxYyZz**

FONT ALTERNATES

MOST COMMONLY USED FOR DIGITAL OR OFFICE APPLICATIONS. Alternate fonts are identified here for cases where the the brand fonts are not technically available or advisable. The web-safe, office font Trebuchet MS is relatively consistent across devices, so is good for documents that are being shared (e.g. Microsoft Word docs or presentations). The web fonts Libre Baskerville and Nunito Sans are available free from Google and make for good fonts for the website and other applications like Canva.

Baskerville (web-safe font)

AaBbCcDdEeFfGgHhIiJjKkLlMmNnOoPpQqRrSsTtUuVvWwXxYyZz

Libre Baskerville (web font, Google, Canva)

AaBbCcDdEeFfGgHhIiJjKkLlMmNnOoPpQqRrSsTtUuVvWwXxYyZz

Trebuchet MS (web-safe font)

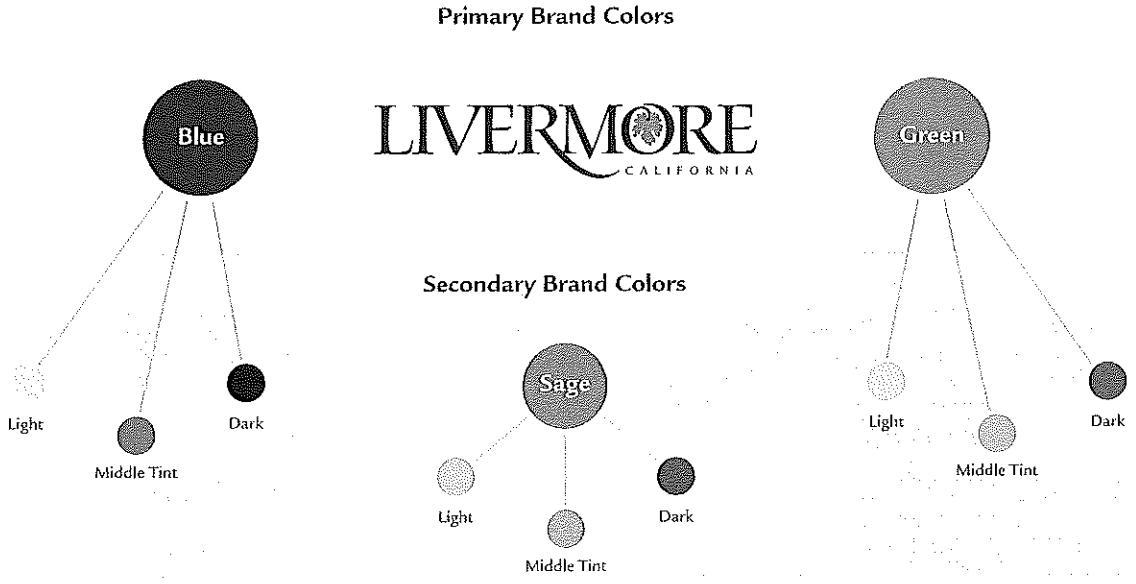
AaBbCcDdEeFfGgHhIiJjKkLlMmNnOoPpQqRrSsTtUuVvWwXxYyZz

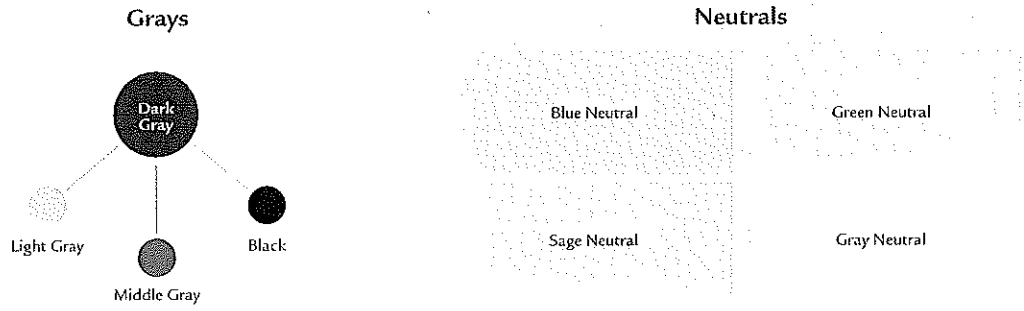
Nunito Sans (web font, Google, Canva)

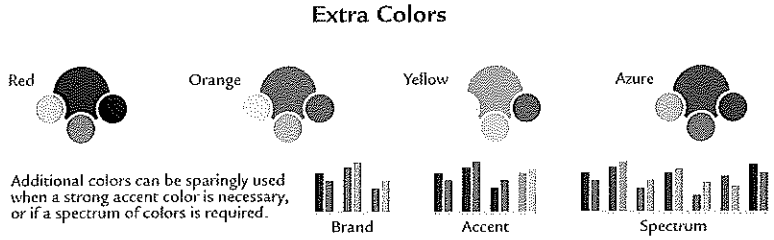
AaBbCcDdEeFfGgHhIiJjKkLlMmNnOoPpQqRrSsTtUuVvWwXxYyZz

COLOR

The **primary** Blue and Green signify the City's brand. They are the dominant colors and should be used in everything that represents the City. The **secondary** color palette provides the ancillary coloring that all together create the City's identifiable look and feel. The secondary colors are used in addition to the primary Blue and Green, not instead of them. The grays and neutrals identified here provide additional design flexibility. **Extra colors are provided to use sparingly,** when the existing brand colors simply aren't enough (e.g. as an accent when a strong highlight is needed, or when a whole spectrum is required).







Color Detail

The brand colors are defined here, for several different formats. Digital/web colors are based on RGB or Hex colors. The printing process uses Pantone inks or CMYK (4-color process) inks. PMS code 'C' indicates an ink used for coated (glossy) paper and 'U' indicates is used for non-coated finishes.

PRIMARY	PROMINENCE	HEX	R	G	B	C	M	Y	K	PANTONE C	PANTONE U
Blue		#606489	96	100	137	70	62	27	6	5275 C	5275 U
❖ Green		#A5A837	165	168	55	35	22	76	0	5845 C	5845 U
SECONDARY											
Sage		#8CAEA2	140	174	162	41	11	31	6	5565 C	5565 U
❖ Sage Dark		#6D8877	109	136	119	9	36	56	4	n/a	n/a
Sage Mid		#ABCLB9	171	193	18S	24	10	19	0	50%	50%
Sage Lt		#C2DLCA	194	209	202	24	14	27	0	15%	15%
BLUE SHADE & TINTS											
❖ Blue Dark		#4F4174	79	65	116	79	83	27	12	n/a	n/a
Blue Mid		#9194B6	145	148	182	56	39	13	0	50%	50%
❖ Blue Lt		#E2E8F1	226	232	241	10	6	2	0	15%	15%
GREEN SHADE & TINTS											
Green Dark		#8B8F36	139	143	54	48	31	100	8	n/a	n/a
Green Mid		#C9CA87	201	202	135	23	12	57	0	50%	50%
Green Lt		#E4E5C3	228	229	195	11	4	27	0	15%	15%
EXTRA COLORS FOR ACCENT OR FLEXIBILITY											
Red		#B7LF3C	182	31	59	20	100	77	10	1945 C	1935 U
Red Dk		#990D31	153	13	49	12	100	69	23	n/a	n/a
Red Mid		#D48A83	212	138	131	10	50	39	5	50%	50%
Red Lt		#F0CFC9	240	207	201	4	20	15	0	15%	15%
Orange		#F47721	244	119	33	4	54	100	0	152 C	152 U
Orange Dk		#D6782A	214	120	42	15	63	100	0	n/a	n/a
Orange Mid		#FCC288	252	194	136	0	27	50	0	50%	50%
Orange Lt		#FFE4CA	255	228	202	0	11	20	0	15%	15%
Yellow		#FBB416	251	180	22	0	32	100	0	130 C	130 U
Yellow Dk		#C37FL3	195	127	19	7	45	100	30	n/a	n/a
Yellow Mid		#FFCE7B	255	206	123	0	20	60	0	50%	50%
Yellow Lt		#FFEFCF	255	239	207	0	5	20	0	15%	15%
Azure		#4D8BBE	77	139	190	71	37	7	0	285 C	285 U
Azure Dk		#4377BB	67	119	187	77	51	0	0	n/a	n/a
Azure Mid		#80A5CE	128	165	206	50	26	5	0	50%	50%
Azure Lt		#B5C6DC	181	198	220	28	15	5	0	15%	15%

BLACKS, GRAYS & NEUTRALS	HEX	R	G	B	C	M	Y	K	PANTONE C	PANTONE U
Black	#333333	51	51	51	0	0	0	100	PMS Black	PMS Black
Superblack	#000000	0	0	0	60	30	30	100	n/a	n/a
❖ Gray Dk	#435148	67	81	72	70	51	64	38	80%	80%
❖ Gray Mid	#6B737D	107	115	125	61	48	40	11	60%	60%
Gray Lt	#EOEODD	224	224	221	7	5	7	4	8%	8%
Gray Neutral	#F3F3F3	243	243	243	0	0	0	5	5%	5%
Blue Neutral	#F1F3F8	241	243	248	7	5	7	4	10%	10%
Green Neutral	#F1F2E1	241	242	225	0	0	4	4	10%	10%
Sage Neutral	#E0E8E5	224	232	229	n/a				8%	8%

WEBSITE COLORS	HEX	R	G	B
❖ Blue Dark	#4F4174	79	65	116
❖ Green	#A5A837	165	168	55
❖ Sage Dark	#6D8877	109	136	119
❖ Blue Lt	#E2E8F1	226	232	241
❖ Gray Dk	#435148	67	81	72
❖ Gray Mid	#6B737D	107	115	125

Note: web site colors are a subset of City brand colors selected for online appearance and contrast.

LIVERMORE
CALIFORNIA

CITY COUNCIL STAFF REPORT **ITEM NO. 5.5**

DATE: October 24, 2022

TO: Honorable Mayor and City Council

FROM: Tina Olson, Administrative Services Director

SUBJECT: Resolution authorizing execution of a purchase order with CDW-G for the replacement of the City of Livermore's (City) primary data backup system in an amount not-to-exceed $185,000

RECOMMENDED ACTION

Staff recommends the City Council adopt a resolution authorizing execution of a purchase order with CDW-G for the replacement of the City's primary data backup system in an amount not-to-exceed $185,000.

SUMMARY

The City's primary data backup system has reached the end of the warranty period. Therefore, City staff will upgrade the existing data backup system hardware to the manufacturer's newest platform and expand the system to include the Police Department systems. The total cost for this project is not-to-exceed $185,000 and includes the remote support for configuration to City standards.

DISCUSSION

The City's current backup system is at the end of its warranty period. Therefore, city staff will upgrade the existing data backup system hardware to the manufacturer's newest platform and expand the system to include an additional unit to protect the Police Department systems. Currently, there are two different backup systems in use, one for City Hall servers and one for Police servers. Both are from different manufacturers, depend on physical tapes and off-site storage as part of their design, and neither supports immutable backups. This shortcoming was a significant factor in the City's cybersecurity event in 2020.

An immutable backup is a backup file that can't be altered in any way. The hardware that stores the data prevents any changes to the data and prevents the destruction of one of the largest targets during a ransomware attack. This ensures the data is able to deploy to production servers immediately in case of ransomware or other data loss.

Advanced ransomware attacks now target backups and attackers can modify or delete a backup, destroying the City's ability to recover from a malware attack. Immutable backups prevent these situations, and the newest model, ExaGrid, supports this technology. By standardizing on this platform, all data backups will receive this level of protection, and system administration will become significantly more efficient with reduced training and support requirements.

Additionally, this upgrade will allow the City to implement the best practices for data backup, which is the 3-2-1 method. The City will retain three copies of the data in two separate locations and maintain one off-site cloud-based backup. Combined with immutable backups, this upgrade implements a zero-trust backup system to protect the City's file and application servers. By updating the backup system to these modern standards, the City will address a significant cybersecurity threat and eliminate the need for physical tapes and off-site storage.

CDW-G is a reseller of technology solutions. As most hardware vendors do not sell directly to the end-user, the City engages with resellers who commit to using the City's preferred purchasing contracts, such as National IPA/OMNIA Technology. In this case, the vendor provides pricing per the published National IPA/OMNIA Technology state contract price schedule already accepted by the City's purchasing policy. Therefore, staff recommends purchasing the ExaGrid Tiered Backup Storage system from CDW-G.

FISCAL AND ADMINISTRATIVE IMPACT

The not-to-exceed amount for procurement of the City’s new ExaGrid data backup system is $185,000. It includes initial deployment support and 12 months of hardware maintenance. All costs associated with the proposed contract will be covered by the City’s General Fund and are included in the current Information Technology Division’s budget.

Staff expects to reduce the total cost of ownership of the City’s backup system by eliminating approximately $10,000 per year to purchase physical tapes and eliminating off-site storage, which costs the City approximately $1,000 per year.

After the first year, the City will continue to pay a yearly maintenance fee of $25,000 to cover ongoing support and maintenance of the backup system hardware. In addition, cloud storage fees are not expected to increase from the current amount already included in the budget.

ATTACHMENTS

1. CDW-G Quote MZLD146
2. Resolution

Prepared by: Steve Rodriguez
IT 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 THE EXECUTION OF A PURCHASE ORDER WITH CDW-G FOR DATA BACKUP HARDWARE IN AN AMOUNT NOT-TO-EXCEED $185,000

The City of Livermore ("City") currently has a primary data backup system that has reached the end of its warranty period. City staff will upgrade the existing ExaGrid hardware to the manufacturer's newest platform and expand the system to include supporting the Police Department systems. This system is an essential component of the City Council's Modernization, Training, and Workplace Enhancements goal, improving the City's cybersecurity profile and standardizing the backup platform.

The City has selected CDW-G to provide the storage array hardware and support services, through the National Intergovernmental Purchasing Alliance (National IPA)/OMNIA Technology statewide agreement.

Section 2.68.390 of the Livermore Municipal Code states that the Administrative Services Director may enter into purchases that are based on cooperative purchasing programs or consortiums, when the underlying purchase was made using quotation or a bid procedure at least as restrictive as the City's.

City staff selected CDW-G to provide the ExaGrid Tiered Backup Storage hardware through the National IPA/OMNIA Technology statewide agreement.

The National IPA/OMNIA Technology statewide agreement is a competitive bid contract that meets the City's purchasing guidelines.

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

1. Authorizes the City Manager to execute a purchase order with CDW-G, in an amount not-to-exceed $185,000.

2. Authorizes the City Manager to take whatever actions are necessary and appropriate to carry out the purpose and intent of this resolution.

On motion of Council Member _____, seconded by Council Member _____, the foregoing resolution was passed and adopted on October 24, 2022, by the following vote:

RESOLUTION NO. _____

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

ATTEST:

_____
Marie Weber
City Clerk

APPROVED AS TO FORM:

/s/ Tara M. Mazzanti
Tara Mazzanti
Assistant City Attorney

RESOLUTION NO. _____

LIVERMORE
CALIFORNIA

CITY COUNCIL STAFF REPORT **ITEM NO. 5.6**

DATE: October 24, 2022

TO: Honorable Mayor and City Council

FROM: Jeramy Young, Police Chief

SUBJECT: Resolution authorizing an agreement with Sun Ridge Systems, Inc. for continued software maintenance and support for the Public Safety Computer Aided Dispatch and Records Management software and related public safety software systems in an amount not-to-exceed $331,396.

RECOMMENDED ACTION

Staff recommends the City Council adopt a resolution authorizing the City Manager to sign an agreement with Sun Ridge Systems, Inc. for continued software maintenance and support for the Public Safety Computer Aided Dispatch and Records Management software and related public safety software systems in an amount not-to-exceed $331,396.

SUMMARY

On June 8, 2015, the City Council approved a resolution authorizing the City Manager to enter into a purchasing agreement with Sun Ridge Systems, Inc. to acquire a new Public Safety Computer Aided Dispatch (CAD) and Records Management System (RMS) and related systems. The new CAD RMS system was successfully implemented in February 2016 and included a warranty and maintenance period that expired on February 10, 2019. The original continuing maintenance agreement was implemented when the warranty maintenance agreement expired and is now coming to a close. The proposed new Sun Ridge Systems, Inc. maintenance agreement will maintain support for the City's CAD RMS system for an additional three years up to October 31, 2025.

DISCUSSION

The City Council adopted a resolution authorizing the City Manager on June 8, 2015, to enter into a purchase agreement with Sun Ridge Systems, Inc. to provide the Police Department with a fully integrated CAD, RMS, Report Writing, Mobile Field Reporting, Training Management System, Property Module, and additional interfaces to local, state and federal systems. In February 2016 the system was put into full operation. The first multi-year maintenance agreement is expiring, and the new agreement will cover software and support services through an additional three years to October 31, 2025, at a fixed rate of $103,110 for year one, $111,359 for year two and $116,927 for year three. The total agreement is

for $331,396.

FISCAL AND ADMINISTRATIVE IMPACTS

Funding for the Sun Ridge Systems, Inc. software and support services agreement is allocated in the Police Department's approved FY 2022-23 budget and will cause no increase to that budget to cover the first year of the contract of $103,110. The remaining necessary funds will be included in the Police Department's FY 2023-24 ($111,359) and FY 2024-25 ($116,927) annual operating general fund budget for Police Information Technology. The total cost for Sun Ridge Solutions maintenance services agreement is $331,396 for the three-year period.

ATTACHMENTS

1. Resolution
2. Exhibit A - Sun Ridge Systems Agreement

Prepared by: John Reynolds
Police Lieutenant

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 SOFTWARE MAINTENANCE AND SUPPORT AGREEMENT WITH SUN RIDGE SYSTEMS, INC. IN AN AMOUNT NOT-TO-EXCEED $331,396

On June 8, 2015, the City Council approved a resolution authorizing the City Manager to enter into a purchasing agreement with Sun Ridge Systems, Inc. to acquire a new Public Safety Computer Aided Dispatch (CAD) and Records Management System (RMS) and related public safety software systems. The new CAD RMS system was successfully implemented in February 2016 and included a warranty and maintenance period that expired on February 1, 2019, with an additional maintenance contract which expires on October 31, 2022.

The proposed Sun Ridge Systems Software Support Services Agreement will cover three years extending the maintenance period to October 31, 2025, to ensure ongoing maintenance and support for the City's public safety software.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Livermore, that the City Manager is authorized to execute an agreement with Sun Ridge Systems, Inc., a copy of which is attached as Exhibit A and incorporated by this reference, for continued software maintenance and support for the Public Safety Computer Aided Dispatch and Records Management software and related public safety software systems in an amount not-to-exceed $331,396.

On motion of Council Member _____, seconded by Council Member _____, the foregoing resolution was passed and adopted on October 24, 2022, 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 M. Mazzanti
Tara Mazzanti
Assistant City Attorney

Exhibit A – Agreement with Sun Ridge Systems Inc.

Sun Ridge Systems Software Support Services Agreement

This is a description of the software support, maintenance, and enhancement services to be provided by Sun Ridge Systems, Inc. ("SRS") to the City of Livermore, a municipal corporation ("Licensee") as part of a Software Support Services Agreement ("Agreement"). This Agreement covers all RIMS public safety software (Software) licensed by the Licensee and is effective on November 1, 2022 ("Effective Date").

Under this agreement SRS agrees to provide the following services and products to Licensee:

1. **Coverage Hours.** SRS will provide a toll-free phone number for Licensee to call whenever a covered problem occurs. *Normal service hours will be Monday-Friday, 8AM-5PM PST, with the exception of New Year's Day, President's Day, Memorial Day, July 4th, Labor Day, Veteran's Day, Thanksgiving Day, Day after Thanksgiving Day, and Christmas Day ("common holidays").* However, for instances where the Licensee's system is completely inoperable due to an SRS software problem ("critical problems") preventing basic system operation, service will be available 24 hours, 7 days a week, common holidays included.

2. **SRS Response to reported problems**. SRS agrees to provide service and assistance as expeditiously as possible as follows:

   a. Most problems will be resolved with the initial phone call.

   b. For problems that cannot be immediately resolved, SRS will work to resolve the problem based on the severity of the problem *and* the urgency reported by Licensee.

      - For critical problems, SRS personnel will work with Licensee until the situation is resolved.

      - For problems that are not critical problems that have a lesser though continuing impact on operations of Licensee ("non-critical problems"), SRS will endeavor to provide a solution or work around within 72 hours of the problem being reported to SRS by the Licensee.

      - For problems that are not critical problems and are not non-critical problems ("minor problems") SRS may, at its discretion, either issue a near term "fix release" of the product or include the fix in the next scheduled product update.

3. **Licensee equipment and software responsibilities.** Licensee agrees to allow SRS to remotely connect to Licensee's system when a problem is reported. SRS uses BeyondTrust (formerly Bomgar) remote access software for secure installation and follow-on support services. BeyondTrust software provides superior security and does so over an ordinary internet connection via an SRS server that hosts a BeyondTrust security hardware device.

   SRS will use this line only with Licensee's permission. SRS will use this link to examine data files, investigate reported problems and provide updates and corrections when necessary.

4. **Provision of software updates.** SRS will provide at no additional cost all new enhanced and updated versions of software licensed to Licensee. This software will be provided with detailed installation instructions for installation by Licensee. If desired, Licensee may retain SRS to perform any installation at additional cost to be determined on a per case basis. Updates are distributed via download from the SRS ftp web site. SRS will not be obligated to provide service for release versions that are more than two annual release versions older than the current release.

5. **Cost.** The total cost of the services and software to be provided under this Agreement are as follows:

   Three-Year Support Rate – Reference Attachment A

   November 1, 2022 – October 31, 2023: $103,110
   November 1, 2023 – October 31, 2024: $111,359
   November 1, 2024 – October 31, 2025: $116,927

   Total for 3-Years $331,396.00

6. **Late Payment.** In addition to any other amounts for which Licensee is liable under this Agreement, Licensee agrees to pay to SRS a late charge equal to one percent (1%) of the amount due if Licensee fails to pay SRS any amount that is due and owing pursuant to this Agreement within sixty (60) days after Licensee's receipt of an invoice from SRS or (60) days after the expiration of the previous Agreement, whichever comes later. In addition, any invoiced amounts that are due and owing under this Agreement which Licensee fails to pay to SRS within ninety (90) days after Licensee's receipt of an invoice from SRS shall thereafter bear interest at the rate of twelve percent (12%) per annum or the highest interest rate allowed by applicable law, whichever is less.

7. **Term.** The term of this Agreement shall be one year from the date stated in the initial paragraph and shall be automatically annually renewed for another year upon payment of invoice. Payment for the year is due in advance the day the services begin. Non-payment of the support invoice within 60 days as described in Section 6 shall be cause for terminating or suspending the Agreement at the discretion of SRS.

8. **Termination.** Licensee may terminate this Agreement with or without cause upon ninety (90) days written notice to SRS. If terminated, Licensee is entitled to a prorated refund for the service days not consumed beginning on the last day of the month the written notice is received by SRS to the end of the remaining term of the Agreement.

9. **Limitations.** SRS agrees to provide support only for public safety application software provided by SRS. Other software used by Licensee (word processing, spreadsheet, etc.) is not included in this Agreement. PC and network operating system software and Microsoft SQL Server database system software is similarly not included, although SRS may assist Licensee in isolating problems to this software. Also specifically excluded is responsibility for administration, support, or maintenance of your server, computer network, operating systems, or database (Microsoft SQL Server).

   Licensee may request that SRS provide support services outside the limitations of this Support Services Agreement. If SRS agrees to provide any requested additional support services, which SRS may do or decline to do in its sole discretion, such support services will be provided at SRS's then-current rate and on such other terms and conditions as SRS may require.

This Agreement does not include equipment maintenance or assistance in diagnosing hardware problems including but not limited to PCs, printers, network, scanners, and other computer peripheral devices with the exception that SRS will assist Licensee in determining whether a problem is RIMS application software in nature.

10. **Indemnity and Insurance.**

a. Sun Ridge agrees to indemnify, defend, and hold harmless the City and its officers, directors, shareholders, employees, and agents (the "City Indemnified Parties") from any and all claims, demands, liabilities, and costs, including attorney's fees ("Claims"), arising out of or relating to (i) any actual infringement of a third-party's intellectual property rights or (ii) the negligence or willful misconduct of any employee or agent of Sun Ridge occurring during or as a result of Sun Ridge's performance of its obligations hereunder, provided that Sun Ridge shall have no indemnity or other obligations to the City hereunder to the extent any such Claims arise from or are the result of the negligence or other fault of the City or its employees, agents or other contractors nor shall the foregoing indemnity and hold harmless obligations of Sun Ridge extend to or cover any Claims arising from or relating to claims of defects or errors in the Software or the City's use or inability to use the Software. The City shall promptly notify Sun Ridge of any claim of infringement or misappropriation for which Sun Ridge is alleged to be responsible and shall cooperate with Sun Ridge to facilitate the defense or settlement of such claim. This indemnity obligation shall survive the expiration, cancellation, or termination of this Agreement. Notwithstanding the foregoing, the City expressly waives, releases, and agrees that neither Sun Ridge nor Sun Ridge's officers, directors, shareholders, employees, agents, and affiliates shall have any liability for any individual's or entity's lost business, direct damages, incidental or consequential damages, or any other Claims arising out of or related to the use or implementation of the Software.

b. During the term of this Agreement, Sun Ridge shall comply with the following insurance requirements:

i. **Workers' Compensation.** Sun Ridge shall fully comply with the terms of the law of California concerning workers' compensation. Said compliance shall include, but not be limited to, maintaining in full force and effect one or more policies of insurance insuring against any liability Sun Ridge may have for workers' compensation. Said policy shall also include employer's liability coverage of S1,000,000 per accident for bodily injury or disease.

ii. **General Liability Insurance.** Sun Ridge shall obtain at its sole cost and keep in full force and effect 'during the term of this Agreement commercial general liability insurance in the amount of S1,000,000 per occurrence for bodily injury, and property damage personal injury: coverage includes products and completed operations. Said insurance shall provide (1) that the City, its officers, and employees shall be included as additional insureds under the policy, and (2) that the policy shall operate as primary insurance, and noncontributory.

iii. **Automobile Liability Insurance.** Sun Ridge shall obtain at its sole cost and keep in full force and effect during the term of this Agreement business automobile liability insurance in the amount of S1,000,000 combined single limit per occurrence for bodily injury and property damage. Said insurance shall provide (2) that the policy shall operate as primary insurance, and non-contributory.

iv. **Certificates of Insurance.** Sun Ridge shall file with City upon the execution of this Agreement, certificates of insurance which shall provide that no cancellation, major change in coverage, expiration, or nonrenewal will be made during the term of this agreement, without thirty (30) days written notice to the City prior to the effective date of such cancellation or change in coverage.

All terms, conditions, and limitations set forth in the *Sun Ridge Systems Software License Agreement* are incorporated herein by this reference and shall be fully applicable to the products and services provided under this Agreement.

For:	Sun Ridge Systems, Inc.	For:	City of Livermore
Name:	Anthony B. Richards	Name:	Marianna Marysheva
Signed:		Signed:	
Title:	President	Title:	City Manager
Date:	9/27/22	Date:	

APPROVED AS TO FORM:

*Includes Attachment A – Line-Item Pricing Detail

Sun Ridge Systems Software Support Services Agreement

Attachment A – Line-Item Pricing Detail

Product	Revised FY-22-23	FY 23-24	FY 24-25
Computer Aided Dispatch Software	$28,233	$ 30,492	$ 32,017
Records Management Software	$28,233	$ 30,492	$ 32,017
Mobile Computer Software	$16,731	$ 18,069	$ 18,973
E911 Link Software	$2,092	$ 2,259	$ 2,372
State Link Software	$2,092	$ 2,259	$ 2,372
CAD Mapping Software	$7,320	$ 7,905	$ 8,300
Mobile Mapping Software	$2,092	$ 2,259	$ 2,372
Property Room Management Software	$4,183	$ 4,518	$ 4,744
Text Paging Software	$1,046	$ 1,129	$ 1,186
CopLogic Link Software	$1,046	$ 1,129	$ 1,186
Citizen RIMS Software	$2,092	$ 2,259	$ 2,372
Crossroads eCite Link Software	$837	$ 904	$ 949
SmartJustice Link Software	$0	$ -	$ -
Pre-Pol Link Software	$0	$ -	$ -
LaserFiche Link Software	$0	$ -	$ -
Collaborate Data Sharing Software	$1,046	$ 1,129	$ 1,186
iRIMS Software	$2,092	$ 2,259	$ 2,372
TIMS Training Management Software	$1,046	$ 1,129	$ 1,186
Accurint Link	$2,092	$ 2,259	$ 2,372
Crossroads Collision Import	$315	$ 340	$ 357
Body Camera Link - AXON	$525	$ 567	$ 595
Total	$103,110	$ 111,359	$ 116,927

* This Pricing Detail is for the listed modules only. If additional software or interfaces are added or modified it may impact the support amounts listed. *

LIVERMORE
CALIFORNIA

CITY COUNCIL STAFF REPORT **ITEM NO. 5.7**

DATE: October 24, 2022

TO: Honorable Mayor and City Council

FROM: Christine Martin, Assistant City Manager

SUBJECT: Resolution authorizing the display of the POW- MIA flag for the week of November 6-13, 2022

RECOMMENDED ACTION

Staff recommends the City Council adopt a resolution authorizing the display of the POW-MIA flag on the flagpole at the Civic Center Campus for the week of November 6-13, 2022.

SUMMARY

At the request of Mayor Woerner, consistent with the Commemorative Flag Display policy this agenda item provides a resolution for Council consideration which would authorize the display of the POW-MIA flag at the Civic Center Campus for the week of November 6-13, 2022.

DISCUSSION

On September 23, 2019, Council adopted a Commemorative Flag Display policy. The policy allows a Council Member to request display of a commemorative flag at the Civic Center Campus, on the City of Livermore flagpole, beneath the City of the Livermore flag. Once a request has been made by a Council Member, the Council will consider the request at a duly noticed public meeting.

The City's policy is constructed to allow the display of commemorative flags as a form of government expression. Such flags may be displayed for a period of time that is reasonable or customary for the subject that is to be commemorated, but no more than thirty-one consecutive days.

At the request of Mayor Woerner, consistent with the Commemorative Flag Display policy this agenda item provides a resolution for Council consideration which would authorize the display of the POW-MIA flag at the Civic Center Campus for the week of November 6-13, 2022.

FISCAL AND ADMINSTRATIVE IMPACTS

There are no fiscal or administrative impacts associated with flying the POW-MIA flag for the week of

November 6-13, 2022.

ATTACHMENTS

1. Resolution

Prepared by: Christine Martin
Assistant City 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 THE DISPLAY OF THE POW-MIA FLAG FOR THE WEEK OF NOVEMBER 6-13, 2022

On September 23, 2019, the City Council adopted a commemorative flag display policy.

Consistent with the commemorative flag display policy, Mayor Woerner requested display of the POW-MIA flag at the civic center campus for the week of November 6-13, 2022.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Livermore direct staff to display the POW-MIA flag for the week of November 6-13, 2022.

On motion of Council Member _____, seconded by Council Member _____, the foregoing resolution was passed and adopted on October 24, 2022, 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 Alcala
Jason Alcala
City Attorney

LIVERMORE
CALIFORNIA

CITY COUNCIL STAFF REPORT **ITEM NO. 5.8**

DATE: October 24, 2022

TO: Honorable Mayor and City Council

FROM: Christine Martin, Assistant City Manager

SUBJECT: Resolution reauthorizing remote or hybrid teleconference meetings for City of Livermore's legislative bodies in accordance with Assembly Bill 361.

RECOMMENDED ACTION

Staff recommends City Council adopt a resolution reauthorizing remote or hybrid teleconference meetings for City of Livermore's legislative bodies in accordance with Assembly Bill 361.

SUMMARY

On September 16, 2021, the Governor signed Assembly Bill 361 ("AB 361") into law, allowing the City's legislative bodies to continue to meet via teleconference during proclaimed states of emergency under modified Brown Act requirements when a state of emergency is declared by the Governor pursuant to Government Code section 8625, proclaiming the existence of conditions of disaster or of extreme peril to the safety of persons and property within the state caused by conditions as described in Government Code section 8558. AB 361 further requires that state or local officials have imposed or recommended measures to promote social distancing, or, the legislative body meeting in person would present imminent risks to the health and safety of attendees. AB 361 requires reauthorization every 30 days.

DISCUSSION

An outbreak of coronavirus disease 2019 (COVID-19) caused by the 2019 novel coronavirus (SARS-CoV-2) began in Wuhan, Hubei Province, China in December 2019, and has now spread throughout the world.

On March 1, 2020, the Health Officer of Alameda County declared a public health emergency throughout the County of Alameda.

On March 4, 2020, the Governor of California proclaimed a state of emergency exists in California after making determinations that:

1. The conditions caused by COVID-19 are likely to require the combined forces of a mutual aid

region or regions to appropriately respond; and,
2. Local authority is inadequate to cope with the threat posed by COVID-19.

On March 12, 2020, the Alameda County Department of Public Health confirmed evidence of community-acquired transmission.

On March 13, 2020, the President of the United States of America declared a National state of emergency in response to the spread of COVID-19 within the United States of America.

On March 13, 2020, the City Manager declared a Local Emergency. The local emergency was ratified by City Council and continued every 30 days into 2022, where the emergency was terminated by Council in April 2022, then reinstated in May 2022 (Reso. No. 2022-077) and continued in June 2022 (Reso. No. 2022-099). The local emergency terminated thirty days thereafter, as it was not renewed.

However, the state continues its COVID-19 emergency response, and the Governor has signed Executive Order N-11-22, which retains a limited set of provisions that remain necessary to continue responding to the threat posed by, and mitigating the effects of, the COVID-19 pandemic; and precautions toward reducing the spread of COVID-19, including strongly encouraging masking indoors and social distancing.

Based on the above, staff recommends the City Council adopt a resolution reauthorizing teleconference or hybrid meetings of the City's legislative bodies in accordance with AB 361.

FISCAL AND ADMINISTRATIVE IMPACTS

There are no fiscal or administrative impacts associated with the resolution.

ATTACHMENTS

1. Resolution

Prepared by: Christine Martin
Assistant City 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 REAUTHORIZING REMOTE TELECONFERENCE MEETINGS FOR THE CITY OF LIVERMORE'S LEGISLATIVE BODIES IN ACCORDANCE WITH ASSEMBLY BILL 361, INCLUDING HYBRID

An outbreak of coronavirus disease in 2019 (COVID-19) caused by the novel coronavirus (SARS-CoV-2) began in Wuhan, Hubei Province, China, in December 2019, and spread throughout China and to numerous other countries and territories, including the United States.

COVID-19 is an infectious disease that causes respiratory illness. Experts anticipate that while a high percentage of individuals affected by COVID-19 will experience mild flu-like symptoms, some will have more serious symptoms and require hospitalization, particularly individuals who are elderly or have underlying chronic health conditions.

It is imperative to prepare for and respond to suspected or confirmed COVID-19 cases, to implement measures to mitigate the spread of COVID-19, and to prepare to respond to an increasing number of individuals requiring medical care and hospitalization.

The United States Centers for Disease Control and Prevention (CDC), the United States Health and Human Services Agency, the California Department of Public Health, and the Alameda County Department of Public Health are each working to monitor and plan for the potential spread of COVID-19 to support and guide local actions to preserve public health.

On January 23, 2020, the CDC activated its emergency response system to provide ongoing support for the response to COVID-19 in the United States.

On January 31, 2020, the Secretary of the United States Department of Health and Human Services declared a public health emergency for the entire United States to aid the nation's healthcare community in responding to COVID-19.

On February 25, 2020, the Centers for Disease Control and Prevention announced that community spread of COVID-19 is likely to occur in the United States.

On March 1, 2020, Health Officer of Alameda County declared a public health emergency throughout the County of Alameda.

On March 4, 2020, the Governor of California proclaimed a state of emergency exists in California after making determinations that:

1. The conditions caused by COVID-19 are likely to require the combined forces of a mutual aid region or regions to appropriately respond; and,
2. Local authority is inadequate to cope with the threat posed by COVID-19.

On March 12, 2020, the Alameda County Department of Public Health confirmed evidence of community-acquired transmission.

On March 13, 2020, the President of the United States of America declared a national state of emergency in response to the spread of COVID-19 within the United States of America.

On March 16, 2020, the City Council adopted a resolution ratifying the declaration of local emergency (Resolution No. 2020-033).

On June 8, July 27, September 14, November 9, December 14, 2020, February 8, March 22, May 10, June 28, July 26, September 13, October 25, November 22, December 13, 2021, January 10, February 14, and February 28, 2022, the City Council adopted resolutions of continued local emergency (Resolution Nos. 2020-78, 2020-133, 2020-166, 2020-207, 2020-235, 2021-018, 2021-037, 2021-063, 2021-112, 2021-140, 2021-155, 2021-179, 2021-195, 2021-217, 2022-006, 2022-016, and 2022-022, respectively).

On April 11, 2022, the City Council adopted a resolution terminating the proclamation of local emergency and the temporary suspension and revision of the City Council Meeting Rules of Procedure, and all unexpired emergency orders declared in response to the spread of COVID-19.

On May 13, 2022, the Alameda County Department of Health, along with twelve Bay Area health officers urged the public to take precautions as COVID-19 levels rise, including but not limited to continued masking indoors as the region experiences a new swell of COVID-19 cases and hospitalizations.

On May 20, 2022, the Director of Emergency Services declared a local emergency. The declaration was based on the Alameda County Department of Health's guidance issued on May 13, 2022, and the increase of positive cases among Livermore residents and City of Livermore staff.

On May 23, June 13, and July 11, 2022, the City Council adopted resolutions ratifying the declaration of local emergency and to reauthorize remote teleconference meetings in accordance with Assembly Bill 361 (Reso. Nos. 2022-077, 2022-099, and 2022-121).

On September 12 and October 10, 2022, the City Council adopted resolutions to reauthorize remote teleconference meetings in accordance with Assembly Bill 361 (Resos. No. 2022-153 and 2022-167).

The State continues its COVID-19 emergency response, and the Governor has signed Executive Order N-11-22, which retains a limited set of provisions that remain necessary to continue responding to the threat posed by, and mitigating the effects of the COVID-19 pandemic; and precautions toward reducing the spread of COVID-19, including strongly encouraging masking indoors and social distancing.

Alameda County continues to align its response to the State and strongly encourages COVID-19 safety precautions, including masking indoors.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Livermore that it hereby finds that conditions warrant reauthorization of remote or hybrid teleconference meetings for the City of Livermore's legislative bodies in accordance with Assembly Bill 361 due to the COVID-19 pandemic.

BE IT FURTHER RESOLVED by the City Council of the City of Livermore that:

1. The Recitals set forth above are true and correct and are incorporated into this Resolution by reference.

2. The City Council has determined that COVID-19 continues to impact the ability of the City of Livermore's legislative bodies to meet safely in person with no teleconference option. In-person meetings of the City of Livermore's legislative bodies with no teleconference option might present imminent risks to the health or safety of some or all attendees.

3. The staff and legislative bodies of the City of Livermore are hereby reauthorized and directed to take all actions necessary to carry out the intent and purpose of this Resolution, including conducting open and public meetings in accordance with Government Code section 54953(e) and other applicable provisions of the Brown Act for fully teleconferenced meetings, or hybrid meetings that accommodate both in person and teleconference participation by the legislative body members, staff, and the public.

4. This Resolution shall take effect immediately upon its adoption and shall be effective until the earlier of November 24, 2022, or such time the City Council makes subsequent findings in accordance with Government Code section 54953(e)(3) to extend the time during which the legislative bodies of the City of Livermore may continue to teleconference without compliance with Government Code section 54953(b)(3).

5. If any section, subsection, clause, or phrase in this Resolution is for any reason held invalid, the validity of the remainder of this Resolution shall not be affected thereby. The City Council would have passed this Resolution and each section, subsection, sentence, clause, or phrase thereof, irrespective of the fact that one or more sections, subsections, sentences, clauses, or phrases thereof be held invalid.

On motion of Council Member _____, seconded by Council Member _____, the foregoing resolution was passed and adopted on October 24, 2022, 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 Alcala
Jason Alcala
City Attorney

LIVERMORE
CALIFORNIA

CITY COUNCIL STAFF REPORT **ITEM NO. 6.1**

DATE: October 24, 2022

TO: Honorable Mayor and City Council

FROM: Paul Spence, Community Development Director

SUBJECT: **Adoption of an ordinance** amending and revising the Building Code, Property Maintenance Code, Fire Code, Electrical Code, Mechanical Code, Plumbing Code, Residential Code, and the Green Building Standards Codes in the City's Municipal Code, to adopt by reference and amend the 2022 California Building Standards Code and the codes set forth therein.

RECOMMENDED ACTION

Staff recommends the City Council adopt an ordinance with an effective date of January 1, 2023:

1. Revising and amending Chapter 15.02 (Building Code), 15.04 (Property Maintenance Code), 15.06 (Fire Code), 15.08 (Electrical Code), 15.10 (Mechanical Code), 15.12 (Plumbing Code), 15.14 (Residential Code), and 15.26 (Green Building Standards Code) in The Livermore Municipal Code.
2. Adopting new Chapters 15.02 (Building Code), 15.06 (Fire Code), 15.08 (Electrical Code), 15.10 (Mechanical Code), 15.14 (Residential Code), and 15.26 (Green Building Standards Code) of the Livermore Municipal Code by adopting and amending the 2022 Editions of the California Building, Fire, Electrical, Mechanical, Plumbing, Residential, and Green Building Standards Codes.
3. Adopting new Chapter 15.04 (Property Maintenance Code) of the Livermore Municipal Code by adopting and amending the 2021 edition of the International Property Maintenance Code.

SUMMARY

State law mandates all local jurisdictions enforce the California State Building Standards (Title 24 of the California Code of Regulations) in the construction and maintenance of all buildings and structures. These standards include provisions of the nationally recognized model Building, Fire, Electrical, Mechanical and Plumbing Codes. These standards are updated on a tri-annual basis. The City currently enforces the 2019 California Building Standards Code. The State recently published the 2022 version of the Codes; per State law, local jurisdictions must enforce these codes with an effective date of January 1, 2023. Local amendments are permitted if they are no less restrictive than the State Code and are determined to be reasonably necessary in order to meet local climatic, geological, topographical, and

environmental conditions.

This proposed ordinance amends and revises the old codes and amends and adopts the new 2022 California Building Standards Code. In addition, staff has identified minor administrative amendments within the Building, Fire, and Residential codes that help to clarify the intent of pertinent code sections. These minor amendments are consistent with amendments made in previous code adoptions.

DISCUSSION

Under State law, various State agencies have statutory authority to develop building standards, also known as building codes. These standards are updated every three years and are adopted into Title 24 of the California Code of Regulations through the California Building Standards Commission. The California Building Standards are based primarily on model codes developed by national code development organizations known as the International Code Council (Building, Fire, Residential and Property Maintenance Codes), the National Fire Protection Association (Electrical Code), and the International Association of Plumbing and Mechanical Officials (Plumbing and Mechanical Codes). The one exception to this is the Green Building Standards Code, which is developed in its entirety by the State.

As with the State Building standards, the model codes are also updated every three years. Both the model codes and state standards are developed with extensive local government input. Livermore participates in these efforts by providing testimony on behalf of the city, region and state during national model code hearings. The City also represents local government through participation on statewide seismic design, disabled access, and code advisory committees.

Livermore is a founding member city of the Tri-Chapter Uniform Code Adoption committee, a committee comprised of Bay Area cities, whose goal is to promote regional consistency in the local amendment process. These efforts have helped to maintain regional consistency, promoting user-friendly and easily understood construction codes throughout the Bay Area.

In addition, local jurisdictions can adopt code amendments that establish requirements above the minimum State building code requirements. These amendments are called “reach codes” and must be filed with and approved by the California Building Standards Commission (CBSC). A jurisdiction can adopt a reach code at any time; however, the most streamlined approach is to adopt the reach code concurrently with the new state building code.

Reach codes are effective and flexible tools to achieve local energy and climate policy objectives. Over 50 local jurisdictions in California adopted amendments to the 2019 Building Standards Code (2019 Code) related to energy-efficiency, building electrification, electric vehicle (EV) charging infrastructure, and solar photovoltaics. These reach codes are intended to reduce energy costs and greenhouse gas emissions, improve indoor and outdoor air quality, and expand clean and renewable energy.

Livermore’s Draft Climate Action Plan (CAP) calls for the City to adopt reach codes for all-electric buildings and electric vehicle charging in new construction. Conversations with the community during outreach for the CAP revealed overall support for these requirements in new construction. The community expressed concern about applying these requirements to additions or renovations in existing buildings due to costly upgrades that may be required, particularly in older homes with limited electrical capacity. Requiring new construction to be all-electric and to install electrical infrastructure for EV

charging upfront is a more cost-effective approach.

Reach codes for the 2019 Code amended the Energy Code (Title 24, Part 6), which required review and approval by the California Energy Commission (CEC) in addition to the CBSC. For the 2022 Building Standards Code (2022 Code), local jurisdictions have been directed to include all-electric construction and EV charging reach codes in the Green Building Standards Code also known as CALGreen Code (Title 24, Part 11). Amendments to the CALGreen Code do not require CEC review.

To further expand on the proposed Reach Code, the following sections outline proposed amendments to the 2022 CALGreen Code to require new buildings in Livermore to be all-electric and to install additional electric vehicle charging infrastructure. The reach codes do not apply to renovations or additions to existing buildings, including accessory dwelling units (ADUs) that are constructed on a lot with an existing residence. The reach codes amend the following sections of the 2022 CALGreen Code:

Chapter 2 - Definitions; Section 202 Definitions
Chapter 4 - Residential Mandatory Measures; Section 4.106 Site Development
Chapter 5 - Nonresidential Mandatory Measures; Section 5.106 Site Development

The amendments were prepared based on recommendations from the City Council Climate Change Subcommittee, Rincon Consultants, and East Bay Community Energy. They were also prepared in coordination with the Cities of Pleasanton and Dublin, which plan to adopt similar reach codes. If approved by the City Council, staff will submit the proposed amendments to the CBSC for review. If the CBSC approves the amendments, the requirements would take effect with the 2022 Code on January 1, 2023.

All-Electric Buildings in New Construction

All-electric buildings improve indoor and outdoor air quality and reduce greenhouse gas emissions when electricity is sourced from carbon-free and renewable energy. In most cases, all-electric construction is cheaper than construction with natural gas because it eliminates the need to install natural gas infrastructure. The all-electric reach code would require most new buildings in Livermore to be constructed without natural gas or other fossil fuels. The reach code requirements would not apply to renovations or additions to existing buildings.

An all-electric building is defined as:

A building that contains no combustion equipment or plumbing for combustion equipment serving space heating (including fireplaces), water heating (including pools and spas), cooking appliances (including barbeques), and clothes drying, within the building or building property lines, and instead use electric heating appliances for service.

Minimizing exceptions to the requirements is important to prevent expensive expansion of natural gas lines that serve only a few end users and to maximize the public health and environmental benefits of all-electric buildings. However, the reach code includes exceptions in the following cases:

- Multifamily residential projects that received entitlements before the effective date of the code and have water heating systems serving multiple units.
- Accessory Dwelling Units (ADUs) that are constructed on a parcel with an existing residence that

utilizes fuel gas.
- Commercial kitchens with a business-related need to cook with combustion equipment.
- Laboratories with a business, research, or educational-related need to use combustion equipment.
- Hotels and motels with 80 or more guestrooms may utilize fuel gas in on-site commercial clothes drying equipment.
- Projects that can demonstrate that it is infeasible to construct all-electric according to the California Energy Code or Building Energy Efficiency Standards.

All buildings that are granted an exception must meet requirements for combustion equipment, including having the pre-wiring and physical space needed to accommodate a future transition to all-electric. Overall, this reach code will reduce construction costs, minimize natural gas usage, and open a pathway to utilizing 100% renewable energy in new construction.

Electric Vehicle Charging Infrastructure in New Construction

Electric vehicle charging infrastructure at homes, workplaces, and commercial centers is necessary to support a transition from combustion to electric vehicles. The proposed reach code for EV charging establishes more ambitious requirements for EV charging infrastructure in new construction compared to the 2022 CALGreen Code. The reach code requirements would not apply to renovations or additions to existing buildings. Electric vehicle charging readiness requirements generally fall into three categories:

1. EV Charging Station (EVCS): An EV charger installed at a parking space, such that an EV can charge without additional equipment.
2. EV Ready Space: A parking space that has the power supply and associated outlet to readily plug in an EV charger and a vehicle can charge.
3. EV Capable Space: A parking space with electrical conduit installed and adequate capacity in the building's electrical panel and transformers to serve a future EV charger. Electrical work to complete the circuit and/or increase the gauge of upstream wiring would be required to accommodate an EV charger.

Additionally, EV charging speed is generally summarized into three categories:
- Level 1: Includes a 110/120V, 20-amp circuit. This is equivalent to a standard home outlet that would charge an electric vehicle approximately 3-4 miles per charging hour.
- Level 2: Includes a 208/240V, 40-amp circuit. This service capacity is typically used for larger appliance loads in homes and would charge an electric vehicle approximately 10-20 miles per charging hour.
- Level 3: A minimum of 480V, 100-amp circuit. This level is used for Tesla Superchargers and other Direct Current Fast Chargers. An electric vehicle can charge 150+ miles per charging hour at this level.

The 2022 CALGreen Code includes the following requirements for EV charging infrastructure in new construction:

- New one- and two-family dwellings and townhouses with attached private garages:
    - One Level 2 EV capable space
- Multi-family dwellings and hotels with less than 20 units:
    - 25% Level 2 EV ready spaces
    - 10% Level 2 EV capable spaces

- Multi-family dwellings and hotels with more than 20 units:
    - 5% Level 2 EV charging stations
    - 25% Level 2 EV ready spaces
    - 10% Level 2 EV capable spaces
- Non-residential uses:
    - 5% Level 2 EV charging stations
    - 15% Level 2 EV capable spaces

While California's new minimum requirements are a step forward, it is unlikely that the requirements for multi-family dwellings and non-residential buildings are enough to keep pace with expected electric vehicle growth looking towards 2030. The proposed reach code allows Livermore to prepare for a higher volume of electric vehicles in the future. The amendments include the following requirements for EV charging in new construction:

- One- and two-family dwellings and townhouses with attached private garages:
    - Two Level 2 EV Ready spaces
- Multi-family dwellings:
    - 15% Level 2 EV Charging Stations
    - 85% Level 2 EV Ready spaces
- Non-residential uses:
    - Offices
        - 20% Level 2 EV Charging Stations
        - 30% Level 2 EV Capable spaces
    - Hotels:
        - 5% Level 2 EV Charging Stations
        - 25% Level 2 EV Ready spaces
        - 10% Level 2 EV Capable spaces
    - All other:
        - 10% Level 2 EV Charging Stations
        - 10% Level 2 EV Capable spaces

Similar to the all-electric reach code, the EV charging reach code grants exceptions in certain cases, including:

- Where local utility power supply is inadequate
- If construction costs would increase by an average of:
    - $400 per parking space for affordable housing and non-profit organizations serving low-income and underserved communities; or
    - $4,500 per parking space for all other uses
- Accessory Dwelling Units
- Multifamily residential projects that received entitlements before the effective date of the code
- Spaces in automated mechanical car parking systems

Ensuring that newly constructed residential and non-residential parking has ample EV charging capability will reduce long-term retrofit costs of EV infrastructure installation, while supporting EV adoption and decreasing transportation-related greenhouse gas emissions.

Each of these efforts contribute to a set of construction codes that remain current with evolving industry practice, ensuring broad stakeholder input, building safety, construction consistency, protection of the environment, and economic vitality. The latest codes, as adopted by the State and proposed amendments have been updated to better reflect current technology and standards for construction, including seismic safety, fire protection, environmental protection, and maintenance of buildings.

FISCAL AND ADMINSTRATIVE IMPACTS

None.

ATTACHMENTS

1. Ordinance
2. Exhibit A - Chapter 15.02 Building Code
3. Exhibit B - Chapter 15.04 Property Maintenance Code
4. Exhibit C- Chapter 15.06 Fire Code
5. Exhibit D - Chapter 15.08 Electrical Code
6. Exhibit E - Chapter 15.10 Mechanical Code
7. Exhibit F - Chapter 15.12 Plumbing Code
8. Exhibit G - Chapter 15.14 Residential Code
9. Exhibit H - Chapter 15.26 Green Code

Prepared by: Franc Moufarrej
Building Official

Approved by:

Marianna Marysheva
City Manager

Fiscal Review by:

Tina Olson
Administrative Services Director

IN THE CITY COUNCIL OF THE CITY OF LIVERMORE, CALIFORNIA

AN ORDINANCE REVISING AND AMENDING CHAPTERS 15.02 *BUILDING CODE*, 15.04 *PROPERTY MAINTENANCE CODE,* 15.06 *FIRE CODE,* 15.08 *ELECTRICAL CODE,* 15.10 *MECHANICAL CODE*, 15.12 *PLUMBING CODE*, 15.14 *RESIDENTIAL CODE*, AND 15.26 *GREEN BUILDING STANDARDS CODE* IN THE LIVERMORE MUNICIPAL CODE, AND ADOPTING BY REFERENCE, AND AMENDING BASED UPON LOCAL CLIMATIC, GEOLOGICAL, AND TOPOGRAPHICAL CONDITIONS, THE 2022 CALIFORNIA BUILDING STANDARDS CODE SET FORTH IN TITLE 24 OF THE CALIFORNIA CODE OF REGULATIONS AND THE FOLLOWING CODES ADOPTED THEREIN - THE 2021 EDITIONS OF THE INTERNATIONAL BUILDING CODE, THE INTERNATIONAL FIRE CODE, THE INTERNATIONAL PROPERTY MAINTENANCE CODE, THE INTERNATIONAL RESIDENTIAL CODE, THE UNIFORM PLUMBING CODE, THE UNIFORM MECHANICAL CODE, THE 2020 EDITION OF THE NATIONAL ELECTRICAL CODE, AND THE 2022 CALIFORNIA GREEN BUILDING STANDARDS CODE

Health and Safety Code Sections 17958 and 17958.5 allow the City of Livermore ("City"), by ordinance, to make modifications or changes to the State Building Standards Code and other regulations adopted pursuant to Health and Safety Code Section 17922.

Health and Safety Code Section 17958.5 requires that such changes be determined to be reasonably necessary because of local climatic, geological, or topographical conditions.

Health and Safety Code Section 17958.7 requires that the City, before making any modifications or changes pursuant to Health and Safety Code Sections 17958 and 17958.5, make an express finding that each such modification or change is needed.

Such findings must be made available as a public record and a copy thereof with each such modification or change shall be filed with the California Building Standards Commission.

The City Council hereby determines that the proposed ordinance establishes requirements greater than those set forth in the 2022 edition of the California Building Standards Code codified in Title 24 of the California Code of Regulations, as adopted by the City of Livermore and set forth in chapters 15.02 *Building Code*, 15.04 *Property Maintenance Code*, 15.06 *Fire Code*, 15.08 *Electrical Code*, 15.10 *Mechanical Code*, 15.12 *Plumbing Code*, 15.14 *Residential Code*, 15.26 *Green Building Code,* in the Livermore Municipal Code.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF LIVERMORE DOES FIND AND ORDAIN AS FOLLOWS:

Section 1. *Findings*. Amendments of the 2021 International Building Code, the 2021 International Fire Code, the 2021 Uniform Plumbing Code, the 2021 International Residential Code and the 2022 California Green Building Standards Code are necessary to serve the public interest by reducing the risk to life and property of the citizens of Livermore because of the following conditions:

1. Average yearly rainfall for the City is approximately 16"-18". This rainfall normally occurs from October to April. During the summer months, there is generally no measurable precipitation. Temperatures for this dry period average from 80□ to 100□ Fahrenheit and are frequently accompanied by light to gusty westerly winds. The City is surrounded by 2300 acres of grasslands, which, in conjunction with the dry and windy climatic conditions, create a hazardous situation that has led to extensive grass and brush fires in recent years. With more development extending from the urban core into the grass covered areas, wind driven fires could lead to severe consequences, as has been the case on several occasions in similar areas of the State. Therefore, additions to the Livermore Building and Fire Codes are necessary.

2. Uniquely for a city of its size, the City is bisected by several topographical features, including two major creeks (Arroyo Las Positas and Arroyo Mocho), one railroad line (Union Pacific) and Interstate, 580. As a result, the City is divided into discrete districts, such as the Springtown area north of the freeway and the residential area southwest of the Arroyo Mocho. Traffic between these districts is channeled into several major thoroughfares which must cross the creeks, railroad tracks, and freeway, by means of bridges, overpasses or underpasses. Heavy traffic congestion on the City's major streets already act as a barrier to timely responses for fire equipment and emergency services. In the event of an accident or other emergency at one of the key points of intersection between a road and creek, or freeway, sections of the City could become isolated, or response time could be sufficiently slowed so as to increase the risk of substantial injury or damage. For example, a routine accident at Holmes Street bridge or First Street overpass would greatly reduce response times to the northeastern or southwestern portions of the City. With the inability of emergency services to guarantee rapid response to various sections of the City, it is necessary to mitigate this problem by requiring additional built-in automatic fire protection systems, which will provide for early detection and initial fire control until the arrival of the firefighting equipment and other emergency services.

The Livermore Valley is subject to ground tremors from large seismic events on the San Andreas, Hayward, and Calaveras faults, the major active faults in the San

Francisco Bay Area. In the Valley itself, and adjacent to the City of Livermore, is the active Greenville Fault. The largest recorded earthquake in this immediate area occurred on the San Andreas Fault on October 17, 1989, a 7.1 magnitude. The area also had a sequence of earthquakes on the Greenville Fault in January and February of 1980; these earthquakes had a magnitude of from 5.5 to 5.9 on the Richter Scale. The Mount Diablo thrust fault is also a potentially active fault in the northern end of the valley. Several smaller faults in or around the City include the Las Positas Fault, the Tesla Fault, and the Livermore Fault. The U.S. Geological Survey (USGS) has identified a 70% probability of a major earthquake occurring in the region within the next 30 years. Recent earthquake damage studies, including the 1994 Northridge earthquake, have indicated the lack of adequate design and detailing as a contributing factor to damages that reduced the protection of the life-safety of building occupants.

The potential for earthquakes influences fire protection planning in several ways. First, a major seismic event would create a city-wide demand on fire protection service which would be beyond the response capacity of the fire department. This potential problem can be mitigated by requiring initial fire control through the installation of automatic fire protection systems.

In addition, the City is adjacent to the Lawrence Livermore National Laboratory and Sandia Laboratory; two facilities engaged in nuclear, energy and scientific research. Because of the presence at both sites of radioactive and other hazardous materials, the fire department's energy in the wake of an earthquake would have to be focused on stabilizing any problems at these facilities.

This also supports the need for other structures in the City to be capable of at least initial fire suppression capacity. Finally, as demonstrated above, structural damage to the overpass or bridges connecting the City's various areas would seriously delay emergency vehicle access to these areas.

Livermore is located in the Livermore Valley, which has local topographical conditions affecting air quality. The Livermore Valley is a sheltered inland valley near the eastern border of the Bay Area. The western side of the valley is bordered by hills of 1,000 to 1,500 feet in elevation with two gaps connecting the valley to the central Bay area, the Hayward Pass, and Niles Canyon. The eastern side of the valley is also bordered by hills of 1,000 to 1,500 feet in elevation with one major passage to the San Joaquin Valley at the Altamont Pass, and several secondary passages. To the north lies the Black Hills and Mt. Diablo. A northwest to southeast channel connects the Diablo Valley to the Livermore Valley. The south side of the Livermore Valley is bordered by mountains approximately 3,000 to 3,500 feet high. Maximum summer temperatures in the Livermore Valley range from the high-80s to the

low-90s, with extremes in the 100s. Winter maximum temperatures range from the high-50s to the low-60s, while minimum temperatures range from the mid-to-high 30s, with extremes in the high teens and low-20s.

The Livermore Valley does have violations of federal and state air quality standards based on these local topographical conditions, as well as local climatic. These local topographical and climatic conditions, combined with the local environmental condition as set forth in the Climate Change Element of the Livermore General Plan (2009), adopted herein by this reference, are the basis for the amendments to the California Building Standards Code. These conditions contribute to the Bay Area's status as a "nonattainment area" under the federal Clean Air Act for ozone and particulate matter and therefore, these air quality considerations require additional Green Building measures to amend chapters 2, 4, and 5 of the 2022 Green Building Standards Code (CAL Green) and adopt additional measures "Reach Codes" for electrification and Electric Vehicle charging as applicable, to improve indoor air quality, reduce energy usage, decrease greenhouse gas emissions, and expand clean and renewable energy.

3. Section 609.3 of the 2021 Uniform Plumbing Code is amended to prohibit the installation of water distribution piping under concrete floor slabs within buildings, due to the corrosive nature (on this piping) of the soil within various areas of the City.

For the above reasons, taken individually and cumulatively, the City Council of the City of Livermore finds that there are building and fire hazards, as well as environmental considerations, peculiar to Livermore that require the increased fire protection, structural design, and green building standards set forth in this ordinance.

Section 2. *Adoption by Reference and Amendments*. The 2022 California Building Standards Code set forth in Title 24 of the California Code of Regulations, and the following codes adopted therein – the 2021 editions of the International Building Code, the International Fire Code, the International Property Maintenance Code, the International Residential Code, the Uniform Plumbing Code, the Uniform Mechanical Code, the 2020 edition of the National Electrical Code, and the 2022 California Green Building Code, and amendments thereto set forth in the following chapters of the Livermore Municipal Code that are revised and amended to read as set forth in the corresponding exhibits attached hereto:

Exhibit A: Chapter 15.02, Building Code
Exhibit B: Chapter 15.04, Property Maintenance Code
Exhibit C: Chapter 15.06, Fire Code
Exhibit D: Chapter 15.08, Electrical Code
Exhibit E: Chapter 15.10, Mechanical Code
Exhibit F: Chapter 15.12, Plumbing Code
Exhibit G: Chapter 15.14, Residential Code
Exhibit H: Chapter 15.26, Green Building Standards Code

Section 3. *Environmental*. The passage of this ordinance is not a project according to the definition in the California Environmental Quality Act and, therefore, is not subject to the provisions requiring environmental review.

Section 4. *Severability*. If any part of this ordinance is declared invalid by a court, such invalidity shall not affect any of the remaining parts.

Section 5. *Publication*. This ordinance, or a comprehensive summary thereof, shall be published once in a newspaper of general circulation in the City of Livermore within 15 days after its adoption and shall take effect and be in force thirty days after its adoption.

Section 6. *Effective Date*. This ordinance shall take effect 30 days after its adoption, but the revised and amended codes will not take effect for enforcement until 12:01 a.m. on January 1, 2023, when the 2022 California Building Standards Code becomes effective. Until that date and time, the chapters amended and revised by this ordinance will remain in full force and effect for enforcement.

The foregoing ordinance was introduced and its reading waived at the regular meeting of the City Council of the City of Livermore held on September 27, 2022, by the following vote:

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

The foregoing ordinance was adopted and its reading waived at the regular meeting of the City Council held on October 24, 2022, by the following vote:

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

_____
Bob Woerner
Mayor, City of Livermore

ATTEST:

_____
Marie Weber
City Clerk

APPROVED AS TO FORM:

/s/ Jason Alcala
_____
Jason Alcala
City Attorney

Exhibit A – Chapter 15.02 Building Code
Exhibit B – Chapter 15.04 Property Maintenance Code
Exhibit C – Chapter 15.06 Fire Code
Exhibit D – Chapter 15.08 Electrical Code
Exhibit E – Chapter 15.10 Mechanical Code
Exhibit F – Chapter 15.12 Plumbing Code
Exhibit G – Chapter 15.14 Residential Code
Exhibit H – Chapter 15.26 Green Code

Chapter 15.02
BUILDING CODE

Sections:

15.02.010 Title for Citation.
15.02.020 Documents adopted by reference.
15.02.030 Amendments to International Building Code.
15.02.040 CBC Chapter 1, Division II, Title Block amended – Title block.
15.02.050 CBC Chapter 1, Division II, Section 101 amended – General.
15.02.060 CBC Chapter 1, Division II, Section 103 amended – Building and Safety.
15.02.070 CBC Chapter 1, Division II, Section 105.2 amended – Work exempt from permit.
15.02.080 CBC Chapter 1, Division II, Section 106 amended – Floor and Roof Design Loads.
15.02.090 CBC Chapter 1, Division II, Section 109 amended – Fees.
15.02.100 CBC Chapter 1, Division II, Section 110.3.6 amended – Lath and gypsum board inspections.
15.02.110 CBC Chapter 1, Division II, Section 110.3.9 amended – Energy efficiency inspections.
15.02.120 CBC Sections 903 and 904 amended – Fire Protection Systems.
15.02.130 CBC Section 1505.1 amended – Fire Classification, Roof coverings.
15.02.150 CBC Section 1705.3 amended – Concrete Construction, exception 1.
15.02.160 CBC Section 1905.1.7 amended - ACI 318, Section 14.1.4
15.02.170 Residential building permits issuance limitations.

15.02.010 Title for citation.

This chapter shall be known as the "Building Code," may be cited as such and will be referred to in this chapter as "this code."

15.02.020 Documents adopted by reference.

The International Building Code, 2021 Edition, as amended and set forth in the California Building Standards Code, Title 24 of the California Code of Regulations, published by the International Code Council is hereby adopted, together with Chapter 1 Division II, Scope and Administration and Appendices Chapters C and J, except as set forth in this chapter.

15.02.030 Amendments to International Building Code.

The International Building Code (IBC) adopted in this chapter by reference is amended by the following additions, deletions and amendments thereto as set forth in this chapter. Reference numbers herein are taken from the 2022 California Building Code.

15.02.040 CBC Chapter 1, Division II Scope and Administration amended – Title block.

CBC Chapter 1, Division II, Title block shall be amended to read:
15.02.040 CBC Chapter 1, Division II Title Block shall be amended to read:

CHAPTER 1, DIVISION II

LIVERMORE BUILDING CODE ADMINISTRATIVE PROVISIONS

15.02.050 CBC Chapter 1, Division II, Section 101 amended – General.

CBC Chapter 1, Division II, Section 101 is amended to read:

SECTION 101
GENERAL

101.1 Title. These regulations shall be known as the Livermore Building Code, hereinafter referred to as “this code.”

101.2 Scope.
The provisions of this code shall apply to the construction, alteration, relocation, enlargement, replacement, repair, equipment, use and occupancy, location, maintenance, removal and demolition of every building or structure or any appurtenances connected or attached to such buildings or structures.

> Exception: Detached one-and two-family dwellings and multiple single-family dwelling (townhouses) not more than three stories above grade plane in height with a separate means of egress and their accessory structures not more than 3 stories above grade plane in height, shall comply with this code or the California Residential Code.

> 101.2.1 Appendices.
> Provisions in the appendices shall not apply unless specifically adopted.

101.3 Purpose.
The purpose of this code is to establish the minimum requirements to provide a reasonable level of safety, health and general welfare through structural strength, means of egress facilities, stability, sanitation, light and ventilation, energy conservation, energy conservation, and for providing a reasonable level of life safety and property protection from the hazards of fire, explosion or dangerous conditions, and to provide a reasonable level of safety to fire fighters and emergency responders during emergency operations.

101.4 Referenced codes.
The other codes listed in Sections 101.4.1 through 101.4.7 and referenced elsewhere in this code shall be considered part of the requirements of this code to the prescribed extent of each such reference.

101.4.1 Gas.
The provisions of the Livermore Plumbing Code shall apply to the installation of gas piping from the point of delivery, gas appliances and related accessories as covered in this code. These requirements apply to gas piping systems extending from the point of delivery to the inlet connections of appliances and the installation and operation of residential and commercial gas appliances and related accessories.

101.4.2 Mechanical.
The provisions of the Livermore Mechanical Code shall apply to the installation, alterations, repairs and replacement of mechanical systems, including equipment, appliances, fixtures, fittings and/or appurtenances, including ventilating, heating, cooling, air-conditioning and refrigeration systems, incinerators and other energy-related systems.

101.4.3 Plumbing.
The provisions of the Livermore Plumbing Code shall apply to the installation, alteration, repair and replacement of plumbing systems, including equipment, appliances, fixtures, fittings and appurtenances, and where connected to a water or sewage system and all aspects of a medical gas system. The provisions of the Livermore Plumbing Code shall apply to private sewage disposal systems.

101.4.4 Property maintenance.
The provisions of the Livermore Property Maintenance and Building Codes shall apply to existing structures and premises; equipment and facilities; light, ventilation, space heating, sanitation, life and fire safety hazards; responsibilities of owners, operators and occupants; and occupancy of existing premises and structures.

101.4.5 Fire prevention.
The provisions of the Livermore Fire Code shall apply to matters affecting or relating to structures, processes and premises from the hazard of fire and explosion arising from the storage, handling or use of structures, materials or devices; from conditions hazardous to life, property or public welfare in the occupancy of structures or premises; and from the construction, extension, repair, alteration or removal of fire suppression, automatic sprinkler systems and alarm systems or fire hazards in the structure or on the premises from occupancy or operation.

101.4.6 Energy.
The provisions of the California Energy Code, Title 24, Part 6 shall apply to all matters governing the design and construction of buildings for energy efficiency.

101.4.7 Existing buildings.
The provisions of the Livermore Existing Building Code shall apply to all matters governing the repair, alteration, change of occupancy, addition to and relocation of existing buildings.

15.02.060 CBC Chapter 1, Division II, Section 103 amended – Building and Safety.

CBC Chapter 1, Division II, Section 103 is amended to read:

SECTION 103
BUILDING AND SAFETY DIVISION

103.1 Creation of enforcement agency.
The Building and Safety Division is hereby created and the official in charge thereof shall be known as the building official. The function of the agency shall be the implementation, administration, and enforcement of this code.

103.2 Appointment.
The building official shall be appointed by the city manager.

103.3 Deputies.
In accordance with the prescribed procedures of this jurisdiction and with the concurrence of the appointing authority, the building official shall have the authority to appoint related technical officers, inspectors, plan examiners and other employees. Such employees shall have powers as delegated by the building official.

15.02.070 CBC Chapter 1, Division II, Section 105.2 amended – Work exempt from permit.

CBC Chapter 1, Division II, Section 105.2 is amended to read:

Delete all reference to Electrical, Gas, Mechanical, and Plumbing repairs, appliances and fixtures. These items are addressed in the Livermore Electrical, Mechanical and Plumbing Codes.

15.02.080 CBC Chapter 1, Division II, Section 106 amended – Floor and Roof Design Loads.

CBC Chapter 1, Division II, Section 106 is deleted.

15.02.090 CBC Chapter 1, Division II, Section 109 amended – Fees.

CBC Chapter 1, Division II, Section 109 is amended to read:

Fees are to be set by resolution of the Livermore City Council.

All permit fees, development fees and other city fees, including, but not limited to, the tax on construction and traffic impact fees, may be waived for any permit issued for the repair of any structure as required by Chapter 15.64 (Unreinforced Masonry Building Hazard Reduction Program). Fees may be waived for reconstruction of any building removed in accordance with Chapter 15.64 when such building is replaced to replicate the structure to be removed.

15.02.100 CBC Chapter 1, Division II, Section 110.3.6 amended – Lath and gypsum board inspections.

CBC Chapter 1, Division II, Section 110.3.6 is amended to read:

110.3.6 Lath and gypsum board inspection.

The Exception is deleted.

15.02.110 CBC Chapter 1, Division II, Section 110.3.9 amended – Energy efficiency inspections.

CBC Chapter 1, Division II, Section 110.3.9 is amended to read:

110.3.9 Energy efficiency inspections.
Inspections shall be made to determine compliance with Title 24, Part 6 and shall include, but not be limited to, inspections for: envelope insulation R and U values, fenestration U value, duct system R value, and HVAC and water-heating equipment efficiency.

15.02.120 CBC Sections 903 and 904 amended – Fire Protection Systems.

Sections 903 and 904 are amended as amended in sections 903 and 904 of the Livermore Fire Code (LMC Chapter 15.06).

15.02.130 CBC Section 1505.1 amended - Fire Classification, Roof coverings.

Section 1505.1 is amended by adding the following paragraph:

Roof covering shall be fire retardant minimum Class B or higher for all building regardless of type of construction.

15.02.150 CBC Section 1705.3 amended – Concrete Construction, exception 1.
Section 1705.3, exception 1 is amended to read:

1. Isolated spread concrete footings of buildings three stories or less above grade plane that are fully supported on earth or rock, where the structural design of the footing is based on a specified compressive strength, f'c, no greater than 2,500 pounds per square inch (psi) (17.2Mpa).

15.02.160 CBC Section 1905.1.7 amended - ACI 318, Section 14.1.4

Section 1905.1.7 is amended to read:

1905.1.7 ACI 318, Section 14.1.4. Delete ACI Section 14.1.4 and replace with the following:

14.1.4 Plain concrete in structures assigned to seismic design category C, D, E or F.

14.1.4.1 Structures assigned to Seismic Design Category C, D, E or F shall not have elements of structural plain concrete, except as follows:

(a) Isolated footings of plain concrete supporting pedestals or columns are permitted, provided the projection of the footing beyond the face of the supported member does not exceed the footing thickness.

Exception: In detached one and two-family dwellings three stories or less in height, the projection of the footing beyond the face of the supported member is permitted to exceed the footing thickness.

(b) Plain concrete footing supporting walls are permitted, provided the footings have at least two continuous longitudinal reinforcing bars. Bars shall not be smaller than No. 4 and shall have a total area of not less than 0.002 times the gross cross-sectional area of the footing. A minimum of one bar shall be provided at the top and bottom of the footing. Continuity of reinforcement shall be provided at corners and intersections.

Exception: In detached one and two-family dwellings three stores or less in height and constructed with stud bearing walls, plain concrete footings–with at least two continuous longitudinal reinforcing bars not smaller than No. 4 are permitted to have a total area of less than 0.002 times the gross cross –sectional area of the footing.

15.02.170 Residential building permits issuance limitations.

The following language is inserted in accordance with the provisions of a voter-approved initiative ordinance, dated April 11, 1972.

A. The people of the city find and declare that it is in the best interest of the city, in order to protect the health, safety, and general welfare of the citizens of the city, to control residential building permits in the said city. Residential building permits include single-family residential, multiple residential, and trailer court building permits within the meaning of this code. Additionally, it is the purpose of this initiative measure to contribute to the solution of air pollution in the city.

B. The specific reasons for the proposed petition are that the undersigned believe that the resulting impact from issuing residential building permits at the current rate results in the following problems mentioned below. Therefore, no further residential building permits are to be issued by the said city until satisfactory solutions, as determined in the standards set forth, exist to all the following problems:

1. Educational facilities. No double sessions in the schools or overcrowded classrooms as determined by the California Education Code.
2. Sewage. The sewage treatment facilities and capacities meet the standards set by the Regional Water Quality Control Board; and
3. Water supply. No rationing of water with respect to human consumption or irrigation and adequate water reserves for fire protection are existing.

Chapter 15.04
PROPERTY MAINTENANCE CODE

Sections:

15.04.010 Title for citation.
15.04.020 Documents adopted by reference.
15.04.030 Amendments to the International Property Maintenance Code.
15.04.040 IPMC Chapter 1 amended.
15.04.050 IPMC Chapter 2 amended.
15.04.060 IPMC Chapter 3 amended.
15.04.070 IPMC Chapter 4 amended.
15.04.080 IPMC Chapter 5 amended.
15.04.090 IPMC Chapter 6 amended.

15.04.010 Title for citation.

This chapter shall be known as the "property maintenance code," may be cited as such and will be referred to in this chapter as "this code."

15.04.020 Documents adopted by reference.

The International Property Maintenance Code, 2021 Edition published by the International Code Council is hereby adopted. Where this chapter is inconsistent with state law then in that instance the provisions of the state law shall prevail.

15.04.030 Amendments to International Property Maintenance Code.

The International Property Maintenance Code (IPMC) adopted in this chapter by reference is amended by the following additions, deletions and amendments thereto as set forth in this chapter.

15.04.040 IPMC Chapter 1 amended.

Chapter 1 is amended as follows:

Sections 102.3, 102.8, 103, 107, 108, 111.7, 111.8, 112.4, 112.5, 112.6, 113 are deleted.

Each reference to the International Building Code is replaced with The California Building Code. Each reference to the International Existing Building Code is replaced by the California Existing Building Code. Each reference to the International Fire Code is replaced by the California Fire Code. Each reference to the International Fuel Gas and International Plumbing Codes is replaced by the California Plumbing Code. Each

reference to the International Mechanical Code is replaced by the California Mechanical Code. Each reference to the International Residential Code is replaced by the California Residential Code. Each reference to the International Zoning Code is replaced by the Livermore Development Code.

15.04.050 IPMC Chapter 2 amended.

Chapter 2 is amended as follows:

Each reference to the International Building Code is replaced with The California Building Code. Each reference to the International Existing Building Code is replaced by the California Existing Building Code. Each reference to the International Fire Code is replaced by the California Fire Code. Each reference to the International Fuel Gas and International Plumbing Codes is replaced by the California Plumbing Code. Each reference to the International Mechanical Code is replaced by the California Mechanical Code. Each reference to the International Residential Code is replaced by the California Residential Code. Each reference to the International Zoning Code is replaced by the Livermore Development Code.

15.04.060 IPMC Chapter 3 amended.

Chapter 3 is amended as follows:

Sections 302.4, 302.8, 304.14, 304.18, and 309 are deleted.

Section 303.2 is amended to read:
Every person in possession of land within the city, either as owner, purchaser under contract, lessee, tenant or licensee, upon which is situated a private or public swimming pool or spa, shall at all times maintain an enclosure and safety device in accordance with chapter 31B (public swimming pools) of the California Building Code, specifically Section 3109.4.4.

15.04.070 IPMC Chapter 4 amended.

Chapter 4 is amended as follows:

Sections 404.6 and 404.7 are deleted.

15.04.080 IPMC Chapter 5 amended.

Chapter 5 is amended as follows:

Each reference to the International Plumbing Code shall be replaced with the California Plumbing Code

Section 506.3 Grease interceptors amend to read:

Grease interceptors shall comply with section 1014 of the California Plumbing Code.

15.04.090 IPMC Chapter 6 amended.

Chapter 6 is amended as follows:

Each reference to the International Mechanical Code is replaced by the California Mechanical Code.

Chapter 15.06
FIRE CODE

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15.06.010 Title for citation

These regulations shall be known as the "Livermore Fire Code," hereinafter referred to as "this code."

15.06.020 Documents adopted by reference

A. The International Fire Code, 2021 Edition, as amended and set forth in the California Code of Regulations, Title 24, Part 9, published by the International Code Council, is hereby adopted, together with Appendices D, E (informational purposes), F, and H, except as set forth in this chapter.

1. Only those sections, including applicable amendments, of Chapter 4 and Chapter 11 adopted by the California Office of the State Fire Marshal (SFM) as identified in the applicable adoption matrix shall be adopted.

B. The International Fire Code (IFC) adopted by reference for the purpose of prescribing regulations governing conditions hazardous to life and property from fire or explosion in this chapter by reference is amended by the following additions, deletions and amendments thereto as set forth in this chapter. Reference numbers herein are taken from the 2022 California Fire Code.

C. These regulations shall be known as the Livermore Fire Code, hereinafter referred to as “this code.”

D. Where there is a reference in the code to the “fire official,” “fire code official” or “authority having jurisdiction,” it shall mean the “Fire Chief” or, in the absence of the fire chief, the Fire Marshal.

15.06.030 Amendments to the International Fire Code

The International Fire Code (IFC) adopted in this chapter by reference is amended by the following additions, deletions and amendments thereto as set forth in this chapter. Reference numbers herein are taken from the 2022 California Fire Code.

15.06.040 CFC Chapter 1, Division II, 103.1 amended - Creation of agency

Section 103.1 is amended to read:

The Livermore-Pleasanton Fire Department is hereby created and the official in charge thereof shall be known as the fire code official. The function of the agency shall be the implementation, administration and enforcement of the provisions of this code.

15.06.050 CFC Chapter 1, Division II, Table 105.5.9 amended – Permit Amounts for Compressed Gases

Table 105.5.9 is amended to read:

Type of Gas	Amount (cubic feet at NTP)
Carbon dioxide used in carbon dioxide enrichment systems	875 (100 lb.)
Carbon dioxide used in insulated carbon dioxide beverage dispensing applications	875 (100 lb.)
Corrosive	200
Flammable (except cryogenic fluids and LPG)	200
Highly Toxic	Any amount
Inert, carbon dioxide (not otherwise permitted above), simple asphyxiant and other gases with a 1,000 cubic foot threshold for the HMBP program	1,000
Moderately Toxic	Any amount
Oxidizing (including oxygen)	200
Pyrophoric	Any amount
Toxic	Any amount
All other gases not otherwise permitted above subject to HMBP reporting (per material)	200

15.06.060 CFC Chapter 1, Division II, Table 105.5.11 amended – Permit Amounts for Cryogenic Fluids.

Table 105.5.11 is amended to read:

Type of Cryogenic Fluid	Cubic feet at NTP
Corrosive	Any Amount
Flammable	Any Amount
Inert, simple asphyxiant, and other gases with a 1,000 cubic foot threshold for the HMBP program	1,000
Oxidizing (including oxygen)	200
Physical or health hazard not indicated above	Any amount

All other materials not otherwise permitted above subject to HMBP requirements (per material)	200

15.06.070 CFC Chapter 1, Division II, Section 105.5.18 Item 3 amended – Flammable and combustible liquids.

Section 105.5.18 Item 3 is amended to read:

3. To store, handle or use Class II or Class IIIA liquids in excess of 25 gallons except for fuel oil in the fuel tanks of portable equipment.

15.06.080 CFC Chapter 1, Division II, Section 105.5.18 Item 12 added - Permit Amounts for Hazardous Materials, Flammable and Combustible Liquids and Gases at Residential Occupancies

Section 105.6.17 Item 12 is added to read:

12. Storage of flammable and combustible liquids and flammable gases at Group R occupancies are limited as follows:

1. Outside storage of flammable liquids (including gasoline) is limited to 30 gallons.
2. Outside storage of combustible liquids (including diesel and kerosene) is limited to 55 gallons.

   Exception: Emergency generators used for life safety purposes.

3. Outside storage of compressed and liquefied flammable gas is limited to 15 gallons or 540 cubic feet.

   Exceptions:

   a. Emergency generators used for life safety purposes.
   b. Fixed gas supply for occupancies not provided with natural gases services. Amounts over 1,000 gallons must be approved by the fire official.

4. Manufacture of Biodiesel and Methanol at Residential Occupancies. The manufacture of biodiesel and methanol is prohibited in Residential Occupancies and in U Occupancies associated with Residential Occupancies both inside and outside buildings.

15.06.090 CFC Chapter 1, Division II, Table 105.5.22 amended – Permit Amounts for Hazardous Materials.

Table 105.5.22 is amended to add:

Moderately toxic gas	20 cubic Feet
Irritants and Sensitizers	550 gallons (liquids) 5000 pounds (solids)
Other materials subject to HMBP requirements	55 gallons (liquids) 500 pounds (solids)

15.06.100 CFC Chapter 1, Division II, Section 105.5.54 Item 4 added- Radioactive Materials.

Section 105.5.54 Item 4 is added to read:

4. Radioactive Materials. To store or handle more than one micro curie (37,000 Becquerel) of radioactive material not contained in a sealed source or more than 1 mill curie (37,000,000 Becquerel) of radioactive material in a sealed source or sources, or any amount of radioactive material for which a specific license from the Nuclear Regulatory Commission is required.

15.06.110 CFC Chapter 1, Division II, Section 111 deleted - Means of Appeals.

Section 111 is deleted.

15.06.120 CFC Chapter 1, Division II, 112.4 – Violation penalties

Section 112.4 is amended to read:

112.4 Violation penalties. Persons who shall violate a provision of this code or shall fail to comply with any of the requirements thereof or who shall erect, install, alter, repair or do work in violation of the approved construction documents, or directive of the fire code official, or of a permit, or certificate used under provisions of this code, shall be punished in accordance with the fines and penalties established by the Livermore Municipal Code and/or, as specified by California Government Code, Section 36900. Each day that a violation continues after due notice has been served shall be deemed a separate offense.

15.06.130 CFC Chapter 1, Division II, Section 115 added – Unauthorized Discharges.

Section 115 is added to read:

Unauthorized Discharges. The Livermore-Pleasanton Fire Department may charge fees to recover the cost of response to incidents involving the discharge or the threatened discharge of a hazardous (or suspected hazardous) material.

15.06.140 CFC Chapter 2 Definitions amended - Hazardous Materials

The definition of Hazardous Materials is amended as follows:

HAZARDOUS MATERIALS. Those chemicals or substances which are physical hazards or health hazards as defined and classified in this chapter and/or are compressed gases, whether the materials are in usable or waste condition.

15.06.150 CFC Chapter 2 Definitions amended - Health Hazard

The definition of Health Hazard is amended as follows:

HEALTH HAZARD. A classification of chemical for which there is statistically significant evidence that acute or chronic health effects are capable of occurring in exposed persons. The term “health hazard” includes chemicals that are moderately toxic, toxic, highly toxic, or corrosive.

15.06.160 CFC Chapter 2 Definitions added - Maximum Threshold Quantity

The definition of Maximum Threshold Quantity is added as follows:

Maximum Threshold Quantity. The following formula shall be used to calculate the maximum threshold quantity for toxic, highly toxic, and moderately toxic gases:

Max TQ (lbs.) = LC50 (ppm) x 2 lb.

For gas mixtures containing one or more toxic, highly toxic or moderately toxic components, the LC50 shall be calculated using CGA Standards P-20 and P-23.

15.06.170 CFC Chapter 2 Definitions added - Moderately Toxic Gas

The definition of Moderately Toxic Gas is added as follows:

Moderately Toxic Gas. A chemical or substance that has a medial lethal concentration (LC50) in air of more than 2,000 parts per million but not more than 5,000 parts per million by volume of gas or vapor, when administered by continuous inhalation for an hour, or less if death occurs within one hour, to albino rats weighing between 200 and 300 grams each.

15.06.180 CFC Section 603.11 added – Multiple Sources of Non-Utility Electricity

Section 603.11 is added to read:

603.11 Multiple Sources of Non-Utility Electricity. When a facility has more than one source of non-utility-based electrical utility power, including emergency and standby power systems, a written shutdown plan shall be provided. A copy of the plan will be posted at or near the main electrical panel in a location approved by the Fire Department. A copy of the plan will be provided in a format acceptable to the Fire Department.

15.06.190 CFC Section 611 added – Immersion Heaters.

Section 611 is added to read:

611 Immersion Heaters. All electrical immersion heaters used in dip tanks, sinks, vats, and similar operations shall be provided with approved over-temperature controls and low liquid level electrical disconnects. Manual reset of required protection devices shall be provided.

15.06.200 CFC Section 903.2 amended – Automatic Sprinkler Systems

903.2 is deleted and replaced with the following:

903.2 Where required.

1. Automatic fire extinguishing systems shall be provided in all new buildings and structures, including any detached or attached structure added to a parcel of land already containing automatic extinguishing system protected buildings.

   Exception:

   a. Detached U Occupancies, other than trash enclosures, that do not exceed 400 square feet of floor area.
   b. Trash enclosures that have been exempted by the fire code official or that meet the following conditions:
      i. The enclosure, including the cover and door, are constructed of non-combustible materials.
      ii. The enclosure does not exceed 180 square feet in size
      iii. The enclosure is stand-alone structure, be a minimum of 20 feet from adjacent buildings and a minimum of 10 feet from property line(s).
      iv. The enclosure is used exclusively for waste garbage contained within approved trash containers. No outdoor storage is permitted within the trash enclosure,
   c. Photo Voltaic Arrays covering parking stalls only.

2. Existing commercial or industrial buildings not currently provided with automatic fire extinguishing systems shall be provided with an automatic fire extinguishing system as follows:

    a) When modification to the building results in a 50% or greater increase of the total floor area of the building or brings the over total of floor area of the building to more than 8,000 square feet, the entire building shall be provided with an automatic fire extinguishing system.

        Exception:

        Additions providing accessory storage space not greater than 500 square feet in area to an existing non-fire sprinklered building or solely for the purpose of providing accessibility shall not result in a requirement that the building be provided with an automatic extinguishing system.

    b) When a change in occupancy classification results in an increased fire hazard or risk to business operations, or increased life safety hazard of the occupants, the new occupancy and all fire areas that the new occupancy exits through shall be provided with an automatic extinguishing system.

        Exception:

        Public assembly occupancies not exceeding an occupant load of 150, whether occupying an entire building or a portion of a building that located in single story buildings.

3. Existing residential buildings not currently provided with automatic fire extinguishing systems shall be provided with an automatic fire extinguishing system as follows:

    a. When a modification or modifications to the building results in a 50% or greater increase of the total original approved floor area of the building.
    b. In the garage when a new attached or detached garage is added, and the modification does not otherwise require the addition of an automatic fire protection system throughout the building.

15.06.210 CFC Section 903.3.1.2.3 amended - NFPA 13R Sprinkler Systems.

Section 903.3.1.2.3 is amended to read:

903.3.1.2.3 Attics. Automatic fire sprinklers shall be provided in all attic areas.

15.06.220 CFC Section 903.3.1.3 amended - NFPA 13D Sprinkler Systems.

Section 903.3.1.3 is amended to read:

903.3.1.3 NFPA 13D sprinkler systems. Automatic sprinkler systems installed in one- and two-family dwellings; Group R-3; Group R-4, Condition 1; and townhouses shall be permitted to be installed throughout in accordance with NFPA 13D *as amended in Chapter 80*.

In addition to the provisions of NFPA 13D, the automatic fire sprinkler system shall be designed, and sprinklers shall be installed in the following additional locations:

1. Attic shall be provided intermediate temperature-rated residential fire sprinklers for detection coverage and located at a spacing equivalent to 30 feet by 30 feet centers and maximum of 15 feet from outside walls.
2. Fire sprinklers shall be provided in garages. Fire sprinklers shall be intermediate rated, quick response, with a maximum coverage of 130 square feet per sprinkler.
3. Any bathroom located under a stairway, regardless of the bathroom's size.
4. Any closet located under a stairway regardless of the closet's size or surfacing materials.

15.06.230 CFC Section 3208.3.1 amended – Flue space protection.

Section 3208.3.1 is amended to read:

3208.3.1 Flue space protection. Flue spaces required by Table 3208.3 above the first tier of storage in single-, double- or multiple-row rack storage installation shall be equipped with approved protection devices. Such devices shall not be removed or modified. Such devices must be repaired or replaced if damaged.

15.06.240 CFC Section 5001.5.3 added - Hazardous Materials Management Plan and Hazardous Materials Management Plan Maintenance

Section 5001.5.3 is added as follows:

Hazardous Materials Management Plans (HMISs) and Hazardous Materials Management Plans (HMMPs) shall be modified and resubmitted when substantive changes occur as defined in the California Health and Safety Code for Hazardous Materials Business Plans (HMBPs).

Whether or not substantive changes have occurred, Hazardous Materials Inventory Statements (HMISs) and Hazardous Materials Management Plans (HMMPs) shall be resubmitted or certified no later than 12 months from the last submittal date.

Exception: HMISs and HMMPs for unstaffed utility sites that are under the reporting threshold for the Federal Emergency Planning and Community Right-to-Know Act (EPCRA) shall be resubmitted no later than 36 months after the latest submittal.

15.06.250 CFC Section 5001.5.4 added - Hazardous Materials Business Plan (HMBP) Reporting Thresholds.

Section 5001.5.4 is added as follows:

In addition to the reporting requirements of California Health and Safety Code, Chapter 6.95, regulated facilities are required to report any amount of highly toxic, toxic, and moderately toxic gases, oxidizing materials Class 4, oxidizing materials Class 3, unstable (reactive) Class 4, unstable (reactive) Class 3, pyrophoric materials, water reactive Class 3.

15.06.260 CFC Section 5003.2.10 added – Biodiesel and methanol equipment

Section 5003.2.10 is added to read:

5003.2.10 **Biodiesel and methanol equipment.** Biodiesel and methanol manufacturing/processing equipment shall be listed or approved. Such equipment shall at a minimum adequately address electrical system, materials of construction, ventilation, seismic and process control and shut-down safety issues.

15.06.270 CFC Section 5003.5.2 added – Ventilation ducting.

Section 5003.5.2 is added to read:

5003.5.2 Ventilation ducting. Product conveying ducts for venting hazardous materials operations shall be labeled with the hazard class of the material being vented and the direction of flow.

15.06.280 CFC Section 5003.5.3 added – H Occupancies.

Section 5003.5.3 is added to read:

5003.5.3 H Occupancies. In “H” occupancies, all piping and tubing may be required to be identified when there is any possibility of confusion with hazardous materials transport tubing or piping. The identification label must include the product/waste name and flow direction indicator. Labels to be placed no less than once every 20 feet of piping and at changes of direction.

15.06.290 CFC Section 5003.13 added – Automatic Filling of Tanks.

Section 5003.13 is added to read:

5003.13 Automatic Filling of Tanks. Systems that automatically fill flammable or combustible liquid tanks shall be equipped with approved overfill protection that sends an alarm signal to a location that is normally occupied during normal business hours and immediately stops the filling of the tank. The alarm signal and automatic shutoff shall be tested in a manner acceptable to the fire code official on an annual basis and records of such testing shall be maintained on-site for a period of five (5) years.

Exception: Emergency generator tanks

15.06.300 CFC Section 5005.5 added - Emergency Alarms, supervision and monitoring

Section 5005.5 is added as follows:

5005.5 Emergency alarms, supervision and monitoring. Emergency alarms, supervision and monitoring shall be provided in accordance with Sections 5004.9 and 5004.10.

15.06.310 CFC Section 5601.1.3 amended – Fireworks.

Section 5601.1.3 is amended as follows:

5601.1.3 Fireworks. The possession, manufacturing, storage, sale, handling, and use of fireworks are prohibited.

Exceptions:

1. Exception 1 is deleted.
2. Exception 2 is deleted.
3. No amendment
4. Exception 4 is deleted.
5. Snap caps and party poppers classified by the California Office of the State Fire Marshal (SFM) as pyrotechnic devices.

15.06.320 CFC Section 5704.2.7.5.8 amended - Exception.

Section 5704.2.7.5.8, Exception, is amended to read:

Exception: Outside aboveground tanks with a capacity of 100 gallons (378 L) or less.

15.06.330 CFC Chapter 60 Title

Chapter 60's title is hereby amended to read:

CHAPTER 60
HIGHLY TOXIC AND TOXIC MATERIALS
AND MODERATELY TOXIC GASES INCLUDING THOSE USED AS
REFRIGERANTS

15.06.340 CFC Section 6004.1 amended - General

Section 6004.1 is hereby amended to read:

6004.1 General. Materials that are stored and used as a gas whether or not the material meets the definition of a compressed gas, and that meet the definition of a highly toxic, toxic or moderately toxic gas shall comply with Section 6004.

Performance based design alternatives may be used for refrigeration systems.

Moderately toxic gases with an LC_{50} less than or equal to 3,000 parts per million shall comply with the requirements for toxic gases in Sections 6004.2.2.1 through 6004.2.2.10.4.

Moderately toxic gases with an LC_{50} more than 3000 parts per million but not greater than 5000 parts per million and exceeding the maximum threshold quantity, as determined by Section 6004.1.6, shall comply with the requirements for toxic gases in Sections 6004.2.2.1 through 6004.2.2.7.

The minimum threshold quantity for highly toxic, toxic and moderately toxic gases, vapors and mists for indoor and exterior storage and use are set forth in Table 6004.1.

Table 6004.1
Minimum Threshold Quantities for Highly Toxic, Toxic and Moderately Toxic Gases

Highly Toxic	0
Toxic	10 cubic feet
Moderately Toxic	20 cubic feet

15.06.350 CFC Section 6004.1.2 amended - Gas Cabinets

Section 6004.1.2 is amended to read:

6004.1.2 Gas cabinets. Gas cabinets containing highly toxic, toxic or moderately toxic gases shall comply with Section 5003.8.6 and the following requirements:

[balance to remain the same]

15.06.360 CFC Section 6004.1.3 amended - Exhausted Enclosures

Section 6004.1.3 is amended to read:

6004.1.2 Exhausted enclosures. Exhausted enclosures containing highly toxic, toxic or moderately toxic gases shall comply with Section 5003.8.5 and the following requirements:

[balance to remain the same]

15.06.370 CFC Sections 6004.1.4 added - Automatic shut-off valve

Section 6004.1.4 is added to read:

6004.1.4 Automatic shut-off valve. An automatic shut-off valve, which is of a fail-safe to close design, shall be provided to shut off the supply of highly toxic gases as close as possible to the supply container for any of the following:

1. Activation of a manual fire alarm system.
2. Activation of the gas detection system.
3. Failure of emergency power.
4. Failure of primary containment.
5. Seismic activity.
6. Failure of required ventilation.
7. Manual activation at an approved remote location.

15.06.380 CFC Section 6004.1.5 added - Annual Maintenance

Section 6004.1.5 is added to read:

6004.1.5 Annual Maintenance. All safety control systems at a facility shall be maintained in good working condition and tested not less frequently than annually. Maintenance and testing shall be performed by persons qualified to perform the maintenance and tests. Maintenance records and certifications shall be kept for a minimum of three years and shall be made available to any representative of the Livermore-Pleasanton Fire Department for inspection upon request.

15.06.390 CFC Section 6004.1.6 added - Maximum threshold quantity

Section 6004.1.6 is added to read:

6004.1.6 Maximum threshold quantity. Toxic gases stored or used in quantities exceeding the maximum threshold quantity in a single vessel per control area or outdoor control area or H-Occupancy shall comply with the additional requirements for highly toxic gases of Section 6004 of this code.

Moderately toxic gases stored or used in quantities exceeding the maximum threshold quantity in a single vessel per control area or outdoor control area or H-Occupancy shall comply with the additional requirements for toxic gases of Section 6004 of this code.

15.06.400 CFC Section 6004.1.7 added - Reduced flow valve

Section 6004.1.7 is added to read:

6004.1.7 Reduced flow valve. All containers of materials other than lecture bottles containing highly toxic material and having a vapor pressure exceeding 29 psi shall be equipped with a reduced flow valve when available. If a reduced flow valve is not available, the container shall be used with a flow-limiting device. All flow limiting devices shall be part of the valve assembly and visible to the eye when possible; otherwise, they shall be installed as close as possible to the cylinder source.

> **Exception**: When the process use rate is approximately equal to the maximum flow rate of the cylinder/tank valve.

15.06.410 CFC Section 6004.1.8 added - Fire extinguishing systems

Section 6004.1.8 **Fire extinguishing systems** is added to read:

6004.1.8 Fire extinguishing systems. Buildings and covered exterior areas for storage and use areas of materials regulated by this Chapter shall be protected by an automatic fire sprinkler system in accordance with NFPA 13. The design of the sprinkler system for any room or area where highly toxic, toxic and moderately toxic gases are stored, handled or used shall be in accordance with Section 5004.5.

15.06.420 CFC Section 6004.1.9 added - Local gas shut off

Section 6004.1.9 **Local gas shut off** is added to read:

6004.1.9 Local gas shut off. Manual activation controls shall be provided at locations near the point of use and near the source, as approved by the fire code official. The fire code official may require additional controls at other places, including, but not limited to, the entry to the building, storage or use areas, and emergency control stations. Manual activated shut-off valves shall be of a fail-safe-to-close design.

15.06.430 CFC Section 6004.1.10 added - Exhaust ventilation monitoring

Section 6004.1.10 **Exhaust ventilation monitoring** is added to read:

6004.1.10 Exhaust ventilation monitoring. For highly toxic gases, toxic and moderately toxic gases exceeding minimum threshold quantities, a continuous monitoring system shall be provided to assure that the required exhaust ventilation rate is maintained. The system shall monitor actual air flow in the exhaust system. The monitoring system shall initiate a local alarm. The alarm shall be both visual and audible and shall be designed to provide warning both inside and outside of the interior storage, use, or handling area.

15.06.440 CFC Section 6004.1.11 added - Emergency response plan

Section 6004.1.11 **Emergency response plan** is added to read:

6004.1.11 Emergency response plan. If the preparation of an emergency response plan for the facility is not required by any other law, responsible persons shall prepare, or cause to be prepared, and filed with the fire code official, a written emergency response plan. If the preparation of an emergency response plan is required by other law, a responsible person shall file a copy of the plan with the fire code official.

15.06.450 CFC Section 6004.1.12 added - Emergency Response Liaisons

Section 6004.1.12 **Emergency Response Liaisons** is added to read:

6004.1.12 Emergency Response Liaisons. Responsible persons shall be designated and trained to be liaison personnel for the Livermore-Pleasanton Fire Department. There persons shall aid the Fire Department in preplanning emergency responses and understanding the materials and operations utilizing the gases.

15.06.460 CFC Section 6004.1.13 added - Emergency Drills

Section 6004.1.13 **Emergency Drills** is added to read:

6004.1.13 Emergency Drills. Emergency drills of the on-site emergency response personnel and liaisons shall be conducted on a regular basis but not less than every six months. Records of drills conducted shall be maintained for three years.

15.06.470 CFC Section 6004.1.14 added - Cylinder leak testing

Section 6004.1.14 **Cylinder leak testing** is added to read:

6004.1.14 Cylinder leak testing. Cylinders shall be tested for leaks immediately upon delivery and again immediately prior to departure. Testing shall be approved by the fire code official in accordance with appropriate nationally recognized industry standards and practices, if any. Appropriate remedial action shall be immediately undertaken when leaks are detected.

15.06.480 CFC Section 6004.1.15 added - Inert gas purge system

Section 6004.1.15 is added to read:

6004.1.15 Inert gas purge system. Gas systems shall be provided with dedicated inert gas purge systems. A dedicated inert gas purge system may be used to purge more than one gas, provided the gases are compatible. Purge gas systems inside buildings shall be located in an approved gas cabinet unless the system operates by vacuum demand.

Exception: Refrigeration systems.

15.06.490 CFC Section 6004.1.16 added - Seismic shutoff valve

Section 6004.1.16 is added to read:

6004.1.16 Seismic shutoff valve. An automatic seismic shut-off valve, which is of a fail-safe to close design, shall be provided to shutoff the supply of highly toxic, toxic and moderately toxic gases with an LC50 less than 3,000 parts per million upon a seismic event within 5 seconds of a horizontal sinusoidal oscillation having a peak acceleration of 0.3G (1.47m/sec^2) and a period of 0.4 seconds.

15.06.500 CFC Section 6004.1.17 added - Fittings and connections.

Section 6004.1.17 is added to read:

6004.1.17 Fittings and connections. Fittings and connections shall be located in a gas cabinet, exhausted enclosure, gas room or exhausted valve manifold box.

Exception: Welded connections.

15.06.510 CFC Section 6004.2 amended - Indoor storage and use.

Section 6004.2 is amended to read:

The indoor storage or use of highly toxic, toxic and moderately toxic compressed gases shall be in accordance with Sections 6004.2.1 through 6004.2.2.10.4.

15.06.520 CFC Section 6004.2.1 amended - Applicability

Section 6004.2.1 is amended to read:

6004.2.1 Applicability. The applicability of regulations governing the indoor storage and use of highly toxic, toxic and moderately toxic compressed gases shall be in accordance with Sections 6004.2.1.1 through 6004.2.1.5.

15.06.530 CFC Section 6004.2.1.1 amended - Quantities not exceeding the maximum allowable quantity per control area.

Section 6004.2.1.1 is amended to read:

6004.2.1.1 Quantities not exceeding the maximum allowable quantity per control area. The indoor storage or use of highly toxic and toxic compressed gases in amounts not exceeding the maximum allowable quantity per control area set forth in Table 5003.1.1(2) shall be in accordance with Sections 5001, 5003, 6001, 6004.1, 6004.2.1.4 and 6004.2.1.5.

15.06.540 CFC Section 6004.2.1.4 added - Quantities not exceeding minimum threshold quantity per control area.

Section 6004.2.1.4 is added to read:

6004.2.1.4 Quantities not exceeding minimum threshold quantity per control area. The indoor storage or use of highly toxic, toxic and moderately toxic gases in amounts not exceeding the minimum threshold quantity per control area set forth in Table 6004.1 shall be in accordance with Sections 6001, and 6004.1 and Chapter 50.

15.06.550 CFC Section 6004.2.1.5 added - Quantities exceeding minimum threshold quantity per control area.

Section 6004.2.1.5 is added to read:

6004.2.1.5 Quantities exceeding the minimum threshold quantity per control area. The indoor storage or use of highly toxic, toxic and moderately gases in amounts exceeding the minimum threshold quantity per control area set forth in Table 6004.1 shall be in accordance with Sections 6001, 6004.1, 6004.2 and Chapter 50.

15.06.560 CFC Section 6004.2.2 amended - General indoor requirements.

Section 6004.2.2 is amended to read:

6004.2.2 General indoor requirements. The general requirements applicable to the indoor storage and use of highly toxic, toxic and moderately toxic compressed gases shall be in accordance with Sections 6004.2.2.1 through 6004.2.2.10.3.

Moderately toxic gases shall not be considered as toxic gases for maximum allowable quantities determinations under Table 5003.1.1(2).

15.06.570 CFC Section 6004.2.2.5 amended - Piping and controls -stationary tanks, Item 1

Section 6004.2.2.5 Piping and controls – stationary tanks, Item 1 is amended by deleting the exception

CFC Section 6004.2.2.5 Piping and controls -stationary tanks

1. Pressure relief devices shall be vented to a treatment system designed in accordance with Section 6004.2.2.7

   Delete exception.

15.06.580 CFC Section 6004.2.2.7 amended - Treatment systems.

Section 6004.2.2.7 is amended to delete exception 2:

6004.2.2.7 Treatment systems - **Delete Exception 2.**

15.06.590 CFC Section 6004.2.2.10.1 amended - Alarms.

Section 6004.2.2.10.1 is amended to delete the exception:

6004.2.2.10.1 Alarms. Delete Exception.

15.06.600 CFC Section 6004.3 amended - Outdoor storage and use.

Section 6004.3 is amended to read:

6004.3 Outdoor storage and use. The outdoor storage or use of highly toxic, toxic and moderately toxic gases shall be in accordance with Sections 6004.3.1 through 6004.3.4. The minimum threshold quantity for highly toxic, toxic and moderately toxic gases for outdoor storage and use are set forth in Table 6004.1.

15.06.610 CFC Section 6004.3.1 amended - Applicability

Section 6004.3.1 is amended to read:

6004.3.1 Applicability. The applicability of regulations governing the outdoor storage and use of highly toxic, toxic, and moderately toxic gases shall be as set forth in Sections 6004.3.1.1 through 6004.3.1.5.

15.06.620 CFC Section 6004.3.1.1 amended - Quantities not exceeding the maximum allowable quantity per control area.

Section 6004.3.1.1 is amended to read:

6004.3.1.1 Quantities not exceeding the maximum allowable quantity per control area. The outdoor storage or use of highly toxic and toxic gases in amounts exceeding the threshold quantity per control area set forth in Table 5003.1.1(4) shall be in accordance with Sections 5001, 5003, 6001, 6004.1, and 6004.3.1.4 and 6004.3.1.5.

15.06.630 CFC Section 6004.3.1.4 added Quantities not exceeding the minimum threshold quantity per control area.

Section 6004.3.1.4 is added to read:

6004.3.1.4 Quantities not exceeding the minimum threshold quantity per control area. The outdoor storage or use of highly toxic, toxic and moderately toxic gases in amounts not exceeding the minimum threshold quantity per control area set forth in Table 6004.1 shall be in accordance with Sections 6001, 6004.1 and Chapter 50.

15.06.640 CFC Section 6004.3.1.5 added - Quantities exceeding the minimum threshold quantity per control area.

Section 6004.3.1.5 is added to read:

6004.3.1.5 Quantities exceeding the minimum threshold quantity per control area. The outdoor storage or use of highly toxic, toxic and moderately toxic gases in amounts exceeding the minimum threshold quantity per control area set forth in Table 6004.1 shall be in accordance with Sections 6001, 6004.1, 6004.3 and Chapter 50.

15.06.650 CFC Section 6004.3.2 amended - General outdoor requirements.

Section 6004.3.2 is amended to read:

6004.3.2 General outdoor requirements. The general requirements applicable to the outdoor storage and use of highly toxic, toxic and moderately toxic gases shall be in accordance with Sections 6004.3.2.1 through 6004.3.2.4.

Moderately toxic gases with an LC50 equal to or less than 3000 parts per million shall comply with the requirements for toxic gases in Sections 5001, 5003, 6001, 6004.1 and 6004.3.

Moderately toxic gases with an LC50 more than 3000 parts per million but not greater than 5000 parts per million and exceeding the maximum threshold quantity, as determined by 6004.1.6, shall comply with the requirements for toxic gases in Sections 5001, 5003, 6001, 6004.1 and 6004.3.2.1 through 6004.3.2.4.

Moderately toxic gases shall not be considered as toxic gases for maximum allowable quantities determinations under Table 5003.1.1(2).

15.06.660 CFC Section 6004.3.3 amended - Outdoor storage weather protection for portable tanks and cylinders.

Section 6004.3.3 is amended to read:

6004.3.3 Outdoor storage weather protection for portable tanks and cylinders. Weather protection in accordance with Section 5004.13 shall be provided for portable tanks and cylinders located outdoors and not within gas cabinets or exhausted enclosures. The storage area shall be equipped with an approved automatic sprinkler system in accordance with Section 5004.5.

Delete Exceptions.

Chapter 15.08
ELECTRICAL CODE

Sections:

15.08.010 Title for citation.
15.08.020 Documents adopted by reference.
15.08.030 Amendments to the National Electrical Code.
15.08.040 Connection to energy source – Conditions.

15.08.010 Title for citation.

This chapter shall be known as the "electrical code," may be cited as such and will be referred to in this chapter as "this code."

15.08.020 Documents adopted by reference.

The National Electrical Code, 2020 Edition, as amended and set forth in the California Building Standards Code, Title 24 of the California Code of Regulations, published by the National Fire Protection Association is hereby adopted.

15.08.030 Amendments to the National Electrical Code.

The National Electrical Code adopted by reference is amended by the following additions, deletions and amendments thereto as set forth in this chapter. Reference numbers herein are taken from the 2022 California Electrical Code, Title 24 of the California Code of Regulations.

15.08.040 Connection to energy source – Conditions.

A. It is unlawful for any person, firm or corporation to make connection from a source of electrical energy or to supply electrical service to any electrical wiring or equipment, for the installation of which a permit is required, unless authorized by the building official.
B. When the electrical wiring and equipment is found to be in conformity with the provisions of this code, the building official shall indicate such approval by signing and dating the permit card and, if the building or premises containing the electrical installation has been approved by the building official for occupancy, the building official shall notify the serving electrical utility of such approval and shall authorize the connection of the installation to the source of supply.

C. When a building has not been approved for occupancy, the building official may authorize temporary connection of approved electrical installation, or portions thereof, to a source of energy for purposes of testing equipment, providing light to facilitate completion of such building, or similar purposes, provided the owner has filed a statement with the building official certifying that the building will not be occupied for purposes other than doing work necessary to complete the building.

Chapter 15.10
MECHANICAL CODE

Sections:

15.10.010 Title for citation.
15.10.020 Document adopted by reference.
15.10.030 Amendments to Uniform Mechanical Code
15.02.040 CMC Chapter 1, Division II Administration Section 104.4.6 deleted – Retention of Plans.
15.02.050 CMC Chapter 1, Division II Administration Section 104.5 amended – Fees.
15.02.060 CMC Chapter 1, Division II Administration Section 106.3 amended – Penalties**.**
15.02.070 CMC Chapter 1, Division II Administration Section 107.0 deleted – Appeal Board.

15.10.010 Title for citation.

This chapter shall be known as the “mechanical code,” may be cited as such and will be referred to in this chapter as “this code.”

15.10.020 Document adopted by reference.

The Uniform Mechanical Code, 2021 Edition, as amended and set forth in the California Building Standards Code, Title 24 of the California Code of Regulations, published by the International Association of Plumbing and Mechanical Officials together with Chapter 1 Division II, Administration is hereby adopted.

15.02.030 Amendments to Uniform Mechanical Code.

The Uniform Mechanical Code (UMC) adopted in this chapter by reference is amended by the following additions, deletions and amendments thereto as set forth in this chapter. Reference numbers herein are taken from the 2022 California Mechanical Code (CMC)

15.02.040 CMC Chapter 1, Division II Administration Section 104.4.6 deleted – Retention of Plans.

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Section 104.4.6 Retention of Plans is hereby deleted

15.02.050 CMC Chapter 1, Division II Administration Section 104.5 amended – Fees.

Section 104.5 Fees is amended to read:

Fees are to be set by resolution of the Livermore City Council.

15.02.060 CMC Chapter 1, Division II Administration Section 106.3 amended – Penalties.

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Section 106.3 Penalties is amended to read:

Any person, firm, or corporation violating a provision of this code shall be subject to penalties prescribed in the Livermore Municipal Code Chapters 1.16, 1.20 and 1.24.

15.02.070 CMC Chapter 1, Division II Administration Section 107.0 deleted – Appeal Board.

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Section 108.0 Board of Appeals is hereby deleted

Chapter 15.12
PLUMBING CODE

Sections:

15.12.010 Title for citation.
15.12.020 Document adopted by reference.
15.12.030 Amendments to Uniform Plumbing Code.
15.12.040 CPC Chapter 1, Division II Administration Section 104.4.6 deleted – Retention of Plans
15.12.050 CPC Chapter 1, Division II Administration Section 104.5 amended – Fees.
15.12.060 CPC Chapter 1, Division II Administration Section 106.3 amended – Penalties.
15.12.070 CPC Chapter 1, Division II Administration Section 107.0 deleted – Appeals Board.
15.12.080 CPC Chapter 1, Division II Administration Section 108 added - Disconnection.
15.12.090 CPC Section 609.3 amended - Under Concrete Slab

15.12.010 Title for citation.

This chapter shall be known as the "plumbing code," may be cited as such and will be referred to in this chapter as "this code."

15.12.020 Document adopted by reference.

The Uniform Plumbing Code, 2021 Edition, as amended and set forth in the California Building Standards Code, Title 24 of the California Code of Regulations, published by the International Association of Plumbing and Mechanical Officials, is hereby adopted,-except as hereinafter amended in this chapter.

15.12.030 Amendments to Uniform Plumbing Code.

The Uniform Plumbing Code (UPC) adopted herein by reference is hereby amended by the following additional deletions and amendments thereto as set forth in this chapter. Reference numbers herein are taken from the 2022 California Plumbing Code, (CPC) Title 24 of the California Code of Regulations.

15.12.040 CPC Chapter 1, Division II Administration Section 104.4.6 deleted – Retention of Plans.

Section 104.4.6 Retention of Plans is hereby deleted

15.12.050 CPC Chapter 1, Division II Administration Section 104.5 amended – Fees.

Section 104.5 Fees is amended to read:

Fees are to be set by resolution of the Livermore City Council.

15.12.060 CPC Chapter 1, Division II Administration Section 106.3 amended – Penalties.

Section 106.3 Penalties is amended to read:

Any person, firm, or corporation violating a provision of this code shall be subject to penalties prescribed in the Livermore Municipal Code Chapters 1.16, 1.20 and 1.24.

15.12.070 CPC Chapter 1, Division II Administration Section 107.0 deleted – Appeals Board.

Section 107.0 Board of Appeals is hereby deleted

15.12.080 CPC Chapter 1, Division II Administration Section 108 added - Disconnection.

Section 108 Disconnection is added to read:

The building official is authorized to order discontinuance of utility service to any buildings or structure which has been declared by the building official to be unsafe to occupy. No person, firm or corporation shall reconnect or supply service to such building without first having received express authorization from the building official.

15.12.090 CPC Section 609.3 amended - Under Concrete Slab.

Section 609.3 is amended to read:

Water distribution systems shall not be installed under a concrete floor slab within a building.

Chapter 15.14
RESIDENTIAL CODE

Sections:

15.14.010 Title for citation.
15.14.020 Document adopted by reference.
15.14.030 Amendments to International Residential Code.
15.14.040 CRC Chapter 1, Division II amended – Title block.
15.14.050 CRC Chapter 1, Division II, Section 101.1 amended – Title
15.14.060 CRC Chapter 1, Division II, Section R102 amended - Applicability
15.14.070 CRC Chapter 1, Division II, Section 103 amended – Building and Safety.
15.14.080 CRC Chapter 1, Division II, Section R105 amended - Permits.
15.14.090 CRC Chapter 1, Division II, Section R107 deleted - Temporary Structures
15.14.100 CRC Chapter 1, Division II, Section R108 amended - Fees
15.14.110 CRC Chapter 1, Division II, Section R110 amended - Certificate of Occupancy
15.14.120 CRC Chapter 1, Division II, Section R112 deleted - Board of Building Appeals
15.14.130 CRC Chapter 1, Division II, Section R113 amended - Violations
15.14.140 CRC Chapter 1, Division II, Section R114.4 amended - Failure to comply
15.14.150 CRC Table R301.2(1) amended - Climatic and Geographic Design Criteria
15.14.160 CRC Section R403.1.3 amended – Seismic reinforcing.
15.14.170 CRC Section R902.1 amended - Roofing covering materials.

15.14.010 Title for citation.

This chapter shall be known as the "Residential Code," may be cited as such and will be referred to in this chapter as "this code."

15.14.020 Documents adopted by reference.

The International Residential Code, 2021 Edition, as amended and set forth in the California Building Standards Code, Title 24 of the California Code of Regulations, published by the International Code Council is hereby adopted together with Chapter 1 Division II, Administration.

15.14.030 Amendments to International Residential Code.

The International Residential Code adopted herein by reference is hereby amended by the following additional deletions and amendments thereto as set forth in this chapter. Reference numbers herein are taken from the 2022 California Residential Code (CRC), Title 24 of the California Code of Regulations.

15.14.040 CRC Chapter 1, Division II amended – Title block.

CRC Chapter 1, Division II, Title block shall be amended to read:

CHAPTER 1, DIVISION II

LIVERMORE RESIDENTIAL CODE ADMINISTRATIVE PROVISIONS

15.14.050 CRC Chapter 1, Division II, Section 101.1 amended – Title.

CRC Chapter 1, Division II, Section 101.1 is amended to read:

R101.1 Title. These provisions shall be known as the "Residential Code for One-and Two-family Dwellings of the "City of Livermore" and shall be cited as such and will be referred to hereinafter as "this code."

15.14.060 CRC Chapter 1, Division II, Section R102 amended - Applicability

Section R102.7 Existing Structures is amended to read:

The legal occupancy of any structure existing on the date of adoption of this code shall be permitted to continue without change, except as is specifically covered in this code, the Livermore Property Maintenance Code or the Livermore Fire Code, or as deemed necessary by the building official for the general safety and welfare of the occupants and the public.

15.14.070 CRC Chapter 1, Division II, Section 103 amended – Building and Safety.

CBC Chapter 1, Division II, Section 103 is amended to read:

SECTION 103
BUILDING AND SAFETY DIVISION

103.1 Creation of enforcement agency.

The Building and Safety Division is hereby created and the official in charge thereof shall be known as the building official.

103.2 Appointment.
The building official shall be appointed by the city manager.

103.3 Deputies.

In accordance with the prescribed procedures of this jurisdiction and with the concurrence of the appointing authority, the building official shall have the authority to appoint related technical officers, inspectors, plan examiners and other employees. Such employees shall have powers as delegated by the building official.

15.14.080 CRC Chapter 1, Division II, Section R105 amended - Permits.

R105.2 Work exempt from permits is amended to read:

Delete all reference to Electrical, Gas, Mechanical, and Plumbing repairs, appliances and fixtures. These items are addressed in the Livermore Electrical, Mechanical and Plumbing Codes.

Delete:

The stopping of leaks in drains, water, soil, waste or vent pipe; provided, however that if any concealed trap, drainpipe, water, soil. Waste or vent pipe becomes defective, and it becomes necessary to remove and replace the same with new material, such work shall be considered as new work and a permit shall be obtained and inspection made as provided in this code.

The clearing of stoppages or the repairing of leaks in pipes, valves or fixtures and the removal and reinstallation of water closets, provided such repairs do not involve or require the replacement of valves, pipes or fixtures.
R105.2.1 Emergency repairs is deleted

R105.2.2 Repairs is deleted

15.14.090 CRC Chapter 1, Division II, Section R107 deleted - Temporary Structures

R107 Temporary Structures is deleted

15.14.100 CRC Chapter 1, Division II, Section R108 amended- Fees

R108 Fees is amended to read:

Fees are to be set by resolution of the Livermore City Council.

15.14.110 CRC Chapter 1, Division II, Section R110 amended- Certificate of Occupancy

CRC Section R110.1 Use and Occupancy is amended to read:

Newly constructed one or two family dwellings shall not be used or occupied until the building official has issued a certificate of occupancy therefor provided herein. Issuance of a certificate of occupancy shall not be construed as an approval of a violation of the provisions of this code or of other ordinances of the jurisdiction.

CRC Section R110.3 Certificate issued –amend to read:

After the building official inspects the building or structure and finds no violations of the provisions of this code or other laws that are enforced by the building and safety division, the building official shall issue a certificate of occupancy.

15.14.120 CRC Chapter 1, Division II, Section R112 deleted Board of Building Appeals

R112 Board of Appeals is deleted

15.14.130 CRC Chapter 1, Division II, Section R113- amended Violations

R113.2 Notice of violation is deleted

R113.3 Prosecution of violation is deleted

R113.4 Violation penalties is amended to read:

Any person who violates a provision of this code or fails to comply with any of the requirements thereof or who erects, constructs, alters or repairs a building or structure in violation of the approved construction documents or directive of the building official, or of a permit or certificate issued under the provisions of this code shall be subject to penalties prescribed in the Livermore Municipal Code Chapters 1.16, 1.20 and 1.24.

15.14.140 CRC Chapter 1, Division II, Section R114.4 amended - Failure to comply

CRC Section R114.4 Failure to comply is amended to read:

Any person who shall continue work in or about the structure after having been served with a stop work order, except such work as that person is directed to perform to remove a violation or unsafe condition, shall be subject to penalties prescribed in the Livermore Municipal Code Chapters 1.16, 1.20 and 1.24.

15.14.150 CRC Table R301.2(1) amended- Climatic and Geographic Design Criteria

Table R301.2(1) is amended to read:

TABLE R301.2(1) CLIMATIC AND GEOGRAPHIC DESIGN CRITERIA

GROUND SNOW LOAD	WIND DESIGN		SEISMIC DESIGN CATEGORY[f]	SUBJECT TO DAMAGE FROM			WINTER DESIGN TEMP[e]	ICE BARRIER UNDERLAYMENT REQUIRED[h]	FLOOD HAZARDS[g]	AIR FREEZING INDEX[i]	MEAN ANNUAL TEMP[j]
	Speed[d] (mph)	Topographic effects[k]		Weathering[a]	Frost line depth[b]	Termite[c]					
0	85	No	D_0,D_1 D_2,	Negligible	12 inches	Very Heavy	32°	no	See FIRM	2%	58.7

15.14.160 CRC Section R403.1.3 amended – Seismic reinforcing.

The first paragraph of Section R403.1.3 is amended to read:

R403.1.3 Seismic Reinforcing. Concrete footings located in Seismic Design Categories D_0, D_1 and D_2, as established in Table R301.2(1), shall have minimum reinforcement of at least two continuous longitudinal reinforcing bars not smaller than No. 4 bars. Bottom reinforcement shall be located a minimum of 3 inches (76 mm) clear from the bottom of the footing.

In Seismic Design Categories D_0, D_1 and D_2 where a grouted masonry stem wall is supported on a concrete footing and stem wall, a minimum of one No. 4 bar shall be installed at not more than 4 feet (1219 mm) on center. The vertical bar shall extend to 3 inches (76 mm) clear of the bottom of the footing and have a standard hook.

In Seismic Design Categories D_0, D_1 and D_2 masonry stem walls without solid grout and vertical reinforcing are not permitted.

Exception: In detached one- and two-family *dwellings* which are three stories or less in height and constructed with stud bearing walls, plain concrete footings without longitudinal reinforcement supporting walls and isolated plain concrete footings supporting columns or pedestals are permitted.

15.14.0170 CRC Section R902.1 amended - Roofing covering materials.

Section R902.1 is amended to read:

Roof coverings. Roofs shall be covered with materials as set forth in Sections R904 and R905. A minimum Class A or B roofing shall be installed in Livermore. Roofing shall be tested and listed in accordance with UL790 or ASTM E 108.

Chapter 15.26
GREEN BUILDING STANDARDS CODE

Sections:

15.26.010 Title for citation.
15.26.020 Document adopted by reference.
15.26.030 Amendments to California Green Building Standards Code.
15.26.040 GBSC Section 202 amended - Definitions
15.26.050 GBSC Section 304.1.2 added – Alternate methods.
15.26.060 GBSC Section 4.106.1 amended – General.
15.26.070 GSBC Section 4.106.4 amended – Electric vehicle (EV) charging for new construction.
15.26.080 GBSC section 4.106.4.1 amended- New One- And Two-Family Dwellings and Townhouses with Attached Private Garages
15.26.090 GBSC section 4.106.4.2 amended-New Multifamily Dwellings, and New Residential Parking Facilities
15.26.100 GBSC section 4.106.4.2.1 Deleted-Multifamily Development Projects with Less Than 20 Dwelling Units: And Hotels and Motels with Less Than 20 Sleeping Units or Guest Rooms
15.26.110 GBSC section 4.106.4.2.2 deleted - Multifamily Development Projects With 20 or More Dwelling Units, Hotels and Motels With 20 or More Sleeping Units or Guest Rooms
15.26.120 GBSC section 4.106.4.2.2.1 amended - Electric Vehicle Charging Stations (EVCS)
15.26.130 GBSC section 4.106.4.2.2.1.1 amended - Location
15.26.140 GBSC section 4.106.4.2.2.1.2 amended – Electric Vehicle Charging Stations (EVCS) Dimensions.
15.26.150 GBSC section 4.106.4.2.2.1.3 deleted - Accessible EV Spaces
15.26.160 GBSC section 4.106.4.2.3 deleted - EV Space Requirements
15.26.170 GBSC section 4.106.4.2.4 deleted - Identification
15.26.180 GBSC section 4.106.4.2.5 deleted - Electric Vehicle Ready Space Signage
15.26.190 GBSC Section 4.106.5 added – All-electric Buildings
15.26.200 GBSC Section 4.106.5.1 added - New Construction
15.26.210 GBSC Section 4.106.5.2 added - Requirements for combustion equipment.
15.26.220 GSBC Section 5.106.5.3 amended – Electric vehicle (EV) charging.
15.26.230 GSBC Section 5.106.5.3.1 amended – EV capable spaces.
15.26.240 GSBC Section 5.106.5.3.2 amended – Electric vehicle charging stations (EVCS**)**
15.26.250 GSBC Section 5.106.5.3.3 amended - Use of automatic load management systems (ALMS).
15.26.260 GSBC Section 5.106.5.3.4 amended - Accessible EVCS
15.26.270 GSBC Section 5.106.13 added – All-Electric Buildings.
15.26.280 GSBC Section 5.106.13.1. added - New construction.

15.26.290 GSBC Section 5.106.13.2. added - Requirements for combustion equipment.

15.26.010 Title for citation.

This chapter shall be known as the "Green Building Standards Code," may be cited as such and will be referred to in this chapter as "this code."

15.26.020 Documents adopted by reference.

The Green Building Standards Code, 2022 Edition, as set forth in the California Building Standards Code (GBSC), Title 24 of the California Code of Regulations, published by the State of California is hereby adopted.

15.26.030 Amendments to the California Green Building Standards Code.

The Green Building Standards Code adopted herein by reference is hereby amended by the following additional deletions and amendments thereto as set forth in this chapter.

15.26.040 GBSC Section 202 amended - Definitions.

Section 202 is amended to add, amend, or delete the following definitions:

Section 202 is amended to add the following definitions:

AFFORDABLE HOUSING. Residential buildings that entirely consist of units below market rate and whose rents or sales prices are governed by local agencies to be affordable based on area median income.

ALL-ELECTRIC BUILDING. A building that contains no combustion equipment or plumbing for combustion equipment serving space heating (including fireplaces), water heating (including pools and spas), cooking appliances (including barbeques), and clothes drying, within the building or building property lines, and instead uses electric heating appliances for service.

COMBUSTION EQUIPMENT. Any equipment or appliance used for space heating, water heating, cooking, clothes drying and/or lighting that uses fuel gas.

COMMERCIAL FOOD HEAT-PROCESSING EQUIPMENT. An equipment used in a food establishment for heat-processing food or utensils and that produces grease vapors, steam, fumes, smoke, or odors that are required to be removed through a local exhaust ventilation system, as defined in the California Mechanical Code.

ELECTRIC HEATING APPLIANCE. A device that produces heat energy to create a warm environment by the application of electric power to resistance elements, refrigerant compressors, or dissimilar material junctions, as defined in the California Mechanical Code.

FUEL GAS. A gas that is natural, manufactured, liquefied petroleum, or a mixture of these.

DIRECT CURRENT FAST CHARGING (DCFC). A parking space provided with electrical infrastructure that meets the following conditions:

i. A minimum of 48 kVa (480 volt, 100-ampere) capacity wiring.

ii. Electric vehicle supply equipment (EVSE) located within three (3) feet of the parking space providing a minimum capacity of 80-ampere.

LEVEL 2 EV CAPABLE. A parking space provided with electrical infrastructure that meets the following requirements:

i. Conduit that links a listed electrical panel with sufficient capacity to a junction box or receptacle located within three (3) feet of the parking space.

ii. The conduit shall be designed to accommodate at least 8.3 kVa (208/240 volt, 40-ampere) per parking space. Conduit shall have a minimum nominal trade size of 1 inch inside diameter and may be sized for multiple circuits as allowed by the California Electrical Code. Conduit shall be installed at a minimum in spaces that will be inaccessible after construction, either trenched underground or where penetrations to walls, floors, or other partitions would otherwise be required for future installation of branch circuits, and such additional elements deemed necessary by the Building Official. Construction documents shall indicate future completion of conduit from the panel to the parking space, via the installed inaccessible conduit.

iii. The electrical panel shall reserve a space for a 40-ampere overcurrent protective device space(s) for EV charging, labeled in the panel directory as “EV CAPABLE.”

iv. Electrical load calculations shall demonstrate that the electrical panel service capacity and electrical system, including any on-site distribution transformer(s), have sufficient capacity to simultaneously charge all EVs at all required EV spaces at a minimum of 40 amperes.

v. The parking space shall contain signage with at least a 12” font adjacent to the parking space indicating the space is EV Capable.

LEVEL 1 EV READY. A parking space that is served by a complete electric circuit with the following requirements:

i. A minimum of 2.2 kVa (110/120 volt, 20-ampere) capacity wiring.

ii. A receptacle labeled “Electric Vehicle Outlet” or electric vehicle supply equipment located within three (3) feet of the parking space. If EVSE is provided the minimum capacity of the EVSE shall be 16-ampere.

iii. Conduit oversized to accommodate future Level 2 EV Ready (208/240 volt, 40-ampere) at each parking space**.**

LEVEL 2 EV READY. A parking space that is served by a complete electric circuit with the following requirements:

i. A minimum of 8.3 kVa (208/240 volt, 40-ampere) capacity wiring.
ii. A receptacle labeled “Electric Vehicle Outlet” or electric vehicle supply equipment located within three (3) feet of the parking space. If EVSE is provided the minimum capacity of the EVSE shall be 30-ampere.

LOW POWER LEVEL 2 EV READY. A parking space that is served by a complete electric circuit with the following requirements:

i. A minimum of 4.1 kVA (208/240 Volt, 20-ampere) capacity wiring.
ii. A receptacle labeled “Electric Vehicle Outlet” or electric vehicle supply equipment located within three (3) feet of the parking space. If EVSE is provided the minimum capacity of the EVSE shall be 16-ampere.
iii. Conduit oversized to accommodate future Level 2 EV Ready (208/240 volt, 40-ampere) at each parking space.

Section 202 is amended to amend the following definitions:

AUTOMATIC LOAD MANAGEMENT SYSTEM (ALMS). A control system designed to manage load across one or more electric vehicle supply equipment (EVSE), circuits, panels and to share electrical capacity and/or automatically manage power at each connection point. ALMS systems shall be designed to deliver no less than 3.3 kVa (208/240 volt, 16-ampere) to each EV Capable, EV Ready or EVCS space served by the ALMS, and meet the requirements of California Electrical Code Article 625. The connected amperage to the building site for the EV charging infrastructure shall not be lower than the required connected amperage per California Green Building Standards Code, Title 24 Part 11.

ELECTRIC VEHICLE CHARGING STATION (EVCS). A parking space that includes installation of electric vehicle supply equipment (EVSE) at an EV Ready space. An EVCS space may be used to satisfy EV Ready space requirements. EVSE shall be installed in accordance with the California Electrical Code, Article 625**.**

Section 202 is amended to delete the following definitions:

ELECTRIC VEHICLE (EV) READY SPACE. [HCD]

ELECTRIC VEHICLE (EV) CAPABLE SPACE.

LEVEL 2 ELECTRIC VEHICLE SUPPLY EQUIPMENT (EVSE). [HCD]

LOW POWER LEVEL 2 ELECTRIC VEHICLE (EV) CHARGING RECEPTACLE. [HCD]

15.26.050 GBSC Section 304.1.2 added – Alternate methods.

Section 304.1.2 is added to read:

Alternate Methods. As an alternative to achieving compliance with the Green Building Standards Code requirements, a project may instead achieve compliance through; (i) the United States Green Building Council's Leadership in Energy and Environmental Design (LEED), (ii) Build It Green's Green Point Rating System; or (iii) another recognized and approved third party green building standards and rating system. Equivalency to the Green Building Standards Code shall be evaluated, detailed and certified by the design professional.

15.26.060 GBSC Section 4.106.1 amended – General.

Section 4.106.1 is amended to read:

General: Preservation and use of the available natural resources shall be accomplished through evaluation and careful planning to minimize negative effects on the site and adjacent areas. Preservation of slopes, management of storm water drainage and erosion controls shall comply with this section, and the provisions of the Stormwater Management and Control Program (Municipal Code chapter 13.45).

15.26.070 GSBC Section 4.106.4 amended – Electric vehicle (EV) charging for new construction.

Section 4.106.4 is amended to read:

4.106.4 Electric Vehicle (EV) Charging for New Construction

New construction shall comply with Section 4.106.4.1 or 4.106.4.2 to facilitate future installation and use of EV chargers. Electric vehicle supply equipment (EVSE) shall be installed in accordance with the *California Electrical Code*, Article 625. Signage for EVCS and EV Ready spaces shall be identified by signage or pavement markings, in compliance with Caltrans Traffic Operations Policy Directive 13-01 (Zero Emission Vehicle Signs and Pavement Markings) or its successor(s).

Exceptions:

1. On a case-by-case basis, where the local enforcing agency has determined EV charging and infrastructure are not feasible based upon one or more of the following conditions:

1.1. Where there is no local utility power supply, or the local utility is unable to supply adequate power.

1.2. Where there is evidence suitable to the local enforcing agency substantiating that additional local utility infrastructure design requirements, directly related to the implementation of Section 4.106.4, may increase construction cost by an average of $4,500 per parking space for market rate housing or $400 per parking space for affordable housing. EV infrastructure shall be provided up to the level that would not exceed this cost for utility service.

2. Accessory Dwelling Units (ADU) and Junior Accessory Dwelling Units (JADU) without additional parking facilities.

3. Multifamily residential R-2 building projects that have approved entitlements before the code effective date.

15.26.080 GBSC section 4.106.4.1 amended- New One- And Two-Family Dwellings and Townhouses with Attached Private Garages

Section 4.106.4.1 is amended to read:

One parking space provided per unit shall be a Level 2 EV Ready space. If a second parking space is provided, it shall be provided with a Level 2 EV Ready space.

Exception: Accessory Dwelling Units with new parking facilities shall provide one Level 2 EV Capable space.

Delete Exception and **sub-section 4.106.4.1.1 Identification**

15.26.090 GBSC section 4.106.4.2 amended-New Multifamily Dwellings, Hotels and Motels and New Residential Parking Facilities

Section 4.106.4.2 is amended to read:

4.106.4.2 New Multifamily Dwellings, Hotels and New Residential Parking Facilities

Fifteen percent (15%) of dwelling units with parking spaces shall be EVCS with Level 2 EV Ready. ALMS shall be permitted to reduce load when multiple vehicles are charging. Eighty-five percent (85%) of dwelling units with parking spaces shall be provided with a Low Power Level 2 EV Ready space. One DCFC may be substituted for up to five (5) EVCS to meet the requirements of 4.106.4.2.

EV Ready spaces and EVCS in multifamily developments shall comply with California Building Code, Chapter 11A, Section 1109A. EVCS shall comply with the accessibility provisions for EV chargers in the California Building Code, Chapter 11B.

15.26.100 GBSC section 4.106.4.2.1 deleted-Multifamily Development Projects with Less Than 20 Dwelling Units: And Hotels and Motels With Less Than 20 Sleeping Units or Guest Rooms

Section 4.106.4.2.1 is deleted

15.26.110 GBSC section 4.106.4.2.2 deleted - Multifamily Development Projects With 20 or More Dwelling Units, Hotels and Motels With 20 or More Sleeping Units or Guest Rooms

section 4.106.4.2.2 is deleted

15.26.120 GBSC section 4.106.4.2.2.1 amended - Electric Vehicle Charging Stations (EVCS)

Section 4.106.2.2.1 is amended to read:

Electric vehicle charging stations required by Section 4.106.4.2 shall comply with Section 4.106.4.2.2.1.

Exception: Electric vehicle charging stations serving public accommodations, public housing, motels and hotels shall not be required to comply with this section. See California Building Code, Chapter 11B, for applicable requirements.

15.26.130 GBSC section 4.106.4.2.2.1.1 amended – Location

Section 4.106.4.2.2.1.1 is amended to read:

EVCS shall comply with at least one of the following options:

1. The charging space shall be located adjacent to an accessible parking space meeting the requirements of the California Building Code, Chapter 11A, to allow use of the EV charger from the accessible parking space.

2. The charging space shall be located on an accessible route, as defined in the California Building Code, Chapter 2, to the building.

Exception: Electric vehicle charging stations designed and constructed in compliance with the California Building Code, Chapter 11B, are not required to comply with Section 4.106.4.2.2.1.1 and Section 4.106.4.2.2.1.2.

15.26.140 GBSC section 4.106.4.2.2.1.2 amended – Electric Vehicle Charging Stations (EVCS) Dimensions

Section 4.106.4.2.2.1.2 is amended to read:

4.106.4.2.2.1.2 Dimensions

The charging spaces shall be designed to comply with the following:

1. The minimum length of each EV space shall be 18 feet (5486 mm).

2. The minimum width of each EV space shall be 9 feet (2743 mm).

3. One in every 25 charging spaces, but not less than one, shall also have an 8-foot (2438 mm) wide minimum aisle. A 5-foot (1524 mm) wide minimum aisle shall be permitted provided the minimum width of the EV space is 12 feet (3658 mm).

    a. Surface slope for this EV space and the aisle shall not exceed 1 unit vertical in 48 units horizontal (2.083 percent slope) in any direction.

Exception: Where the City's Municipal or Zoning Code permits parking space dimensions that are less than the minimum requirements stated in this section 4.106.4.3.2, and the compliance with which would be infeasible due to particular circumstances of a project, an exception may be granted while remaining in compliance with *California Building Code* Section Table 11B-228.3.2.1 and 11B-812, as applicable.

15.26.150 GBSC section 4.106.4.2.2.1.3 deleted - Accessible EV Spaces

Section 4.106.4.2.2.1.3 is deleted

15.26.160 GBSC section 4.106.4.2.3 deleted - EV Space Requirements

Section 4.106.4.2.3 is deleted

15.26.170 GBSC section 4.106.4.2.4 deleted - Identification

Section 4.106.4.2.4 is deleted

15.26.180 GBSC section 4.106.4.2.5 deleted - Electric Vehicle Ready Space Signage

Section 4.106.4.2.5 is deleted

15.26.190 GBSC Section 4.106.5 added – All-electric Buildings.

Section 4.106.5 is added to read:

New construction buildings shall comply with Section 4.106.5.1 or 4.106.5.2 so that they do not use *combustion equipment* or are ready to accommodate installation of *electric heating appliances*.

15.26.200 GBSC Section 4.106.5.1 added - New Construction.

Section 4.106.5.1 is added to read:

New Construction: All newly constructed buildings shall be *all-electric buildings*.

Building additions, alterations, repairs, and tenant improvements shall not be considered new construction. The final determination whether a project meets the definition of new construction shall be made by the local enforcing agency.

Exceptions:

1. Multifamily residential building projects that have approved entitlements before the effective date of this ordinance may install fuel gas for water heating systems serving multiple dwelling units. The applicant shall comply with Section 4.106.5.2.

2. Accessory Dwelling Units (ADUs) that are constructed on a lot with an existing residence that utilizes fuel gas.

3. If the applicant establishes that there is not an all-electric prescriptive compliance pathway for the building under the California Building Energy Efficiency Standards, and that the building is not able to achieve the performance compliance standard applicable to the building under the Energy Efficiency Standards using commercially available technology and an approved calculation method, then the local enforcing agency may grant a modification. The applicant shall comply with Section 4.106.5.2.

Inactive *Fuel Gas Infrastructure* may be extended to spaces that are anticipated to qualify for the exceptions contained in this chapter. The inactive *Fuel Gas Infrastructure* shall not be activated, have a meter installed, or otherwise used unless the exemptions specified in this chapter have been confirmed as part of the issuance of a building permit. If the *Fuel Gas Infrastructure* is no longer serving one of the exceptions contained in this chapter, it shall either be capped, otherwise terminated, or removed by the entity previously entitled to the exemption, in a manner pursuant to all applicable Codes.

The local enforcing agency shall have the authority to approve alternative materials, design and methods of construction or equipment per California Building Code Section 104.

15.26.210 GBSC Section 4.106.5.2 added - Requirements for combustion equipment.

Section 4.106.5.2 is added to read:

Where *combustion equipment* is allowed per Exceptions under 4.106.5.1, the construction drawings shall indicate electrical infrastructure and physical space accommodating the future installation of an *electrical heating appliance* in the following ways, as certified by a registered design professional or licensed electrical contractor:

1. Branch circuit wiring, electrically isolated and designed to serve all electrical heating appliances in accordance with manufacturer requirements and the California Electrical Code, including the appropriate voltage, phase, minimum amperage, and an electrical receptacle or junction box within five feet of the appliance that is accessible with no obstructions. Appropriately sized conduit may be installed in lieu of conductors; and

2. Labeling of both ends of the unused conductors or conduit shall be with “For Future Electrical Appliance”; and

3. Reserved circuit breakers in the electrical panel for each branch circuit, appropriately labeled (i.e “Reserved for Future Electric Range”), and positioned on the opposite end of the panel supply conductor connection; and

4. Connected subpanels, panelboards, switchboards, busbars, and transformers shall be sized to serve the future electrical heating appliances. The electrical capacity requirements shall be adjusted for demand factors in accordance with the California Electric Code; and

5. Physical space for future electrical heating appliances, including equipment footprint, and if needed a pathway reserved for routing of ductwork to heat pump evaporator(s), shall be depicted on the construction drawings. The footprint necessary for future electrical heating appliances may overlap with non-structural partitions and with the location of currently designed combustion equipment.

15.26.220 GSBC Section 5.106.5.3 amended – Electric vehicle (EV) charging.

Section 5.106.5.3 is amended to read:

5.106.5.3 Electric vehicle (EV) charging. Construction to provide electric vehicle infrastructure and facilitate electric vehicle charging shall comply with Section 5.106.5.3 and shall be provided in accordance with regulations in the *California Building Code* and the *California Electrical Code*. Accessible EVCS shall be provided in accordance with the *California Building Code Chapter 11B Section 11B-228.3.* For EVCS signs, refer to Caltrans Traffic Operations Policy Directive 13-01 (Zero Emission Vehicle Signs and Pavement Markings) or its successor(s).

Exceptions:

1. On a case-by-case basis where the local enforcing agency has determined compliance with this section is not feasible based upon one of the following conditions:

    a. Where there is no local utility power supply.

    b. Where the local utility is unable to supply adequate power.

    c. Where there is evidence suitable to the local enforcement agency substantiating that additional local utility infrastructure design requirements, directly related to the implementation of Section 5.106.5.3, may increase construction cost by an average of $400 per parking space for non-profit organizations serving low-income, vulnerable, and/or underserved communities or $4,500 per parking space for all others. EV infrastructure shall be provided up to the level that would not exceed this cost for utility service.

2. Parking spaces accessible only by automated mechanical car parking systems are not required to comply with this code section.

15.26.230 GSBC Section 5.106.5.3.1 amended – EV capable spaces.

Section 5.106.5.3.1 is amended to read:

5.106.5.3.1 Nonresidential Occupancy Class B Offices, including mixed-class buildings that include Occupancy Class B Office space – Shared Parking Space.

Twenty percent (20%) of parking spaces shall be EVCS with Level 2 EV Ready. ALMS shall be permitted to reduce load when multiple vehicles are charging. Thirty percent (30%) of parking spaces provided shall be Level 2 EV Capable.

Delete table 5.106.5.3.1

15.26.240 GSBC Section 5.106.5.3.2 amended – Electric vehicle charging stations (EVCS)

Section 5.106.5.3.2 is amended to read:

5.106.5.3.2 Hotel and Motel Occupancies – Shared Parking Facilities.

New Construction. Five percent (5%) of parking spaces provided shall be EVCS with Level 2 EV Ready. ALMS shall be permitted to reduce load when multiple vehicles are charging. Twenty-five percent (25%) of parking spaces provided shall be Low Power Level 2 EV Ready space. Ten percent (10%) of parking spaces provided shall be Level 2 EV Capable.

15.26.250 GSBC Section 5.106.5.3.3 amended - Use of automatic load management systems (ALMS).

Section 5.106.5.3.3 is amended to read:

5.106.5.3.3 All Other Nonresidential Occupancies – Shared Parking Facilities.

New Construction. Ten percent (10%) of parking spaces provided shall be EVCS with Level 2 EV Ready. ALMS shall be permitted to reduce load when multiple vehicles are charging. Ten percent (10%) of parking spaces provided shall be Level 2 EV Capable.

15.26.260 GSBC Section 5.106.5.3.4 amended - Accessible EVCS.

Section 5.106.5.3.4 is amended to read:

5.106.5.3.4 Direct current fast charging stations. One DCFC may be substituted for up to five (5) EVCS to meet the requirements of 5.106.5.3.1, 5.106.5.3.2, and

5.106.5.3.3. Where ALMS serve DCFC stations, the power demand from the DCFC shall be prioritized above Level 1 and Level 2 spaces.

15.26.270 GSBC Section 5.106.13 added – All-Electric Buildings.

Section 5.106.13 is added to read:

5.106.13 All-electric buildings. New construction buildings shall comply with Section 5.106.13.1 or 5.106.13.2 so that they do not use *combustion equipment* or are ready to facilitate future electrification.

15.26.280 GSBC Section 5.106.13.1. added - New construction.

Section 5.106.13.1 is added to read:

New construction: All newly constructed buildings shall be *all-electric buildings*.

Building additions, alterations, repairs, and tenant improvements shall not be considered new construction. The final determination whether a project meets the definition of new construction shall be made by the local enforcing agency.

Exceptions:

1. Nonresidential buildings containing kitchens located in a place of public accommodation, as defined in the California Building Code Chapter 2, may apply to the local enforcing agency for a modification to install *commercial food heat-processing equipment* served by *fuel gas*. The local enforcing agency may grant the modification if they find:
    a. A business-related need to cook with *combustion equipment*; and
    b. The need cannot be achieved equivalently with an *electric heating appliance*; and
    c. The applicant has installed energy efficient equipment based on Energy Star or California Energy Wise qualifications, as available.
    d. The applicant shall comply with Section 5.106.13.2.

2. Laboratories, as defined in the California Building Code Chapter 2, may apply to the local enforcing agency for a modification to install *combustion equipment* served by *fuel gas.* The local enforcing agency may grant the modification if they find:
    e. A business, research, or educational-related need to use *combustion equipment*; and
    f. The need cannot be achieved equivalently with an *electric heating appliance*; and
    g. The applicant has installed energy efficient equipment based on Energy Star or California Energy Wise qualifications, as available.
    h. The applicant shall comply with Section 5.106.13.2.

3. Hotels and motels with eighty or more guestrooms may utilize *fuel gas* in on-site commercial clothes drying equipment. The applicant shall comply with Section 5.106.13.2.

4. If the applicant establishes that there is not an all-electric prescriptive compliance pathway for the building under the California Building Energy Efficiency Standards, and that the building is not able to achieve the performance compliance standard applicable to the building under the Energy Efficiency Standards using commercially available technology and an approved calculation method, then the local enforcing agency may grant a modification. The applicant shall comply with Section 5.106.13.2

Inactive *Fuel Gas Infrastructure* may be extended to spaces that are anticipated to qualify for the exceptions contained in this chapter. The inactive *Fuel Gas Infrastructure* shall not be activated, have a meter installed, or otherwise used unless the exemptions specified in this chapter have been confirmed as part of the issuance of a building permit. If the *Fuel Gas Infrastructure* is no longer serving one of the exceptions contained in this chapter, it shall either be capped, otherwise terminated, or removed by the entity previously entitled to the exemption, in a manner pursuant to all applicable Codes.

The local enforcing agency shall have the authority to approve alternative materials, design and methods of construction or equipment per California Building Code Section 104.

15.26.290 GSBC Section 5.106.13.2. added - Requirements for combustion equipment.

Section 5.106.13.2 is added to read:

Where *combustion equipment* is allowed per exceptions under Section 5.106.13.1, the construction drawings shall indicate electrical infrastructure and physical space accommodating the future installation of an *electrical heating appliance* in the following ways, as certified by a registered design professional or licensed electrical contractor:

1. Branch circuit wiring, electrically isolated and designed to serve all electrical heating appliances in accordance with manufacturer requirements and the California Electrical Code, including the appropriate voltage, phase, minimum amperage, and an electrical receptacle or junction box within five feet of the appliance that is accessible with no obstructions. Appropriately sized conduit may be installed in lieu of conductors; and

2. Labeling of both ends of the unused conductors or conduit shall be with “For Future Electrical Appliance”; and

3. Reserved circuit breakers in the electrical panel for each branch circuit, appropriately labeled (i.e “Reserved for Future Electric Range”), and positioned on the opposite end of the panel supply conductor connection; and

4. Connected subpanels, panelboards, switchboards, busbars, and transformers shall be sized to serve the future electrical heating appliances. The electrical capacity requirements shall be adjusted for demand factors in accordance with the California Electric Code; and

5. Physical space for future electrical heating appliances, including equipment footprint, and if needed a pathway reserved for routing of ductwork to heat pump evaporator(s), shall be depicted on the construction drawings. The footprint necessary for future electrical heating appliances may overlap with non-structural partitions and with the location of currently designed combustion equipment.

LIVERMORE
CALIFORNIA

CITY COUNCIL STAFF REPORT **ITEM NO. 6.2**

DATE: October 24, 2022

TO: Honorable Mayor and City Council

FROM: Paul Spence, Community Development Director

SUBJECT: Hearing to consider approving an Amended and Restated Disposition and Development Agreement with Red Bear Property Management, Inc. for development of downtown commercial uses, authorizing the City Manager to execute the agreement and all other necessary documents to implement that agreement, and to conform the Stockmen's Park easement to this project and others on the park site.

RECOMMENDED ACTION

Staff recommends the City Council adopt resolutions and direct the following:

1. Finding that the Amended and Restated Disposition and Development Agreement (DDA) with Red Bear Property Management, Inc., attached hereto as Exhibit A, is within the scope of the 2004 Downtown Specific Plan Environmental Impact Report and the 2009 Downtown Specific Plan Subsequent Environmental Impact Report and the addendums adopted by City Council on September 10, 2018 by Resolution 2018-153, May 13, 2019 by Resolution 2019-064, and October 26, 2020 by Resolution 2020-178, and determining that Assessor Parcel Numbers 098-0289-026 and 098-0289-027 are exempt from the Surplus Land Act as defined in Government Code Section 54234(a)(1); and
2. Authorizing the City Manager to execute the DDA and all other necessary documents to implement that agreement and to conform the Stockmen's Park easement to this project and other projects on the park site.

SUMMARY

The proposed Disposition and Development Agreement Amendment (DDA) reflects changes to the commercial project since the 2018 Disposition and Development Agreement and updates the terms of the sale of City-owned sites to Red Bear Property Management, Inc. (Red Bear).

Under the amended DDA, Red Bear will develop approximately 12,835 square feet of new commercial retail space consistent with the City Council’s approved Downtown Plan. The proposal expands Blacksmith Square with one new building and an addition to the non-historic building at 25 South Livermore Avenue occupied by Tap 25 and Prints & Pints. The project also includes a new two-story

stand-alone building with a roof deck at the northwest corner of Veterans Way and South Livermore Avenue. The new commercial space is located on the eastern edge of Stockmen's Park, expanding Blacksmith Square and closing the gap between Blacksmith Square and 39 South Livermore Avenue, occupied by Uncle Yu's at the Vineyard and Sandia Laboratory Credit Union.

The amended agreement continues to secure additional public benefits and improvements including contributions to Stockmen's Park maintenance, constructing a public restroom, and making parking spaces in the private parking area for 39 South Livermore available to the public. Red Bear is an experienced development company, which has been responsible for the development and operation of a number of high quality, successful properties in both Livermore and Pleasanton. Based on Council direction, the City and Red Bear have negotiated the amended DDA, which establishes the terms for the sale of the City-owned sites to Red Bear and the responsibilities of each of the parties for the commercial development.

Staff is also requesting authorization to conform the Stockmen's Park easement to the minor adjustments to the property boundaries that have been necessary as final designs have been developed for the Blacksmith Square expansion and surrounding properties.

The commercial project implements the City Council's Downtown Priority and is a key component of the Downtown Plan approved by the Council in 2018. The new retail and restaurant uses will help activate Stockmen's Park and provide a place for residents and visitors to enjoy shopping and dining.

DISCUSSION

Background

On October 22, 2018, the City Council adopted Resolution No. 2018-185 authorizing the City Manager to execute a Disposition and Development Agreement between the City and Red Bear Property Management, Inc. for developing approximately 8,600 square feet of new retail and restaurant space. The agreement implemented the Downtown Plan approved by the City Council in early 2018.

On November 9, 2020, the City Council adopted Ordinance No. 2106 approving a Development Agreement with Red Bear Property Management, Inc. for the Downtown Commercial Project. This agreement secured Red Bear's right to develop and use the property in accordance with the City's General Plan, Downtown Specific Plan, and Livermore Development Code for a term of 30 years.

The Disposition and Development Agreement approved by the City Council in 2018 includes commencement of construction in May 2020 and completion in December 2020. However, the 2018 Referendum challenging the Council's approval of a Specific Plan Amendment to allow a four-story hotel, the 2019 Referendum challenging the Council's approval of a Development Agreement for the hotel, and the 2019 Central Park Plan Initiative to change the land uses across the City's Downtown Core Site caused significant uncertainty and delayed the project.

The Referendum for the September 2018 Specific Plan Amendments necessitated several adjustments to the Downtown Plan. The adjustments included reduced building heights for the hotel and the L Street parking structure and required two-story buildings for the commercial project adjacent to the one-story buildings in Blacksmith Square. Only after the City Council readopted the Specific Plan Amendments that

were challenged by the 2018 Referendum on May 11, 2020, was the one-story provision put back in place to facilitate the commercial project.

Red Bear and staff have been working collaboratively on the project's site, architecture, and landscape plans. On September 16, 2022, Red Bear submitted a formal Downtown Design Review application for administrative review and approval by staff.

Livermore Stockmen’s Rodeo Association Easement

The project will be located on the southwest corner of South Livermore Avenue and Railroad Avenue as identified in the Livermore Stockmen’s Rodeo Association Easement (Easement). The Easement identifies commercial use areas A, B, C, and D, which collectively comprise the property that will be sold for commercial development. The purpose of the easement is to ensure, among other things, the Livermore Stockmen’s Rodeo Association will have input in the development of the commercial property adjacent to Stockmen’s Park to ensure its development integrates with the park area in an appealing manner and that its development does not overshadow the park and its memorial. Representatives from the Livermore Stockmen’s Rodeo Association and staff met to review the proposed commercial project on September 8, 2022, and on September 26, 2022, the Stockmen's Rodeo Association confirmed the commercial project meets the purpose of the Easement.

The Easement has undergone several minor amendments over time to reflect the design progress for the Black Box Theater and Quest Science Center, and completion of Stockmen's Park. Staff is recommending the City Council authorize the City Manager to execute all documents necessary to conform the Stockmen's Park easement to this project and others on the park site as designs for the Black Box Theater and Quest Science Center progress.

Disposition and Development Agreement

The DDA adds a number of conditions to the development of the property and in return recognizes the cost of these restrictions in the value of the land and the fees applied to the project. Among these conditions is the requirement that Red Bear participate in the Community Facility Maintenance District for Downtown Improvements (Maintenance District), which will help to fund the ongoing maintenance of Stockmen’s Park. Red Bear will contribute $22,000 per year to the Maintenance District.

In addition, Red Bear has agreed to incorporate a restroom facility into the commercial development which will be open and available to the public from mid-morning until early evening. This restroom will be operated and maintained by Red Bear and will serve both retail and restaurant customers and visitors to the park. This is a substantial cost savings for the City, as it avoids having to construct a stand-alone restroom facility for the park.

Red Bear has also agreed to execute a deed restriction for the property at 39 South Livermore Avenue which would require a portion of the parking at this site to remain open and available without restriction to use by specific businesses. This will help to ensure the efficient use of this parking, consistent with the intent of the Downtown Specific Plan and helps to reduce demand on other public parking areas.

In terms of design, the commercial buildings are compatible with Blacksmith Square and consistent with the Downtown Specific Plan. Where buildings are adjacent to Stockmen’s Park, building walls oriented toward the park are designed to incorporate window and door openings so tenant spaces actively

interface with Stockmen's Park.

The sales price of $50,000 and some fee credits reflect the cost of Red Bear's participation in the Maintenance District, the provision of publicly accessible restroom facilities, restrictions on design, limitations on parking that will be added to 39 South Livermore Avenue, and the schedule of performance for completion of construction. The performance schedule gives Red Bear just under 18 months to prepare construction level plans, obtain building permits, and complete the construction of the project. Construction would be complete by March 2024.

The approval of this amended DDA will allow the commercial properties identified in the Downtown Plan to move forward and be developed in a manner that is consistent and compatible with Blacksmith Square. These new commercial uses are a critical element in the activation and successful operation of Stockmen's Park.

The proposed commercial use is within walking distance of nearby housing, restaurants, retail shops, the Bankhead Theater, Livermore Cinema, and other commercial uses. Furthermore, Veterans Park, Eden Housing, the Quest Science Center, and Black Box Theater by SPARC are planned directly to the west and southwest. The new commercial project closes the gap between Blacksmith Square and 39 South Livermore Avenue and implements the community's vision for the Downtown. Upon completion, the project will support the City's economic development goals for Downtown, provide employment opportunities, and provide the City with additional revenue in the form of increased property and sales taxes.

Surplus Land Act

The Surplus Land Act under Government Code 54221(b)(2) and Surplus Land Act Guidelines dated April 2021 (Guidelines), Section 103 identify conditions under which disposition of publicly-owned land is exempt from the Surplus Land Act. Generally, publicly-owned land is not subject to the requirements of the Guidelines if a legally binding agreement for disposition of the property is entered into not later than December 31, 2020, and disposition is completed by December 31, 2022.

On September 28, 2022, the California Department of Housing and Community Development confirmed that the commercial parcels were exempt from the 2021 Guidelines and subject only to the 2019 Surplus Land Act, based upon the following circumstances:

- The initial DDA was approved before December 31, 2020, and
- Disposition of the property will be complete before December 31, 2022

Environmental Determination

The commercial project is within the scope of the 2004 Downtown Specific Plan Environmental Impact Report and the 2009 Downtown Specific Plan Subsequent Environmental Impact Report and the addendums adopted by City Council on September 10, 2018 by Resolution 2018-153, May 13, 2019 by Resolution 2019-064, and October 26, 2020 by Resolution 2020-178. No new or more severe significant impacts were identified for the project that were not identified in the 2004 Final EIR and 2009 Subsequent EIR, and no new mitigation measures would be required for the downtown plan. For all environmental topics addressed in the addendums, there were no substantial changes in environmental circumstances that would result in new or more severe significant environmental effects than were

identified and evaluated in the 2004 Final EIR and 2009 Subsequent EIR.

FISCAL AND ADMINISTRATIVE IMPACTS

Implementing the terms of the Disposition and Development Agreement outlined above will enable development of the downtown commercial sites, contributing to the economic vitality of Downtown Livermore. The proposed project will pay $50,000 for the land and approximately $890,000 in development impact fees to offset the additional costs of development impacts. Red Bear will also contribute $22,000 annually to the Stockmen's Park Community Facility Maintenance District. This contribution will adjust annually consistent with CPI plus one percent. The development will generate revenue from property tax and sales tax that will further offset related municipal services.

ATTACHMENTS

1. Resolution - CEQA and Exemption
2. Exhibit A - APN Map
3. Exhibit B-Surplus Land DDA Resolution
4. Exhibit C - Surplus Land - DA Ordinance No. 2106
5. Exhibit D - HCD Confirmation 9-28-22
6. Resolution - DDA
7. Exhibit A - Amended and Restated Disposition and Development Agreement.pdf

Prepared by: Steve Stewart
Planning 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 FINDING THE PROJECT IS CONSISTENT WITH PRIOR ENVIRONMENTAL REVIEW FOR CEQA AND DECLARING THAT TWO CITY-OWNED PARCELS ARE EXEMPT SURPLUS LAND PURSUANT TO GOVERNMENT CODE SECTION 54221

The City of Livermore is the owner in fee simple of two parcels of land located on the southwest corner of South Livermore Avenue and Railroad Avenue in downtown Livermore (APNs: 098-0289-026 and 098-0289-027); both as more particularly described in Exhibit A, (collectively "Commercial Properties").

On October 22, 2018, the City Council adopted Resolution No. 2018-185 authorizing the city manager to execute a Disposition and Development Agreement between the City and Red Bear Property Management, Inc. for developing approximately 8,600 square feet of new retail and restaurant space. The agreement implemented the Downtown Plan approved by the City Council in early 2018.

On November 9, 2020, the City Council adopted Ordinance No. 2106 approving a Development Agreement with Red Bear Property Management, Inc. for the Downtown Commercial Project. This agreement secured Red Bear's right to develop and use the property in accordance with the City's General Plan, Downtown Specific Plan, and Livermore Development Code for a term of 30 years.

The City Council has determined that the Commercial Properties are not necessary for City use as set forth in Resolution No. 2018-185 authorizing the city manager to execute a Disposition and Development Agreement between the City and Red Bear Property Management, Inc. for developing the Commercial Properties, attached hereto as Exhibit B, and as set forth in Ordinance No. 2106, authorizing execution of a Development Agreement between the City of Livermore and Red Bear Property Management, Inc., securing Red Bear Property Management, Inc.'s right to develop the Commercial Properties, attached hereto as Exhibit C.

The surplus property legislation provides that its requirements do not apply to city-owned property when an agreement for the property's disposition was executed before December 31, 2020, and the final disposition is completed before December 31, 2022. Here, the agreements between the City and Red Bear Property Management, Inc. were entered into prior to those dates, and the disposition is scheduled to be completed before December 31, 2022.

The Amended and Restated Disposition and Development Agreement amends and restates the 2018 Disposition and Development Agreement so that the conveyance of Commercial Properties can be completed. For the reasons stated above, the conveyance of Commercial Properties is exempt from the Surplus Land Act in accordance with Government Code section 54221.

On September 28, 2022, the California Department of Housing and Community Development confirmed the commercial parcels were exempt from the 2021 Surplus Land Act and Guidelines and subject to the Surplus Land Act as it existed on December 31, 2019. A copy of that notice is attached as Exhibit D.

Staff recommends that the City Council declare that the Commercial Properties are exempt surplus land pursuant to Government Code section 54221.

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

1. It finds the conveyance of the Commercial Properties, consisting of APNs 098-0289-026 and 098-0289-027, from the City to Red Bear Property Management, Inc. were analyzed by, and the project is consistent with the scope of the addendums adopted by City Council on September 10, 2018 by Resolution 2018-153, May 13, 2019 by Resolution 2019-064, and October 26, 2020 by Resolution 2020-178, and the 2004 Downtown Specific Plan Environmental Impact Report and the 2009 Downtown Specific Plan Subsequent Environmental Impact Report.

No new or more severe significant impacts were identified for the project that was not identified in the 2004 Final EIR and 2009 Subsequent EIR, and no new mitigation measures would be required for the downtown plan. For all environmental topics addressed in the addendums, there were no substantial changes in environmental circumstances that would result in new or more severe significant environmental effects than were identified and evaluated in the 2004 Final EIR and 2009 Subsequent EIR.

2. It determines the following two parcels identified herein as the Commercial Properties, consisting of APNs 098-0289-026 and 098-0289-027 and as more particularly described in Exhibit A, are exempt surplus land as defined in Government Code section 54221, as confirmed by the California Department of Housing and Community Development.

On motion of Council Member _____, seconded by Council Member _____, the foregoing resolution was passed and adopted on October 24, 2022, by the following vote:

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

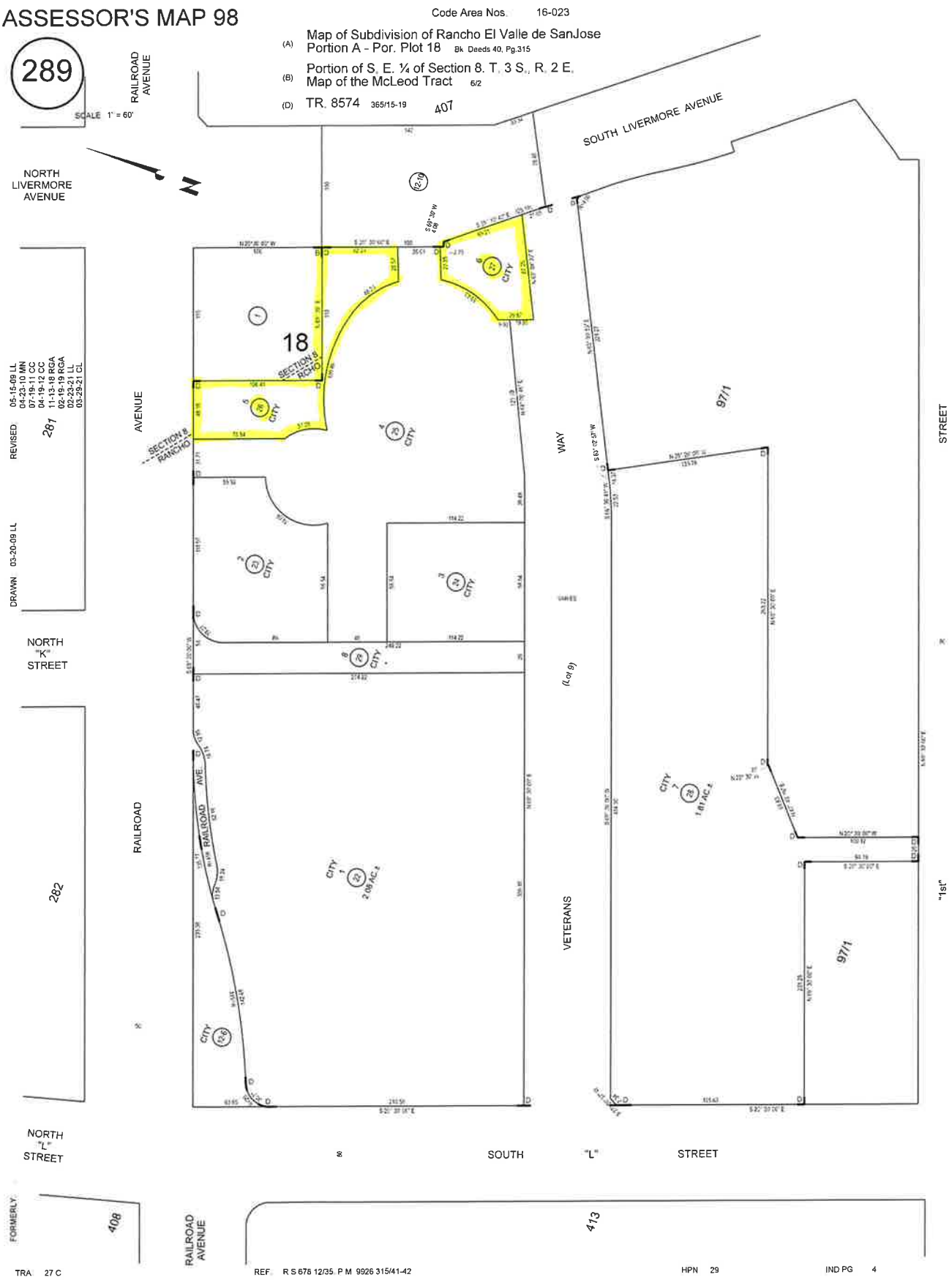
ATTEST:

Marie Weber
City Clerk

APPROVED AS TO FORM:

/s/ Jason R. Alcala
Jason R. Alcala
City Attorney

Exhibit A – APN Map
Exhibit B – Resolution No. 2018-185
Exhibit C – Ordinance No. 2106
Exhibit D – HCD Notice dated September 28, 2022


ASSESSOR'S MAP 98
Code Area Nos. 16-023
(A) Map of Subdivision of Rancho El Valle de SanJose Portion A - Por. Plot 18 Bk Deeds 40, Pg.315
(B) Portion of S. E. ¼ of Section 8. T. 3 S., R. 2 E. Map of the McLeod Tract 6/2
(D) TR. 8574 365/15-19
289
SCALE 1" = 60'
RAILROAD AVENUE
NORTH LIVERMORE AVENUE
SOUTH LIVERMORE AVENUE
407
18
SECTION 8 RCHO
281
282
REVISED 05-15-09 LL 04-23-10 MN 07-19-11 CC 04-19-12 CC 11-13-18 RGA 02-19-19 RGA 02-23-21 LL 03-29-21 CL
DRAWN 03-20-09 LL
AVENUE
WAY
STREET
97/1
NORTH "K" STREET
NORTH "L" STREET
SOUTH "L" STREET
RAILROAD
VETERANS
"1st"
(Lot 9)
1.61 AC ±
2.08 AC ±
FORMERLY
408
413
RAILROAD AVENUE
TRA 27 C
REF R S 678 12/35. P M 9926 315/41-42
HPN 29
IND PG 4

IN THE CITY COUNCIL OF THE CITY OF LIVERMORE, CALIFORNIA

A RESOLUTION AUTHORIZING EXECUTION OF A DISPOSITION AND DEVELOPMENT AGREEMENT BETWEEN THE CITY OF LIVERMORE AND RED BEAR PROPERTY MANAGEMENT FOR THE DISPOSITION OF CITY OWNED PARCELS AND DEVELOPMENT OF DOWNTOWN COMMERCIAL PROPERTY

(APN'S 098-0289-002-01, 098-0289-019, 098-0289-020)

On January 30, 2018, the City Council approved the Downtown Plan, which provides for commercial uses on the Livermore Village site on the southwest corner of Railroad Avenue and South Livermore Avenue.

On July 26, 2018, the City entered into an Exclusive Negotiating Rights Agreement with Red Bear Property Management, Inc. to establish procedures and standards to negotiate a purchase and sale agreement for the disposition and development of certain property for the purpose of developing downtown commercial sites.

The City and Red Bear Property Management, Inc. desire to enter into an agreement to sell the City-owned property to Red Bear Property Management, Inc. for the construction of new commercial space on approximately 12,900 square feet of property.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Livermore finds that the Disposition and Development Agreement attached to this resolution as Exhibit A is consistent with the Addendum to the Downtown Specific Plan 2009 Subsequent Environmental Impact Report approved by City Council on September 10, 2018.

BE IT FURTHER RESOLVED that the City Council of the City of Livermore authorizes the City Manager to execute a Disposition and Development Agreement with Red Bear Property Management, Inc. that is in substantially the same form as the agreement attached hereto as Exhibit A.

BE IT FURTHER RESOLVED that the City Council of the City of Livermore authorizes the City Manager to execute any documents, with prior approval as to form by the City Attorney, required to effectuate the purpose of the Disposition and Development Agreement, including but not limited to, the parcel map, minor revisions to the schedule of performance, agreements contemplated by the material terms attached as exhibits to the Disposition and Development Agreement, and grant deeds.

On motion of Vice Mayor Woerner, seconded by Council Member Spedowfski, the foregoing Resolution was passed and adopted on October 22, 2018, by the following vote:

AYES: Council Members Carling, Coomber, Spedowfski, Vice Mayor Woerner, Mayor Marchand
NOES: None
ABSENT: None
ABSTAIN: None

ATTEST:

Sarah Bunting
City Clerk

APPROVED AS TO FORM:

Jason Alcala
City Attorney

Date: October 25, 2018

Exhibit A – Disposition and Development Agreement

DISPOSITION AND DEVELOPMENT AGREEMENT

by and between

CITY OF LIVERMORE

and

RED BEAR PROPERTY MANAGEMENT, Inc.

Retail/Commercial Project
Livermore Village, Stockmen's Park
Downtown Livermore

(Resolution Number _____)

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DISPOSITION AND DEVELOPMENT AGREEMENT

THIS DISPOSITION AND DEVELOPMENT AGREEMENT (this "Agreement") is made as of October __, 2018, by and between the City of Livermore, a municipal corporation ("City"), and Red Bear Property Management, Inc., a California corporation ("Developer"), with reference to the following facts, purposes, and understandings.

RECITALS

A. These Recitals refer to and utilize certain capitalized terms that are defined within this Agreement.

B. The City is the owner of a certain parcels of property that are approximately 5.5 acres, bounded by Railroad Avenue, Livermore Avenue, First Street, and L Street, and that is commonly referred to as the "Livermore Village Site."

C. On January 30, 2018, the City Council approved the Downtown Plan, a copy of which is attached hereto as Exhibit A, that provides for, among other things, the development of the Livermore Village Site. The Downtown Plan contemplates a public park with provisions for a science center, a black box theater, and retail space within the park area of the Livermore Village Site.

D. On January 30, 2018, the City Council granted a park easement to the Livermore Stockmen's Rodeo Association (recorded in the Official Records on April 18, 2018 as County Recorder number 2018076967) ("Park Easement"), a copy of which is attached hereto as Exhibit B.

E. The Park Easement is subject to the terms and conditions set forth in the specific agreement between the City and the Livermore Stockmen's Rodeo Association titled *First Amendment to Agreement for the Development of the Rodeo Grounds and Sunken Garden Area as a Civic Center and Parks and Recreation Area*, dated January 30, 2018 ("LSRA Agreement"), a copy of which is attached hereto as Exhibit C.

F. The LSRA Agreement and Park Easement designate commercial use areas within the Park Easement identified as commercial use areas A, B, C, and D in Exhibit B. The commercial use areas A, B, C, and D, are collectively referred to in this Agreement as the "Commercial Property," the plat map and legal description for which from the Park Easement is attached as Exhibit D.

G. The LSRA Agreement states that the purpose of the Park Easement is to ensure, among other things, the Livermore Stockmen's Rodeo Association will have input on the development of the Commercial Property adjacent to Stockmen's Park to ensure its development integrates with the park area in an appealing manner and to ensure that its development does not overshadow the park and its memorial. The LSRA Agreement and Park Easement contemplate and allow for the City transfer of the Property to a third party.

H. The City is the owner of the City-owned parcels located on the southwest corner of South Livermore Avenue and Railroad Avenue in downtown Livermore (APNs: 98-289-2-1,

98-289-20, and portions of APN 97-1-32, 98-289-2-1, 98-289-18, 98-289-19, and 98-289-21), that are within the Park Easement granted to the Livermore Stockmen's Rodeo Association.

I. The City will prepare and record a parcel map for the Commercial Property areas to be conveyed from the City to the Developer ("Property"), as more particularly described in draft parcel map attached to this Agreement as Exhibit E ("Draft Parcel Map for the Property"), that consists of the Commercial Property in the Park Easement.

J. On April 27, 2019, the City circulated a request seeking qualifications from developers interested in designing and constructing commercial retail uses on the Property to implement the Downtown Plan.

K. On June 18, 2018, the City selected the Developer for the disposition of the Property for its development to implement the Downtown Plan consistent with the Livermore General Plan, the Downtown Specific Plan, the Livermore Development Code, the Livermore Municipal Code, City design standards and guidelines, and other City guidelines, standards, and requirements for development (collectively "City Regulations").

L. On June 18, 2018, the City Council adopted resolution no. 2018-088 authorizing the City Manager to execute for the City, an Exclusive Negotiating Rights Agreement with Developer to negotiate this Agreement to:

- Maximize land use of the Property consistent with the Downtown Specific Plan and the goals articulated by the City Council upon its selection of Developer to negotiate for this Agreement;
- Develop the Property in a timely and efficient manner; and,
- Construct the development of the Property consistent with any City entitlements and requirements for the project, including the Downtown Specific Plan.

M. The Developer desires to develop the Property with the following considerations:

- Construct commercial buildings on approximately 12,938 square feet of the Property;
- Utilize architecture and design elements compatible with Blacksmith Square;
- Configure building walls for the commercial buildings adjacent to the Stockmen's Park so that they are oriented toward Stockmen's Park and designed to incorporate window and door openings so tenant spaces actively interface with Stockmen's Park;
- Identify shared facilities, if any, with the Science and Society Center that the Downtown Plan contemplates to the west of the Property on the Park Easement;

- Provide for its own trash enclosure and collection facilities. At such time as the L Street Parking Garage Compactor Facility becomes available for business use, the Property may utilize these facilities, subject to standard City fees and requirements for use, which are applicable to all businesses users. ; and,

- Construct public improvements related to the Improvements consisting of: frontage improvements, public art, and public access to Stockmen's Park to and from Railroad Avenue and S. Livermore Avenue.

N. The Developer also proposes to participate in the formation of, or annexation of the Property into, a community facilities district, or other assessment district, formed to fund the maintenance of Stockmen's Park and other designated downtown public facilities

O. The City desires to sell to the Developer the Property depicted and described in Exhibit E, and Developer desires to acquire said Property from the City, upon the terms and conditions set forth in this Agreement.

P. The City has determined that the Developer has the necessary expertise, skill, and ability to carry out the commitments contained in this Agreement.

Q. Pursuant to CEQA, the City (in its capacity as "lead agency") has prepared, reviewed, and certified the Addendum to the 2009 Subsequent Environmental Impact Report, Subsequent Environmental Impact Report dated March 2009, and Downtown Specific Plan Environmental Impact Report dated February 9, 2004.

NOW, THEREFORE, the City and the Developer agree that the aforementioned recitals are true and correct, and further agree as follows:

ARTICLE 1.
DEFINITIONS

Section 1.1 Definitions. In addition to the terms defined elsewhere in this Agreement, the following capitalized words shall have the following meanings:

(a) "Affiliate" shall mean any Person which directly or indirectly through one or more intermediaries, Controls, or is Controlled by, or is under common Control with, the Developer.

(b) "Agreement" shall mean this Disposition and Development Agreement.

(c) "Appurtenances" shall mean all rights, privileges and easements appurtenant to the Property, including, without limitation (to the extent in existence), all minerals, oil, gas, and other hydrocarbon substances on or under the Property, as well as development rights, air rights, riparian rights and water rights which the City may own and which relate to the Property and any rights-of-way or other appurtenances affecting the Property.

(d) "Building Permit" shall mean an excavation, demolition, grading, foundation, or other building permit issued by the City in connection with the construction of the Improvements.

(e) "CEQA" shall mean the California Environmental Quality Act (California Public Resources Code Section 21000 et seq.), and its implementing guidelines.

(f) "Certificate of Occupancy" shall mean that certificate issued by the City to the Developer to allow occupancy of the Improvements.

(g) "CFD" shall mean the community facility district created pursuant to the Mello-Roos Community Facilities Act of 1982.

(h) "City" shall mean the City of Livermore,

(i) "City Event of Default" shall mean any default by the City as more particularly described in Section 10.2.

(j) "City Fees" shall mean the estimated fees listed in Exhibit F, which fees are estimates only and will be finally determined at the issuance of the Building Permit.

(k) "Close of Escrow" shall have the meaning set forth in Section 3.5.

(l) "Compactor Facility" shall mean a trash facility to be located in close proximity to the L Street Parking Garage.

(m) "Control" shall mean (i) direct or indirect management or control of the managing member or members in the case of a limited liability company; (ii) direct or indirect management or control of the managing general partner or general partners in the case of a partnership and (iii) (a) boards of directors that overlap by fifty percent (50%) or more of their directors, or (b) direct or indirect control of a majority of the directors in the case of a corporation.

(n) "Developer" shall mean Red Bear Property Management, Inc., or any transferee of the Developer in accordance with Section 8.4.

(o) "Developer Event of Default" shall mean any default by the Developer as more particularly described in Section 10.3, subject to any applicable notice and cure rights set forth therein.

(p) "Effective Date" shall mean the date which is the later of (i) the date this Agreement is executed by the Developer and (ii) the date this Agreement is approved and executed by the City, which later date of execution shall be written in the first paragraph of this Agreement by City.

(q) "Entitlements" shall mean, collectively, zoning approvals, site plan review, design review, conditional use permit, and any other discretionary approvals required for

construction of the Improvements. For purposes of this Agreement, "Entitlements" do not include demolition, grading, building or other ministerial permits or approvals.

(r) "Escrow" shall mean the escrow opened with the Escrow Holder to close the transactions described in Article 3.

(s) "Escrow Holder" shall mean escrow company approved by the City and Developer.

(t) "Final Construction Drawings" shall mean final drawings for the construction of the Improvements used to obtain a Building Permit from the City for the construction of the Improvements.

(u) "Grant Deed" shall mean the grant deed by which the City conveys its fee estate in the Property and Appurtenances to the Developer. A form of the Grant Deed is attached to this Agreement as Exhibit G.

(v) "Hazardous Materials" shall mean:

(1) Those substances included within the definitions of "hazardous substances", "Hazardous Materials", "toxic substances", or "solid waste" in the Comprehensive Environmental Response Compensation and Liability Act of 1980 (42 U.S.C. §§ 9601 et seq.) ("CERCLA"), as amended by Superfund Amendments and Reauthorization Act of 1986 (Pub. L. 99-499 100 Stat. 1613) ("SARA"), the Resource Conservation and Recovery Act of 1976 (42 U.S.C. §§6901 et seq.) ("RCRA"), and the Hazardous Materials Transportation Act, 49 U.S.C. §§ 1801 et seq., and in the regulations promulgated pursuant to said laws, all as amended;

(2) Those substances listed in the United States Department of Transportation Table (49 CFR 172.101 and amendments thereto) or by the Environmental Protection Agency (or any successor agency) as hazardous substances (40 CFR Part 302 and amendments thereto);

(3) Any material, waste or substance which is (A) petroleum, (B) asbestos, (C) polychlorinated biphenyls, (D) designated as a "hazardous substance" pursuant to Section 311 of the Clean Water Act, 33 U.S.C. §§ 1251 et seq. (33 U.S.C. §§1321) or listed pursuant to Section 307 of the Clean Water Act (33 U.S.C. §§ 1317); (E) flammable explosives; or (F) radioactive materials;

(4) Any toxic or hazardous waste, material or substance or any oil or pesticide listed in, covered by, or regulated pursuant to, any state or local law, ordinance, rule or regulation applicable to the Property, as heretofore or hereafter amended; and

(5) Such other substances, materials and wastes which are or become regulated as hazardous or toxic under applicable local, state or federal law, or the United States government, or which are classified as hazardous or toxic under federal, state, or local laws or regulations.

The term "Hazardous Materials" shall not include: construction materials, gardening materials, household products, office supply products or equipment, food service or preparation equipment or materials or janitorial supply products or equipment customarily used in the construction, maintenance, rehabilitation, use, occupancy or management of a commercial property , to the extent which the same are used and stored in accordance with all applicable environmental ordinances and regulations.

(w) "Hazardous Materials Laws" shall mean environmental and health and safety laws, regulations, ordinances, administrative decisions, common law decisions (whether federal, state, or local) with respect to Hazardous Materials, including those relating to soil and groundwater conditions.

(x) "Improvements" shall mean collectively the buildings and related works described in Article 4 of this Agreement, and as further defined in the Scope of Development, Project Documents, Entitlements, Final Construction Drawings, and other related permits and approvals for the commercial uses contemplated by this Agreement for the Property's development.

(y) "Insurance Requirements" shall mean the insurance requirements for the Developer and its contractors and subcontractors contained in Exhibit H.

(z) "Memo of DDA" shall mean the memorandum of this Agreement, substantially in the form of Exhibit I.

(aa) "Official Records" shall mean the Official Records of Alameda County.

(bb) "Parties" shall mean the City and the Developer.

(cc) "Party" shall mean either the City or the Developer depending on the context.

(dd) "Permitted Exceptions" shall mean the following exceptions to title with respect to the Property:

(1) the lien of any non-delinquent property taxes and assessments;

(2) the Park Easement and all other existing easements over, under and across the Property for ingress and egress and public utilities, which do not preclude Developer's intended use of the Property;

(3) any incidental easements or other matters affecting title which do not preclude or materially impair Developer's intended use of the Property;

(4) applicable building and zoning laws and regulations;

(5) the provisions of this Agreement;

(6) other matters created by, through or under Developer; and

(7) such other exceptions to title as may hereafter be mutually approved by the City and the Developer.

(ee) "Person" or "Persons" shall mean any individual, partnership, joint venture, corporation, limited liability company, limited liability partnership, trust or other entity, private or public with the power and authority to act and conduct business on its own behalf.

(ff) "Pro Forma" shall mean the preliminary sources and uses for the development of the Project delivered by the Developer under separate confidential cover.

(gg) "Project" shall collectively mean (i) the Property and (ii) the Improvements.

(hh) "Project Documents" shall mean the site plan, elevations and landscaping plans submitted by the Developer to enable the Developer to obtain the Entitlements for the Improvements, together with and all conditions of approval associated with the Entitlements.

(ii) "Property" shall mean the parcels described Draft Parcel Map for the Property to be created and recorded in the Official Records by the City for the Commercial Property depicted in the Park Easement located on the southwest corner of South Livermore Avenue and Railroad Avenue in downtown Livermore, as more particularly described in Exhibit E attached to this Agreement to be transferred from the City to the Developer.

(jj) "Purchase Price" shall have the meaning set forth in Section 3.2.

(kk) "Reciprocal Access Easement" shall mean a permanent easement agreement between the Developer and the City, as the same may be amended by agreement of the parties thereto, pursuant to which permanent easements are granted for access and encroachments between, by, and among the Property, the Park Easement, and the science center and blackbox theater contemplated for the Park Easement, for the construction, operation, repair and maintenance of utilities and utility lines (including sewers, water and gas pipes and systems, electrical power conduits, telephone conduits, lines and wires), storm drains and equipment, surface water runoff, landscaping, pedestrian access, and such other easements consistent with the Project Documents or as may be agreed upon by the Parties to implement the Downtown Plan and the uses contemplated by the Park Easement and the LSRA Agreement.

(ll) "Schedule of Performance" shall mean the summary schedule of actions to be taken by the Parties pursuant to this Agreement to achieve the disposition of the Property to the Developer and the construction of the Project, as the same or components of the same may be extended pursuant to this Agreement. The Schedule of Performance is attached to this Agreement as Exhibit J.

(mm) "Scope of Development" shall mean the Improvements described in Article 4 for this Agreement, which includes the Scope of Development attached to this Agreement as Exhibit K, and the Downtown Specific plan Design Guidelines, as refined in the Project Documents for the Improvements.

(nn) "Security Financing Interests" shall have the meaning set forth in Section 9.1.

(oo) "Outside Date" shall mean the last date for the commencement of construction as more particularly described in the Schedule of Performance.

(pp) "Title Company" shall mean shall mean title company approved by the City and Developer.

(qq) "Title Policy" has the meaning set forth in Section 2.2(f).

(rr) "Transaction Documents" shall mean, collectively, the Grant Deed, the Memo of DDA, final recorded parcel map for the Property, and the Reciprocal Access Easement.

(ss) "Transfer" shall mean a transfer of this Agreement or an interest in the Developer, as more particularly described in Section 8.1.

Section 1.2 Exhibits. The following exhibits are attached to and incorporated into this Agreement:

Exhibit A: Downtown Plan.

Exhibit B: Park Easement.

Exhibit C: LSRA Agreement.

Exhibit D: Commercial Property Plat Map and Legal Description.

Exhibit E: Draft Parcel Map for the Property

Exhibit F: City Fees.

Exhibit G: Grant Deed.

Exhibit H: Insurance Requirements.

Exhibit I: Memo of DDA.

Exhibit J: Schedule of Performance.

Exhibit K: Scope of Development

ARTICLE 2.
PREDISPOSITION REQUIREMENTS

Section 2.1 City's Conditions Precedent to Close of Escrow. As conditions precedent to the Close of Escrow for the Property, the predisposition conditions set forth in this Section 2.1 must first be met by the times specified for such conditions in the Schedule of Performance (as such times may be extended pursuant to Section 11.4 or other provisions of this Agreement) or,

if no time is so specified, on or before the Close of Escrow. Satisfaction of these conditions depends on performance by the Developer. Only the City can waive satisfaction of the conditions in this Section 2.1.

(a) The Developer has provided the City with the preliminary development Pro Forma setting forth the Developer's current estimate of sources and uses of funds for development of the Improvements. The Pro Forma is intended to serve as a guide for the review of the Developer's financing commitments. The Pro Forma and the information contained therein are privileged documents of the Developer containing trade secrets, private personal information, and/or the contents of real estate appraisals, engineering and/or feasibility estimates, evaluations and other proprietary information. No later than the time specified in the Schedule of Performance, the Developer has submitted a true copy of each letter of interest or letter of intent, which may be binding or non-binding, from lenders, mortgage brokers and/or equity partners to provide funds in the amounts necessary, together with the funds of Developer, to fully finance the projected costs of development of the Improvements. The City shall not make an exact copy of the Pro Forma, but may make such notes to record pertinent information from the Pro Forma to guide the City's determinations relative to the adequacy of the Pro Forma, which notes shall likewise be treated as privileged to the extent the notes reflect the Developer's private personal information, and/or the contents of real estate appraisals, engineering and/or feasibility estimates, evaluations and other proprietary information. The City shall return the original Pro Forma to the Developer upon the Developer's request.

(b) The Developer has obtained all Entitlements. The Developer has deposited an executed counterpart of the Reciprocal Access Easement with Escrow Holder.

(c) There is no existing, pending or threatened litigation, suit, action or proceeding before any court or administrative agency affecting the City or the Developer or the Property that would, if adversely determined, materially adversely affect the Property or the Developer's or the City's ability to perform their obligations under this Agreement or the Developers' ability to develop and operate the Improvements.

(d) There shall exist no condition, event or act, which would constitute a Developer Event of Default or which, upon the giving of notice or the passage of time, or both, would constitute a Developer Event of Default.

(e) Within the time specified in the Schedule of Performance, the Developer shall furnish to the City the type and amounts of insurance specified in Exhibit H. The City shall be named as additional insured on the policies specified therein. The Developer shall require that all worker compensation insurance policies carried by the general contractor and subcontractors working on the Improvements include a waiver of subrogation in favor of the City.

(f) The Developer has deposited the Purchase Price into Escrow.

(g) The Developer has executed and recorded a deed restriction in favor of the City and burdening the property located at 39 South Livermore Avenue (APN 097-0001-033) to require that 23 parking spaces on that property shall be open and available to the public. The

deed restriction shall provide that the 23 parking spaces shall be available for public use on a first come first served basis subject to the City's regulations for off-street parking, and shall not be reserved or assigned to individual tenants or users. The deed restriction must be approved by the City and must include a clause stating that it cannot be altered without the City's prior written consent.

(h) A deed restriction is executed and recorded in favor of the City and burdening the Property, or a portion thereof, to require that upon development there shall be a public restroom facility on the Property that is open and available to the public between 10:00 a.m. and dusk, every day of the week. The deed restrictions shall provide that the Developer or its successor shall be responsible, at its own cost and expense, for all aspects of constructing, owning, operating, maintaining and replacing the public restroom. The deed restriction must be approved by the City and must include a clause stating that it cannot be altered without the City's prior written consent.

Section 2.2 Developer's Conditions Precedent to Close of Escrow. As conditions precedent to the Close of Escrow for the Property, the predisposition conditions set forth in this Section 2.2 must first be met by the times specified for such conditions in the Schedule of Performance (as such times may be extended pursuant to Section 11.4 or other provisions of this Agreement) or, if no time is so specified, on or before the Close of Escrow. Satisfaction of these conditions in Section 2.2(a) depends on performance by the City. Only the Developer can waive satisfaction of the conditions contained in this Section 2.2.

(a) The City has prepared and recorded in the Official Records a parcel map for the Property that substantially conforms to the Draft Parcel Map for the Property, and that lies within the Commercial Property depicted in the Park Easement.

(b) The Developer has obtained all Entitlements.

(c) The City has deposited an executed counterpart of the Reciprocal Access Easement with Escrow Holder.

(d) There is no existing, pending or threatened litigation, suit, action or proceeding before any court or administrative agency affecting the City or the Developer or the Property that would, if adversely determined, materially adversely affect the Property or the Developer's or the City's ability to perform their obligations under this Agreement or the Developers' ability to develop and operate the Improvements.

(e) There shall exist no condition, event or act which would constitute a City Event of Default or which, upon the giving of notice or the passage of time, or both, would constitute a City Event of Default.

(f) The is irrevocably and unconditionally committed to issue to Developer the Title Policy, free and clear of all liens, and subject only to the Permitted Encumbrances, within thirty (30) days of Close of Escrow. As used in this Agreement, the term "Title Policy" shall mean an ALTA extended coverage owner's policy of title insurance in the amount of the Purchase Price insuring fee simple title to the Property, subject only to the Permitted Encumbrances.

Section 2.3 Access for Investigations. Prior to Close of Escrow, the City grants to the Developer and the Developer's agents the right to enter upon the Property for the exclusive purpose of conducting geotechnical and environmental studies and investigations. Such entry shall be made only during regular business hours and upon not less than five (5) business days' advance telephonic, email, or written facsimile notice to the City's Community Development Director. Prior to exercise of the right of entry, the Developer shall provide the City with satisfactory evidence, in the form of a certificate of insurance, that the Developer's agents who obtain access to the Property are insured under comprehensive general liability and automobile liability insurance policy or policies in a manner acceptable to the City in its reasonable discretion. The Developer shall indemnify and defend the City, and its elected officials, officers, directors, employees, contractors, consultants, attorneys, agents, and designated volunteers (collectively the "Indemnified Parties") against, and hold the Indemnified Parties and the Property harmless from and against, any and all costs, expenses (including, without limitation, attorneys' fees), damages, claims, liabilities, liens (including, without limitation, mechanics liens) encumbrances and charges to the extent such arise out of or are in any way directly related to any entry by the Developer or the Developer's agents upon the Property, but only to the extent such matters do not arise from the gross negligence or willful misconduct of the City or other Indemnified Party, from pre-existing conditions of the Property, or from Developer's discovery of any information potentially having a negative impact on the Property. The foregoing obligation of the Developer shall survive the expiration or termination of this Agreement. The City shall cooperate with the Developer in obtaining, for the benefit of the Developer, reliance letters from the appropriate parties with respect to any third party reports or studies commissioned or obtained by the City with respect to the Property.

ARTICLE 3.
DISPOSITION OF THE PROPERTY

Section 3.1 Purchase and Sale. Provided the predisposition requirements set forth in Article 2 and the additional closing conditions set forth in Section 3.4 have been satisfied or waived, the City shall sell to the Developer, and the Developer shall purchase from the City, the Property pursuant to the terms, covenants, and conditions of this Agreement.

Section 3.2 Purchase Price. The purchase price for the Property shall be Fifty Thousand Dollars ($50,000) to be paid by the Developer at the Close of Escrow (the "Purchase Price"). This purchase price reflects the cost of the Developer’s participation in the Community Facility Maintenance District for Downtown Core Improvements, the cost of providing and maintaining a restroom facility for public use, the restrictions in design requiring the building improvements to front onto and activate Stockmen’s Park, and the standards established by the Schedule of Performance.

Section 3.3 Opening Escrow; Costs of Escrow. To accomplish the transfer and conveyance of the Property from the City to the Developer, by the date specified in the Schedule of Performance, the Parties shall establish an escrow and execute and deliver to the Escrow Holder written instructions that are consistent with this Agreement. The City shall pay or cause to be paid (i) one half (½) of any escrow fee charged by the Escrow Holder and (ii) any and all City and County real estate documentary transfer taxes. The Developer shall pay (a) one half (½) of any escrow fee charged by the Escrow Holder, (b) all costs of the Title Policy (and any

endorsements) issued based thereon, and (c) any recording fees. Each Party shall be responsible for the payment of its own attorney's fees, copying expenses and other costs incurred in connection with the negotiation of this Agreement and the consummation of the transaction contemplated hereunder. Any other closing costs and all prorations (if any) shall be split and accounted for as customary in Alameda County, California, for commercial real estate transactions.

Section 3.4 Closing and Closing Deliverables. Subject to the satisfaction or waiver of the closing conditions to, and the predisposition requirements for, the Close of Escrow set forth in Section 2.1 and Section 2.2, the Close of Escrow shall occur and the City shall convey, and the Developer shall accept conveyance of, fee simple title to the Property and Appurtenances pursuant to the Grant Deed. At or before Close of Escrow, the City and the Developer, as applicable, shall deliver to the Title Company and Escrow Holder the following:

(a) The Developer shall deposit: (i) the Purchase Price, (ii) originals of each of the Transaction Documents executed and acknowledged (as applicable) by the Developer, and (iii) any other documents that may be reasonably requested by the Escrow Holder and the Title Company and that are customarily delivered in connection with the closing of real estate transactions in Alameda County, and any other documents that may be necessary in order to consummate the transactions contemplated under this Agreement.

(b) The City shall deposit: (i) originals of each of the Transaction Documents executed and acknowledged (as applicable), (ii) a FIRPTA Certificate, and (iii) any other documents that may be reasonably requested by the Escrow Holder and the Title Company and that are customarily delivered in connection with the closing of real estate transactions in Alameda County, and any other documents that may be necessary in order to consummate the transactions contemplated under this Agreement.

Section 3.5 Close of Escrow. Subject to the satisfaction or waiver of the closing conditions to, and the predisposition requirements for, the Close of Escrow set forth in Section 2.1 and Section 2.2 and provided that all of the documents and other items set forth in Section 3.4 have been deposited with Escrow Holder, Escrow Holder shall do all of the following:

(a) Complete all blank spaces, if any, in the Transaction Documents, including the effective dates thereof;

(b) Attach to all applicable Transaction Documents final and accurate legal descriptions consistent with the Title Policy;

(c) Deliver copies of fully executed originals of the Transaction Documents to the appropriate parties, including certified copies of the recordable Transaction Documents showing recording information; and

(d) Cause to be recorded or distributed (as more particularly described below) the following documents:

(1) Record in the Official Records the Grant Deed conveying the Property to the Developer;

(2) Record in the Official Records the Memo of DDA;

(3) Record in the Official Records the Reciprocal Access Easement;

(4) File any informational reports required by Internal Revenue Code Section 6045(e), as amended, and any other applicable requirements;

(5) Deliver the FIRPTA Certificate, if any, to the Developer;

(6) Forward to both the Developer and the City a separate accounting of all funds received and disbursed for each party and copies of all executed and recorded or filed documents deposited with Escrow Holder, with such recording and filing date and information endorsed thereon to the extent applicable;

(7) Issue the Title Policy to Developer or irrevocably and unconditionally commit to issue the Title Policy to the Developer within thirty (30) days of Close of Escrow; and

(8) Distribute or record such other documents as may be specified in the Parties' escrow instructions, if any.

The date on which the Escrow Holder completes the recordation of all of the recordable documents listed in this Section 3.5 shall be the "Close of Escrow."

Section 3.6 Additional Escrow Instructions. The Parties shall execute such further or additional escrow instructions as Escrow Holder may require or that any such Party desires. Such further or additional escrow instructions shall not require the imposition of any additional obligations or liabilities on a Party, unless agreed to by the Party, and shall not modify the provisions of this Agreement (unless the Parties otherwise expressly provide for such modification in such further or additional escrow instructions).

Section 3.7 Condition of the Property.

(a) "As Is" Conveyance.

(1) THE DEVELOPER SPECIFICALLY ACKNOWLEDGES AND AGREES THAT THE CITY IS CONVEYING THE PROPERTY ON AN "AS IS WITH ALL FAULTS" BASIS AND THAT THE DEVELOPER IS NOT RELYING ON ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND WHATSOEVER, (EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT) EXPRESS OR IMPLIED, FROM THE CITY AS TO ANY MATTERS CONCERNING THE PROPERTY, INCLUDING WITHOUT LIMITATION: (A) THE QUALITY, NATURE, ADEQUACY AND PHYSICAL CONDITION OF THE PROPERTY (INCLUDING, WITHOUT LIMITATION, TOPOGRAPHY, CLIMATE, AIR, WATER RIGHTS, WATER, GAS, ELECTRICITY, UTILITY SERVICES, GRADING, DRAINAGE, SEWERS, ACCESS TO PUBLIC ROADS AND RELATED CONDITIONS); (B) THE QUALITY, NATURE, ADEQUACY, AND PHYSICAL CONDITION OF SOILS, GEOLOGY AND GROUNDWATER, (C) THE EXISTENCE, QUALITY, NATURE,

ADEQUACY AND PHYSICAL CONDITION OF UTILITIES SERVING THE PROPERTY, (D) THE DEVELOPMENT POTENTIAL OF THE PROPERTY, AND THE PROPERTY'S USE, HABITABILITY, MERCHANTABILITY, OR FITNESS, SUITABILITY, VALUE OR ADEQUACY OF THE PROPERTY OR ANY PARTICULAR PURPOSE, (E) THE ZONING OR OTHER LEGAL STATUS OF THE PROPERTY OR ANY OTHER PUBLIC OR PRIVATE RESTRICTIONS ON THE USE OF THE PROPERTY, (F) THE COMPLIANCE OF THE PROPERTY OR THEIR OPERATION WITH ANY APPLICABLE CODES, LAWS, REGULATIONS, STATUTES, ORDINANCES, COVENANTS, CONDITIONS AND RESTRICTIONS OF ANY GOVERNMENTAL OR QUASI-GOVERNMENTAL ENTITY OR OF ANY OTHER PERSON OR ENTITY, (G) THE PRESENCE OR ABSENCE OF HAZARDOUS MATERIALS ON, UNDER OR ABOUT THE PROPERTY OR THE ADJOINING OR NEIGHBORING PROPERTY, AND (H) THE CONDITION OF TITLE TO THE PROPERTY. THE DEVELOPER AFFIRMS THAT THE DEVELOPER HAS NOT RELIED ON THE SKILL OR JUDGMENT OF THE CITY OR ANY OF ITS ELECTED OFFICIALS, OFFICERS, DIRECTORS, EMPLOYEES, CONTRACTORS, CONSULTANTS, ATTORNEYS, AGENTS, OR DESIGNATED VOLUNTEERS TO SELECT OR FURNISH THE PROPERTY FOR ANY PARTICULAR PURPOSE, AND THAT THE CITY MAKES NO WARRANTY THAT THE PROPERTY IS FIT FOR ANY PARTICULAR PURPOSE. THE DEVELOPER ACKNOWLEDGES THAT IT SHALL USE ITS INDEPENDENT JUDGMENT AND MAKE ITS OWN DETERMINATION AS TO THE SCOPE AND BREADTH OF ITS DUE DILIGENCE INVESTIGATION WHICH IT SHALL MAKE RELATIVE TO THE PROPERTY AND SHALL RELY UPON ITS OWN INVESTIGATION OF THE PHYSICAL, ENVIRONMENTAL, ECONOMIC AND LEGAL CONDITION OF THE PROPERTY (INCLUDING, WITHOUT LIMITATION, WHETHER THE PROPERTY IS LOCATED IN ANY AREA WHICH IS DESIGNATED AS A SPECIAL FLOOD HAZARD AREA, DAM FAILURE INUNDATION AREA, EARTHQUAKE FAULT ZONE, SEISMIC HAZARD ZONE, HIGH FIRE SEVERITY AREA OR WILDLAND FIRE AREA, BY ANY FEDERAL, STATE OR LOCAL AGENCY). THE DEVELOPER UNDERTAKES AND ASSUMES ALL RISKS ASSOCIATED WITH ALL MATTERS PERTAINING TO THE PROPERTY'S LOCATION IN ANY AREA DESIGNATED AS A SPECIAL FLOOD HAZARD AREA, DAM FAILURE INUNDATION AREA, EARTHQUAKE FAULT ZONE, SEISMIC HAZARD ZONE, HIGH FIRE SEVERITY AREA OR WILDLAND FIRE AREA, BY ANY FEDERAL, STATE OR LOCAL AGENCY.

(2) Developer's Release of City. Except with respect to the obligations of the City under this Agreement, and the Transaction Documents, the Developer, on behalf of itself and anyone claiming by, through or under the Developer hereby waives its right to recover from and fully and irrevocably releases the City, and its elected officials, officers, directors, employees, contractors, consultants, attorneys, agents, and designated volunteers (the "Released Parties") from any and all claims, responsibility and/or liability that the Developer may have or hereafter acquire against any of the Released Parties for any costs, loss, liability, damage, expenses, demand, action or cause of action arising from or related to (i) the condition (including any construction defects, errors, omissions or other conditions, latent or otherwise), valuation, salability or utility of the Property, or their suitability for any purpose whatsoever, (ii) any

presence of Hazardous Materials, and (iii) any information furnished by the Released Parties under or in connection with this Agreement.

(3) Scope of Release. The release set forth in Section 3.7(a)(2) hereof includes claims of which the Developer is presently unaware or which the Developer does not presently suspect to exist which, if known by the Developer, would materially affect the Developer's release of the Released Parties. The Developer specifically waives the provision of any statute or principle of law that provides otherwise. In this connection and to the extent permitted by law, the Developer agrees, represents and warrants that the Developer realizes and acknowledges that factual matters now unknown to the Developer may have given or may hereafter give rise to such causes of action, claims, demands, debts, controversies, damages, costs, losses and expenses which are presently unknown, unanticipated and unsuspected, and the Developer further agrees, represents and warrants that the waivers and releases herein have been negotiated and agreed upon in light of that realization and that the Developer nevertheless hereby intends to release, discharge and acquit the City from any such unknown causes of action, claims, demands, debts, controversies, damages, costs, losses and expenses. Accordingly, the Developer, on behalf of itself and anyone claiming by, through or under the Developer, hereby assumes the above-mentioned risks and hereby expressly waives any right the Developer and anyone claiming by, through or under the Developer, may have under Section 1542 of the California Civil Code, which reads as follows:

"A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR."

Developer's Initials: _____

(4) Exception for Known Contamination. Notwithstanding the foregoing, the City does acknowledge the potential existence of contamination. The City agrees, subject to the cost limitations further described in this subsection 3.7(a)(4), to provide on-site hazardous materials cleanup and remediation sufficient to allow the Improvements to be developed on the Property, but any additional remediation for a basement use on the Property shall be the Developer's responsibility subject to the terms and conditions of this section 3.7. In the event remediation cannot occur prior to close of escrow, the Developer agrees to allow the City to access the Property to perform the remediation of the contamination, which access includes and allows the City to install, monitor, and maintain remediation equipment.

(b) Survival. The provisions of this section shall survive the termination of this Agreement.

Section 3.8 Real Estate Commissions. The City shall not be liable for any real estate commissions or brokerage fees that may arise from this Agreement. The Developer represents that it has not obtained or engaged the services of a real estate broker in this transaction. If a real estate commission is claimed through either Party in connection with the transaction contemplated by this Agreement, then the Party through whom the commission is claimed shall

indemnify, defend and hold the other Party harmless from any liability related to such commission. The provisions of this Section shall survive termination of this Agreement.

Section 3.9 Challenge to this Agreement or the Entitlements. In the event a claim is filed in a court of competent jurisdiction regarding the validity of this Agreement or to the City's action in issuing the Entitlements for the Improvements, which claim proves successful, or in the event a referendum is initiated with respect to the validity of this Agreement or to the City's action in issuing the Entitlements for the Improvements, which referendum proves successful, upon sixty (60) days prior written notice the Developer may elect to not proceed with the Project. If Developer elects not to proceed with the Project pursuant to the preceding sentence, promptly following delivery of such written notice Developer will convey the Property to the City and the City will reacquire the Property and acquire the Developer's interest in Project related work product by paying the Purchase Price. Upon the required payment by the City, the Developer will assign its interest in the plans and specifications for the Improvements and all engineering and architect contracts to the City, without representation or warranty.

Section 3.10 Parcel Map for Property. Prior to the Property's disposition, the City shall prepare and record in the Official Records a parcel map for the Property that substantially conforms to the Draft Parcel Map for the Property, and that lies within the Commercial Property areas depicted in the Park Easement. The parcel map shall divide the Property into two parcels, each of which shall fit within the corresponding Commercial Property areas depicted in the Park Easement and be limited by the buildable footprints specified in the Park Easement. However, in the event Developer elects to merge one or more of the Property parcels with its adjacent property commonly known as Blacksmith Square, the City shall coordinate with the Developer to prepare an appropriate parcel map and to ensure those portions of the merged parcel that are within the Park Easement continue to lie within the Commercial Property areas depicted in the Park Easement.

ARTICLE 4.
IMPROVEMENTS AND DESIGN REQUIREMENTS

Section 4.1 Improvements. Within the time specified in the Schedule of Performance, the Developer shall construct commercial buildings on approximately 12,938 square feet of the Property, utilizing architecture and design elements compatible with Blacksmith Square, and configuring the building walls adjacent to the Stockmen's Park so that they are oriented toward Stockmen's Park and designed to incorporate window and door openings so tenant spaces actively interface with Stockmen's Park, as more specifically described in the Scope of Development, attached as Exhibit K to this Agreement and the City's Downtown Specific Plan Design Guidelines.

Section 4.2 Design in Conformance with Project Documents. In designing and constructing the Improvements, the Developer shall cause all subsequent design documents prepared by the Developer to be substantially consistent with the Scope of Development and City Design Guidelines attached as Exhibit K, and the Project Documents. In addition, the Project design shall include the provision of restroom facilities, which shall be open and available to the public. The restroom may be part of a tenant space or a stand-alone facility, but restroom users will not be required to be customers or tenants. The Scope of Development, City Design

Guidelines, and the Project Documents shall establish the baseline design standards from which the Developer shall prepare the Final Construction Drawings.

Section 4.3 Additional Permits and Approvals. Within the time specified in the Schedule of Performance (as such times may be extended pursuant to Section 11.4 or by mutual agreement of the Parties or by other provisions of this Agreement), Developer shall obtain all Entitlements, permits, and approvals necessary to construct the Improvements. All applications for such Entitlement, permits, and approvals shall be consistent with the approved Project Documents. The Developer acknowledges that execution of this Agreement by the City does not constitute approval by the City of any required permits, applications, or allocations, and in no way limits the discretion of the City in the permit, allocation, and approval process. The City shall provide reasonable assistance to the Developer in securing such permits and approvals.

Section 4.4 City Review. The Developer shall be solely responsible for all aspects of the Developer's conduct in connection with the Improvements, including, but not limited to, the design of the Improvements, the quality and suitability of the Project Documents related to the Improvements, the supervision of construction work, and the qualifications, financial condition, and performance of all architects, engineers, contractors, subcontractors, suppliers, consultants, and property managers. Any review or inspection undertaken by the City with reference to the Project is solely for the purpose of determining whether the Developer is properly discharging its obligations to the City under this Agreement, and should not be relied upon by the Developer or by any third parties as a warranty or representation by the City as to the quality of the design or construction of the Improvements.

Section 4.5 Basic Concept Drawings. Before filing an application for Entitlements for the Improvements, and within the time set forth in the Schedule of Performance, the Developer shall submit or cause to be submitted to the City, for the City's review and approval as property owner transferring the Commercial Property to the Developer, and not in the City's exercise of its municipal regulatory authority, basic concept drawings and related documents containing the overall plan for development of the Improvements, including the proposed architecture and site planning for the Improvements. The basic concept drawings shall conform to the Scope of Development and City Design Guidelines. The City shall approve or disapprove the Basic Concept Drawings from Developer within 45 days or else it shall be deemed approved by the City. City shall endeavor to approve and provide to Developer written comments with as much detail as practicable on the basic concept drawings within the time established in the Schedule of Performance. Any disapproval of the basic concept drawings shall state in writing the reasons for disapproval. If the basic concept drawings are not approved by City, Developer shall revise such plans, drawings and related documents and resubmit them to City as soon as commercially reasonable after receipt of the notice of disapproval, provided that in no case shall Developer be required to make changes that are inconsistent with this Agreement and any previously approved items.

ARTICLE 5.
PRECONDITIONS TO COMMENCEMENT OF CONSTRUCTION

Section 5.1 Approvals. All applicable Entitlements, permits, and approvals necessary to construct the Improvements have been obtained.

Section 5.2 City Fees. All applicable City Fees have been paid. A portion of required fees totaling $185,000 shall be paid at the issuance of a building permit for the Improvements. The remainder of applicable fees shall be paid either at the grand opening of Stockmen's Park, or at building permit issuance, whichever is later. For the Improvements, the Developer shall be entitled to $300,000 in total fee credits for utility connections and other impact fees from the previous commercial use of the Property. The Improvements shall be further eligible for an additional $50,000 in fee credits recognizing the costs associated with the construction costs and fees associated with the provision of restroom facilities which are available to the public. Finally, the Improvements will be eligible for credit for $468,800 in parking in-lieu fee credits, recognizing a further portion of the project's contribution to publicly available restroom facilities, credit for City provision of eight new surface parking in the vicinity of the property, and the Developer's deed restriction at 39 South Livermore Avenue. Section 5.3 Execution and Recordation of Reciprocal Access Easement. As a condition to commencement of construction of the Project, the Reciprocal Access Easement shall have been agreed to by all applicable parties, and executed, acknowledged (as applicable) and delivered by all applicable parties, and recorded (as applicable) in the Official Records. The City and Developer shall, as of the date or dates set forth in the Schedule of Performance, cooperate in good faith to agree upon, execute, acknowledge (as applicable), deliver, and record (as applicable).

Section 5.4 Building Permits. Building Permits to enable the Project to be constructed have been issued by the City or are ready to issue.

Section 5.5 Updates to Title Policy. It is anticipated that, prior to commencing construction of the Project, Developer will obtain updates to the Title Policy necessary to reflect Security Financing Instruments and other encumbrances contemplated by this Agreement, placed in connection with the construction of the Improvements. The City shall cooperate with Developer in connection with such updates to the Title Policy and any such title policies for Encumbrance Holders, including, without limitation, delivering such documents as may be reasonably requested by the Title Company with respect to the same.

Section 5.6 Insurance. The Developer shall furnish to the City evidence of the type and amounts of insurance specified in Exhibit H. The City shall be named as additional insured on the commercial general liability policies specified therein.

ARTICLE 6.
CONSTRUCTION OF THE IMPROVEMENTS

Section 6.1 Commencement of Construction. The Developer shall commence construction of the Improvements within the time set forth in the Schedule of Performance. Construction shall be deemed to commence on the date physical work on the Property starts pursuant to a valid Building Permit from the City.

Section 6.2 Completion of Construction. The Developer shall diligently prosecute to completion the construction of the Improvements, and shall complete construction of the Improvements within the time set forth in the Schedule of Performance. The Developer shall be

solely responsible for the construction of the Improvements by the time set forth for such completion in the Schedule of Performance, including all costs of design and construction.

Section 6.3 Construction Pursuant to Scope of Development and Project Documents.

(a) The Developer shall construct the Improvements in accordance with the Scope of Development, the Project Documents, the approved Final Construction Drawings, and the terms and conditions of all City and other governmental approvals.

(b) The Developer shall submit or cause to be submitted for the City's approval as property owner transferring the Property to the Developer, and not in the City's regulatory capacity, any proposed change in the Final Construction Drawings which materially changes the size, location, or elevations of the Improvements, including the landscape and/or hardscape, or signage of the Improvements, or which materially changes the quality or appearance of the exterior materials of the Improvements, or which would require an amendment to any Entitlements prior to making such change. The City shall reasonably approve or disapprove a proposed material change within fifteen (15) days after receipt by the City. Failure to approve or disapprove within fifteen (15) days shall be deemed to be disapproval of such change. If the City rejects the proposed material change and upon the Developer's request, the City shall provide the Developer with the specific reasons therefor, and the approved Final Construction Drawings shall continue to control.

(c) No change which is required for compliance with building codes, government health and safety regulations or other applicable laws or regulations, or to comply with changes or corrections required of the Developer in the plan check process shall be deemed material. However, the Developer must submit to the City any change that is required for such compliance within ten (10) days after making such change, and such change shall become a part of the approved Final Construction Drawings, binding on the Developer.

Section 6.4 Mechanics' Liens. The Developer shall indemnify the City and hold the City harmless against and defend the City in any proceeding related to any mechanic's lien, stop notice or other claim brought by a subcontractor, laborer or material supplier who alleges having supplied labor or materials in the course of the construction of the Improvements by the Developer. This indemnity obligation shall survive the issuance of a Certificate of Occupancy by the City and the termination of this Agreement.

Section 6.5 Compliance with Applicable Law. The Developer shall cause all work performed in connection with construction of the Improvements to be performed in compliance with (a) all applicable laws, ordinances, rules and regulations of federal, state, county or municipal governments or agencies now in force or that may be enacted hereafter, and (b) all directions, rules and regulations of any fire marshal, health officer, building inspector, or other officer of every governmental agency now having or hereafter acquiring jurisdiction. The work shall proceed only after procurement of each permit, license, or other authorization that may be required by any governmental agency having jurisdiction, and the Developer shall be responsible for the procurement and maintenance thereof, as may be required of the Developer and all entities engaged in the work of constructing the Improvements.

Section 6.6 Progress Reports. Until a Certificate of Occupancy has been issued by the City, the Developer shall provide the City with periodic progress reports, as reasonably requested by the City (but not more than once every calendar month), regarding the status of the construction of the Improvements. Such report shall consist of an executive summary of the work to date, including, but not limited to, the causes for any delays and the work that is anticipated for the following month, a reasonable number of construction photographs taken since the last report submitted to the City, and shall be in form reasonably acceptable to the City.

Section 6.7 Entry by City. Until a Certificate of Occupancy has been issued by the City, the Developer shall permit the City, upon reasonable prior notice, through its officers, agents, or employees, to enter the Property during normal business hours to inspect the work of construction to determine that such work is in substantial conformity with the Scope of Development, the Project Documents, and the approved Final Construction Drawings or to inspect the Property for compliance with this Agreement. The City is under no obligation to (a) supervise construction, (b) inspect the Property, or (c) inform the Developer of information obtained by the City during any inspection. The Developer shall not rely upon the City for any supervision or inspection. The rights granted to the City pursuant to this Section 6.7 are in addition to any rights of entry and inspection the City may have in the exercising of its municipal regulatory authority.

Section 6.8 Non-Discrimination During Construction; Equal Opportunity. The Developer (for purposes of this Section 6.8, the term "Developer" shall include Developer's contractors), for itself, its successors and assigns, and transferees agrees that in the construction of the Project provided for in this Agreement:

(a) The Developer will not discriminate against any employee or applicant for employment because of race, color, religion, creed, national origin, ancestry, disability, actual and perceived, medical condition, age, marital status, sex, sexual orientation, Acquired Immune Deficiency Syndrome (AIDS), actual or perceived, or retaliation for having filed a discrimination complaint ("Nondiscrimination Factors"). The Developer will take affirmative steps to ensure that applicants are employed by the Developer or its applicable contractor, and that its employees are treated without regard to the Nondiscrimination Factors during employment including, but not limited to, activities of: upgrading, demotion or transfer; recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Developer or its applicable contractor shall post in conspicuous places, available to its employees and applicants for employment, the applicable nondiscrimination clause set forth herein.

(b) The Developer will ensure that its or its applicable contractor's solicitations or advertisements for employment are in compliance with the aforementioned nondiscrimination factors.

Section 6.9 Insurance Requirements. Developer, its contractors, subcontractors and/or agents shall furnish or cause to be furnished to the City duplicate originals of the insurance policies or other written evidence of binding coverage, complete with additional insured and loss payee endorsements, as applicable pursuant to Exhibit Q.

Section 6.10 Certificate of Occupancy. Upon the Developer's completion of construction for that portion of the Improvements to be constructed on particular parcel of the Property, the City shall issue the Developer a Certificate of Occupancy for that improvement on the corresponding parcel of the Property. Once the Developer receives Certificates of Occupancy from the City for each of the Improvements to be constructed on a particular parcel of the Property, then that parcel will no longer be subject to the Security Financing Interests more particularly described in Article 9, except for the provisions in that Article 9 that continue through and beyond the completion of the construction or otherwise survive as provided for in this Agreement.

ARTICLE 7.
OBLIGATIONS WHICH CONTINUE THROUGH AND BEYOND THE COMPLETION OF CONSTRUCTION

Section 7.1 Commercial Use. The Developer covenants to use the Property only for the development and operation of commercial uses authorized by the Downtown Specific plan for a term of not less than thirty (30) years following the date of the issuance of the Certificate of Occupancy without the prior written approval of the City, which shall not be unreasonably withheld or delayed.

Section 7.2 Community Facility Maintenance District for Downtown Core Improvements. The Developer agrees to participate in a maintenance district or districts created to fund the maintenance of Stockman's Park and other designated downtown public facilities ("Downtown Core Maintenance District"). The Downtown Core Maintenance District and assessment shall be placed onto the Property no earlier than one (1) year following the issuance of the Certificate of Occupancy, and shall be placed on the annual tax bill of the Property in the approximate initial amount not to exceed $22,000 and increasing annually thereafter at the percent year-over-year change in the Consumer Price Index For All Urban Consumers – San Francisco Area plus one percent (1%). The assessment for the Downtown Core Maintenance District shall be apportioned to each parcel of the Property as provided for in the methodology for the district's assessment.

Section 7.3 Maintenance. The Developer hereby agrees that, after the Close of Escrow and prior to completion of construction of the Improvements, the Improvements shall be maintained in a neat and orderly condition and in accordance with industry health and safety standards, and that, once the Improvements are completed they shall be maintained in accordance with industry standards as to both external and internal appearance of the buildings, and common areas. At all times, the Developer shall maintain or cause to be maintained the Improvements in good repair and working order, and in a neat, clean and orderly condition, including the walkways and landscaping, reasonable wear and tear excepted, and from time to time make all necessary and proper repairs, renewals, and replacements. In the event that there arises a condition in contravention of the above maintenance standard, then the City shall notify the Developer in writing of such condition, giving the Developer thirty (30) days from receipt of such notice to commence and thereafter diligently to proceed to cure said condition. In the event the Developer fails to cure or commence to cure the condition within the time allowed, the City shall have the right to perform all acts necessary to cure such a condition. The City shall receive

from the Developer the City's reasonable cost in taking such action and shall provide reasonable evidence of such costs to the Developer.

Section 7.4 Developer To Indemnify City.

(a) The Developer shall indemnify, defend (with counsel approved by the City) and hold harmless the City, and its elected officials, officers, directors, employees, contractors, consultants, attorneys, agents, and designated volunteers (collectively, the "Indemnitees") from and against any and all liabilities, losses, costs, expenses (including without limitation attorneys' fees and costs of litigation), claims, demands, actions, suits, causes of action, writs, judicial or administrative proceedings, penalties, deficiencies, fines, orders, judgments and damages (all of the foregoing collectively "Claims") which in any manner, directly or indirectly, in whole or in part, are caused by, arise in connection with, result from, relate to, or are alleged to be caused by, arise in connection with, result from, or relate to: (i) approval of this Agreement and/or the Improvements; (ii) performance of this Agreement on the part of the Developer or any contractor or subcontractor of Developer; and/or (iii) the development, operation, maintenance or management of the Improvements, whether or not any insurance policies shall have been determined to be applicable to any such Claims. It is further agreed that the City does not and shall not waive any rights against Developer which they may have by reason of this indemnity and hold harmless agreement because of the acceptance by the City, or Developer's deposit with the City of any of the insurance policies described in this Agreement.

(b) The Developer shall pay immediately upon the Indemnitees' demand any amounts owing under this indemnity. The duty of Developer to indemnify includes the duty to defend the Indemnitees or, at the Indemnitees' choosing, to pay the Indemnitees' costs of its defense in any court action, administrative action, or other proceeding brought by any third party arising from the Improvements. The Indemnitees shall have reasonable approval rights regarding decisions with respect to their representation in any legal proceeding, including, but not limited to, the selection of attorney(s). Developer's obligations set forth in this Section shall survive the issuance of the Certificate of Occupancy by the City, and termination of this Agreement. Notwithstanding the foregoing, Developer's indemnification obligations set forth in this Section 7.4 shall not apply to Claims to the extent arising from the gross negligence or willful misconduct of the Indemnitees, or any Claims arising from the activities of any Indemnitee on the Property, or any Claims arising from the breach by the City of any of its obligations under this Agreement or the Transaction Documents.

Section 7.5 Hazardous Materials.

(a) Certain Covenants and Agreements. Following possession of the Property, the Developer hereby covenants and agrees that:

(1) The Developer shall not knowingly permit the Property or Improvements, or any portion thereof, to be a site for the use, generation, treatment, manufacture, storage, disposal or transportation of Hazardous Materials or otherwise knowingly permit the presence of Hazardous Materials in, on or under the Property in violation of any applicable law;

(2) The Developer shall keep and maintain the Property and Improvements, and each portion thereof, in compliance with, and shall not cause or permit the Property or Improvements, or any portion thereof, to be in violation of, any Hazardous Materials Laws;

(3) Upon receiving actual knowledge of the same the Developer shall within ten (10) days advise the City in writing of: (A) any and all enforcement, cleanup, removal or other governmental or regulatory actions instituted, completed or threatened against the Developer or the Property or Improvements pursuant to any applicable Hazardous Materials Laws; (B) any and all claims made or threatened by any third party against the Developer or the Property or Improvements relating to damage, contribution, cost recovery, compensation, loss or injury resulting from any Hazardous Materials (the matters set forth in the foregoing clause (A) and this clause (B) are hereinafter referred to as "Hazardous Materials Claims"); (C) the presence of any Hazardous Materials in, on or under the Property in such quantities which require reporting to a government agency; or (D) the Developer's discovery of any occurrence or condition on any real property adjoining or in the vicinity of the Property or Improvements or to be otherwise subject to any restrictions on the ownership, occupancy, transferability or use of the Property or Improvements under any Hazardous Materials Laws.

(b) Indemnity. Without limiting the generality of the indemnification set forth in Section 7.4, the Developer hereby agrees to indemnify, protect, hold harmless and defend (by counsel reasonably satisfactory to the City) the City, and its elected officials, officers, directors, employees, contractors, consultants, attorneys, agents, and designated volunteers from and against any and all claims, losses, damages, liabilities, fines, penalties, charges, administrative and judicial proceedings and orders, judgments, remedial action requirements, enforcement actions of any kind, and all costs and expenses incurred in connection therewith (including, but not limited to, reasonable attorney's fees and expenses), arising directly or indirectly, in whole or in part, out of: (1) the failure of the Developer, its agents, employees, or contractors to comply with any Hazardous Materials Law relating in any way whatsoever to the handling, treatment, presence, removal, storage, decontamination, cleanup, transportation or disposal of Hazardous Materials into, on, under or from the Property or Improvements at any time following the Close of Escrow; (2) the presence in, on or under the Property or Improvements of any Hazardous Materials or any releases or discharges of any Hazardous Materials into, on, under or from the Property; or (3) any activity carried on or undertaken on or off the Property of Improvements, subsequent to the Close of Escrow, and whether by the Developer or any employees, agents, contractors or subcontractors of the Developer at any time occupying or present on the Property, in connection with the handling, treatment, removal, storage, decontamination, cleanup, transport or disposal of any Hazardous Materials at any time located or present on or under the Property (collectively "Indemnification Claims"). The foregoing indemnity shall further apply to any residual contamination on or under the Property, or affecting any natural resources, and to any contamination of any property or natural resources arising in connection with the generation, use, handling, treatment, storage, transport or disposal of any such Hazardous Materials, and irrespective of whether any of such activities were or will be undertaken in accordance with Hazardous Materials Laws. Notwithstanding the foregoing, Developer's indemnity under this Section 7.5(b) shall not apply to any Claims to the extent arising solely from the gross negligence or willful misconduct of any of the City, its board members, officers, employees, or

contractors. Developer's obligations set forth in this Section shall survive the issuance of the Certificate of Occupancy by the City, and termination of this Agreement.

(c) No Limitation. The Developer hereby acknowledges and agrees that the Developer's duties, obligations and liabilities under this Agreement, including, without limitation, under Section 7.5(b) above, are in no way limited or otherwise affected by any information the City may have concerning the Project and/or the presence within the Project of any Hazardous Materials, whether the City obtained such information from the Developer or from its own investigations.

Section 7.6 No Liability for Breaches of Security. The foregoing and anything to the contrary contained in this Agreement notwithstanding, the City and Developer shall have no liability to the other Party, or any obligation to indemnify the other Party for any third party claims, for any injury to person or property caused by the acts of third persons in connection with any alleged breach of or failure to provide reasonable security, including criminal acts or other losses, nor shall this Agreement establish any duty owed in tort to, or standard of care in tort as to, either Party or any third party.

Section 7.7 Non-Discrimination.

(a) The Developer covenants and agrees for itself, its successors and its assigns in interest to the Property or any part thereof, that there shall be no discrimination against or segregation of any person or persons on 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. All deeds, leases, or contracts for the sale, lease, sublease, or other transfer of the Property shall contain or be subject to the nondiscrimination or non-segregation clauses hereafter prescribed.

(b) Notwithstanding subdivision (a), with respect to familial status, subdivision (a) shall not be construed to apply to housing for older persons, as defined in Section 12955.9 of the Government Code. With respect to familial status, nothing in subdivision (a) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11, and 799.5 of the Civil Code, relating to housing for senior citizens. Subdivision (d) of Section 51 and Section 1360 of the Civil Code and subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall apply to subdivision (a).

(c) Developer's obligations set forth in this Section shall survive the issuance of the Certificate of Occupancy by the City, and termination of this Agreement.

Section 7.8 CFD Assessment. Nothing is this Agreement is intended to prevent the Developer from passing-through all or a portion of any CFD assessment applicable to the tenants occupying the Improvements.

Section 7.9 Survival. The provisions of this section shall survive the termination of this Agreement.

ARTICLE 8.
ASSIGNMENT AND TRANSFERS

Section 8.1 Definitions. As used in this Article 8, the term "Transfer" shall mean:

(a) Any total or partial sale, assignment or conveyance, or any trust or power, or any transfer in any other mode of form, of or with respect to this Agreement, or of the Property, or any part thereof or any interest therein or of the Improvements constructed thereon, or any contract or agreement to do any of the same; or

(b) Any total or partial sale, assignment or conveyance, or any trust or power, or any transfer in any other mode or form, of or with respect to more than a fifty percent (50%) ownership interest in the Developer, or any contract or agreement to do any of the same.

Section 8.2 Purpose of Restrictions on Transfer. This Agreement is entered into solely for the purpose of development and operation of the Improvements on the Property and their subsequent use in accordance with the terms of this Agreement. The qualifications and identity of the Developer are of particular concern to the City, in view of:

(a) The importance of the redevelopment of the Property to the general welfare of the community; and

(b) The fact that a Transfer as defined in Section 8.1 above is for practical purposes a transfer or disposition of the Property.

It is because of the qualifications and identity of the Developer that the City is entering into this Agreement with the Developer and that Transfers are permitted only as provided in this Agreement.

Section 8.3 Prohibited Transfers. The limitations on Transfers set forth in this Article 8 shall apply from the Effective Date of this Agreement until the issuance of a Certificate of Occupancy by the City as more particularly described in Section 6.10. Except as expressly permitted in this Agreement, the Developer represents and agrees that the Developer has not made or created, and will not make or create or suffer to be made or created, any Transfer, either voluntarily or by operation of law, without the prior approval of the City, which shall not be unreasonably withheld, conditioned, or delayed. Any Transfer made in contravention of this Section 8.3 shall be void and shall be deemed to be a default under this Agreement, whether or not the Developer knew of or participated in such Transfer.

Section 8.4 Permitted Transfers. Notwithstanding the provisions of Section 8.3, the following Transfers shall be permitted (subject to satisfaction of the conditions of Section 8.5), so long as such Transfer is permitted under, and accomplished in accordance with this Agreement:

(a) Any Transfer creating a Security Financing Interest (defined in Section 9.1).

(b) Any Transfer directly resulting from the foreclosure of a Security Financing Interest or the granting of a deed in lieu of foreclosure of a Security Financing Interest.

(c) Any Transfer resulting directly from the death or mental incapacity of an individual.

(d) The conveyance or dedication of a portion of the Property to any public entity, including a public utility, required to allow for the development of the Project.

(e) The granting of temporary or permanent easements or permits to facilitate development of the Project.

(f) A Transfer to an Affiliate of Developer.

(g) Any Transfer contemplated by or permitted pursuant to any other provision of this Agreement,

(h) The lease of any space within the Improvements to a third party.

(i) Any Transfer resulting in up to ninety percent (90%) in the aggregate of the direct or indirect ownership or beneficial interests in Developer, provided that, following such Transfer, Red Bear Property Management, Inc. (or any Affiliate of such entity, "Red Bear") remains in Control of Developer.

(j) A Transfer otherwise approved by the City.

As a condition of the City approval of a Transfer described in Section 8.4(f) and Section 8.4(g) above, the transferee must concurrently assume the obligations of the Developer under this Agreement. As a condition of the City's approval of a Transfer described in Section 8.4(f) above, the City must review and approve the transferee's organizational documents for the purposes of determining that such transferee is an Affiliate of the Developer. As a condition of the City's approval of a Transfer described in Section 8.4(i) above, the City must review and approve Developer's organizational documents for the purposes of determining that Red Bear remains in Control.

Section 8.5 Effectuation of Permitted Transfers.

(a) Other than as permitted in Section 8.4, no Transfer of a direct interest in this Agreement shall be permitted unless, at the time of the Transfer, the person or entity to which such Transfer is made, by an agreement reasonably satisfactory to the City and in form recordable among the land records, expressly agrees to perform and observe, from and after the date of the Transfer, the obligations, terms and conditions of this Agreement; provided, however, that no such transferee shall be liable for the failure of its predecessor to perform any such obligation. The City shall grant or deny approval of a proposed Transfer within sixty (60) days of receipt by the City of the Developer's request for approval of a Transfer, which request shall include evidence of the proposed transferee's business expertise and financial capacity. Subject to the provisions of Section 11.5 of this Agreement, failure by the City to approve or disapprove

the proposed Transfer within sixty (60) days after receipt of the Developer's written request shall be deemed to be approval of the proposed Transfer by the City.

(b) Any assignment of rights and/or delegation of obligations under this Agreement in connection with a Transfer of a direct interest in this Agreement (whether or not the City approval is required) shall be in writing executed by Developer and the assignee or transferee, which written agreement shall name the City as an express third party beneficiary with respect to such agreement (the "Assumption Agreement") with a copy thereof delivered to the City within thirty (30) days after the effective date thereof. Upon Transfer of a direct interest in this Agreement pursuant to an Assumption Agreement, the assignor shall be relieved of liability with respect to any such obligations relating to the Project accruing from and after the date of such assignment or Transfer. Notwithstanding the foregoing, unless such assignee specifically assumes pursuant to the Assumption Agreement the obligations under this Agreement to indemnify the City with respect to the Property and Improvements, the assignor will retain such obligations and remain jointly and severally liable for such indemnity obligations with such assignee; however, in the event of such an assumption of the indemnification obligation, Developer shall be released from all liability under such indemnity obligations.

ARTICLE 9.
SECURITY FINANCING AND RIGHTS OF HOLDERS

Section 9.1 Encumbrances. Mortgages, deeds of trust, assignment of rents and security agreements, and other real and personal property security instruments to secure the funds necessary for acquisition of the Property, or the construction and permanent financing of the Property or Improvements, and any other expenditures incurred in connection with the design, construction and operation of the Property or Improvements, are permitted to be placed upon the Property or any personal property thereon or therein or the limited liability company interests in Developer. Such permitted security instruments and related interests shall be referred to as "Security Financing Interests". The Developer shall promptly notify the City of any Security Financing Interest that has been or will be created or attached to Developer's fee simple interest in the Property or the limited liability company interests in Developer. The foregoing notwithstanding, until the Developer is entitled to issuance of a Certificate of Occupancy as more particularly described in Section 6.10, the Developer may place Security Financing Interests only for the purpose of securing acquisition of the fee interest and for development, construction and permanent financing. As used herein: (a) “Encumbrance Holder” shall mean the holder of record of any Security Financing Interest; (b) "Foreclosure Transfer" shall mean any transfer of all or a portion of the Property or of any associated personal property or limited liability company interests in Developer pursuant to any judicial or non-judicial foreclosure or other enforcement of remedies under or with respect to a Security Financing Interest, or by voluntary deed or assignment or other transfer in lieu thereof; and "Foreclosure Transferee" shall mean any transferee (including without limitation an Encumbrance Holder) which acquires title in the Property or interest therein or of any associated personal property or of the limited liability company interests in Developer pursuant to a Foreclosure Transfer.

Section 9.2 Holder Not Obligated to Construct. No Encumbrance Holder or Foreclosure Transferee is obligated to construct or complete any Improvements, or to guarantee such construction or completion. Nothing in this Agreement shall be deemed to permit or

authorize any such Encumbrance Holder or Foreclosure Transferee to devote the Property or any portion thereof to any uses, or to construct any improvements thereon, other than those uses or Improvements provided for or authorized by this Agreement. A Developer Event of Default or other breach will not defeat or render invalid any Security Financing Interest. No Encumbrance Holder or Foreclosure Transferee of any Security Financing Interest shall be personally liable for the performance or observance of any covenants or conditions to be performed by the Developer under this Agreement, any Transaction Document or any Project Documents unless and until such Encumbrance Holder or Foreclosure Transferee acquires the Developer's interest in the Property and at the election of Encumbrance Holder or Foreclosure Transferee enters into a new agreement with the City. The City agrees that such Encumbrance Holder or Foreclosure Transferee may sell, assign, or otherwise dispose of any interest to which it has so succeeded or which it has so acquired. Upon such sale, assignment or disposition, such Encumbrance Holder or Foreclosure Transferee shall be released from all obligations and liabilities of the Developer whatsoever arising under this Agreement, any Transaction Document or any other document from and after the date of such sale, assignment or disposition.

Section 9.3 Notice of Default and Right to Cure. Whenever the City pursuant to its rights set forth in Article 10 delivers any notice to the Developer of the occurrence of a Developer Event of Default or any other matter which may give rise to a right of termination or other claim (a "Cure Notice"), the City shall not exercise any remedy available to it unless and until each of the following have occurred: (a) a Cure Notice describing the is provided to each and every then-existing Encumbrance Holder that has notified the City in writing of (i) its interest in receiving such a notice, and (ii) its address for the receipt of such notice; and (b) such Developer Event of Default remains uncured after the expiration of the applicable cure period set forth in Section 9.4. The Cure Notice shall be sent simultaneously with any similar notice or notices of a Developer Event of Default that the City may be required to provide to Developer pursuant to Article 10. An Encumbrance Holder shall have the right and the power to cure any Developer Event of Default specified in a Cure Notice within the cure periods set forth in Section 9.4 below, and, if such Developer Event of Default is so cured, this Agreement shall remain in full force and effect. Nothing contained in this Agreement shall be deemed to permit or authorize any Encumbrance Holder or Foreclosure Transferee to undertake or continue the construction or completion of the Improvements or any other work (beyond the extent necessary to conserve or protect such improvements or construction already made) without first having expressly assumed in writing the Developer's obligations to the City under this Agreement. The Encumbrance Holder in that event must agree to complete, in the manner provided in this Agreement, the construction of the Improvements. Any such Encumbrance Holder properly completing construction of the Improvements pursuant to this Section 9.3 shall assume all rights and obligations of Developer under this Agreement and shall be entitled, upon written request made to the City, to a Certificate of Occupancy from the City.

Section 9.4 Cure of Developer Defaults. Developer Events of Default may be cured by any Encumbrance Holder in the following manner within the following time frames:

(a) For all Developer Events of Default, an Encumbrance Holder shall have (a) sixty (60) days after the later of (i) its receipt of the earliest Cure Notice issued by the City to such Encumbrance Holder setting forth such Developer Event of Default, or (ii) expiration of the applicable Cure Period set forth in Section 10.3(b) to cure such Developer Event of Default if

such Developer Event of Default can reasonably be cured by an Encumbrance Holder within such sixty (60)-day period; or (b) if an Encumbrance Holder has promptly commenced to cure such Developer Event of Default within such applicable period and has been diligently prosecuting the same, but such Developer Event of Default cannot reasonably be cured by such Encumbrance Holder within such applicable period, then such Encumbrance Holder shall be provided with such additional time as is necessary to complete the cure, provided such Encumbrance Holder continues to diligently pursue such cure to completion.

(b) If a Developer Event of Default cannot practicably be cured by an Encumbrance Holder without the need for such Encumbrance Holder to obtain possession of the Property or any portion thereof or to obtain control of the Developer, or if a Developer Event of Default cannot be cured by an Encumbrance Holder (for example, the insolvency of Developer), then, in each case, if at least one Encumbrance Holder has delivered to the City within sixty (60) days after its receipt of a Cure Notice a written undertaking wherein such Encumbrance Holder agrees (1) that it will commence foreclosure proceedings forthwith, and (2) will cure or obtain an agreement from the Foreclosure Transferee that such Foreclosure Transferee will cure such Developer Event of Default (to the extent that it can be cured) upon completion of the foreclosure and the resultant Foreclosure Transfer, and if thereafter any such Encumbrance Holder actually commences foreclosure proceedings and prosecutes the same thereafter with due diligence, then the cure period shall not commence until completion of such foreclosure proceedings and the resultant Foreclosure Transfer; provided, that if said Encumbrance Holder is prevented from commencing or continuing foreclosure proceedings by any bankruptcy stay, or any order, judgment or decree of any court or regulatory body of competent jurisdiction, and said Encumbrance Holder diligently seeks release from or reversal of such stay, order, judgment or decree, then the cure period shall not commence until such stay, order, judgment or decree is released or reversed, and such foreclosure proceedings and the resultant Foreclosure Transfer are thereafter actually commenced and prosecuted thereafter with due diligence to completion. Upon completion of any such Foreclosure Transfer, the Foreclosure Transferee (whether such Foreclosure Transferee is the Encumbrance Holder or another party) shall have until the expiration of the applicable cure periods set forth in this Section 9.4 to cure the Developer Event of Default giving rise to such Foreclosure Transfer, to the extent curable by such Foreclosure Transferee (unless such Developer Event of Default has already been cured), and any other Developer Events of Default that may then exist and be curable by such Foreclosure Transferee. The Encumbrance Holder shall have the right to terminate its foreclosure proceedings hereunder in the event of a cure of a Developer Event of Default giving rise to such foreclosure proceedings. If an Encumbrance Holder or a Foreclosure Transferee obtains possession through foreclosure proceedings and assumes obligations to construct Improvements, the Schedule of Performance will be extended as needed to account for the time expended by such Encumbrance Holder or Foreclosure Transferee to commence and then complete such foreclosure proceedings. Upon the curing of any Developer Event of Default by an Encumbrance Holder or Foreclosure Transferee within the time provided in this Section 9.4, the City's right to pursue any remedies for the cured Developer Event of Default shall terminate.

Section 9.5 Failure of Holder to Complete Improvements. Subject to Section 10.3(b), in any case where after a default by the Developer in completion of construction of the Improvements under this Agreement, the Encumbrance Holder or Foreclosure Transferee, having first exercised its option to construct and also obtained possession of the Property or control of

Developer, has not proceeded diligently with construction within six (6) months after obtaining possession of the Property, the City shall be afforded those rights against such Encumbrance Holder or Foreclosure Transferee it would otherwise have against the Developer under this Agreement.

Section 9.6 Right of the City to Cure. In the event of a default or breach by the Developer of a Security Financing Interest prior to the completion of construction of the Improvements, and if the Encumbrance Holder or Foreclosure Transferee has not exercised its option to complete the construction of the Improvements, the City may cure such default, provided that Developer is given ten (10) days prior notice of the City's intention to cure such default and does not thereafter immediately commence and continue with due diligence to complete to cure such default, and provided that City's right to cure shall be coterminous with the Developer's cure rights under the Security Financing Interest. In such event, the City shall be entitled to reimbursement from the Developer of all reasonable costs and expenses incurred by the City in curing the default.

Section 9.7 Right of the City to Satisfy Other Liens. After the Close of Escrow and after the Developer has had a reasonable time to challenge, cure, or satisfy any liens or encumbrances on the Property, or any portion thereof, which is not permitted under this Agreement, and has failed to do so, in whole or in part, the City shall, upon at least ten (10) days' prior written notice to the Developer, have the right to satisfy any such lien or encumbrances; provided, however that nothing in this Agreement shall require the Developer to pay or make provision for the payment of any tax, assessment, lien, or charge so long as the Developer in good faith shall contest the validity or amount thereof and so long as such delay in payment shall not subject the Property or any portion thereof to forfeiture or sale.

Section 9.8 Holder to be Notified. To the extent deemed necessary by the City, the Developer shall use good faith efforts to insert each applicable term contained in this Article 9 related to Security Financing Interest or the rights of Encumbrance Holders into each Security Financing Interest or shall procure acknowledgement of such terms by each prospective Encumbrance Holder prior to its coming into any security right or interest in the Property or portion thereof.

Section 9.9 Modifications. If an Encumbrance Holder should, as a condition of providing financing or funding for development of all or a portion of the Improvements or other portions of the Project, request any modification of this Agreement, the Transaction Documents or any documents in order to protect its interests in the Project, the City shall consider such request in good faith consistent with the purpose and intent of this Agreement and the rights and obligations of the Parties under this Agreement. In addition, (a) the City agrees to cooperate reasonably with each Encumbrance Holder or prospective Encumbrance Holder in confirming or verifying the rights and obligations of each Encumbrance Holder under this Agreement, the Transaction Documents, and the Project Documents, and (b) the City agrees to cooperate reasonably with Developer in including the provisions of this Article 9 in the Reciprocal Access Easement.

Section 9.10 Estoppel Certificates. Either Party, at any time and from time to time following Close of Escrow, within fifteen (15) days of receipt of a written request from the other

Party, shall execute and deliver to such Party a written statement that, to the knowledge of the certifying Party (i) this Agreement, the Transactions Documents and the Project Documents are in full force and effect and binding obligation of the Parties, (ii) this Agreement, Transaction Documents, and the Project Documents have not been amended or modified, or if so amended or modified, identifying the amendments or modifications, 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.

Section 9.11 Participation in Insurance and Condemnation Proceedings. It is agreed, notwithstanding any other provision of this Agreement to the contrary, that, at all times while a Security Financing Interests remains in effect, all policies of insurance required to be maintained by the Developer under this Agreement or otherwise in effect for the Project contain a standard mortgagee protection endorsement, and the Encumbrance Holder shall be entitled to hold the originals of all such policies. The Encumbrance Holder shall be entitled to participate in the settlement or adjustment of any losses covered by such policies of insurance and no such settlement or adjustment shall be accepted or approved without the specific consent in writing of such Encumbrance Holder. In addition, at all times while a Security Financing Interests remains in effect, the Encumbrance Holder shall be entitled to participate in any settlement of or any stipulation of judgment with respect to any condemnation proceeds affected all or any portion of the Property or any agreement to sell all or any portion of the Property in lieu of condemnation, and no such settlement, stipulation or agreement shall be made or entered into without the specific consent in writing of such Encumbrance Holder.

Section 9.12 Multiple Encumbrance Holders. If at any time there is more than one Security Financing Interest constituting a lien on the Property or any interest therein, the lien of the Encumbrance Holder prior in time to all others shall be vested with the rights under this Article 9 to the exclusion of the holder of any other Security Financing Interest; provided, however, that if the holder of a senior Security Financing Interest fails to exercise the rights set forth in this Article 9, each holder of a junior Security Financing Interest shall succeed to the rights set forth in this Article 9 only if the holders of all Security Financing Interests senior to it have failed to exercise the rights set forth in this Article 9.

ARTICLE 10.
DEFAULT AND REMEDIES

Section 10.1 Application of Remedies. The provisions of this Article 10 shall govern the Parties' remedies for breach of this Agreement.

Section 10.2 Fault of City.

(a) Event of Default. Following notice and cure as more particularly described in Section 10.2(b) below, each of the following events constitutes a "City Event of Default" and a basis for the Developer to take action against City:

(1) The City fails to convey the Property as provided in this Agreement and the Developer is otherwise entitled by this Agreement to such conveyance.

(2) The City breaches any other material provision of this Agreement.

(b) Notice and Cure Procedure; Remedies. Upon the occurrence of any of the above-described events, the Developer shall first notify the City in writing of its purported breach or failure, giving the City thirty (30) days from receipt of such notice to cure such breach or failure. In the event the City does not then cure the default within such thirty (30)-day period (or, if the default is not reasonably susceptible of cure within such thirty (30)-day period, the City fails to commence the cure within such period and thereafter to prosecute the cure diligently to completion), then the Developer shall be entitled to any rights afforded it in law or in equity by pursuing any or all of the following remedies: (1) terminating this Agreement by written notice to the City; (2) prosecuting an action for damages (subject to the limitation of liability more particularly described in Section 11.3, and excluding punitive damages and consequential damages); or (3) seeking any other remedy available at law or in equity (excluding punitive damages and consequential damages), including, without limitation, an action for specific performance.

Section 10.3 Fault of Developer.

(a) Event of Default. Following notice and cure as more particularly described in Section 10.3(b) below, each of the following events constitutes a "Developer Event of Default" and a basis for the City to take action against the Developer:

(1) The Developer does not attempt diligently and in good faith to cause satisfaction of the conditions in Article 2 benefiting the Developer within the reasonable control of the Developer by the time set forth in the Schedule of Performance.

(2) The Developer fails to construct the Improvements in accordance with in Article 6 within the time set forth in the Schedule of Performance.

(3) The Developer has breached its obligations under Section 7.1.

(4) Prior to the issuance of a Certificate of Occupancy for the Improvements as more particularly described in Section 6.10, the Developer attempts or completes a Transfer except as permitted under Article 8.

(5) The Developer's: (1) filing for bankruptcy, dissolution, or reorganization, or failure to obtain a full dismissal of any such involuntary filing brought by another party before the earlier of final relief or ninety (90) days after the filing; (2) making a general assignment for the benefit of creditors; (3) applying for the appointment of a receiver, trustee, custodian, or liquidator, or failure to obtain a full dismissal of any such involuntary application brought by another party before the earlier of final relief or ninety (90) days after the filing; (4) insolvency as evidenced by an entered decree by a court of competent jurisdiction; or (5) failure, inability or admission in writing of its inability to pay its debts as they become due.

(6) Following the Close of Escrow and prior to the issuance of a Certificate of Occupancy for the Improvements, the Developer defaults under any Security Financing Interest, has not cured such default within the applicable cure period contained in such agreement evidencing such Security Financing Interest and the applicable Encumbrance Holder has elected in writing to accelerate the debt secured by such Security Financing Interest.

(7) The Developer breaches any other material provision of this Agreement.

(b) Notice and Cure Procedure. Upon the happening of any of the above-described events the City shall first notify the Developer in writing of its purported breach or failure, giving the Developer thirty (30) days from receipt of such notice to cure such breach or failure. If the Developer does not cure the default within such thirty (30)-day period (or if the default is not reasonably susceptible of being cured within such thirty (30)-day period, the Developer fails to commence the cure within such period and thereafter to prosecute the cure diligently to completion), then the City shall be afforded all of its rights at law or in equity by taking any or all of the following remedies: (1) terminating this Agreement by written notice to the Developer; (2) prosecuting an action for damages (subject to the limitation of liability more particularly described in Section 11.3, and excluding specific performance, punitive damages and consequential damages); or (3) seeking any other remedy available at law or in equity (excluding punitive damages and consequential damages). If the City elects to terminate this Agreement, the provisions of this Agreement that are specified to survive such termination shall remain in full force and effect.

Section 10.4 Right of Reverter. Following the Close of Escrow, if the Developer fails to commence the construction of the Improvements by the Outside Date (as the Outside Date may be extended pursuant to Section 11.4 or other provisions of this Agreement), then the City may, in addition to other rights granted in this Agreement, re-enter and take possession of the Property with all improvements on the Property, and revest in the City the estate previously conveyed to the Developer by the City with respect to the Property subject to the provisions set forth below. The City's rights under this Section 10.4 shall terminate and be of no further force and effect once the City issues a Certificate of Occupancy as more particularly described in Section 6.10.

The interest created pursuant to this Section 10.4 shall be a "Power of Termination" as defined in California Civil Code Section 885.010. The City's Power of Termination shall be subordinate and subject to and be limited by and shall not defeat, render invalid, or limit:

(a) Any Security Financing Instrument with respect to the Property; or

(b) Any rights or interests provided in this Agreement for the protection of the holder of a Security Financing Interest with respect to the Property.

(c) Any leases affecting the Property as of the date of such termination.

Upon revesting in the City of title to the Property as provided in this Section 10.4, the City shall, pursuant to its responsibilities under state law, use its best efforts to resell the Property as soon as possible, in a commercially reasonable manner and consistent with the objectives of such law, to a qualified and responsible party or parties (as reasonably determined by the City) who will assume the obligation of making or completing such improvements as are acceptable to the City in accordance with the uses specified for the Property and in a manner satisfactory to the City. Upon such resale of the Property the proceeds thereof shall be applied as follows:

(1) First to reimburse the City on its own behalf for all costs and expenses incurred by the City, including but not limited to salaries of personnel and legal fees incurred in connection with the recapture, management, and resale of the Property (but less any income derived by the City from any part of the Property in connection with such management); all taxes, installments of assessments payable prior to resale, and water and sewer charges with respect to the Property (or, in the event the Property is exempt from taxation or assessment or such charges during the period of ownership by the City, an amount equal to the taxes, assessments, or charges that would have been payable if the Property was not so exempt); any payments made or necessarily to be made to discharge any encumbrances or liens existing on the Property at the time of revesting of title in the City or to discharge or prevent from attaching or being made any subsequent encumbrances or liens due to obligations, defaults, or acts of the Developer, its successors or transferees; expenditures made or obligations incurred with respect to the making or completion of the Property or any part thereof; and any amounts otherwise owing the City by the Developer and its successors or transferee.

(2) Second, to reimburse the Developer, its successor or transferee, up to the amount equal to: the Purchase Price for the Property, plus the fair market value of the Improvements the Developer has placed on the Property, less any funds paid by the City to remove any encumbrances or liens and gains or income withdrawn or made by the Developer from the Property or the improvements thereon. Notwithstanding the foregoing, the amount calculated pursuant to this paragraph (2) shall not exceed the fair market value of the Property together with the Improvements thereon as of the date of the default or failure which gave rise to the City's exercise of the right of reverter.

(3) Third, any balance remaining after such reimbursements shall be retained by the City as its property.

The rights established in this Section 10.4 are to be interpreted in light of the fact that the City will convey the Property to the Developer for development and not for speculation.

Section 10.5 Rights and Remedies Cumulative. Except as otherwise provided, the rights and remedies of the Parties are cumulative, and the exercise or failure to exercise any right or remedy shall not preclude the exercise, at the same time or different times, of any right or remedy for the same default or any other default.

Section 10.6 Survival. Upon termination of this Agreement under this Article 10, the following provisions of this Agreement shall survive: Section 2.3, Section 3.7, Section 3.8, Section 6.4, Section 6.8, Section 7.4, and Section 7.5. This Section 10.6 exists for reference purposes only, and does not alter the scope or nature of the surviving provisions.

ARTICLE 11.
GENERAL PROVISIONS

Section 11.1 Identity of Developer. The Developer represents and warrants to the City as of the Effective Date and as of the Close of Escrow, as follows:

(a) Organization. The Developer is a corporation, duly organized, validly existing and in good standing under the laws of California with full power and authority to conduct its business as presently conducted and to execute, deliver and perform its obligations under this Agreement.

(b) Authorization. The Developer has taken all necessary action to authorize its execution, delivery and, subject to any conditions set forth in this Agreement performance of the Agreement. Upon the Effective Date of this Agreement, this Agreement shall constitute a legal, valid and binding obligation of the Developer, enforceable against the Developer in accordance with its terms, subject to all applicable bankruptcy laws and laws affecting the rights of creditors generally.

(c) No Conflict. The execution, delivery and performance of this Agreement by the Developer does not and will not conflict with, or constitute a violation or breach of, or constitute a default under (i) the charter or incorporation documents of the Developer, (ii) any applicable law, rule or regulation binding upon or applicable to the Developer, or (iii) any material agreements to which the Developer is a party.

(d) No Litigation. To the Developer's actual knowledge, there is no pending or threatened litigation, suit, action or proceeding before any court or administrative agency affecting the Developer or the Property that would, if adversely determined, materially and adversely affect the Developer or the Property or the Developer's ability to perform its obligations under this Agreement or to develop and operate the Project.

(e) No Material Adverse Change. There has been no material adverse change in the financial condition of the Developer since the Effective Date.

(f) Default Under Other Agreements. There is no event, act or omission which constitute, or but for the passage of time or the giving of notice, or both, would constitute a breach, violation or default by Developer under any agreement materially related to the development or operation of the Property or Improvements, including but not limited any other partnership agreement, joint venture agreement, or loan agreement.

Until the Close of Escrow, Developer shall, upon learning of any fact or condition which would cause any of the warranties and representations in this Section 11.1 not to be true, immediately give written notice of such fact or condition to the City. Upon the Developer's Transfer prior to the Close of Escrow, the Developer shall cause the Developer's assignee to update the representations and warranties set forth above.

Section 11.2 Notices, Demands and Communications. Formal notices, demands, submittals and communications between the City and the Developer shall be sufficiently given if, and shall not be deemed given unless, delivered personally, or dispatched by certified mail, return receipt requested, or by reputable overnight delivery service with a receipt showing date of delivery, to the principal offices of the City and the Developer as follows:

City: City of Livermore
1052 S. Livermore Avenue
Livermore, California 94550

Attn: City Manager

Developer Red Bear Property Management
5955 Coronado Lane
Pleasanton, CA 94588
Attn: Mike Madden

With a copy to:

Such written notices, demands and communications may be sent in the same manner to such other addresses as the affected Party may from time to time designate by mail as provided in this Section 11.2. Delivery shall be deemed to have occurred at the time indicated on the receipt for delivery or refusal of delivery.

Section 11.3 Limitation of Liability. The Parties acknowledge that neither Party would have entered into this Agreement had it been exposed to damage claims from the other Party for any breach thereof. As such, the Parties agree that in no event shall either Party be entitled to recover damages against the other Party for breach of this Agreement. In addition, no member, partner, beneficial interest holder, official, officer, director, employee, contractor, consultant, attorney, agent, or designated volunteer of a Party shall be personally liable to the other Party, or any successor in interest to the other Party, in the event of any default or breach or for any amount or on any obligation under the terms of this Agreement.

Section 11.4 Enforced Delay. In addition to specific provisions of this Agreement, performance by any Party hereunder shall not be deemed to be in default, and all performance and other dates specified in this Agreement or the Schedule of Performance shall be extended, where delays or defaults are due to war; insurrection; strikes; lock-outs; riots; floods; earthquakes; fires; casualties; acts of God; acts of the public enemy; epidemics; quarantine restrictions; freight embargoes; lack of transportation; governmental restrictions or priority (except for restrictions or priorities established by the Party required to perform the action required under this Agreement); litigation; unusually severe weather; inability to secure necessary labor, materials or tools; or acts or the failure to act of the City or any other public or governmental agency or entity including breaches by the City under this Agreement, any Transaction Document, or Project Document; or any other cause beyond the affected Party's reasonable control (except that acts or the failure to act of a Party shall not excuse performance by such Party, including without limitation the Developer's inability to obtain financing for the Project or the economic infeasibility of the Project) ("Force Majeure"). An extension of time for Force Majeure shall only be for the period of the enforced delay, which period shall commence to run from the time of the notification of the delay by the Party requesting the extension to the other Party. The Party requesting an extension of time under this Section 11.4 shall give notice promptly following knowledge of the delay to the other Party. If, however, notice by the Party claiming such extension is sent to the other Party more than thirty (30) days after knowledge of the commencement of the delay, the period shall commence to run upon the earlier of (i) thirty (30) days prior to the giving of such notice or (ii) the date that the other Party received knowledge of the events giving rise to the delay.

Section 11.5 Delegation of Authority. Upon approval of this Agreement by the City Council, the City Manager is authorized to execute any and all and Transaction Documents, including but not limited to the recording in the Official Records the parcel map for the Property.

Section 11.6 Reserved.

Section 11.7 Inspection of Books and Records. The City has the right at all reasonable times and upon five (5) business days prior written notice to inspect the books, records and all other documentation of the Developer pertaining to its obligations under this Agreement. Such books, records and documentation are privileged documents of the Developer containing trade secrets, private personal information, and/or the contents of real estate appraisals, engineering and/or feasibility estimates, evaluations, and other proprietary non-public information.

Section 11.8 Title of Parts and Sections. Any titles of the sections or subsections of this Agreement are inserted for convenience of reference only and shall be disregarded in interpreting any part of its provision. References to "Articles" and "Sections" are to sections of this Agreement, unless otherwise specifically provided.

Section 11.9 Applicable Law. This Agreement shall be interpreted under and pursuant to the laws of the State of California.

Section 11.10 Severability. If any term, provision, covenant or condition of this Agreement is held in a final disposition by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions shall continue in full force and effect unless the rights and obligations of the Parties have been materially altered or abridged by such invalidation, voiding or unenforceability.

Section 11.11 Legal Actions. In the event any legal action is commenced to interpret or to enforce the terms of this Agreement or to collect damages as a result of any breach thereof, each Party shall bear their own attorneys' fees and no attorneys' fees may be awarded to the Party prevailing in the action.

Section 11.12 Binding Upon Successors; Covenants to Run With Land. This Agreement shall be binding upon and inure to the benefit of the heirs, administrators, executors, successors in interest, and assigns of each of the Parties; provided, however, that there shall be no Transfer except as permitted in under the terms of this Agreement. Any reference in this Agreement to a specifically named Party shall be deemed to apply to any successor, heir, administrator, executor, successor, or assign of such Party who has acquired an interest in compliance with the terms of this Agreement or under law.

The terms of this Agreement shall run with the land, and shall bind all successors in title to the Property until the termination of this Agreement, except that the provisions of this Agreement that are specified to survive termination of this Agreement shall run with the land in perpetuity and remain in full force and effect following such termination. Every contract, deed, or other instrument hereafter executed covering or conveying the Property, or any portion thereof, shall be held conclusively to have been executed, delivered and accepted subject to such covenants and restrictions, regardless of whether such covenants or restrictions are set forth in

such contract, deed or other instrument, unless the City expressly releases the Property, or the applicable portion of the Property, from the requirements of this Agreement.

Section 11.13 Parties Not Co-Venturers. Nothing in this Agreement is intended to or does establish the Parties as partners, co-venturers, or principal and agent with one another.

Section 11.14 Entire Understanding of the Parties. This Agreement constitutes the entire understanding and agreement of the Parties with respect to the conveyance of the Property and the development of the Project, and expressly supersedes the Exclusive Negotiating Rights Agreement dated July 26, 2018.

Section 11.15 Counterparts. This Agreement may be executed in counterparts and multiple originals.

Section 11.16 Amendments. The Parties can amend this Agreement only by means of a writing signed by both Parties.

Section 11.17 Recordation of Memo of DDA. The Parties consent to the recordation of the Memo of DDA in the Official Records against the Developer's interest in the Property.

Section 11.18 Standard of Approval. Any consents or approvals required or permitted under this Agreement shall not be unreasonably withheld or made, except where it is specifically provided that a sole discretion standard applies.

Section 11.19 Effectiveness of Agreement. This Agreement is dated for convenience only and shall only become effective on the Effective Date.

Section 11.20 Interpretation. The use in this Agreement of the words “including”, “such as” or words of similar import when following any general term, statement or matter shall not be construed to limit such statement, term or matter to the specific statements, terms or matters, whether or not language of non-limitation, such as “without limitation” or “but not limited to”, or words of similar import, is used with reference thereto.

Section 11.21 No Gift or Dedication. Except as otherwise specified herein, this Agreement shall not be deemed to be a gift or dedication of any portion of the Property to the general public, for the general public, or for any public use or purpose whatsoever. Except as provided for the REA, the Developer shall have the right to prevent or prohibit the use of or access to any portion of the Project by any member of the general public.

[SIGNATURES ON THE FOLLOWING PAGE]

WHEREFORE, the Parties have executed this Agreement as of the date first above written.

City:

By: _____
Marc Roberts
Its: City Manager

Date: _____

APPROVED AS TO FORM

By: _____

DEVELOPER:
RED BEAR PROPERTY MANAGEMENT, Inc., a California Corporation

By:

By: _____

Name: _____

Title: _____

EXHIBIT A
DOWNTOWN PLAN

EXHIBIT B

Downtown Plan

Parking improvements begin this summer!



EXHIBIT A

EXHIBIT B
PARK EASEMENT

EXHIBIT B

COPY of document to be recorded
Has not been compared with Original

2018076967 04/18/2018 09:18 AM
OFFICIAL RECORDS OF ALAMEDA COUNTY
STEVE MANNING
RECORDING FEE: 0.00

COPY of document to be recorded
Has not been compared with Original

8 PGS

RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:
City of Livermore
1052 South Livermore Avenue
Livermore, CA 94550

APN's: 98-289-2-1, 98-289-20
AND PORTIONS OF APN's:
97-1-32, 98-289-2-1, 98-289-18
98-289-19, 98-289-21

ABOVE THIS LINE FOR RECORDER'S USE

18-114

Free recording requested, government code 6103 & 27383 & 27388.1
The undersigned Grantor declares: No Tax Due – R&T 11911 consideration less than $100

GRANT OF EASEMENT

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged,

The City of Livermore, a municipal corporation ("City"), hereby Grants to the Livermore Stockmen's Rodeo Association, a park easement on the real property in the City of Livermore, County of Alameda, State of California, being a portion of New Parcel A described Grant Deed recorded on April 17,2018 under document number 2018-046079 official records of Alameda county and more particularly described in the attached Exhibit "D," subject to the terms and conditions set forth in that specific agreement titled *First Amendment to Agreement for the Development of the Rodeo Grounds and Sunken Garden Area as a Civic Center and Parks and Recreation Area,* dated January 30, 2018 and on file with the City Clerk for the City of Livermore ("Agreement"). The rights, duties, and obligations of the City and the Livermore Stockmen's Rodeo Association concerning the use of the Park Area, Cultural Facility Area, and the Commercial Use Area of this park easement are set forth in that Agreement.

This park easement may be used by the City for parking prior to the construction of the park facilities, cultural facilities, and commercial uses in those areas designated as the Park Area, Cultural Facility Use Area, and Commercial Use Areas, respectively. The Cultural Facility Use Area and the Commercial Use Areas A, B, and C may be used by the City as a park if the respective locations are no longer needed for parking, prior to the construction of a cultural facility or commercial facilities, in those respective areas. The City may use any and all portions of the park easement for public infrastructure that does not interfere with other uses allowed in the easement area.

**FOR DESCRIPTION SEE THE ATTACHED EXHIBIT "D"
ATTACHED HERETO AND MADE A PART HEREOF**

APPROVED AS TO FORM:
CITY ATTORNEY
Jason Alcala

Grantors Signature:

CITY OF LIVERMORE,
a municipal corporation of the State of California

Dated: 4/3/18

Marc Roberts, City Manager

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)
) ss
COUNTY OF ALAMEDA)

On _____, 2018 before me, _____ personally appeared _____, City of Livermore, personally known me (or proved on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person 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 Certificate attached

THIS DOCUMENT IS BEING RECORDED BY OLD REPUBLIC TITLE COMPANY AS AN ACCOMODATION ONLY. NO EXAMINATION HAS BEEN MADE AS TO ITS CONTENTS OR AFFECT ON 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 that document.

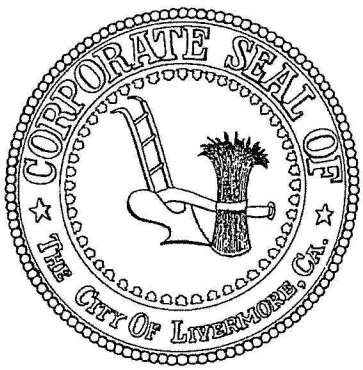
STATE OF CALIFORNIA } SS.
COUNTY OF ALAMEDA }

On APRIL 3, 2018 before me, SUSAN NEER, CITY CLERK,

personally appeared MARC ROBERTS, CITY MANAGER,
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 Susan Neer

EXHIBIT "D"
LEGAL DESCRIPTION

CULTURAL FACILITY USE AREA:

Commencing at the westerly northeasterly corner of said New Parcel A, said corner being on the southerly line of Railroad Avenue, said corner also being the northwesterly corner of the parcel of land described in the deed to Maroon Bear, LP, recorded in Document No. 2003-450990, Official Records of Alameda County;

thence along the northerly line of New Parcel A, last said line also being the southerly line of Railroad Avenue, South 69°30'00" West 76.378 feet for the **Point of Beginning** hereof;

thence across New Parcel A for the following eight (8) courses:

1) South 20°30'00" East 59.920 feet,
2) westerly, southerly and easterly along a non-tangent curve to the left, which a radial bears South 20°30'00" East to the radius point, having a radius of 40.000 feet, a central angle of 140°49'09" and an arc length of 98.310 feet,
3) South 10°02'06" West 19.313 feet,
4) South 20°30'00" East 122.670 feet,
5) southwesterly along a non-tangent curve to the right, which a radial bears North 31°19'27" West to the radius point, having a radius of 330.000 feet, a central angle of 17°46'19" and an arc length of 102.359 feet,
6) North 20°30'00" West 156.382 feet,
7) northeasterly along a non-tangent curve to the left, which a radial bears North 34°43'03" West to the radius point, having a radius of 450.000 feet, a central angle of 03°31'01" and an arc length of 27.622 feet and
8) North 20°30'00" West 111.338 feet to the northerly line of New Parcel A, being the southerly line of the aforesaid Rail Road Avenue;

thence along last said line North 69°30'00" East 110.007 feet to the **Point of Beginning.**

Containing 27,217 square feet of land, more or less.

COMMERCIAL USE AREAS A, B, AND C:

Beginning at the westerly northeasterly corner of New Parcel A, said corner being on the southerly line of Railroad Avenue, said corner also being the northwesterly corner of the parcel of land described in the deed to Maroon Bear, LP, recorded in Document No. 2003-450990, Official Records of Alameda County;

EXHIBIT "D"
LEGAL DESCRIPTION

Thence crossing New Parcel A for the following six (6) courses:

1) South 63°04'20" West 87.250 feet,
2) North 20°30'00" West 49.695 feet,
3) Northeasterly along a non-tangent curve to the left, which a radial bears North 41°51'41" West to the radius point, having a radius of 300.000 feet, a central angle of 01°51'41" and an arc length of 9.746 feet,
4) Northeasterly along a tangent compound curve to the left, which a radial bears North 43°43'22" West to the radius point, having a radius of 100.000 feet, a central angle of 09°54'59" and an arc length of 17.308 feet,
5) Northeasterly along a tangent compound curve to the left, which a radial bears North 53°38'21" West to the radius point, having a radius of 44.000 feet, a central angle of 39°40'42" and an arc length of 30.471 feet,
6) North 69°30'00" East 18.221 feet and
   Thence South 20°30'00" East 10.064 feet to the **Point of Beginning**.

Containing 4,991 square feet of land, more or less.

APN 98-289-2-1, 98-289-20 & PORTIONS OF APN's 97-1-32, 98-289-2-1, 98-289-18, 98-289-19, 98-289-21

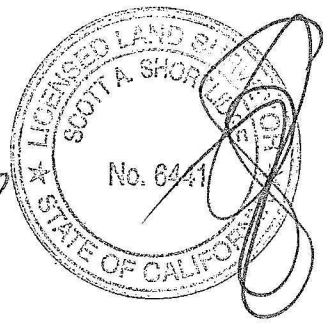
See Exhibit D – Plat to Accompany Legal Description which is attached hereto and made a part hereof.

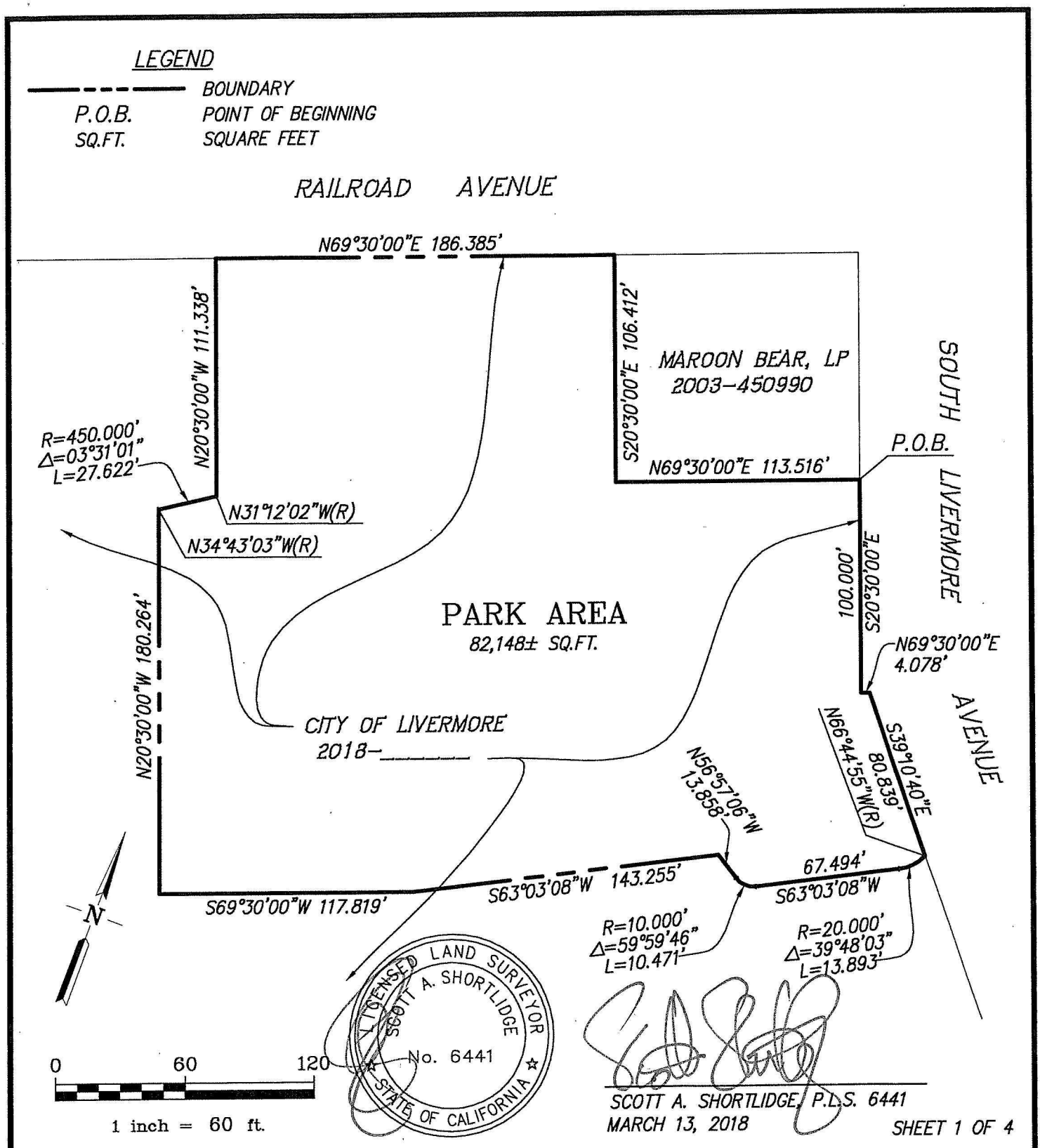
END OF DESCRIPTION

This description and its accompanying plat were prepared by or under the direction of:

3-13-15

Scott Shortlidge, LS 6441 Date





SCOTT A. SHORTLIDGE, P.L.S. 6441
MARCH 13, 2018

SHEET 1 OF 4

EXHIBIT D

PLAT TO ACCOMPANY LEGAL DESCRIPTION
FOR
PARK AREA

CITY OF LIVERMORE, ALAMEDA COUNTY, CALIFORNIA

RJA
RUGGERI-JENSEN-AZAR
ENGINEERS ▪ PLANNERS ▪ SURVEYORS
4690 CHABOT DRIVE, SUITE 200 PLEASANTON, CA 94588
PHONE: (925) 227-9100 FAX: (925) 227-9300

SCALE:	DATE:	JOB NO.:
1" = 60'	MARCH 13, 2018	151084.45

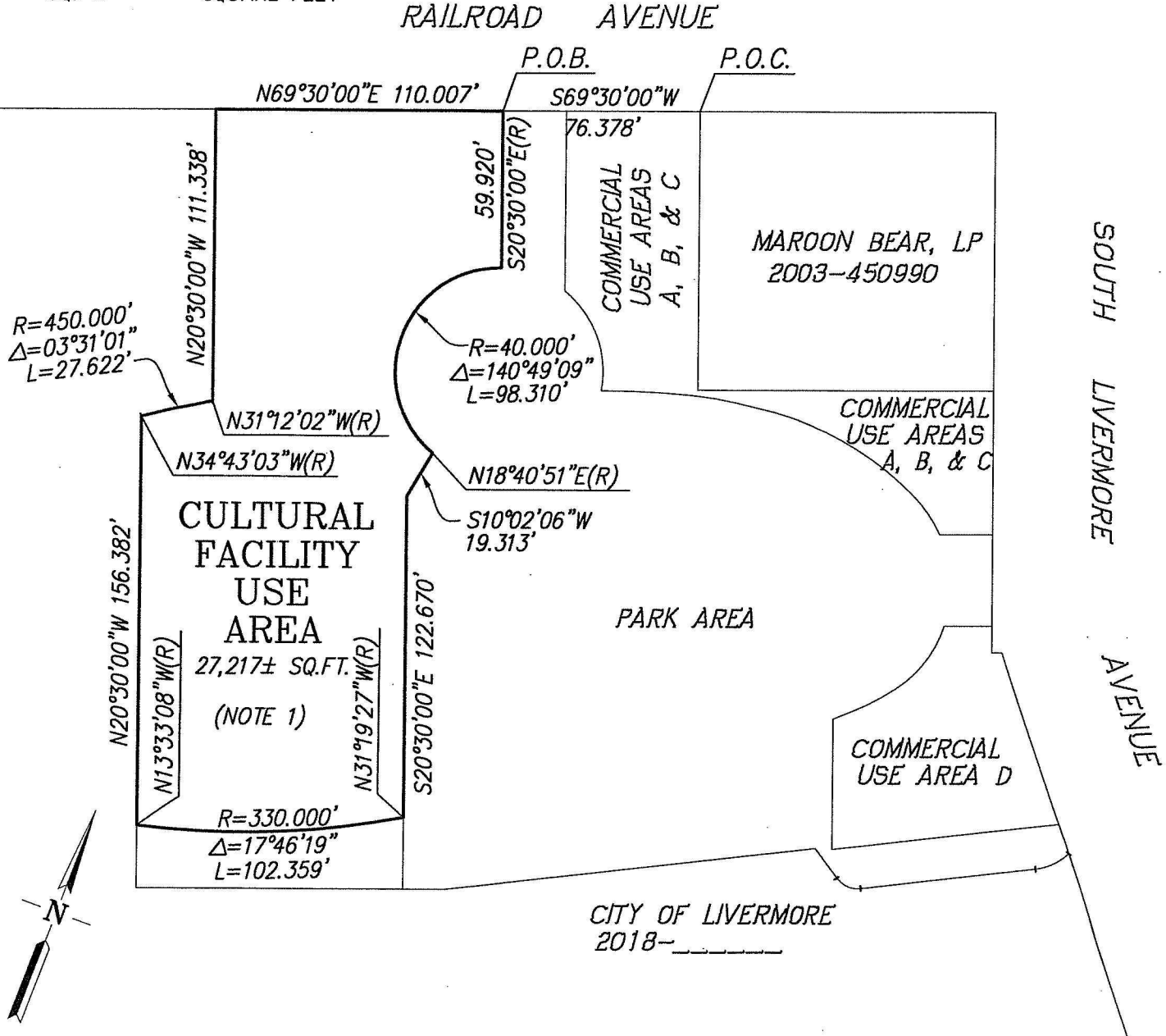
G:\JOB2015\151084 T45\MAPPING\PLATS\PARK AREA.DWG 2/6/2018 4:55:23 PM JOHN KNEZOVICH

LEGEND

———	BOUNDARY
P.O.B.	POINT OF BEGINNING
P.O.C.	POINT OF COMMENCEMENT
SQ.FT.	SQUARE FEET

GENERAL NOTE:

1. THE BUILDABLE FOOTPRINT WITHIN THE CULTURAL FACILITY AREA SHALL NOT EXCEED 20,100 SQUARE FEET.



SHEET 2 OF 4

EXHIBIT D

PLAT TO ACCOMPANY LEGAL DESCRIPTION FOR

CULTURAL FACILITY USE AREA

CITY OF LIVERMORE, ALAMEDA COUNTY, CALIFORNIA

RJA
RUGGERI-JENSEN-AZAR
ENGINEERS ▪ PLANNERS ▪ SURVEYORS
4690 CHABOT DRIVE, SUITE 200 PLEASANTON, CA 94588
PHONE: (925) 227-9100 FAX: (925) 227-9300

SCALE:	DATE:	JOB NO.:
1" = 60'	MARCH 13, 2018	151084.45

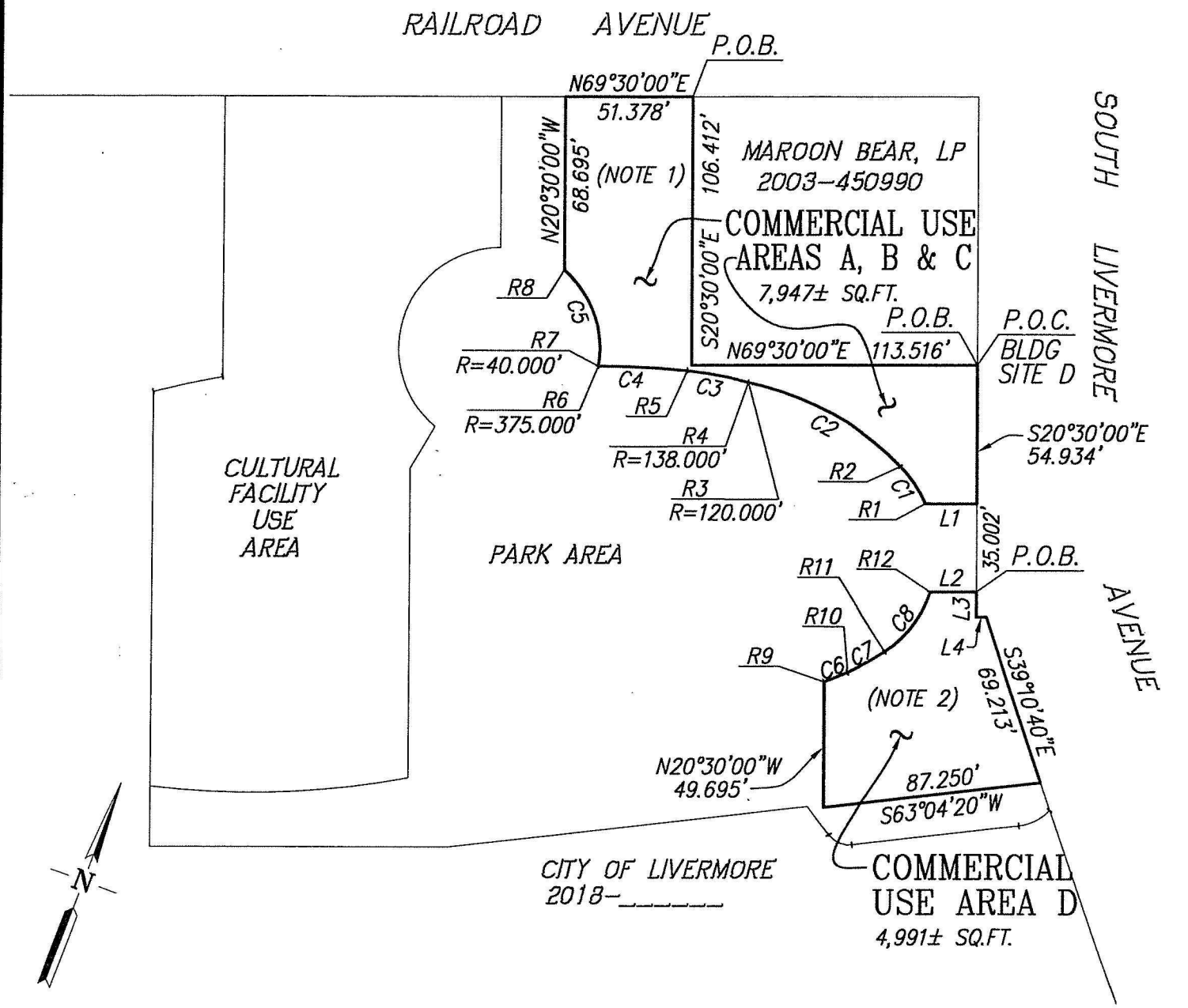
FOR CURVE/LINE TABLES SEE SHEET 4

LEGEND

———	BOUNDARY
P.O.B.	POINT OF BEGINNING
P.O.C.	POINT OF COMMENCEMENT
SQ.FT.	SQUARE FEET

GENERAL NOTES:

1. THE BUILDABLE FOOTPRINT WITHIN THE COMMERCIAL USE AREAS A, B & C SHALL NOT EXCEED 5,700 SQUARE FEET.
2. THE BUILDABLE FOOTPRINT WITHIN THE COMMERCIAL USE AREA D SHALL NOT EXCEED 2,900 SQUARE FEET.



SHEET 3 OF 4

EXHIBIT D

PLAT TO ACCOMPANY LEGAL DESCRIPTION
FOR
COMMERCIAL USE AREAS

CITY OF LIVERMORE. ALAMEDA COUNTY. CALIFORNIA

RJA
RUGGERI-JENSEN-AZAR
ENGINEERS ▪ PLANNERS ▪ SURVEYORS
4690 CHABOT DRIVE, SUITE 200 PLEASANTON, CA 94588
PHONE: (925) 227-9100 FAX: (925) 227-9300

SCALE:	DATE:	JOB NO.:
1" = 60'	MARCH 13. 2018	151084.45

Radial Bearing Table	
Line	Bearing
R1	N45°37'56"E
R2	N25°03'00"E
R3	N08°22'42"W
R4	N04°27'15"W
R5	N14°48'32"W
R6	N20°12'19"W
R7	N79°18'30"E
R8	N18°10'56"E
R9	N41°51'41"W
R10	N43°43'22"W
R11	N53°38'21"W
R12	N86°40'57"E

Line Table		
Line	Bearing	Distance
L1	N69°30'00"E	20.266'
L2	N69°30'00"E	18.221'
L3	N20°30'00"W	10.064'
L4	N69°30'00"E	4.078'

Curve Table			
Curve	Radius	Delta	Length
C1	50.000'	20°34'56"	17.961'
C2	120.000'	33°25'42"	70.012'
C3	138.000'	10°21'17"	24.940'
C4	375.000'	5°23'47"	35.320'
C5	40.000'	61°07'34"	42.674'
C6	300.000'	1°51'41"	9.746'
C7	100.000'	9°54'59"	17.308'
C8	44.000'	39°40'42"	30.471'

SHEET 4 OF 4

EXHIBIT D

PLAT TO ACCOMPANY LEGAL DESCRIPTION
FOR
COMMERCIAL USE AREAS

CITY OF LIVERMORE, ALAMEDA COUNTY, CALIFORNIA

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PHONE: (925) 227-9100 FAX: (925) 227-9300

SCALE:	DATE:	JOB NO.:
1" = 60'	MARCH 13, 2018	151084.45

G:\JOB2015\151084 T45\MAPPING\PLATS\COMMERCIAL USE AREAS.DWG 2/6/2018 4:55:13 PM JOHN KNEZOVICH

EXHIBIT C
LSRA AGREEMENT

EXHIBIT B

18-046

EXHIBIT C

FIRST AMENDMENT TO
AGREEMENT FOR THE DEVELOPMENT OF THE RODEO GROUNDS
AND SUNKEN GARDEN AREA
AS A CIVIC CENTER AND PARKS AND RECREATION AREA

THIS FIRST AMENDMENT, made and entered into this 30th day of January 2018, by and between the City of Livermore, a municipal corporation (hereinafter referred to as "City"), and the Livermore Stockmen's Rodeo Association, a California Corporation, (hereinafter referred to as "Association").

RECITALS

On January 8, 1962, in exchange for due consideration, the City and Association entered into an agreement for, among other things, the transfer of 33 acres of real property from the Association to the City to be developed as a civic center and a park and recreation facility ("Original Agreement").

The transferred property was identified in the Original Agreement as Area A and is located south of Pacific Avenue and to the north and east of Livermore Avenue. The exhibit in the Original Agreement depicting Area A has been reproduced and attached to this First Amendment, along with a scale map and current tract map showing the area, collectively as "Exhibit A."

The Articles of Incorporation for the Association permitted it to transfer Area A to the City with the expectation that a portion would be used as a memorial to the residents of Murray and Pleasanton Townships who served in the armed forces of the United States ("Memorial").

In the Original Agreement, the City agreed to set aside part of Area A for a park and recreation area and agreed that all of Area A will be used only for public purposes in the best interest of the community. The City also agreed Area A will not be used for private gain, except when public facilities or buildings are leased by the City in the public's interest.

The Association deeded Area A to the City to be used for a civic center, park and recreation area, with the expectation that the City would develop a park, at the City's expense, to be designated as the Memorial.

The City has used Area A for public purposes since it was received from the Association, but the City has not developed a park or the Memorial on Area A.

The Association has followed the City's outreach efforts for the redevelopment of the downtown project sites with great interest. In light of the need to satisfy the community's interest in an open space on the westside parcel, the need to satisfy the affordable housing obligations on the downtown sites, and the need to satisfy the obligations to construct a

park and the Memorial for the Association, the Association developed and proposed an offer to help the City meet those needs. To that end, the Association made the following offer to the City.

The Association offered the following:

1. Modify the Original Agreement to allow Area A to be used for affordable housing purposes for seniors with a preference for veterans, in addition to public purposes;

2. Modify the Original Agreement to allow the City, either itself or through a partnership or support of a third-party non-profit agency, and/or others, develop affordable housing for seniors with a preference for veterans in Area A;

3. Modify the Original Agreement to allow the City to dispose of portions of Area A that are not used for civic center purposes to third-party non-profit agencies for the development of affordable housing for seniors with a preference for veterans and not for private gain;

in exchange for the following:

1. The City granting an easement to the Association in the downtown area designated by the Association in "Exhibit D" ("Easement") to this First Amendment for a park and the Park Amenities defined in the section below to be constructed in that portion of the Easement Designed "Park Area." The Association agrees and understands that the City, by itself or in partnership with a third party, may develop cultural facilities and commercial uses in those portions of the Easement designated "Cultural Facility Area" and "Commercial Use Area", respectively, and may dispose of the those easement areas for those purposes. The purpose of the Easement is to ensure the obligations and requirements for the park and Park Amenities in the Park Area run with the land and allow the Association to have input on the integration of cultural facilities being considered (such as a science and society center, a black box theater, and open space support) and commercial uses in those designated areas adjacent to the park and the Memorial to ensure they integrate with the Park Area defined in the section below in an appealing manner;

2. The City, at its own expense, designing a park in that portion of the Easement identified in Exhibit D as the "Park Area" that does and includes the following items which are collectively referred to as the "Park Amenities":

    a. The park shall be named "Stockmen's Park" and the name shall not be changed without the Association's prior written approval;
    b. Is designed in the shape of a horseshoe with the toe of the horseshoe abutting Livermore Avenue;

c. Includes level grassy areas and concrete pathways that can be used for gathering and community events;
d. Includes a monument located within the inner edges of the horseshoe branches recognizing the transition of cowboys to soldiers in the defense of the United States;
e. Includes a memorial to the Association's Livermore heritage;
f. Includes a memorial for or dedicated to the residents of Murray and Pleasanton Townships who honorably served in the armed forces of the United States;
g. Includes a memorial to Livermore residents who honorably served in the armed forces of the United States in times of peace and times of war; and,
h. Includes a wrought iron or metal trellis or archway at the park's entrance along Livermore Avenue in a style that closely matches the metal design elements currently existing in the adjacent Blacksmith Square;

3. The design of the park and the Park Amenities must be acceptable to the Association and approved by the Association in writing;

4. The City expending up to $500,000 to construct the park and Park Amenities in the Park Area of the Easement, and commencing construction thereon on or before January 1, 2025, and thereafter diligently pursuing completion of construction, and ultimately completing the construction within 18 months of its commencement. The City's right to construct, or for a City partner to construct, affordable housing on Area A is contingent upon the earlier of the City either depositing $500,000 in escrow to construct the park and Park Amenities, or the City commencing construction of the park and Park Amenities. Notwithstanding the foregoing, the City may undertake efforts to make the necessary amendments to the City's general plan and zoning for Area A to enable land use entitlements to be secured for affordable housing on Area A, and to undertake efforts by the City or third-party non-profit agencies and/or others to apply to the City for entitlements to develop affordable housing in Area A, provided no work to construct affordable housing on Area A is commenced before the condition precedent in this section has been satisfied. In the event affordable housing is constructed in Area A, but the City does not complete construction of the park and Park Amenities as set forth herein, the City shall be subject to the penalties in Section 10 of the Original Agreement for that portion of Area A occupied by the affordable housing. Once constructed, the City will be responsible, at no cost to the Association, for the regular upkeep of the park and Park Amenities, including its maintenance, repair, and replacement, which shall be at a level consistent with other parks maintained by the City. The failure of the City to adequately maintain or repair the park and Park Amenities shall entitle Association to the remedies set forth in Section 10 of the Original Agreement, as amended;

5. The City providing the Association the opportunity to comment and provide input on the cultural facilities to be constructed by the City, or constructed by a third party to whom the City has transferred property, in that portion of the Easement identified in Exhibit D as the "Cultural Facility Area." The purpose of the Association's opportunity to comment and provide input is to ensure the cultural facilities do not overshadow the park and Memorial and integrate with the Park Area in an appealing manner;

6. The City providing the Association the opportunity to comment and provide input on the commercial uses to be constructed by a third party to whom the City has transferred property in those portions of the Easement identified in Exhibit D as the "Commercial Use Areas." The purpose of the Association's opportunity to comment and provide input is to ensure the commercial uses do not overshadow the park and Memorial and integrate with the Park Area in an appealing manner.

The Association's offer would allow the City to continue using Area A for public purposes, and preclude the use of Area A for market-rate residential housing and commercial uses that are not related to the public purposes and public interest for the civic center.

The Association's offer would also allow all areas of the Easement to be used for parking prior to the construction of the park facilities, cultural facilities, and commercial uses in those designated areas. The Association's offer would also allow the Cultural Facility Area and the Commercial Use Areas to be used as a park if the location is no longer needed for parking, prior to the construction of a cultural facility or commercial facility, respectively. In addition, the City may utilize the Easement for public infrastructure that does not interfere with other uses allowed in the Easement, or with the rights of the Association pursuant to the Easement.

City and Association desire to enter into the First Amendment to the Original Agreement for the City to accept the Association's offer.

AGREEMENT

NOW, THEREFORE, City and Association hereby agree that the aforementioned recitals are true and correct and further agree as follows:

1. City and Association agree that all obligations under the Original Agreement have been satisfied, except for the City's development of a park and the Memorial on Area A.

2. Association has made an offer to the City, and the City hereby accepts the Associations' offer, to modify the Original Agreement to expand the uses for Area A to allow it to be used for affordable housing purposes for seniors with a preference for veterans, as set forth in this First Amendment.

3. Section 1 of the Original Agreement is hereby revised to read as follows:

"The Association shall deed Area A to the City to be used for a civic center, parks and recreation, and for affordable housing. The City agrees that all of Area A will be used only for public purposes in the best interest of the community and for affordable housing purposes for seniors with a preference for veterans. The City expressly agrees it will not use any part of Area A for market rate housing purposes, and it will not use any part of Area A for commercial uses that are not related to the public purposes and public interest for the civic center, subject to the penalties in Section 10."

4. Section 14 of the Original Agreement is hereby revised to read as follows:

"It is mutually agreed that except so far as the Association's activities under this contract are concerned, Area A and B are to be used only for public purposes and affordable housing for seniors with a preference for veterans, and not for private gain, except when public facilities or buildings are leased by the City for events of public interest."

5. The Original Agreement is hereby revised to add Section 15 to read as follows:

"The City may use Area A for affordable housing purposes as set forth herein, either by itself or through a partnership or through the support of a third-party non-profit agency and/or others, to develop affordable housing in Area A. The Association acknowledges that the City's use of Area A for affordable housing includes the right to dispose of portions of Area A that are not used for civic center purposes to third-party non-profit agencies for the development of affordable housing and not for private gain."

6. The Original Agreement is hereby revised to add Section 16 to read as follows:

"In consideration for allowing the City to use Area A for affordable housing purposes for seniors with a preference for veterans, the City shall grant an easement to the Association for the downtown area designated in "Exhibit D" ("Easement") for a park and the Park Amenities defined in the Section 17 below. The purpose of the Easement is to ensure the obligations and requirements for the park and Park Amenities run with the land and allow the Association to have input on the integration of cultural facilities and commercial uses adjacent to the park and the Memorial to ensure the cultural facilities do not overshadow the park and Memorial and integrate with the Park Area in an appealing manner. For the purposes of this agreement, cultural facilities means a science and society center, a black box theater, a structure to provide open space support, and similar uses."

7. The Original Agreement is hereby revised to add Section 17 to read as follows:

"The City, at its own expense, shall design a park in that portion of the Easement identified in Exhibit D as the "Park Area" that does and includes the following items which are collectively referred to as the "Park Amenities":

a. The park shall be named "Stockmen's Park" and the name shall not be changed without the Association's prior written approval;

b. Is designed in the shape of a horseshoe with the toe of the horseshoe abutting Livermore Avenue;

c. Includes level grassy areas and concrete pathways that can be used for gathering and community events;

d. Includes a monument located within the inner edges of the horseshoe branches recognizing the transition of cowboys to soldiers in the defense of the United States;

e. Includes a memorial to the Association's Livermore heritage;

f. Includes a memorial for or dedicated to the residents of Murray and Pleasanton Townships who honorably served in the armed forces of the United States;

g. Includes a memorial to Livermore residents who honorably served in the armed forces of the United States in times of peace and times of war; and,

h. Includes a wrought iron or metal trellis or archway at the park's entrance along Livermore Avenue in a style that closely matches the metal design elements currently existing in the adjacent Blacksmith Square.

The memorials above may consist of bronze plaques, marble or other stone works, or other similar landmark objects, and are intended to generally memorialize the groups identified above and not necessarily the names of individuals. The monument is intended be more substantial and in the form of a statute or sculpture."

8. The Original Agreement is hereby revised to add Section 18 to read as follows:

"The City's design of the park and the Park Amenities must be acceptable to the Association and approved by the Association in writing."

9. The Original Agreement is hereby revised to add Section 19 to read as follows:

"The City shall expend up to $500,000 to construct the park and Park Amenities in the Park Area of the Easement, and commence construction thereon on or before

January 1, 2025, and thereafter diligently pursuing completion of construction, and ultimately completing the construction within 18 months of its commencement. The City's right to construct, or for a City partner to construct, affordable housing on Area A is contingent upon the earlier of the City either depositing $500,000 in escrow to construct the park and Park Amenities, or the City commencing construction of the park and Park Amenities. Notwithstanding the foregoing, the City may undertake efforts to make the necessary amendments to the City's general plan and zoning for Area A to enable land use entitlements to be secured for affordable housing on Area A, and to undertake efforts by the City or third-party non-profit agencies and/or others to apply to the City for entitlements to develop affordable housing in Area A, provided no work to construct affordable housing on Area A is commenced before the condition precedent in this section has been satisfied. In the event affordable housing is constructed in Area A, but the City does not complete construction of the park and Park Amenities as set forth herein, the City shall be subject to the penalties in Section 10 of the Original Agreement for that portion of Area A occupied by the affordable housing. Once constructed, the City will be responsible, at no cost to the Association, for the regular upkeep of the park and Park Amenities, including its maintenance, repair, and replacement at a level consistent with other parks maintained by the City. The failure of the City to adequately maintain or repair the park and Park Amenities shall entitle Association to the remedies set forth in Section 10 for a breach of this Section 19."

10. The Original Agreement is hereby revised to add Section 20 to read as follows:

"The City shall provide the Association the opportunity to comment and provide input on the cultural facilities to be constructed by the City, or constructed by a third party to whom the City has transferred property, in that portion of the Easement identified in Exhibit D as the "Cultural Facility Area." The purpose of the Association's opportunity to comment and provide input is to ensure the cultural facilities do not overshadow the park and Memorial and integrate with the Park Area in an appealing manner."

11. The Original Agreement is hereby revised to add Section 21 to read as follows:

"The City shall provide the Association the opportunity to comment and provide input on the commercial uses to be constructed by a third party to whom the City has transferred property in those portions of the Easement identified in Exhibit D as the "Commercial Use Areas." The purpose of the Association's opportunity to comment and provide input is to ensure the commercial uses do not overshadow the park and Memorial and integrate with the Park Area in an appealing manner."

12. The Original Agreement is hereby revised to add Section 22 to read as follows:

"The Easement may be used for parking prior to the construction of the park facilities, cultural facilities, and commercial uses in those respective areas

designated in Exhibit D. In addition, the Cultural Facility Area and the Commercial Use Area may be used as a park if the location is no longer needed for parking, prior to the construction of a cultural facility or commercial facility, respectively. The City may utilize the Easement for public infrastructure that does not interfere with other uses allowed in the Easement, or with the rights of the Association pursuant to the Easement."

13. Section 10 of the Original Agreement is hereby revised to add an additional paragraph to the existing to read as follows:

"In the event the City fails to maintain and repair the park and Park Amenities as required by section 19, Association shall provide written notice of breach to the City with a demand to cure. In the event the City fails to implement the cure or provide information to the Association demonstrating that a breach has not occurred, within 30 days of the date the written notice is delivered, then the Association may, but is not required to:

a. Perform the maintenance and repairs identified in the notice of breach; and may,

b. Provide documentation to the City showing the actual reasonable costs incurred for the maintenance and repair work identified in the notice and performed by the Association. The City shall be responsible for reimbursing Association for the costs of the work, plus an additional 10% of the costs for arranging the repairs and maintenance. The City shall deliver the reimbursement to the Association within 30 days of the date the documentation for the work is delivered to the City."

14. The Original Agreement is hereby revised to add Section 23 to read as follows:

"The following standard terms and conditions are incorporated into this agreement:

a. California Law. This agreement shall be governed by and construed in accordance with the laws of the State of California.

b. Notices. All notices and demands shall be given in writing by registered or certified mail, postage prepaid, and return receipt requested. Notices shall be considered given forty-eight (48) hours after such mailing. Notices shall be addressed as appears below for the respective party, provided that if any party gives notice of a change of address or name, notices to the giver of that notice shall thereafter be given as demanded in that notice.

City:

Attn: City Manager
City of Livermore
1052 S. Livermore Avenue
Livermore, California 94550

With a copy to:

Attn: City Attorney
City of Livermore
1052 S. Livermore Avenue
Livermore, California 94550

Association:

Attn: President
Livermore Stockmen's Rodeo Association
P.O. Box 180
Livermore, California 94551

With a copy to:

Attn: Attorney for Livermore Stockmen's Rodeo Association
Rien, Adams & Cox
39 S. Livermore Avenue
Livermore, California 94550

c. Successors and Assigns. Each party hereto binds himself, his partners, successors, assigns, agents, and representatives to the other party hereto and to the partners, successors, assigns, agents, and representatives of such other party with respect to all covenants, agreements, and obligations contained in this agreement. Neither party to this agreement shall assign this agreement, or any of its duties or obligations set forth in this agreement, without the prior written consent of the other.

d. Attorney's Fees. If legal action or arbitration is required to enforce any of the terms or conditions set forth in this agreement, then the prevailing party shall, in addition to all other relief available, be entitled to recover reasonable attorney's fees.

e. Counterparts. This agreement may be signed in counterpart and each counterpart shall be deemed an original instrument. This agreement shall become effective on the signing thereof by all parties.

f. Complete Agreement. This agreement represents the entire agreement of the parties which completely sets forth the obligations of the parties. Both parties acknowledge, warrant, and understand that there are no statements, representations, inducements, or agreements made between the parties, except for those expressly set forth herein. No amendment, clarification, supplement, or termination of this agreement shall be valid unless in writing and signed by the parties.

g. Partial Invalidity. If any provision or portion of this agreement shall be deemed invalid, it is agreed that such invalidity shall effect only such provision or portion thereof, and the remainder of this agreement shall remain in full force and effect."

15. The revisions in this First Amendment are prospective and only apply after the execution of this First Amendment. Unless otherwise stated herein, this First Amendment does not and shall not relieve the parties of the terms and conditions of the Original Agreement as written and in effect prior to this First Amendment.

16. If there are any conflicts between the provisions in this First Amendment and the provisions in the Original Agreement, the provisions of this First Amendment shall control.

17. Except as revised above, the Original Agreement shall remain in full force and effect.

****

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 caused this First Amendment to be executed on the date first written above.

LIVERMORE STOCKMEN'S RODEO ASSOCIATION:

By: Dave Finster
Title: President

CITY OF LIVERMORE

Marc Roberts
City Manager

APPROVED AS TO FORM:

Jason R. Alcala
City Attorney

Attachments:
Exhibit A – Area "A" Property Description and Maps
Exhibit D – Easement

EXHIBIT "A"

AREA "A"

PARCEL 1: All that certain real property situate, lying and being in the Township of Murray, County of Alameda, State of California, and particularly described as follows, to-wit:

Lots 17, 18 and 19 and all that portion of lot 23 of the Smith and Grant Tract, which lies northwesterly of a line drawn parallel with the northwestern line of said lot 23 and distant at right angles 25 feet southeasterly therefrom, as said lots and tract are shown on the "Map of Addition No. 3 of the Town of Livermore" filed April 9, 1878 in Book 6 of Maps, at page 3, in the office of the County Recorder of Alameda County.

PARCEL 2: All those certain lots pieces or parcels of land, situate, lying and being in the State of California, and bounded and particularly described as follows, to-wit:

Lots Numbers Fifteen (15), Sixteen (16), Twenty-four (24), Twenty-five (25), Twenty-six (26), Twenty-seven (27), Twenty-eight (28), Twenty-nine (29), and Thirty (30), of the Smith and Grant Tract, as the same are delineated, on a certain Map entitled, "Map of Addition No. 3, to the Town of Livermore", filed April 9th, 1878 in the office of the County Recorder of Alameda County. (Liber 6 of Maps at page 3).

Same description as Agmt w/ MAPD -

Same as Grant Deed R594 I 618

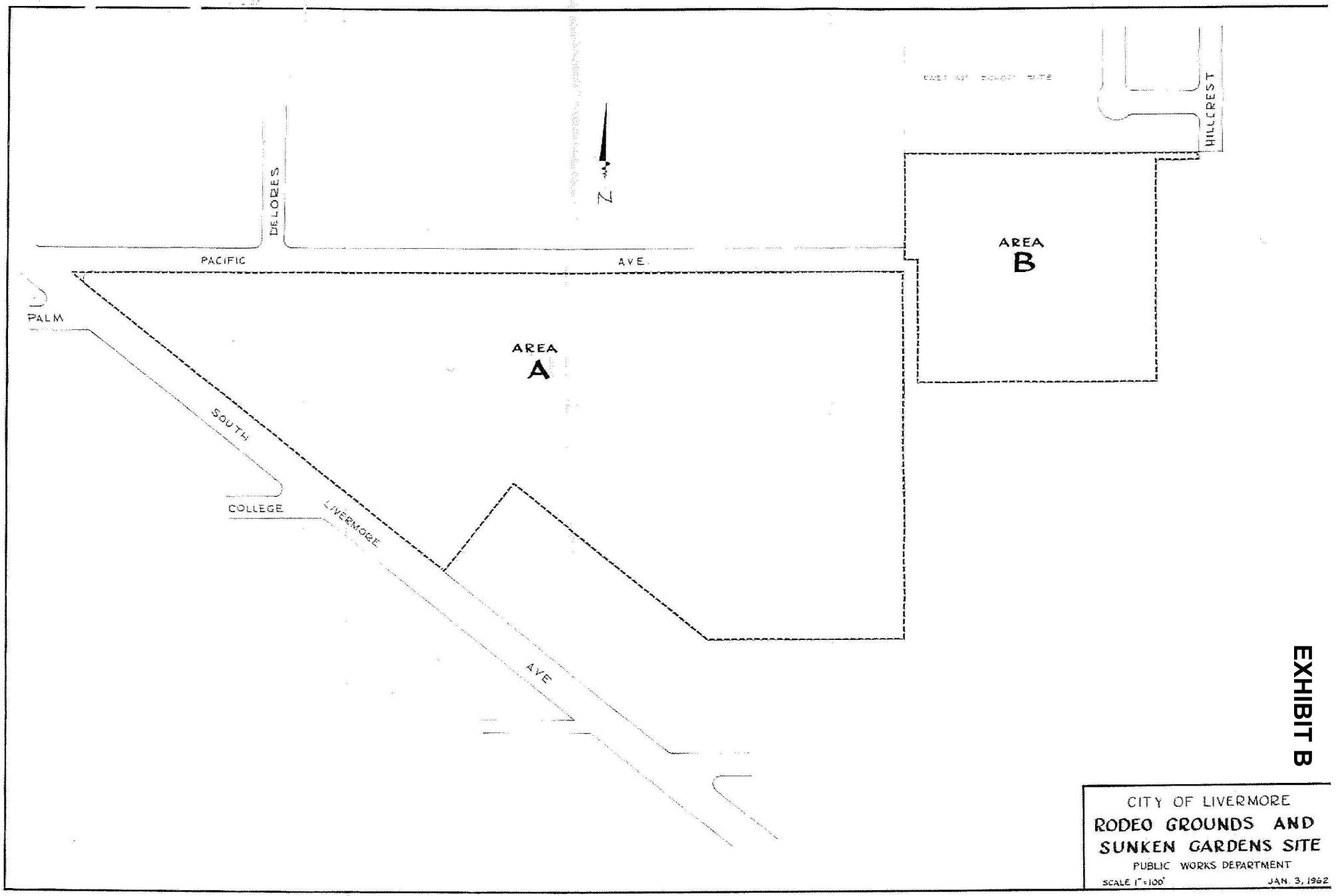


EXHIBIT B

CITY OF LIVERMORE
RODEO GROUNDS AND
SUNKEN GARDENS SITE
PUBLIC WORKS DEPARTMENT
SCALE 1"=100' JAN. 3, 1962

ASSESSOR'S MAP 99

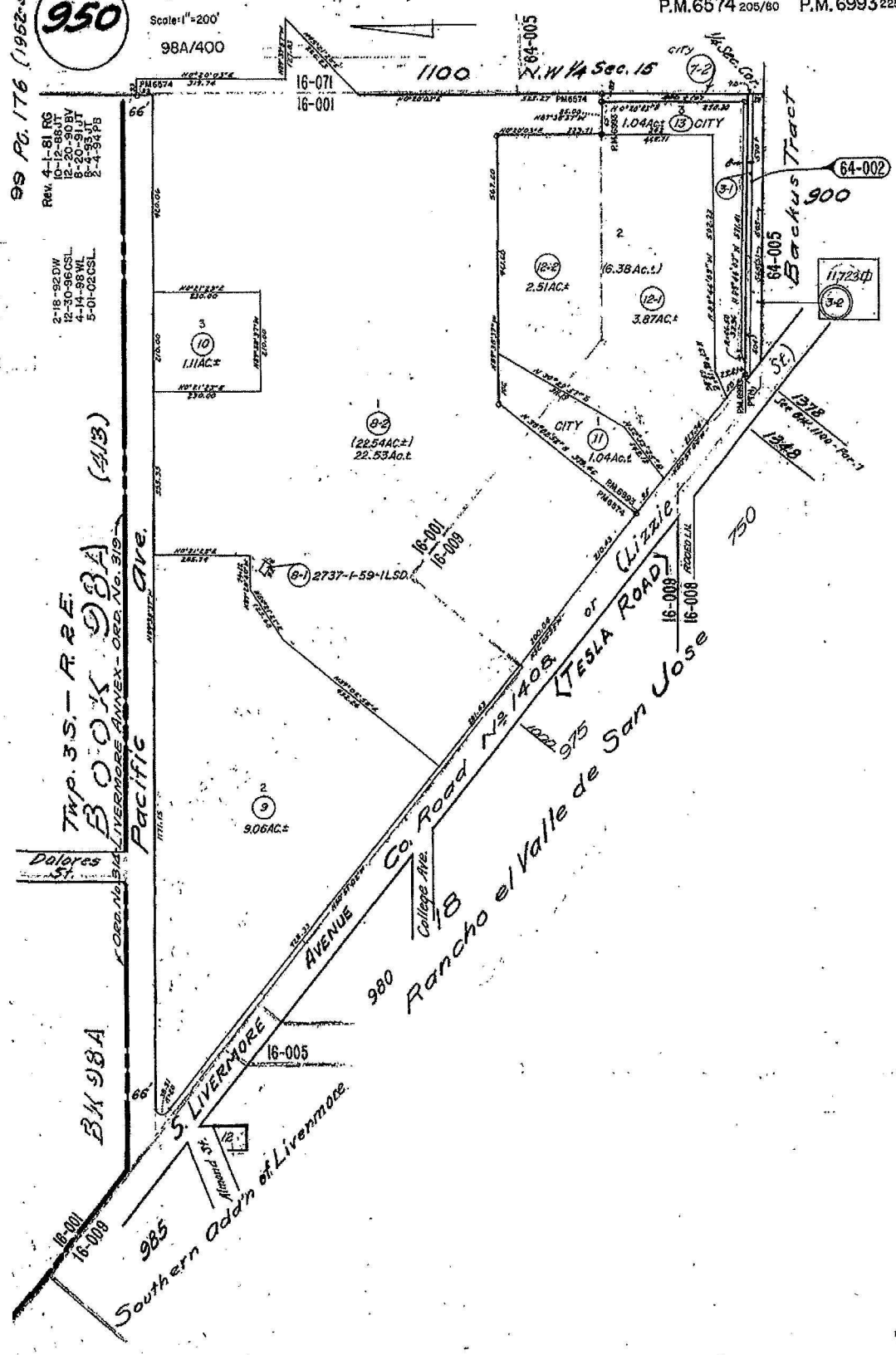
Code Area Nos.
16-001 16-009
64-002

EXHIBIT B

Map of Addition No 3 to the Town of Livermore
(Smith and Grant Tract) (Bk. 6 Pg. 3)

Ptn. of NE 1/4 Section 16
T. 3S., R. 2E.
P.M. 6574 205/60 P.M. 6993 225/46

ALAMEDA COUNTY
OFFICE OF ASSESSOR
FOR ASSESSMENT USE ONLY
NOT FOR
REPRODUCTION OR SALE

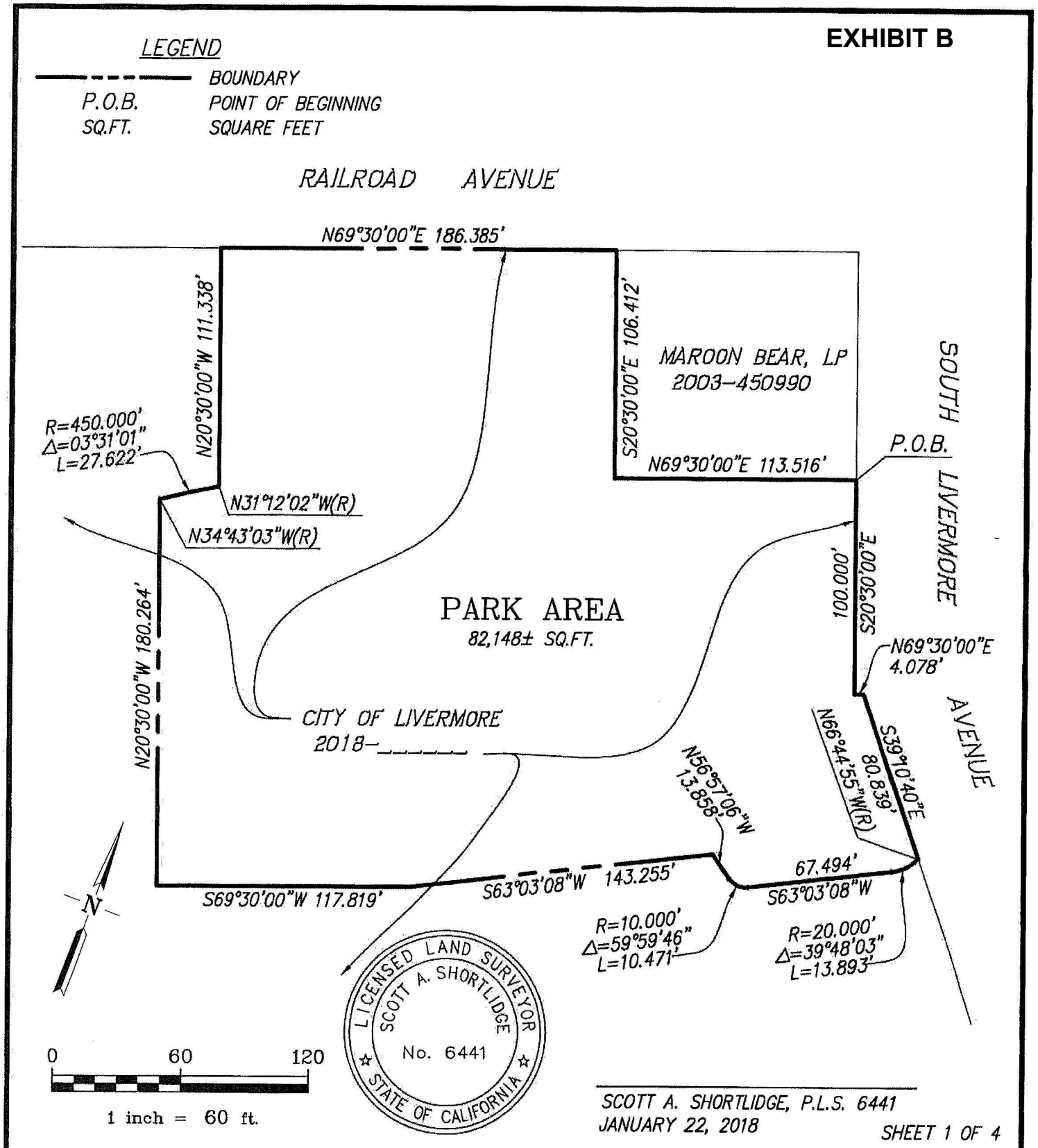


ACM 49

REF: R.S. 595 (Bk. II, Pg. 36)

HPN 10

EXHIBIT B



SCOTT A. SHORTLIDGE, P.L.S. 6441
JANUARY 22, 2018

SHEET 1 OF 4

EXHIBIT D

PLAT TO ACCOMPANY LEGAL DESCRIPTION
FOR
PARK AREA

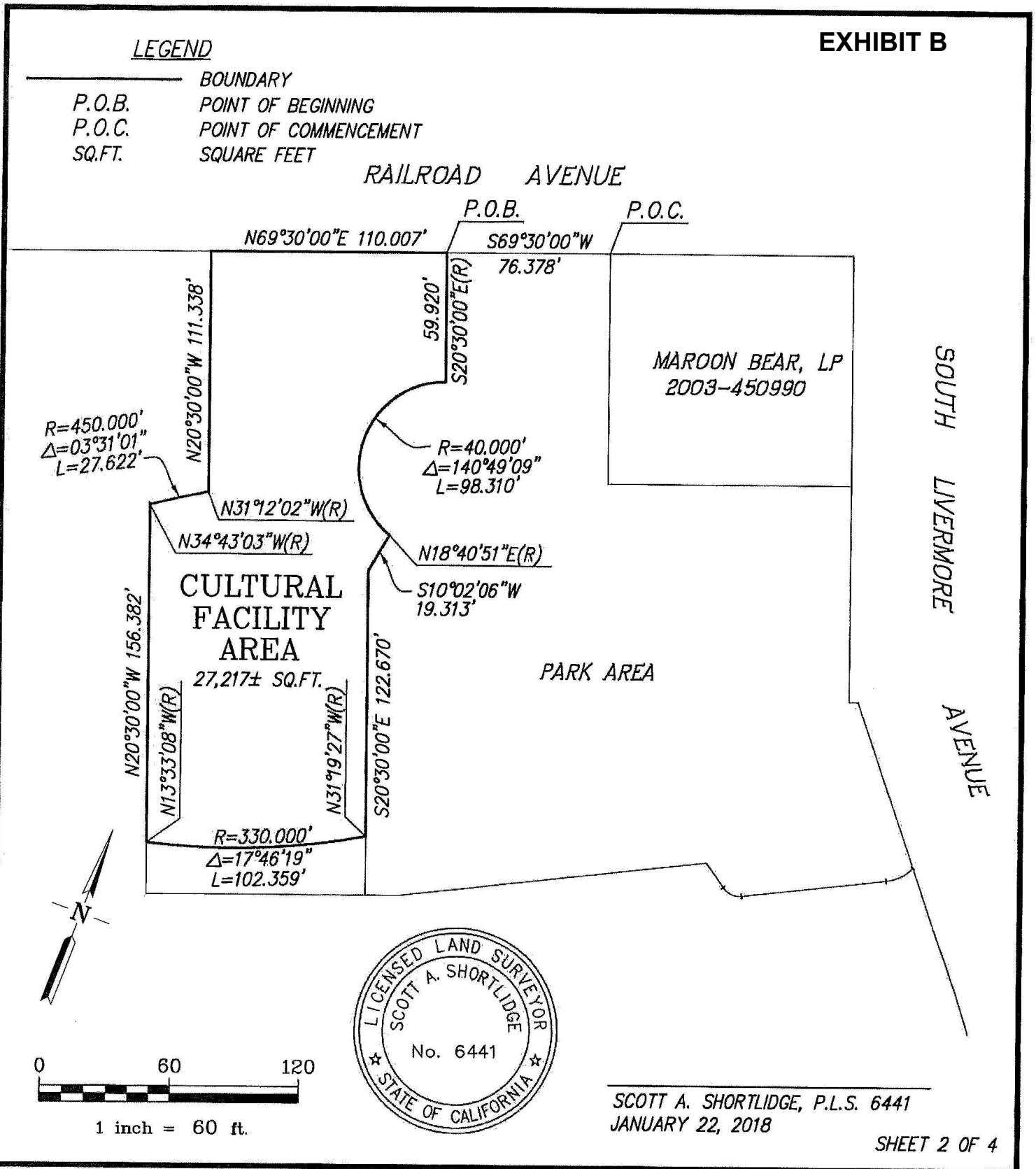
CITY OF LIVERMORE, ALAMEDA COUNTY, CALIFORNIA

RJA
RUGGERI-JENSEN-AZAR
ENGINEERS ▪ PLANNERS ▪ SURVEYORS
4690 CHABOT DRIVE, SUITE 200 PLEASANTON, CA 94588
PHONE: (925) 227-9100 FAX: (925) 227-9300

SCALE:	DATE:	JOB NO.:
1" = 60'	JANUARY 22, 2018	151084.45

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EXHIBIT B



SCOTT A. SHORTLIDGE, P.L.S. 6441
JANUARY 22, 2018

SHEET 2 OF 4

EXHIBIT D

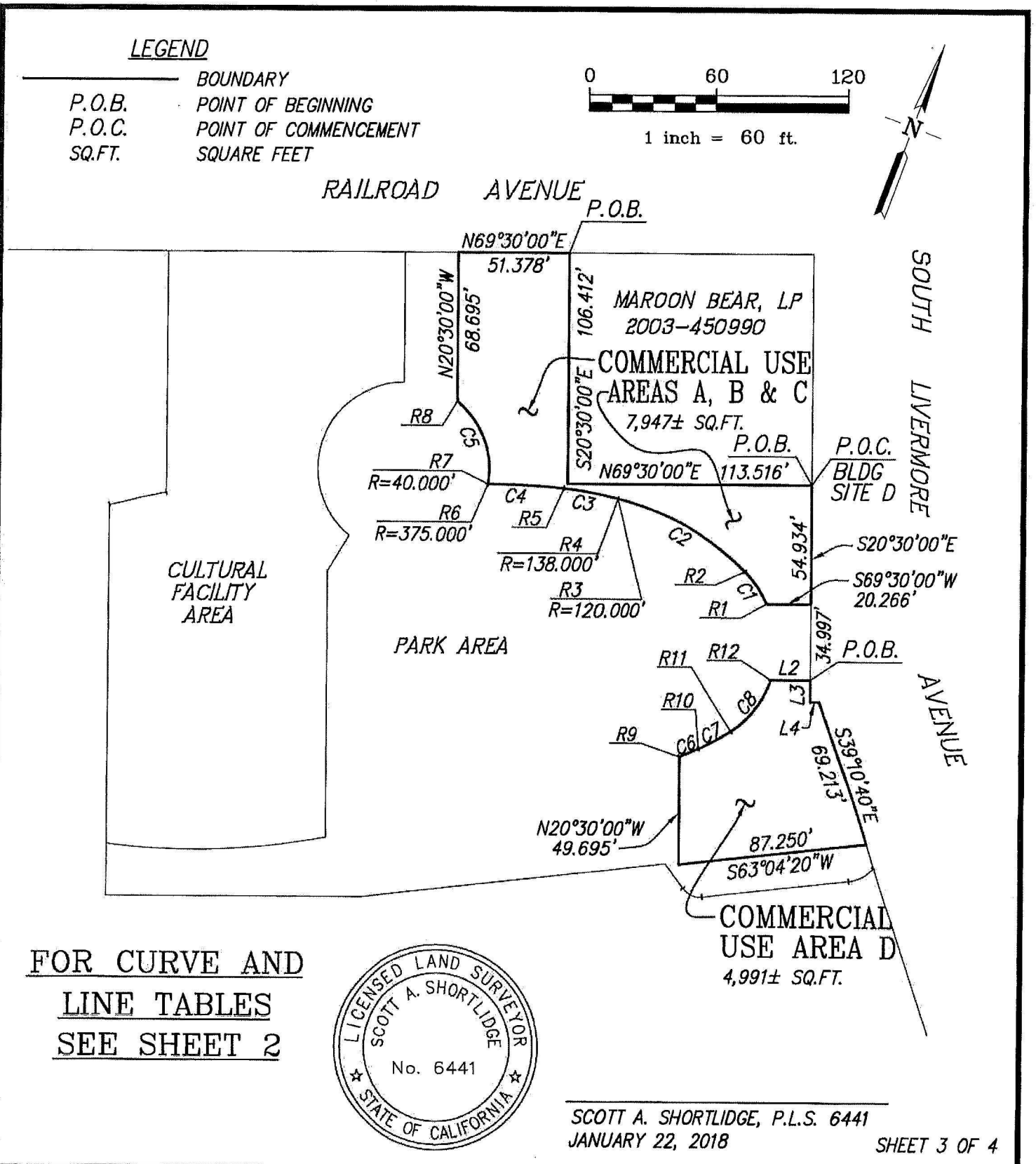
PLAT TO ACCOMPANY LEGAL DESCRIPTION
FOR
CULTURAL FACILITY AREA

CITY OF LIVERMORE, ALAMEDA COUNTY, CALIFORNIA

RJA
RUGGERI-JENSEN-AZAR
ENGINEERS ▪ PLANNERS ▪ SURVEYORS
4690 CHABOT DRIVE, SUITE 200 PLEASANTON, CA 94588
PHONE: (925) 227-9100 FAX: (925) 227-9300

SCALE:	DATE:	JOB NO.:
1" = 60'	JANUARY 22, 2018	151084.45

G:\JOB2015\151084 T45\MAPPING\PLATS\CULTURAL FACILITY.DWG 1/22/2018 3:26:12 PM JOHN KNEZOVICH



FOR CURVE AND LINE TABLES SEE SHEET 2

LICENSED LAND SURVEYOR
SCOTT A. SHORTLIDGE
No. 6441
STATE OF CALIFORNIA

SCOTT A. SHORTLIDGE, P.L.S. 6441
JANUARY 22, 2018

SHEET 3 OF 4

EXHIBIT D

PLAT TO ACCOMPANY LEGAL DESCRIPTION FOR

COMMERCIAL USE AREAS

CITY OF LIVERMORE, ALAMEDA COUNTY, CALIFORNIA

RJA
RUGGERI-JENSEN-AZAR
ENGINEERS ▪ PLANNERS ▪ SURVEYORS
4690 CHABOT DRIVE, SUITE 200 PLEASANTON, CA 94588
PHONE: (925) 227-9100 FAX: (925) 227-9300

SCALE:	DATE:	JOB NO.:
1" = 60'	JANUARY 22, 2018	151084.45

G:\JOB2015\151084 T45\MAPPING\PLATS\COMMERCIAL USE AREAS.DWG 1/22/2018 3:33:46 PM JOHN KNEZOVICH

EXHIBIT B

Radial Bearing Table	
Line	Bearing
R1	N45°37'56"E
R2	N25°03'00"E
R3	N08°22'42"W
R4	N04°27'15"W
R5	N14°48'32"W
R6	N20°12'19"W
R7	N79°18'30"E
R8	N18°10'56"E
R9	N41°51'41"W
R10	N43°43'22"W
R11	N53°38'21"W
R12	N86°40'57"E

Line Table		
Line	Bearing	Distance
L1	N69°30'00"E	20.236'
L2	N69°28'58"E	18.154'
L3	N20°30'00"W	10.069'
L4	N69°30'00"E	4.078'

Curve Table			
Curve	Radius	Delta	Length
C1	50.000'	20°34'56"	17.961'
C2	120.000'	33°25'42"	70.012'
C3	138.000'	10°21'17"	24.940'
C4	375.000'	5°23'47"	35.320'
C5	40.000'	61°07'34"	42.674'
C6	300.000'	1°51'41"	9.746'
C7	100.000'	9°54'59"	17.308'
C8	44.000'	39°40'42"	30.471'

EXHIBIT D

PLAT TO ACCOMPANY LEGAL DESCRIPTION
FOR
COMMERCIAL USE AREAS

CITY OF LIVERMORE, ALAMEDA COUNTY, CALIFORNIA

RJA
RUGGERI-JENSEN-AZAR
ENGINEERS ▪ PLANNERS ▪ SURVEYORS
4690 CHABOT DRIVE, SUITE 200 PLEASANTON, CA 94588
PHONE: (925) 227-9100 FAX: (925) 227-9300

SCALE:	DATE:	JOB NO.:
1" = 60'	JANUARY 22, 2018	151084.45

G:\JOB2015\151084 T45\MAPPING\PLATS\COMMERCIAL USE AREAS.DWG 1/22/2018 3:18:54 PM JOHN KNEZOVICH

Real property situate in the City of Livermore, County of Alameda, State of California and being portions of New Parcel "A" described in the Grant Deed to the City of Livermore recorded on _____, 2018 under Document No. 2018-_____, Official Records of Alameda County and more particularly described as follows:

PARK AREA:

Beginning at the most easterly northeasterly corner of said parcel, said corner being on the westerly line of South Livermore Avenue, said corner also being the southeasterly corner of the parcel of land described in the deed to Maroon Bear, LP, recorded in Document No. 2003-450990, Official Records of Alameda County; thence along the easterly line of first said New Parcel A for the following three (3) courses: 1) South 20°30'00" East 100.000 feet, 2) North 69°30'00"East 4.078 feet and 3) South 39°10'40" East 80.839 feet;

thence across said parcel the following nine (9) courses:

1) Southeasterly along a non-tangent curve to the right, which a radial bears North 66°44'55" West to the radius point, having a radius of 20.000 feet, a central angle of 39°48'03" and an arc length of 13.893 feet,
2) South 63°03'08" West 67.494 feet,
3) along a tangent curve to the right having a radius of 10.000 feet, a central angle of 59°59'46" and an arc length of 10.471 feet,
4) North 56°57'06" West 13.858 feet,
5) South 63°03'08" West 143.255 feet,
6) South 69°30'00" West 117.819 feet,
7) North 20°30'00" West 180.264 feet,
8) Northeasterly along a non-tangent curve to the left, which a radial bears North 34°43'03" West to the radius point, having a radius of 450.000 feet, a central angle of 03°31'01" and an arc length of 27.622 feet and
9) North 20°30'00" West 111.338 feet to the northerly line of said parcel, last said line also being the southerly line of Railroad Avenue;

thence along last said line North 39°30'00" East 186.385 feet to the westerly line of said parcel of land described in the deed to Maroon Bear, LP (2003-450990);

thence along last said line and the southerly line of last said parcel (2003-450990) South 20°30'00" East 106.412 feet and North 69°30'00" East 113.516 feet to the **Point of Beginning.**

Containing 82,148 square feet of land, more or less.

CULTURAL FACILITY AREA:

Commencing at the westerly northeasterly corner of said New Parcel A, said corner being on the southerly line of Railroad Avenue, said corner also being the northwesterly corner of the parcel of land described in the deed to Maroon Bear, LP, recorded in Document No. 2003-450990, Official Records of Alameda County;

thence along the northerly line of New Parcel A, last said line also being the southerly line of Railroad Avenue, South 69°30'00" West 76.378 feet for the **Point of Beginning** hereof;

thence across New Parcel A for the following eight (8) courses:

1) South 20°30'00" East 59.920 feet,
2) westerly, southerly and easterly along a non-tangent curve to the left, which a radial bears South 20°30'00" East to the radius point, having a radius of 40.000 feet, a central angle of 140°49'09" and an arc length of 98.310 feet,
3) South 10°02'06" West 19.313 feet,
4) South 20°30'00" East 122.670 feet,
5) southwesterly along a non-tangent curve to the right, which a radial bears North 31°19'27" West to the radius point, having a radius of 330.000 feet, a central angle of 17°46'19" and an arc length of 102.359 feet,
6) North 20°30'00" West 156.382 feet,
7) northeasterly along a non-tangent curve to the left, which a radial bears North 34°43'03" West to the radius point, having a radius of 450.000 feet, a central angle of 03°31'01" and an arc length of 27.622 feet and
8) North 20°30'00" West 111.338 feet to the northerly line of New Parcel A;

thence along last said line North 69°30'00" East 110.007 feet to the **Point of Beginning.**

Containing 27,217 square feet of land, more or less.

COMMERCIAL USE AREAS A, B, AND C:

Beginning at the westerly northeasterly corner of New Parcel A, said corner being on the southerly line of Railroad Avenue, said corner also being the northwesterly corner of the parcel

of land described in the deed to Maroon Bear, LP, recorded in Document No. 2003-450990, Official Records of Alameda County;

thence along the westerly and southerly lines of last said parcel (2003-450990) South 20°30'00" East 106.412 feet and North 69°30'00" East 113.516 feet to the easterly line of said New Parcel A, last said line also being the westerly line of South Livermore Avenue;

thence along last said line South 20°30'00" East 54.934 feet;

thence across New Parcel A for the following seven (7) courses:

1) South 69°30'00" West 20.266 feet,
2) northwesterly along a non-tangent curve to the left, which a radial bears South 45°37'56" West to the radius point, having a radius of 50.000 feet, a central angle of 20°34'56" and an arc length of 17.961 feet,
3) westerly along a non-tangent curve to the left, which a radial bears South 25°03'00" West to the radius point, having a radius of 120.000 feet, a central angle of 33°25'42" and an arc length of 70.012 feet,
4) westerly along a non-tangent curve to the left, which a radial bears South 04°27'15" East to the radius point, having a radius of 138.000 feet, a central angle of 10°21'17" and an arc length of 24.940 feet,
5) westerly along a non-tangent curve to the left, which a radial bears South 14°48'32" East to the radius point, having a radius of 375.000 feet, a central angle of 05°23'47" and an arc length of 35.320 feet,
6) northwesterly along a non-tangent curve to the left, which a radial bears South 79°18'30" West to the radius point, having a radius of 40.000 feet, a central angle of 61°07'34" and an arc length of 42.674 feet and
7) North 20°30'00" West 68.695 feet to the northerly line of said New Parcel A, last said line also being the southerly line of Railroad Avenue;

thence along last said line North 69°30'00" East 51.378 feet to the **Point of Beginning**.

Containing 7,947 square feet of land, more or less.

COMMERCIAL USE AREA D:

Beginning at the westerly terminus of a line segment of the easterly line of said New Parcel A described by the course North 69°30'00" East 4.078 feet, said line segment also being the westerly line of South Livermore Avenue;

Thence along last said line segment and said westerly line of South Livermore Avenue North 69°30'00" East 4.078 feet and South 39°10'40" East 69.213 feet;

Thence crossing New Parcel A for the following six (6) courses:

1) South 63°04'20" West 87.250 feet,
2) North 20°30'00" West 49.695 feet,
3) Northeasterly along a non-tangent curve to the left, which a radial bears North 41°51'41" West to the radius point, having a radius of 300.000 feet, a central angle of 01°51'41" and an arc length of 9.746 feet,
4) Northeasterly along a tangent compound curve to the left, which a radial bears North 43°43'22" West to the radius point, having a radius of 100.000 feet, a central angle of 09°54'59" and an arc length of 17.308 feet,
5) Northeasterly along a tangent compound curve to the left, which a radial bears North 53°38'21" West to the radius point, having a radius of 44.000 feet, a central angle of 39°40'42" and an arc length of 30.471 feet,
6) North 69°30'00" East 18.221 feet and
   Thence South 20°30'00" East 10.064 feet to the **Point of Beginning.**

Containing 4,991 square feet of land, more or less.

See Exhibit D – Plat to Accompany Legal Description which is attached hereto and made a part hereof.

END OF DESCRIPTION

This description and its accompanying plat were prepared by or under the direction of:

_____

Scott Shortlidge, LS 6441 Date

EXHIBIT D
COMMERCIAL PROPERTY PLAT MAP AND LEGAL DESCRIPTION

EXHIBIT "D"
LEGAL DESCRIPTION

CULTURAL FACILITY USE AREA:

Commencing at the westerly northeasterly corner of said New Parcel A, said corner being on the southerly line of Railroad Avenue, said corner also being the northwesterly corner of the parcel of land described in the deed to Maroon Bear, LP, recorded in Document No. 2003-450990, Official Records of Alameda County;

thence along the northerly line of New Parcel A, last said line also being the southerly line of Railroad Avenue, South 69°30'00" West 76.378 feet for the **Point of Beginning** hereof;

thence across New Parcel A for the following eight (8) courses:

1) South 20°30'00" East 59.920 feet,
2) westerly, southerly and easterly along a non-tangent curve to the left, which a radial bears South 20°30'00" East to the radius point, having a radius of 40.000 feet, a central angle of 140°49'09" and an arc length of 98.310 feet,
3) South 10°02'06" West 19.313 feet,
4) South 20°30'00" East 122.670 feet,
5) southwesterly along a non-tangent curve to the right, which a radial bears North 31°19'27" West to the radius point, having a radius of 330.000 feet, a central angle of 17°46'19" and an arc length of 102.359 feet,
6) North 20°30'00" West 156.382 feet,
7) northeasterly along a non-tangent curve to the left, which a radial bears North 34°43'03" West to the radius point, having a radius of 450.000 feet, a central angle of 03°31'01" and an arc length of 27.622 feet and
8) North 20°30'00" West 111.338 feet to the northerly line of New Parcel A, being the southerly line of the aforesaid Rail Road Avenue;

thence along last said line North 69°30'00" East 110.007 feet to the **Point of Beginning.**

Containing 27,217 square feet of land, more or less.

COMMERCIAL USE AREAS A, B, AND C:

Beginning at the westerly northeasterly corner of New Parcel A, said corner being on the southerly line of Railroad Avenue, said corner also being the northwesterly corner of the parcel of land described in the deed to Maroon Bear, LP, recorded in Document No. 2003-450990, Official Records of Alameda County;

EXHIBIT "D"
LEGAL DESCRIPTION

Thence crossing New Parcel A for the following six (6) courses:

1) South 63°04'20" West 87.250 feet,
2) North 20°30'00" West 49.695 feet,
3) Northeasterly along a non-tangent curve to the left, which a radial bears North 41°51'41" West to the radius point, having a radius of 300.000 feet, a central angle of 01°51'41" and an arc length of 9.746 feet,
4) Northeasterly along a tangent compound curve to the left, which a radial bears North 43°43'22" West to the radius point, having a radius of 100.000 feet, a central angle of 09°54'59" and an arc length of 17.308 feet,
5) Northeasterly along a tangent compound curve to the left, which a radial bears North 53°38'21" West to the radius point, having a radius of 44.000 feet, a central angle of 39°40'42" and an arc length of 30.471 feet,
6) North 69°30'00" East 18.221 feet and
   Thence South 20°30'00" East 10.064 feet to the **Point of Beginning**.

Containing 4,991 square feet of land, more or less.

APN 98-289-2-1, 98-289-20 & PORTIONS OF APN's 97-1-32, 98-289-2-1, 98-289-18, 98-289-19, 98-289-21

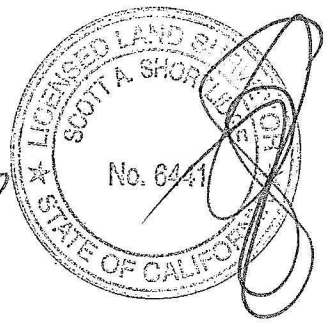
See Exhibit D – Plat to Accompany Legal Description which is attached hereto and made a part hereof.

END OF DESCRIPTION

This description and its accompanying plat were prepared by or under the direction of:

3-13-15

Scott Shortlidge, LS 6441 Date



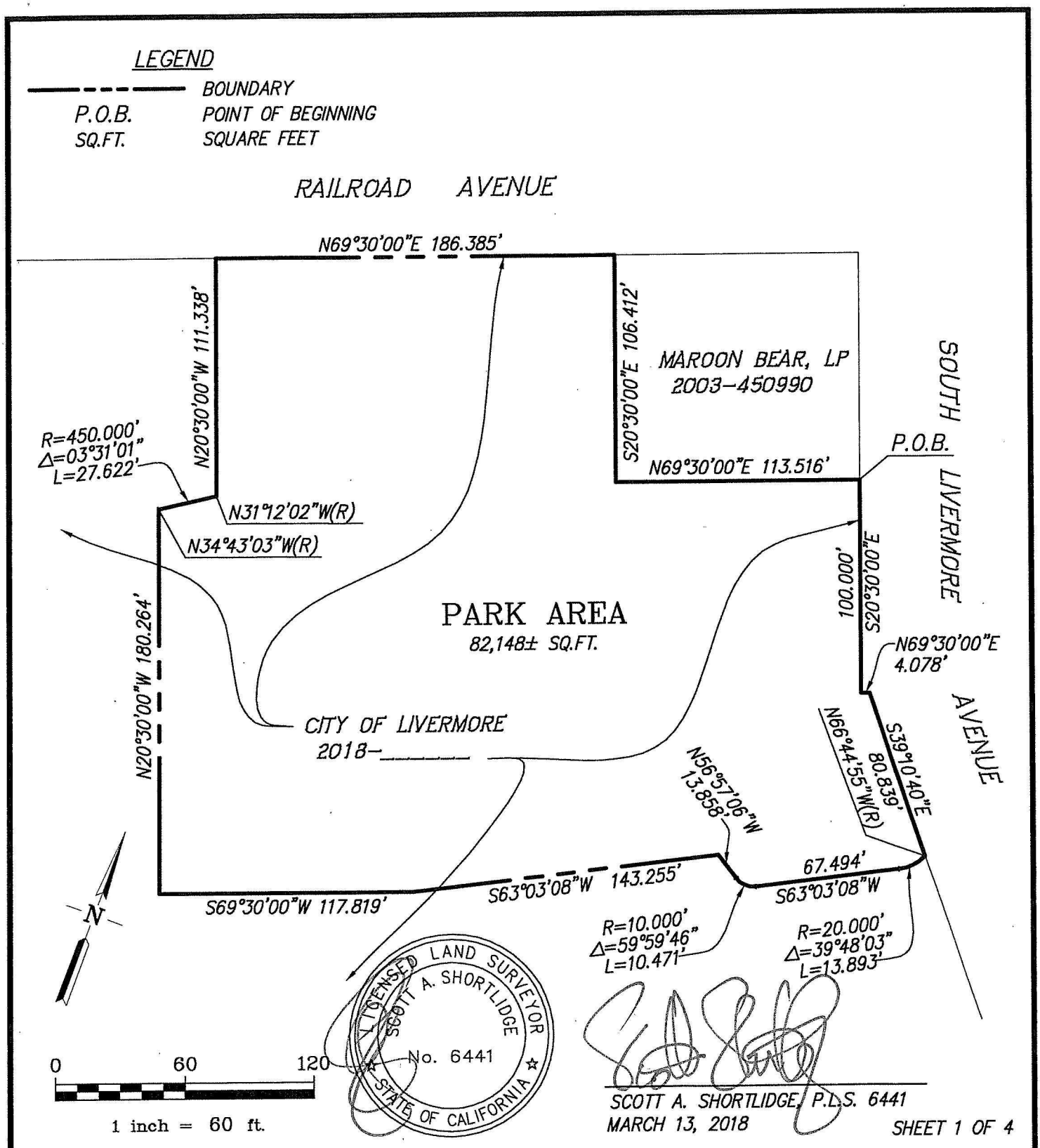


EXHIBIT D

PLAT TO ACCOMPANY LEGAL DESCRIPTION
FOR
PARK AREA

CITY OF LIVERMORE, ALAMEDA COUNTY, CALIFORNIA

RJA
RUGGERI-JENSEN-AZAR
ENGINEERS ▪ PLANNERS ▪ SURVEYORS
4690 CHABOT DRIVE, SUITE 200 PLEASANTON, CA 94588
PHONE: (925) 227-9100 FAX: (925) 227-9300

SCALE:	DATE:	JOB NO.:
1" = 60'	MARCH 13, 2018	151084.45

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EXHIBIT D

LEGEND

———	BOUNDARY
P.O.B.	POINT OF BEGINNING
P.O.C.	POINT OF COMMENCEMENT
SQ.FT.	SQUARE FEET

GENERAL NOTE:

1. THE BUILDABLE FOOTPRINT WITHIN THE CULTURAL FACILITY AREA SHALL NOT EXCEED 20,100 SQUARE FEET.

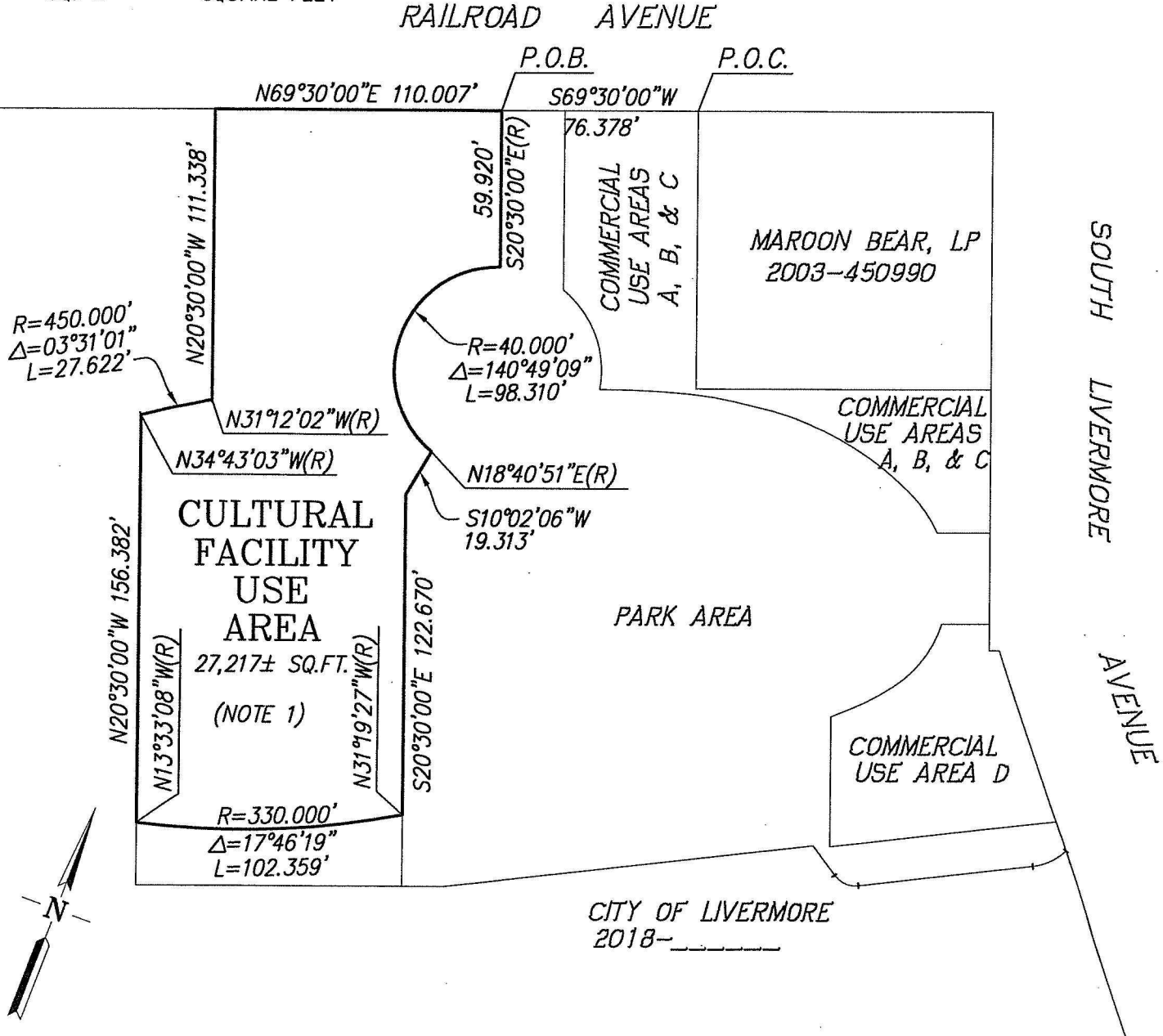


EXHIBIT D

PLAT TO ACCOMPANY LEGAL DESCRIPTION FOR

CULTURAL FACILITY USE AREA

CITY OF LIVERMORE, ALAMEDA COUNTY, CALIFORNIA

RJA
RUGGERI-JENSEN-AZAR
ENGINEERS ▪ PLANNERS ▪ SURVEYORS
4690 CHABOT DRIVE, SUITE 200 PLEASANTON, CA 94588
PHONE: (925) 227-9100 FAX: (925) 227-9300

SCALE:	DATE:	JOB NO.:
1" = 60'	MARCH 13, 2018	151084.45

EXHIBIT B

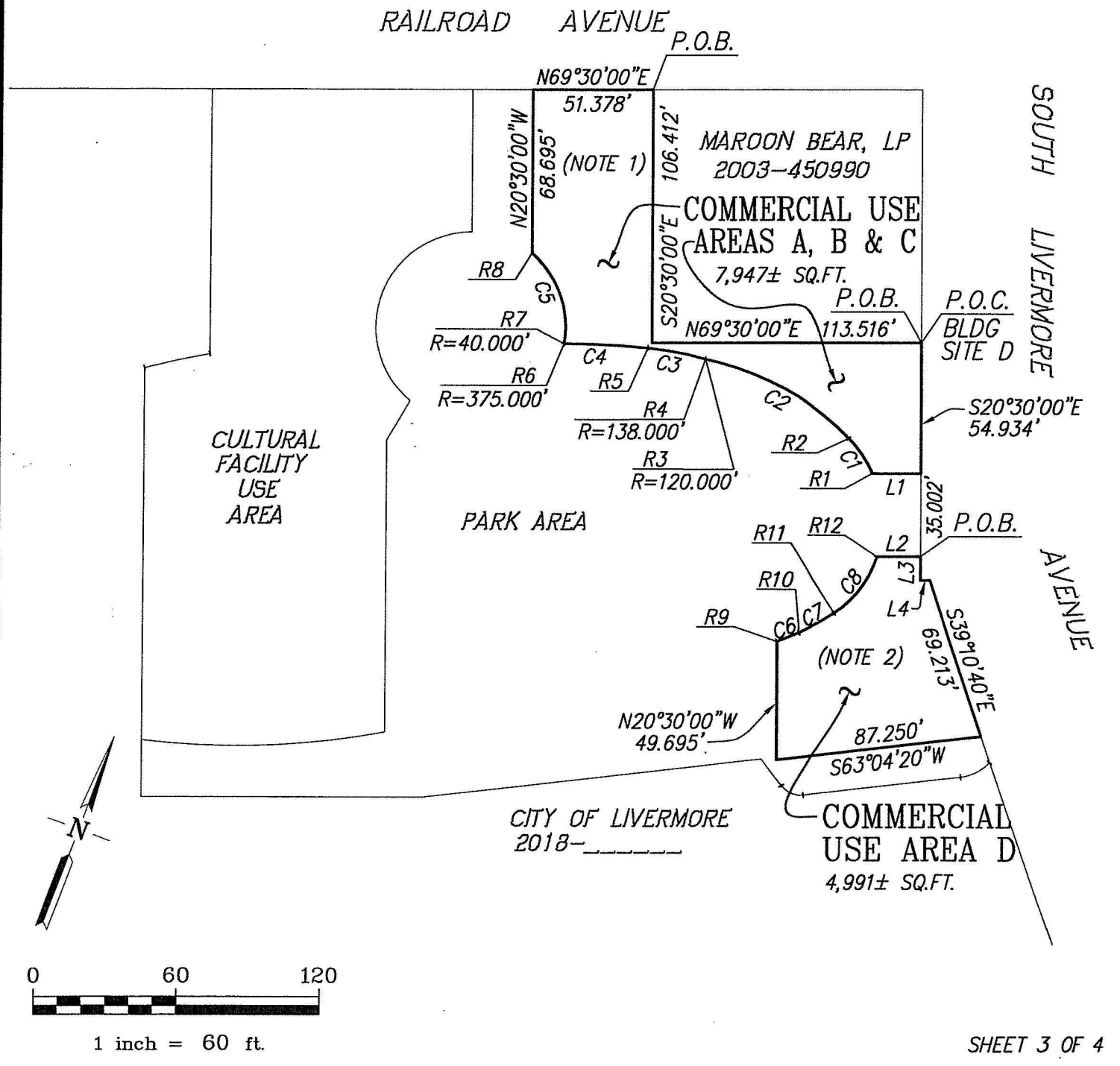
FOR CURVE/LINE TABLES SEE SHEET 4

LEGEND

———	BOUNDARY
P.O.B.	POINT OF BEGINNING
P.O.C.	POINT OF COMMENCEMENT
SQ.FT.	SQUARE FEET

GENERAL NOTES:

1. THE BUILDABLE FOOTPRINT WITHIN THE COMMERCIAL USE AREAS A, B & C SHALL NOT EXCEED 5,700 SQUARE FEET.
2. THE BUILDABLE FOOTPRINT WITHIN THE COMMERCIAL USE AREA D SHALL NOT EXCEED 2,900 SQUARE FEET.



SHEET 3 OF 4

EXHIBIT D

PLAT TO ACCOMPANY LEGAL DESCRIPTION FOR

COMMERCIAL USE AREAS

CITY OF LIVERMORE. ALAMEDA COUNTY. CALIFORNIA

RJA
RUGGERI-JENSEN-AZAR
ENGINEERS ▪ PLANNERS ▪ SURVEYORS
4690 CHABOT DRIVE, SUITE 200 PLEASANTON, CA 94588
PHONE: (925) 227-9100 FAX: (925) 227-9300

SCALE:	DATE:	JOB NO.:
1" = 60'	MARCH 13, 2018	151084.45

Radial Bearing Table	
Line	Bearing
R1	N45°37'56"E
R2	N25°03'00"E
R3	N08°22'42"W
R4	N04°27'15"W
R5	N14°48'32"W
R6	N20°12'19"W
R7	N79°18'30"E
R8	N18°10'56"E
R9	N41°51'41"W
R10	N43°43'22"W
R11	N53°38'21"W
R12	N86°40'57"E

Line Table		
Line	Bearing	Distance
L1	N69°30'00"E	20.266'
L2	N69°30'00"E	18.221'
L3	N20°30'00"W	10.064'
L4	N69°30'00"E	4.078'

Curve Table			
Curve	Radius	Delta	Length
C1	50.000'	20°34'56"	17.961'
C2	120.000'	33°25'42"	70.012'
C3	138.000'	10°21'17"	24.940'
C4	375.000'	5°23'47"	35.320'
C5	40.000'	61°07'34"	42.674'
C6	300.000'	1°51'41"	9.746'
C7	100.000'	9°54'59"	17.308'
C8	44.000'	39°40'42"	30.471'

SHEET 4 OF 4

EXHIBIT D

PLAT TO ACCOMPANY LEGAL DESCRIPTION
FOR
COMMERCIAL USE AREAS

CITY OF LIVERMORE, ALAMEDA COUNTY, CALIFORNIA

RJA
RUGGERI-JENSEN-AZAR
ENGINEERS ▪ PLANNERS ▪ SURVEYORS
4690 CHABOT DRIVE, SUITE 200 PLEASANTON, CA 94588
PHONE: (925) 227-9100 FAX: (925) 227-9300

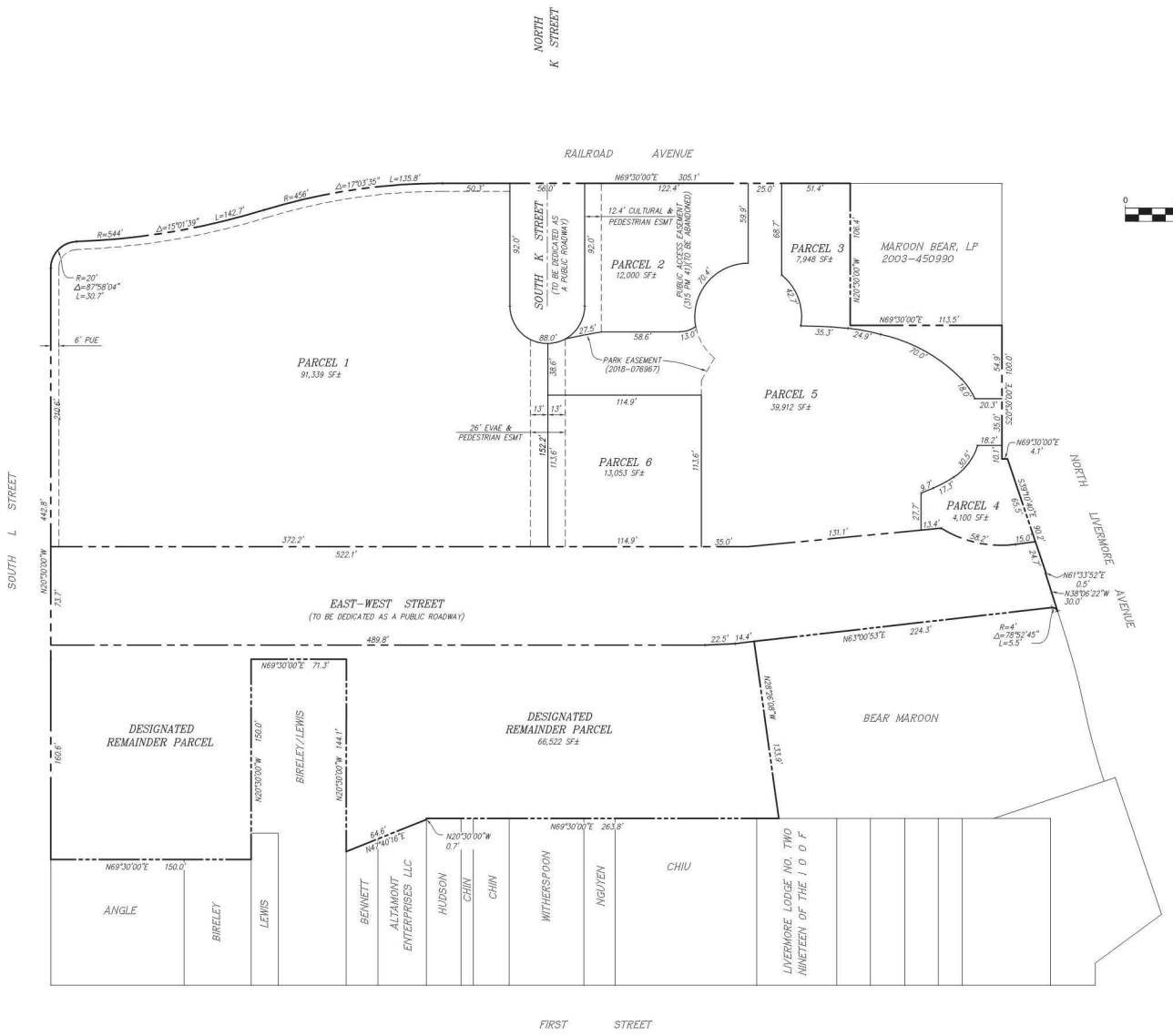
SCALE:	DATE:	JOB NO.:
1" = 60'	MARCH 13, 2018	151084.45

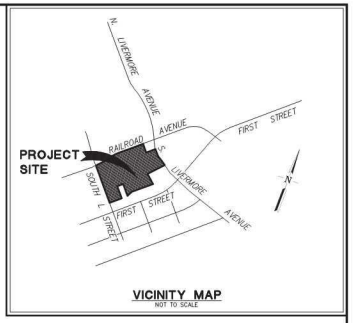
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EXHIBIT E
DRAFT PARCEL MAP FOR PROPERTY

TENTATIVE PARCEL MAP 10926

CITY OF LIVERMORE, ALAMEDA COUNTY, CALIFORNIA





0 40 80 120

1 inch = 40 ft.

GENERAL NOTES:

1.	OWNER:	CITY OF LIVERMORE 1052 S. LIVERMORE AVENUE LIVERMORE, CA 94550 (925) 960-4512 ROSY EHLERT
2.	LAND SURVEYOR:	RUGGERI-JENSEN-AZAR 4690 CHABOT DRIVE, SUITE 200 PLEASANTON, CA 94588 (925) 227-9100 CONTACT: SCOTT SHORTLIDGE, LS #6441
3.	ASSESSOR'S PARCEL NUMBERS:	097-0001-026-01, 097-0001-026-02, 097-0001-028-02, 097-0001-032, 097-0001-036, 098-0289-002-01, 098-0289-018, 098-0289-019, 098-0289-020, 098-0289-021
4.	PROPERTY DESCRIPTION:	NEW PARCEL "A" PER (2018-076079)
5.	EXISTING USE:	RETAIL AND VACANT
6.	PROPOSED USE:	PUBLIC PARK, PARKING, RETAIL AND PUBLIC FACILITIES
7.	GENERAL PLAN LAND USE:	DOWNTOWN AREA SPECIFIC PLAN (DA)
8.	EXISTING ZONING:	DOWNTOWN SPECIFIC PLAN (DSP)
9.	PROPOSED ZONING:	DOWNTOWN SPECIFIC PLAN (DSP)
10.	GROSS AREA: (TOTAL CITY PROPERTY)	294,093± SQUARE FEET
11.	NET LOT AREA: (PARCELS 1 THROUGH 6)	177,739± SQ.FT.
12.	TOTAL NUMBER OF PROPOSED PARCELS:	6
13.	SMALLEST LOT SIZE:	4,100± SQ.FT.
15.	UTILITIES a. WATER: b. SANITARY SEWER: c. STORM DRAIN: d. GAS AND ELECTRIC: e. TELEPHONE: f. CABLE TV:	 CALIFORNIA WATER SERVICE COMPANY CITY OF LIVERMORE CITY OF LIVERMORE PACIFIC GAS AND ELECTRIC AT&T COMCAST
16.	NO IMPROVEMENTS OR GRADING IS PROPOSED WITH THIS APPLICATION.	

LAND SURVEYOR OF WORK

PREPARED UNDER THE DIRECTION OF:

SCOTT A. SHORTLIDGE, LS 6441
RUGGERI-JENSEN-AZAR

DATE

EXHIBIT E

RJA
RUGGERI-JENSEN-AZAR
ENGINEERS • PLANNERS • SURVEYORS
4690 CHABOT DRIVE, SUITE 200 PLEASANTON, CA 94588
PHONE: (925) 227-9100 FAX: (925) 227-9300

DATE: OCTOBER 22, 2018 JOB NO. 151084 T67 SHEET 1 OF 1

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EXHIBIT F
CITY FEES

LIVERMORE VILLAGE SITE FEE ESTIMATE SUMMARY - With Credits by Bldg SF*

Monday, October 22, 2018

		Future Retail A	Future Retail B	Future Retail C	Future Retail D	Retail A, B,C,D Subtotal
1	City Storm Drainage Fee [1]					
2	County Storm Drainage Fee [1]					
3	Sanitary Sewer Connection Fees	$12,450.50	$4,761.90	$3,574.20	$10,715.20	$31,501.80
4	Park Facilty Fee	$7,180.91	$2,746.46	$2,061.44	$6,180.06	$18,168.88
5	City Water Connection Fee - N/A Calwater	$0.00	$0.00	$0.00	$0.00	$0.00
6	ACWFC Zone 7 Connection Fee - 1" Domestic	$42,255.00	$0.00	$42,255.00	$28,170.00	$112,680.00
7	ACWFC Zone 7 Connection Fee - 3/4" Domestic					$0.00
8	ACWFC Zone 7 Connection Fee - 3" Domestic [2]					$0.00
9	ACWFC Zone 7 Connection Fee - 1" Irigation	$0.00	$0.00	$0.00	$28,170.00	$28,170.00
10	ACWFC Zone 7 Connection Fee - 1.5" Irrigation					$0.00
11	Low Income Housing Impact Fee	$4,657.16	$1,781.21	$1,336.94	$4,008.06	$11,783.38
13	Traffic Impact Fee	$38,337.45	$14,662.79	$11,005.64	$32,994.13	$97,000.00
13	Tri-Valley Transportation Development Fee	$11,474.65	$4,388.67	$3,294.06	$9,875.36	$29,032.74
14	Social / Human Services Facility Fee	$16.83	$6.44	$4.83	$14.48	$42.57
15	City Wide General Plan Recovery Cost	$1,312.35	$501.93	$376.74	$1,129.44	$3,320.46
16	Encroachment Permit Fee					$0.00
17	Encroachment Permit Inspection Fee					$0.00
18	School Mitigation Fees	$2,052.65	$785.07	$589.26	$1,766.56	$5,193.54
19	Engineering Plan Check Fees					$0.00
20	Downtown specific plan cost recovery	$1,043.15	$398.97	$299.46	$897.76	$2,639.34
21	Downtown revitalization fee	$60,637.30	$23,191.74	$17,407.32	$52,185.92	$153,422.28
22	Building Permit Fee Estimate	$13,000.00	$12,000.00	$12,000.00	$13,000.00	$50,000.00
23	Art in Public Places- No fee if art installed					

Fee Estimate Subtotal	$194,417.94	$65,225.17	$94,204.90	$189,106.98	$542,954.98
Previous Development Credit					$300,000.00
Restroom Construction Credit					$50,000.00
Total Fee Estimate					$192,954.98
Parking In Lieu Estimate					$499,500
Parking In Lieu Credits					$468,800
Total Parking Fees Estimate					$30,700

*Actual fees paid will be based on total building square footage and related construction details. Fees charged will be based on the cost of the fee at the time the fee is paid

1 *City and County Storm Drainage fees. No Fees required because new impervious surface is less than existing*

EXHIBIT G
GRANT DEED

RECORDING REQUESTED BY:
Order No.
Escrow No.
Loan No.

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 $
DOCUMENTARY TRANSFER TAX $
SURVEY MONUMENT FEE $
Computed on the consideration or value or property conveyed; OR
Computed on the consideration or value less liens or encumbrances remaining a t time of sale.

APN # _____, _____, _____

GRANT DEED

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged,

The City of Livermore, A Municipal Corporation

hereby Grant(s) in fee to
Red Bear Management, Inc.

the real property in the City of Livermore
County of Alameda, State of California, as described as

FOR PLAT MAP AND LEGAL DESCRIPTION
SEE EXHIBITS "A" AND "B" ATTACHED HERETO AND MADE A PART HEREOF

POWER OF TERMINATION (Civil Code section 885.010)

IN THE EVENT THAT RED BEAR PROPERTY MANAGEMENT, INC., OR ITS SUCCESSORS OR ASSIGNS, FAILS TO COMMENCE CONSTRUCTION OF THE IMPROVEMENTS AS SET FORTH AND DEFINED IN SECTION 10.4 OF THE DISPOSITION AND DEVELOPMENT AGREEMENT BETWEEN THE CITY AND RED BEAR PROPERTY MANAGEMENT, INC. FOR THE TRANSFER OF THE PROPERTY HEREIN DESCRIBED, THEN THE PROPERTY HEREIN DESCRIBED SHALL REVERT TO THE CITY OF LIVERMORE, OR ITS SUCCESSORS OR ASSIGNS, FREE AND CLEAR OF ANY CLAIMS OF RED BEAR PROPERTY MANAGEMENT, INC., OR ITS SUCCESSORS OR ASSIGNS.

City of Livermore, a municipal corporation

_____
Signature:

_____

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 that document.

State of California)
County of _____)

On _____, before me, _____, a 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 _____

EXHIBIT "D"
LEGAL DESCRIPTION

CULTURAL FACILITY USE AREA:

Commencing at the westerly northeasterly corner of said New Parcel A, said corner being on the southerly line of Railroad Avenue, said corner also being the northwesterly corner of the parcel of land described in the deed to Maroon Bear, LP, recorded in Document No. 2003-450990, Official Records of Alameda County;

thence along the northerly line of New Parcel A, last said line also being the southerly line of Railroad Avenue, South 69°30'00" West 76.378 feet for the **Point of Beginning** hereof;

thence across New Parcel A for the following eight (8) courses:

1) South 20°30'00" East 59.920 feet,
2) westerly, southerly and easterly along a non-tangent curve to the left, which a radial bears South 20°30'00" East to the radius point, having a radius of 40.000 feet, a central angle of 140°49'09" and an arc length of 98.310 feet,
3) South 10°02'06" West 19.313 feet,
4) South 20°30'00" East 122.670 feet,
5) southwesterly along a non-tangent curve to the right, which a radial bears North 31°19'27" West to the radius point, having a radius of 330.000 feet, a central angle of 17°46'19" and an arc length of 102.359 feet,
6) North 20°30'00" West 156.382 feet,
7) northeasterly along a non-tangent curve to the left, which a radial bears North 34°43'03" West to the radius point, having a radius of 450.000 feet, a central angle of 03°31'01" and an arc length of 27.622 feet and
8) North 20°30'00" West 111.338 feet to the northerly line of New Parcel A, being the southerly line of the aforesaid Rail Road Avenue;

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Containing 27,217 square feet of land, more or less.

COMMERCIAL USE AREAS A, B, AND C:

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EXHIBIT "D"
LEGAL DESCRIPTION

Thence crossing New Parcel A for the following six (6) courses:

1) South 63°04'20" West 87.250 feet,
2) North 20°30'00" West 49.695 feet,
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4) Northeasterly along a tangent compound curve to the left, which a radial bears North 43°43'22" West to the radius point, having a radius of 100.000 feet, a central angle of 09°54'59" and an arc length of 17.308 feet,
5) Northeasterly along a tangent compound curve to the left, which a radial bears North 53°38'21" West to the radius point, having a radius of 44.000 feet, a central angle of 39°40'42" and an arc length of 30.471 feet,
6) North 69°30'00" East 18.221 feet and
   Thence South 20°30'00" East 10.064 feet to the **Point of Beginning**.

Containing 4,991 square feet of land, more or less.

APN 98-289-2-1, 98-289-20 & PORTIONS OF APN's 97-1-32, 98-289-2-1, 98-289-18, 98-289-19, 98-289-21

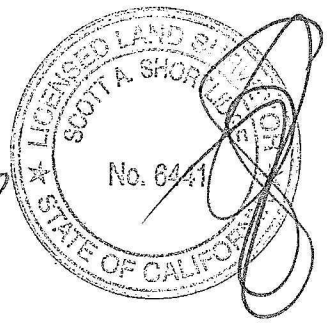
See Exhibit D – Plat to Accompany Legal Description which is attached hereto and made a part hereof.

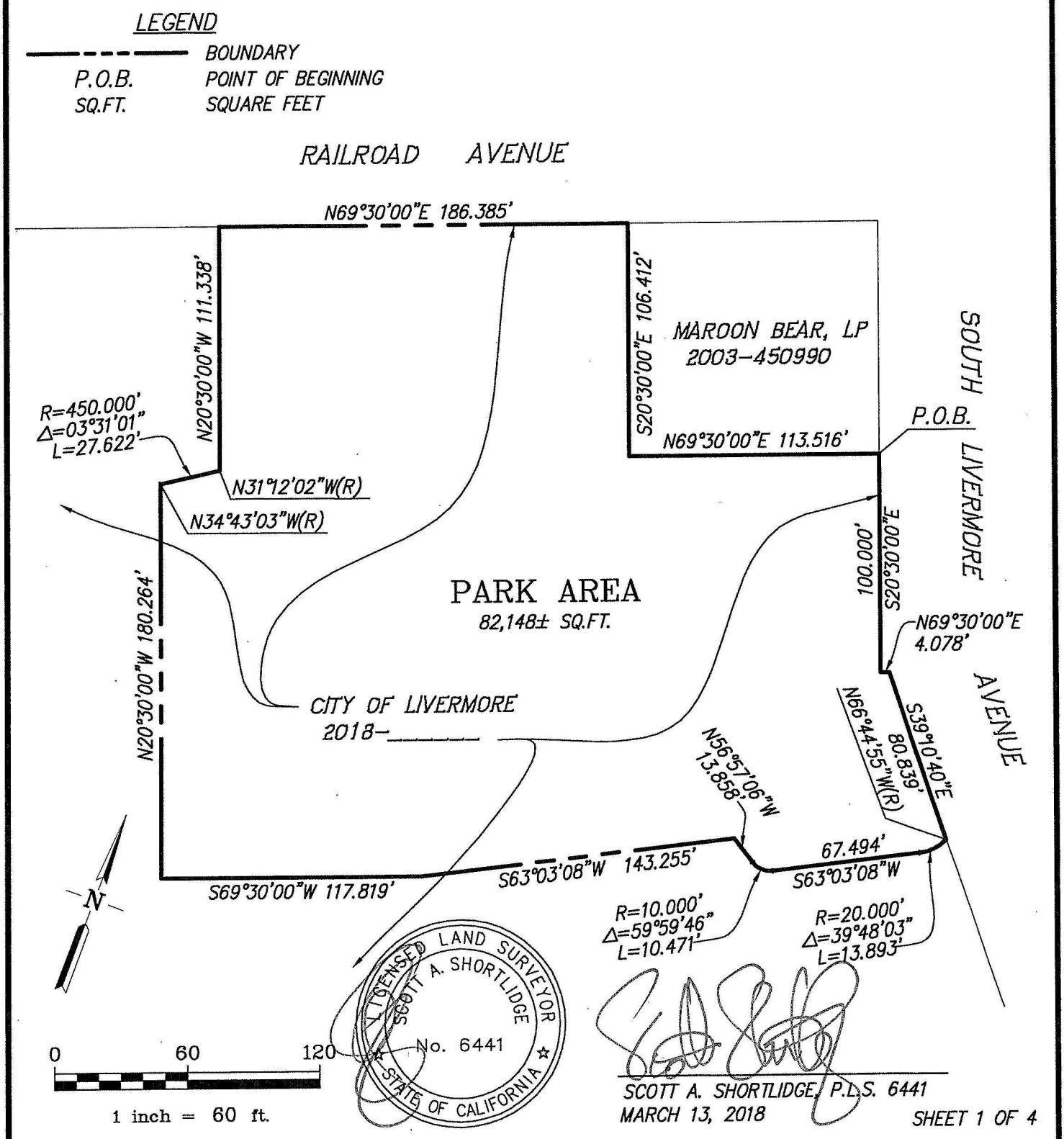
END OF DESCRIPTION

This description and its accompanying plat were prepared by or under the direction of:

3-13-15

Scott Shortlidge, LS 6441 Date





SCOTT A. SHORTLIDGE, P.L.S. 6441
MARCH 13, 2018

SHEET 1 OF 4

EXHIBIT D

PLAT TO ACCOMPANY LEGAL DESCRIPTION
FOR
PARK AREA

CITY OF LIVERMORE, ALAMEDA COUNTY, CALIFORNIA

RJA
RUGGERI-JENSEN-AZAR
ENGINEERS ▪ PLANNERS ▪ SURVEYORS
4690 CHABOT DRIVE, SUITE 200 PLEASANTON, CA 94588
PHONE: (925) 227-9100 FAX: (925) 227-9300

SCALE:	DATE:	JOB NO.:
1" = 60'	MARCH 13, 2018	151084.45

G:\JOB2015\151084 T45\MAPPING\PLATS\PARK AREA.DWG 2/6/2018 4:55:23 PM JOHN KNEZOVICH

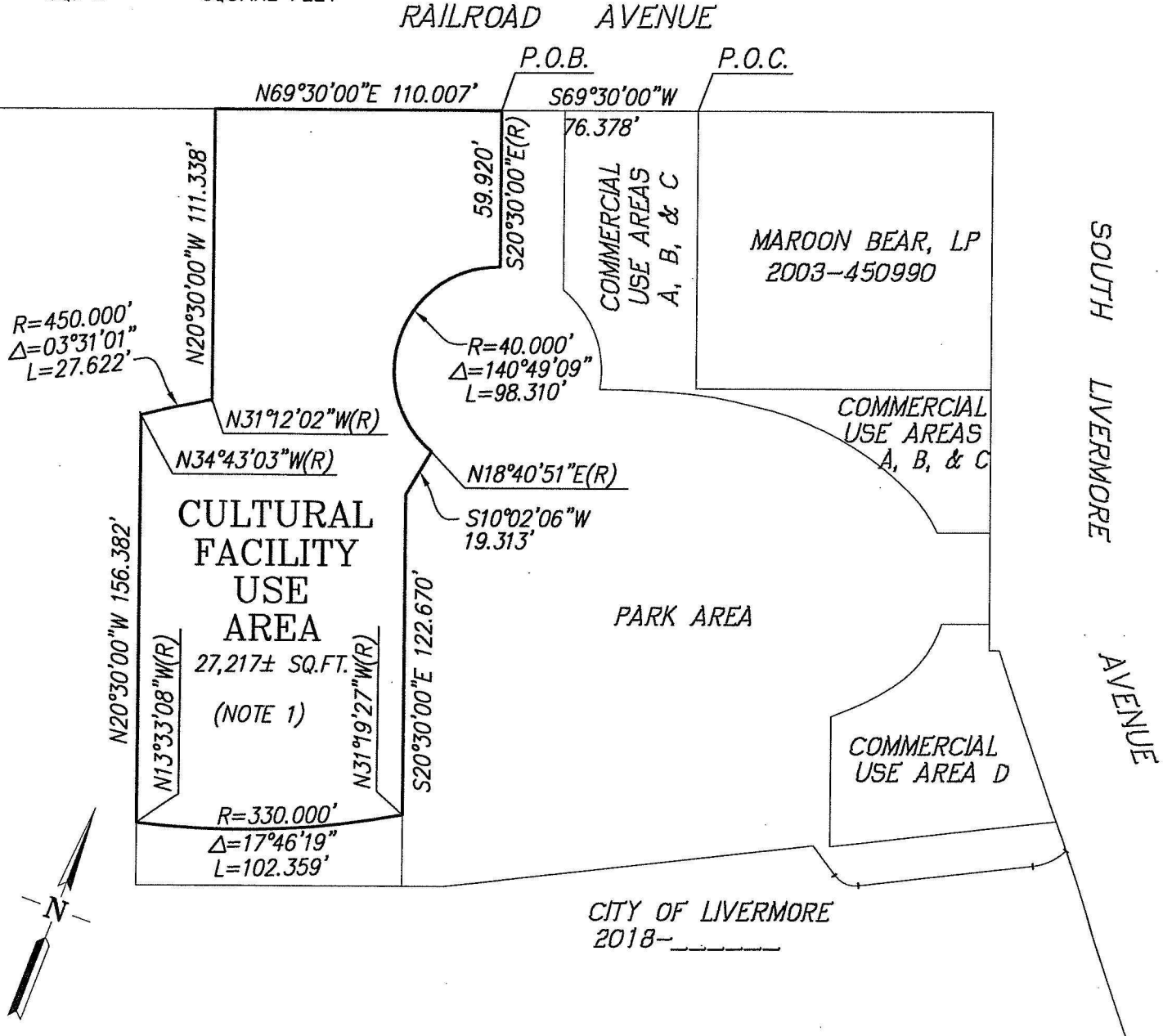
EXHIBIT B

LEGEND

———	BOUNDARY
P.O.B.	POINT OF BEGINNING
P.O.C.	POINT OF COMMENCEMENT
SQ.FT.	SQUARE FEET

GENERAL NOTE:

1. THE BUILDABLE FOOTPRINT WITHIN THE CULTURAL FACILITY AREA SHALL NOT EXCEED 20,100 SQUARE FEET.



SHEET 2 OF 4

EXHIBIT D

PLAT TO ACCOMPANY LEGAL DESCRIPTION FOR

CULTURAL FACILITY USE AREA

CITY OF LIVERMORE, ALAMEDA COUNTY, CALIFORNIA

PAGE 4 OF 6

RJA
RUGGERI-JENSEN-AZAR
ENGINEERS ▪ PLANNERS ▪ SURVEYORS
4690 CHABOT DRIVE, SUITE 200 PLEASANTON, CA 94588
PHONE: (925) 227-9100 FAX: (925) 227-9300

SCALE:	DATE:	JOB NO.:
1" = 60'	MARCH 13, 2018	151084.45

FOR CURVE/LINE TABLES SEE SHEET 4

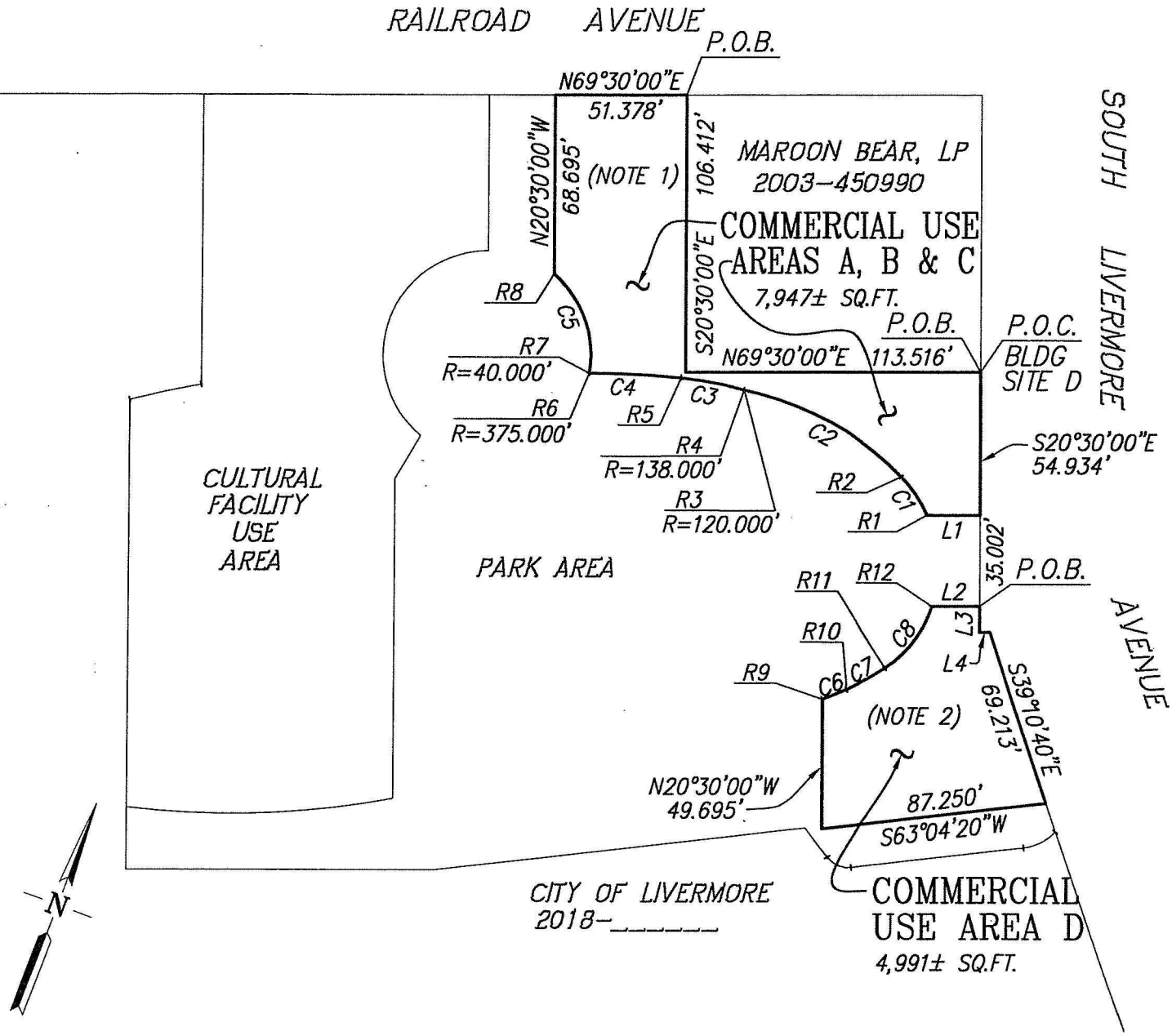
EXHIBIT B

LEGEND

———	BOUNDARY
P.O.B.	POINT OF BEGINNING
P.O.C.	POINT OF COMMENCEMENT
SQ.FT.	SQUARE FEET

GENERAL NOTES:

1. THE BUILDABLE FOOTPRINT WITHIN THE COMMERCIAL USE AREAS A, B & C SHALL NOT EXCEED 5,700 SQUARE FEET.
2. THE BUILDABLE FOOTPRINT WITHIN THE COMMERCIAL USE AREA D SHALL NOT EXCEED 2,900 SQUARE FEET.



SHEET 3 OF 4

EXHIBIT D

PLAT TO ACCOMPANY LEGAL DESCRIPTION FOR

COMMERCIAL USE AREAS

CITY OF LIVERMORE. ALAMEDA COUNTY. CALIFORNIA

RJA
RUGGERI-JENSEN-AZAR
ENGINEERS ▪ PLANNERS ▪ SURVEYORS
4690 CHABOT DRIVE, SUITE 200 PLEASANTON, CA 94588
PHONE: (925) 227-9100 FAX: (925) 227-9300

SCALE:	DATE:	JOB NO.:
1" = 60'	MARCH 13. 2018	151084.45

Radial Bearing Table	
Line	Bearing
R1	N45°37'56"E
R2	N25°03'00"E
R3	N08°22'42"W
R4	N04°27'15"W
R5	N14°48'32"W
R6	N20°12'19"W
R7	N79°18'30"E
R8	N18°10'56"E
R9	N41°51'41"W
R10	N43°43'22"W
R11	N53°38'21"W
R12	N86°40'57"E

Line Table		
Line	Bearing	Distance
L1	N69°30'00"E	20.266'
L2	N69°30'00"E	18.221'
L3	N20°30'00"W	10.064'
L4	N69°30'00"E	4.078'

Curve Table			
Curve	Radius	Delta	Length
C1	50.000'	20°34'56"	17.961'
C2	120.000'	33°25'42"	70.012'
C3	138.000'	10°21'17"	24.940'
C4	375.000'	5°23'47"	35.320'
C5	40.000'	61°07'34"	42.674'
C6	300.000'	1°51'41"	9.746'
C7	100.000'	9°54'59"	17.308'
C8	44.000'	39°40'42"	30.471'

SHEET 4 OF 4

EXHIBIT D

PLAT TO ACCOMPANY LEGAL DESCRIPTION
FOR
COMMERCIAL USE AREAS

CITY OF LIVERMORE, ALAMEDA COUNTY, CALIFORNIA

RJA
RUGGERI-JENSEN-AZAR
ENGINEERS ▪ PLANNERS ▪ SURVEYORS
4690 CHABOT DRIVE, SUITE 200 PLEASANTON, CA 94588
PHONE: (925) 227-9100 FAX: (925) 227-9300

SCALE:	DATE:	JOB NO.:
1" = 60'	MARCH 13, 2018	151084.45

EXHIBIT H
INSURANCE REQUIREMENTS

INSURANCE REQUIREMENTS

1. General

Developer is required to procure and provide proof of insurance coverage required by these Insurance Requirements in the form of certificates and endorsements. The required insurance must cover the activities of the Developer, its Contractor and Subcontractors relating to or arising from the project described in the agreement to which these requirements are attached ("Project"), and must remain in full force and effect at all times during the period covered by the Agreement until the date of Acceptance. All required insurance must be issued by a company licensed to do business in the State of California, and each such insurer must have an A.M. Best's financial strength rating of "A" or better and a financial size rating of "VII" or better, and be approved by the City Attorney and City's Risk Manager before the Agreement is awarded. (Any waiver may only apply under written waiver from the Risk Manager.)

2. Required policies and limits.

The following insurance policies and limits are required for this Contract:

2.1. General.

Any available insurance proceeds broader than or in excess of the specified minimum insurance coverage requirements and/or limits must be available to the additional insured. Furthermore, the requirements for coverage and limits must be (1) the minimum coverage and limits specified in the Contract Documents; or (2) the broader coverage and maximum limits of coverage of any insurance policy or proceeds available to the named insured; whichever is greater.

2.2. Limits.

The limits of required insurance may be satisfied by a combination of primary and umbrella or excess insurance. Any umbrella or excess insurance must contain or be endorsed to contain a provision that the coverage will also apply on a primary and non-contributory basis for the benefit of the City before the City's own insurance or self-insurance may be called upon to protect it as a named insured.

3. Minimum Scope of Insurance.

Coverage must be at least as broad as the following:

3.1. Insurance Services Office Commercial General Liability coverage: (a) Blanket contractual liability; (b) Broad form property coverage; and (c) Personal injury;

3.2. Insurance Services Office form covering Automobile Liability, code 1 (any auto);

3.3. Workers' Compensation insurance as required by the State of California and Employer's Liability insurance. A waiver of subrogation is required for Workers'

Compensation insurance; and

3.4. Other. Any other insurance coverages and limits required in the Contract Documents.

4. Minimum Limits of Insurance.

Contractor must maintain limits no less than:

4.1. General Liability: $5,000,000 per occurrence for bodily injury, personal injury and property damage and a $10,000,000 aggregate. If Commercial General Liability insurance or other form with a general aggregate liability is used, either the general aggregate limit must apply separately to this Project or must be designated as project specific, or the general aggregate limit must be twice the required occurrence limit.

4.2. Automobile Liability: $2,000,000 per accident for bodily injury and property damage.

4.3. Workers' Compensation/Employer's Liability: In conformance with California state requirements including $1,000,000 Employers' Liability per accident, per employee for bodily injury or disease. A waiver of subrogation is required for Workers' Compensation.

4.4. Builder's Risk Insurance: The Builder's Risk Insurance policy must be issued on occurrence basis, for all-risk coverage on a 100% completed value basis on the insurable portion of the Project for the benefit of the City. This insurance must protect the Contractor and the City against risks of damage to buildings, structures, and materials and equipment. Builder's Risk insurance must name the City as loss payee. The policy must contain a provision that in the event of payment for any loss under the coverage provided, the insurance company will have no rights of recovery against the Contractor and the City. The Builder's Risk policy must insure against all risks of direct physical loss or damage to property from any external cause. Allowable exclusions, if any, must be as specified in the Special Conditions and approved by the City's Risk Manager.

4.5. Completed Operations: Contractor shall maintain insurance as required by this contract for a minimum of five years following the completion of this Project. In the event the Contractor fails to obtain or maintain completed operations coverage as required by this agreement, the City of Livermore at its sole discretion may purchase the coverage required and the cost will be paid by the Contractor. Completed Operations endorsement or coverage shall be at least as broad as Insurance Services Office CG 20 37. Contractor shall require and verify that all subcontractors or other parties hired for this Agreement purchase and maintain coverage for indemnity and insurance requirements at least as broad as specified in this Agreement to the extent they apply to the scope of the subcontractor's work with the same Certificate of Insurance requirements and naming as additional insureds all parties to this Agreement. Contractor shall include the following language in their agreements with Subcontractors: "Subcontractor agrees to be bound to Contractor and City in the same manner and to the same extent as Contractor is bound to City under the Agreement. Subcontractor further agrees to include the same

requirements and provisions of this Agreement, including the indemnity and insurance requirements, with any sub-subcontractor to the extent they apply to the scope of the subcontractor's work. A copy of the City Contract Document Indemnity and Insurance provisions will be furnished to the Subcontractor upon request." Contractor shall provide proof of such compliance and verification to the City upon request.

5. Deductibles and Self-Insured Retentions

5.1. City Approval. Any deductibles or self-insured retentions must be declared to and approved by the City. At the option of the City, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City, its officers, officials, employees, and volunteers; or the Contractor shall procure a bond guaranteeing payment of losses and related investigations, claims administration and defense expenses.

5.2. Self-Insured Retention. 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.

5.3. Copies. The City reserves the right to obtain a full certified copy of any insurance policy and endorsement. Failure to exercise this right shall not constitute a waiver of right to exercise later.

6. Other Insurance Provision Requirements.

The required general liability and automobile policies are to contain, or be endorsed to contain the following provisions:

6.1. The City, its officers, officials, employees, agents and designated volunteers are to be covered as additional insureds as respects alleged liability arising out of activities performed by or on behalf of the Contractor; products and completed operations of the Contractor; premises owned, occupied or used by the Contractor; or automobiles owned, leased, hired or borrowed by the Contractor. The coverage shall contain no special limitations on the scope of protection afforded to the City, its officers, officials, employees, agents or volunteers.

6.2. Any failure to comply with reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to the City, its officers, officials, employees, agents or designated volunteers.

6.3. Contractor must furnish properly executed Certificates of Insurance from insurance companies acceptable to the City and signed copies of the specified endorsements for each policy before beginning Work under the Contract. That documentation must clearly evidence all coverages required above including specific evidence of separate endorsements naming the City and must provide that such insurance shall not be materially changed, terminated or allowed to expire in accordance with policy provisions by written notice and certified mail, return receipt requested, has been filed with the Risk Manager. Contractor shall replace such certificates for policies expiring before completion of Work.

7. Acceptability of Insurers.

Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A: VII.

8. Cross-Liability.

The Liability policy shall include a cross-liability or severability of interest endorsement.

9. Failure to Maintain Insurance Coverage.

If Contractor, for any reason, fails to maintain the required insurance coverage, it shall be deemed a material breach of contract. The City, at its sole option, may terminate this agreement and obtain damages from the Contractor resulting from the breach. Alternatively, the City may purchase the required insurance coverage, and without further notice to Contractor, the City may deduct from sums due to Contractor any premium costs advanced by the City for the insurance.

10. Primary and Non-Contributory.

For any claims related to this Project, the Contractor's insurance coverage shall be primary insurance as respects the City, its officers, officials, employees, agents and designated volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees, agents or designated volunteers shall be excess of the Contractor's insurance and shall not contribute with it.

The additional insured coverage under the 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 CG 20 01 04 13.

11. Subcontractors.

Contractor must require that every level of Subcontractor and every entity performing Work on the Project to be contractually bound to meet all of the requirements of the Contract Documents to the same extent as the Contractor, to the extent the requirements apply to such Work. Contractor shall require that every level of Subcontractor and every entity performing Work on the Project contractually provide the Contractor and City the right to enforce all applicable requirements of the Contract Documents, including all indemnity and insurance requirements. Contractor must require all Subcontractors and entities performing Project Work to provide valid certificates of insurance and required endorsements before beginning any Work and proof of such compliance to the City if requested.

12. Subrogation Waiver.

Contractor waives subrogation rights against City regardless of the applicability of any insurance proceeds, must require all Subcontractors, every entity performing Project Work, or others involved in any way with the Work to do likewise.

13. Verification of Coverage.

Contractor must furnish the City with original endorsements effecting coverage required by the Contract Documents. The endorsements are to be signed by a person authorized by the insurer to bind coverage on its behalf.

END OF DOCUMENT

EXHIBIT I
MEMORANDUM OF DDA

EXHIBIT B

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

City of Livermore
1052 South Livermore Avenue
Livermore, CA 94550
Attn: Director Community and Economic Development

No fee for recording pursuant
to Government Code Section 27383

MEMORANDUM OF DISPOSITION AND DEVELOPMENT AGREEMENT

THIS MEMORANDUM OF DISPOSITION AND DEVELOPMENT AGREEMENT (the "Memo of DDA") is made as of October __, 2018, by and between the City of Livermore, a municipal corporation (the "City") and Red Bear Property Management, Inc., a California corporation ("Developer") to confirm that the City and the Developer are parties to that certain Disposition and Development Agreement dated as of October __, 2018, as may be amended from time to time (the "DDA"). The DDA concerns the sale of real property in Livermore, California, which real property is described in the attached Exhibit D and the development of approximately 8,600 square feet of commercial buildings. The DDA is a public document and may be reviewed at the in the office of the City Clerk of the City of Livermore. In the event, and to the extent, that any of the terms or provisions of this Memo of DDA are inconsistent with the terms or provisions of the DDA, the terms and provisions of the DDA shall govern and prevail.

IN WITNESS WHEREOF, the City and Developer have executed this Agreement by duly authorized representatives, all on the date first written above.

City:

By: _____

Its:

Date: _____

DEVELOPER:

APPROVED AS TO FORM

Name: _____

By: _____ Title: _____

Exhibit D
Property Description

EXHIBIT "D"
LEGAL DESCRIPTION

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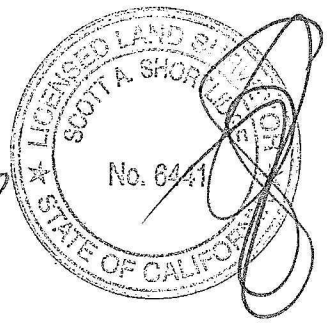
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Scott Shortlidge, LS 6441 Date



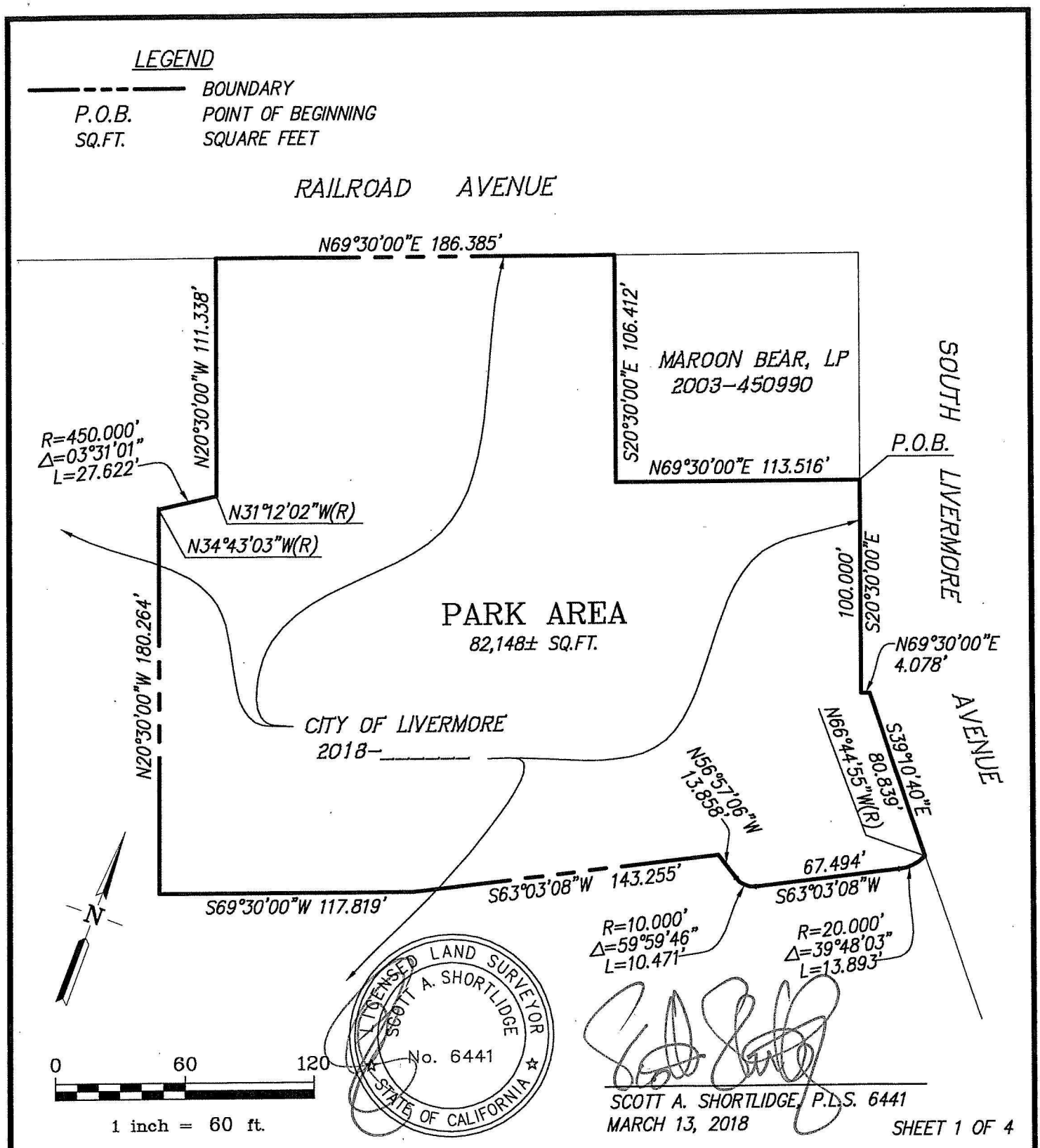


EXHIBIT D

PLAT TO ACCOMPANY LEGAL DESCRIPTION
FOR
PARK AREA

CITY OF LIVERMORE, ALAMEDA COUNTY, CALIFORNIA

RJA
RUGGERI-JENSEN-AZAR
ENGINEERS ▪ PLANNERS ▪ SURVEYORS
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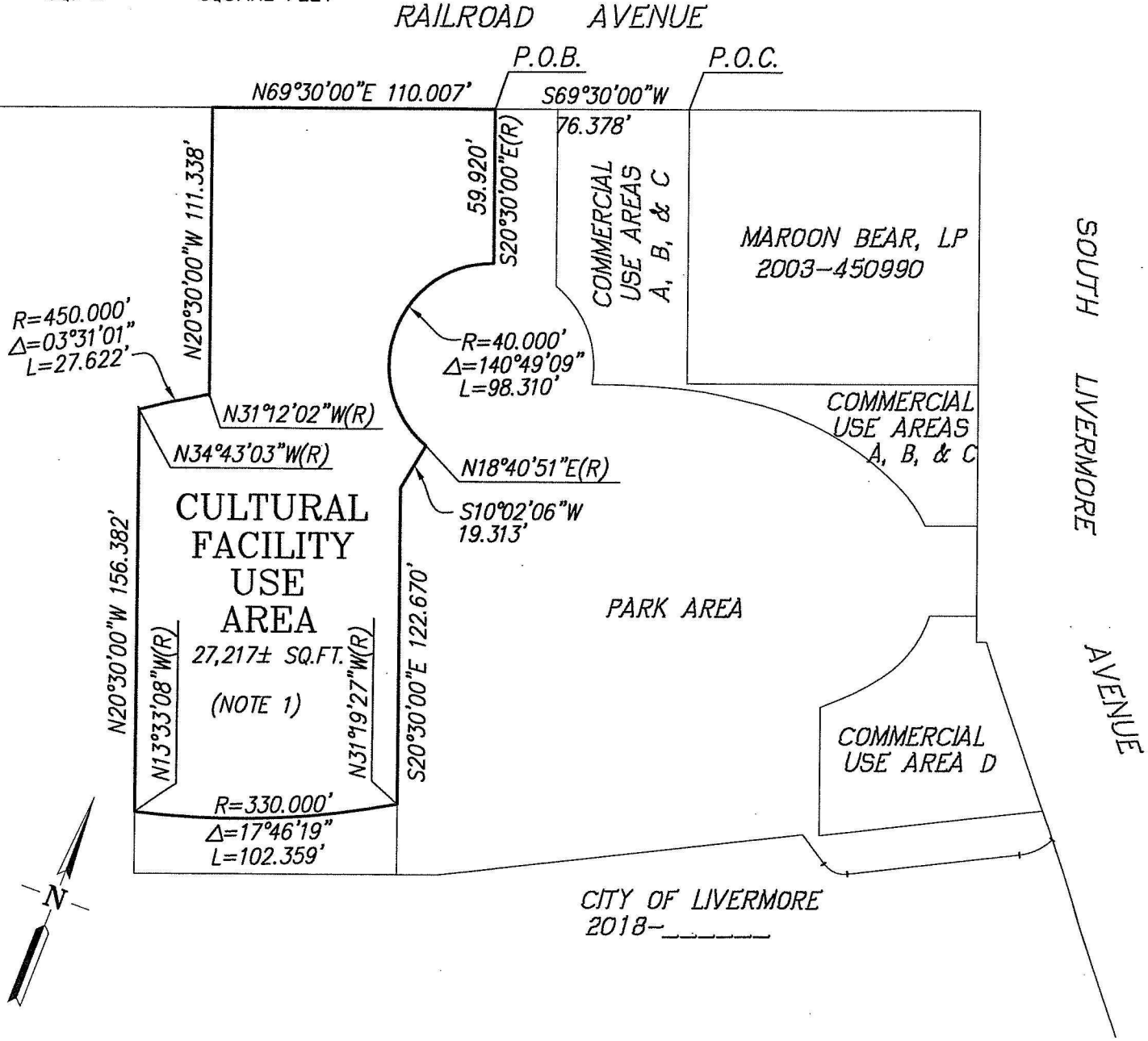
G:\JOB2015\151084 T45\MAPPING\PLATS\PARK AREA.DWG 2/6/2018 4:55:23 PM JOHN KNEZOVICH

LEGEND

———	BOUNDARY
P.O.B.	POINT OF BEGINNING
P.O.C.	POINT OF COMMENCEMENT
SQ.FT.	SQUARE FEET

GENERAL NOTE:

1. THE BUILDABLE FOOTPRINT WITHIN THE CULTURAL FACILITY AREA SHALL NOT EXCEED 20,100 SQUARE FEET.



SHEET 2 OF 4

EXHIBIT D

PLAT TO ACCOMPANY LEGAL DESCRIPTION FOR

CULTURAL FACILITY USE AREA

CITY OF LIVERMORE, ALAMEDA COUNTY, CALIFORNIA

RJA
RUGGERI-JENSEN-AZAR
ENGINEERS ▪ PLANNERS ▪ SURVEYORS
4690 CHABOT DRIVE, SUITE 200 PLEASANTON, CA 94588
PHONE: (925) 227-9100 FAX: (925) 227-9300

SCALE:	DATE:	JOB NO.:
1" = 60'	MARCH 13, 2018	151084.45

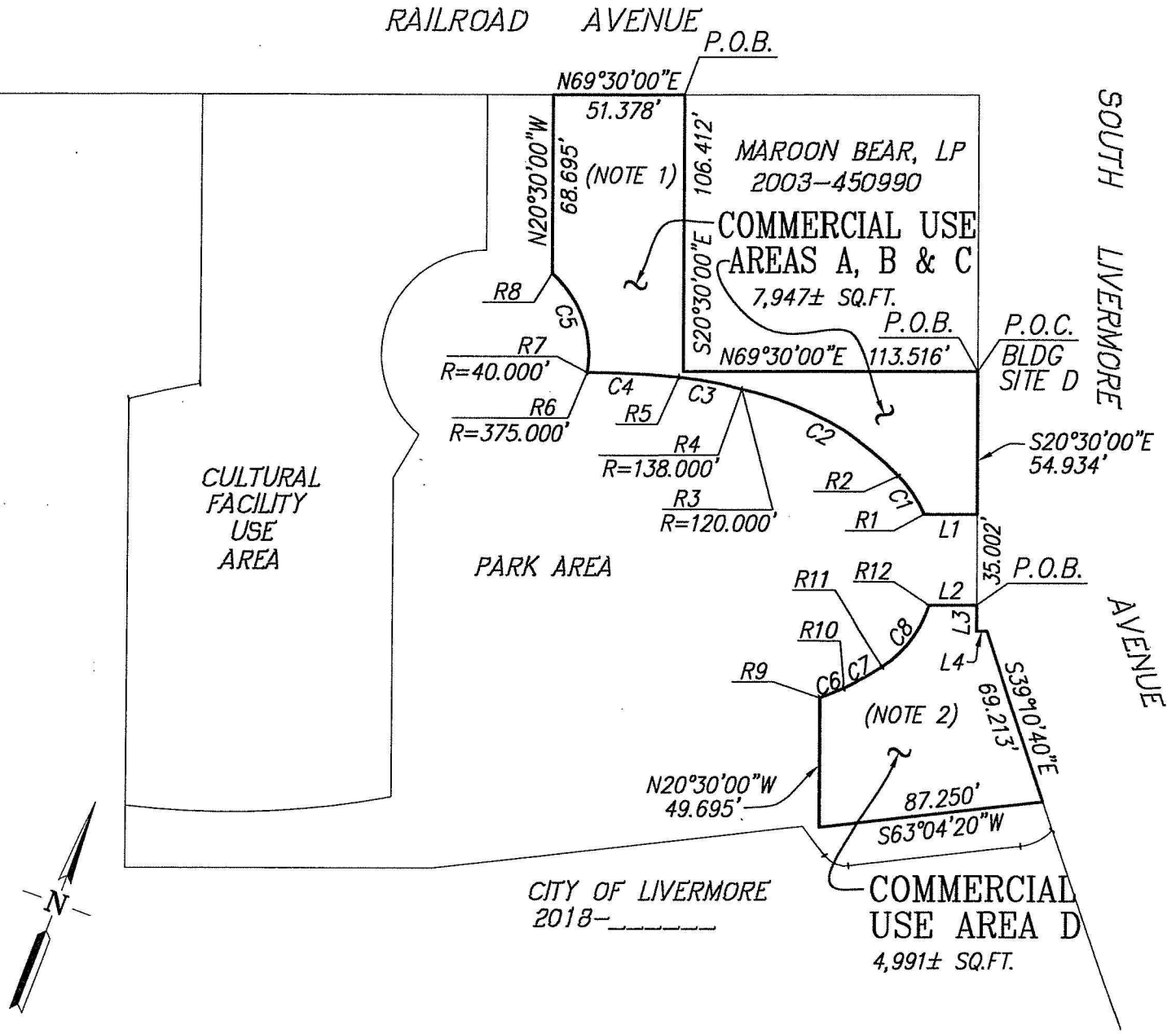
FOR CURVE/LINE TABLES SEE SHEET 4

LEGEND

———	BOUNDARY
P.O.B.	POINT OF BEGINNING
P.O.C.	POINT OF COMMENCEMENT
SQ.FT.	SQUARE FEET

GENERAL NOTES:

1. THE BUILDABLE FOOTPRINT WITHIN THE COMMERCIAL USE AREAS A, B & C SHALL NOT EXCEED 5,700 SQUARE FEET.
2. THE BUILDABLE FOOTPRINT WITHIN THE COMMERCIAL USE AREA D SHALL NOT EXCEED 2,900 SQUARE FEET.



SHEET 3 OF 4

EXHIBIT D

PLAT TO ACCOMPANY LEGAL DESCRIPTION FOR

COMMERCIAL USE AREAS

CITY OF LIVERMORE. ALAMEDA COUNTY. CALIFORNIA

RJA
RUGGERI-JENSEN-AZAR
ENGINEERS ▪ PLANNERS ▪ SURVEYORS
4690 CHABOT DRIVE, SUITE 200 PLEASANTON, CA 94588
PHONE: (925) 227-9100 FAX: (925) 227-9300

SCALE:	DATE:	JOB NO.:
1" = 60'	MARCH 13. 2018	151084.45

Radial Bearing Table	
Line	Bearing
R1	N45°37'56"E
R2	N25°03'00"E
R3	N08°22'42"W
R4	N04°27'15"W
R5	N14°48'32"W
R6	N20°12'19"W
R7	N79°18'30"E
R8	N18°10'56"E
R9	N41°51'41"W
R10	N43°43'22"W
R11	N53°38'21"W
R12	N86°40'57"E

Line Table		
Line	Bearing	Distance
L1	N69°30'00"E	20.266'
L2	N69°30'00"E	18.221'
L3	N20°30'00"W	10.064'
L4	N69°30'00"E	4.078'

Curve Table			
Curve	Radius	Delta	Length
C1	50.000'	20°34'56"	17.961'
C2	120.000'	33°25'42"	70.012'
C3	138.000'	10°21'17"	24.940'
C4	375.000'	5°23'47"	35.320'
C5	40.000'	61°07'34"	42.674'
C6	300.000'	1°51'41"	9.746'
C7	100.000'	9°54'59"	17.308'
C8	44.000'	39°40'42"	30.471'

SHEET 4 OF 4

EXHIBIT D

PLAT TO ACCOMPANY LEGAL DESCRIPTION
FOR
COMMERCIAL USE AREAS

CITY OF LIVERMORE, ALAMEDA COUNTY, CALIFORNIA

RJA
RUGGERI-JENSEN-AZAR
ENGINEERS ▪ PLANNERS ▪ SURVEYORS
4690 CHABOT DRIVE, SUITE 200 PLEASANTON, CA 94588
PHONE: (925) 227-9100 FAX: (925) 227-9300

SCALE:	DATE:	JOB NO.:
1" = 60'	MARCH 13, 2018	151084.45

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EXHIBIT J
SCHEDULE OF PERFORMANCE

Commercial - DDA Schedule of Performance

EXHIBIT J

Prior to Close of Escrow	Due Date	Status	Who	Reference Doc/ Section
Preliminary Pro Forma	23-Sep-19		Developer	DDA Section 2.1a
Obtain Entitlements and Reciprocal Access Easement	23-Sep-19		Developer/City	DDA Section2.1b
Determine Insurance Requirements per Activity	23-Sep-19		City	DDA Section2.1e
Deposit Purchase Price into Escrow	23-Sep-19		Developer	DDA Section2.1f
Deed restriction on 39 S. Livermore Ave. for public parking	23-Sep-19		Developer	DDA Section2.1g
Deed Restriction for Public Restroom	23-Sep-19		Developer	DDA Section2.1h
Parcel Map PM Finagled	23-Sep-19		City	DDA Section2.2a
Right of Entry to Property for Developer	23-Sep-19		City	DDA Section2.3
PreConditions to Begin of Construction Project				
Develop and Staff Approval of Concept Plans	22-Apr-19		Developer/City	DDA Section4.5
City Approval of Entitlement Plans	20-Aug-19		City	DDA Section5.1
Submit Construction and Building Permit Plans	17-Feb-20		Developer/City	
City Fees Paid	20-Apr-20		Developer	DDA Section5.2
Obtain Building Permit	20-Apr-20		Developer	DDA Section5.4
Existing Temporary Parking Lot vacated	28-Apr-20		City	
Construction of Project				
Begin Construction	5-May-20		Developer	
Complete Construction	22-Dec-20		Developer	

Due Dates assume CC Approval of DDA on October 22, 2018. If CC approval is delayed the due dates should be extended on a day for day basis.

EXHIBIT K
SCOPE OF DEVELOPMENT AND CITY GUIDELINES

EXHIBIT “K”
SCOPE OF DEVELOPMENT

Red Bear Property Management (Red Bear) will maximize land use of the property consistent with the Downtown Specific Plan and the goals articulated by the City Council upon its selection of Red Bear to negotiate for the Disposition and Development Agreement. Red Bear will construct the development of the property consistent with any City entitlements and requirements for the project.

The project will consist of approximately 8,600 square feet of commercial buildings on approximately 12,938 square feet of the property. The project will utilize architecture and design elements compatible with Blacksmith Square. Building walls adjacent to Stockmen’s Park will be oriented towards the park so that tenant spaces actively interface with Stockmen’s Park.

The project will include its own trash enclosure and collection facilities. At such time as the L Street Parking Garage Compactor Facility becomes available for business use, the project may utilize these facilities, subject to standard City fees and requirements for use, which are applicable to all businesses users.

Red Bear will also construct public improvements related to the improvements consisting of: frontage improvements, public art, and public access to Stockmen’s Park to and from Railroad Avenue and S. Livermore Avenue.

IN THE CITY COUNCIL OF THE CITY OF LIVERMORE, CALIFORNIA

AN ORDINANCE APPROVING DEVELOPMENT AGREEMENT (DA) 19-002 WITH RED BEAR PROPERTY MANAGEMENT, INC FOR THE DOWNTOWN COMMERCIAL PROJECT

THE CITY COUNCIL OF THE CITY OF LIVERMORE DOES ORDAIN AS FOLLOWS:

Section 1. The Planning Commission held a duly noticed public hearing on August 20, 2019, to consider adoption of the Development Agreement and by its Resolution No. 20-19, attached hereto as Exhibit A, recommended that the City Council approve Development Agreement 19-002.

Section 2. The City Council considered the findings made by the Planning Commission for approval of the Development Agreement in Planning Commission Resolution No. 20-19 and, based on the City Council's own independent review and considerations, hereby adopts the same findings by reference.

Section 3. The City Council considered the environmental review in Resolution No. 2020-180 and instructed staff to file a Notice of Determination with the Alameda County Clerk if the Development Agreement was approved.

Section 4. The Development Agreement is consistent with the General Plan, the Downtown Specific Plan and the Livermore Development Code Chapter 9.04.

Section 5. Pursuant to Government Code section 65864, et seq., the City Council approves that certain document under City Application Number Development Agreement 19-002 and entitled "*Development Agreement Blacksmith Square Expansion*" ("Development Agreement"), attached hereto as Exhibit B.

Section 6. The City Manager is hereby authorized to sign the Development Agreement, attached hereto as Exhibit B, on behalf of the City of Livermore.

Section 7. Staff is instructed to file a Notice of Determination with the Alameda County Clerk.

Section 8. The City Clerk is directed to record the Development Agreement within ten days after the effective date of the Development Agreement.

Section 9. The documents that constitute the record of proceedings upon which this decision is based can be found in the City Clerk's Office, 1052 S. Livermore Avenue, Livermore, California.

Section 10. If any part of this ordinance is declared unconstitutional or invalid by a court, such unconstitutionality or invalidity shall not affect any of the remaining parts.

Section 11. This ordinance, or a comprehensive summary thereof, shall be published once in a newspaper of general circulation of the city of Livermore within fifteen days after its adoption and shall take effect and be in force no earlier than thirty days from and after its adoption and upon execution by all parties of the Development Agreement.

The foregoing ordinance was introduced at the regular meeting of the City Council of the City of Livermore held on October 26, 2020, by the following vote:

AYES:	Council Members Carling, Coomber, Munro, Vice Mayor Woerner, Mayor Marchand
NOES:	None
ABSENT:	None
ABSTAIN:	None

The ordinance was adopted at the regular meeting of the City Council held on November 9, 2020, by the following vote:

AYES:	Council Members Carling, Coomber, Munro, Vice Mayor Woerner, Mayor Marchand
NOES:	None
ABSENT:	None
ABSTAIN:	None

John Marchand
Mayor, City of Livermore

ATTEST:
Marie Weber
City Clerk

Date: November 10, 2020

APPROVED AS TO FORM:
Kim Cilley
Senior Assistant City Attorney

Exhibit A - Planning Commission Resolution No. 20-19
Exhibit B - Development Agreement No. 19-002

IN THE PLANNING COMMISSION OF THE CITY OF LIVERMORE STATE OF CALIFORNIA

A RESOLUTION RECOMMENDING APPROVING

Development Agreement (DA) 19-002
Blacksmith Square Expansion

Authorizing execution of a Development Agreement (DA19-002) with Red Bear Property Management, Inc. to construct an approximately 8,600 square foot expansion of Blacksmith Square for commercial uses on the southwest corner of South Livermore Avenue and Railroad Avenue.

Location: 29 South Livermore Avenue and 2139 Railroad Avenue

The City received an application for Development Agreement (DA) 19-002.

A public notice was mailed to neighboring property owners and published in a newspaper of local circulation.

The Planning Commission held a noticed public hearing on August 20, 2019, considered the staff recommendation for approval, and heard public testimony.

NOW, THEREFORE, BE IT RESOLVED that, based on the whole record before it, the Planning Commission of the City of Livermore recommends the City Council find the environmental impacts of Development Agreement (DA) 19-002 were analyzed by and are consistent with the 2019 Addendum to the Downtown Specific Plan 2009 Subsequent Environmental Impact Report.

BE IT FURTHER RESOLVED that the Planning Commission finds the following based upon the information presented for Development Agreement (DA) 19-002:

1. The Development Agreement provides benefit to the City.

   Finding: The development of the proposed commercial project will implement the community's vision for the Downtown and help activate Stockmen's Park. Upon completion, the project will support the City's economic development goals for Downtown, provide employment opportunities, and provide the City with additional revenue in the form of increased property and sales taxes.

2. The Development Agreement is consistent with the purpose, intent, goals, policies, programs, and land use designations of the General Plan, any applicable Specific Plan, and the Development Code.

Finding: The project site is designated as Downtown Area in the General Plan. The Downtown Area designation is a general designation that applies to the area traditionally known as Downtown Livermore. The Downtown Area seeks to provide a unique, pedestrian-friendly shopping environment supported by higher-intensity residential development. The area supports a variety of mixed uses, including commercial, office, entertainment, lodging, and residential, which are implemented through the Downtown Specific Plan [Livermore General Plan Land Use Element, p. 3-22]. The future development of a commercial space on this site is consistent with the land use designation and General Plan goals for the Downtown Area.

The project site is located in the Downtown Core, Subareas 2 and 3 of the Downtown Specific Plan. The purpose of the Downtown Core is to revitalize the City's historic core area as the center of the City of Livermore [Downtown Specific Plan, Downtown Core p. 1] .The intent of this Plan Area is to, "promote the continued development and revitalization of the City's pedestrian-oriented Downtown district that serves as the center of the Livermore Community, its most unique shopping district, and as a neighborhood hub for the residences within and surrounding it." [Id.] To support this objective, the Downtown Core permits a variety of specialty retail, restaurant, and residential uses and is intended to be the most densely developed part of the City. Various commercial retail uses are permitted in Subareas 2 and 3 of the Downtown Core. Therefore, the proposed use is consistent with the Downtown Specific Plan.

The Development Agreement secures Red Bear's right to develop and use the property in accordance with the City's General Plan, Downtown Specific Plan, and Livermore Development Code in effect at the time of the effective date of the Development Agreement.

3. The Development Agreement complies with the requirements of the Government Code Sections 65864 through 65869.5.

   Finding: Development Agreement (DA) 19-002 complies with the requirements of Government Code Sections 65864 through 65869.5 (e.g. including but not limited to: DA 19-002 is prepared pursuant to procedures established by the City, which are in the Development Code; the City is entering into DA 19-002 with persons authorized to represent the individuals with a legal interest in the property to be developed; DA 19-002 establishes a duration, which is 30 years; DA 19-002 is being reviewed in a noticed public hearing; and DA 19-002 is not in a coastal plan area).

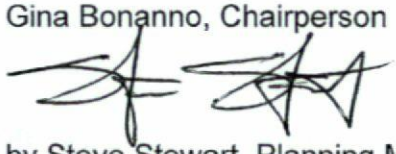
BE IT FURTHER RESOLVED by the Planning Commission of the City of Livermore that, based on the above findings, Development Agreement (DA) 19-002 is recommended to the City Council for approval.

The documents that constitute the record of proceedings upon which this decision is based can be found in the Community Development Department, 1052 S. Livermore Avenue, in Livermore, California.

On the motion by Commissioner Bjorklund, seconded by Commissioner Anderson, the foregoing Resolution was adopted at the Planning Commission meeting of August 20, 2019, by the following vote:

AYES: ANDERSON, BJORKLUND, BONANNO, STEIN.
NOES: NONE.
ABSENT: NONE.
RECUSED: FAGUNDES.

Gina Bonanno, Chairperson



by Steve Stewart, Planning Manager
Secretary to the Planning Commission

RECORDING REQUESTED BY AND
WHEN RECORDED RETURN TO:

City Clerk
City of Livermore
1052 S. Livermore Avenue
Livermore, CA 94550

DEVELOPMENT AGREEMENT (DA) 19-002
Blacksmith Square Expansion

This Development Agreement ("Agreement") is entered into on _____, 20__, between the City of Livermore, a municipal corporation, ("City") and Red Bear Property Management Inc., an incorporated company ("Developer").

RECITALS

This Development Agreement is based on the following facts:

A. The City has the authority to enter into a development agreement under Government Code section 65864 *et seq.* ("Development Agreement Statutes") and Chapter 9.04 of the Livermore Development Code in order to vest certain rights in the Developer and to meet certain public purposes of the local government.

B. The City is the owner of approximately 0.3 acres of property located on portions of 29 South Livermore Avenue and 2139 Railroad Avenue in the City of Livermore, County of Alameda, described more specifically in Exhibit A, attached hereto ("Property"). On October 22, 2018, the City and the Developer entered into a Disposition and Development Agreement to articulate their respective obligations for the sale and development of the Property. The Disposition and Development Agreement, and any amendments thereto, is hereby referred to as the DDA for the purposes of this Agreement. The Developer has expended, and will continue to expend, significant funds to design the Project (defined below in recital D, Section 2) in anticipation of the purchase of the Property as required by the DDA, and to then construct the Project. The Developer has a legal and equitable interest in the Property which is the subject of this Agreement.

C. The Developer and the City desire to enter into this Agreement in order to facilitate the development of Property within the Downtown Core.

D. On October 22, 2018, the City Council approved a Disposition and Development Agreement (DDA) with the Developer, which established the terms for the sale and development of the City-owned sites to the Developer and the responsibilities of each of the parties. Upon

transfer of the Property from the City to the Developer, the Developer shall then also be known as the "Property Owner" when that term is used in this Agreement.

E. The City Council finds that the Blacksmith Square expansion will provide substantial public benefits and help attain certain public objectives, including without limitation: (i) development of the Downtown Core, which will revitalize the downtown area; (ii) provide a long-term source of employment opportunities; (iii) provide the City with additional revenue in the form of increased real property taxes; and (iv) activate Stockmen's Park and provide a place for residents and visitors to enjoy shopping and dining.

F. This Agreement will promote and encourage the development of the Property by providing the Developer and its creditors with a greater degree of certainty of the Developer's ability to expeditiously and economically complete the development effort for the Project, and the parties agree that the consideration to be received by the City pursuant to this Agreement and the rights secured to the Developer hereunder constitute sufficient consideration to support the covenants and agreements of the City and the Developer. By entering into this Agreement, the City desires to allow the Developer to design, apply for, and, if approved, to develop the Project pursuant to this Agreement, the DDA, the land-use ordinances, rules, regulations and policies applicable on the "Effective Date," as defined in Section 3, and to vest in Developer, to the fullest extent possible under the law, all possible development entitlements in order to complete the Project.

G. The commercial space the Developer proposes in connection with the Property has been extensively reviewed and considered by the City and its officers, agencies and departments. That commercial use has been found to accommodate the City's recommendations and suggestions in order to protect the public's interest and to enhance the desirability, from the public's perspective, of the Project and commercial use.

H. The City conducted duly noticed public hearings on this Agreement pursuant to Government Code section 65867 and Livermore Development Code sections 9.04.040 and 9.04.050 and found that the provisions of this Agreement and its purposes are consistent with the objectives, policies, general land uses and programs specified in the City's General Plan and Downtown Specific Plan.

I. This Agreement was adopted by ordinance of the City Council, after notice and public hearings before the Planning Commission and City Council and after City Council adoption/ approval of the 2009 Subsequent Environmental Impact Report for the Downtown Specific Plan Amendments and Regional Performing Arts Theater (the "Previous EIR") [LSA (March 2019) *California Environmental Quality Act (CEQA) Revised Addendum for the Downtown Specific Plan Amendment Project; Livermore, California*, State Clearing House No. 2008092085, in accordance with the California Environmental Quality Act, Public Resources Code section 21000 *et seq*.

NOW, THEREFORE, the City and Developer hereby agree that the aforementioned recitals are true and correct and further agree as follows:

1. The Property. The Property which is the subject of this Agreement is described in recital B above and Exhibit A, attached hereto.

2. The Project. Developer will construct an expansion of Blacksmith Square. The architecture of the new buildings will be consistent with the existing buildings at Blacksmith Square and interface with Stockmen's Park.

3. Effective Date. The effective date of this Agreement is the later of (a) thirty (30) days after the date the Ordinance approving this Agreement is adopted by the City Council, or (b) if a referendum petition is timely and duly circulated, filed and qualified, the date the election results on the ballot measure by City voters approving this Agreement are certified by the City Council in the manner provided by the Elections Code. This Agreement shall be executed by the City within ten (10) days after the effective date and recorded as provided in Government Code Section 65868.5

4. Term. The term of this Agreement is thirty (30) years, beginning on the effective date. The Agreement may be extended as provided for in the Development Agreement Statutes and the Livermore Development Code, subject to the written consent of the City and the Developer as Property Owner following transfer of the Property as set forth in the DDA. The Developer shall comply with the requirements set forth in the Schedule of Performance set forth in the DDA between the City and the Developer.

5. Vested Development Rights. Subject to this Agreement and during the life of this Agreement, the Property Owner has the right to develop and use the Property in accordance with:

a. The City's General Plan, Downtown Specific Plan, and the Livermore Development Code in effect on the effective date. For reference, the Downtown Area Land Use Designation from the General Plan, and the Downtown Core Land Use Map and Downtown Core Development Standards from the Downtown Specific Plan are attached hereto as Exhibit B;

b. All other City policies, ordinances, resolutions, rules, regulations and standards applicable to development or use of the Property on the effective date, except that Property Owner shall:

(1) Pay the processing and development impact fees consistent with the Disposition and Development Agreement in effect at the time those fees are paid;

(2) Comply with Building Code requirements in effect on a city-wide basis at the time of construction;

(3) Comply with construction and technical design standards or specifications for public improvements which are applicable city-wide;

(4) Comply with changes in City laws, regulations, plans or policies applicable city-wide, the terms of which are found by the City Council, based on substantial evidence, to be necessary to protect members of the public from a condition dangerous to their health or safety;

(5) Comply with a change in City law, regulations, plans or policies which is:
(i) Specifically mandated by state or federal law, or by any regional governmental agency that has legal authority over the City under state law or a joint powers agreement; or
(ii) A result of or in response to state or federal law, or regional agency action, made necessary in order for the City to avoid losing or not receiving substantial funding or other substantial public benefits or facilities that would be available to the City only if it makes such a change; or
(iii) Specifically mandated by, or necessary for compliance with or implementation of, the terms of any permit, entitlement or other authorization necessary for the development of the Property issued or granted to the City, County and/or Property Owner by any federal, state or regional agency;

(6) Following any subsequent environmental review, comply with required mitigation measures; and

c. All subsequent Project approvals which are consistent with this Agreement.

d. Developer acknowledges that execution of this Agreement by the City does not constitute approval of any required permits, applications, or allocations, and in no way limits the discretion of the City in the permit, allocation, and approval process.

6. Periodic Review. Review of the Agreement shall be made annually, consistent with Government Code section 65865.1 and Livermore Development Code Chapter 9.04.

7. Amendments. The Agreement may be amended by the parties consistent with the procedures set forth in the Development Agreement Statutes and the Livermore Development Code, as they are amended from time-to-time.

8. Remedies for Default. If a party is in default under this Agreement, the other party may pursue one or more of the following courses of action, after 30 days' written notice to the other party (or such longer period as may be required to cure the default so long as such party commences the cure within such 30-day period and diligently pursues the cure to completion): (a) waive the default; (b) in the City's case, pursue administrative remedies including denial or otherwise withholding issuance of building permits, certificates of occupancy or other approvals; (c) pursue judicial remedies; or (d) terminate this Agreement.

9. No Damages Relief Against the City. The parties acknowledge that the City would not have entered into this Agreement had it been exposed to damage claims from Developer for any breach thereof. As such, the parties agree that in no event shall Developer be entitled to recover damages against City for breach of this Agreement. To the extent permitted by law, specific enforcement of this Agreement is the proper and desirable remedy.

10. Recordation; Binding Effect. This Agreement shall be recorded in the office of the County Recorder and shall be binding upon and inure to the benefit of successors in interest to the parties. Where there is more than one Property Owner, the obligations are joint and several.

11. Legal Action; Attorney's Fees. If the City chooses to defend any third party claim or suit challenging any action taken by the City with regard to this Agreement or any procedure or aspect of the City's approval of the development of the Project, including the environmental review process, the Developer in its capacity as either Developer or Property Owner agrees to reimburse the City for its reasonable attorney's fees, expert witness fees, and related costs as the City may incur in connection with its retention of outside counsel, and for any award of court costs or fees against the City. The City has the right to choose and retain such legal counsel as the City deems appropriate. After expenses reach $100,000, and each $100,000 thereafter, the parties will confer to review the status of the litigation and their options for proceeding or settling, and they will negotiate in good faith about how the expenses will be allocated. The Developer in its capacity as the Developer or Property Owner shall have no obligation to reimburse the City for costs incurred after the date on which the Developer or Property Owner give the City written notice of their decision to settle a case, even if the City does not agree to the settlement.

If legal action is brought by one of the parties to enforce a provision of this Agreement, the prevailing party is entitled to reasonable attorney's fees, expert witness fees, and court costs.

12. Notices. The address of each party for the purpose of all notices permitted or required by this Agreement follows:

To City:	City of Livermore 1052 South Livermore Avenue Livermore, CA 94550 Attention: Community Development Director
With a copy to:	City Attorney City of Livermore 1052 South Livermore Avenue Livermore, CA 94550
To Developer:	Red Bear Property Management, Inc. 5955 Coronado Lane Pleasanton, CA 94588 Attn: Mike Madden
With a copy to:	[Address/If Needed]

The written address of either party set forth above may be changed by written notice given not less than five (5) days prior to the date such change is to be in effect. All notices under this Agreement shall be in writing, shall be properly addressed and shall be sent by personal delivery, United States mail (registered, certified, or Express Mail, return receipt requested and postage prepaid), or by overnight courier delivery service. All such notices shall be considered delivered: (i) if personally delivered, on the date of delivery; (ii) if sent by United States mail in the manner prescribed above, on the date shown on the return receipt for acceptance or rejection; or (iii) if sent by overnight courier delivery service, on the date of delivery or attempted delivery as shown by the written delivery record of such service.

13. Severability. If any term, provision, condition, or covenant of this Agreement, or the application thereof to any party or circumstances, shall to any extent be held invalid or unenforceable, the remainder of the instrument, or the application of such term, provision, condition or covenants or the application of such term, provision, condition or covenant to persons or circumstances other than those as to whom or which it is held invalid or unenforceable, shall not be affected thereby and each term and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

14. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which constitute one and the same instrument.

IN WITNESS WHEREOF, the parties have signed this Development Agreement on the dates indicated below.

DEVELOPER

a MICHAEL J. MADDEN, PRESIDENT
DEVELOPER:
RED BEAR PROPERTY MANAGEMENT,
Inc., a California Corporation

By: _____
(Notary Acknowledgment Required)

Date: 10/16/2020 Title: _____

CITY OF LIVERMORE

By: _____
Date: _____ Marc Roberts, City Manager

Attest:

_____
City Clerk

Approved as to Form:

_____
Assistant/City Attorney

Exhibits:

A Property Description

B General Plan Downtown Area Land Use Designation; Downtown Land Use Map; Downtown Core Development Standards

CALIFORNIA ACKNOWLEDGMENT CIVIL CODE § 1189

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 October 16, 2020 (Date) before me, Laura Albert, Notary Public (Here Insert Name and Title of the Officer)

personally appeared Michael Madden (Name(s) of Signer(s))

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.

LAURA ALBERT
Notary Public - California
Alameda County
Commission # 2287490
My Comm. Expires May 4, 2023

Place Notary Seal and/or Stamp Above

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 Laura Albert
Signature of Notary Public

OPTIONAL

Completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached Document
Title or Type of Document: Development Agreement
Document Date: October 16, 2020 Number of Pages: 7
Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: Michael Madden	Signer's Name: _____
☒ Corporate Officer – Title(s): President	☐ Corporate Officer – Title(s): _____
☐ Partner – ☐ Limited ☐ General	☐ Partner – ☐ Limited ☐ General
☐ Individual ☐ Attorney in Fact	☐ Individual ☐ Attorney in Fact
☐ Trustee ☐ Guardian or Conservator	☐ Trustee ☐ Guardian or Conservator
☐ Other: _____	☐ Other: _____
Signer is Representing: Red Bear Property Management, Inc.	Signer is Representing: _____

©2018 National Notary Association

EXHIBIT "A"

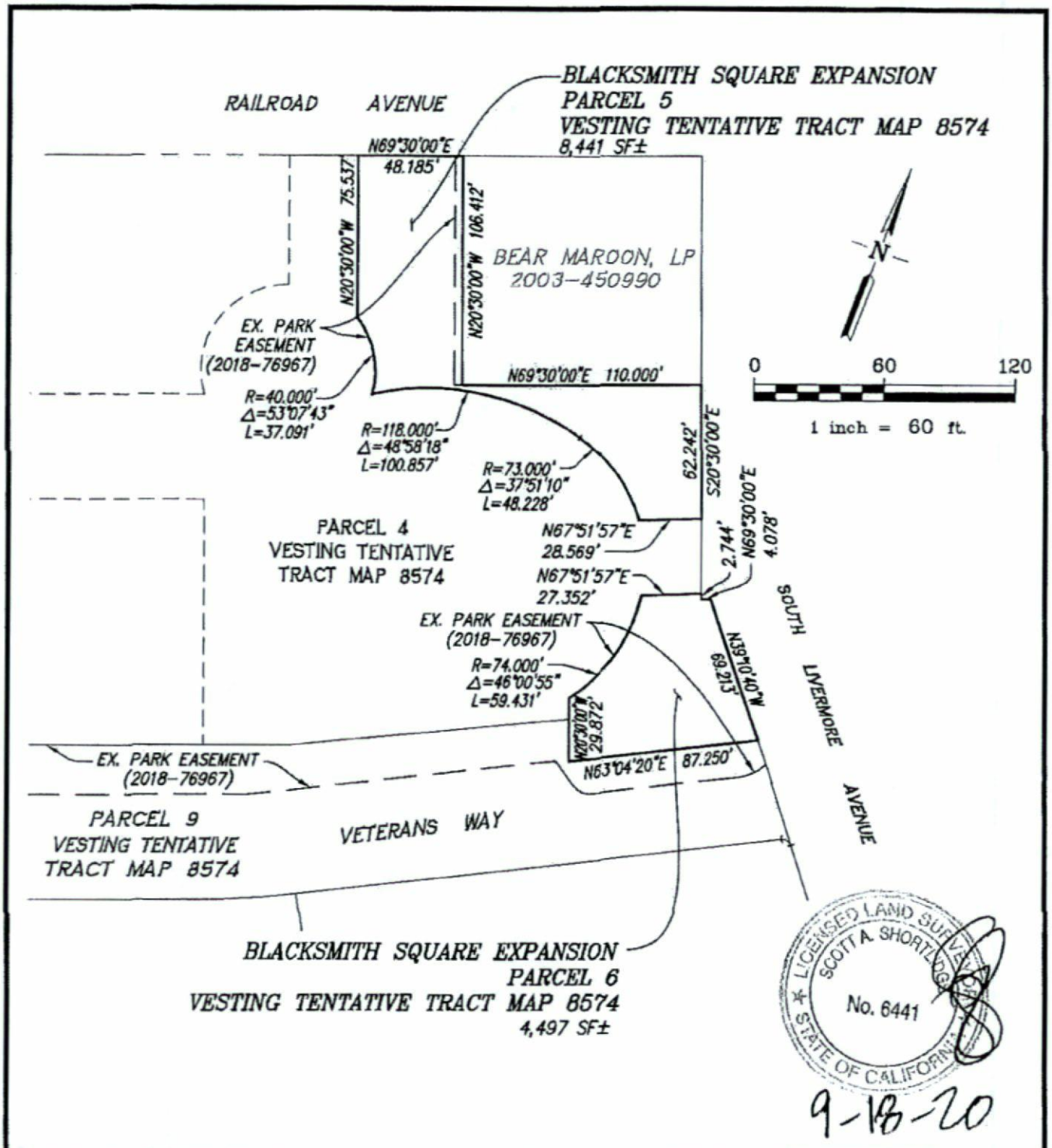


EXHIBIT A "PROPERTY" BLACKSMITH SQUARE EXPANSION CITY OF LIVERMORE, ALAMEDA COUNTY, CALIFORNIA	RJA RUGGERI-JENSEN-AZAR ENGINEERS • PLANNERS • SURVEYORS 4690 CHABOT DRIVE, SUITE 200 PLEASANTON, CA 94588 PHONE: (925) 227-9100 FAX: (925) 227-9300		
	SCALE: 1" = 60'	DATE: 9/18/2020	JOB NO.: 151084.67

Exhibit A, Page 1of 1

EXHIBIT "B"

- General Plan Downtown Area Land Use Designation
- Downtown Specific Plan Downtown Core Land Use Map and Development Standards

of and benefit to the surrounding neighborhood, and medium density residential development consistent with the Urban High-3 Residential land use designation (14 to 18 du/acre). Neighborhood serving commercial uses are typically locally-based stores or small scale shops selling various types of merchandise. Larger planned or strip commercial centers with regional or national retailers would not be considered appropriate for this designation. (Reso. 2010-034)

Mixed-Use

Mixed-use development allows or encourages different but compatible uses to be located in close proximity to each other. A common example of mixed-use is a two- or three-story building with retail or office space on the ground floor and apartments on the upper floors. Mixed-use development provides housing close to jobs and services, thereby reducing the need to drive and encouraging people to walk or bike to their destination. Mixed-use development is also often located around transit services, increasing transit usage and reducing automobile dependency.

Land Use Designations

Downtown Area (DA)

The Downtown Area (DA) designation is a general designation that applies to the area traditionally known as Downtown Livermore. The DA seeks to provide a unique, locally-oriented, pedestrian-friendly shopping environment. Higher-intensity residential development of a density that will support the predominantly commercial environment is integral to the economic viability of this district. This area encompasses approximately 270 acres and supports a variety of mixed uses, including commercial, office, entertainment, cultural arts, lodging, and residential. Anticipated maximum development potential in the DA analyzed in the Final Environmental Impact Report (FEIR) prepared and certified in 2003 and the Subsequent FEIR certified in 2009 for the General Plan and Downtown Specific Plan, by land use, is as follows: Commercial – 1,000,000 square feet; Office – 356,000 square feet; Entertainment – 2,500 performance art seats and up to 15 movie theater screens; Lodging – 300 rooms; and Residential – 3,600 units (Reso. 2009-055). Land uses, development, and redevelopment in the Downtown Area shall be implemented through a specific plan. More specific designations, development standards, design requirements, and land use specifications applicable to the Downtown are provided in the Downtown Specific Plan.

The initial maximum residential development potential within the Downtown Area shall be 2,000 new units as of February 2004. After approval of 1,400 new residential units, the City Council shall review the progress of the implementation of the specific plan. The City Council shall consider increasing the maximum number of new dwellings to 3,259 from the February 2004 base number, for a build-out total of 3,600 residential units, unless there is a compelling reason not to implement the build-out scenario analyzed in the FEIR prepared and certified for the 2003 General Plan and Downtown Specific Plan.

Neighborhood Mixed-Use (NM)

The Neighborhood Mixed-Use designations are intended to help improve the pedestrian orientation of Livermore's neighborhoods by providing neighborhood commercial services within walking distance of existing residents and integrating housing with commercial development on a single site. Neighborhood serving commercial uses are typically locally-based stores or small scale shops selling various types of merchandise, as well as small-scale food service uses such as a local market, deli, or coffee shop. Mixed residential and commercial land uses are required at these sites. Projects developed primarily for residential uses must provide a minimum of 20-percent floor area for commercial uses. Section H *(New Mixed-Use Neighborhoods)* discusses particular requirements for two specific mixed-use planning areas, being the East Side Transitional Areas and the Greenville BART Transit Oriented Development (TOD) Area. (Reso. 2010-034)

Parcels designated Neighborhood Mixed-Use are TDC receiving areas. As with all of the residential receiving areas described above, developers can achieve a baseline density for residential development on land with these classifications without complying with the City's TDC Ordinance. To exceed the baseline density, developers must comply with the TDC Ordinance, but in no event can developments exceed the maximum density allowed by these designations. The letters preceding each classification correspond to Figure 3-4 *(TDC Receiving Sites)* indicating the location of these TDC areas.

Type K – Neighborhood Mixed-Use Low Density (NML)

A maximum of .30 FAR is allowed for the commercial portion development on these sites. The residential baseline density is 2 du/ac – 3 du/ac (maximum density when developers



FIGURE 5-1: LAND USE PLAN AREA: THE DOWNTOWN CORE

EXHIBIT C
EXHIBIT B

Chapter 5 – Development Standards - Core

EXHIBIT C
EXHIBIT B

Development Standards: Downtown Core Plan Area

1. **Purpose**
   The purpose of the Downtown Core is to revitalize the City's historic core area as the center of the City of Livermore. The primary intent of this Plan Area is to promote the continued development and revitalization of the City's pedestrian-oriented Downtown district that serves as the center of the Livermore Community, its most unique shopping district, and as a neighborhood hub for the residences within and surrounding it. Its shopping areas will provide high quality specialty sales and services that are in keeping with the distinctive character of Downtown; discount stores are not intended for this district. Development Standards for the Downtown Core are targeted towards re-establishing Downtown's identity as a compelling place for shoppers, investors, residents and visitors, requiring development that is in line with Downtown's traditions and preserves its historic heritage. They require a mix of stores intended to draw people downtown during the day, evenings, and on weekends, an improved streetscape to provide downtown visitors with a pleasant pedestrian experience, and a series of public spaces to provide places for citizens to come together downtown.

2. **Permitted Uses**
   All uses permitted in the Downtown Core shall contribute to the vibrancy of the Plan Area. Restaurants, services and retail uses shall help promote the Core as a "specialty" retail and activity center, providing high-end, unique yet quality goods and services. As a "specialty" retail and activity center, the Core is not appropriate for discount retail uses.

   In order to ensure that Downtown is the most densely developed part of the City, and in order to sustain a high level of pedestrian and retail activity, mixed-use buildings are required for all parcels fronting First Street, and encouraged throughout the Downtown Core. All uses permitted in the Downtown Core shall be required to comply with the City's Right to Downtown Operations Ordinance (Chapter 10 – Implementation and Livermore Municipal Code Chapter 8.19). In addition, all noise generating uses shall be required to comply with the noise level standards, and all new residential uses shall be required to utilize construction methods necessary to comply with the interior noise thresholds, established for the Downtown in Section 7 of this Chapter.

   New single-story buildings shall not be allowed, except within Subarea 4 – Special Condition Sub-district – A, where new buildings may be one story to maintain the scale of the adjacent Blacksmith Square development at 21-29 South Livermore Avenue.

2.1 Subarea 1

2.1.1 Permitted Ground Floor Uses

Mixed Use Buildings are required on First Street: All buildings fronting First Street in Downtown Core are required to be "mixed-use" (except as provided for in sections 2.1.D, 2.2 and 2.3 below), defined for this Plan Area as the vertical combining of ground-floor retail sales and service uses or eating and drinking establishments, with permitted upper floor uses such as residential or office in the same building.

A. Retail Sales and Services including the following:

1. Specialty Food Retail, including the following and similar specialty foods: Groceries/Specialty Market/Market Hall (separate retail food uses (e.g. meat, fish, bakery, deli, produce, etc.) that combine to create a market)/Drug Stores; Chocolate/candy; General gourmet; Ice cream; Pastry/desserts; Yogurt/dairy; Doughnuts/bakery; Wine Shops and wine tasting; and similar specialty foods.
2. Specialty Goods Retail, including the following and similar specialty goods uses: Cooking supplies/culinary; General house wares; Decorator/arts and design centers (including tile, floor and wall coverings); Specialty hardware; Antique stores selling high-quality used goods (this category excludes thrift and second-hand stores); Party supplies; Lamps/lighting; Household accessories; Books/magazines/stationery; Music/instruments.
3. Quality Goods Retail, including the following, and similar uses: Small crafts; Specialty furniture; Clothing (including consignment stores that sell both gently used and new clothing and accessories)/shoe stores; Stereo/video or computers; Cameras/photography; Sporting goods; Bicycle shops; Outdoor/sports clothing and supplies; Toys/games; Cards/gifts; Jewelry; Watches/clocks; Beauty/cosmetics; Plants/flowers. Thrift stores, donation centers, and similar retail uses are not permitted.
4. Business Services, excluding sales and storage of heavy equipment - businesses that generate a significant amount of foot traffic, such as Computer and Office Supply, Photocopy Shops, Photo Finishers, and Print Shops.
5. State Licensed Banks and Financial Institutions, excluding check cashing stores.
6. Permitted and fully-conforming retail uses that occupy a ground-floor retail storefront may have an outdoor display area within the public right-of-way (sidewalk area only) and upon outdoor private property between a storefront and the public right-of-way consistent with the Master Design Program and Outdoor Display Permit application procedures specific to outdoor merchant display uses contained within Chapters 6 and 10 of the Downtown Specific Plan.

B. Eating and Drinking Establishments including the following uses:
   1. Restaurants, including those serving alcoholic beverages or providing entertainment, provided this activity is clearly ancillary to food service.
   2. Establishments serving wine and/or beer and providing ancillary food service are permitted. Ancillary entertainment is also permitted with this type of use.
   3. Drive-up or drive-in restaurants are not permitted.
   4. Outdoor dining uses may be permitted within the public right-of-way (sidewalk and/or flexible zone areas) consistent with the Master Design Program and Outdoor Dining Permit application procedures specific to outdoor dining uses contained within Chapter 6 and 10 of the Downtown Specific Plan; however, the number of parking spaces converted to outdoor dining use shall be limited to 25 percent of all parking spaces on First Street between M Street and Maple Street. In addition, the City reserves the right to limit the number of parking spaces that may be converted to outdoor dining use based on the cumulative effect of the loss of parking spaces on a block by block basis.
C. Publicly Owned Parking Facilities.
D. Performing Arts, Civic & Cultural Facilities, including libraries, public recreation facilities, museums, art galleries, movie theaters and auditoriums (these uses are exempt from the mixed-use requirement for newly constructed buildings on First Street).
E. Accessory Uses and Structures: Including signage, parking facilities, trash and utility enclosures, and enclosed storage.
F. Public and quasi-public uses and public utilities are permitted within the block bounded by First Street, Second Street, McLeod Street and South Livermore Avenue.
G. Additional Uses Permitted: Other similar and compatible uses deemed by the Community Development Director to meet the purpose and intent of the Downtown Specific Plan.

2.1.2 Subarea 1 - Permitted Upper Floor Uses

Upper floor uses are encouraged to provide more residential and small office uses.

A. Multi-Family and Attached Single Family Residential.
B. Retail Sales and Service uses (as defined in Section 2.1.A above) are permitted on upper-floors if internally connected to and operated in conjunction with the ground-floor use.
C. Eating and Drinking Establishments, including those serving alcoholic beverages or providing entertainment, provided this activity is clearly ancillary to food service.

D. Business, Professional, and Government Offices.
E. Medical and Dental Offices.
F. Health and Exercise Clubs.
G. Lodging or other establishments engaged in the provision of temporary or travel accommodation on a less than monthly basis, including bed and breakfasts, hostels, hotel, motel and inns, single unit rentals, and temporary housing facilities.
H. Other business services that do not generate significant foot traffic, such as travel agencies, & small appliance repair.
I. Publicly Owned Parking Facilities.
J. Personal Services, including the following uses: Photographer, Hair and Nail Salons, Shoe Repair, Day Spa, and Full Service Salon (Tattoo, Piercing, Psychic, Tarot Card Reading, Palm Reading, and Massage Parlors are prohibited).
K. Instructional facilities, tutoring, learning centers and schools for music, art, cosmetology, dance, and martial arts.
L. Additional Uses Permitted: Other similar and compatible uses deemed by the Community Development Director to meet the purpose and intent of the Downtown Specific Plan.

2.1.3 Subarea 1 – Conditionally Permitted Uses

Findings for Conditional Uses along First Street must document the potential for the use to contribute to pedestrian activity and to provide interesting displays or views into the business. Conditional Uses must also be appropriate to the area and compatible with nearby uses.

The following uses are permitted on the ground level, upon granting of a Conditional Use Permit:

A. Bars and Nightclubs, including establishments providing entertainment or permitting dancing, and establishments serving alcoholic beverages (other than beer and wine) not clearly ancillary to food service.
B. Public Halls, Clubs, Lodges, Community Recreational Centers, and Meeting Facilities.
C. Additional Uses Permitted with a Conditional Use Permit: Other similar and compatible uses deemed by the Planning Commission to meet the purpose and intent of the Downtown Specific Plan.

The following uses are permitted on upper stories, upon granting of a Conditional Use Permit:

D. Stand-alone Retail Sales and Service Uses (as defined in 2.1.A above), that are not associated with and connected to a ground floor use.
E. Bars and Nightclubs, including establishments providing entertainment or permitting dancing, and establishments serving alcoholic beverages not clearly ancillary to food service.
F. Public Halls, Clubs, Lodges, Community Recreational Centers, and Meeting Facilities.
G. Additional Uses Permitted with a Conditional Use Permit: Other and similar compatible uses deemed by the Planning Commission to meet purpose and intent of the Downtown Specific Plan.

2.2 Subarea 2

2.2.1 Permitted Ground Floor and Upper Floor Uses

The following uses are permitted on all floors:

A. Multi-Family and Attached Single Family Residential.
B. Live-Work – residential living spaces may include an integrated work space, provided the work space has a ground-floor storefront expression and upper-floor workspaces are internally connected to and operated in conjunction with the ground-floor, principally used by one or more of the residents. Work activity is limited to business (primarily office), the making of arts and crafts, including painting, graphic production, photography, print, ceramics, and sculpture, and other activities compatible with residential use. Activities that require hazardous assembly, including fabrication, manufacturing, repair or processing operations such as welding and woodworking (with more than three fixed pieces of equipment) shall not be permitted. The maximum number of employees not including the owner/occupant is limited to two. Permitted work activities shall be classified as a business and shall be subject to all applicable City, County, and State Regulations.
C. Business, Professional, and Government Offices, provided that ground floor offices have a storefront expression; i.e. with large street-fronting windows permitting visibility into the establishment.
D. Medical and Dental Offices, provided that ground floor offices have a storefront expression; i.e. with large street-fronting windows permitting visibility into the establishment.
E. Health and Exercise Clubs.
F. Lodging or other establishments engaged in the provision of temporary or travel accommodation on a less than monthly basis, including bed and breakfasts, hostels, hotel, motel and inns, single unit rentals, and temporary housing facilities.
G. Other business services that do not generate significant foot traffic, such as travel agencies, & small appliance repair.
H. Publicly Owned Parking Facilities.
I. Public Utilities, Performing Arts, Civic and Cultural Facilities.

J. Groceries, Specialty Market, Market Halls (separate retail food uses (e.g. meat, fish, bakery, deli, produce, etc.) that combine to create a market) and Drug Stores are permitted on the ground-floor, and are permitted on upper- floors if internally connected to and operated in conjunction with the ground-flooruse.
K. Neighborhood Serving Uses – small shops that serve the convenience needs of nearby residential, limited to full service deli, dry cleaner, laundromat, tailoring, watch repair and postal annex are permitted on the ground- floor only (Liquor stores, Cigarette stores, and similar uses are prohibited).
L. Personal Services, including the following uses: Photographer, Hair and Nail Salons, Shoe Repair, Day Spa and Full Service Salon (Tattoo, Piercing, Psychic, Tarot Card Reading, Palm Reading, and Massage Parlors are prohibited).
M. Instructional facilities, tutoring, learning centers and schools for music, art, cosmetology, dance, and martialarts.
N. Additional Uses Permitted: Other similar and compatible uses deemed by the Community Development Director to meet the purpose and intent of the Downtown Specific Plan.

2.2.2 Subarea 2 – Conditionally Permitted Ground Floor and Upper Floor Uses
Findings for Conditional Uses must document the potential for the use to contribute to pedestrian activity and to provide interesting displays or views into the business. Conditional Uses must also be appropriate to the area and compatible with nearby uses.

The following uses are permitted upon granting of a Conditional Use Permit:
A. Public and quasi-public buildings, including uses of an educational, religious, or public service nature (i.e. schools, adult training facilities, churches, public and non-profit organizations).
B. Day and Child Care Centers, Day Care Homes, and Residential Care Homes.
C. Additional Uses Permitted with a Conditional Use Permit: Other similar and compatible uses deemed by the Community Development Director to meet the purpose and intent of the Downtown Specific Plan.

2.2.3 Subarea 2 – Special Condition Sub-district (North I Street)
(Area encompassing five vacant parcels at the northwest end of North I Street and including the existing parking structure to the east.)

EXHIBIT C
EXHIBIT B

Following uses are permitted on the ground and upper floor levels:

A. Publicly accessible parking facilities including structured parking.
B. Public and quasi-public buildings including uses of a public service nature such as transportation related facilities including bus and train stations.
C. Open space, pedestrian paths, multi-use trails, plazas, and public recreation facilities.
D. Accessory uses and structures.
E. Additional uses permitted. Other similar and compatible uses deemed by the Community Development Director to meet the purpose and intent of the Downtown Specific Plan.

2.3 Subarea 3

2.3.1 Permitted Ground Floor Uses

A. Retail Sales and Services including the following:
   1. Specialty Food Retail, including the following and similar specialty foods: Groceries/Specialty Market/Market Hall (separate retail food uses (e.g. meat, fish, bakery, deli, produce, etc.) that combine to create a market)/Drug Stores; Chocolate/candy; General gourmet; Ice cream; Pastry/desserts; Yogurt/dairy; Doughnuts/bakery; Wine Shops and wine tasting; and similar specialty foods.
   2. Specialty Goods Retail, including the following and similar specialty goods uses: Cooking supplies/culinary; General house wares; Decorator/arts and design centers (including tile, floor and wall coverings); Specialty Hardware; Antique stores selling high-quality used goods (this category excludes thrift and second-hand stores); Party supplies; Lamps/lighting; Household accessories; Books/magazines/stationery; Music/instruments.
   3. Quality Goods Retail, including the following, and similar uses: Small crafts; Specialty furniture; Clothing (including consignment stores that sell both gently used and new clothing and accessories)/shoe stores; Stereo/video or computers; Cameras/photography; Sporting goods; Bicycle Shops; Outdoor/sports clothing and supplies; Toys/games; Cards/gifts; Jewelry; Watches/clocks; Beauty/cosmetics; Plants/flowers. Thrift stores, donation centers, and other similar uses are not permitted.
   4. Business Services, excluding sales and storage of heavy equipment - businesses that generate a significant amount of foot traffic, such as Computer and Office Supply, Photocopy Shops, Photo Finishers, and Print Shops.
   5. Permitted and fully-conforming retail uses that occupy a ground-floor retail storefront may have outdoor

displays within the public right-of-way (sidewalk area only) and upon outdoor private property between a storefront and the public right-of-way consistent with the Master Design Program and Outdoor Display Permit application procedures specific to outdoor merchant display uses contained within Chapters 6 and 10 of the Downtown Specific Plan.

B. Eating and Drinking Establishments including the following uses:
   1. Restaurants, including those serving alcoholic beverages or providing entertainment, provided this activity is clearly ancillary to food service.
   2. Drive-up or drive-in restaurants are not permitted.
   3. Outdoor dining uses may be permitted within the public right-of-way (sidewalk area only) consistent with the Master Design Program and Outdoor Dining Permit application procedures specific to outdoor dining uses contained within Chapter 6 and 10 of the Downtown Specific Plan.
C. Publicly Owned Parking Facilities.
D. Cultural Facilities including performing arts theaters, museums and art galleries.
E. Multi-Family and Attached Single Family Residential.
F. Live-Work – residential living spaces may include an integrated work space, provided the work space has a ground-floor storefront expression, principally used by one or more of the residents. Work activity is limited to business (primarily office), the making of arts and crafts, including painting, graphic production, photography, print, ceramics, and sculpture, and other activities compatible with residential use. Activities that require hazardous assembly, including fabrication, manufacturing, repair or processing operations such as welding and woodworking (with more than three fixed pieces of equipment) shall not be permitted. The maximum number of employees not including the owner/occupant is limited to two. Permitted work activities shall be classified as a business and shall be subject to all applicable City, County, and State Regulations.
G. Business, Professional, and Government Offices, provided that ground floor offices have a storefront expression; i.e. with large street-fronting windows permitting visibility into the establishment.
H. Medical and Dental Offices, provided that ground floor offices have a storefront expression; i.e. with large street-fronting windows permitting visibility into the establishment.
I. Health and Exercise Clubs.
J. Lodging or other establishments engaged in the provision of temporary or travel accommodation on a less than monthly basis, including bed and breakfasts, hostels, hotel, motel and inns, single unit rentals, and temporary housing facilities.
K. State licensed Banks and Financial Institutions are permitted on Second Street only.
L. Other business services that do not generate significant foot traffic, such as travel agencies, & small appliance repair.

M. Neighborhood Serving Uses – small shops that serve the convenience needs of nearby residential, limited to full service deli, dry cleaner, laundromat, tailoring, watch repair and postal annex (Liquor stores, Cigarette stores, and similar uses are prohibited).
N. Personal Services, including the following uses: Photographer, Hair and Nail Salons, Shoe Repair, Day Spa, and Full Service Salon (Tattoo, Piercing, Psychic, Tarot Card Reading, Palm Reading, and Massage Parlors are prohibited).
O. Instructional facilities, tutoring, learning centers and schools for music, art, cosmetology, dance, and martial arts.
P. Accessory Uses and Structures: Including signage, parking facilities, trash and utility enclosures, and enclosed storage.
Q. Additional Uses Permitted: Other similar and compatible uses deemed by the Community Development Director to meet the purpose and intent of the Downtown Specific Plan.

2.3.2 Subarea 3 - Permitted Upper Floor Uses

A. Multi-Family and Attached Single Family Residential.
B. Live-Work – residential living spaces may include an integrated work space, provided the work space has a ground-floor storefront expression and upper-floor workspaces are internally connected to and operated in conjunction with the ground-floor, principally used by one or more of the residents. Work activity is limited to business (primarily office), the making of arts and crafts, including painting, graphic production, photography, print, ceramics, and sculpture, and other activities compatible with residential use. Activities that require hazardous assembly, including fabrication, manufacturing, repair or processing operations such as welding and woodworking (with more than three fixed pieces of equipment) shall not be permitted. The maximum number of employees not including the owner/occupant is limited to two. Permitted work activities shall be classified as a business and shall be subject to all applicable City, County, and State Regulations.
C. Retail Sales and Service uses (as defined in Section 2.6.A above) are permitted on upper-floors if internally connected to and operated in conjunction with the ground-floor use.
D. Eating and Drinking Establishments, including those serving alcoholic beverages or providing entertainment, provided this activity is clearly ancillary to food service.
E. Business, Professional, and Government Offices.
F. Medical and Dental Offices.
G. Health and Exercise Clubs.
H. Lodging or other establishments engaged in the provision of temporary or travel accommodation on a less than monthly basis, including bed and breakfasts, hostels, hotel, motel and inns, single unit rentals,

and temporary housing facilities.

I. Other business services that do not generate significant foot traffic, such as travel agencies, & small appliance repair.
J. Publicly Owned Parking Facilities.
K. Personal Services, including the following uses: Photographer, Hair and Nail Salons, Shoe Repair, Day Spa, and Full Service Salon (Tattoo, Piercing, Psychic, Tarot Card Reading, Palm Reading, and Massage Parlors are prohibited).
L. Instructional facilities, tutoring, learning centers and schools for music, art, cosmetology, dance, and martialarts.
M. Additional Uses Permitted: Other similar and compatible uses deemed by the Community Development Director to meet the purpose and intent of the Downtown SpecificPlan.

2.3.3 Subarea 3 – Conditionally Permitted Uses

Findings for Conditional Uses must document the potential for the use to contribute to pedestrian activity and to provide interesting displays or views into the business. Conditional Uses must also be appropriate to the area and compatible with nearby uses.

The following uses are permitted on the ground level, upon granting of a Conditional Use Permit:

A. Bars and Nightclubs, including establishments providing entertainment or permitting dancing, and establishments serving alcoholic beverages not clearly ancillary to food service.
B. Public Halls, Clubs, Lodges, Community Recreational Centers, and Meeting Facilities.
C. Public and quasi-public buildings, including uses of an educational, religious, or public service nature (i.e. schools, adult training facilities, churches, public and non-profit organizations).
D. Day and Child Care Centers, Day Care Homes, and Residential Care Homes.
E. Additional Uses Permitted with a Conditional Use Permit: Other similar and compatible uses deemed by the Planning Commission to meet the purpose and intent of the Downtown Specific Plan.

The following uses are permitted on upper stories, upon granting of a Conditional Use Permit:

A. Bars and Nightclubs, including establishments providing entertainment or permitting dancing, and establishments serving alcoholic beverages not clearly ancillary to food service.
B. Stand-alone Retail Sales and Service Uses (as defined in 2.6.A above), that are not associated with and connected to a ground floor use.

C. Public Halls, Clubs, Lodges, Community Recreational Centers, and Meeting Facilities.
D. Day and Child Care Centers, Day Care Homes, and Residential Care Homes.
E. Additional Uses Permitted With a Conditional Use Permit: Other similar and compatible uses deemed by the Planning Commission to meet the purpose and intent of the Downtown Specific Plan.

2.3.4 Subarea 3 – Special Condition Sub-district – A (Southeast corner of Railroad and South Livermore Avenue and generally bounded by the Bankhead Theater and plaza to the east and commercial development along First Street to the south):

The following uses are permitted on ground and upper levels:
A. Public owned parking facilities.
B. Cultural facilities including performing arts theaters
C. Open space, pedestrian paths, plazas, and public recreation facilities.
D. Boutique hotel, which may include accessory uses such as a spa, restaurant, bar, meeting facilities, and limited retail and personal service uses to serve the needs of guests.
E. Conference and meeting facilities
F. Accessory uses and structures
G. Additional uses permitted. Other similar and compatible uses deemed by the Community Development Director to meet the purpose and intent of the Downtown Specific Plan.

The following uses are permitted on ground and upper levels, upon granting of a Conditional Use Permit:
A. Public halls and community recreation centers.
B. Additional uses permitted. Other similar and compatible uses deemed by the Planning Commission to meet the purpose and intent of the Downtown Specific Plan.

2.3.5 Subarea 3 – Special Condition Sub-district – B (South side of Railroad Avenue including Performing Arts Theatre and Plaza)

The following uses are permitted on ground and upper levels:
A. Cultural facilities including performing arts theaters.
B. Open space, pedestrian paths, plazas, and public recreation facilities.
C. Accessory uses and structures.

D. Additional uses permitted. Other similar and compatible uses deemed by the Community Development Director to meet the purpose and intent of the Downtown Specific Plan.

The following uses are permitted on ground and upper levels, upon granting of a Conditional Use Permit:
A. Public halls and community recreation centers;
B. Conference and meeting facilities.
C. Additional uses permitted. Other similar and compatible uses deemed by the Planning Commission to meet the purpose and intent of the Downtown Specific Plan.

2.3 Subarea 4

2.3.1 Subarea 4 – Special Condition Sub-district – A (Commercial and Cultural Sub-District)

Permitted Uses. The following uses are permitted:

A. Retail Sales and Services including the following:
   1. Specialty Food Retail, including the following and similar specialty foods: Groceries/Specialty Market/Market Hall (separate retail food uses (e.g. meat, fish, bakery, deli, produce, etc.) that combine to create a market)/Drug Stores; Chocolate/candy; General gourmet; Ice cream; Pastry/desserts; Yogurt/dairy; Doughnuts/bakery; Wine Shops and wine tasting; and similar specialty foods.
   2. Specialty Goods Retail, including the following and similar specialty goods uses: Cooking supplies/culinary; General house wares; Decorator/arts and design centers (including tile, floor and wall coverings); Specialty Hardware; Antique stores selling high-quality used goods (this category excludes thrift and second-hand stores); Party supplies; Lamps/lighting; Household accessories; Books/magazines/stationery; Music/instruments.
   3. Quality Goods Retail, including the following, and similar uses: Small crafts; Specialty furniture; Clothing (including consignment stores that sell both gently used and new clothing and accessories)/shoe stores; Stereo/video or computers; Cameras/photography; Sportinggoods;

EXHIBIT C
EXHIBIT B

Bicycle Shops; Outdoor/sports clothing and supplies; Toys/games; Cards/gifts; Jewelry; Watches/clocks; Beauty/cosmetics; Plants/flowers. Thrift stores, donation centers, and other similar uses are not permitted.

4. Permitted and fully-conforming retail uses that occupy a ground-floor retail storefront may have outdoor displays within the public right-of-way (sidewalk area only) and upon outdoor private property between a storefront and the public right-of-way consistent with the Master Design Program and Outdoor Display Permit application procedures specific to outdoor merchant display uses contained within Chapters 6 and 10 of the Downtown Specific Plan.

B. Eating and Drinking Establishments including the following uses:

1. Restaurants, including those serving alcoholic beverages or providing entertainment, provided this activity is clearly ancillary to food service.
2. Drive-up or drive-in restaurants are not permitted.
3. Outdoor dining uses may be permitted within the public right-of-way (sidewalk area only) consistent with the Master Design Program and Outdoor Dining Permit application procedures specific to outdoor dining uses contained within Chapter 6 and 10 of the Downtown Specific Plan.

C. Accessory Uses and Structures: Including signage, parking facilities, trash and utility enclosures, and enclosed storage.

D. Additional Uses Permitted: Other similar and compatible uses deemed by the Community Development Director to meet the purpose and intent of the Downtown Specific Plan

Conditional Uses. The following uses are permitted, upon granting of a Conditional Use Permit:

A. Bars and Nightclubs, including establishments providing entertainment or permitting dancing, and establishments serving alcoholic beverages not clearly ancillary to food service.

B. Other similar and compatible uses deemed by the Planning Commission to meet the purpose and intent of the Downtown Specific Plan.

EXHIBIT C
EXHIBIT B

2.3.2 Subarea 4 – Special Condition Sub-district – B (Public Park)

The following uses are permitted:

A. Public Park, open space, pedestrian paths, plazas, and public recreation facilities.
B. Accessory uses and structures that support the operation of the park and adjoining commercial and cultural uses.
C. Additional uses permitted. Other similar and compatible uses deemed by the Community Development Director to meet the purpose and intent of the Downtown Specific Plan.

2.3.3 Subarea 4 – Special Condition Sub-district – C (Science and Society Center, Black Box Theater)

The following uses are permitted:

A. Cultural facilities including museums, art galleries, and theaters with a maximum interior seating capacity of 200 seats.
B. Open space, pedestrian paths, plazas, and public recreation facilities.
C. Accessory uses and structures.
D. Additional uses permitted. Other similar and compatible uses deemed by the Community Development Director to meet the purpose and intent of the Downtown Specific Plan

2.3.4 Subarea 4 – Special Condition Sub-district – D (Multi-Family Residential)

The following uses are permitted:

A. Multi-family residential limited to housing affordable to a variety of household income levels not to exceed 120 percent of area median income (AMI) for Alameda County (Oakland-Fremont Metro Region). AMI shall be as determined by California Department of Housing and Community Development (HCD) for Alameda County using income limits published by the U.S. Department of Housing and Urban Development for the Section 8 Program for Alameda Court (Oakland-Fremont Metro Region).
B. Accessory uses and structures
C. Public Park, open space, pedestrian paths, plazas, and public recreation facilities.
D. Additional uses permitted. Other similar and compatible uses deemed by the Community Development Director to meet the purpose and intent of the Downtown Specific Plan.

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2.3.5 Subarea 4 – Special Condition Sub-district – E (Public Parking Garage and Public Surface Parking)

The following uses are permitted:

A. Publicly Owned Parking Facilities
B. Publicly accessible parking facilities including structured parking.
C. Accessory uses and structures, including waste collection facilities.
D. Additional uses permitted. Other similar and compatible uses deemed by the Community Development Director to meet the purpose and intent of the Downtown Specific Plan.

3. Development Intensity

In order to ensure that Downtown is the most urban, densely developed part of the City, development shall be allowed to the highest intensities.

3.1 Residential Density.

A. Minimum density of 30 dwelling units per acre and a maximum density of 55 units per acre. Density shall be calculated on a project-wide basis.
B. Mixed-use developments shall have no minimum density required for residential uses located above the first floor where non-residential uses are located on the ground floor.
C. Where unique site constraints prevent this density, and in locations where the Planning Commission finds that providing residential at a higher density would be incompatible with the scale and character of existing historic buildings or residential uses, residential development may occur at a minimum density of 15 dwelling units per acre, subject to the granting of a Conditional Use Permit.

4. Height

Height requirements are intended to ensure that the heights of new buildings are compatible with the character of the Plan Area.

4.1 Height, as measured from the average contact ground level at the front wall of the building to the highest point of the coping of a flat roof or to the deck line of a mansard roof, or to the mean height level between eaves and ridge of gable, hip, or gambrel roofs.

A. Buildings in Subarea 4 – Special Condition Sub-district – A, may range in height from one (1) to two (2)

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floors to a maximum height of forty-five (45) feet; and at adjoining property lines, may not be more than twice the height of the closest building on the adjoining property. However, portions of the building façade may exceed twice the height of adjoining buildings if they are set back from the adjoining property line a minimum of twenty (20) feet.

B. Outside Subarea 4 – Special Condition Sub-district – A, and subject to the exceptions established in section 4.1.D, buildings must maintain a minimum height of two (2) floors and twenty (20) feet. Buildings may not exceed a total maximum height of three (3) floors and forty-five (45) feet; and at adjoining property lines, may not be more than twice the height of the closest building on the adjoining property. However, portions of the building façade may exceed twice the height of adjoining buildings if they are set back from the adjoining property line a minimum of twenty (20) feet. The applicant may reduce or eliminate this additional setback requirement through a Major Conditional Use Permit.

C. Accessory buildings, including non-dwelling units such as freestanding garages for individual residential units, service structures and tool sheds, may be a maximum of fifteen (15) feet.

D. Exceptions:

1. Podium or partially submerged parking levels may project beyond the sidewalk or average finished grade for an average of four (4) feet. On lots that slope, the tallest part of the podium level may not exceed five (5) feet. Podium and partially submerged parking levels shall not count as a floor.
2. Special Architectural Features, such as uninhabited towers (clock, bell, observation) or entry volumes may exceed the maximum height by no more than ten (10) feet, where proportionate and consistent with building design, if approved by the City. Towers or other volumes should not extend for more than twenty (20) feet in any horizontal direction.
3. Rooftop Structures, such as elevator and mechanical equipment enclosures or roof deck trellises and gazebos, may exceed the height limit by ten (10) feet, provided they are set back a minimum of ten (10) feet from building walls and are screened on all sides by a parapet or sloping roof that is architecturally integrated with the building design.
4. Projects proposing height exceptions taller than three (3) floors/forty-five (45) feet are subject to Planning Commission and City Council review in addition to the normally required review process as established in Chapter 10 "Implementation", under Design and Site Plan Review.

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5. The following projects/sites may exceed the maximum height established in 4.1.B above up to the maximum heights indicated subject to Planning Commission and City Council review in addition to the normally required review process as established in Chapter 10 "Implementation", under Design and Site Plan Review:
   a) Local Performing Arts Theater proposed generally south of Railroad Avenue and east of South Livermore Avenue in the Livermore Valley Center (LVC) – may have a maximum height up to seventy- five (75) feet.
   b) Two proposed LVC Retail/Office/Restaurant Developments (Retail East and Retail West) proposed along the north side of First Street east of South Livermore and west of Railroad Avenue/Maple Street may have a maximum height up to three (3) floors/fifty (50) feet.
   c) SBC Building on the northwest corner of McLeod and Second Streets (2388 Second Street) – may have a maximum height up to seventy-five (75) feet.
   d) Residential development on the Downtown Specific Plan Catalyst Project Site (former Lucky's site) located south of Railroad Avenue between L Street and South Livermore Avenue – may have a maximum height up to four (4) floors/fifty- five (55) feet, provided the fourth floor doesnot extend for more than 60% of the site frontage along L Street, Railroad Avenue and South Livermore Avenue.
   e) The public parking structure in Subarea 4 – Special Condition Sub-district – E may have a height of five (5) parking levels, including ground and roof levels, with a maximum height offorty-five (45) feet. Towers and architectural features may have a maximum height of sixty-five (65) feet.
   f) The maximum height standard shall not apply to rooftop finials on the parking structure. f) LVC Cinema Complex proposed for the northwest corner of First Street and Railroad Avenue/Maple Street – architectural features of the proposed project may have a maximum height up to fifty(50) feet.
   g) Groth catalyst site located at the northwest corner of First Street and South L Street – may have a maximum height up to four (4) floors/fifty-five (55) feet, provided the fourth floor does not extend for more than 60 percent of the site frontage along L Street, M Street and Railroad Avenue, and adjacent to First Street the maximum height shall be limited to three (3) floors/forty-five (45) feet. In addition, special Architectural Features, such as uninhabited towers (clock, bell, and observation) or entry volumes may exceed the maximum height by no more than ten (10) feet if approved by the City. Towers or other volumes shall not extend for more than twenty (20) feet in any horizontal direction.

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5. Setbacks

In order to bring storefront activity and window displays up to the public right-of-way, the majority of all building frontages (except residential) are required to be built to the property line.

5.1 Street Frontage Setbacks (excluding alleys)

A. For all uses except residential, a minimum of seventy (70) percent of the building frontage must be built to the property line. A maximum of thirty (30) percent of the building frontage may be recessed to provide for entryways, street-facing courtyards, and similar features.
B. For residential uses, there is no minimum setback (i.e. uses may be built to the property line); maximum setback is twenty (20) feet.
C. At corner parcels, setback/built-to requirements apply to both street frontages.
D. Special Condition: Building Overhangs - Trellises, canopies and awnings may extend horizontally into the public right-of-way, up to six (6) feet. These overhangs must provide a minimum of eight feet (8') clear height above sidewalk grade.
E. Exemptions:
    1. Performing Arts and Civic and Cultural facilities are exempt from the street frontage setback requirements.
    2. Buildings with frontage on Veterans Way are exempt from the street frontage setback requirements.

5.2 Side Setbacks

A. For all uses, minimum side setback is zero, and maximum setback is ten (10) feet (except for driveways and pedestrian pathways).
B. Exemptions: Performing Arts, and Civic and Cultural Facilities are exempt from the side setback requirements.

5.3 Rear setback

A. There are no rear setback requirements in the Downtown Core District

5.4 Setbacks for Parking Lots and Structures

A. At grade parking lots shall be set back a minimum of five (5) feet from all property lines, and landscaped as described in Landscaping & Screening, below.
B. Freestanding parking structures may be built to the property line.

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5.5 Setbacks from Railroad Tracks

A. For habitable buildings located within 100-feet from the centerline of railroad tracks, developments shall provide a study demonstrating that groundbourne vibration issues associated with rail operations have been adequately addressed (i.e. by building siting or by construction technique).

6. Site Development

All new development must relate to the existing City structure of streets and blocks. New streets shall conform to the direction and orientation of existing streets.

6.1 Block Pattern

A. New streets shall conform to a pattern of generally rectilinear blocks, with new streets and access drives linking orthogonally to surrounding City streets.

B. For sites having more than 200 feet of street frontage, all new development shall match the typical block increment of three hundred (300) feet in length by two hundred (200) feet in depth, and shall not exceed a block size of four hundred (400) feet in length by three hundred (300) feet in depth, where feasible. Where achievement of this block size is not feasible, blocks should be subdivided with alley streets or pedestrian pathways.

6.2 Driveway Access

A. Driveway access must be from alleys, rear parking areas and streets other than First Street. Curb cuts are not allowed on First Street between M Street and Maple Avenue.

B. The maximum number of curb cuts associated with a single building is one (1) two-way curb cut or two (2) one-way curb cuts. Otherwise, the maximum number of curb cuts is one (1) two-way curb cut or two (2) one-way curb cuts per one hundred fifty (150) feet of street frontage.

C. The minimum width of driveways/ curb cuts is ten (10) feet; the maximum width of driveways/curb cuts is twelve (12) feet for one-way and twenty-four (24) feet for two-way driveways.

D. Driveway setbacks must be a minimum of five (5) feet from adjoining private properties, and a minimum of three (3) feet from adjacent buildings.

E. Service access must be from alleys and rear parking areas wherever possible. Where only curbside service is possible, such service must be located along streets other than First Street.

F. Adequate access for garbage, recycling, food waste collection vehicles, and emergency vehicles must be provided.

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6.3 Open Space

Commercial and office developments are required to provide publicly accessible open space in the form of parks, greens, squares, plazas or widened sidewalks for public use. Residential uses are required to provide publicly accessible common outdoor space for the development, as well as private open space (e.g. balconies or patios accessible only to the dwelling/dwellings served) for all residential units.

A. Commercial and Office Development: Developments of greater than 50,000 square feet shall provide a minimum of one hundred (100) square feet of usable publicly accessible open space for every 2,000 square feet of ground floor commercial space constructed, and a minimum of one hundred (100) square feet of usable open space for every 1,000 square feet of office space constructed. Open space may be constructed on-site, or off-site if located within the Downtown Core Plan Area, or through payment of an in- lieu fee.
   1. Special Condition: Ground-floor retail establishments located on First Street shall be exempt from this open space requirement.

B. Residential and Mixed Use Developments: Outdoor space shall be provided at a minimum of one hundred fifty (150) square feet of publicly accessible open space and sixty (60) square feet of private open space per residential unit. Private open space shall be provided on-site. Publicly accessible open space shall be provided as described below:
   1. Residential Project Site 0.5 Acre or Less: Shall provide required open space on-site, off-site, through payment of an in-lieu fee, or any combination of the above.
   2. Residential Project Site Greater Than 0.5 Acre: Shall provide 10 percent of required public open space on-site for every 4,500 square feet of site area (or portion thereof) over 0.5 acre. Remaining required public open space shall be provided on-site, off site, through the payment of an in-lieu fee, or any combination of the above.
   3. Mixed-Use Project Site 1 Acre or Less: Shall provide required public open space on-site, off-site, through the payment of an in-lieu fee, or any combination of the above.
   4. Mixed-Use Project Site Greater Than 1 Acre: Shall provide 10 percent of required public open space on-site for every 4,500 square feet of site area (or portion thereof) over 1 acre. Remaining required public open space shall be provided on-site, off-site, through the payment of an in-lieu fee, or any combination of the above.
   5. Projects at densities higher than 40 du/acre may construct required publicly accessible open space through the payment of an in-lieu fee or off-site, if located within 500 feet of the project.

C. For Mixed-Use Developments, commercial/office and residential open space requirements shall be calculated separately (based on the requirements of sections 6.3.A and 6.3.B above) and then added

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together to reach the total square footage of public open space required.

D. Iron Horse Trail: All new developments located on parcels backing onto the Southern Union Pacific right- of-way shall be required to provide a 20-foot dedication south of the existing right-of-way, to be reserved for the Iron Horse Multi-Use Trail. Developments shall be required to provide improvements to the trail. This dedication may count as park dedication credits (if approved by LARPD), or towards the provision of public open space, but not both.

E. For all open spaces, usable open space is defined as an area that is not encumbered with any substantial structure, and is not devoted to use as a street, parking area, sidewalk or waste disposal field. Open space provision shall not include required setback areas. (Please refer to the Design Standards and Guidelines for Site Improvements, Furnishings, Landscape and Lighting for design of open space).
   1. Minimum dimension for usable publicly accessible open space in any single direction is twelve (12) feet.
   2. For private open space within multi-family structures, open space may be provided through porches, balconies, decks, yard, terraces, and patios. Minimum dimension for private open space in any single direction is six (6) feet if provided as part of a porch or balcony; and eight (8) feet if provided as a deck, yard, terrace or patio.
   3. Unless otherwise noted, any open space provided off-site shall be located within the same plan area as
   4. the project site (Downtown Core, Downtown Boulevard Gateway, etc.) or within 500 feet of the project site.
   5. Any open space provided off-site must be a minimum of 1,000 square feet in size.
   6. For projects opting to pay an in-lieu fee to meet all or a portion of their open space requirements, the fees shall be subject to the provisions of the Downtown Specific Plan Open Space Program.

F. All public open spaces provided as part of the minimum requirement shall be publicly accessible during daylight hours, and shall be designed to connect with public rights-of-way and adjacent public open spaces in the vicinity.

G. For any public open space provided on- or off-site, the site plan layout shall provide appropriate paths, landscaping, and other amenities (i.e. benches, tables, fountains, shade structures, etc.) for the recreation and enjoyment of on-site users and the public.

H. For all developments, the developer shall prepare binding agreements ("CC&R's") addressing issues of common interest in terms of maintenance of public accessibility to open space, tree planter areas, planting strips, and walks.

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6.4 Landscaping & Screening

A. At Service and Parking Areas, where commercial development is sited adjacent to residential buildings, attractive screen fencing or walls must be provided along the property line(s). A five (5) foot planting area must be established adjacent to the screening fence or wall with trees at a maximum spacing of twenty (20) feet on center.

B. Utility, Trash, Recycling, Food Waste and Service Equipment, including satellite receiving dishes, must be located away from streets and enclosed or screened by landscaping, fencing or other architectural means.

C. Rooftop equipment must be screened on all sides and must be integrated architecturally in the building design. Trash facilities and recycling containers must always be within structural enclosures.

6.5 Utility Easement

A. All public utility easements must be provided under or immediately adjacent to new public rights-of-way or within other public easement areas acceptable to the City Engineer.

7. Noise

7.1 Exterior Noise Levels

A. For those permitted land uses in the Downtown generating noise, Exterior Noise Levels may not exceed a maximum exterior decibel rating of 75 dBA from 7:00a.m. to 12:00a.m.

B. For those permitted land uses in the Downtown generating noise, Exterior Noise Levels may not exceed a maximum exterior decibel rating of 65 dBA from 12:00a.m. to 7:00 a.m.

C. Exception: Emergency equipment and emergency generators used for public uses and public utilities may exceed this requirement during testing and emergency operation.

7.2 Interior Noise Levels

A. All Residential – All residential building spaces must be improved or constructed in such a manner that noise levels do not exceed a maximum decibel rating of 45 dBA with windows closed, assuming 85 dBA on the first floor and an exterior noise level of 75 dBA. If noise analysis assumes closed windows 100% of the time, a fresh air ventilation system must be utilized.

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8. Historic Structures

8.1 To allow use conversions of existing historic structures that will promote rehabilitation (including relocation) and redevelopment, certain development standards (as described in chapter 5) may be modified for projects involving National Historic Resources (rated 1-3) or Historic Resources (rated 4). Any modification to the development standards to allow or encourage such conversion is subject to a Conditional Use Permit and must demonstrate to the Historic Preservation Commission and the final reviewing body that the proposed modification to Standard(s):

A. Is consistent with the 2003 General Plan and Downtown Specific Plan goals, policies andobjectives;

B. Will advance the City's historic preservation objectives; and

C. Will not detrimentally affect the historic character and integrity of thestructure.

STATE OF CALIFORNIA - BUSINESS, CONSUMER SERVICES AND HOUSING AGENCY GAVIN NEWSOM, *Governor*

DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT
DIVISION OF HOUSING POLICY DEVELOPMENT
2020 W. El Camino Avenue, Suite 500
Sacramento, CA 95833
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www.hcd.ca.gov

September 28, 2022

Steve Stewart, Planning Manager
Community Development Department
City of Livermore
1052 S. Livermore Avenue
Livermore, CA 94550

Dear Steve Stewart:

RE: HCD's Review of the City of Livermore's Disposition and Development Agreement with Red Bear Property Management, Inc. for the Development of Certain Real Properties Located on the Southwest Corner of South Livermore Avenue and Railroad Avenue in Downtown Livermore

Thank you for contacting the California Department of Housing and Community Development (HCD) regarding the parcels of property that are approximately 5.5 acres, bounded by Railroad Avenue, Livermore Avenue, First Street, and L Street, commonly referred to as Livermore Village Site (APNs 098-0289-002-01, 098-0289-019, and 098-0289-020) (Property), located in the City of Livermore (City). HCD reviewed the Disposition and Development Agreement (DDA) between the City and Red Bear Property Management, Inc (Developer), and other documentation you provided.

HCD also considered the City's claim that the Property is subject to the Surplus Land Act (SLA) as it existed on December 31, 2019, because the Property qualifies for the "grandfathering exemption" under Government Code section 54234, subdivision (a)(1) (Grandfathering Exemption). As explained below, HCD finds that the Property qualifies for the "Grandfathering Exemption" under Government Code section 54234, subdivision (a)(1), so long as the disposition of the Property is completed by December 31, 2022.

Analysis

According to Government Code section 54234, subdivision (a)(1), surplus land is subject to the SLA as it existed on December 31, 2019, provided the disposition of the surplus land meets the following requirements:

(i). The local agency entered into an ENA or legally binding agreement to dispose of the property prior to September 30, 2020.

(ii). The disposition of the Property to the party that had entered into the ENA or legally binding agreement (or its successors or assigns) is completed by December 31, 2022.

Disposition and Development Agreement of the Property

On October 22, 2018, the City Council adopted Resolution No. 2018-185 authorizing the city manager to execute the DDA between the City and the Developer. On May 30, 2019, the City and Developer executed the DDA for purposes of the City selling the Property and the Developer acquiring and developing the Property.

Merger and Subdivision of APNs 098-0289-002-01, 098-0289-019, and 098-0289-020

On April 17, 2018, the City recorded a Grant Deed, which merged certain City-owned parcels, including the Property, and created one parcel identified as APN 098-0289-021-001. Subsequently, the City re-subdivided APN 098-0289-021-001, which created nine new parcels including APNs 098-0289-026 and 098-0289-027. Based on the additional documentation provided, HCD finds that the parcels that now will be disposed of to the Developer are identified as APNs 098-0289-026 and 098-0289-027.

Conclusion and Next Steps

After reviewing the documentation provided, HCD finds that, because the City entered into a legally binding agreement as of September 30, 2019, the parcels now identified as APNs 098-0289-026 and 098-0289-027 (Subject Property) qualify for the "grandfathering exemption" under Government Code section 54234, subdivision (a)(1). Therefore, the disposition of the Subject Property is subject to the SLA as it existed on December 31, 2019, provided the disposition of the Subject Property to the Developer is completed by December 31, 2022.

After the City has completed the disposition of the Property, it must provide HCD documentation demonstrating that the disposition was completed by December 31, 2022, for HCD's records.

If you have any questions or need additional technical assistance, please contact Public Lands at Publiclands@hcd.ca.gov.

Sincerely,

Laura Nunn

Laura Nunn
Senior Manager, Housing Accountability Unit
Housing Policy Development

IN THE CITY COUNCIL OF THE CITY OF LIVERMORE, CALIFORNIA

A RESOLUTION FINDING THE COMMERCIAL PROJECT IS CONSISTENT WITH PRIOR ENVIRONMENTAL REVIEW FOR CEQA, AND AUTHORIZING EXECUTION OF AN AMENDED AND RESTATED DISPOSITION AND DEVELOPMENT AGREEMENT WITH RED BEAR PROPERTY MANAGEMENT, INC. FOR DEVELOPMENT OF A DOWNTOWN COMMERCIAL PROJECT; AUTHORIZING THE CITY MANAGER TO EXECUTE ALL OTHER DOCUMENTS NECESSARY TO IMPLEMENT THAT AGREEMENT; AND AUTHORIZING STAFF TO EXECUTE ALL NECESSARY DOCUMENTS TO CONFORM THE STOCKMEN'S PARK EASEMENT WITH THE COMMERCIAL PROJECT AND FOR ALL OTHER PROJECTS ON THE PARK SITE

(APNs 098-0289-026 and 098-0289-027)

On October 22, 2018, the City Council adopted Resolution No. 2018-185 authorizing the city manager to execute a Disposition and Development Agreement between the City and Red Bear Property Management, Inc. for developing approximately 8,600 square feet of new retail and restaurant space. The agreement implemented the Downtown Plan approved by the City Council in early 2018.

On November 9, 2020, the City Council adopted Ordinance No. 2106 approving a Development Agreement with Red Bear Property Management, Inc. for the Downtown Commercial Project. This agreement secured Red Bear's right to develop and use the property in accordance with the City's General Plan, Downtown Specific Plan, and Livermore Development Code for a term of 30 years.

The City and Red Bear Property Management, Inc. desire to enter into an amended agreement to sell the City-owned property to Red Bear Property Management, Inc. for the construction of a downtown commercial project including approximately 12,835 square feet of new commercial space ("Commercial Project").

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Livermore that it finds the Disposition and Development Agreement with Red Bear Property Management, Inc. is consistent with, and analyzed by, scope of the addendums adopted by City Council on September 10, 2018 by Resolution 2018-153, May 13, 2019 by Resolution 2019-064, and October 26, 2020 by Resolution 2020-178, and the 2004 Downtown Specific Plan Environmental Impact Report, and the 2009 Downtown Specific Plan Subsequent Environmental Impact Report.

No new or more severe significant impacts were identified for the project that was not identified in the 2004 Final EIR and 2009 Subsequent EIR, and no new mitigation measures would be required for the downtown plan. For all environmental topics addressed in the addendums, there were no substantial changes in environmental circumstances that would result in new or more severe significant environmental effects than were identified and evaluated in the 2004 Final EIR and 2009 Subsequent EIR. The City Council of the City of Livermore directs the City Clerk to file a Notice of Determination with the Alameda County Clerk.

BE IT FURTHER RESOLVED by the City Council of the City of Livermore that the City Manager is authorized to execute, on behalf of the City of Livermore, the Amended and Restated Disposition and Development Agreement with Red Bear Property Management, Inc. for development of the downtown commercial project, attached hereto as Exhibit A, and all other documents necessary to implement that agreement

BE IT FURTHER RESOLVED by the City Council of the City of Livermore that the City Manager is authorized to execute on behalf of the City of Livermore all documents necessary to conform the Stockmen's Park Easement with the Commercial Project and all other projects approved by the City Council for the Stockmen's Park site.

On motion of_____, seconded by _____, the foregoing resolution was passed and adopted on October 24, 2022, 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 – Amended and Restated Disposition and Development Agreement

AMENDED AND RESTATED DISPOSITION AND DEVELOPMENT AGREEMENT

by and between

CITY OF LIVERMORE

and

RED BEAR PROPERTY MANAGEMENT, Inc.

Retail/Commercial Project
Blacksmith Square, Stockmen's Park
Downtown Livermore

(Resolution Number _____)

Prior Agreements:

1. Disposition and Development Agreement, dated May 30, 2019, approved by City Council Resolution No. 2018-185.

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AMENDED AND RESTATED DISPOSITION AND DEVELOPMENT AGREEMENT

THIS AMENDED AND RESTATED DISPOSITION AND DEVELOPMENT AGREEMENT (this "Agreement") is made as of October __, 2022, by and between the City of Livermore, a municipal corporation ("City"), and Red Bear Property Management, Inc., a California corporation ("Developer"), (each of City and Developer is a "Party," and collectively they are the "Parties") with reference to the following facts, purposes, and understandings.

RECITALS

A. These Recitals refer to and utilize certain capitalized terms that are defined within this Agreement.

B. The City is the owner of a certain parcels of property that are approximately 5.5 acres, bounded by Railroad Avenue, Livermore Avenue, First Street, and L Street, and that is commonly referred to as the "Livermore Village Site."

C. On January 30, 2018, the City Council approved the Downtown Plan, a copy of which is attached hereto as Exhibit A, that provides for, among other things, the development of the Livermore Village Site. The Downtown Plan contemplates a public park with provisions for a science center, a black box theater, and retail space within the park area of the Livermore Village Site.

D. On January 30, 2018, the City Council granted a park easement to the Livermore Stockmen's Rodeo Association (recorded in the Official Records on April 18, 2018 as County Recorder number 2018076967) and amended said easement on June 6, 2022 (recorded in the Official Records on June 23, 2022 as County Record number 2022116128) ("Park Easement"), a copy of which is attached hereto as Exhibit B.

E. The Park Easement is subject to the terms and conditions set forth in the specific agreement between the City and the Livermore Stockmen's Rodeo Association titled *Third Amendment to Agreement for the Development of the Rodeo Grounds and Sunken Garden Area as a Civic Center and Parks and Recreation Area ("LSRA Agreement") Dated June 6, 2022 that was first amended January 30, 2018, and amended a second time September 27, 2019,* a copy of which is attached hereto as Exhibit C.

F. The Park Easement designates commercial use areas within the Easement identified as commercial use areas A, B, C, and D in Exhibit B. The commercial use areas A, B, C, and D, are collectively referred to in this Agreement as the "Commercial Property," the plat map and legal description for which from the Park Easement is attached as Exhibit D.

G. The LSRA Agreement states that the purpose of the Park Easement is to ensure, among other things, the Livermore Stockmen's Rodeo Association will have input on the development of the Commercial Property adjacent to Stockmen's Park to ensure its development integrates with the park area in an appealing manner and to ensure that its development does not overshadow the park and its memorial. The LSRA Agreement and Park Easement contemplate and allow for the City transfer of the Property to a third party.

H. The City is the owner of the City-owned parcels located on the southwest corner of South Livermore Avenue and Railroad Avenue in downtown Livermore (APNs: 098-0289-22, 098-0289-028, 098-0289-29, Veterans Way, and APNs: 098-0289-023 through 27), that are within the Park Easement granted to the Livermore Stockmen's Rodeo Association.

I. The Commercial Property areas to be conveyed from the City to the Developer ("Property") consisting of Parcel 5 of Tract Map 8574, recorded on December 23, 2020, in Book 365 of Maps at Pages 15-19 of Official County Records and Parcel C of Parcel Map 11239 recorded May 24, 2022 in Book 354 of Maps at Pages 95-97 of Official County Records., as more particularly described in Exhibit D attached to this Agreement.

J. On April 27, 2019, the City circulated a request seeking qualifications from developers interested in designing and constructing commercial retail uses on the Property to implement the Downtown Plan.

K. On June 18, 2018, the City selected the Developer for the disposition of the Property for its development to implement the Downtown Plan consistent with the Livermore General Plan, the Downtown Specific Plan, the Livermore Development Code, the Livermore Municipal Code, City design standards and guidelines, and other City guidelines, standards, and requirements for development (collectively "City Regulations").

L. On June 18, 2018, the City Council adopted resolution no. 2018-088 authorizing the City Manager to execute for the City, an Exclusive Negotiating Rights Agreement with Developer to negotiate this Agreement to:

- Maximize land use of the Property consistent with the Downtown Specific Plan and the goals articulated by the City Council upon its selection of Developer to negotiate for this Agreement;
- Develop the Property in a timely and efficient manner; and,
- Construct the development On the Property consistent with any City entitlements and requirements for the project, including the Downtown Specific Plan.

M. On October 22, 2018, the City Council adopted resolution no. 2018-185 authorizing execution of a Disposition and Development Agreement between the City of Livermore and Red Bear Property Management for the disposition of City owned parcels and development of downtown commercial property and authorizing the City Manager to execute a Disposition and Development Agreement and other documents necessary to effectuate the purposes of the that agreement. The City and Red Bear Property Management executed that agreement dated May 30, 2019, ("Original Disposition and Development Agreement"). The Original Disposition and Development Agreement included the following provisions for the sale of the property and development of the commercial project:

- Construction and operation of 8,600 square feet of commercial retail space on approximately 12,938 square feet of the Property;

- Building design that is compatible with Blacksmith Square and actively interfaces with Stockmen's Park;
- Contributions to Stockmen's Park maintenance;
- Public restrooms; and
- Schedule of Performance

N. Now, based on further analysis of the site development options, the Developer desires to develop the Property with the following considerations:

- Construct approximately 12,834 square feet of commercial retail space on approximately 24,790 square feet of the Property;
- Utilize architecture and design elements compatible with Blacksmith Square;
- Configure building walls for the commercial buildings adjacent to the Stockmen's Park so that they are oriented toward Stockmen's Park and designed to incorporate window and door openings so tenant spaces actively interface with Stockmen's Park;
- Revised Schedule of Performance; and,
- Construct public improvements related to the Improvements consisting of: frontage improvements, public art, public access to Stockmen's Park to and from Railroad Avenue and South Livermore Avenue, and public restrooms incorporated into the project.

O. The Developer also proposes to participate in the formation of, or annexation of the Property into, a community facilities district, or other assessment district, formed to fund the maintenance of Stockmen's Park and other designated downtown public facilities

P. The City desires to sell to the Developer the Property depicted and described in Exhibit D, and Developer desires to acquire said Property from the City, upon the terms and conditions set forth in this Agreement, and the City and Developer desire to amend and restate the Original Disposition and Development Agreement for that purpose.

Q. The City has determined that the Developer has the necessary expertise, skill, and ability to carry out the commitments contained in this Agreement.

R. Pursuant to CEQA, the City (in its capacity as "lead agency") has prepared, reviewed, and certified the Addendum to the 2009 Subsequent Environmental Impact Report, Subsequent Environmental Impact Report dated March 2009, and Downtown Specific Plan Environmental Impact Report dated February 9, 2004.

S. The Parties wish to clarify the scope of the City's present and future responsibilities and obligations with respect to Contamination (as hereafter defined) at, on, in, under or entering onto or emanating from the Property.

NOW, THEREFORE, the City and the Developer agree that the aforementioned recitals are true and correct, and further agree as follows:

ARTICLE 1.
DEFINITIONS

Section 1.1 Definitions. In addition to the terms defined elsewhere in this Agreement, the following capitalized words shall have the following meanings:

(a) "Affiliate" shall mean any Person which directly or indirectly through one or more intermediaries, Controls, or is Controlled by, or is under common Control with, the Developer.

(b) "Agreement" shall mean this Amended and Restated Disposition and Development Agreement.

(c) "Applicable Law(s)" means laws, regulations, statutes, codes, rules, orders, permits, policies, licenses, certifications, decrees, standards, or interpretations imposed by any Governmental Authority that apply to this Agreement and/or the Property.

(d) "Appurtenances" shall mean all rights, privileges and easements appurtenant to the Property, including, without limitation (to the extent in existence), all minerals, oil, gas, and other hydrocarbon substances on or under the Property, as well as development rights, air rights, riparian rights and water rights which the City may own and which relate to the Property and any rights-of-way or other appurtenances affecting the Property.

(e) "Building Permit" shall mean an excavation, demolition, grading, foundation, or other building permit issued by the City in connection with the construction of the Improvements.

(f) "CEQA" shall mean the California Environmental Quality Act (California Public Resources Code Section 21000 et seq.), and its implementing guidelines.

(g) "Certificate of Occupancy" shall mean that certificate issued by the City to the Developer to allow occupancy of the Improvements.

(h) "CFD" shall mean the community facility district created pursuant to the Mello-Roos Community Facilities Act of 1982.

(i) "City" shall mean the City of Livermore,

(j) "City Event of Default" shall mean any default by the City as more particularly described in Section 10.2.

(k) "City Fees" shall mean the estimated fees listed in Exhibit E, which fees are estimates only and will be finally determined at the issuance of the Building Permit.

(l) "Claim(s)" means any liability, loss, demand, damage, encumbrance, cause of action of any kind, order, subpoena, obligation, cost, royalty, fee, assessment, duty, requirement, charge, penalty, fine, judgment, interest, and award (including recoverable legal counsel fees and cost of litigation of the Person asserting the claim), whether arising by law, contract, tort, voluntary settlement, or in any other manner. For clarity, Claims do not include the initial inability to collect or obtain rent prior to the receipt of the Certificate of Occupancy due to Environmental Conditions, Remediation or Mitigation but do include any delay or inability to collect rent due to Environmental Conditions, Remediation or Mitigation after receipt of the Certificate of Occupancy.

(m) "Close of Escrow" shall have the meaning set forth in Section 3.5.

(n) "Compactor Facility" shall mean a trash facility to be located in close proximity to the L Street Parking Garage.

(o) "Contamination" or "Contaminated" means any Hazardous Materials or any other hazardous or toxic material, substance, chemical or waste, contaminant, emission, discharge or pollutant or comparable material listed, identified or regulated pursuant to any federal, state or local law, ordinance or regulation which has as a purpose the protection of health, safety or the environment, including, but not limited to, trichloroethene ("TCE" and its degradation products such as cis-1,2-dichloroethene and vinyl chloride), perchloroethylene ("PCE" and its degradation products such as TCE, cis-1,2-dichloroethene and vinyl chloride), and other volatile organic compounds ("VOCs"), and/or petroleum or petroleum products or wastes and/or perfluorooctanoic acid (PFOA) and perfluorooctane sulfonic acid (PFOS) substances (including similar and/or related substances), resulting from any cause, release, or source whether located on or off of the Property.

(p) "Control" shall mean (i) direct or indirect management or control of the managing member or members in the case of a limited liability company; (ii) direct or indirect management or control of the managing general partner or general partners in the case of a partnership and (iii) (a) boards of directors that overlap by fifty percent (50%) or more of their directors, or (b) direct or indirect control of a majority of the directors in the case of a corporation.

(q) "Developer" shall mean Red Bear Property Management, Inc., or any transferee of the Developer in accordance with Section 8.4.

(r) "Developer Event of Default" shall mean any default by the Developer as more particularly described in Section 10.3, subject to any applicable notice and cure rights set forth therein.

(s) "Effective Date" shall mean the date which is the later of (i) the date this Agreement is executed by the Developer and (ii) the date this Agreement is approved and executed by the City, which later date of execution shall be written in the first paragraph of this Agreement by City.

(t) "Entitlements" shall mean, collectively, zoning approvals, site plan review, design review, conditional use permit, and any other discretionary approvals required for

construction of the Improvements. For purposes of this Agreement, "Entitlements" do not include demolition, grading, building or other ministerial permits or approvals.

(u) "Environment" means all forms of fauna, flora, soil, natural resources; surface, subsurface, or ground waters; land, ground, surface, or subsurface strata; ambient air; or any other environmental medium, including the indoor environment, contained within, affecting the Property or operations thereon or associated in any way with Environmental Conditions.

(v) "Environmental Condition(s)" means Contamination at, on, in, under or entering onto or emanating from the Property which such Contamination was released (or continues to be released) into the Environment prior to the Close of Escrow (or continues to be released into the Environment from pre-Close of Escrow releases or disposals into utilities or into the Environment). Notwithstanding the foregoing, Environmental Conditions for the purposes of this Agreement do not include Contamination from uses on the Property after Close of Escrow or as between the Parties, such Contamination is proven to originate from property on Blacksmith Square (specifically 21 and 25 S. Livermore Avenue) owned by Developer.

(w) "Environmental Laws" means any Applicable Law relating to pollution; the protection of the Environment; the release, emission, discharge, or disposal of any material or chemical substance; human health or safety; Hazardous Materials; natural resource damage; product registration; hazard communication, each as from time to time has been or may be amended or adopted before or after the Effective Date, including, but not limited to any of the following: (A) the Occupational Safety and Health Act, 29 U.S.C.A. §651, et seq.; the Resource Conservation and Recovery Act, 42 U.S.C.A. §6901, et seq.; the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C.A. §9601, et seq.; the Clean Water Act, 33 U.S.C.A. §1251, et seq.; the Clean Air Act, 42 U.S.C.A. §7401, et seq.; the Safe Drinking Water Act, 42 U.S.C.A. §3001, et seq.; the Toxic Substances Control Act, 15 U.S.C.A. §2601, et seq.; the Oil Pollution Act of 1990, 33 U.S.C.A. §2701, et seq. and (B) the California Underground Storage of Hazardous Substances Act, H & S C §§ 25280, et seq.; the California Hazardous Substances Account Act, H & S C §§ 25300, et seq.; the California Hazardous Waste Control Act, H & S C §§ 25100, et seq.; the California Safe Drinking Water and Toxic Enforcement Act, H & S C §§ 24249.5, et seq.; and the Porter-Cologne Water Quality Act, Wat C §§ 13000, et seq.

(x) "Environmental Obligation(s)" means and includes all of the following, regardless of the sole, joint, or concurrent negligence, breach of contract, breach of warranty, strict liability, regulatory liability, statutory liability, or other fault or responsibility of any Person: (A) Claims and Losses incurred relating to any Environmental Condition; (B) Claims and Losses relating to Mitigation and/or Remediation; (C) Claims and Losses incurred resulting from injury or death to natural Persons caused by the exposure or alleged exposure to Hazardous Materials (including expenses associated with claims investigation, testing, assessment and monitoring); (D) Claims relating to the presence, release, emission, or discharge of Hazardous Materials, pollution, contaminant, or other regulated substances in or into the Environment; (E) Claims, Losses, or any increase in the cost of the Project due to or associated in any way with any delays by City in implementing or paying for any Remediation or Mitigation on or off of the Property; (F) Claims or Losses due to the initial inability to collect or obtain rent or any delay at any time in the ability to collect or obtain rent from the Project, when such inability or delay is associated in any way with Remediation and/or Mitigation. Notwithstanding the foregoing,

Environmental Obligations for the purposes of this Agreement, do not include Contamination from uses on the Property after Close of Escrow or, as between the Parties, such Contamination is proven to originate from property on Blacksmith Square (specifically 21 and 25 S. Livermore Avenue) owned by Developer. Except for the exclusions contained in the prior sentence, the Environmental Conditions do include Contamination on, from, or related to other property owned at any time by the City and/or for which the City in the past, now, or in the future, had, has, or will have any alleged relationship due to the City's ownership of property or as the result of a release by the City. Neither this definition, nor any provision in this Agreement is intended to create a right for a third-party beneficiary.

(y) "Escrow" shall mean the escrow opened with the Escrow Holder to close the transactions described in Article 3.

(z) "Escrow Holder" shall mean escrow company approved by the City and Developer.

(aa) "Final Construction Drawings" shall mean final drawings for the construction of the Improvements used to obtain a Building Permit from the City for the construction of the Improvements.

(bb) "Governmental Authority" means the United States of America, the State of California, the County, the City, and any agency, authority, court, department, commission, board, bureau, or instrumentality of any of them and specifically includes the San Francisco Bay Regional Water Quality Control Board (Regional Board).

(cc) "Grant Deed" shall mean the grant deed by which the City conveys its fee estate in the Property and Appurtenances to the Developer. A form of the Grant Deed is attached to this Agreement as Exhibit F.

(dd) "Hazardous Materials" shall mean:

(1) Those substances included within the definitions of "hazardous substances", "Hazardous Materials", "toxic substances", or "solid waste" in the Comprehensive Environmental Response Compensation and Liability Act of 1980 (42 U.S.C. §§ 9601 et seq.) ("CERCLA"), as amended by Superfund Amendments and Reauthorization Act of 1986 (Pub. L. 99-499 100 Stat. 1613) ("SARA"), the Resource Conservation and Recovery Act of 1976 (42 U.S.C. §§6901 et seq.) ("RCRA"), and the Hazardous Materials Transportation Act, 49 U.S.C. §§ 1801 et seq., and in the regulations promulgated pursuant to said laws, all as amended;

(2) Those substances listed in the United States Department of Transportation Table (49 CFR 172.101 and amendments thereto) or by the Environmental Protection Agency (or any successor agency) as hazardous substances (40 CFR Part 302 and amendments thereto);

(3) Any material, waste or substance which is (A) petroleum, (B) asbestos, (C) polychlorinated biphenyls, (D) designated as a "hazardous substance" pursuant to Section 311 of the Clean Water Act, 33 U.S.C. §§ 1251 et seq. (33 U.S.C. §§1321) or listed

pursuant to Section 307 of the Clean Water Act (33 U.S.C. §§ 1317); (E) flammable explosives; or (F) radioactive materials.

"Hazardous Materials" also includes, but is not limited to, all of the following: (1) a hazardous substance, as defined in Section 25281 or 25316 of the California Health and Safety Code; (2) a hazardous waste, as defined in Section 25117 of the California Health and Safety Code; (3) a waste, as defined in Section 470 of the California Health and Safety Code or as defined in Section 13050 of the California Water Code; and/or (4) any substance or material that is defined or designated as a hazardous waste, material or substance by any other applicable Environmental Laws, including, without limitation, PFAS/PFOS substances (including similar and/or related substances), asbestos, petroleum (including crude oil or any fraction thereof, natural gas, natural gas liquids, liquefied natural gas, or synthetic gas usable for fuel, or any mixture thereof), petroleum-based products and petroleum additives and derived substances, lead-based paint, mold, fungi or bacterial matter, polychlorinated biphenyls, urea formaldehyde, radon gas, radioactive matter, and chemicals which may cause cancer or reproductive toxicity; any toxic or hazardous waste, material or substance or any oil or pesticide listed in, covered by, or regulated pursuant to, any state or local law, ordinance, rule or regulation applicable to the Property, as heretofore or hereafter amended; and, such other substances, materials and wastes which are or become regulated as hazardous or toxic under applicable local, state or federal law, or the United States government, or which are classified as hazardous or toxic under federal, state, or local laws or regulations.

The term "Hazardous Materials" shall not include: construction materials, gardening materials, household products, office supply products or equipment, food service or preparation equipment or materials or janitorial supply products or equipment customarily used in the construction, maintenance, rehabilitation, use, occupancy or management of a commercial property, to the extent which the same are used and stored in accordance with all applicable environmental ordinances and regulations.

(ee) "Hazardous Materials Laws" shall mean environmental and health and safety laws, regulations, ordinances, administrative decisions, common law decisions (whether federal, state, or local) with respect to Hazardous Materials, including those relating to soil and groundwater conditions.

(ff) "Improvements" shall mean collectively the buildings and related works described in Article 4 of this Agreement, and as further defined in the Scope of Development, Project Documents, Entitlements, Final Construction Drawings, and other related permits and approvals for the commercial uses contemplated by this Agreement for the Property's development. For clarity, Improvements include Mitigation.

(gg) "Insurance Requirements" shall mean the insurance requirements for the Developer and its contractors and subcontractors contained in Exhibit G.

(hh) "License Agreement" shall mean that agreement contained in Exhibit K for access between City and Developer (which is assignable by Developer according to its terms) to the Property for work associated with complying with any Environmental Laws or as directed or requested by any Governmental Agency with respect to any Environmental Law or Hazardous

Material Laws or otherwise at the request of Developer all with respect to any matter involving Contamination or an Environmental Condition

(ii) "Loss" means any and all claims, suits, proceedings, actions, demands, liabilities, obligations, damages, penalties, fines, costs and expenses, but expressly excluding any fees and disbursements by and for attorneys, experts and consultants unless incurred by City as a result of any failure by Developer to perform any of its obligations under this Agreement.

(jj) "Memorandum of Amended and Restated Disposition and Development Agreement" shall mean the memorandum of this Agreement, substantially in the form of Exhibit H

(kk) "Mitigation" shall mean any measure, whether active or passive, intended to reduce, positively affect, manage, remove, eliminate, reverse, or prevent vapor intrusion of Contamination into indoor air and includes but is not limited to vapor barriers, soil vapor management systems, HVAC systems/HVAC system modifications, sewer controls and any other control and management technologies.

(ll) "Official Records" shall mean the Official Records of Alameda County.

(mm) "Parties" shall mean the City and the Developer.

(nn) "Party" shall mean either the City or the Developer depending on the context.

(oo) "Permitted Exceptions" shall mean the following exceptions to title with respect to the Property:

(1) the lien of any non-delinquent property taxes and assessments;

(2) the Park Easement and all other existing easements over, under and across the Property for ingress and egress and public utilities, which do not preclude Developer's intended use of the Property;

(3) any incidental easements or other matters affecting title which do not preclude or materially impair Developer's intended use of the Property;

(4) applicable building and zoning laws and regulations;

(5) the provisions of this Agreement;

(6) other matters created by, through or under Developer; and

(7) such other exceptions to title as may hereafter be mutually approved by the City and the Developer.

(pp) "Person" or "Persons" shall mean any individual, partnership, joint venture, corporation, limited liability company, limited liability partnership, trust or other entity, private or public with the power and authority to act and conduct business on its own behalf.

(qq) "Pro Forma" shall mean the preliminary sources and uses for the development of the Project delivered by the Developer under separate confidential cover.

(rr) "Project" shall collectively mean (i) the Property and (ii) the Improvements.

(ss) "Project Documents" shall mean the site plan, elevations and landscaping plans submitted by the Developer to enable the Developer to obtain the Entitlements for the Improvements, together with and all conditions of approval associated with the Entitlements.

(tt) "Property" shall mean the Commercial Property area depicted in the Park Easement located on the southwest corner of South Livermore Avenue and Railroad Avenue in downtown Livermore, and more particularly described in Recital I and Exhibit D attached to this Agreement to be transferred from the City to the Developer.

(uu) "Purchase Price" shall have the meaning set forth in Section 3.2.

(vv) "Reciprocal Access Easement" shall mean a permanent easement agreement between the Developer and the City, for public access over the relevant properties to the public restroom facility designated for public use pursuant to Section 5.3. The easement may be amended by agreement of the parties thereto, pursuant to which permanent easements are granted for access and encroachments between, by, and among the Property, the Park Easement, and the science center and blackbox theater contemplated for the Park Easement, for the construction, operation, repair and maintenance of utilities and utility lines (including sewers, water and gas pipes and systems, electrical power conduits, telephone conduits, lines and wires), storm drains and equipment, surface water runoff, landscaping, pedestrian access, and such other easements consistent with the Project Documents or as may be agreed upon by the Parties to implement the Downtown Plan and the uses contemplated by the Park Easement and the LSRA Agreement.

(ww) “Remediation” or “Remediate” shall mean any and all actions required to be taken under the Environmental Law to address Environmental Conditions, including investigation, monitoring, removal, corrective action, response action, Mitigation, treatment, decontamination, or cleanup of (1) Hazardous Materials, (2) pollution, or (3) Contamination, present or alleged to be present in the Environment.

(xx) "Schedule of Performance" shall mean the summary schedule of actions to be taken by the Parties pursuant to this Agreement to achieve the disposition of the Property to the Developer and the construction of the Project, as the same or components of the same may be extended pursuant to this Agreement. The Schedule of Performance is attached to this Agreement as Exhibit I

(yy) “Site Management Plan” or “SMP” shall mean any plan or directive issued by a Governmental Authority with respect to managing Contamination on the Property.

(zz) "Scope of Development" shall mean the Improvements described in Article 4 for this Agreement, which includes the Scope of Development attached to this Agreement as Exhibit J, and the Downtown Specific plan Design Guidelines, as refined in the Project Documents for the Improvements.

(aaa) "Security Financing Interests" shall have the meaning set forth in Section 9.1.

(bbb) "Outside Date" shall mean the last date for the commencement of construction as more particularly described in the Schedule of Performance.

(ccc) "Title Company" shall mean title company approved by the City and Developer.

(ddd) "Title Policy" has the meaning set forth in Section 2.2(f).

(eee) "Transaction Documents" shall mean, collectively, the Grant Deed, the Memorandum of Amended and Restated Development Agreement, and the Commercial Property Description as depicted in Exhibit D.

(fff) "Transfer" shall mean a transfer of this Agreement or an interest in the Developer, as more particularly described in Section 8.1.

Section 1.2 Exhibits. The following exhibits are attached to and incorporated into this Agreement:

Exhibit A: Downtown Plan.

Exhibit B: Park Easement.

Exhibit C: LSRA Agreement

Exhibit D: Property.

Exhibit E: City Fees.

Exhibit F: Grant Deed.

Exhibit G: Insurance Requirements.

Exhibit H: Memo of Amended and Restated DDA.

Exhibit I: Schedule of Performance.

Exhibit J: Scope of Development

Exhibit K: License Agreement

ARTICLE 2.
PREDISPOSITION REQUIREMENTS

Section 2.1 City's Conditions Precedent to Close of Escrow. As conditions precedent to the Close of Escrow for the Property, the predisposition conditions set forth in this Section 2.1 must first be met by the times specified for such conditions in the Schedule of Performance (as such times may be extended pursuant to Section 11.4 or other provisions of this Agreement) or, if no time is so specified, on or before the Close of Escrow. Satisfaction of these conditions depends on performance by the Developer. Only the City can waive satisfaction of the conditions in this Section 2.1.

(a) The Developer shall provide the City with the preliminary development Pro Forma setting forth the Developer's current estimate of sources and uses of funds for development of the Improvements. The Pro Forma is intended to serve as a guide for the review of the Developer's financing commitments. The Pro Forma and the information contained therein are privileged documents of the Developer containing trade secrets, private personal information, and/or the contents of real estate appraisals, engineering and/or feasibility estimates, evaluations and other proprietary information. No later than the time specified in the Schedule of Performance, the Developer has submitted a true copy of each letter of interest or letter of intent, which may be binding or non-binding, from lenders, mortgage brokers and/or equity partners to provide funds in the amounts necessary, together with the funds of Developer, to fully finance the projected costs of development of the Improvements. The City shall not make an exact copy of the Pro Forma, but may make such notes to record pertinent information from the Pro Forma to guide the City's determinations relative to the adequacy of the Pro Forma, which notes shall likewise be treated as privileged to the extent the notes reflect the Developer's private personal information, and/or the contents of real estate appraisals, engineering and/or feasibility estimates, evaluations and other proprietary information. The City shall return the original Pro Forma to the Developer upon the Developer's request.

(b) The Developer has obtained all Entitlements.

(c) There is no existing, pending or threatened litigation, suit, action or proceeding before any court or administrative agency affecting the City or the Developer or the Property that would, if adversely determined, materially adversely affect the Property or the Developer's or the City's ability to perform their obligations under this Agreement or the Developers' ability to develop and operate the Improvements.

(d) There shall exist no condition, event or act, which would constitute a Developer Event of Default or which, upon the giving of notice or the passage of time, or both, would constitute a Developer Event of Default.

(e) Within the time specified in the Schedule of Performance, the Developer shall furnish to the City the type and amounts of insurance specified in Exhibit G. The City shall be named as additional insured on the policies specified therein. The Developer shall require that all worker compensation insurance policies carried by the general contractor and subcontractors working on the Improvements include a waiver of subrogation in favor of the City.

(f) The Developer has deposited the Purchase Price into Escrow.

(g) RESERVED.

(h) RESERVED.

Section 2.2 Developer's Conditions Precedent to Close of Escrow. As conditions precedent to the Close of Escrow for the Property, the predisposition conditions set forth in this Section 2.2 must first be met by the times specified for such conditions in the Schedule of Performance (as such times may be extended pursuant to Section 11.4 or other provisions of this Agreement) or, if no time is so specified, on or before the Close of Escrow. Satisfaction of these conditions in Section 2.2(a) depends on performance by the City. Only the Developer can waive satisfaction of the conditions contained in this Section 2.2.

(a) The City has prepared and recorded in the Official Records a parcel map for the Property that includes the Commercial Property depicted in the Park Easement.

(b) The Developer has obtained all Entitlements.

(c) RESERVED.

(d) There is no existing, pending or threatened litigation, suit, action or proceeding before any court or administrative agency affecting the City or the Developer or the Property that would, if adversely determined, materially adversely affect the Property or the Developer's or the City's ability to perform their obligations under this Agreement or the Developers' ability to develop and operate the Improvements.

(e) There shall exist no condition, event or act which would constitute a City Event of Default or which, upon the giving of notice or the passage of time, or both, would constitute a City Event of Default.

(f) The is irrevocably and unconditionally committed to issue to Developer the Title Policy, free and clear of all liens, and subject only to the Permitted Encumbrances, within thirty (30) days of Close of Escrow. As used in this Agreement, the term "Title Policy" shall mean an ALTA extended coverage owner's policy of title insurance in the amount of the Purchase Price insuring fee simple title to the Property, subject only to the Permitted Encumbrances.

Section 2.3 Access for Investigations. Prior to Close of Escrow, the City grants to the Developer and the Developer's agents the right to enter upon the Property for the exclusive purpose of conducting geotechnical and environmental studies and investigations. Such entry shall be made only during regular business hours and upon not less than five (5) business days' advance telephonic, email, or written facsimile notice to the City's Community Development Director. Prior to exercise of the right of entry, the Developer shall provide the City with satisfactory evidence, in the form of a certificate of insurance, that the Developer's agents who obtain access to the Property are insured under comprehensive general liability and automobile liability insurance policy or policies in a manner acceptable to the City in its reasonable discretion. The Developer shall indemnify and defend the City, and its elected officials, officers,

directors, employees, contractors, consultants, attorneys, agents, and designated volunteers (collectively the "Indemnified Parties") against, and hold the Indemnified Parties and the Property harmless from and against, any and all costs, expenses (including, without limitation, attorneys' fees), damages, claims, liabilities, liens (including, without limitation, mechanics liens) encumbrances and charges to the extent such arise out of or are in any way directly related to any entry by the Developer or the Developer's agents upon the Property, but only to the extent such matters do not arise from the gross negligence or willful misconduct of the City or other Indemnified Party, from pre-existing conditions of the Property, or from Developer's discovery of any information potentially having a negative impact on the Property. The foregoing obligation of the Developer shall survive the expiration or termination of this Agreement. The City shall cooperate with the Developer in obtaining, for the benefit of the Developer, reliance letters from the appropriate parties with respect to any third party reports or studies commissioned or obtained by the City with respect to the Property.

ARTICLE 3.
DISPOSITION OF THE PROPERTY

Section 3.1 Purchase and Sale. Provided the predisposition requirements set forth in Article 2 and the additional closing conditions set forth in Section 3.4 have been satisfied or waived, the City shall sell to the Developer, and the Developer shall purchase from the City, the Property pursuant to the terms, covenants, and conditions of this Agreement.

Section 3.2 Purchase Price. The purchase price for the Property shall be Fifty Thousand Dollars ($50,000) to be paid by the Developer at the Close of Escrow (the "Purchase Price"). This purchase price reflects the cost of the Developer's participation in the Community Facility Maintenance District for Downtown Core Improvements, the cost of providing and maintaining a restroom facility for public use, the restrictions in design requiring the building improvements to front onto and activate Stockmen's Park, and the standards established by the Schedule of Performance.

Section 3.3 Opening Escrow; Costs of Escrow. To accomplish the transfer and conveyance of the Property from the City to the Developer, by the date specified in the Schedule of Performance, the Parties shall establish an escrow and execute and deliver to the Escrow Holder written instructions that are consistent with this Agreement. The City shall pay or cause to be paid (i) one half (½) of any escrow fee charged by the Escrow Holder and (ii) any and all City and County real estate documentary transfer taxes. The Developer shall pay (a) one half (½) of any escrow fee charged by the Escrow Holder, (b) all costs of the Title Policy (and any endorsements) issued based thereon, and (c) any recording fees. Each Party shall be responsible for the payment of its own attorney's fees, copying expenses and other costs incurred in connection with the negotiation of this Agreement and the consummation of the transaction contemplated hereunder. Any other closing costs and all prorations (if any) shall be split and accounted for as customary in Alameda County, California, for commercial real estate transactions.

Section 3.4 Closing and Closing Deliverables. Subject to the satisfaction or waiver of the closing conditions to, and the predisposition requirements for, the Close of Escrow set forth in Section 2.1 and Section 2.2, the Close of Escrow shall occur and the City shall convey, and the

Developer shall accept conveyance of, fee simple title to the Property and Appurtenances pursuant to the Grant Deed. At or before Close of Escrow, the City and the Developer, as applicable, shall deliver to the Title Company and Escrow Holder the following:

(a) The Developer shall deposit: (i) the Purchase Price, (ii) originals of each of the Transaction Documents executed and acknowledged (as applicable) by the Developer, and (iii) any other documents that may be reasonably requested by the Escrow Holder and the Title Company and that are customarily delivered in connection with the closing of real estate transactions in Alameda County, and any other documents that may be necessary in order to consummate the transactions contemplated under this Agreement.

(b) The City shall deposit: (i) originals of each of the Transaction Documents executed and acknowledged (as applicable), (ii) a FIRPTA Certificate, and (iii) any other documents that may be reasonably requested by the Escrow Holder and the Title Company and that are customarily delivered in connection with the closing of real estate transactions in Alameda County, and any other documents that may be necessary in order to consummate the transactions contemplated under this Agreement.

Section 3.5 Close of Escrow. Subject to the satisfaction or waiver of the closing conditions to, and the predisposition requirements for, the Close of Escrow set forth in Section 2.1 and Section 2.2 and provided that all of the documents and other items set forth in Section 3.4 have been deposited with Escrow Holder, Escrow Holder shall do all of the following:

(a) Complete all blank spaces, if any, in the Transaction Documents, including the effective dates thereof;

(b) Attach to all applicable Transaction Documents final and accurate legal descriptions consistent with the Title Policy;

(c) Deliver copies of fully executed originals of the Transaction Documents to the appropriate parties, including certified copies of the recordable Transaction Documents showing recording information; and

(d) Cause to be recorded or distributed (as more particularly described below) the following documents:

(1) Record in the Official Records the Grant Deed conveying the Property to the Developer;

(2) Record in the Official Records the Memorandum of Amended and Restated Disposition and Development Agreement;

(3) RESERVED;

(4) File any informational reports required by Internal Revenue Code Section 6045(e), as amended, and any other applicable requirements;

(5) Deliver the FIRPTA Certificate, if any, to the Developer;

(6) Forward to both the Developer and the City a separate accounting of all funds received and disbursed for each party and copies of all executed and recorded or filed documents deposited with Escrow Holder, with such recording and filing date and information endorsed thereon to the extent applicable;

(7) Issue the Title Policy to Developer or irrevocably and unconditionally commit to issue the Title Policy to the Developer within thirty (30) days of Close of Escrow; and

(8) Distribute or record such other documents as may be specified in the Parties' escrow instructions, if any.

The date on which the Escrow Holder completes the recordation of all of the recordable documents listed in this Section 3.5 shall be the "Close of Escrow."

Section 3.6 Additional Escrow Instructions. The Parties shall execute such further or additional escrow instructions as Escrow Holder may require or that any such Party desires. Such further or additional escrow instructions shall not require the imposition of any additional obligations or liabilities on a Party, unless agreed to by the Party, and shall not modify the provisions of this Agreement (unless the Parties otherwise expressly provide for such modification in such further or additional escrow instructions).

Section 3.7 Condition of the Property.

(a) "As Is" Conveyance.

(1) THE DEVELOPER SPECIFICALLY ACKNOWLEDGES AND AGREES THAT THE CITY IS CONVEYING THE PROPERTY ON AN "AS IS WITH ALL FAULTS" BASIS AND THAT THE DEVELOPER IS NOT RELYING ON ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND WHATSOEVER, (EXCEPT AS OTHERWISE EXPRESSLY SET FORTH IN THIS AGREEMENT) EXPRESS OR IMPLIED, FROM THE CITY AS TO ANY MATTERS CONCERNING THE PROPERTY, INCLUDING WITHOUT LIMITATION: (A) THE QUALITY, NATURE, ADEQUACY AND PHYSICAL CONDITION OF THE PROPERTY (INCLUDING, WITHOUT LIMITATION, TOPOGRAPHY, CLIMATE, AIR, WATER RIGHTS, WATER, GAS, ELECTRICITY, UTILITY SERVICES, GRADING, DRAINAGE, SEWERS, ACCESS TO PUBLIC ROADS AND RELATED CONDITIONS); (B) THE QUALITY, NATURE, ADEQUACY, AND PHYSICAL CONDITION OF SOILS, GEOLOGY AND GROUNDWATER, (C) THE EXISTENCE, QUALITY, NATURE, ADEQUACY AND PHYSICAL CONDITION OF UTILITIES SERVING THE PROPERTY, (D) THE DEVELOPMENT POTENTIAL OF THE PROPERTY, AND THE PROPERTY'S USE, HABITABILITY, MERCHANTABILITY, OR FITNESS, SUITABILITY, VALUE OR ADEQUACY OF THE PROPERTY OR ANY PARTICULAR PURPOSE, (E) THE ZONING OR OTHER LEGAL STATUS OF THE PROPERTY OR ANY OTHER PUBLIC OR PRIVATE RESTRICTIONS ON THE USE OF THE PROPERTY, (F) THE COMPLIANCE OF THE PROPERTY OR THEIR OPERATION WITH ANY APPLICABLE CODES, LAWS, REGULATIONS,

STATUTES, ORDINANCES, COVENANTS, CONDITIONS AND RESTRICTIONS OF ANY GOVERNMENTAL OR QUASI-GOVERNMENTAL ENTITY OR OF ANY OTHER PERSON OR ENTITY, (G) THE CONDITION OF TITLE TO THE PROPERTY. THE DEVELOPER AFFIRMS THAT THE DEVELOPER HAS NOT RELIED ON THE SKILL OR JUDGMENT OF THE CITY OR ANY OF ITS ELECTED OFFICIALS, OFFICERS, DIRECTORS, EMPLOYEES, CONTRACTORS, CONSULTANTS, ATTORNEYS, AGENTS, OR DESIGNATED VOLUNTEERS TO SELECT OR FURNISH THE PROPERTY FOR ANY PARTICULAR PURPOSE, AND THAT THE CITY MAKES NO WARRANTY THAT THE PROPERTY IS FIT FOR ANY PARTICULAR PURPOSE. THE DEVELOPER ACKNOWLEDGES THAT IT SHALL USE ITS INDEPENDENT JUDGMENT AND MAKE ITS OWN DETERMINATION AS TO THE SCOPE AND BREADTH OF ITS DUE DILIGENCE INVESTIGATION WHICH IT SHALL MAKE RELATIVE TO THE PROPERTY AND SHALL RELY UPON ITS OWN INVESTIGATION OF THE PHYSICAL, ENVIRONMENTAL, ECONOMIC AND LEGAL CONDITION OF THE PROPERTY (INCLUDING, WITHOUT LIMITATION, WHETHER THE PROPERTY IS LOCATED IN ANY AREA WHICH IS DESIGNATED AS A SPECIAL FLOOD HAZARD AREA, DAM FAILURE INUNDATION AREA, EARTHQUAKE FAULT ZONE, SEISMIC HAZARD ZONE, HIGH FIRE SEVERITY AREA OR WILDLAND FIRE AREA, BY ANY FEDERAL, STATE OR LOCAL AGENCY). THE DEVELOPER UNDERTAKES AND ASSUMES ALL RISKS ASSOCIATED WITH ALL MATTERS PERTAINING TO THE PROPERTY'S LOCATION IN ANY AREA DESIGNATED AS A SPECIAL FLOOD HAZARD AREA, DAM FAILURE INUNDATION AREA, EARTHQUAKE FAULT ZONE, SEISMIC HAZARD ZONE, HIGH FIRE SEVERITY AREA OR WILDLAND FIRE AREA, BY ANY FEDERAL, STATE OR LOCAL AGENCY.

(2) Developer's Release of City. Except with respect to the obligations of the City under this Agreement, and the Transaction Documents, and except as otherwise expressly set forth in this Agreement (and for clarity, specifically excluding any third-party claim or loss related in any way to the Environmental Conditions, Environmental Obligations, Remediation or Mitigation), the Developer, on behalf of itself and anyone claiming by, through or under the Developer hereby waives its right to recover from and fully and irrevocably releases the City, and its elected officials, officers, directors, employees, contractors, consultants, attorneys, agents, and designated volunteers (the "Released Parties") from any and all claims, responsibility and/or liability that the Developer may have or hereafter acquire against any of the Released Parties for any costs, loss, liability, damage, expenses, demand, action or cause of action arising from or related to (i) the condition (including any construction defects, errors, omissions or other conditions, latent or otherwise), valuation, salability or utility of the Property, or their suitability for any purpose whatsoever, and (ii) any information furnished by the Released Parties under or in connection with this Agreement.

(3) Scope of Release. Except as otherwise expressly set forth in this Agreement (and for clarity, expressly excluding any third-party claim or loss related in any way to the Environmental Conditions, Environmental Obligations, Remediation, or Mitigation), the release set forth in Section 3.7(a)(2) hereof includes: (a) claims of which the Developer is presently unaware or which the Developer does not presently suspect to exist which, if known by the Developer, would materially affect the Developer's release of the Released Parties; (b) the

Developer specifically waives the provision of any statute or principle of law that provides otherwise; (c) in this connection and to the extent permitted by law, the Developer agrees, represents and warrants that the Developer realizes and acknowledges that factual matters now unknown to the Developer may have given or may hereafter give rise to such causes of action, claims, demands, debts, controversies, damages, costs, losses and expenses which are presently unknown, unanticipated and unsuspected, and the Developer further agrees, represents and warrants that the waivers and releases herein have been negotiated and agreed upon in light of that realization and that the Developer nevertheless hereby intends to release, discharge and acquit the City from any such unknown causes of action, claims, demands, debts, controversies, damages, costs, losses and expenses; and (d) accordingly, the Developer, on behalf of itself and anyone claiming by, through or under the Developer, hereby assumes the above-mentioned risks and hereby expressly waives any right the Developer and anyone claiming by, through or under the Developer, may have under Section 1542 of the California Civil Code, which reads as follows:

> **"A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR."**
>
> Developer's Initials: _____

(4) Exception for Contamination; City's Responsibilities Concerning Contamination.

(A) Notwithstanding the foregoing, the City acknowledges the existence of Contamination on and off of the Property. Consequently, the City agrees that it is now and will at all times remain responsible as owner of the Property prior to the Close of Escrow for such Contamination, the Environmental Conditions, and the Environmental Obligations in any way alleged to be related to or associated with the Property. Further, for clarity the City agrees, as between the Parties, that it will, at all times, perform all Remediation and is solely responsible for and shall pay all costs associated in any way with Remediation, Mitigation, the Environmental Conditions and the Environmental Obligations for the commercial use of the Property. Such costs include (but are not limited to), are, for example, those described in Section 1.1 (x). The City agrees to make commercially reasonable and diligent efforts to Remediate the Environmental Conditions for the commercial use of the Property in a timely fashion in accordance with applicable laws and regulations (including but not limited to Environmental Laws) and timely achieve "no further action" or "closure" status for the Property, i.e., no further action other than customary operation and maintenance associated with Mitigation and/or an SMP as those terms are defined herein for comparable Regional Board supervised projects. Further, the City agrees to make commercially reasonable and diligent efforts to promptly Remediate the Environmental Conditions and promptly pay for any required Mitigation or modifications to existing Mitigation should any no "further action" or "closure" for the Property be "reopened" (or a new matter related in any way to the Environmental Conditions be initiated) by any Governmental Authority, except for a "reopening" due to action or inaction by the Developer, or an agent or tenant of Developer. The City will, at all times, cooperate with

Developer in performing the foregoing and agrees to make best efforts to: i) comply with the License; ii) cooperate with Developer's work on the Property; and iii) not unreasonably interfere with Developer's activities or the Project. For further clarity, the City is not obligated, and has no responsibility, to Developer for: (a) Contamination, Environmental Conditions, or Environmental Obligations that arise due to a change in the Property's use from commercial use to residential use; (b) as between the Parties, such Contamination is proven to originate from property on Blacksmith Square (specifically 21 and 25 S. Livermore Avenue) owned by Developer; and (c) Contamination from uses on the Property after Close of Escrow. Except for the exclusions contained in the prior sentence, the City is obligated and is responsible for Contamination on, from, or related to other property owned at any time by the City and/or for which the City in the past, now, or in the future, had, has, or will have any alleged relationship due to the City's ownership of property or as the result of a release by the City. For further clarity, Developer is and shall remain responsible, at its sole cost, for the operation, maintenance, repair, and replacement of Mitigation measures as Improvements beginning five (5) calendar years after the completion of the installation of such Mitigation, with the express understanding that the City is responsible for the same for the first five (5) calendar years.

(B) The City agrees to comply with all Environmental Laws with respect to the Environmental Conditions and the Environmental Obligations. Further, for clarity, the City agrees, as between the Parties, that it will, at all times, perform and is solely responsible to pay all costs to comply with Environmental Laws for the commercial use of the Property. Such costs include, but are not limited to Remediation (including soil excavation, vapor management systems, vapor extraction systems., etc.) for the commercial use of the Property, and the City agrees that it will be responsible for the costs of any additional excavation, construction, operating or maintenance reasonably attributable to the Environmental Conditions (such as, for example, the incremental cost to dispose of excavated contaminated soil or groundwater over the cost to dispose of non-contaminates soil or groundwater; the incremental cost of a larger HVAC system to mitigate vapor intrusion over the cost of a standard HVAC system; the cost to prevent sub-surface vapors intruding from an elevator pit over no requirement to otherwise do so; the cost of a specialized vapor barrier over the cost of a standard moisture barrier, etc.). To the extent possible or permitted by law or regulation, all manifests for Contaminated soil and/or Contaminated groundwater removed from the Property will not identify Developer as the generator and City (or its agents) shall be identified as the sole generator, shall be responsible for obtaining any necessary EPA generator identification number, and shall dispose of any such Contamination at an appropriately licensed disposal facility. City ensure that all work associated with the Environmental Conditions the Environmental Obligations, will be supervised, directed and performed by consultants, contractors, and/or other vendors each of whom shall be duly licensed, qualified, and insured environmental professionals who shall perform consistent with service standards adhered to at environmental projects in the San Francisco Bay Area that involve complexity comparable to those associated with the Property. Contractors and consultants performing work on the Property pursuant to this Agreement shall carry no less than the amounts and types of insurance commonly carried by contractors and consultants work on environmental projects in the San Francisco Bay Area that involve complexity comparable to those associated with the Property. Prior to the commencement of any work on the Property by City after Close of Escrow, Developer shall be provided with reasonable and customary documentation confirming that such contractors and consultants have such insurance and that Developer has additional insured status under all

policies where such status is customary for similar work. City waives all rights of recovery against Developer on account of loss and damage occasioned to City and its consultants, contractors and agents to the extent that such loss or damage is insured or is required to be insured against under any of the required insurance policies. City and its consultants, contractors and agents will, on obtaining policies of insurance pertaining to the Property, give notice to its insurance carriers that this waiver of subrogation is contained in this Agreement and will cause each insurance policy carried by it pertaining to the Property to provide that the insurance company acknowledges acceptance of the foregoing waiver (*i.e.,* waiver of subrogation) of claims. For further clarity, the City is not obligated, and has no responsibility, to Developer for: (a) Contamination, Environmental Conditions, or Environmental Obligations that arise due to a change in the Property's use from commercial use to residential use; (b) as between the Parties, such Contamination is proven to originate from property on Blacksmith Square (specifically 21 and 25 S. Livermore Avenue) owned by Developer; and, (c) Contamination from uses on the Property after Close of Escrow. Except for the exclusions contained in the prior sentence, the City is obligated and is responsible for Contamination on, from, or related to other property owned at any time by the City and/or for which the City in the past, now, or in the future, had, has, or will have any alleged relationship due to the City's ownership of property or as the result of a release by the City. For further clarity, Developer is and shall remain responsible, at its sole cost, for the operation, maintenance, repair, and replacement of Mitigation measures as Improvements beginning five (5) calendar years after the completion of the installation of such Mitigation, with the express understanding that the City is responsible for the same for the first five (5) calendar years.

(C) It is possible that the Regional Board may require a Site Management Plan for the commercial use of the Property that will identify, based on the Property's history, Contamination that could be discovered during the Project or thereafter. The methodology and assumed exposure pathways identified in the SMP will be consistent with the City's commercial remediation goals for the Environmental Conditions. The City and Developer will cooperate in the development of the SMP; the SMP shall not unreasonably interfere with the development or long-term operation and/or maintenance of the Project, but may include Mitigation (which may be required by the Regional Board).

(D) After close of escrow, Developer shall receive all correspondence between any Governmental Authority and the City with respect to the Environmental Conditions and/or Environmental Obligations and City shall provide Developer no less than five (5) business days advance notice of any meeting between City and any Governmental Authority with respect to the same and Developer may, at its option, attend such meetings. Developer will be provided with copies of all reports in any way related to Environmental Conditions and/or Environmental Obligations. For each submittal by the City to any Governmental Authority that concerns to any extent the Environmental Conditions and/or Environmental Obligations, the City shall provide Developer no less than ten (10) business days to review and provide comments on the submittal. The Parties shall meet and confer in good faith during that period to consider an comments or requested changes.

(b) No-Third Party Benefit. Nothing in this section is intended to create, nor does it to create, not shall in be interpreted to create, a right for a third-party beneficiary.

(c) Survival. The provisions of this section shall survive the Close of Escrow and any termination of this Agreement.

Section 3.8 Real Estate Commissions. The City shall not be liable for any real estate commissions or brokerage fees that may arise from this Agreement. The Developer represents that it has not obtained or engaged the services of a real estate broker in this transaction. If a real estate commission is claimed through either Party in connection with the transaction contemplated by this Agreement, then the Party through whom the commission is claimed shall indemnify, defend and hold the other Party harmless from any liability related to such commission. The provisions of this Section shall survive termination of this Agreement.

Section 3.9 Challenge to this Agreement or the Entitlements. In the event a claim is filed in a court of competent jurisdiction regarding the validity of this Agreement or to the City's action in issuing the Entitlements for the Improvements, which claim proves successful, or in the event a referendum is initiated with respect to the validity of this Agreement or to the City's action in issuing the Entitlements for the Improvements, which referendum proves successful, upon sixty (60) days prior written notice the Developer may elect to not proceed with the Project. If Developer elects not to proceed with the Project pursuant to the preceding sentence, promptly following delivery of such written notice Developer will convey the Property to the City and the City will reacquire the Property and acquire the Developer's interest in Project related work product by paying the Purchase Price. Upon the required payment by the City, the Developer will assign its interest in the plans and specifications for the Improvements and all engineering and architect contracts to the City, without representation or warranty.

Section 3.10 Parcel Map for Property. The City has subdivided the Property consistent with the Downtown Core Plan and as depicted in the Park Easement. In the event the Developer elects to subdivide or merge one or more of the Property parcels with its adjacent property commonly known as Blacksmith Square, the Developer shall prepare an appropriate parcel map and to ensure those portions of the merged parcel(s) that are within the Park Easement continue to lie within the Commercial Property areas depicted in the Park Easement. The developer shall prepare all required documents to amend the LSRA Agreement and Park Easement and be responsible for all other associated costs with amending said documents.

ARTICLE 4.
IMPROVEMENTS AND DESIGN REQUIREMENTS

Section 4.1 Improvements. Within the time specified in the Schedule of Performance, the Developer shall construct commercial buildings on approximately 13,423 square feet of the Property, utilizing architecture and design elements compatible with Blacksmith Square, and configuring the building walls adjacent to the Stockmen’s Park so that they are oriented toward Stockmen’s Park and designed to incorporate window and door openings so tenant spaces actively interface with Stockmen’s Park, as more specifically described in the Scope of Development, attached as Exhibit J to this Agreement and the City’s Downtown Specific Plan Design Guidelines.

Section 4.2 Design in Conformance with Project Documents. In designing and constructing the Improvements, the Developer shall cause all subsequent design documents prepared by the Developer to be substantially consistent with the Scope of Development and City Design Guidelines attached as Exhibit J, and the Project Documents. In addition, the Project design shall include the provision of restroom facilities, which shall be open and available to the

public. The restroom may be part of a tenant space or a stand-alone facility, but restroom users will not be required to be customers or tenants of the commercial project. The Scope of Development, City Design Guidelines, and the Project Documents shall establish the baseline design standards from which the Developer shall prepare the Final Construction Drawings.

Section 4.3 Additional Permits and Approvals. Within the time specified in the Schedule of Performance (as such times may be extended pursuant to Section 11.4 or by mutual agreement of the Parties or by other provisions of this Agreement), Developer shall obtain all Entitlements, permits, and approvals necessary to construct the Improvements. All applications for such Entitlement, permits, and approvals shall be consistent with the approved Project Documents. The Developer acknowledges that execution of this Agreement by the City does not constitute approval by the City of any required permits, applications, or allocations, and in no way limits the discretion of the City in the permit, allocation, and approval process. The City shall provide reasonable assistance to the Developer in securing such permits and approvals.

Section 4.4 City Review. The Developer shall be solely responsible for all aspects of the Developer's conduct in connection with the Improvements, including, but not limited to, the design of the Improvements, the quality and suitability of the Project Documents related to the Improvements, the supervision of construction work, and the qualifications, financial condition, and performance of all architects, engineers, contractors, subcontractors, suppliers, consultants, and property managers. Any review or inspection undertaken by the City with reference to the Project is solely for the purpose of determining whether the Developer is properly discharging its obligations to the City under this Agreement, and should not be relied upon by the Developer or by any third parties as a warranty or representation by the City as to the quality of the design or construction of the Improvements.

Section 4.5 Basic Concept Drawings. The Developer submitted Basic Concept Drawings in July 2021, for the City's review and approval as property owner transferring the Commercial Property to the Developer, and not in the City's exercise of its municipal regulatory authority. The City found the Basic Concept Drawings consistent with the Scope of Development and City Design Guidelines and approved them on August 20, 2022.

Section 4.6 Public Restroom Facility. A deed restriction shall be executed and recorded in favor of the City and burdening the Property, or a portion thereof, to require that upon development there shall be a public restroom facility on the Property that is open and available to the public between 10:00 a.m. and dusk, every day of the week. The deed restrictions shall provide that the Developer or its successor shall be responsible, at its own cost and expense, for all aspects of constructing, owning, operating, maintaining and replacing the public restroom. The deed restriction must be approved by the City and must include a clause stating that it cannot be altered without the City's prior written consent. The City and Developer shall, cooperate in good faith to agree upon, execute, acknowledge (as applicable), deliver, and record (as applicable) the deed restriction for the public restroom facility prior the earlier of the issuance of a building permit for construction of the Project or February 6, 2023, as set forth in the Schedule of Performance, whichever occurs first.

ARTICLE 5.
PRECONDITIONS TO COMMENCEMENT OF CONSTRUCTION

Section 5.1 Approvals. All applicable Entitlements, permits, and approvals necessary to construct the Improvements have been obtained.

Section 5.2 City Fees. All applicable pre-development City Fees have been paid. The Developer shall be responsible for all Development Impact fee costs at time of building permit. The current estimated cost of these fees is $1,132,568. The Developer shall be entitled to development fee credits for utility connections and other impact fees from the previous commercial use of the Property based upon the fee rates at the time of building permit. The current estimated value of these credits is $490,416. The Developer shall be eligible for an additional credit of $272,465 recognizing the costs associated with the construction costs and fees associated with the provision of restroom facilities which are available to the public. The Developer shall also be responsible for the payment of the City's Parking In-Lieu Fee based upon the fee rate at the time of building permit. The current estimated Parking In-Lieu Fee is $952,740. The Developer is entitled to Parking In-Lieu Fee Credits based upon the fee rate at the time of building permit. The current estimated value of this credit is $362,949 recognizing a further portion of the project's contribution to publicly available restroom facilities, credit for City provision of eight new surface parking in the vicinity of the property, and the Developer's deed restriction at 39 South Livermore Avenue (APN 097-0001-033) to require that 23 parking spaces on that property shall be open and available to the public. The deed restriction shall provide that the 23 parking spaces shall be available for public use on a first come first served basis subject to the City's regulations for off-street parking, and shall not be reserved or assigned to individual tenants or users. The deed restriction must be approved by the City and must include a clause stating that it cannot be altered without the City's prior written consent. Upon recordation of said deed restriction, the City shall satisfy and pay the Parking In-Lieu Fee Credit obligation in this Section 5.2 on behalf of the Developer for the Property as the fee at the time of the building Permit. The City and Developer shall cooperate in good faith and agree upon, execute, acknowledge, deliver, and record the deed restriction shall be recorded prior the earlier of the issuance of a building permit for construction of the Project or February 6, 2023, as set forth in the Schedule of Performance, whichever occurs first. The Parking In-Lieu Fees shall be paid no later than building occupancy. Payment of the Parking In-Lieu fees proportional for each building may be phased with each building occupancy. The Developer shall be entitled to an additional credit up to $15,000 to cover production costs related to three Downtown Artistic Renderings. The Downtown Artistic Renderings include two eye-level views and one aerial view. The Downtown Artistic Renderings show visual perspectives of the Downtown Core Plan following buildout of the Blacksmith Square expansion, Quest science center, and SPARC black box theater. Actual credit for the Downtown Artistic Renderings will be based upon invoices for rendering production services. The Developer shall be entitled to an additional credit up to $15,000 for additional Downtown Artistic Renderings. Finally, the Developer shall be entitled to an additional $120,000 credit to cover construction costs related to remediation of hazardous materials.

Section 5.3 Execution and Recordation of Reciprocal Access Easement. As a condition to commencement of construction of the Project, the Reciprocal Access Easement shall have been agreed to by all applicable parties, and executed, acknowledged (as applicable) and delivered by all applicable parties, and recorded (as applicable) in the Official Records. The City and Developer shall, , cooperate in good faith to agree upon, execute, acknowledge (as

applicable), deliver, and record (as applicable) the Reciprocal Access Easement prior the earlier of the issuance of a building permit for construction of the Project or February 6, 2023, as set forth in the Schedule of Performance, whichever occurs first.

Section 5.4 Building Permits. Building Permits to enable the Project to be constructed have been issued by the City or are ready to issue.

Section 5.5 Updates to Title Policy. It is anticipated that, prior to commencing construction of the Project, Developer will obtain updates to the Title Policy necessary to reflect Security Financing Instruments and other encumbrances contemplated by this Agreement, placed in connection with the construction of the Improvements. The City shall cooperate with Developer in connection with such updates to the Title Policy and any such title policies for Encumbrance Holders, including, without limitation, delivering such documents as may be reasonably requested by the Title Company with respect to the same.

Section 5.6 Insurance. The Developer shall procure, maintain, and furnish to the City evidence of the type and amounts of insurance specified in Exhibit G for the term of this Agreement. The City shall be named as additional insured on the commercial general liability policies specified therein.

ARTICLE 6.
CONSTRUCTION OF THE IMPROVEMENTS

Section 6.1 Commencement of Construction. The Developer shall commence construction of the Improvements within the time set forth in the Schedule of Performance. Construction shall be deemed to commence on the date physical work on the Property starts pursuant to a valid Building Permit from the City.

Section 6.2 Completion of Construction. The Developer shall diligently prosecute to completion the construction of the Improvements and shall complete construction of the Improvements within the time set forth in the Schedule of Performance. The Developer shall be solely responsible for the construction of the Improvements by the time set forth for such completion in the Schedule of Performance, including all costs of design and construction.

Section 6.3 Construction Pursuant to Scope of Development and Project Documents.

(a) The Developer shall construct the Improvements in accordance with the Scope of Development, the Project Documents, the approved Final Construction Drawings, and the terms and conditions of all City and other governmental approvals.

(b) The Developer shall submit or cause to be submitted for the City's approval as property owner transferring the Property to the Developer, and not in the City's regulatory capacity, any proposed change in the Final Construction Drawings which materially changes the size, location, or elevations of the Improvements, including the landscape and/or hardscape, or signage of the Improvements, or which materially changes the quality or appearance of the exterior materials of the Improvements, or which would require an amendment to any Entitlements prior to making such change. The City shall reasonably approve or disapprove a proposed material change within fifteen (15) days after receipt by the City. Failure

to approve or disapprove within fifteen (15) days shall be deemed to be disapproval of such change. If the City rejects the proposed material change and upon the Developer's request, the City shall provide the Developer with the specific reasons therefor, and the approved Final Construction Drawings shall continue to control.

(c) No change which is required for compliance with building codes, government health and safety regulations or other applicable laws or regulations, or to comply with changes or corrections required of the Developer in the plan check process shall be deemed material. However, the Developer must submit to the City any change that is required for such compliance within ten (10) days after making such change, and such change shall become a part of the approved Final Construction Drawings, binding on the Developer.

Section 6.4 Mechanics' Liens. The Developer shall indemnify the City and hold the City harmless against and defend the City in any proceeding related to any mechanic's lien, stop notice or other claim brought by a subcontractor, laborer or material supplier who alleges having supplied labor or materials in the course of the construction of the Improvements by the Developer. The City shall indemnify the Developer and hold the Developer harmless against and defend the Developer in any proceeding related to any mechanic's lien, stop notice or other claim brought by a subcontractor, laborer or material supplier who alleges having supplied labor or materials in the course of the City conducting Remediation or any other activity associated with the Environmental Obligations on or related to the Property. These indemnity obligations shall survive the issuance of a Certificate of Occupancy by the City and the termination of this Agreement.

Section 6.5 Compliance with Applicable Law. The Developer shall cause all work performed in connection with construction of the Improvements to be performed in compliance with (a) all applicable laws, ordinances, rules and regulations of federal, state, county or municipal governments or agencies now in force or that may be enacted hereafter, and (b) all directions, rules and regulations of any fire marshal, health officer, building inspector, or other officer of every governmental agency now having or hereafter acquiring jurisdiction. The work shall proceed only after procurement of each permit, license, or other authorization that may be required by any governmental agency having jurisdiction, and the Developer shall be responsible for the procurement and maintenance thereof, as may be required of the Developer and all entities engaged in the work of constructing the Improvements.

Section 6.6 Progress Reports. Until a Certificate of Occupancy has been issued by the City, the Developer shall provide the City with periodic progress reports, as reasonably requested by the City (but not more than once every calendar month), regarding the status of the construction of the Improvements. Such report shall consist of an executive summary of the work to date, including, but not limited to, the causes for any delays and the work that is anticipated for the following month, a reasonable number of construction photographs taken since the last report submitted to the City, and shall be in form reasonably acceptable to the City.

Section 6.7 Entry by City. Until a Certificate of Occupancy has been issued by the City, the Developer shall permit the City, upon reasonable prior notice, through its officers, agents, or employees, to enter the Property during normal business hours to inspect the work of construction to determine that such work is in substantial conformity with the Scope of

Development, the Project Documents, and the approved Final Construction Drawings or to inspect the Property for compliance with this Agreement. The City is under no obligation to (a) supervise construction, (b) inspect the Property, or (c) inform the Developer of information obtained by the City during any inspection. The Developer shall not rely upon the City for any supervision or inspection. The rights granted to the City pursuant to this Section 6.7 are in addition to any rights of entry and inspection the City may have in the exercising of its municipal regulatory authority.

Section 6.8 Non-Discrimination During Construction; Equal Opportunity. The Developer (for purposes of this Section 6.8, the term "Developer" shall include Developer's contractors), for itself, its successors and assigns, and transferees agrees that in the construction of the Project provided for in this Agreement:

(a) The Developer will not discriminate against any employee or applicant for employment because of race, color, religion, creed, national origin, ancestry, disability, actual and perceived, medical condition, age, marital status, sex, sexual orientation, Acquired Immune Deficiency Syndrome (AIDS), actual or perceived, or retaliation for having filed a discrimination complaint ("Nondiscrimination Factors"). The Developer will take affirmative steps to ensure that applicants are employed by the Developer or its applicable contractor, and that its employees are treated without regard to the Nondiscrimination Factors during employment including, but not limited to, activities of: upgrading, demotion or transfer; recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Developer or its applicable contractor shall post in conspicuous places, available to its employees and applicants for employment, the applicable nondiscrimination clause set forth herein.

(b) The Developer will ensure that its or its applicable contractor's solicitations or advertisements for employment are in compliance with the aforementioned nondiscrimination factors.

Section 6.9 Insurance Requirements. Developer, its contractors, subcontractors and/or agents shall procure, maintain, and furnish, or cause to be furnished, to the City duplicate originals of the insurance policies or other written evidence of binding coverage, complete with additional insured and loss payee endorsements, as applicable pursuant to Exhibit G.

Section 6.10 Certificate of Occupancy. Upon the Developer's completion of construction for that portion of the Improvements to be constructed on particular parcel of the Property, the City shall issue the Developer a Certificate of Occupancy for that improvement on the corresponding parcel of the Property. Once the Developer receives Certificates of Occupancy from the City for each of the Improvements to be constructed on a particular parcel of the Property, then that parcel will no longer be subject to the Security Financing Interests more particularly described in Article 9, except for the provisions in that Article 9 that continue through and beyond the completion of the construction or otherwise survive as provided for in this Agreement.

ARTICLE 7.
OBLIGATIONS WHICH CONTINUE THROUGH
AND BEYOND THE COMPLETION OF CONSTRUCTION

Section 7.1 Commercial Use. The Developer covenants to use the Property only for the development and operation of commercial uses authorized by the Downtown Specific plan for a term of not less than thirty (30) years following the date of the issuance of the Certificate of Occupancy without the prior written approval of the City, which shall not be unreasonably withheld or delayed.

Section 7.2 Community Facility Maintenance District for Downtown Core Improvements. The Developer agrees to participate in a maintenance district or districts created to fund the maintenance of Stockmen's Park and other designated downtown public facilities ("Downtown Core Maintenance District"). The Downtown Core Maintenance District and assessment shall be placed onto the Property no earlier than one (1) year following the issuance of the Certificate of Occupancy and shall be placed on the annual tax bill of the Property in the approximate initial amount not to exceed $22,000 and increasing annually thereafter at the percent year-over-year change in the Consumer Price Index For All Urban Consumers – San Francisco Area plus one percent (1%). The assessment for the Downtown Core Maintenance District shall be apportioned to each parcel of the Property as provided for in the methodology for the district's assessment.

Section 7.3 Maintenance. The Developer hereby agrees that, after the Close of Escrow and prior to completion of construction of the Improvements, the Improvements shall be maintained in a neat and orderly condition and in accordance with industry health and safety standards, and that, once the Improvements are completed, they shall be maintained in accordance with industry standards as to both external and internal appearance of the buildings, and common areas. At all times, the Developer shall maintain or cause to be maintained the Improvements in good repair and working order, and in a neat, clean and orderly condition, including the walkways and landscaping, reasonable wear and tear excepted, and from time to time make all necessary and proper repairs, renewals, and replacements. In the event that there arises a condition in contravention of the above maintenance standard, then the City shall notify the Developer in writing of such condition, giving the Developer thirty (30) days from receipt of such notice to commence and thereafter diligently to proceed to cure said condition. In the event the Developer fails to cure or commence to cure the condition within the time allowed, the City shall have the right to perform all acts necessary to cure such a condition. The City shall receive from the Developer the City's reasonable cost in taking such action and shall provide reasonable evidence of such costs to the Developer.

Section 7.4 Developer To Indemnify City.

(a) **EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT WITH RESPECT TO THE ENVIRONMENTAL CONDITIONS AND THE ENVIRONMENTAL OBLIGATIONS,** the Developer shall indemnify, defend (with counsel approved by the City) and hold harmless the City, and its elected officials, officers, directors, employees, contractors, consultants, attorneys, agents, and designated volunteers (collectively, the "Indemnitees") from and against any and all liabilities, losses, costs, expenses (including

without limitation attorneys' fees and costs of litigation), claims, demands, actions, suits, causes of action, writs, judicial or administrative proceedings, penalties, deficiencies, fines, orders, judgments and damages (all of the foregoing collectively "Claims") which in any manner, directly or indirectly, in whole or in part, are caused by, arise in connection with, result from, relate to, or are alleged to be caused by, arise in connection with, result from, or relate to: (i) approval of this Agreement and/or the Improvements; (ii) performance of this Agreement on the part of the Developer or any contractor or subcontractor of Developer; and/or (iii) the development, operation, maintenance or management of the Improvements, whether or not any insurance policies shall have been determined to be applicable to any such Claims. It is further agreed that the City does not and shall not waive any rights against Developer which they may have by reason of this indemnity and hold harmless agreement because of the acceptance by the City, or Developer's deposit with the City of any of the insurance policies described in this Agreement.

(b) The Developer shall pay immediately upon the Indemnitees' demand any amounts owing under this indemnity. The duty of Developer to indemnify includes the duty to defend the Indemnitees or, at the Indemnitees' choosing, to pay the Indemnitees' costs of its defense in any court action, administrative action, or other proceeding brought by any third party arising from the Improvements. The Indemnitees shall have reasonable approval rights regarding decisions with respect to their representation in any legal proceeding, including, but not limited to, the selection of attorney(s). Developer's obligations set forth in this Section shall survive the issuance of the Certificate of Occupancy by the City, and termination of this Agreement. Notwithstanding the foregoing, Developer's indemnification obligations set forth in this Section 7.4 shall not apply to Claims to the extent arising from the gross negligence or willful misconduct of the Indemnitees, or any Claims arising from the activities of any Indemnitee on the Property, or any Claims arising from the breach by the City of any of its obligations under this Agreement or the Transaction Documents.

Section 7.5 Hazardous Materials.

(a) Certain Covenants and Agreements. Following possession of the Property, the Parties covenant and agree that:

(1) The Developer shall not knowingly permit the Property or Improvements, or any portion thereof, to be a site for the use, generation, treatment, manufacture, storage, disposal or transportation of Hazardous Materials or otherwise knowingly permit the presence of Hazardous Materials in, on or under the Property (other than with respect the Environmental Conditions, with the express understanding that the Developer is not permitting the Environmental Conditions to be on the Property) in violation of any applicable law;

(2) Other than with respect the Environmental Conditions, with the express understanding that the Developer is not permitting the Environmental Conditions to be on the Property, the Developer shall keep and maintain the Property and Improvements, and each portion thereof, in compliance with, and shall not cause or permit the Property or Improvements, or any portion thereof, to be in violation of, any Hazardous Materials Laws ;

(3) With respect the Environmental Conditions as defined herein and any Hazardous Materials released on the Property after Developer takes possession of the Property, upon receiving actual knowledge of the same the Developer shall within ten (10) days advise the City in writing of: (A) any and all enforcement, cleanup, removal or other governmental or regulatory actions instituted, completed or threatened against the Developer or the Property or Improvements pursuant to any applicable Hazardous Materials Laws; (B) any and all claims made or threatened by any third party against the Developer or the Property or Improvements relating to damage, contribution, cost recovery, compensation, loss or injury resulting from any Hazardous Materials (the matters set forth in the foregoing clause (A) and this clause (B) are hereinafter referred to as "Hazardous Materials Claims"); (C) the presence of any Hazardous Materials in, on or under the Property in such quantities which require reporting to a government agency; or (D) the Developer's discovery of any occurrence or condition on any real property adjoining or in the vicinity of the Property (other than the Environmental Conditions) or Improvements or to be otherwise subject to any restrictions on the ownership, occupancy, transferability or use of the Property or Improvements under any Hazardous Materials Laws.

(b) Indemnity from Developer. Without limiting the generality of the indemnification set forth in Section 7.4, the Developer hereby agrees to indemnify, protect, hold harmless and defend (by counsel reasonably satisfactory to the City) the City, and its elected officials, officers, directors, employees, contractors, consultants, attorneys, agents, and designated volunteers from and against any and all claims, losses, damages, liabilities, fines, penalties, charges, administrative and judicial proceedings and orders, judgments, remedial action requirements, enforcement actions of any kind, and all costs and expenses incurred in connection therewith (including, but not limited to, reasonable attorney's fees and expenses), arising directly or indirectly, in whole or in part, out of: (1) the failure of the Developer, its agents, employees, or contractors to comply with any Hazardous Materials Law relating in any way whatsoever to the handling, treatment, presence, removal, storage, decontamination, cleanup, transportation or disposal of Hazardous Materials other than the Environmental Conditions into, on, under or from the Property or Improvements at any time following the Close of Escrow; (2) other than the Environmental Conditions, the presence in, on or under the Property or Improvements of any Hazardous Materials or any releases or discharges of any Hazardous Materials into, on, under or from the Property; or (3) other than the Environmental Conditions, any activity carried on or undertaken on or off the Property of Improvements, subsequent to the Close of Escrow, and whether by the Developer or any employees, agents, contractors or subcontractors of the Developer at any time occupying or present on the Property, in connection with the handling, treatment, removal, storage, decontamination, cleanup, transport or disposal of any Hazardous Materials at any time located or present on or under the Property (collectively "Indemnification Claims"). The foregoing indemnity shall not apply to any Environmental Conditions or Contamination released or detected at any time prior to Close of Escrow from, on, or at any location, including, but not limited to, the Property, but shall apply only to any Contamination due directly and solely to Hazardous Materials released on the Property after Developer takes possession of the Property that are detected on or under the Property, or affecting any natural resources, and to any Contamination of any property or natural resources arising in connection with the generation, use, handling, treatment, storage, transport or disposal of any such Hazardous Materials after Close of Escrow, and irrespective of whether any of such activities were or will be undertaken in accordance with Hazardous Materials Laws. Notwithstanding the foregoing, Developer's indemnity under this Section 7.5(b) shall apply to

any Environmental Conditions related to the Contamination that are the result of actions by the Developer or its agents or tenants that impede, interfere, obstruct, or otherwise compromise a Mitigation, but shall not apply to any Claims to the extent arising solely from the gross negligence or willful misconduct of any of the City, its board members, officers, employees, or contractors. Developer's obligations set forth in this Section shall survive the issuance of the Certificate of Occupancy by the City, and termination of this Agreement.

(c) Indemnity from City. At all times, the City hereby agrees to indemnify, protect, hold harmless and defend (by counsel reasonably satisfactory to the Developer) the Developer, and its officers, directors, employees, members, contractors, consultants, attorneys, agents, and permitted transferees under Section 8, from and against any and all claims, losses, demands, allegations, damages, liabilities, fines, penalties, charges, administrative and judicial proceedings and orders, judgments, Governmental Agency requests/requirements, remedial action requirements, enforcement actions of any kind, and all costs and expenses incurred in connection therewith (including, but not limited to, reasonable attorney's, consultant, and expert witness fees, and expenses), arising directly or indirectly, in whole or in part, out of: (1) the failure of the City, its agents, employees, or contractors to comply with any Environmental Law relating in any way whatsoever to the Environmental Conditions at any time whether before or after the Close of Escrow; (2) the presence of Contamination in, on or under the Property or Improvements; (3) the, Environmental Conditions and/or Environmental Obligations; (4) implementing and/or complying with any Regional Board or Governmental Authority's requirement, demand, or request made at any time with respect to the Environmental Conditions; (5) any incremental Improvement, construction, operating, or maintenance cost reasonably attributable to the Environmental Conditions (e.g., specialized materials necessitated by the presence of residual VOCs or VOC vapors, larger capacity HVAC systems, vapor barrier, etc., with the express understanding that, if, for any reason, Developer determines, in its sole discretion, that it is in its best interest that a vapor barrier be installed as a mitigative measure, the City shall pay all costs associated with such installation); (6) the failure of any Remediation or the failure to implement or pay for any Remediation or Mitigation; (7) impacts of the Environmental Conditions on (x) any persons or entities not party to this Agreement and (y) any property other than the Property, and/or (z) natural resources (collectively, "Third Party Claims" with Third Party Claims including but not being limited to claims asserted by any Governmental Authority whether before or after issuance of any "no further action" or other "closure" document with respect to the Property or any properties); (8) any activity carried on or undertaken on or off the Property at any time in connection with the handling, treatment, removal, storage, decontamination, cleanup, transport or disposal of Contamination or any Hazardous Materials associated with the Environmental Conditions; (collectively "Indemnification Claims"). The foregoing indemnity shall further apply to any Contamination of any property or natural resources arising in connection with the generation, use, handling, treatment, storage, transport, or disposal of any such Hazardous Materials associated with the Environmental Conditions, and irrespective of whether any of such activities were or will be undertaken in accordance with Hazardous Materials Laws. Notwithstanding the foregoing, City's indemnity under this Section 7.5(c) shall not apply to any Claims to the extent arising solely from the gross negligence or willful misconduct of any of the Developer, its officers, employees, or contractors, nor shall it apply to any claims related Environmental Conditions due to actions by the Developer or its agents or tenants that impede, interfere, obstruct, or otherwise compromise a Mitigation. City's obligations set forth in this Section shall survive the issuance of

the Certificate of Occupancy by the City, and termination of this Agreement. In the event this indemnity is judicially determined to exceed that permitted by Applicable Law, then such indemnity shall be construed as to preserve the maximum indemnity permitted thereby.

Section 7.6 No Liability for Breaches of Security The foregoing and anything to the contrary contained in this Agreement notwithstanding, the City and Developer shall have no liability to the other Party, or any obligation to indemnify the other Party for any third party claims, for any injury to person or property caused by the acts of third persons in connection with any alleged breach of or failure to provide reasonable security, including criminal acts or other losses, nor shall this Agreement establish any duty owed in tort to, or standard of care in tort as to, either Party or any third party.

Section 7.7 Non-Discrimination.

(a) The Developer covenants and agrees for itself, its successors and its assigns in interest to the Property or any part thereof, that there shall be no discrimination against or segregation of any person or persons on 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. All deeds, leases, or contracts for the sale, lease, sublease, or other transfer of the Property shall contain or be subject to the nondiscrimination or non-segregation clauses hereafter prescribed.

(b) Notwithstanding subdivision (a), with respect to familial status, subdivision (a) shall not be construed to apply to housing for older persons, as defined in Section 12955.9 of the Government Code. With respect to familial status, nothing in subdivision (a) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11, and 799.5 of the Civil Code, relating to housing for senior citizens. Subdivision (d) of Section 51 and Section 1360 of the Civil Code and subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall apply to subdivision (a).

(c) Developer's obligations set forth in this Section shall survive the issuance of the Certificate of Occupancy by the City, and termination of this Agreement.

Section 7.8 CFD Assessment. Nothing is this Agreement is intended to prevent the Developer from passing-through all or a portion of any CFD assessment applicable to the tenants occupying the Improvements.

Section 7.9 Deed Restriction. The Parties acknowledge that the Regional Board may require the recordation of a Covenant and Environmental Restriction ("Covenant") that: (a) runs with the land pursuant to California Civil Code Section 1471, (b) specifies that groundwater at the Site may not be used without prior Regional Board authorization, (c) requires compliance with an SMP and Mitigation, as those terms are defined in this Agreement, and/or (c) contains other provisions that are routinely required by the Regional Board on comparable sites. If the Regional Board requires such a Covenant, then, within the sooner of (x) a deadline imposed by the Regional Board, or (y) thirty (30) calendar days after a certificate of occupancy is issued for

the Project, Developer shall cause to be recorded in the Alameda County Recorder's Office a Covenant the terms of which are mutually acceptable to the Parties, and the Regional Board. Neither Party shall unreasonably withhold its acceptance of the Covenant's terms. The Covenant shall include, but not be limited to, a commercially reasonable notice to future owners of all or any portion of the Property confirming (i) the existence and Remediation and/or Mitigation of the Environmental Conditions; and (ii) any obligations future landowners may have in connection with ongoing risk management protocols described in the SMP applicable to the Site.

Section 7.10 Survival. The provisions of this section shall survive the termination of this Agreement.

ARTICLE 8.
ASSIGNMENT AND TRANSFERS

Section 8.1 Definitions. As used in this Article 8, the term "Transfer" shall mean:

(a) Any total or partial sale, assignment or conveyance, or any trust or power, or any transfer in any other mode of form, of or with respect to this Agreement, or of the Property, or any part thereof or any interest therein or of the Improvements constructed thereon, or any contract or agreement to do any of the same; or

(b) Any total or partial sale, assignment or conveyance, or any trust or power, or any transfer in any other mode or form, of or with respect to more than a fifty percent (50%) ownership interest in the Developer, or any contract or agreement to do any of the same.

Section 8.2 Purpose of Restrictions on Transfer. This Agreement is entered into solely for the purpose of development and operation of the Improvements on the Property and their subsequent use in accordance with the terms of this Agreement. The qualifications and identity of the Developer are of particular concern to the City, in view of:

(a) The importance of the redevelopment of the Property to the general welfare of the community; and

(b) The fact that a Transfer as defined in Section 8.1 above is for practical purposes a transfer or disposition of the Property.

It is because of the qualifications and identity of the Developer that the City is entering into this Agreement with the Developer and that Transfers are permitted only as provided in this Agreement.

Section 8.3 Prohibited Transfers. The limitations on Transfers set forth in this Article 8 shall apply from the Effective Date of this Agreement until the issuance of a Certificate of Occupancy by the City as more particularly described in Section 6.10. Except as expressly permitted in this Agreement, the Developer represents and agrees that the Developer has not made or created and will not make or create or suffer to be made or created, any Transfer, either voluntarily or by operation of law, without the prior approval of the City, which shall not be unreasonably withheld, conditioned, or delayed. Any Transfer made in contravention of this

Section 8.3 shall be void and shall be deemed to be a default under this Agreement, whether or not the Developer knew of or participated in such Transfer.

Section 8.4 Permitted Transfers. Notwithstanding the provisions of Section 8.3, the following Transfers shall be permitted (subject to satisfaction of the conditions of Section 8.5), so long as such Transfer is permitted under, and accomplished in accordance with this Agreement:

(a) Any Transfer creating a Security Financing Interest (defined in Section 9.1).

(b) Any Transfer directly resulting from the foreclosure of a Security Financing Interest or the granting of a deed in lieu of foreclosure of a Security Financing Interest.

(c) Any Transfer resulting directly from the death or mental incapacity of an individual.

(d) The conveyance or dedication of a portion of the Property to any public entity, including a public utility, required to allow for the development of the Project.

(e) The granting of temporary or permanent easements or permits to facilitate development of the Project.

(f) A Transfer to an Affiliate of Developer.

(g) Any Transfer contemplated by or permitted pursuant to any other provision of this Agreement,

(h) The lease of any space within the Improvements to a third party.

(i) Any Transfer resulting in up to ninety percent (90%) in the aggregate of the direct or indirect ownership or beneficial interests in Developer, provided that, following such Transfer, Red Bear Property Management, Inc. (or any Affiliate of such entity, "Red Bear") remains in Control of Developer.

(j) A Transfer otherwise approved by the City.

As a condition of the City approval of a Transfer described in Section 8.4(f) and Section 8.4(g) above, the transferee must concurrently assume the obligations of the Developer under this Agreement. As a condition of the City's approval of a Transfer described in Section 8.4(f) above, the City must review and approve the transferee's organizational documents for the purposes of determining that such transferee is an Affiliate of the Developer. As a condition of the City's approval of a Transfer described in Section 8.4(i) above, the City must review and approve Developer's organizational documents for the purposes of determining that Red Bear remains in Control.

Section 8.5 Effectuation of Permitted Transfers.

(a) Other than as permitted in Section 8.4, no Transfer of a direct interest in this Agreement shall be permitted unless, at the time of the Transfer, the person or entity to which such Transfer is made, by an agreement reasonably satisfactory to the City and in form recordable among the land records, expressly agrees to perform and observe, from and after the date of the Transfer, the obligations, terms and conditions of this Agreement; provided, however, that no such transferee shall be liable for the failure of its predecessor to perform any such obligation. The City shall grant or deny approval of a proposed Transfer within sixty (60) days of receipt by the City of the Developer's request for approval of a Transfer, which request shall include evidence of the proposed transferee's business expertise and financial capacity. Subject to the provisions of Section 11.5 of this Agreement, failure by the City to approve or disapprove the proposed Transfer within sixty (60) days after receipt of the Developer's written request shall be deemed to be approval of the proposed Transfer by the City.

(b) Any assignment of rights and/or delegation of obligations under this Agreement in connection with a Transfer of a direct interest in this Agreement (whether or not the City approval is required) shall be in writing executed by Developer and the assignee or transferee, which written agreement shall name the City as an express third party beneficiary with respect to such agreement (the "Assumption Agreement") with a copy thereof delivered to the City within thirty (30) days after the effective date thereof. Upon Transfer of a direct interest in this Agreement pursuant to an Assumption Agreement, the assignor shall be relieved of liability with respect to any such obligations relating to the Project accruing from and after the date of such assignment or Transfer. Notwithstanding the foregoing, unless such assignee specifically assumes pursuant to the Assumption Agreement the obligations under this Agreement to indemnify the City with respect to the Property and Improvements, the assignor will retain such obligations and remain jointly and severally liable for such indemnity obligations with such assignee; however, in the event of such an assumption of the indemnification obligation, Developer shall be released from all liability under such indemnity obligations.

ARTICLE 9.
SECURITY FINANCING AND RIGHTS OF HOLDERS

Section 9.1 Encumbrances. Mortgages, deeds of trust, assignment of rents and security agreements, and other real and personal property security instruments to secure the funds necessary for acquisition of the Property, or the construction and permanent financing of the Property or Improvements, and any other expenditures incurred in connection with the design, construction and operation of the Property or Improvements, are permitted to be placed upon the Property or any personal property thereon or therein or the limited liability company interests in Developer. Such permitted security instruments and related interests shall be referred to "s "Security Financing Interests". The Developer shall promptly notify the City of any Security Financing Interest that has been or will be created or attached to Developer's fee simple interest in the Property or the limited liability company interests in Developer. The foregoing notwithstanding, until the Developer is entitled to issuance of a Certificate of Occupancy as more particularly described in Section 6.10, the Developer may place Security Financing Interests only for the purpose of securing acquisition of the fee interest and for development, construction and permanent financing. As used herein: (a) "Encumbrance Holder" shall mean the holder of record

of any Security Financing Interest; (“) "Foreclosure Transfer" shall mean any transfer of all or a portion of the Property or of any associated personal property or limited liability company interests in Developer pursuant to any judicial or non-judicial foreclosure or other enforcement of remedies under or with respect to a Security Financing Interest, or by voluntary deed or assignment or other transfer in lieu thereof; and "Foreclosure Transferee" shall mean any transferee (including without limitation an Encumbrance Holder) which acquires title in the Property or interest therein or of any associated personal property or of the limited liability company interests in Developer pursuant to a Foreclosure Transfer.

Section 9.2 Holder Not Obligated to Construct. No Encumbrance Holder or Foreclosure Transferee is obligated to construct or complete any Improvements, or to guarantee such construction or completion. Nothing in this Agreement shall be deemed to permit or authorize any such Encumbrance Holder or Foreclosure Transferee to devote the Property or any portion thereof to any uses, or to construct any improvements thereon, other than those uses or Improvements provided for or authorized by this Agreement. A Developer Event of Default or other breach will not defeat or render invalid any Security Financing Interest. No Encumbrance Holder or Foreclosure Transferee of any Security Financing Interest shall be personally liable for the performance or observance of any covenants or conditions to be performed by the Developer under this Agreement, any Transaction Document or any Project Documents unless and until such Encumbrance Holder or Foreclosure Transferee acquires the Developer’s interest in the Property and at the election of Encumbrance Holder or Foreclosure Transferee enters into a new agreement with the City. The City agrees that such Encumbrance Holder or Foreclosure Transferee may sell, assign, or otherwise dispose of any interest to which it has so succeeded or which it has so acquired. Upon such sale, assignment or disposition, such Encumbrance Holder or Foreclosure Transferee shall be released from all obligations and liabilities of the Developer whatsoever arising under this Agreement, any Transaction Document or any other document from and after the date of such sale, assignment or disposition.

Section 9.3 Notice of Default and Right to Cure. Whenever the City pursuant to its rights set forth in Article 10 delivers any notice to the Developer of the occurrence of a Developer Event of Default or any other matter which may give rise to a right of termination or other claim “a "Cure Notice"), the City shall not exercise any remedy available to it unless and until each of the following have occurred: (a) a Cure Notice describing the is provided to each and every then-existing Encumbrance Holder that has notified the City in writing of (i) its interest in receiving such a notice, and (ii) its address for the receipt of such notice; and (b) such Developer Event of Default remains uncured after the expiration of the applicable cure period set forth in Section 9.4. The Cure Notice shall be sent simultaneously with any similar notice or notices of a Developer Event of Default that the City may be required to provide to Developer pursuant to Article 10. An Encumbrance Holder shall have the right and the power to cure any Developer Event of Default specified in a Cure Notice within the cure periods set forth in Section 9.4 below, and, if such Developer Event of Default is so cured, this Agreement shall remain in full force and effect. Nothing contained in this Agreement shall be deemed to permit or authorize any Encumbrance Holder or Foreclosure Transferee to undertake or continue the construction or completion of the Improvements or any other work (beyond the extent necessary to conserve or protect such improvements or construction already made) without first having expressly assumed in writing the Developer’s obligations to the City under this Agreement. The Encumbrance Holder in that event must agree to complete, in the manner provided in this

Agreement, the construction of the Improvements. Any such Encumbrance Holder properly completing construction of the Improvements pursuant to this Section 9.3 shall assume all rights and obligations of Developer under this Agreement and shall be entitled, upon written request made to the City, to a Certificate of Occupancy from the City.

Section 9.4 Cure of Developer Defaults. Developer Events of Default may be cured by any Encumbrance Holder in the following manner within the following time frames:

(a) For all Developer Events of Default, an Encumbrance Holder shall have (a) sixty (60) days after the later of (i) its receipt of the earliest Cure Notice issued by the City to such Encumbrance Holder setting forth such Developer Event of Default, or (ii) expiration of the applicable Cure Period set forth in Section 10.3(b) to cure such Developer Event of Default if such Developer Event of Default can reasonably be cured by an Encumbrance Holder within such sixty (60)-day period; or (b) if an Encumbrance Holder has promptly commenced to cure such Developer Event of Default within such applicable period and has been diligently prosecuting the same, but such Developer Event of Default cannot reasonably be cured by such Encumbrance Holder within such applicable period, then such Encumbrance Holder shall be provided with such additional time as is necessary to complete the cure, provided such Encumbrance Holder continues to diligently pursue such cure to completion.

(b) If a Developer Event of Default cannot practicably be cured by an Encumbrance Holder without the need for such Encumbrance Holder to obtain possession of the Property or any portion thereof or to obtain control of the Developer, or if a Developer Event of Default cannot be cured by an Encumbrance Holder (for example, the insolvency of Developer), then, in each case, if at least one Encumbrance Holder has delivered to the City within sixty (60) days after its receipt of a Cure Notice a written undertaking wherein such Encumbrance Holder agrees (1) that it will commence foreclosure proceedings forthwith, and (2) will cure or obtain an agreement from the Foreclosure Transferee that such Foreclosure Transferee will cure such Developer Event of Default (to the extent that it can be cured) upon completion of the foreclosure and the resultant Foreclosure Transfer, and if thereafter any such Encumbrance Holder actually commences foreclosure proceedings and prosecutes the same thereafter with due diligence, then the cure period shall not commence until completion of such foreclosure proceedings and the resultant Foreclosure Transfer; provided, that if said Encumbrance Holder is prevented from commencing or continuing foreclosure proceedings by any bankruptcy stay, or any order, judgment or decree of any court or regulatory body of competent jurisdiction, and said Encumbrance Holder diligently seeks release from or reversal of such stay, order, judgment or decree, then the cure period shall not commence until such stay, order, judgment or decree is released or reversed, and such foreclosure proceedings and the resultant Foreclosure Transfer are thereafter actually commenced and prosecuted thereafter with due diligence to completion. Upon completion of any such Foreclosure Transfer, the Foreclosure Transferee (whether such Foreclosure Transferee is the Encumbrance Holder or another party) shall have until the expiration of the applicable cure periods set forth in this Section 9.4 to cure the Developer Event of Default giving rise to such Foreclosure Transfer, to the extent curable by such Foreclosure Transferee (unless such Developer Event of Default has already been cured), and any other Developer Events of Default that may then exist and be curable by such Foreclosure Transferee. The Encumbrance Holder shall have the right to terminate its foreclosure proceedings hereunder in the event of a cure of a Developer Event of Default giving rise to such foreclosure

proceedings. If an Encumbrance Holder or a Foreclosure Transferee obtains possession through foreclosure proceedings and assumes obligations to construct Improvements, the Schedule of Performance will be extended as needed to account for the time expended by such Encumbrance Holder or Foreclosure Transferee to commence and then complete such foreclosure proceedings. Upon the curing of any Developer Event of Default by an Encumbrance Holder or Foreclosure Transferee within the time provided in this Section 9.4, the City's right to pursue any remedies for the cured Developer Event of Default shall terminate.

Section 9.5 Failure of Holder to Complete Improvements. Subject to Section 10.3(b), in any case where after a default by the Developer in completion of construction of the Improvements under this Agreement, the Encumbrance Holder or Foreclosure Transferee, having first exercised its option to construct and also obtained possession of the Property or control of Developer, has not proceeded diligently with construction within six (6) months after obtaining possession of the Property, the City shall be afforded those rights against such Encumbrance Holder or Foreclosure Transferee it would otherwise have against the Developer under this Agreement.

Section 9.6 Right of the City to Cure. In the event of a default or breach by the Developer of a Security Financing Interest prior to the completion of construction of the Improvements, and if the Encumbrance Holder or Foreclosure Transferee has not exercised its option to complete the construction of the Improvements, the City may cure such default, provided that Developer is given ten (10) days prior notice of the City's intention to cure such default and does not thereafter immediately commence and continue with due diligence to complete to cure such default, and provided that City's right to cure shall be coterminous with the Developer's cure rights under the Security Financing Interest. In such event, the City shall be entitled to reimbursement from the Developer of all reasonable costs and expenses incurred by the City in curing the default.

Section 9.7 Right of the City to Satisfy Other Liens. After the Close of Escrow and after the Developer has had a reasonable time to challenge, cure, or satisfy any liens or encumbrances on the Property, or any portion thereof, which is not permitted under this Agreement, and has failed to do so, in whole or in part, the City shall, upon at least ten (10) d'ys' prior written notice to the Developer, have the right to satisfy any such lien or encumbrances; provided, however that nothing in this Agreement shall require the Developer to pay or make provision for the payment of any tax, assessment, lien, or charge so long as the Developer in good faith shall contest the validity or amount thereof and so long as such delay in payment shall not subject the Property or any portion thereof to forfeiture or sale.

Section 9.8 Holder to be Notified. To the extent deemed necessary by the City, the Developer shall use good faith efforts to insert each applicable term contained in this Article 9 related to Security Financing Interest or the rights of Encumbrance Holders into each Security Financing Interest or shall procure acknowledgement of such terms by each prospective Encumbrance Holder prior to its coming into any security right or interest in the Property or portion thereof.

Section 9.9 Modifications. If an Encumbrance Holder should, as a condition of providing financing or funding for development of all or a portion of the Improvements or other

portions of the Project, request any modification of this Agreement, the Transaction Documents or any documents in order to protect its interests in the Project, the City shall consider such request in good faith consistent with the purpose and intent of this Agreement and the rights and obligations of the Parties under this Agreement. In addition, (a) the City agrees to cooperate reasonably with each Encumbrance Holder or prospective Encumbrance Holder in confirming or verifying the rights and obligations of each Encumbrance Holder under this Agreement, the Transaction Documents, and the Project Documents, and (b) the City agrees to cooperate reasonably with Developer in including the provisions of this Article 9 in the Reciprocal Access Easement.

Section 9.10 Estoppel Certificates. Either Party, at any time and from time to time following Close of Escrow, within fifteen (15) days of receipt of a written request from the other Party, shall execute and deliver to such Party a written statement that, to the knowledge of the certifying Party (i) this Agreement, the Transactions Documents and the Project Documents are in full force and effect and binding obligation of the Parties, (ii) this Agreement, Transaction Documents, and the Project Documents have not been amended or modified, or if so amended or modified, identifying the amendments or modifications, 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.

Section 9.11 Participation in Insurance and Condemnation Proceedings. It is agreed, notwithstanding any other provision of this Agreement to the contrary, that, at all times while a Security Financing Interests remains in effect, all policies of insurance required to be maintained by the Developer under this Agreement or otherwise in effect for the Project contain a standard mortgagee protection endorsement, and the Encumbrance Holder shall be entitled to hold the originals of all such policies. The Encumbrance Holder shall be entitled to participate in the settlement or adjustment of any losses covered by such policies of insurance and no such settlement or adjustment shall be accepted or approved without the specific consent in writing of such Encumbrance Holder. In addition, at all times while a Security Financing Interests remains in effect, the Encumbrance Holder shall be entitled to participate in any settlement of or any stipulation of judgment with respect to any condemnation proceeds affected all or any portion of the Property or any agreement to sell all or any portion of the Property in lieu of condemnation, and no such settlement, stipulation or agreement shall be made or entered into without the specific consent in writing of such Encumbrance Holder.

Section 9.12 Multiple Encumbrance Holders. If at any time there is more than one Security Financing Interest constituting a lien on the Property or any interest therein, the lien of the Encumbrance Holder prior in time to all others shall be vested with the rights under this Article 9 to the exclusion of the holder of any other Security Financing Interest; provided, however, that if the holder of a senior Security Financing Interest fails to exercise the rights set forth in this Article 9, each holder of a junior Security Financing Interest shall succeed to the rights set forth in this Article 9 only if the holders of all Security Financing Interests senior to it have failed to exercise the rights set forth in this Article 9.

ARTICLE 10.
DEFAULT AND REMEDIES

Section 10.1 Application of Remedies. The provisions of this Article 10 shall govern the Parties' remedies for breach of this Agreement.

Section 10.2 Fault of City.

(a) Event of Default. Following notice and cure as more particularly described in Section 10.2(b) below, each of the following events constitutes "a "City Event of Default" and a basis for the Developer to take action against City:

(1) The City fails to convey the Property as provided in this Agreement and the Developer is otherwise entitled by this Agreement to such conveyance.

(2) The City breaches any other material provision of this Agreement.

(b) Notice and Cure Procedure; Remedies. Upon the occurrence of any of the above-described events, the Developer shall first notify the City in writing of its purported breach or failure, giving the City thirty (30) days from receipt of such notice to cure such breach or failure. In the event the City does not then cure the default within such thirty (30)-day period (or, if the default is not reasonably susceptible of cure within such thirty (30)-day period, the City fails to commence the cure within such period and thereafter to prosecute the cure diligently to completion), then the Developer shall be entitled to any rights afforded it in law or in equity by pursuing any or all of the following remedies: (1) terminating this Agreement by written notice to the City; (2) prosecuting an action for damages (subject to the limitation of liability more particularly described in Section 11.3, and excluding punitive damages and consequential damages); or (3) seeking any other remedy available at law or in equity (excluding punitive damages and consequential damages), including, without limitation, an action for specific performance.

Section 10.3 Fault of Developer.

(a) Event of Default. Following notice and cure as more particularly described in Section 10.3(b) below, each of the following events constitutes "a "Developer Event of Default" and a basis for the City to take action against the Developer:

(1) The Developer does not attempt diligently and in good faith to cause satisfaction of the conditions in Article 2 benefiting the Developer within the reasonable control of the Developer by the time set forth in the Schedule of Performance.

(2) The Developer fails to construct the Improvements in accordance with in Article 6 within the time set forth in the Schedule of Performance.

(3) The Developer has breached its obligations under Section 7.1.

(4) Prior to the issuance of a Certificate of Occupancy for the Improvements as more particularly described in Section 6.10, the Developer attempts or completes a Transfer except as permitted under Article 8.

(5) The Developer's: (1) filing for bankruptcy, dissolution, or reorganization, or failure to obtain a full dismissal of any such involuntary filing brought by another party before the earlier of final relief or ninety (90) days after the filing; (2) making a general assignment for the benefit of creditors; (3) applying for the appointment of a receiver, trustee, custodian, or liquidator, or failure to obtain a full dismissal of any such involuntary application brought by another party before the earlier of final relief or ninety (90) days after the filing; (4) insolvency as evidenced by an entered decree by a court of competent jurisdiction; or (5) failure, inability or admission in writing of its inability to pay its debts as they become due.

(6) Following the Close of Escrow and prior to the issuance of a Certificate of Occupancy for the Improvements, the Developer defaults under any Security Financing Interest, has not cured such default within the applicable cure period contained in such agreement evidencing such Security Financing Interest and the applicable Encumbrance Holder has elected in writing to accelerate the debt secured by such Security Financing Interest.

(7) The Developer breaches any other material provision of this Agreement.

(b) Notice and Cure Procedure. Upon the happening of any of the above-described events the City shall first notify the Developer in writing of its purported breach or failure, giving the Developer thirty (30) days from receipt of such notice to cure such breach or failure. If the Developer does not cure the default within such thirty (30)-day period (or if the default is not reasonably susceptible of being cured within such thirty (30)-day period, the Developer fails to commence the cure within such period and thereafter to prosecute the cure diligently to completion), then the City shall be afforded all of its rights at law or in equity by taking any or all of the following remedies: (1) terminating this Agreement by written notice to the Developer; (2) prosecuting an action for damages (subject to the limitation of liability more particularly described in Section 11.3, and excluding specific performance, punitive damages and consequential damages); or (3) seeking any other remedy available at law or in equity (excluding punitive damages and consequential damages). If the City elects to terminate this Agreement, the provisions of this Agreement that are specified to survive such termination shall remain in full force and effect.

Section 10.4 Right of Reverter. Following the Close of Escrow, if the Developer fails to commence the construction of the Improvements by the Outside Date (as the Outside Date may be extended pursuant to Section 11.4 or other provisions of this Agreement), then the City may, in addition to other rights granted in this Agreement, re-enter and take possession of the Property with all improvements on the Property, and revest in the City the estate previously conveyed to the Developer by the City with respect to the Property subject to the provisions set forth below. The City's rights under this Section 10.4 shall terminate and be of no further force and effect once the City issues a Certificate of Occupancy as more particularly described in Section 6.10.

The interest created pursuant to this Section 10.4 shall be "a "Power of Termination" as defined in California Civil Code Section 885.010. The City's Power of Termination shall be subordinate and subject to and be limited by and shall not defeat, render invalid, or limit:

(a) Any Security Financing Instrument with respect to the Property; or

(b) Any rights or interests provided in this Agreement for the protection of the holder of a Security Financing Interest with respect to the Property.

(c) Any leases affecting the Property as of the date of such termination.

Upon revesting in the City of title to the Property as provided in this Section 10.4, the City shall, pursuant to its responsibilities under state law, use its best efforts to resell the Property as soon as possible, in a commercially reasonable manner and consistent with the objectives of such law, to a qualified and responsible party or parties (as reasonably determined by the City) who will assume the obligation of making or completing such improvements as are acceptable to the City in accordance with the uses specified for the Property and in a manner satisfactory to the City. Upon such resale of the Property the proceeds thereof shall be applied as follows:

(1) First to reimburse the City on its own behalf for all costs and expenses incurred by the City, including but not limited to salaries of personnel and legal fees incurred in connection with the recapture, management, and resale of the Property (but less any income derived by the City from any part of the Property in connection with such management); all taxes, installments of assessments payable prior to resale, and water and sewer charges with respect to the Property (or, in the event the Property is exempt from taxation or assessment or such charges during the period of ownership by the City, an amount equal to the taxes, assessments, or charges that would have been payable if the Property was not so exempt); any payments made or necessarily to be made to discharge any encumbrances or liens existing on the Property at the time of revesting of title in the City or to discharge or prevent from attaching or being made any subsequent encumbrances or liens due to obligations, defaults, or acts of the Developer, its successors or transferees; expenditures made or obligations incurred with respect to the making or completion of the Property or any part thereof; and any amounts otherwise owing the City by the Developer and its successors or transferee.

(2) Second, to reimburse the Developer, its successor or transferee, up to the amount equal to: the Purchase Price for the Property, plus the fair market value of the Improvements the Developer has placed on the Property, less any funds paid by the City to remove any encumbrances or liens and gains or income withdrawn or made by the Developer from the Property or the improvements thereon. Notwithstanding the foregoing, the amount calculated pursuant to this paragraph (2) shall not exceed the fair market value of the Property together with the Improvements thereon as of the date of the default or failure which gave rise to the City's exercise of the right of reverter.

(3) Third, any balance remaining after such reimbursements shall be retained by the City as its property.

The rights established in this Section 10.4 are to be interpreted in light of the fact that the City will convey the Property to the Developer for development and not for speculation.

Section 10.5 Rights and Remedies Cumulative. Except as otherwise provided, the rights and remedies of the Parties are cumulative, and the exercise or failure to exercise any right

or remedy shall not preclude the exercise, at the same time or different times, of any right or remedy for the same default or any other default.

Section 10.6 Survival. Upon termination of this Agreement under this Article 10, the following provisions of this Agreement shall survive: Section 2.3, Section 3.7, Section 3.8, Section 6.4, Section 6.8, Section 7.4, and Section 7.5. This Section 10.6 exists for reference purposes only, and does not alter the scope or nature of the surviving provisions.

ARTICLE 11.
GENERAL PROVISIONS

Section 11.1 Identity of Developer. The Developer represents and warrants to the City as of the Effective Date and as of the Close of Escrow, as follows:

(a) Organization. The Developer is a corporation, duly organized, validly existing and in good standing under the laws of California with full power and authority to conduct its business as presently conducted and to execute, deliver and perform its obligations under this Agreement.

(b) Authorization. The Developer has taken all necessary action to authorize its execution, delivery and, subject to any conditions set forth in this Agreement performance of the Agreement. Upon the Effective Date of this Agreement, this Agreement shall constitute a legal, valid and binding obligation of the Developer, enforceable against the Developer in accordance with its terms, subject to all applicable bankruptcy laws and laws affecting the rights of creditors generally.

(c) No Conflict. The execution, delivery and performance of this Agreement by the Developer does not and will not conflict with, or constitute a violation or breach of, or constitute a default under (i) the charter or incorporation documents of the Developer, (ii) any applicable law, rule or regulation binding upon or applicable to the Developer, or (iii) any material agreements to which the Developer is a party.

(d) No Litigation. To the Developer's actual knowledge, there is no pending or threatened litigation, suit, action or proceeding before any court or administrative agency affecting the Developer or the Property that would, if adversely determined, materially and adversely affect the Developer or the Property or the Developer's ability to perform its obligations under this Agreement or to develop and operate the Project.

(e) No Material Adverse Change. There has been no material adverse change in the financial condition of the Developer since the Effective Date.

(f) Default Under Other Agreements. There is no event, act or omission which constitute, or but for the passage of time or the giving of notice, or both, would constitute a breach, violation or default by Developer under any agreement materially related to the development or operation of the Property or Improvements, including but not limited any other partnership agreement, joint venture agreement, or loan agreement.

Until the Close of Escrow, Developer shall, upon learning of any fact or condition which would cause any of the warranties and representations in this Section 11.1 not to be true, immediately give written notice of such fact or condition to the City. Upon the Developer's Transfer prior to the Close of Escrow, the Developer shall cause the Developer's assignee to update the representations and warranties set forth above.

Section 11.2 Notices, Demands and Communications. Formal notices, demands, submittals and communications between the City and the Developer shall be sufficiently given if, and shall not be deemed given unless, delivered personally, or dispatched by certified mail, return receipt requested, or by reputable overnight delivery service with a receipt showing date of delivery, to the principal offices of the City and the Developer as follows:

City: City of Livermore
1052 S. Livermore Avenue
Livermore, California 94550
Attn: City Manager

Developer Red Bear Property Management, Inc.
5955 Coronado Lane
Pleasanton, CA 94588
Attn: Mike Madden

Such written notices, demands and communications may be sent in the same manner to such other addresses as the affected Party may from time to time designate by mail as provided in this Section 11.2. Delivery shall be deemed to have occurred at the time indicated on the receipt for delivery or refusal of delivery.

Section 11.3 Non-Liability of Officials, Employees and Agents. The Parties acknowledge that neither Party would have entered into this Agreement had it been exposed to damage claims from the other Party for any breach thereof. As such, the Parties agree that in no event shall either Party be entitled to recover damages against the other Party for breach of this Agreement. In addition, no member, partner, beneficial interest holder, official, officer, director, employee, contractor, consultant, attorney, agent, or designated volunteer of a Party shall be personally liable to the other Party, or any successor in interest to the other Party, in the event of any default or breach or for any amount or on any obligation under the terms of this Agreement.

Section 11.4 Enforced Delay. In addition to specific provisions of this Agreement, performance by any Party hereunder shall not be deemed to be in default, and all performance and other dates specified in this Agreement or the Schedule of Performance shall be extended, where delays or defaults are due to war; insurrection; strikes; lock-outs; riots; floods; earthquakes; fires; casualties; acts of God; acts of the public enemy; epidemics; quarantine restrictions; freight embargoes; lack of transportation; governmental restrictions or priority (except for restrictions or priorities established by the Party required to perform the action required under this Agreement); litigation; unusually severe weather; inability to secure

necessary labor, materials or tools; or acts or the failure to act of the City or any other public or governmental agency or entity including breaches by the City under this Agreement, any Transaction Document, or Project Document; or any other cause beyond the affected Party's reasonable control (except that acts or the failure to act of a Party shall not excuse performance by such Party, including without limitation the Developer's inability to obtain financing for the Project or the economic infeasibility of the Project" ("Force Majeure"). An extension of time for Force Majeure shall only be for the period of the enforced delay, which period shall commence to run from the time of the notification of the delay by the Party requesting the extension to the other Party. The Party requesting an extension of time under this Section 11.4 shall give notice promptly following knowledge of the delay to the other Party. If, however, notice by the Party claiming such extension is sent to the other Party more than thirty (30) days after knowledge of the commencement of the delay, the period shall commence to run upon the earlier of (i) thirty (30) days prior to the giving of such notice or (ii) the date that the other Party received knowledge of the events giving rise to the delay. Notwithstanding the foregoing, the City shall be responsible for the costs of any delay due to Environmental Obligations as defined in Section 1.1 (x).

Section 11.5 Delegation of Authority. Upon approval of this Agreement by the City Council, the City Manager is authorized to execute any and all and Transaction Documents, including but not limited to the recording in the Official Records the parcel map for the Property.

Section 11.6 Cooperation, On-going Technical/Schedule Consultation, Related Agreements. The Parties acknowledge that achieving the purposes of this Agreement will require ongoing cooperation among them and may require preparation and execution of documents or agreements that were not fully anticipated and specifically described in this Agreement. The Parties therefore agree to participate in meetings to keep each other apprised of any developments that may impact their performance under this Agreement or accomplishing the objectives of this Agreement. Neither the need for such cooperation nor the failure of this Agreement to comprehensively anticipate and provide for such additional documents or agreements shall be deemed a defect in this Agreement or an indication that the Parties had not reached an enforceable agreement as of the Effective Date. Rather, the Parties agree to cooperate in the preparation and execution of such other, related and commercially reasonable agreements as may arise in connection with promptly fulfilling the purposes and intent of this Agreement provided that such secondary agreements do not substantially change the scope or cost of the obligations negotiated by the Parties pursuant to this Agreement or diminish the benefits provided for in this Agreement.

Section 11.7 Inspection of Books and Records. The City has the right at all reasonable times and upon five (5) business days prior written notice to inspect the books, records and all other documentation of the Developer pertaining to its obligations under this Agreement. Such books, records and documentation are privileged documents of the Developer containing trade secrets, private personal information, and/or the contents of real estate appraisals, engineering and/or feasibility estimates, evaluations, and other proprietary non-public information.

Section 11.8 Title of Parts and Sections. Any titles of the sections or subsections of this Agreement are inserted for convenience of reference only and shall be disregarded in interpreting

any part of its provision. References to "Articles" and "Sections" are to sections of this Agreement, unless otherwise specifically provided.

Section 11.9 Applicable Law. This Agreement shall be interpreted under and pursuant to the laws of the State of California.

Section 11.10 Severability. If any term, provision, covenant or condition of this Agreement is held in a final disposition by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions shall continue in full force and effect unless the rights and obligations of the Parties have been materially altered or abridged by such invalidation, voiding or unenforceability.

Section 11.11 Legal Actions. In the event any legal action is commenced to interpret or to enforce the terms of this Agreement or to collect damages as a result of any breach thereof, each Party shall bear their own attorneys' fees and no attorneys' fees may be awarded to the Party prevailing in the action.

Section 11.12 Binding Upon Successors; Covenants to Run With Land. This Agreement shall be binding upon and inure to the benefit of the heirs, administrators, executors, successors in interest, and assigns of each of the Parties; provided, however, that there shall be no Transfer except as permitted in under the terms of this Agreement. Any reference in this Agreement to a specifically named Party shall be deemed to apply to any successor, heir, administrator, executor, successor, or assign of such Party who has acquired an interest in compliance with the terms of this Agreement or under law.

The terms of this Agreement shall run with the land, and shall bind all successors in title to the Property until the termination of this Agreement, except that the provisions of this Agreement that are specified to survive termination of this Agreement shall run with the land in perpetuity and remain in full force and effect following such termination. Every contract, deed, or other instrument hereafter executed covering or conveying the Property, or any portion thereof, shall be held conclusively to have been executed, delivered and accepted subject to such covenants and restrictions, regardless of whether such covenants or restrictions are set forth in such contract, deed or other instrument, unless the City expressly releases the Property, or the applicable portion of the Property, from the requirements of this Agreement.

Section 11.13 Parties Not Co-Venturers. Nothing in this Agreement is intended to or does establish the Parties as partners, co-venturers, or principal and agent with one another.

Section 11.14 Entire Understanding of the Parties. This Agreement constitutes the entire understanding and agreement of the Parties with respect to the conveyance of the Property and the development of the Project, and expressly supersedes the Exclusive Negotiating Rights Agreement dated July 26, 2018, and the Original Disposition and Development Agreement between the City and Red Bear Property Management.

Section 11.15 Counterparts. This Agreement may be executed in counterparts and multiple originals.

Section 11.16 Amendments. The Parties can amend this Agreement only by means of a writing signed by both Parties.

Section 11.17 Recordation of Memorandum of Amended and Restated Disposition and Development Agreement. The Parties consent to the recordation of the Memorandum of Amended and Restated Disposition and Development Agreement in the Official Records against the Developer's interest in the Property.

Section 11.18 Standard of Approval. Any consents or approvals required or permitted under this Agreement shall not be unreasonably withheld or made, except where it is specifically provided that a sole discretion standard applies.

Section 11.19 Effectiveness of Agreement. This Agreement is dated for convenience only and shall only become effective on the Effective Date.

Section 11.20 Interpretation. The use in this Agreement of the words "including", "such as" or words of similar import when following any general term, statement or matter shall not be construed to limit such statement, term or matter to the specific statements, terms or matters, whether or not language of non-limitation, such as "without limitation" or "but not limited to", or words of similar import, is used with reference thereto.

Section 11.21 No Gift or Dedication. Except as otherwise specified herein, this Agreement shall not be deemed to be a gift or dedication of any portion of the Property to the general public, for the general public, or for any public use or purpose whatsoever. Except as provided for the REA, the Developer shall have the right to prevent or prohibit the use of or access to any portion of the Project by any member of the general public.

[SIGNATURES ON THE FOLLOWING PAGE]

WHEREFORE, the Parties have executed this Agreement as of the date first above written.

City:

By: _____
Marianna Marysheva
Its: City Manager

Date: _____

APPROVED AS TO FORM

By: _____
Jason R. Alcala, City Attorney

DEVELOPER:
RED BEAR PROPERTY MANAGEMENT, Inc., a California Corporation

By:

By: _____

Name: _____

Title: _____

EXHIBIT A

Downtown Plan

Parking improvements begin this summer!



LIVERMORE
CALIFORNIA

For more information visit
cityoflivermore.net/downtown

EXHIBIT A

EXHIBIT A
EXHIBIT B - PARK EASEMENT

RECORDING REQUESTED BY:
and

WHEN RECORDED MAIL TO:

CITY CLERK
CITY OF LIVERMORE
1052 S. LIVERMORE AVENUE
LIVERMORE, CA 94550-4899

2022116128 06/23/2022 11:26 AM 11 PGS
OFFICIAL RECORDS OF ALAMEDA COUNTY
MELISSA WILK, CLERK-RECORDER
RECORDING FEES: $0 00

11
HT

THIS SPACE FOR RECORDER'S USE ONLY

MAIL TAX STATEMENTS TO:

SAME AS ABOVE

The Undersigned grantor(s) declare(s):
CITY TRANSFER TAX $
DOCUMENTARY TRANSFER TAX $
SURVEY MONUMENT FEE $
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: 098-0289-23, 098-0289-24, 098-0289-25,
098-0289-26, 098-0289-27

LOG NO. 22-233

No Fee Recording Government Code 6103, 27383, & 27388 1
The Undersigned Grantor declares No Tax Due – R&T 11911
Consideration less than $100

AMENDMENT TO GRANT OF EASEMENT

THIS PAGE ADDED TO PROVIDE ADEQUATE SPACE FOR RECORDING INFORMATION (Govt. Code 27361.6)
(Additional recording fee applies)

RECORDING REQUESTED BY
and

WHEN RECORDED MAIL TO
City Clerk
City of Livermore
1052 South Livermore Avenue
Livermore, CA 94550

MAIL TAX STATEMENTS TO: 22-233

ABOVE THIS LINE FOR RECORDER'S USE

SAME AS ABOVE

The Undersigned grantor(s) declare(s):
CITY TRANSFER TAX $
DOCUMENTARY TRANSFER TAX $
SURVEY MONUMENT FEE $
Computed on the consideration or value or property conveyed, OR
Computed on the consideration or value less liens or encumbrances remaining a t time of sale.

APN #'s 098-0289-23, 098-0289-24, 098-0289-25
098-0289-26, 098-0289-27

No Fee Recording Government Code 6103, 27383, & 27388 1
The undersigned Grantor declares: No Tax Due – R&T 11911 Consideration less than $100

AMENDMENT TO GRANT OF EASEMENT

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged,

The City of Livermore, a municipal corporation ("City" or "Grantor"), owner of the property being all of the lots shown on Tract Map 8574 and on Parcel Map 11239 and the Livermore Stockmen's Rodeo Association ("Grantee"), owner of the Park Easement described in the Grant of Easement recorded on April 18, 2018 under document number 2018076967 Official Records of Alameda County hereby amends said Park Easement to revise the boundaries of the Cultural Facilities Use Area, Commercial Areas, and the Park Area within the Park Easement as described in Exhibit "D" and subject to the terms and conditions set forth in that specific agreement titled *First Amendment to Agreement for the Development of the Rodeo Grounds and Sunken Garden Area as a Civic Center and Parks and Recreation Area,* dated January 30, 2018, the *Second Amendment to Agreement for the Development of the Rodeo Grounds and Sunken Garden Area as a Civic Center and Parks and Recreation Area.* dated September 27, 2019, and *Third Amendment to Agreement for the Development of the Rodeo Grounds and Sunken Garden Area as a Civic Center and Parks and Recreation Area.* dated ~~May~~ June 6, 2022 and on file with the City Clerk for the City of Livermore ("Agreement"). The rights, duties, and obligations of the City and the Livermore Stockmen's Rodeo Association concerning the use of the Park Area, Cultural Facility Use Area, and the Commercial Use Areas of this Amended Park Easement are set forth in that Agreement.

This Amended Park Easement may be used by the City for parking prior to the construction of the park facilities, cultural facilities, and commercial uses in those areas designated as the Park Area, Cultural Facility Use Area, and Commercial Use Areas, respectively. The Cultural Facility Use Area and the Commercial Use Areas A, B, C and D may be used by the City as a park if the respective locations are no longer needed for parking, prior to the construction of a cultural facility or commercial facilities in those respective areas. The City may use any and all portions of the Amended Park Easement for public infrastructure that does not interfere with other uses allowed in the easement area.

**FOR DESCRIPTION SEE THE ATTACHED EXHIBIT "D"
ATTACHED HERETO AND MADE A PART HEREOF**

[*Signature appears on following page*]

Grantor Signature:

CITY OF LIVERMORE
A municipal corporation of the State of California

DATED: 6/6/2022

~~Marc Roberts~~, City Manager
Marianna Maryshcva

Grantee Signature:

LIVERMORE STOCKMEN'S RODEO ASSOCIATION:

DATED: 05-18-22

David Finster, ~~President~~ Director

APPROVED AS TO FORM:

Kimberly Cilley
Sr. Asst. City Attorney

APPROVED AS TO INSURANCE:

Risk Manager/Analyst

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 June 6, 2022 before me, MARIE WEBER, CITY CLERK,

personally appeared Marianna Marysheva, City Manager,
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.

CORPORATE SEAL OF THE CITY OF LIVERMORE, CA.

Signature Marie Weber

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
County of Alameda)

On May 18, 2022 before me, Deborah S. Davis, Notary Public
(insert name and title of the officer)

personally appeared David Finster,
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.

DEBORAH S. DAVIS
Notary Public - California
Alameda County
Commission # 2357707
My Comm. Expires May 15, 2025

Signature Deborah S. Davis (Seal)

EXHIBIT "D"

EXHIBIT B - PARK EASEMENT

LEGAL DESCRIPTION AMENDED PARK EASEMENT

REAL PROPERTY SITUATED IN THE CITY OF LIVERMORE, COUNTY OF ALAMEDA, STATE OF CALIFORNIA, AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEING ALL OF PARCEL 2 AND PARCEL 5, OF TRACT 8574, RECORDED DECEMBER 23,2020, IN BOOK 365 OF MAPS AT PAGES 15-19, AND ALL OF PARCEL'S A, B, & C OF PARCEL MAP 11239 RECORDED MAY 24,2022, IN BOOK 354 OF MAPS AT PAGES 95-97 ALAMEDA COUNTY RECORDS.

CONTAINING 78,671± SQUARE FEET OF LAND MORE OR LESS

APN's: 098-0289-23, 098-0289-24, 098-0289-25, 098-0289-26, 098-0289-27

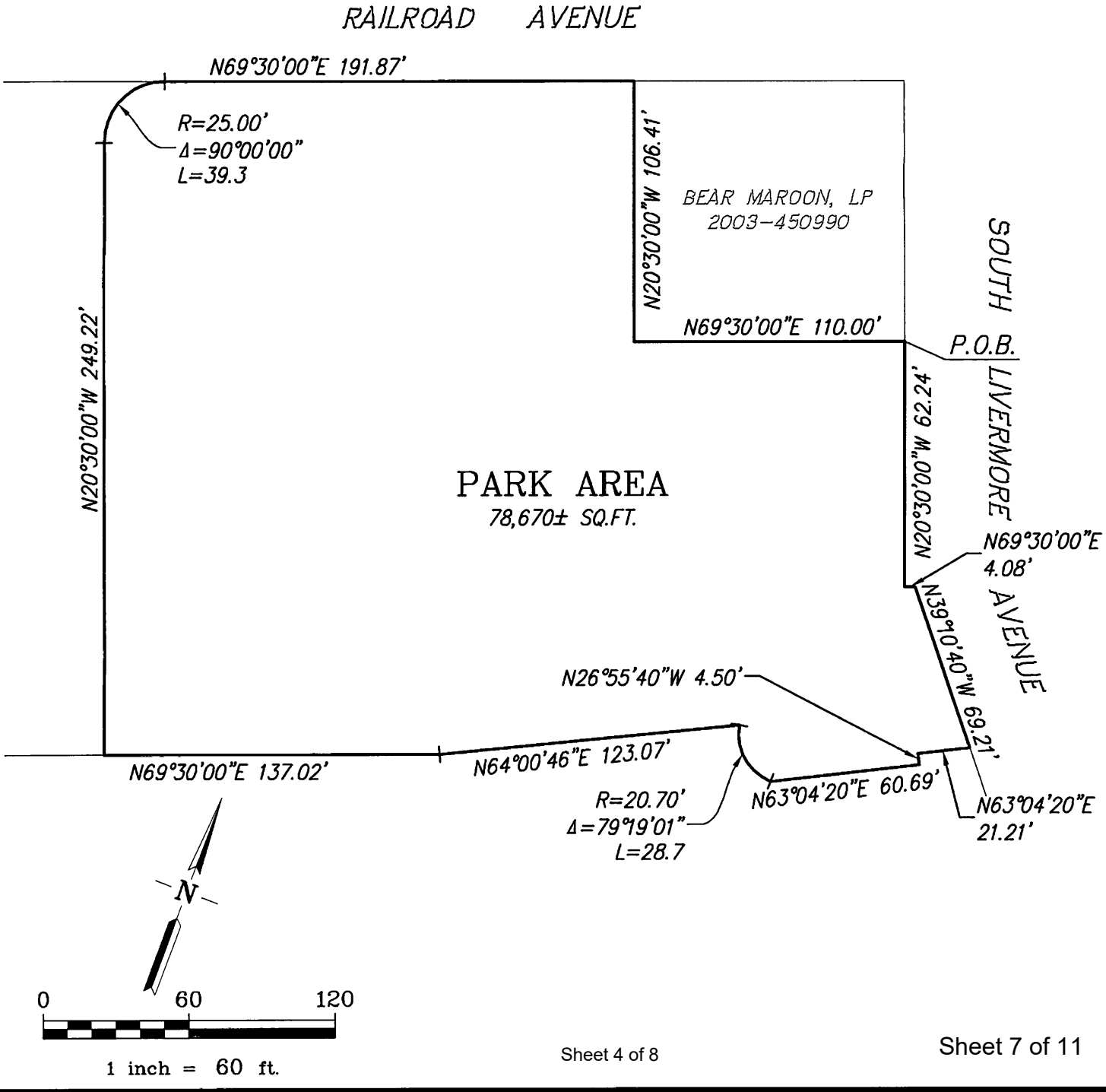
5-5-22

EXHIBIT A

EXHIBIT B - PARK EASEMENT

LEGEND

———	BOUNDARY
P.O.B.	POINT OF BEGINNING
SQ.FT.	SQUARE FEET



Sheet 4 of 8

Sheet 7 of 11

EXHIBIT D

PLAT TO ACCOMPANY LEGAL DESCRIPTION
FOR
PARK AREA

CITY OF LIVERMORE, ALAMEDA COUNTY, CALIFORNIA

RJA
RUGGERI-JENSEN-AZAR
ENGINEERS ▪ PLANNERS ▪ SURVEYORS
4690 CHABOT DRIVE, SUITE 200 PLEASANTON, CA 94588
PHONE (925) 227-9100 FAX (925) 227-9300

SCALE:	DATE:	JOB NO.:
1" = 60'	MAY-5-2022	211010-015

G:\JOB2021\211010-015\SURVEY\CAD FILES\PLATS\PARK AREA.DWG 5/5/2022 11:54:17 AM JESSE MA

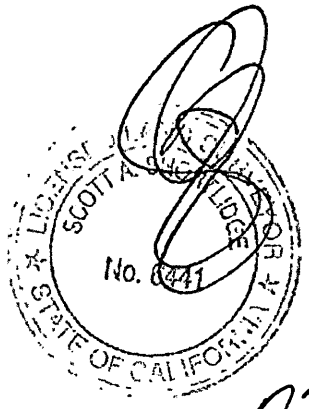
LEGAL DESCRIPTION CULTURAL FACILITY USE AREA

REAL PROPERTY SITUATED IN THE CITY OF LIVERMORE, COUNTY OF ALAMEDA, STATE OF CALIFORNIA, AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEING ALL OF PARCEL 2 OF TRACT 8574, RECORDED December 23,2020, IN BOOK 365 OF MAPS AT PAGES 15-19, AND ALL OF PARCEL A, AND A PORTION OF PARCEL B OF PARCEL MAP 11239 RECORDED May 24, 2002, IN BOOK 354 OF MAPS AT PAGES 95-97 ALAMEDA COUNTY RECORDS AS SHOWN ON ATTACHED PLAT, EXHIBIT D.

CONTAINING 31,146± SQUARE FEET OF LAND MORE OR LESS

APN's: 098-0289-23, 098-0289-24, & 098-0289-25 (PORTION)



5-5-22

LEGEND

———	BOUNDARY
P.O.B.	POINT OF BEGINNING
P.O.C.	POINT OF COMMENCEMENT
SQ.FT.	SQUARE FEET

GENERAL NOTE:

1. THE CULTURAL FACILITY AREA SHALL NOT EXCEED 20,100 SQUARE FEET.

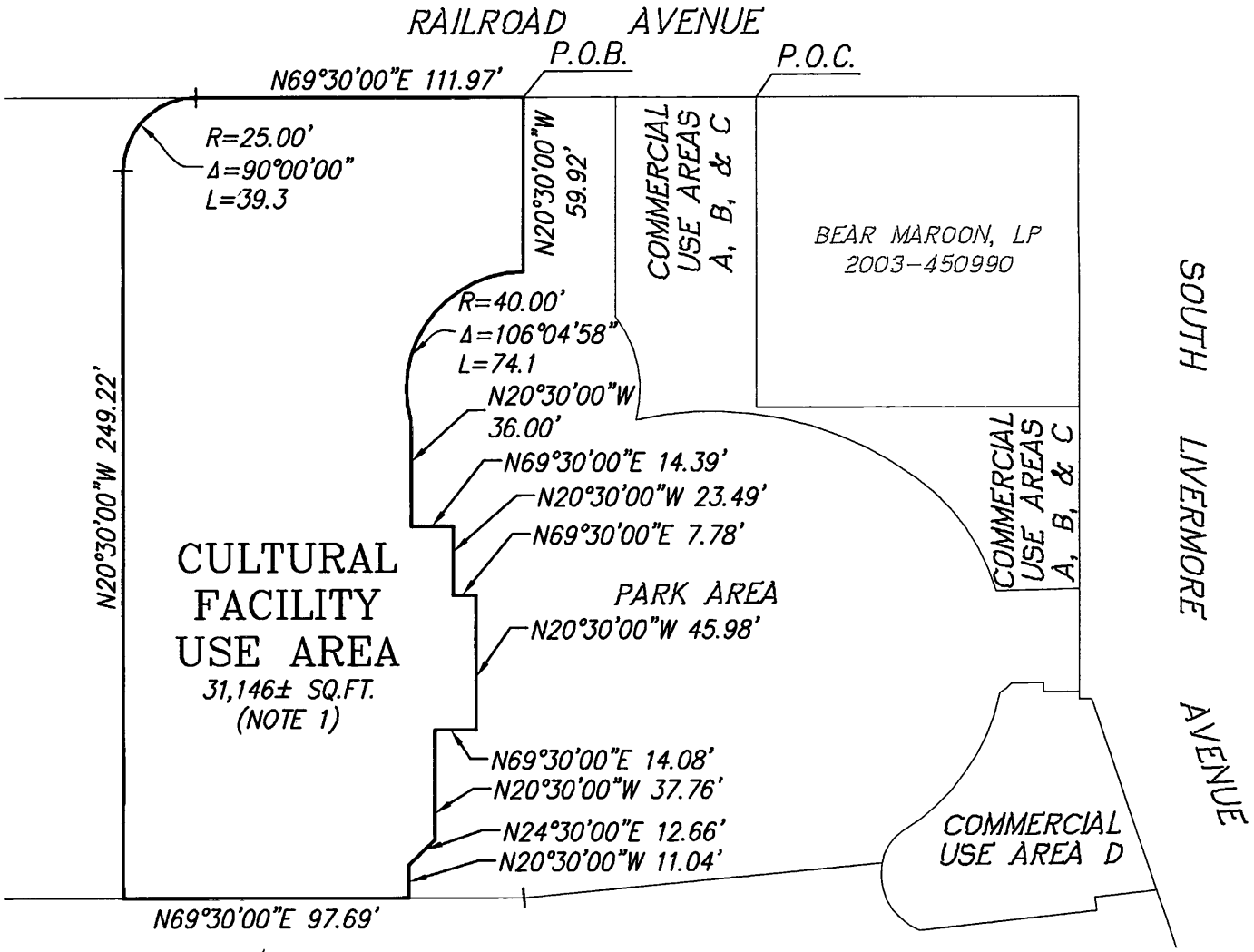


EXHIBIT D

PLAT TO ACCOMPANY LEGAL DESCRIPTION FOR

CULTURAL FACILITY USE AREA

CITY OF LIVERMORE, ALAMEDA COUNTY, CALIFORNIA

RJA
RUGGERI-JENSEN-AZAR
ENGINEERS ▪ PLANNERS ▪ SURVEYORS
4690 CHABOT DRIVE, SUITE 200 PLEASANTON, CA 94588
PHONE (925) 227-9100 FAX (925) 227-9300

SCALE:	DATE:	JOB NO.:
1" = 60'	MAY 5, 2022	211010-015

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EXHIBIT "D"

LEGAL DESCRIPTION COMMERCIAL USE AREA

REAL PROPERTY SITUATED IN THE CITY OF LIVERMORE, COUNTY OF ALAMEDA, STATE OF CALIFORNIA, AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEING ALL OF PARCEL 5, OF TRACT 8574, RECORDED December 23,2020, IN BOOK 365 OF MAPS AT PAGES 15-19, AND ALL OF PARCEL C OF PARCEL MAP 11239 RECORDED MAY 24, 2022, IN BOOK 354 OF MAPS AT PAGES 95-97 ALAMEDA COUNTY RECORDS.

CONTAINING 13,423± SQUARE FEET OF LAND MORE OR LESS

APN's: 098-0289-26 & 098-0289-27

5-5-22

EXHIBIT A

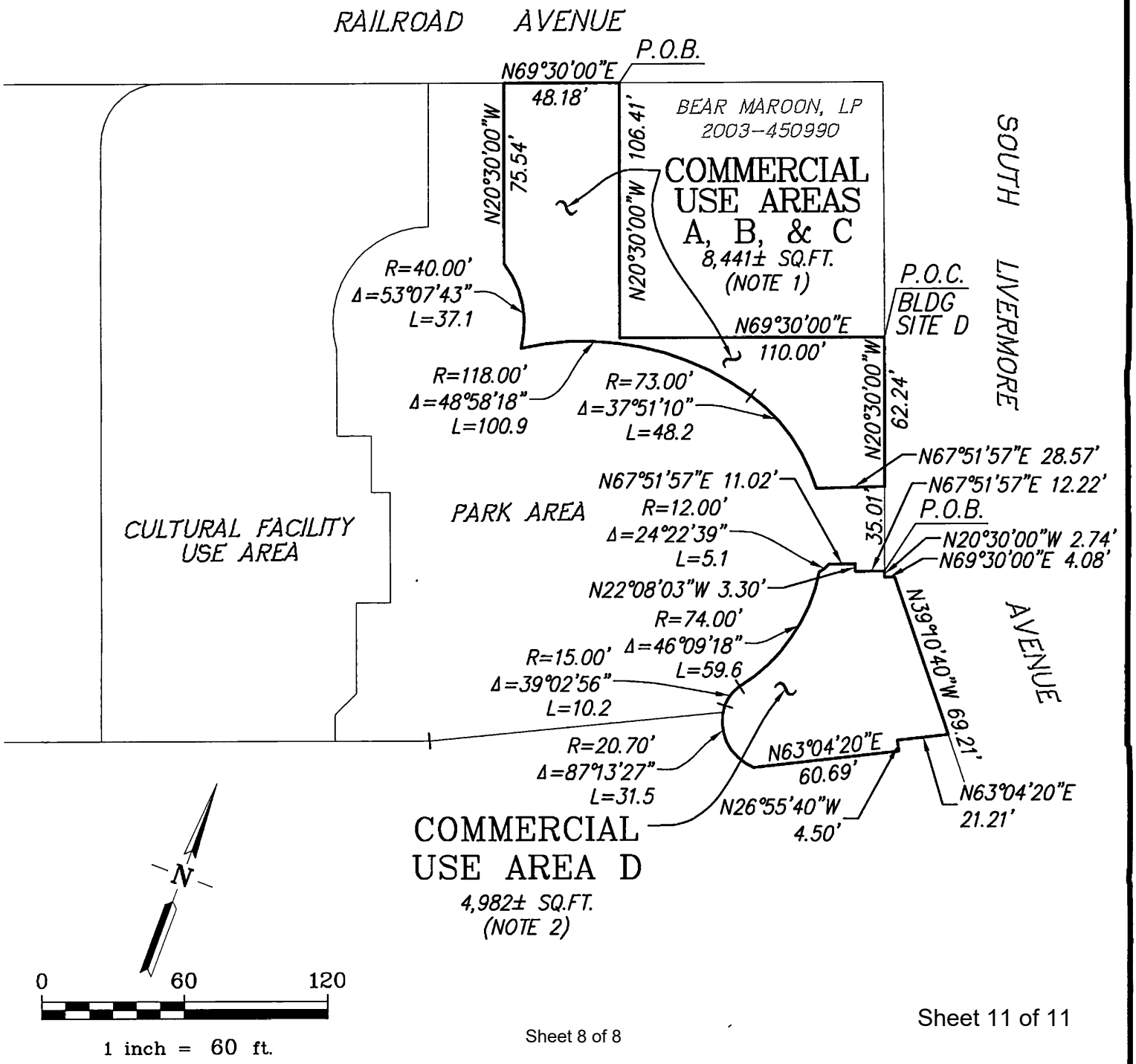
EXHIBIT B - PARK EASEMENT

LEGEND

———	BOUNDARY
P.O.B.	POINT OF BEGINNING
P.O.C.	POINT OF COMMENCEMENT
SQ.FT.	SQUARE FEET

GENERAL NOTES:

1. THE BUILDABLE FOOTPRINT WITHIN THE COMMERCIAL USE AREAS A, B & C SHALL NOT EXCEED 8,441 SQUARE FEET.
2. THE BUILDABLE FOOTPRINT WITHIN THE COMMERCIAL USE AREA D SHALL NOT EXCEED 2,900 SQUARE FEET.



Sheet 8 of 8

Sheet 11 of 11

EXHIBIT D

PLAT TO ACCOMPANY LEGAL DESCRIPTION FOR

COMMERCIAL USE AREAS

CITY OF LIVERMORE, ALAMEDA COUNTY, CALIFORNIA

RJA

RUGGERI-JENSEN-AZAR

ENGINEERS • PLANNERS • SURVEYORS

4690 CHABOT DRIVE, SUITE 200 PLEASANTON, CA 94588

PHONE (925) 227-9100 FAX (925) 227-9300

SCALE:	DATE:	JOB NO.:
1" = 60'	MAY 5, 2022	211010-015

G:\JOB2021\211010-015\SURVEY\CAD FILES\PLATS\COMMERCIAL USE AREAS.DWG 5/5/2022 11:59:51 AM JESSE MA

THIRD AMENDMENT TO AGREEMENT FOR THE DEVELOPMENT OF THE RODEO GROUNDS AND SUNKEN GARDEN AREA AS A CIVIC CENTER AND PARKS AND RECREATION AREA

THIS THIRD AMENDMENT, made and entered into this 6th day of June, 2022, by and between the City of Livermore, a municipal corporation (hereinafter referred to as "City"), and the Livermore Stockmen's Rodeo Association, a California Corporation, (hereinafter referred to as "Association").

RECITALS

On January 8, 1962, in exchange for due consideration, the City and Association entered into an agreement ("Original Agreement") to, among other things, transfer 33 acres of real property ("Civic Center Property") from the Association to the City to be developed as a civic center and a park and recreation facility.

The Association transferred the property to the City with the expectation that a portion of the Civic Center Property would be used as a memorial to the residents of Murray and Pleasanton Townships who served in the armed forces of the United States. As of January 2018, the City had not developed a park or the memorial on the Civic Center Property.

On January 30, 2018, the City and Association entered into a first amendment to the Original Agreement ("First Amendment"). The purpose of the First Amendment was:

A. To allow:

1. A portion of the Civic Center Property to be used for affordable housing purposes for seniors with a preference for veterans, in addition to public purposes;

2. The City, either itself or through a partnership or support of a third-party non-profit agency, and/or others, to develop affordable housing for seniors with a preference for veterans in that portion of the Civic Center Property;

3. The City to dispose of portions of the Civic Center Property to third-party non-profit agencies for the development of affordable housing for seniors with a preference for veterans and not for private gain; and,

B. To require:

1. The City to grant a park easement to the Association in the downtown area for Stockmen's Park and a Memorial subject to the terms and conditions set forth in the First Amendment and the boundaries of the easement set forth in Exhibit D to the First Amendment;

2. Certain portions of the Park Easement to be designated as a "Cultural Facility Area" for the development of cultural facilities such as a black box theater, a science and society center, and open space support, and other portions to be designated as "Commercial Use Areas" for the development of commercial uses, which uses were to integrate with the park in an appealing manner but not overshadow the park and the memorial;

3. The City, at its own expense, to design and construct the park and memorial;

4. The City to obtain the Association's written approval that the design and amenities for park and memorial are acceptable to the Association;

5. The City to allow the Association the opportunity to comment and provide input on the cultural facilities and commercial uses to be constructed in the "Cultural Facility Area" and the "Commercial Use Areas" in the Park Easement. The purpose of the opportunity to comment and provide input was to ensure the cultural facility and commercial uses do not overshadow the park and memorial and integrate with the Park Area in an appealing manner.

On April 18, 2018, the City recorded the grant of a park easement (County Recorders' No. 2018076967) to the Association, subject to the terms and conditions in the First Amendment.

On September 27, 2019, the City and Association entered into a second amendment to the Original Agreement ("Second Amendment"). The purpose of the Second Amendment was to adjust the edges of the Cultural Facility Use Area and the Commercial Use Areas in the park easement. In exchange for the adjustments, the City was required to obtain Association approval for the design and location of the cultural facility use and the commercial uses to ensure that said uses do not overshadow the Park and the Memorial and integrate with the Park Area in an appealing manner. The parties agreed to a revised Exhibit D which identified an adjusted Cultural Facility Use Area and Commercial Use Areas within the park easement.

The City desires to further adjust the edges of the Cultural Facility Use Area, the Commercial Use Areas, and the Park Area in the park easement.

City and Association desire to enter into the Third Amendment to the Original Agreement.

AGREEMENT

NOW, THEREFORE, City and Association hereby agree that the aforementioned recitals are true and correct and further agree as follows:

1. City and Association agree that all obligations under the Original Agreement, except for the City's development of a park and the Memorial on Area A.

2. Section 16 and Exhibit D were added to the Original Agreement by the First

Amendment to identify the park easement granted by the City to the Association, and to identify the Cultural Facility Use Area and the Commercial Use Areas within that park easement. The Second Amendment to the Original Agreement adjusted the edges of the Cultural Facility Use Area and the Commercial Use Areas within the Park Easement, as set forth in the Exhibit D to the Second Amendment. The Exhibit D attached to this Third Amendment and dated June 6, 2022 hereby replaces and supersedes for all purposes the Exhibit D identified in the First and Second Amendments to the Original Agreement. The Exhibit D attached to this Third Amendment identifies an amended park easement granted by the City to the Association, and identifies the adjusted Cultural Facility Use Area, the Commercial Use Areas, and the Park Area within the park easement. Upon approval of this Third Amendment, the parties agree to record an Amendment to the Grant of Easement as set forth Exhibit D.

3. The revisions in this Third Amendment are prospective and only apply after the execution of this Third Amendment. Unless otherwise stated herein, this Third Amendment does not and shall not relieve the parties of the terms and conditions of the Original Agreement as amended by the First and Second Amendments and in effect prior to this Third Amendment.

4. If there are any conflicts between the provisions in this Third Amendment and the provisions in the Original Agreement as amended by the First and Second Amendments, then the provisions of this Third Amendment shall control.

5. Except as revised above, the Original Agreement as amended by the First and Second Amendments shall remain in full force and effect.

****

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 caused this Third Amendment to be executed on the date first written above.

LIVERMORE STOCKMEN'S
RODEO ASSOCIATION:

By: David Finster
Title: ~~President~~ Director

6/6/22
Date

CITY OF LIVERMORE

~~Marc Roberts~~ Marianna Marysheva
City Manager

APPROVED AS TO FORM:

Kimberly Cilley
Senior Assistant City Attorney

APPROVED AS TO INSURANCE:

Risk Manager/Analyst

Attachment:

Exhibit D — Amendment to Grant of Easement

RECORDING REQUESTED BY:
and

WHEN RECORDED MAIL TO:
City Clerk
City of Livermore
1052 South Livermore Avenue
Livermore, CA 94550

EXHIBIT D

MAIL TAX STATEMENTS TO:

SAME AS ABOVE

ABOVE THIS LINE FOR RECORDER'S USE

The Undersigned grantor(s) declare(s):
CITY TRANSFER TAX $
DOCUMENTARY TRANSFER TAX $
SURVEY MONUMENT FEE $
Computed on the consideration or value or property conveyed; OR
Computed on the consideration or value less liens or encumbrances remaining a t time of sale.

APN #'s 098-0289-23, 098-0289-24, 098-0289-25
098-0289-26, 098-0289-27

No Fee Recording Government Code 6103, 27383, & 27388.1
The undersigned Grantor declares: No Tax Due – R&T 11911 Consideration less than $100

AMENDMENT TO GRANT OF EASEMENT

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged,

The City of Livermore, a municipal corporation ("City" or "Grantor"), owner of the property being all of the lots shown on Tract Map 8574 and on Parcel Map 11239 and the Livermore Stockmen's Association ("Grantee"), owner of the Park Easement described in the Grant of Easement recorded on April 18, 2018 under document number 2018076967 Official Records of Alameda County hereby amends said Park Easement to revise the boundaries of the Cultural Facilities Use Area, Commercial Areas, and the Park Area within the Park Easement as described in Exhibit "D" and subject to the terms and conditions set forth in that specific agreement titled *First Amendment to Agreement for the Development of the Rodeo Grounds and Sunken Garden Area as a Civic Center and Parks and Recreation Area,* dated January 30, 2018, the *Second Amendment to Agreement for the Development of the Rodeo Grounds and Sunken Garden Area as a Civic Center and Parks and Recreation Area.* dated September 27, 2019, and *Third Amendment to Agreement for the Development of the Rodeo Grounds and Sunken Garden Area as a Civic Center and Parks and Recreation Area.* dated May__, 2022 and on file with the City Clerk for the City of Livermore ("Agreement"). The rights, duties, and obligations of the City and the Livermore Stockmen's Rodeo Association concerning the use of the Park Area, Cultural Facility Use Area, and the Commercial Use Areas of this Amended Park Easement are set forth in that Agreement.

This Amended Park Easement may be used by the City for parking prior to the construction of the park facilities, cultural facilities, and commercial uses in those areas designated as the Park Area, Cultural Facility Use Area, and Commercial Use Areas, respectively. The Cultural Facility Use Area and the Commercial Use Areas A, B, C and D may be used by the City as a park if the respective locations are no longer needed for parking, prior to the construction of a cultural facility or commercial facilities in those respective areas. The City may use any and all portions of the Amended Park Easement for public infrastructure that does not interfere with other uses allowed in the easement area.

**FOR DESCRIPTION SEE THE ATTACHED EXHIBIT "D"
ATTACHED HERETO AND MADE A PART HEREOF**

[*Signature appears on following page*]

EXHIBIT D

Grantor Signature:

CITY OF LIVERMORE
A municipal corporation of the State of California

DATED: _____

_____
Marc Roberts, City Manager

Grantee Signature:

LIVERMORE STOCKMEN'S RODEO ASSOCIATION:

DATED: _____

_____
David Finster, President

APPROVED AS TO FORM:

_____
Kimberly Cilley
Sr. Asst. City Attorney

EXHIBIT D

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
County of _____)

On _____ before me, _____
(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)**

EXHIBIT D

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
County of _____)

On _____ before me, _____
(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)**

EXHIBIT "D"

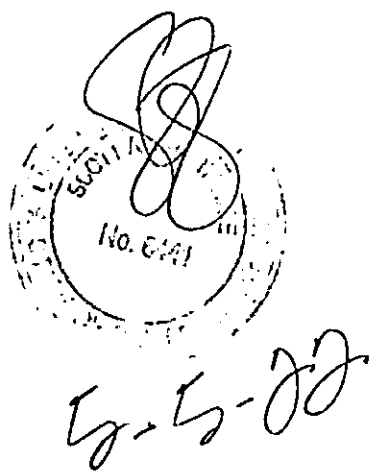
LEGAL DESCRIPTION AMENDED PARK EASEMENT

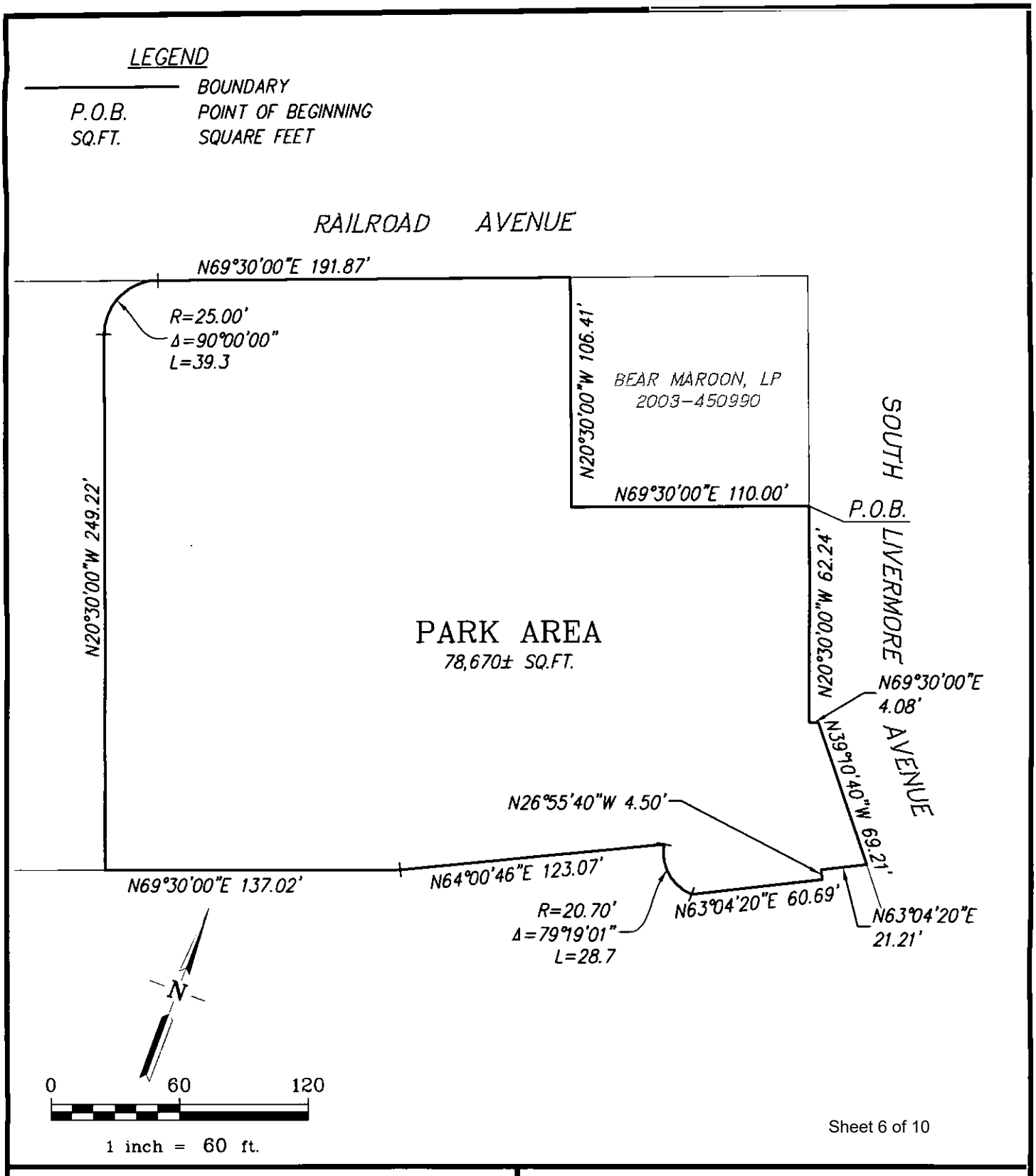
REAL PROPERTY SITUATED IN THE CITY OF LIVERMORE, COUNTY OF ALAMEDA, STATE OF CALIFORNIA, AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEING ALL OF PARCEL 2 AND PARCEL 5, OF TRACT 8574, RECORDED DECEMBER 23,2020, IN BOOK 365 OF MAPS AT PAGES 15-19, AND ALL OF PARCEL'S A, B, & C OF PARCEL MAP 11239 RECORDED _____, IN BOOK ____ OF MAPS AT PAGES _____ ALAMEDA COUNTY RECORDS.

CONTAINING 78,671± SQUARE FEET OF LAND MORE OR LESS

APN's: 098-0289-23, 098-0289-24, 098-0289-25, 098-0289-26, 098-0289-27





Sheet 6 of 10

EXHIBIT D

PLAT TO ACCOMPANY LEGAL DESCRIPTION
FOR
PARK AREA

CITY OF LIVERMORE, ALAMEDA COUNTY, CALIFORNIA

RUGGERI-JENSEN-AZAR
ENGINEERS ▪ PLANNERS ▪ SURVEYORS
4690 CHABOT DRIVE, SUITE 200 PLEASANTON, CA 94588
PHONE: (925) 227-9100 FAX: (925) 227-9300

SCALE:	DATE:	JOB NO.:
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G:\JOB2021\211010-015\SURVEY\CAD FILES\PLATS\PARK AREA.DWG 5/5/2022 11:54:17 AM JESSE MA

EXHIBIT "D"

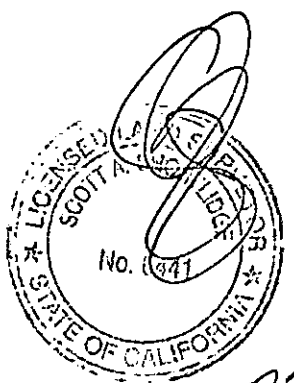
LEGAL DESCRIPTION CULTURAL FACILITY USE AREA

REAL PROPERTY SITUATED IN THE CITY OF LIVERMORE, COUNTY OF ALAMEDA, STATE OF CALIFORNIA, AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEING ALL OF PARCEL 2 OF TRACT 8574, RECORDED December 23,2020, IN BOOK 365 OF MAPS AT PAGES 15-19, AND ALL OF PARCEL A, AND A PORTION OF PARCEL B OF PARCEL MAP 11239 RECORDED _____, IN BOOK ____ OF MAPS AT PAGES _____ALAMEDA COUNTY RECORDS AS SHOWN ON ATTACHED PLAT, EXHIBIT D.

CONTAINING 31,146± SQUARE FEET OF LAND MORE OR LESS

APN's: 098-0289-23, 098-0289-24, & 098-0289-25 (PORTION)



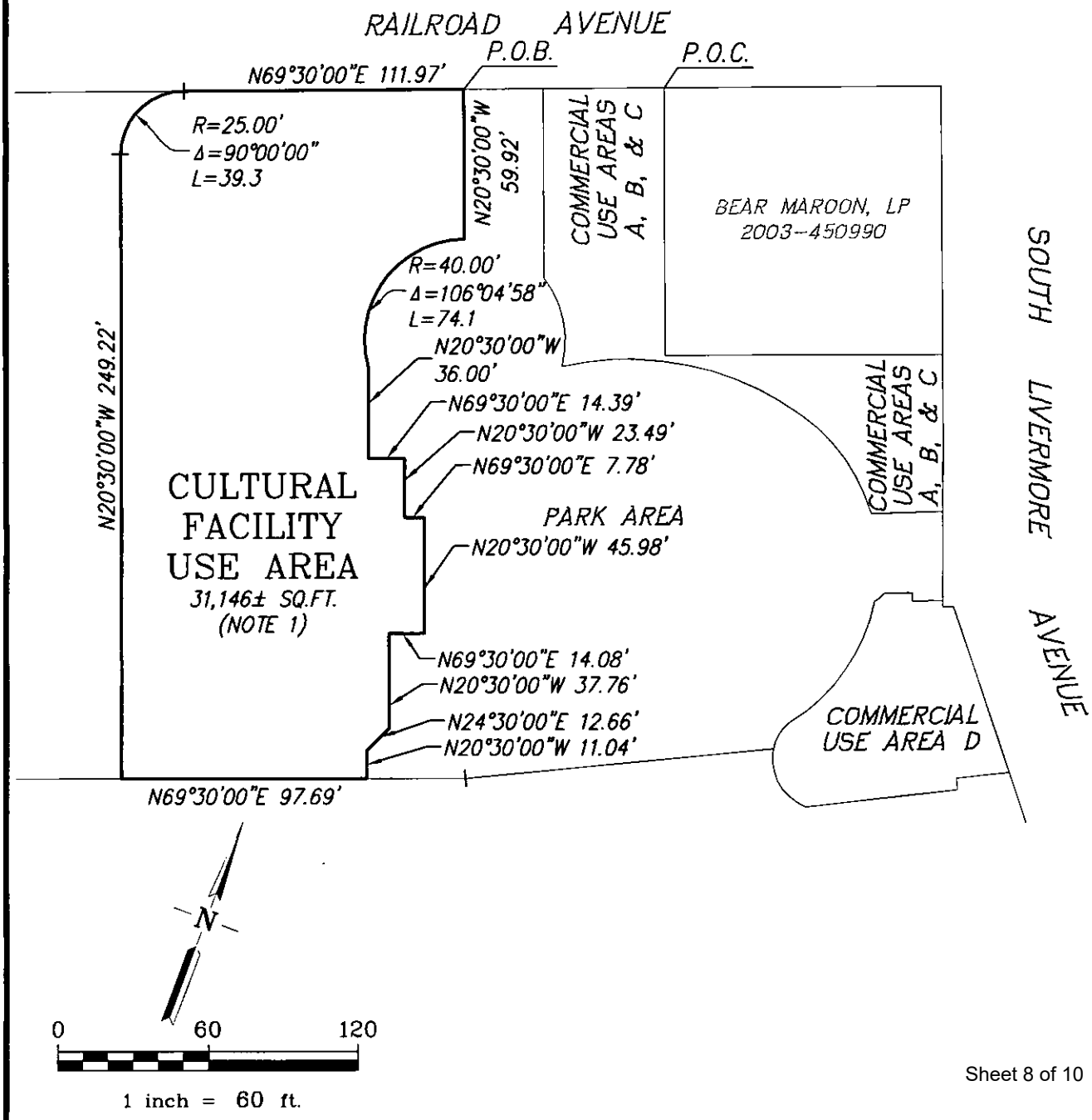
5-5-22

LEGEND

———	BOUNDARY
P.O.B.	POINT OF BEGINNING
P.O.C.	POINT OF COMMENCEMENT
SQ.FT.	SQUARE FEET

GENERAL NOTE:

1. THE BUILDABLE FOOTPRINT WITHIN THE CULTURAL FACILITY AREA SHALL NOT EXCEED 20,100 SQUARE FEET.



Sheet 8 of 10

EXHIBIT D

PLAT TO ACCOMPANY LEGAL DESCRIPTION FOR

CULTURAL FACILITY USE AREA

CITY OF LIVERMORE, ALAMEDA COUNTY, CALIFORNIA

RUGGERI-JENSEN-AZAR
ENGINEERS • PLANNERS • SURVEYORS
4690 CHABOT DRIVE, SUITE 200 PLEASANTON, CA 94588
PHONE: (925) 227-9100 FAX: (925) 227-9300

SCALE:	DATE:	JOB NO.:
1" = 60'	MAY 5, 2022	211010-015

G:\JOB2021\211010-015\SURVEY\CAD FILES\PLATS\CULTURAL FACILITY USE AREA.DWG 5/5/2022 11:54:23 AM JESSE MA

EXHIBIT "D"

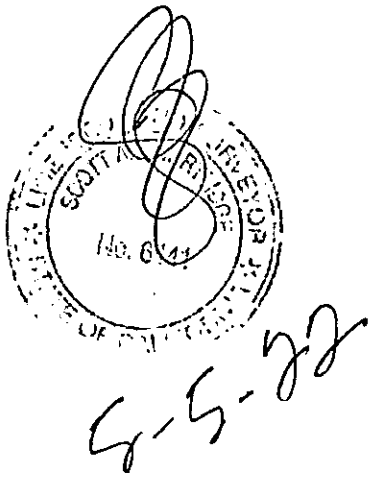
LEGAL DESCRIPTION COMMERCIAL USE AREA

REAL PROPERTY SITUATED IN THE CITY OF LIVERMORE, COUNTY OF ALAMEDA, STATE OF CALIFORNIA, AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEING ALL OF PARCEL 5, OF TRACT 8574, RECORDED December 23,2020, IN BOOK 365 OF MAPS AT PAGES 15-19, AND ALL OF PARCEL C OF PARCEL MAP 11239 RECORDED _____, IN BOOK ____ OF MAPS AT PAGES _____ALAMEDA COUNTY RECORDS.

CONTAINING 13,423± SQUARE FEET OF LAND MORE OR LESS

APN's: 098-0289-26 & 098-0289-27



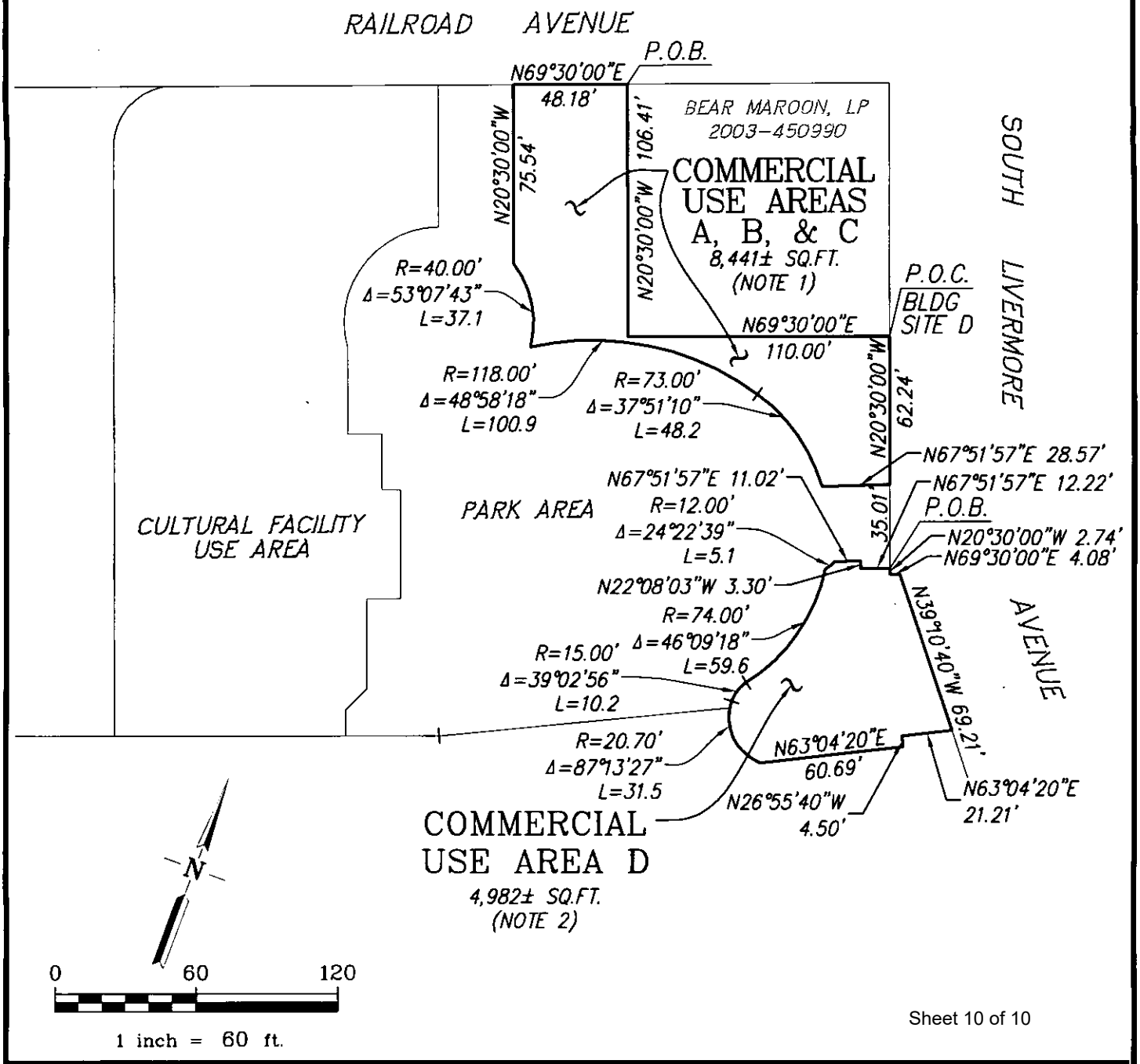
5-5-22

LEGEND

———	BOUNDARY
P.O.B.	POINT OF BEGINNING
P.O.C.	POINT OF COMMENCEMENT
SQ.FT.	SQUARE FEET

GENERAL NOTES:

1. THE BUILDABLE FOOTPRINT WITHIN THE COMMERCIAL USE AREAS A, B & C SHALL NOT EXCEED 5,700 SQUARE FEET.
2. THE BUILDABLE FOOTPRINT WITHIN THE COMMERCIAL USE AREA D SHALL NOT EXCEED 2,900 SQUARE FEET.



Sheet 10 of 10

EXHIBIT D

PLAT TO ACCOMPANY LEGAL DESCRIPTION FOR

COMMERCIAL USE AREAS

CITY OF LIVERMORE, ALAMEDA COUNTY, CALIFORNIA

RJA
RUGGERI-JENSEN-AZAR
ENGINEERS • PLANNERS • SURVEYORS
4690 CHABOT DRIVE, SUITE 200 PLEASANTON, CA 94588
PHONE: (925) 227-9100 FAX: (925) 227-9300

SCALE:	DATE:	JOB NO.:
1" = 60'	MAY 5, 2022	211010-015

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EXHIBIT "D"

LEGAL DESCRIPTION COMMERCIAL USE AREA

REAL PROPERTY SITUATED IN THE CITY OF LIVERMORE, COUNTY OF ALAMEDA, STATE OF CALIFORNIA, AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEING ALL OF PARCEL 5 OF TRACT 8574, RECORDED DECEMBER 23, 2020, IN BOOK 365 OF MAPS AT PAGES 15-19, AND ALL OF PARCEL C OF PARCEL MAP 11239 RECORDED MAY 22, 2022, IN BOOK 354 OF MAPS AT PAGES 95-97, ALAMEDA COUNTY RECORDS.

CONTAINING 13,423± SQUARE FEET OF LAND MORE OR LESS

APN: 098-0289-26 & 098-0289-27



8-31-22

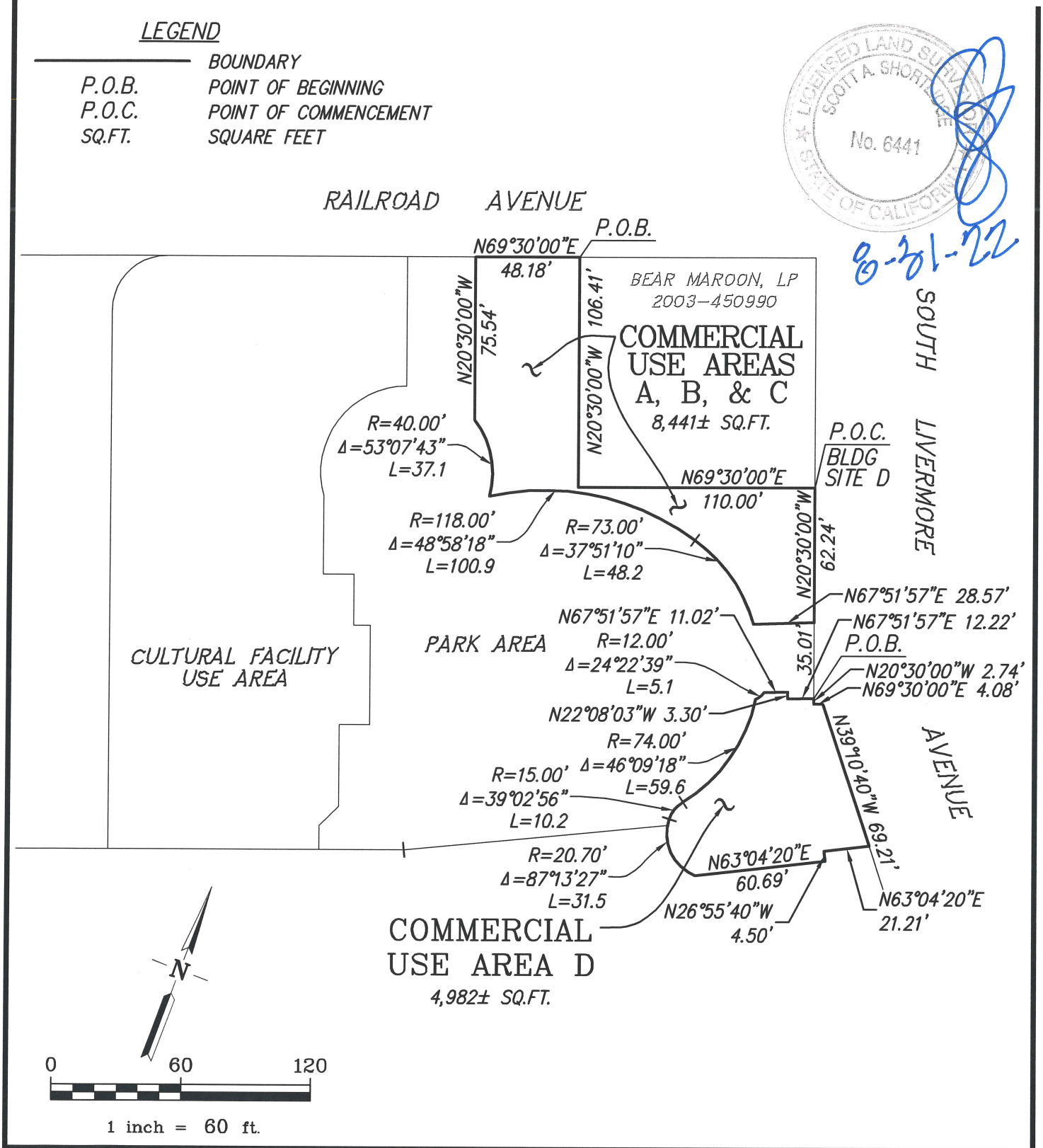


EXHIBIT D

PLAT TO ACCOMPANY LEGAL DESCRIPTION FOR

COMMERCIAL USE AREAS

CITY OF LIVERMORE, ALAMEDA COUNTY, CALIFORNIA

RJA
RUGGERI-JENSEN-AZAR
ENGINEERS ▪ PLANNERS ▪ SURVEYORS
4690 CHABOT DRIVE, SUITE 200 PLEASANTON, CA 94588
PHONE: (925) 227-9100 FAX: (925) 227-9300

SCALE:	DATE:	JOB NO.:
1" = 60'	8-30-2022	211010-015

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Black Smith Square Fee Estimate Summary - With Credits by Bldg SF*

		Future Retail B/Bldg 3	Future Retail C/Bldg 4	Future Retail D/bldg 5	Retail A, B, C, D Subtotal
1	City Storm Drainage Fee [1]				
2	City Storm Drainage Fee Credit [1]				
3	County Storm Drainage Fee [1]				
4	County Storm Drainage Fee Credit [1]				
5	Sanitary Sewer Connection Fees	$15,676.69	$10,202.36	$30,462.21	$686,898.73
6	Sanitary Sewer Fee Credit - Mixed Use	$4,906.80	$3,193.34	$9,534.67	
7	Park Facilty Fee	$11,348.64	$7,385.67	$22,052.14	$40,786.45
8	Park Facilty Fee Credit - Commercial	$9,657.88	$11,401.18	$18,610.40	$39,669.46
9	City Water Connection Fee - N/A Calwater	$0.00	$0.00	$0.00	
10	ACWFC Zone 7 Connection Fee - 1" Domestic	$79,775.00	$79,775.00	$79,775.00	$239,325.00
11	ACWFC Zone 7 Connection Fee - 3/4" Domestic				
12	ACWFC Zone 7 Connection Fee - 3" Domestic [2]				
13	ACWFC Zone 7 Connection Fee - 1" Irigation	$79,775.00	$79,775.00	$79,775.00	$239,325.00
14	ACWFC Zone 7 Connection Fee - 1.5" Irrigation				
15	ACWFC Zone 7 Connection Fee - 5/8" Fee Credits	$21,273.33	$21,273.33	$21,273.33	$63,820.00
16	ACWFC Zone 7 Connection Fee - 2" Fee Credits	$42,546.67	$42,546.67	$42,546.67	$127,640.00
17	Low Income Housing Impact Fee	$8,498.98	$5,531.12	$16,514.82	$30,544.92
18	Low Income Housing Impact Credit - Retail	$8,498.98	$5,531.12	$16,514.82	$30,544.92
19	Traffic Impact Fee	$52,118.75	$33,918.78	$101,274.71	$187,312.23
20	Traffic Impact Fee Credit - Commercial	$52,118.75	$33,918.78	$101,274.71	$187,312.23
21	Tri-Valley Transportation Development Fee	$13,355.54	$8,691.76	$25,951.86	$47,999.16
22	Tri-Valley Transportation Fee Credit	$4,239.69	$5,004.98	$8,169.73	$17,414.39
23	Social / Human Services Facility Fee	$17.86	$11.62	$34.70	$64.17
24	Social / Human Services Facility Credit	$5.67	$6.69	$10.92	$23.28
25	City Wide General Plan Recovery Cost	$1,392.69	$906.36	$2,706.21	$5,005.26
26	City Wide General Plan Recovery Credit - Speedy Lube	$501.93	$376.74	$1,129.44	$2,008.11
27	Encroachment Permit Fee				
28	Encroachment Permit Inspection Fee				
29	School Mitigation Fees	$2,228.30	$1,450.18	$4,329.94	$8,008.42
30	School Mitigation Fee Credit - Retail	$707.37	$835.05	$1,363.08	$2,905.50
31	Engineering Plan Check Fees				
32	Downtown specific plan cost recovery	$1,107.01	$720.44	$2,151.09	$3,978.54
33	Downtown specific plan Credit	$351.42	$414.85	$677.17	$1,443.44
34	Downtown revitalization fee	$76,205.14	$49,594.16	$148,078.26	$273,877.56
35	Downtown revitalization credit	$0.00	$0.00	$0.00	
36	Art in Public Places				

Fee Estimate Subtotal	$341,499.59	$277,962.45	$513,105.93	$1,132,567.97
Previous Development Credit	$144,808.48	$124,502.73	$221,104.94	$ (490,416.15)
Restroom Construction Credit				$ (272,465.00)
Total Fee Estimate				**$369,686.81**
Parking In Lieu Estimate				$ 952,740.00
Parking In Lieu Credits				$ (362,948.64)
Total Parking In Lieu Fees				$ 589,791.36

* Actual fees paid will be based on total building square footage and related construction details. Fees charged will be based on the cost of the fees at the time the fee is paid.

1 *City & County Storm Drainage fees. No Fees or credits required because new impervious surface is less than existing impervious surface.*

EXHIBIT A

EXHIBIT F

RECORDING REQUESTED BY:
Order No.
Escrow No.
Loan No.

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 $ Government Agency
DOCUMENTARY TRANSFER TAX $ Acquiring Title
SURVEY MONUMENT FEE $ Tax Code §§ 11922
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 # 098-0289-026 & 098-0289-027

Exempt from filing fees per Government Code Section §§ 27383 & 6103

GRANT DEED

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged,

The City of Livermore, A Municipal Corporation ("Grantor")

hereby Grant(s) in fee to
Red Bear Management, Inc. ("Grantee")

the real property in the City of Livermore
County of Alameda, State of California, as described with the following restrictions:

POWER OF TERMINATION (Civil Code section 885.010)

In the event that Red Bear Property Management, Inc., or its successors or assigns, (Grantee) fails to commence construction of the improvements as set forth and defined in section 10.4 of the disposition and development agreement between the City and Red Bear Property Management, Inc. for the transfer of the property herein described, then the property herein described shall revert to the City of Livermore, or its successors or assigns, free and clear of any claims of Red Bear Property Management, Inc., or its successors or assigns.

PUBLIC RESTROOM

Grantee does hereby grant to the City of Livermore (Grantor), upon development of the property a public restroom facility on the Property that is open and available to the public between 10:00 a.m. and dusk, every day of the week. The deed restrictions shall provide that the Grantee or its successor shall be responsible, at its own cost and expense, for all aspects of constructing, owning, operating, maintaining and replacing the public restroom.

FOR PLAT MAP AND LEGAL DESCRIPTION
SEE EXHIBIT "D" ATTACHED HERETO AND MADE A PART HEREOF

[SIGNATURES ON THE FOLLOWING PAGE]

EXHIBIT A

EXHIBIT F

GRANTOR:
City of Livermore, a municipal corporation

GRANTEE:
Red Bear Management, Inc.

Signature:
Name:
Title:

By:
Its:

Approved as to Form and Text:

By:
Its:

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)
County of_____)

On_____before me, _____
(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)**

EXHIBIT A

EXHIBIT G

INSURANCE REQUIREMENTS

1. General

Developer is required to procure and provide proof of insurance coverage required by these Insurance Requirements in the form of certificates and endorsements. The required insurance must cover the activities of the Developer, its Contractor and Subcontractors relating to or arising from the project described in the agreement to which these requirements are attached ("Project"), and must remain in full force and effect at all times during the period covered by the Agreement until the date of Acceptance. All required insurance must be issued by a company licensed to do business in the State of California, and each such insurer must have an A.M. Best's financial strength rating of "A" or better and a financial size rating of "VII" or better, and be approved by the City Attorney and City's Risk Manager before the Agreement is awarded. (Any waiver may only apply under written waiver from the Risk Manager.)

2. Required policies and limits.

The following insurance policies and limits are required for this Contract:

2.1. General.

Any available insurance proceeds broader than or in excess of the specified minimum insurance coverage requirements and/or limits must be available to the additional insured. Furthermore, the requirements for coverage and limits must be (1) the minimum coverage and limits specified in the Contract Documents; or (2) the broader coverage and maximum limits of coverage of any insurance policy or proceeds available to the named insured; whichever is greater.

2.2. Limits.

The limits of required insurance may be satisfied by a combination of primary and umbrella or excess insurance. Any umbrella or excess insurance must contain or be endorsed to contain a provision that the coverage will also apply on a primary and non-contributory basis for the benefit of the City before the City's own insurance or self-insurance may be called upon to protect it as a named insured.

3. Minimum Scope of Insurance.

Coverage must be at least as broad as the following:

3.1. Insurance Services Office Commercial General Liability coverage: (a) Blanket contractual liability; (b) Broad form property coverage; and (c) Personal injury;

3.2. Insurance Services Office form covering Automobile Liability, code 1 (any auto);

3.3. Workers' Compensation insurance as required by the State of California and Employer's Liability insurance. A waiver of subrogation is required for Workers'

Compensation insurance; and

3.4. Other. Any other insurance coverages and limits required in the Contract Documents.

4. Minimum Limits of Insurance.

Contractor must maintain limits no less than:

4.1. General Liability: $5,000,000 per occurrence for bodily injury, personal injury and property damage and a $10,000,000 aggregate. If Commercial General Liability insurance or other form with a general aggregate liability is used, either the general aggregate limit must apply separately to this Project or must be designated as project specific, or the general aggregate limit must be twice the required occurrence limit.

4.2. Automobile Liability: $2,000,000 per accident for bodily injury and property damage.

4.3. Workers' Compensation/Employer's Liability: In conformance with California state requirements including $1,000,000 Employers' Liability per accident, per employee for bodily injury or disease. A waiver of subrogation is required for Workers' Compensation.

4.4. Builder's Risk Insurance: The Builder's Risk Insurance policy must be issued on occurrence basis, for all-risk coverage on a 100% completed value basis on the insurable portion of the Project for the benefit of the City. This insurance must protect the Contractor and the City against risks of damage to buildings, structures, and materials and equipment. Builder's Risk insurance must name the City as loss payee. The policy must contain a provision that in the event of payment for any loss under the coverage provided, the insurance company will have no rights of recovery against the Contractor and the City. The Builder's Risk policy must insure against all risks of direct physical loss or damage to property from any external cause. Allowable exclusions, if any, must be as specified in the Special Conditions and approved by the City's Risk Manager.

4.5. Completed Operations: Contractor shall maintain insurance as required by this contract for a minimum of five years following the completion of this Project. In the event the Contractor fails to obtain or maintain completed operations coverage as required by this agreement, the City of Livermore at its sole discretion may purchase the coverage required and the cost will be paid by the Contractor. Completed Operations endorsement or coverage shall be at least as broad as Insurance Services Office CG 20 37. Contractor shall require and verify that all subcontractors or other parties hired for this Agreement purchase and maintain coverage for indemnity and insurance requirements at least as broad as specified in this Agreement to the extent they apply to the scope of the subcontractor's work with the same Certificate of Insurance requirements and naming as additional insureds all parties to this Agreement. Contractor shall include the following language in their agreements with Subcontractors: "Subcontractor agrees to be bound to Contractor and City in the same manner and to the same extent as Contractor is bound to City under the Agreement. Subcontractor further agrees to include the same

requirements and provisions of this Agreement, including the indemnity and insurance requirements, with any sub-subcontractor to the extent they apply to the scope of the subcontractor's work. A copy of the City Contract Document Indemnity and Insurance provisions will be furnished to the Subcontractor upon request." Contractor shall provide proof of such compliance and verification to the City upon request.

5. Deductibles and Self-Insured Retentions

5.1. City Approval. Any deductibles or self-insured retentions must be declared to and approved by the City. At the option of the City, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City, its officers, officials, employees, and volunteers; or the Contractor shall procure a bond guaranteeing payment of losses and related investigations, claims administration and defense expenses.

5.2. Self-Insured Retention. 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.

5.3. Copies. The City reserves the right to obtain a full certified copy of any insurance policy and endorsement. Failure to exercise this right shall not constitute a waiver of right to exercise later.

6. Other Insurance Provision Requirements.

The required general liability and automobile policies are to contain, or be endorsed to contain the following provisions:

6.1. The City, its officers, officials, employees, agents and designated volunteers are to be covered as additional insureds as respects alleged liability arising out of activities performed by or on behalf of the Contractor; products and completed operations of the Contractor; premises owned, occupied or used by the Contractor; or automobiles owned, leased, hired or borrowed by the Contractor. The coverage shall contain no special limitations on the scope of protection afforded to the City, its officers, officials, employees, agents or volunteers.

6.2. Any failure to comply with reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to the City, its officers, officials, employees, agents or designated volunteers.

6.3. Contractor must furnish properly executed Certificates of Insurance from insurance companies acceptable to the City and signed copies of the specified endorsements for each policy before beginning Work under the Contract. That documentation must clearly evidence all coverages required above including specific evidence of separate endorsements naming the City and must provide that such insurance shall not be materially changed, terminated or allowed to expire in accordance with policy provisions by written notice and certified mail, return receipt requested, has been filed with the Risk Manager. Contractor shall replace such certificates for policies expiring before completion of Work.

7. Acceptability of Insurers.

Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A: VII.

8. Cross-Liability.

The Liability policy shall include a cross-liability or severability of interest endorsement.

9. Failure to Maintain Insurance Coverage.

If Contractor, for any reason, fails to maintain the required insurance coverage, it shall be deemed a material breach of contract. The City, at its sole option, may terminate this agreement and obtain damages from the Contractor resulting from the breach. Alternatively, the City may purchase the required insurance coverage, and without further notice to Contractor, the City may deduct from sums due to Contractor any premium costs advanced by the City for the insurance.

10. Primary and Non-Contributory.

For any claims related to this Project, the Contractor's insurance coverage shall be primary insurance as respects the City, its officers, officials, employees, agents and designated volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees, agents or designated volunteers shall be excess of the Contractor's insurance and shall not contribute with it.

The additional insured coverage under the 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 CG 20 01 04 13.

11. Subcontractors.

Contractor must require that every level of Subcontractor and every entity performing Work on the Project to be contractually bound to meet all of the requirements of the Contract Documents to the same extent as the Contractor, to the extent the requirements apply to such Work. Contractor shall require that every level of Subcontractor and every entity performing Work on the Project contractually provide the Contractor and City the right to enforce all applicable requirements of the Contract Documents, including all indemnity and insurance requirements. Contractor must require all Subcontractors and entities performing Project Work to provide valid certificates of insurance and required endorsements before beginning any Work and proof of such compliance to the City if requested.

12. Subrogation Waiver.

Contractor waives subrogation rights against City regardless of the applicability of any insurance proceeds, must require all Subcontractors, every entity performing Project Work, or others involved in any way with the Work to do likewise.

13. Verification of Coverage.

Contractor must furnish the City with original endorsements effecting coverage required by the Contract Documents. The endorsements are to be signed by a person authorized by the insurer to bind coverage on its behalf.

END OF DOCUMENT

EXHIBIT A

EXHIBIT H

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

City of Livermore
1052 South Livermore Avenue
Livermore, CA 94550
Attn: Director Community and Economic Development

No fee for recording pursuant
to Government Code Section 27383

MEMORANDUM OF AMENDED AND RESTATED DISPOSITION AND DEVELOPMENT AGREEMENT

THIS MEMORANDUM OF AMENDED AND RESTATED DISPOSITION AND DEVELOPMENT AGREEMENT (the "Memo of DDA") is made as of October __, 2022, by and between the City of Livermore, a municipal corporation (the "City") and Red Bear Property Management, Inc., a California corporation ("Developer") to confirm that the City and the Developer are parties to that certain Amended and Restated Disposition and Development Agreement dated as of October __, 2022, as may be amended from time to time (the "DDA"). The DDA concerns the sale of real property in Livermore, California, which real property is described in the attached Exhibit D and the development of approximately 15,000 square feet of commercial buildings. The DDA is a public document and may be reviewed at the in the office of the City Clerk of the City of Livermore. In the event, and to the extent, that any of the terms or provisions of this Memo of DDA are inconsistent with the terms or provisions of the DDA, the terms and provisions of the DDA shall govern and prevail.

IN WITNESS WHEREOF, the City and Developer have executed this Agreement by duly authorized representatives, all on the date first written above.

City:

By: _____

Its:

Date: _____

DEVELOPER:

APPROVED AS TO FORM

Name: _____

By: _____

Title: _____

EXHIBIT A

EXHIBIT H

EXHIBIT "D"

LEGAL DESCRIPTION COMMERCIAL USE AREA

REAL PROPERTY SITUATED IN THE CITY OF LIVERMORE, COUNTY OF ALAMEDA, STATE OF CALIFORNIA, AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEING ALL OF PARCEL 5 OF TRACT 8574, RECORDED DECEMBER 23, 2020, IN BOOK 365 OF MAPS AT PAGES 15-19, AND ALL OF PARCEL C OF PARCEL MAP 11239 RECORDED MAY 22, 2022, IN BOOK 354 OF MAPS AT PAGES 95-97, ALAMEDA COUNTY RECORDS.

CONTAINING 13,423± SQUARE FEET OF LAND MORE OR LESS

APN: 098-0289-26 & 098-0289-27



8-31-22

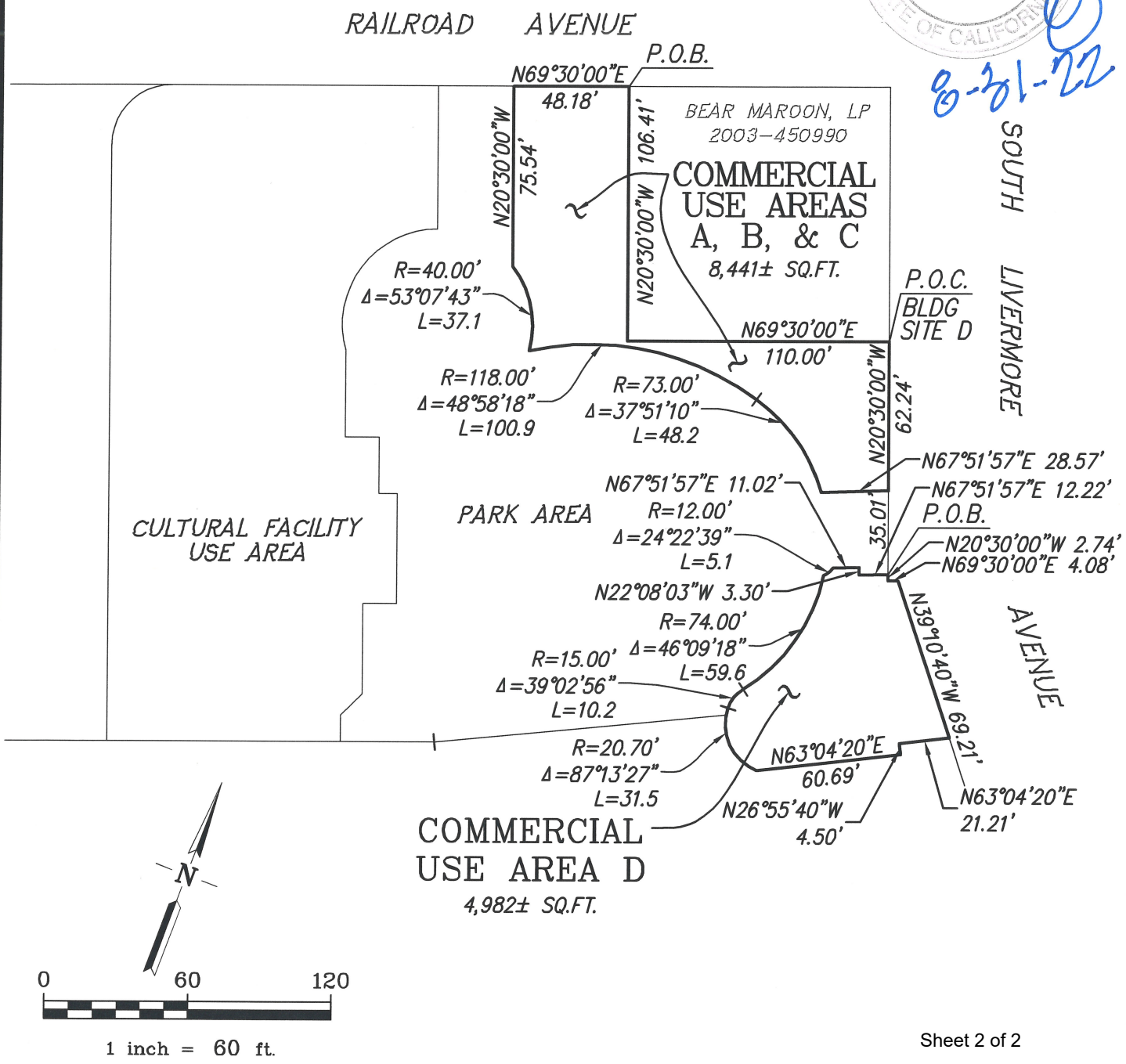
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LEGEND

———	BOUNDARY
P.O.B.	POINT OF BEGINNING
P.O.C.	POINT OF COMMENCEMENT
SQ.FT.	SQUARE FEET

LICENSED LAND SURVEYOR SCOTT A. SHORTLIDGE No. 6441 STATE OF CALIFORNIA

8-31-22



Sheet 2 of 2

EXHIBIT D

PLAT TO ACCOMPANY LEGAL DESCRIPTION FOR

COMMERCIAL USE AREAS

CITY OF LIVERMORE, ALAMEDA COUNTY, CALIFORNIA

RJA
RUGGERI-JENSEN-AZAR
ENGINEERS ▪ PLANNERS ▪ SURVEYORS
4690 CHABOT DRIVE, SUITE 200 PLEASANTON, CA 94588
PHONE: (925) 227-9100 FAX: (925) 227-9300

SCALE:	DATE:	JOB NO.:
1" = 60'	8-30-2022	211010-015

G:\JOB2021\211010-015\SURVEY\CAD FILES\PLATS\COMMERCIAL USE AREAS.DWG 8/30/2022 9:46:03 AM ALAN MULLEN

Commercial - DDA Schedule of Performance

EXHIBIT I

Prior to Close of Escrow	Due Date	Status	Who	Reference Doc/ Section
Preliminary Pro Forma	**11/7/22**		Developer	DDA Section 2.1a
Obtain Entitlements	**11/7/22**		Developer/City	DDA Section 2.1b
Determine Insurance Requirements per Activity	**11/7/22**		City	DDA Section 2.1e
Deposit Purchase Price into Escrow	**11/7/22**		Developer	DDA Section 2.1f
Right of Entry to Property for Developer	**11/7/22**		City	DDA Section 2.3
PreConditions to Begin of Construction Project				
Develop and Staff Approval of Concept Plans	**8/20/22**	**Complete**	Developer/City	DDA Section 4.5
City Approval of Entitlement Plans	**10/31/22**		City	DDA Section 5.1
Submit Construction and Building Permit Plans	**12/5/22**		Developer/City	
City Fees Paid	**2/6/23**		Developer	DDA Section 5.2
Obtain Reciprocal Access Easement	**2/6/23**		Developer	DDA Section 5.3
Deed restriction on 39 S. Livermore Ave. for public parking	**2/6/23**		Developer	DDA Section 2.1g
Deed Restriction for Public Restroom	**2/6/23**		Developer	DDA Section 2.1h
Obtain Building Permit	**2/6/23**		Developer	DDA Section 5.4
Existing Temporary Parking Lot vacated	**1/27/23**		City	
Construction of Project				
Begin Construction	**3/1/23**		Developer	
Complete Construction	**3/1/24**		Developer	

Due Dates assume CC Approval of DDA on October 10, 2022. If CC approval is delayed the due dates should be extended on a day for day basis.

EXHIBIT “J”
SCOPE OF DEVELOPMENT

Red Bear Property Management, Inc.(Red Bear) will maximize land use of the property consistent with the Downtown Specific Plan and the goals articulated by the City Council upon its selection of Red Bear to negotiate for the Disposition and Development Agreement. Red Bear will construct the development of the property consistent with any City entitlements and requirements for the project.

The project will consist of approximately 12,850 square feet of new commercial uses on approximately 24,790 square feet of the property. The project will utilize architecture and design elements compatible with Blacksmith Square. Building walls adjacent to Stockmen’s Park will be oriented towards the park so that tenant spaces actively interface with Stockmen’s Park.

The project will include its own trash enclosure and collection facilities. At such time as the L Street Parking Garage Compactor Facility becomes available for business use, the project may utilize these facilities, subject to standard City fees and requirements for use, which are applicable to all businesses users.

Red Bear will also construct public improvements related to the improvements consisting of: frontage improvements, public art, and public access to Stockmen’s Park to and from Railroad Avenue and S. Livermore Avenue.

THIS LICENSE AGREEMENT (the "Agreement") is made as of _____, ("Effective Date" by and between the City of Livermore, a municipal corporation ("Licensee"), and Red Bear Property Management, Inc., a California corporation ("Licensor"); (Licensor and Licensee shall sometimes hereinafter be referred to individually as a "Party" and together as the "Parties") with reference to the following facts, purposes, and understandings

R E C I T A L S

A. Licensor is the legal and rightful owner of a certain parcel of real property defined in Recital I of the Amended and Restated Disposition Agreement to which this Exhibit K is attached ("Property");

B. Licensee, in cooperation with the San Francisco Bay Regional Water Quality Control Board ("RWQCB"), now desires to enter the Property to perform and continue to perform environmental investigation, mitigation and/or remediation (including any system operation/maintenance) at, on, about, beneath, emanating from and/or entering the Property (the "Work"), with eventual site closure by the RWQCB;

C. The Parties desire to enter into this Agreement so that the soil, soil vapor, indoor and/or groundwater can be assessed, investigated, remediated and/or mitigated pursuant to environmental laws and regulations;

NOW THEREFORE, in consideration of the granting of the foregoing, the mutual premises, covenants, conditions and agreements hereinafter set forth, and other good and valuable consideration, the receipt and adequacy of which are acknowledged, the Parties hereby agree as follows:

1. **Grant of License** - Licensor hereby grants to Licensee, and its employees, representatives and/or contractors a limited, revocable (by Licensor), non-exclusive license (the "License") to enter upon the Property from time to time to conduct the activities described in Recitals Paragraph B and C above and shall not access the Property for any purpose other than the Work, with the further understanding that the Work shall be performed at Licensee's sole cost and expense. Further, Licensor shall cause any tenants or lessees of the Property, not a party hereto, to provide Licensee, including its consultant(s), and/or contractor(s), same License. This License shall commence on_____ (**Effective Date**) and shall end on _____ unless the Parties agree in writing to extend the term of the License. If Licensee is required by a government agency to maintain and/or operate a well, soil vapor extraction system, vapor management system or other equipment on the Property beyond the term of this License, then the License shall, on notice of such requirement to Licensor, be extended for _____. At no time shall anyone from Licensee conduct any of the Work without giving at least five (5) business days' prior notice to Licensor, who is identified in Section 8. Licensor shall not be listed as the owner or responsible for any waste generated or otherwise associated with sampling or any other aspect of the Work. Licensee agrees to lawfully handle, manage, transport, and dispose of any soil, debris or water generated as a result of the Work and to do so in compliance with all applicable laws. In particular, to the extent possible or permitted by law or regulation, all manifests for contaminated soil and/or contaminated groundwater removed from the Property will not identify Licensor as the generator

and Licensee (or its agents) shall be identified as the sole generator, shall be responsible for obtaining any necessary EPA generator identification number, and shall dispose of any such contamination at an appropriately licensed disposal facility. Licensor will be provided with copies of all reports related to the Work. This Agreement is not a grant of easement or any other interest in the Property. In no event will either Party record this Agreement on the title of the Property. Prior to the expiration of the License, Licensee shall, at no cost or expense to Licensor, (a) cause any excavations to be returned to the original gradient, (b) remove all equipment placed on the Property, (c) fill and level all ditches, ruts and depressions, if any, caused by the closure of the Licensee's excavation operations on the Property, properly close all wells and/or remedial and mitigation systems (as appropriate); properly repair any damage to the Property, including buildings, systems, and other improvements on the Property, and (d) remove all debris resulting therefrom. Licensee's obligations hereunder shall survive the termination, cancellation or expiration of this License Agreement.

2. **Compliance with Laws** - Licensee shall conduct all operations which are the subject of this License in compliance with all federal, state, and municipal statutes and ordinances, and with all regulations, orders, and directives of appropriate governmental agencies, as such statutes, ordinances, regulations, orders and directives now exist or provide.

3. **Permits** - Licensee, at no cost or expense to Licensor, shall be responsible for obtaining any and all governmental permits and approvals which may be necessary for it to conduct all Work under this Agreement. Licensor shall coordinate and cooperate with Licensee in Licensee's activities to obtain all necessary government permits and permissions.

4. **Liens and Claims** - Licensee will not permit any mechanics', materialmen's, or similar liens or claims to stand against the Property for labor or material furnished in connection with any work performed by Licensee under this Agreement. Upon reasonable and timely notice of any such lien or claim delivered to Licensee by Licensor, Licensee may bond and contest the validity and the amount of such lien, but Licensee will immediately pay any judgment rendered, will pay all proper costs and charges, and will have the lien or claim released at its sole expense. Licensee shall indemnify Licensor and hold Licensor harmless against and defend Licensor in any proceeding related to any mechanic's lien, stop notice or other claim brought by a subcontractor, laborer or material supplier who alleges having supplied labor or materials in the course of the Licensee conducting the Work or any other activity associated with the Work on or related to the Property.

5. **Cooperation and Insurance** - Licensee agrees to coordinate its activities with Licensor to minimize any impairment of access by customers or business invitees of Licensor or Licensor's tenants' to the Property and any inconvenience to or disruption of Licensor's or Licensor's tenants' business on the Property. Licensee or its agent(s) shall maintain combined liability and property damage insurance coverage in the amount of $1,000,000 per occurrence, $2,000,000 aggregate. Licensor shall be named as additional insured on the aforementioned policy with the express understanding that, with respect to any claim, Licensee and its agent(s) insurance is primary and Licensor's insurance is secondary. Prior to entering onto the Property for the commencement of Work under this Agreement, Licensee or its agent(s) shall provide Licensor with a valid certificate of insurance and endorsement evidencing such coverage and that Licensor is named as additional

insured. Licensee, or its agents, shall maintain Worker's Compensation Insurance in the statutorily required amount relating to the Work.

6. **Indemnity** - Licensee agrees that it will indemnify and hold Licensor harmless from and against any claims, demands, actions, suits, judgments, losses, damages, costs or expenses incurred as a result of personal injury, property damage, civil penalties or fines to the extent caused in whole or in part by the negligence, acts or omissions of Licensee or its authorized contractors and employees in conducting the Work. However, this indemnity and hold harmless obligation shall not apply to any such claims, demands, actions, suits, judgments, losses, damages, costs, or expenses to the extent caused by the gross negligence or willful misconduct of Licensor. This indemnity is expressly conditioned on the following:

(a) In the event Licensor shall identify any matter to which this indemnity may apply or receive a notice or claim from any third party of such matter, it shall immediately, and in every case within sixty (60) days of said notice or claim, notify Licensee in writing of such matter.

(b) Licensor shall cooperate with Licensee by allowing Licensee, its agents, representatives, contractors and consultants prompt and ready access to the Property for the purpose of investigating any matter to which this indemnity may apply. Licensor shall provide Licensee with copies of all investigative reports, data, or other information in any form which Licensor, its consultants or attorneys may have pertaining to any such matter, upon request of Licensee.

7. **Severability** - In case any one or more of the provisions contained in this Agreement shall be invalid, illegal or unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired thereby.

8. **Notices** - Any notice provided for herein or otherwise required to be given hereunder shall be deemed received when personally served or three (3) days after mailing by certified or registered United States mail, return receipt requested, postage prepaid, or by facsimile machine, with transmission and receipt confirmed, or by nationally recognized overnight delivery service, addressed as follows:

To Licensor:
Red Bear Property Management, Inc.
5955 Coronado Lane
Pleasanton, CA 94588
Attn: Mike Madden

To Licensee:
City of Livermore
1052 S. Livermore Avenue
Livermore, California 94550
Attn: City Manager

The person and the place to which notices are to be mailed may be changed by either Party by providing written notice of same to the other.

9. **Assignment -** This Agreement may not be assigned by any Party without the prior written consent of the non-assigning Party, which consent shall not be unreasonably withheld. However, after such assignment or transfer by Licensee, Licensee shall nevertheless not be released from any of the obligations and liabilities hereunder.

10. **Change in Ownership** - Licensor shall notify Licensee of any change in Property ownership within ten (10) business days of the close of Property's escrow or the recordation of a deed indicating Licensor has transferred the Property to another person(s) or entity(ies) by providing Licensee at a minimum, the new Property owner's name and contact information.

11. **Governing Law** - This Agreement shall be construed and interpreted and governed by and in accordance with the local law of the State of California without reference to any choice of law, rules, or policies which may refer the resolution of any dispute arising hereunder to the laws of any other jurisdiction.

12. **Entire Agreement** – Except as expressly provided herein to the contrary, this Agreement represents the full, complete and entire agreement between the Parties with respect to the subject matter hereof, and the rights and remedies of the Parties shall be solely and exclusively those herein contained, and in lieu of any remedies otherwise available at law or in equity. Nothing in this License is intended or shall be construed to modify or amend the Amended and Restated Disposition and Development Agreement ("ARDDA") (to which agreement this Agreement is Exhibit K) dated _____ between the Parties or waive any rights or claims between or among the Parties that may exist relating to the condition of the Property or otherwise. In any conflict in terms between this Agreement and the ARDDA, the text of the ARDDA shall control (and not this Agreement), and, where there is no conflict, any provision herein is in addition to the provisions contained in the ARDDA.

13. **Execution of Agreement** - Each of the undersigned hereby represents and warrants that they are authorized to execute this Agreement on behalf of the respective Parties to the Agreement, and that this Agreement, when executed by those Parties, shall become a valid and binding obligation, enforceable in accordance with its terms. Upon execution, this Agreement shall be binding as to the Parties' respective parent companies, subsidiaries, affiliates, successors, heirs and assigns.

14. **Counterparts** - This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, and all of which, taken together, shall constitute one and the same Agreement. The Parties have executed this Agreement in two (2) duplicate originals on the dates set forth below.

[Signature Page Follows]

LICENSOR

RED BEAR PROPERTY MANAGEMENT, Inc., a California Corporation

By:

By: _____

Name: _____

Title: _____

LICENSEE

By: _____

Date: _____ Its: City Manager

APPROVED AS TO FORM

By: _____

LIVERMORE
CALIFORNIA

CITY COUNCIL STAFF REPORT **ITEM NO. 7.1**

DATE: October 24, 2022

TO: Honorable Mayor and City Council

FROM: Christine Martin, Assistant City Manager

SUBJECT: Update on the FY 2021-23 City Council Goals and Priorities and Equity and Inclusion workplan.

RECOMMENDED ACTION

Staff recommends City Council receive an update on the FY 2021-23 Goals and Priorities and Equity and Inclusion workplan.

SUMMARY

On March 1, 2021, the City Council held a workshop to refine its goals and priorities for FY 2021-23 and provide direction regarding the development of a two-year work plan. The FY 2021-23 Goals and Priorities and work plan were approved by Council on May 10, 2021. This report presents the third update on the FY 2021-23 Goals and Priorities.

On July 26, 2021, the City Council received a final report on the work of the Equity and Inclusion Subcommittee and accepted the Subcommittee's recommendations. This report presents a status update on the implementation of those recommendations.

DISCUSSION

Goals and Priorities Update

On March 1, 2021, a Council Goals and Priorities Workshop was held to identify, discuss, and prioritize key issues that would be addressed over the coming two-year period (FY 2021-23). Based on direction received at the workshop, a report outlining Council goals and priorities, including a list of action items, is brought forward to Council for consideration as part of the two-year budget adoption process.

On May 10, 2021, Council recognized five core goals and priorities and accepted their associated work plans. The FY 2021-23 goals are listed below:

1. **Asset Management and Stormwater.** *Establish a comprehensive Asset Management Program with*

a focus on stormwater, ensuring the community continues to receive vital services through a sustainable infrastructure strategy.

2. **Downtown.** *Enhance the City's vibrancy by completing critical projects downtown, ensuring the right balance of local amenities to support quality of life.*

3. **General Plan Update.** *Engage in a comprehensive General Plan Update, including the Housing Element and Programmatic EIR, to address changes in regional and state policy, market trends, and community preferences, to plan for growth and conservation for the next 25 years, and support and enhance Livermore quality of life*

4. **Homelessness and Affordable Housing.** *Establish a homelessness strategy, engaging local partners to develop a coordinated response, and expand diversity of affordable housing projects.*

5. **Modernization, Training, and Workplace Enhancements.** *Develop a systematic approach to modernizing the City's aging business systems, reviewing processes for alignment with industry best practices, and providing our workforce with the tools and training necessary to effectively deliver services to the community.*

Attachment 1, FY 2021-23 City Council Priorities Report, is a detailed reporting of all recent accomplishments in each of the priority areas. Attachment 2 is a user-friendly, two-page executive summary of key accomplishments. The summary is shared on the city website and on the city's social media platforms.

This is the third and final update on this workplan. Early next year, in a public workshop, the City Council will review a new five-year strategic planning document that identifies all of the organization's services, categorized as goals and objectives, across five community priorities. At that workshop, staff will recommend which of the existing goals the City Council may wish to select as its priorities.

Equity and Inclusion Update

On July 26, 2021, the City Council received a final report on the work of the Equity and Inclusion Subcommittee and accepted the Subcommittee's recommendations. Attachment 3, Equity and Inclusion Workplan, summarizes recent accomplishments on the community-focused recommendations. While this is the last formal update Council will receive on this workplan, it is worth noting that not only will the work continue, but it will be enhanced by adding a focus on employees and businesses.

FISCAL AND ADMINISTRATIVE IMPACTS

There are no fiscal or administrative impacts associated with this update.

ATTACHMENTS

1. FY 2021-23 City Council Priorities Report
2. FY 2021-23 Priorities Executive Summary
3. Equity and Inclusion Workplan Update

Prepared by: Christine Martin
Assistant City Manager

Approved by:



Marianna Marysheva
City Manager

Fiscal Review by:



Tina Olson
Administrative Services Director

GOAL – ASSET MANAGEMENT AND STORMWATER: *Establish and maintain comprehensive Asset Management and Stormwater Management Programs, ensuring the community continues to receive vital services through a sustainable infrastructure strategy.*

Action Items

1.	Asset Management Program: Community Engagement	Status Update	Estimated Completion	Lead
	A) Work with the Community Asset Management (CAMP) Committee to obtain input on proposed management strategies, prioritization options, and public outreach efforts.	Six CAMP Outreach meetings held since May 2021 (two since the last update). Members provided input on upcoming outreach tools including asset fact sheets and stakeholder presentations.	Winter 2022-23	PW
	B) Develop a public education and engagement program to foster a sense of ownership and shared responsibility among residents, businesses, and property owners for the ongoing maintenance, renewal, and replacement of infrastructure.	Using the "Community Connections Campaign", staff and CAMP Outreach Committee members presented Asset Management information to approximately 75 community members, including the Sons in Retirement, Livermore Area Youth Advisory Committee, and other groups.	Fall 2023	PW
	C) Continue to partner with Zone 7, City of Pleasanton, City of Dublin and the Alameda County Resource Conservation District in the Living Arroyos Program and Adopt a Creek Spot programs to engage the public in creek restoration and trash clean-up projects.	In June 2022 the City, in collaboration with Zone 7 and the cities of Dublin and Pleasanton, executed a new task order for the Living Arroyos Program for FY 22/23 to FY 25/26. LARPD is no longer a partner in the program. The Alameda County Resource Conservation District has replaced LARPD as the implementing agency for the program.	Ongoing	CDD / PW
	D) Complete annual reports to maintain Federal Emergency Management Agency Community Rating System Class 6 rating so property owners continue to receive a 20% discount on flood insurance through the National Flood Insurance Program.	Annual Report completed in July 2022.	Ongoing	CDD

GOAL – ASSET MANAGEMENT AND STORMWATER: *Establish and maintain comprehensive Asset Management and Stormwater Management Programs, ensuring the community continues to receive vital services through a sustainable infrastructure strategy.*

Action Items

2.	Asset Management Program: Asset Data Collection and Analysis	Status Update	Estimated Completion	Lead
✓	**A)** Migrate asset data into NEXGEN, the enterprise asset and workorder management software, and develop a user training program.	Developed workflow and business practices, migrated asset data, and developed a training program for all maintenance staff. Transitioned to NEXGEN new software in September 2021. Completed in June 2022.	Completed	PW
	B) Collect real-time maintenance, rehabilitation and replacement data and continually update the work management software and GIS system. Continue to improve asset data, identify missing data, and develop plan for future data collection efforts.	Application testing in progress prior to end of year implementation.	On-going	PW
	C) Utilize risk-based criteria to prioritize infrastructure repair and replacement and refine management strategy options. Provide real-time tools for data analysis to help with project and budget decisions.	Analyzed asset management data from the existing solar array behind City Hall to determine the most financially responsible method to implement a future solar project on the L Street garage.	Winter 2022-23	PW
✓	**D)** Develop a training program and train staff to use NEXGEN Asset Management software.		Completed	PW

GOAL – ASSET MANAGEMENT AND STORMWATER: *Establish and maintain comprehensive Asset Management and Stormwater Management Programs, ensuring the community continues to receive vital services through a sustainable infrastructure strategy.*

Action Items

3.	Stormwater Management	Status Update	Estimated Completion	Lead
✓	**A)** Develop a comprehensive Stormwater Management Program.		Completed	PW
✓	**B)** Complete a condition assessment to better understand the current condition of the storm drain system (inlets, pipes, manholes, etc.) and the reliability of current asset properties (pipe material, inlet configuration, etc.).		Completed	PW
	C) Participate in inter-governmental coordination and advocacy efforts to address regional and localized flood management practices and projects.	The City continues to participate in Bay Area Flood Protection Agency Association meetings to engage with regional flood management and advocacy efforts.	Ongoing	CDD / PW
	D) Conduct a public education campaign. Portions of this task will be completed in conjunction with Asset Management item 1B.	WRD staff have provided information to the CAMP committee on the stormwater system at two meetings.	Spring 2023	PW

GOAL – ASSET MANAGEMENT AND STORMWATER: *Establish and maintain comprehensive Asset Management and Stormwater Management Programs, ensuring the community continues to receive vital services through a sustainable infrastructure strategy.*

Action Items

	3. Stormwater Management	Status Update	Estimated Completion	Lead
	E) Stream Maintenance Program. Utilize the Stream Maintenance Program to repair storm damage and maintain creeks, outfalls and infrastructure in creeks.			
✓	1. Complete annual notifications (quantitative assessments biological assessment, cultural assessment, soil analysis, description of work, environmental impacts and mitigation)	The 2022 Annual Notification has been submitted to enable projects for Fall 2022.	Completed	PW
	2. Renew RWQCB Permit	The City has requested an extension for the current permit and expects to renew the permit in 2023 with an expansion to cover emergency projects.	Summer 2022	PW
	3. Complete creation of creek inspection tool and integrate into existing workflows.	An initial creek inspection tool has been created and beta-tested in the field. Staff and consultants are working to integrate this tool with the new NexGen and GIS systems.	Summer 2022	PW
✓	**F)** Present the costs and benefits of completing a Habitat Conservation Plan (HCP) grant application to the City Council.		Completed	CDD
✓	**G)** Identify missing stormwater asset data and develop a plan for future data collection efforts.		Completed	PW / CDD

GOAL – ASSET MANAGEMENT AND STORMWATER: *Establish and maintain comprehensive Asset Management and Stormwater Management Programs, ensuring the community continues to receive vital services through a sustainable infrastructure strategy.*

Action Items

3.	Stormwater Management	Status Update	Estimated Completion	Lead
✓	**H)** Update the City's Stormwater Master Plan.		Completed	PW
✓	**I)** Complete mid-term update of the Tri-Valley Hazard Mitigation Plan.		Completed	CDD
4.	**Fiscal Sustainability**	**Status Update**	**Estimated Completion**	**Lead**
	A) Create an Asset Management Fund to meet the program's financial needs for future asset rehabilitation, replacement, and/or divestment.	The Infrastructure Repair and Replacement Reserve fund is currently at $10 million.	Spring 2023	ASD / PW
	B) Complete a cost of service study using the outcome of the storm drain condition assessment project (3B) and existing information on stream management.		Spring 2023	PW
	C) Develop a proposed Municipal Code amendment to increase the Urban Runoff Fee.		Summer 2023	PW / CAO
	D) Explore new revenue sources for asset management and stormwater management such as grants, tax measures, etc.	Completed a public opinion research poll to gauge support for a potential new sales tax for infrastructure. On February 28, 2022, Council received the results and directed staff not to proceed with a revenue measure.	Summer 2023	PW

GOAL – DOWNTOWN: *Enhance the City's vibrancy by completing critical projects downtown, ensuring the right balance of local amenities to support quality of life.*

Action Items

1.	Hotel and Public Infrastructure	Status Update	Estimated Completion	Lead
✓	**A)** Work with Presidio to bring an updated Development Agreement to City Council for review, including updated parking information and a revised schedule of performance	The DDLA was approved by the City Council on January 10, 2022.	Completed	CDD
✓	**B)** Council review and approval of updated entitlements for Downtown hotel	City Council approved the updated entitlements on June 13, 2022.	Completed	CDD
	C) Hotel and Public Infrastructure begins construction		Spring 2024	CDD
	D) Hotel opens for business		Summer 2025	CDD
2.	**Parking and Circulation**	**Status Update**	**Estimated Completion**	**Lead**
	A) I-Street Garage			
✓	1. Begin construction		Completed	CDD
✓	2. Complete construction		Completed	CDD
	B) L Street Garage			
✓	1. Complete design		Completed	CDD
	2. Start construction		Winter 2022-23	CDD
	3. Complete construction		Summer 2024	CDD

GOAL – DOWNTOWN: *Enhance the City's vibrancy by completing critical projects downtown, ensuring the right balance of local amenities to support quality of life.*

Action Items

	2. Parking and Circulation	Status Update	Estimated Completion	Lead
	C) K Street Extension and Walkway	Temporary paving will be completed as part of the Eden Housing Project. Final stamped concrete and walkway amenities will be constructed after the Science Center and Black Box Theater are completed.		
	1. Start construction		Summer 2024	CDD
	2. Complete construction		Summer 2025	CDD
	3. Downtown Core Implementation	**Status Update**	**Estimated Completion**	**Lead**
	A) Veterans Park			
✓	1. Conduct Veterans Park design public outreach	Stakeholder engagement conducted in mid-September 2021.	Completed	CDD
	2. City Council review and approval of Veterans Park design		Spring 2023	CDD
	3. Start construction		Summer 2024	CDD
	4. Complete construction		Summer 2025	CDD
	B) Commercial Uses			
	1. Review and approval of entitlement plans for Madden commercial buildings	Entitlements will be approved at staff level by October 24, 2022.	Fall 2022	CDD
	2. Start construction of commercial buildings		Spring 2023	CDD
	3. Open for business		Spring 2024	CDD

GOAL – DOWNTOWN: *Enhance the City's vibrancy by completing critical projects downtown, ensuring the right balance of local amenities to support quality of life.*

Action Items

3.	Downtown Core Implementation	Status Update	Estimated Completion	Lead
	C) Black Box Theater	DDA approved by the City Council on May 23, 2022.		
✓	1. City Council consideration of Development and Disposition Agreement		Completed	CDD/CMO
✓	2. Transfer property to SPARC for the Black Box Theater	Escrow closed and the property transferred on September 9, 2022	Completed	CDD
	D) Quest Science and Society Center			
✓	1. Review and approval of Quest interim educational demonstration area	In summer 2021, staff approved a License Agreement with Quest Science Center to operate the interim educational demonstration area. The interim educational demonstration area was constructed and opened for events in August 2021.	Completed	CDD/CMO
	E) Trash Enclosure in surface parking lot behind the First Street Alehouse			CDD
✓	1. Complete design	Final design was completed in coordination with the adjacent businesses and Livermore Sanitation.	Completed	
	2. Complete construction		Winter 2022-23	

GOAL – DOWNTOWN: *Enhance the City's vibrancy by completing critical projects downtown, ensuring the right balance of local amenities to support quality of life.*

Action Items

3.	Downtown Core Implementation	Status Update	Estimated Completion	Lead
✓	**F)** Electric vehicle chargers in surface parking lot behind First Street Alehouse 1. Finalize lease agreement	On September 12, 2022, Council approved an agreement with East Bay Community Energy.	Completed	CDD
	2. Complete construction		Summer 2023	
✓	**G)** Eden Housing Project 1. Entitlement review	On May 25, 2021, the City Council adopted Resolutions approving the project.	Completed	CDD
	2. Start construction	Delayed pending litigation.	Fall 2023	CDD
	3. Complete construction		Fall 2024	CDD
4.	**Additional Downtown Enhancements**	**Status Update**	**Estimated Completion**	**Lead**
✓	**A)** Enhanced lighting to eliminate dark spots and to improve safety in the Downtown Core	Lightning Project was accepted by the City Council on July 26, 2021. Additional lighting enhancements will be made with various downtown CIP projects such as the L Street Garage.	Completed	CDD
	B) First Street Streetscape (Legacy Project) completion	South side streetscape improvements nearing completion in Fall 2022. North side streetscape improvements expected to be completed in early 2023.	Winter 2022-23	CDD

GOAL – DOWNTOWN: *Enhance the City's vibrancy by completing critical projects downtown, ensuring the right balance of local amenities to support quality of life.*

Action Items

4.	Additional Downtown Enhancements	Status Update	Estimated Completion	Lead
	C) Paseos			
	1. Acquire and extend eastern paseo	Property owner does not want to sell eastern paseo. City will continue to lease and extend the paseo.	Spring 2024	CDD
	2. Construct western paseo		Spring 2024	CDD
5.	**Livermorium Plaza**	**Status Update**	**Estimated Completion**	**Lead**
✓	1. Start construction		Completed	CDD
✓	2. Complete construction	Construction is completed and the plaza is open for use.	Completed	

GOAL – General Plan Update: *Comprehensively update the Livermore General Plan, including Housing Element and Programmatic EIR, to address changes in regional and state policy, market trends, and community preferences, to plan for growth and conservation for the next 25 years, and support and enhance Livermore quality of life.*

Action Items

1.	Project Team Formation	Status Update	Estimated Completion	Lead
✓	**A)** Prepare project scope and budget and enter into a contract with PlaceWorks.	On June 28, 2021, the City Council adopted a Resolution approving a Professional Services Agreement with PlaceWorks to update the Livermore General Plan and Housing Element and authorizing the formation of a Citizens Advisory Committee.	Completed	CDD
2.	**Steering / Advisory Committee**	**Status Update**	**Estimated Completion**	**Lead**
✓	**A)** Seek Council authorization to form a Citizens' Advisory Committee and present recommendations for selection criteria, bylaws, and rules of procedure.	On July 26, 2021, the City Council adopted a Resolution establishing the General Plan Advisory Committee Rules of Procedure. On September 13, Council approved the Committee selection process. Committee interviews and selection occurred on September 28, 30, and October 7.	Completed	CDD
	B) Educate the Advisory Committee on rules of procedure, planning concepts, general plan law and required elements, and technical information and obtain Committee feedback on various plan components alternatives, and policies.	Staff and PlaceWorks have facilitated thirteen General Plan Advisory Committee meetings. Topics included: overview of the General Plan and update process, key learnings on Housing Element and housing law, the land use alternatives process and land use types, population and economic trends, infrastructure & public services, and sustainability. Committee has provided feedback on vision statement, community engagement, and land use focus areas.	Winter 2023-24	CDD

GOAL – General Plan Update: *Comprehensively update the Livermore General Plan, including Housing Element and Programmatic EIR, to address changes in regional and state policy, market trends, and community preferences, to plan for growth and conservation for the next 25 years, and support and enhance Livermore quality of life.*

Action Items

3.	Existing Conditions Analysis	Status Update	Estimated Completion	Lead
✓	**A)** Evaluate existing policies and planning documents, current laws and regulations, land use patterns.	Throughout the Fall 2021, staff and PlaceWorks conducted a multi-disciplinary review of planning documents, federal, state, regional and local regulations and evaluated economic and development trends	Completed	CDD
✓	**B)** General Plan and EIR Topics 1. Prepare an existing condition report on all General Plan and EIR topics. 2. Prepare white papers to serve as a foundation for a range of alternatives the Council, Planning Commission, Advisory Committee, and the community could consider to address key issues and future trends.	The reports are posted on the project website.	Completed Summer 2023	CDD CDD
	C) Present existing conditions report and white paper topics to Advisory Committee, Planning Commission, and City Council for direction and feedback.		Spring 2023	CDD

GOAL – General Plan Update: *Comprehensively update the Livermore General Plan, including Housing Element and Programmatic EIR, to address changes in regional and state policy, market trends, and community preferences, to plan for growth and conservation for the next 25 years, and support and enhance Livermore quality of life.*

Action Items

4.	Community Engagement	Status Update	Estimated Completion	Lead
✓	**A)** Develop a Community Participation Plan to identify outreach and engagement channels and strategies, stakeholder and focus groups, pop-up events, workshops, and open houses. The Plan will outline a schedule for various engagement events and activities at key milestones in the planning process.	In November 2021, staff and PlaceWorks posted the Equity and Inclusion Plan on the website, which is the strategy for engaging with the community throughout the General Plan Update.	Completed	CDD
✓	**B)** Develop and manage a project website and a variety of online engagement tools.	The website is live and staff and PlaceWorks are developing online engagement tools, including videos, and posting relevant documentation.	Ongoing	CDD
	C) Prepare outreach materials (e.g., flyers, posters, press releases, newsletters, FAQs, social media posts, e-blasts, videos, Downtown kiosk display).	Staff and PlaceWorks continue to produce outreach materials, videos, posters, press releases, etc. New material will be produced on an ongoing basis.	Ongoing	CDD
✓	**D)** Conduct visioning workshops with community and focus groups.	The first Visioning workshop (virtual) took place on September 23, 2021. Staff and PlaceWorks engaged the community at Farmers Markets, Marilyn Avenue Food Pantry, and other venues. On March 14, 2022, Council adopted the vision statement.	Completed	CDD

GOAL – General Plan Update: *Comprehensively update the Livermore General Plan, including Housing Element and Programmatic EIR, to address changes in regional and state policy, market trends, and community preferences, to plan for growth and conservation for the next 25 years, and support and enhance Livermore quality of life.*

Action Items

5.	Alternatives Development and Evaluation	Status Update	Estimated Completion	Lead
✓	**A)** Focus Areas and Infill Sites 1. Identify potential focus areas and infill sites (that also correspond to Housing Element site inventory); and confirm focus areas with Advisory Committee and community.	Staff and PlaceWorks have presented land use concepts, land use types, and the land use alternatives process to the Advisory Committee which provided feedback. Staff and PlaceWorks also presented to the Planning Commission for review and City Council for direction.	Completed	CDD
	2. Within each focus area/infill site, develop alternatives and evaluate each alternative's performance.		Winter 2022-23	CDD
	B) Land use and circulation alternatives 1. Develop a series of land use and circulation alternatives for General Plan Area and Focus Areas (including Housing Element inventory sites) based on visioning, goals setting, community input, Committee comments, and Council direction.		Spring 2023	CDD
	2. Present to the community and facilitate Advisory Committee meetings to review draft alternatives.		Spring 2023	CDD
	3. Present Committee and community feedback to Planning Commission.		Spring 2023	CDD

GOAL – General Plan Update: *Comprehensively update the Livermore General Plan, including Housing Element and Programmatic EIR, to address changes in regional and state policy, market trends, and community preferences, to plan for growth and conservation for the next 25 years, and support and enhance Livermore quality of life.*

Action Items

5.	Alternatives Development and Evaluation	Status Update	Estimated Completion	Lead
	4. Present to City Council.		Spring 2023	CDD
	5. Create a preferred alternative based on Council direction and community input.		Summer 2023	CDD
6.	**Policy Development and Evaluation**	**Status Update**	**Estimated Completion**	**Lead**
	A) Evaluate existing policies and prepare policy framework options to address new state requirements and to achieve the preferred alternative.		Winter 2022-23	CDD
	B) Draft new goals, objectives, policies, and actions needed to address elements of the general plan and City priorities.		Winter 2022-23	CDD
	C) 1. Receive input from staff and the Advisory Committee.		Summer 2023	CDD
	2. Present draft policies to Planning Commission.		Summer 2023	CDD
	3. Present draft policies to City Council.		Summer 2023	CDD

GOAL – General Plan Update: *Comprehensively update the Livermore General Plan, including Housing Element and Programmatic EIR, to address changes in regional and state policy, market trends, and community preferences, to plan for growth and conservation for the next 25 years, and support and enhance Livermore quality of life.*

Action Items

7.	General Plan Document Preparation	Status Update	Estimated Completion	Lead
	A) Prepare a General Plan outline and document format and select a design option.		Summer 2023	CDD
	B) Prepare an Administrative Draft General Plan.		Summer 2023	CDD
	C) 1. Prepare a Public Review Draft General Plan. 2. Present Public Review Draft to Advisory Committee and community.		Summer 2023 Summer 2023	CDD CDD
	D) 1. Present the Draft General Plan to the Planning Commission. 2. Present the Draft General Plan to City Council.		Spring 2024 Summer 2024	CDD CDD
	E) Prepare the Final General Plan document.		Fall 2024	CDD
	F) Create and launch an online General Plan to provide greater transparency and accessibility.		Winter 2024-25	CDD/ASD

GOAL – General Plan Update: *Comprehensively update the Livermore General Plan, including Housing Element and Programmatic EIR, to address changes in regional and state policy, market trends, and community preferences, to plan for growth and conservation for the next 25 years, and support and enhance Livermore quality of life.*

Action Items

8.	Housing Element	Status Update	Estimated Completion	Lead
✓	**A)** Meet with community organizations, service providers, and key stakeholders to seek input on policy issues and understand local housing needs.	Throughout the Fall of 2021, staff and PlaceWorks met with the community and stakeholders to seek input on policy and housing related issues.	Completed	CDD
✓	**B)** Conduct various assessments and analyses that pertain to the Housing Element.	Throughout the Fall of 2021 and Winter 2021-22, staff and PlaceWorks analyzed current conditions, supply, land use data, and RHNA allocations.	Completed	CDD
✓	**C)** Update Housing Element goals, policies, and quantified objectives based on the various housing assessments and community input.	Staff and PlaceWorks updated goals and policies within the Housing Element and prepared an administrative draft document.	Completed	CDD
✓	**D)** Prepare an Administrative Draft Housing Element	The Administrative Draft has been completed.	Completed	CDD
	E) Draft Housing Element and CEQA document. Present public review draft of the Housing Element and CEQA document (Notice of Exemption) to Advisory Committee.			CDD
✓	1. Present public review draft of the Housing Element and CEQA document to Planning Commission.	Planning Commission reviewed in Spring 2022.	Completed	CDD

GOAL – General Plan Update: *Comprehensively update the Livermore General Plan, including Housing Element and Programmatic EIR, to address changes in regional and state policy, market trends, and community preferences, to plan for growth and conservation for the next 25 years, and support and enhance Livermore quality of life.*

Action Items

8.	Housing Element	Status Update	Estimated Completion	Lead
✓	2. Present public review draft of the Housing Element and CEQA document to City Council.	City Council reviewed in Spring 2022.	Completed	CDD
	F) Prepare the Final Housing Element document.		Winter 2022-23	CDD
	G) Submit the Final Housing Element to the State Housing and Community Development Department for review and certification.		Winter 2022-23	CDD

GOAL – HOMELESSNESS AND AFFORDABLE HOUSING: *Establish a homelessness strategy, engaging local partners to develop a coordinated response, and expand diversity of affordable housing opportunities.*

Action Items

1.	Homeless Strategic Framework	Status Update	Estimated Completion	Lead
	A) Council Subcommittee on Homelessness			
✓	1. Work with Council Subcommittee on Homelessness to meet Strategic Framework goals for short- medium- and long-term strategies and funding sustainability.	Staff met with the Subcommittee to discuss potential California Homekey program opportunities to meet the Subcommittee's short-medium-and long-term goals. A Homekey application for scattered housing sites was submitted in January 2022, and the City was awarded State Family Homelessness Challenge Grant funding to create a program for homeless students enrolled in LVJUSD and their families at Leahy Square.	Completed	CDD
✓	2. Conduct Subcommittee meetings to receive community input and identify long-term solutions to recommend to Council.	Staff met with the Subcommittee to discuss long term strategies to address substance abuse and mental health services for the unsheltered population. Staff is working with the County to identify a possible location for sober/detox services in the Tri-Valley.	Completed	CDD
✓	3. Work with the Subcommittee to identify additional sources of financing for the continued operation of Council approved crisis intervention services, trash service, biohazard service, and storage.	Livermore received a total of $325,717 in state Homeless Housing Assistance Program 1 & 2 funds. Funds will be used for crisis-intervention, but cannot be used for bio-hazard, trash services, and storage.	Completed	CDD
	B) Regional Advocacy			
	1. Work with the cities of Dublin and Pleasanton to secure future funds.	Staff from Livermore, Dublin and Pleasanton regularly collaborate. Additionally the three cities regularly meet with the County to identify county, state and federal resources. The County awarded the Tri-Valley Region $423,010 in Homeless Housing, Assistance and Prevention Program (HHAP) 1 & 2 (Livermore received $325,717, Pleasanton $88,832, and Dublin $8,460).	Ongoing	CDD

GOAL – HOMELESSNESS AND AFFORDABLE HOUSING: *Establish a homelessness strategy, engaging local partners to develop a coordinated response, and expand diversity of affordable housing opportunities.*

Action Items

	1. Homeless Strategic Framework	Status Update	Estimated Completion	Lead
	2. Secure State and/or Alameda County Homeless Housing Assistance Program Funds (HHAP 3 & 4) funds.	The County is developing a process to release HHAP 3 & 4 funds to cities and regions in their vendor pool. Livermore is the only Tri-Valley City in the County's vendor pool and will administer HHAP funds for the City and region. Livermore's joint Homekey application (with Hayward, Union City and Piedmont) to the State to purchase scattered housing sites for the unsheltered was denied. Staff are currently evaluating program adjustments that would increase competitiveness for future Homekey funding rounds and are also evaluating other sources to support the acquisition of shared housing sites.	Winter 2022-23	CDD
	3. Identify Federal, State and County funds to address Homelessness.	The State budget included $12 billion in new homelessness funding. Program guidelines are still be developed by the state prior to the funding being released. Housing and Homelessness funding through the County's voter approved Measure W is still in litigation. No indication when the funds will be released.	Ongoing	CDD
✓	4. Work with Alameda County to identify and implement a Project Roomkey/Safer Ground Hotel.	All Livermore participants were either placed into housing units or transferred to another County hotel participating in the program.	Completed	CDD
	C) Nonprofit Service Provider Capacity Building			
✓	1. Assist providers with identifying and leveraging local funds.	Staff helped nonprofit partners identify and apply for federal funds that could leverage City funding for housing and human services, such as the Federal Eviction Prevention Program.	Ongoing	CDD

GOAL – HOMELESSNESS AND AFFORDABLE HOUSING: *Establish a homelessness strategy, engaging local partners to develop a coordinated response, and expand diversity of affordable housing opportunities.*

Action Items

1.	Homeless Strategic Framework	Status Update	Estimated Completion	Lead
✓	2. Provide office space at the Multi-Service Center for CityServe.	Construction at the Multi-Service Center is complete and provided a permanent headquarters for and expansion of CityServe's presence in Livermore.	Completed	CDD
	D) Social Opportunity Endowment (SOE) Fund			
	1. Work to evaluate and increase funding into the SOE fund.	The Human Services Commission created a Social Opportunity Ad Hoc Committee at their September 13, 2022, meeting to look for alternative funding sources to replace the loss of SOE Funding.	Spring 2023	CDD
	2. Work to secure new SOE funding opportunities from developments in the Isabel Neighborhood Specific Plan.		Ongoing	CDD/OIED
	E) Human Services Facility Fee			
	1. Work with consultant to revise fee calculation methodology to include community rooms, multi-service resource centers, shelters, etc.		Winter 2022-23	CDD
	2. Work with consultant to evaluate fee methodology for residential and commercial developments.		Winter 2022-23	CDD
	F) Local Agency Coordination			
	1. Coordinate a quarterly meeting with Zone 7, Caltrans, East Bay Regional Parks District, and LARPD.	The City partners with Caltrans and local service providers to conduct regular encampment clean-up operations.	Ongoing	CDD

GOAL – HOMELESSNESS AND AFFORDABLE HOUSING: *Establish a homelessness strategy, engaging local partners to develop a coordinated response, and expand diversity of affordable housing opportunities.*

Action Items

	1. Homeless Strategic Framework	Status Update	Estimated Completion	Lead
	2. Identify and coordinate resources for encampment issues.	Homelessness service providers and staff provide outreach and services to unsheltered individuals that are being displaced due to a clean-up operation.	Ongoing	CDD
	3. Coordinate resources with the business community.	Staff continues to work with local agency partners, service providers and local businesses on coordinated response, including vegetation removal.	Ongoing	CDD
	G) Rental Assistance Program			
✓	1. Work with County to secure additional funding for development of a rental assistance program to address the needs of persons facing eviction due to the pandemic.	As of August 2022, $4,890,314 in federal COVID-19 rent relief funds have been awarded to Livermore tenants. The County is continuing to advocate for unspent federal funds to be re-allocated to Alameda County to meet the enormous local need for rent relief.	Completed	CDD
✓	2. Identify service providers and housing counselors who will provide necessary tenant-based services.	The City contracted with Cityserve to help 88 Livermore residents' access more than $1.7 million in rental assistance funds.	Completed	CDD
✓	3. Provide outreach and marketing to identify those in need of program services.	City disseminated information about the program through its contracts with Centro Legal and Cityserve, who conducted pop-up events, workshops and public information sessions.	Completed	CDD
2.	**Development of Affordable Multifamily Projects**	**Status Update**	**Estimated Completion**	**Lead**
	A) Avance (formerly Sunflower Hill)			
✓	1. Begin construction of Avance.		Completed	CDD
✓	2. Complete project construction.		Completed	CDD

GOAL – HOMELESSNESS AND AFFORDABLE HOUSING: *Establish a homelessness strategy, engaging local partners to develop a coordinated response, and expand diversity of affordable housing opportunities.*

Action Items

2.	Development of Affordable Multifamily Projects	Status Update	Estimated Completion	Lead
✓	3. Work with the Livermore Housing Authority to secure project-based vouchers.	Twenty-five (25) of the project units received project-based Section 8 rental subsidies through the Livermore Housing Authority, assisting extremely low-income tenants.	Completed	CDD
✓	4. Work with MidPen on identifying tenants for the project.	MidPen Housing and the City are working closely with local agencies who serve the developmentally disabled community to help outreach to their consumers with information on the project.	Completed	CDD
	B) Chestnut Family			
✓	1. Assist with the Grand Opening for Chestnut Family Project.	The Grand Opening event for Chestnut Square Family took place on Friday, August 20th, celebrating the completion of 42 affordable homes for families and formerly unhoused households. This was the final phase of an intergenerational community in Livermore, with the 72-unit affordable Chestnut Square Senior apartments next door.	Completed	CDD
	C) Interfaith Housing/Pacific Avenue			
✓	1. Work with Interfaith Housing to finalize plans for a senior affordable rental project.	On September 13, 2021, the Council approved the Development, Disposition, and Loan Agreement (DDLA) for the project.	Completed	CDD
✓	2. Secure project entitlements.	On November 16, 2021, the Planning Commission approved the project entitlements.	Completed	CDD

GOAL – HOMELESSNESS AND AFFORDABLE HOUSING: *Establish a homelessness strategy, engaging local partners to develop a coordinated response, and expand diversity of affordable housing opportunities.*

Action Items

2.	Development of Affordable Multifamily Projects	Status Update	Estimated Completion	Lead
	3. Identify and secure sources of outside funding for site development.	The City received an award from the State's Local Housing Trust Fund to fund the project and SAHA received an award of State No Place Like Home funding to support operating costs for units reserved for homeless seniors.	Summer 2023	CDD
	4. Begin construction.		Spring 2024	CDD
✓	**D)** Livermore Village Catalyst Site 1. Identify and secure sources of outside funding for site development.	The project financing schedule has been tolled to accommodate the litigation delay. Eden hopes to apply for tax credits in 2023.	TBD	CDD
	E) 2047 First Street (Greiner)			
	1. Identify developer for a mixed-use retail/affordable housing project.	Staff are coordinating with the State on the surplus land disposition requirements in preparation for identifying a developer for the site.	Summer 2023	CDD
	2. Secure project entitlement.		Summer 2024	CDD
	3. Identify and secure project financing.		Summer 2025	CDD
	4. Begin construction.		Winter 2025-26	CDD
	F) Livermore Housing Authority Acquisition/Rehab Project - Work with the Livermore Housing Authority (LHA) on the rehabilitation of their units on Bluebell Drive, Chestnut Street, and I Street.			
	1. Develop scope of work for each of the project sites.	The Housing Authority developed a rehabilitation plan for their property on Bluebell Dr. and will commence work in October. The next priority property will be a rehabilitation plan for their Chestnut St. Apts.	Summer 2023	CDD

GOAL – HOMELESSNESS AND AFFORDABLE HOUSING: *Establish a homelessness strategy, engaging local partners to develop a coordinated response, and expand diversity of affordable housing opportunities.*

Action Items

2.	Development of Affordable Multifamily Projects	Status Update	Estimated Completion	Lead
	2. Develop and approve new loan and regulatory agreements for the sites.	Staff is negotiating with the Housing Authority on an extension of the City's loans and affordability restrictions on the Bluebell property.	Fall 2023	CDD
	3. Identify and secure outside sources of project financing.	The City approved a subordination of its Deed of Trusts on the Bluebell units to a new first mortgage from Fremont Bank that will finance the renovation of all 27 Bluebell Apartments.	Winter 2023-24	CDD
	4. Complete rehabilitation work.		Spring 2024	CDD
	G) REACH Housing Accessory Dwelling Units (an expansion of their shared housing model for persons with developmental disabilities).			
✓	1. Determine suitable site location for ADU's.	Staff have identified potential sites and shared housing operators and released a request for proposals in December 2021, for the State Permanent Local Housing Allocation funds awarded for this program.	Completed	CDD
✓	2. Secure financing.	City Council approved a rehabilitation loan to Tri Valley REACH for the Colgate Way property in Livermore in Spring 2022.	Completed	CDD
✓	3. Obtain City approvals.		Completed	CDD
✓	4. Construct units.		Completed	CDD
✓	**H)** Identify existing multifamily unit projects for purchase to convert to affordable/workforce housing.	The City's Request for Information for the Homekey program, released in August 2021, includes a solicitation for multifamily developments interested in converting to affordable housing.	Completed	CDD

GOAL – HOMELESSNESS AND AFFORDABLE HOUSING: *Establish a homelessness strategy, engaging local partners to develop a coordinated response, and expand diversity of affordable housing opportunities.*

Action Items

	2. Development of Affordable Multifamily Projects	Status Update	Estimated Completion	Lead
	I) Vineyard Project			
✓	1. Work with Housing Consortium of the East Bay (HCEB) to secure project financing.	All project financing has been secured for the project and construction commenced in March 2022.	Completed	CDD
✓	2. Develop construction plans for the project.	Plans were completed and the project received a building permit in March 2022.	Completed	CDD
✓	3. Begin project construction.	Construction began with demolition in March 2022.	Completed	CDD
	4. Work with nonprofit service providers to identify and secure appropriate services.	The City approved the developer's lease agreement with Open Heart Kitchen and is meeting regularly with local providers to finalize the staffing and services at the site.	Summer 2023	CDD
	J) Hotel Acquisition and Rehabilitation (for development of transitional housing and on-site services to support homeless)			
✓	1. Identify hotel sites for possible acquisition.	Staff continues to participate in the County hotel acquisition working group and engaged a consultant to identify potential hotel sites. None of the potential leads were found to be feasible. Staff released a released a Request for Information in August 2021, to identify potential Homekey acquisition sites and developer/owners for the project. No sites were identified through that process, but staff will analyze opportunities if they present themselves.	Completed	CDD
	2. Work with County to secure financing.			CDD

GOAL – HOMELESSNESS AND AFFORDABLE HOUSING: *Establish a homelessness strategy, engaging local partners to develop a coordinated response, and expand diversity of affordable housing opportunities.*

Action Items

2.	Development of Affordable Multifamily Projects	Status Update	Estimated Completion	Lead
	3. Identify developer/owner for the project. 4. Acquire site. 5. Develop construction plans for the project. 6. Begin construction. 7. Work with nonprofit service providers to identify and secure appropriate services.			CDD CDD CDD CDD CDD
	K) Work with the real estate community and nonprofit developers to identify new sites for development of affordable housing for use with the Housing First Program.	The Homekey program Request for Information released in August 2021 solicited new sites and partners for developing affordable housing for people experiencing homelessness. Staff are working with developers of projects in the affordable housing pipeline to help set aside units with on-site services for this population. Staff worked with Satellite Affordable Housing Associates to support their successful application for State No Place Like Home Funds to support operating costs for homeless units in the Pacific Senior apartments project. Staff are exploring several opportunities to support the efforts of faith-based groups and community non-profits to facilitate tiny homes and shared housing units as Housing First Program units.	Ongoing	CDD

GOAL – HOMELESSNESS AND AFFORDABLE HOUSING: *Establish a homelessness strategy, engaging local partners to develop a coordinated response, and expand diversity of affordable housing opportunities.*

Action Items

2.	Development of Affordable Multifamily Projects	Status Update	Estimated Completion	Lead
✓	**L)** Identify sites for use in the development of transitional/interim housing units.	Staff are also designing a Housing First program with the Livermore Housing Authority to set aside units at Leahy Square as transitional housing for homeless families and are applying for funding for necessary supportive services.	Completed	CDD
3.	**Create Affordable Ownership Opportunities**	**Status Update**	**Estimated Completion**	**Lead**
✓	**A)** Administer the City's Inclusionary Housing Program 1. Work with provider to create buyer eligibility lists for projects under agreement with the Affordable Homeownership program.	In March of 2021, the City established a new list of first-time buyers interested in the program and received 866 applications.	Completed	CDD
	2. Work with provider to qualify buyers for inclusionary units.		Ongoing	CDD
	3. Assist buyer and seller in completing the purchase transaction.	Since March 2021, ten (10) households, including two Livermore school teachers, have purchased affordable homes.	Ongoing	CDD
	B) Down Payment Assistance (DPA) Program 1. Provide second mortgage DPA loans to eligible low and moderate-income homebuyers.	Over the past year, the City's DPA program funded three loans for low and moderate-income first-time homebuyers.	Ongoing	CDD
	C) Identify outside resources that can be used to expand existing ownership programs and create new ones.	Staff partnered with the County to market and outreach their Down Payment Assistance loan (AC Boost). During the 1st round of financing, AC Boost helped four households buy their first home in Livermore.	Ongoing	CDD

GOAL – HOMELESSNESS AND AFFORDABLE HOUSING: *Establish a homelessness strategy, engaging local partners to develop a coordinated response, and expand diversity of affordable housing opportunities.*

Action Items

3.	Create Affordable Ownership Opportunities	Status Update	Estimated Completion	Lead
✓	**D)** Update the City's Inclusionary Housing Ordinance to include an on-site rental-housing requirement.	City Council adopted an update to the City's Inclusionary Housing ordinance in June 2021 and the new on-site rental housing requirements went into effect in July 2021.	Completed	CDD
4.	**Regional Housing Opportunities**	**Status Update**	**Estimated Completion**	**Lead**
	A) Work with the County to identify and secure additional funding for homeless services.	The City was awarded Family Homeless Challenge Grant funding for a pilot homeless housing program in collaboration with the school district and the Livermore Housing Authority.	Ongoing	CDD
✓	**B)** Continue to work with County on project Roomkey and Operation Safer Ground funding opportunities.	Staff responded to a County solicitation for City-sponsored Homekey projects providing housing for people experiencing homelessness and were successful in obtaining County funding for operating subsidies for the Bay Area Community Services (BACS) Project Reclamation program providing supportive shared housing to people experiencing homelessness.	Completed	CDD

GOAL – MODERNIZATION, TRAINING and WORKPLACE ENHANCEMENTS: *Develop a systematic approach to modernizing the City's aging business systems, reviewing processes for alignment with industry best practices, and providing our workforce with the tools and training necessary to effectively deliver services to the community.*

Action Items

1.	Governance and Process Improvement	Status Update	Estimated Completion	Lead
	A) Governance of Information and Technology			
	1. Establish IT Steering Committee			ASD
	a) Determine key initiatives	IT Strategic Plan and Microsoft 365 Strategic Plans being developed.	Winter 2022-23	
✓	b) Remote workforce technology plan		Completed	
✓	c) Develop Cloud First strategy		Completed	
	d) Integrating City systems	Program portfolio is being developed to track enterprise applications and review for integration.	Winter 2022-23	
	e) Technology refresh		Winter 2022-23	
✓	f) Leveraging artificial intelligence		Completed	
✓	g) Mobile devices		Completed	
	B) Compliance Tracking			
	1. Governance, risk, and compliance tracking system			ASD/CAO
✓	a) Needs analysis for tracking cyber risk and other risks		Completed	
✓	b) Evaluate platforms		Completed	

GOAL – MODERNIZATION, TRAINING and WORKPLACE ENHANCEMENTS: *Develop a systematic approach to modernizing the City's aging business systems, reviewing processes for alignment with industry best practices, and providing our workforce with the tools and training necessary to effectively deliver services to the community.*

Action Items

1.	Governance and Process Improvement	Status Update	Estimated Completion	Lead
✓	c) Select solution	Solution selected.	Completed	
	d) Implement solution		Winter 2022-23	
	e) Train staff		Winter 2022-23	
	2. Compliance Assessment		Winter 2022-23	ASD
	a) Conduct assessments Payment Card Industry (PCI), Healthcare Insurance Portability and Accountability Act (HIPAA), Criminal Justice Information Services (CJIS), American Water Works Association (AWWA)			
	b) Document current compliance activities and state			
	c) Develop remediation plans			
	C) Governance Modernization			
	1. Review Administrative Regulations (AR) and Livermore Municipal Code (LMC)			ASD
✓	a) Establish AR/LMC review committee	Staff review committee established.	Completed	

GOAL – MODERNIZATION, TRAINING and WORKPLACE ENHANCEMENTS: *Develop a systematic approach to modernizing the City's aging business systems, reviewing processes for alignment with industry best practices, and providing our workforce with the tools and training necessary to effectively deliver services to the community.*

Action Items

1.	Governance and Process Improvement	Status Update	Estimated Completion	Lead
	b) Review AR and LMC for cyber risk and financial policy best practices		Spring 2023	
	c) Update Administrative Regulations		Summer 2023	
	d) City Manager approval of AR updates		Summer 2023	
	e) Update Municipal Code to increase purchasing/spending limits to account for CPI increases		Summer 2023	
	f) Council approval of Municipal Code updates		Summer 2023	
	2. Retention Schedule Update			ASD
✓	a) Needs assessment		Completed	
✓	b) Develop file plans for each division for electronic and physical documents		Completed	
✓	c) Update policies/procedures		Completed	
✓	d) Train staff		Completed	

GOAL – MODERNIZATION, TRAINING and WORKPLACE ENHANCEMENTS: *Develop a systematic approach to modernizing the City's aging business systems, reviewing processes for alignment with industry best practices, and providing our workforce with the tools and training necessary to effectively deliver services to the community.*

Action Items

1.	Governance and Process Improvement	Status Update	Estimated Completion	Lead
	D) Internal Process Modernization			
	1. Process Improvement		Winter 2022-23	ASD
	a) Document or update documentation for current procedures			
	b) Evaluate opportunities for improvement, including purchasing-card paper-less workflow process			
	c) Evaluate and identify automation possibilities			
	d) Develop a plan to implement automation			
	2. Paperless Timesheets			ASD
✓	a) Assess needs	Complete	Completed	
✓	b) Procure solution	Complete	Completed	
	c) Test solution		Summer 2024	
	d) Implement solution	Partially implemented; Police Department has implemented InTime, the remainder of the city will implement with the new ERP system.	Fall 2024	
	e) Train users on new system		Fall 2024	

GOAL – MODERNIZATION, TRAINING and WORKPLACE ENHANCEMENTS: *Develop a systematic approach to modernizing the City's aging business systems, reviewing processes for alignment with industry best practices, and providing our workforce with the tools and training necessary to effectively deliver services to the community.*

Action Items

1.	Governance and Process Improvement	Status Update	Estimated Completion	Lead
	3. Contract Management and Electronic Signatures			ASD
✓	a) Create AR for electronic signatures		Completed	
✓	b) Procure DocuSign contract lifecycle management system		Completed	
✓	c) Implement DocuSign eSignature		Completed	
	d) Implement DocuSign CLM		Winter 2022-23	
	e) Create workflows by contract type		Winter 2022-23	
	f) Train staff on process, policy, and system		Winter 2022-23	
	4. Records Storage			ASD
✓	a) Execute a contract with Corodata for records storage, scan on demand, data conversion services and records destruction services		Completed	

GOAL – MODERNIZATION, TRAINING and WORKPLACE ENHANCEMENTS: *Develop a systematic approach to modernizing the City's aging business systems, reviewing processes for alignment with industry best practices, and providing our workforce with the tools and training necessary to effectively deliver services to the community.*

Action Items

1.	Governance and Process Improvement	Status Update	Estimated Completion	Lead
	b) Move records from PD records facility to Corodata		Winter 2022-23	
✓	c) Train staff		Completed	
	d) Move permanent records from City Hall to Corodata			
	5. Paperwork Reduction		Winter 2022-23	ASD/CDD
	a) Prepare plan to transition to electronic file copies for all projects with a secondary electronic backup system			
	6. Improve the approval process for New Hire Requisitions			ASD
✓	a) Implement automated requisition routing module in Neogov		Completed	
✓	b) Develop required approval mapping for each department		Completed	
✓	c) Convert to automated system		Completed	
✓	d) Train staff		Completed	

GOAL – MODERNIZATION, TRAINING and WORKPLACE ENHANCEMENTS: *Develop a systematic approach to modernizing the City's aging business systems, reviewing processes for alignment with industry best practices, and providing our workforce with the tools and training necessary to effectively deliver services to the community.*

Action Items

1.	Governance and Process Improvement	Status Update	Estimated Completion	Lead
	7. Enhance City compliance with noticing, tracking and reporting requirements of Family Medical Leave Act (FMLA) qualified leaves	May be included in ERP. If so, will be done Fall 2024	Fall 2024	ASD
	a) Needs analysis - Identify, test, and select software or vendor alternative to using Excel and Word to track and generate required letters			
	b) Select solution			
	c) Procure solution			
	d) Implement solution			
	e) Train staff			
	8. Public records request software			ASD
✓	a) Procure software		Completed	
✓	b) Implement system		Completed	
✓	c) Train staff		Completed	
✓	d) Communicate to the public the availability of the new system		Completed	

GOAL – MODERNIZATION, TRAINING and WORKPLACE ENHANCEMENTS: *Develop a systematic approach to modernizing the City's aging business systems, reviewing processes for alignment with industry best practices, and providing our workforce with the tools and training necessary to effectively deliver services to the community.*

Action Items

1.	Governance and Process Improvement	Status Update	Estimated Completion	Lead
	9. Online Payments		Fall 2022	CDD/ASD
	a) Needs analysis			
	b) Determine compliance requirements			
	c) Identify solution – merchant account options that work with Accela Procure solution	Software has been identified for paperless plan review and cost estimates received for implementation.		
	d) Procure solution			
	e) Implement			
	10. Expand Permit Types Available from Online Portal			CDD
✓	a) Identify CDD permit types that can be processed online (Building, Planning, and Engineering)		Completed	
	b) Configure additional Accela record types for intake from the Accela Citizen's Access Portal		Fall 2022	
	c) Create online submittal capabilities and processes for all eligible permit types	Received cost estimates from consultant for implementation.	Fall 2022	

GOAL – MODERNIZATION, TRAINING and WORKPLACE ENHANCEMENTS: *Develop a systematic approach to modernizing the City's aging business systems, reviewing processes for alignment with industry best practices, and providing our workforce with the tools and training necessary to effectively deliver services to the community.*

Action Items

1.	Governance and Process Improvement	Status Update	Estimated Completion	Lead
	d) Conduct staff training for new online services		Winter 2022-23	
	e) Launch online permitting Services		Winter 2022-23	
	11. Improve the accuracy of and turnaround time required to do cost proposals in the 2021 Labor Bargaining process			ASD
✓	a) Identify, test and select software alternative to Excel		Completed	
✓	b) Obtain approval for new software and implement vendor contract		Completed	
✓	c) Implement new software		Completed	
✓	d) Train staff		Completed	
	12. Investigate options for more departments to post bid package directly and accept electronic submissions.		Winter 2022-23	ASD/CDD

GOAL – MODERNIZATION, TRAINING and WORKPLACE ENHANCEMENTS: *Develop a systematic approach to modernizing the City's aging business systems, reviewing processes for alignment with industry best practices, and providing our workforce with the tools and training necessary to effectively deliver services to the community.*

Action Items

1.	Governance and Process Improvement	Status Update	Estimated Completion	Lead
	E) Align services to available resources to maintain fiscal stability			ASD
	1. Develop strategy to pay down unfunded liabilities	Council to review with FY2023-25 budget process.	Spring 2023	
	2. Develop long-term strategic plan to identify future revenue and expenditure trends	Concurrent with General Plan Update adoption	Spring 2024	
	3. Develop, maintain, and attract a skilled, adaptable, and diverse workforce by providing opportunities for our employees to feel valued, engaged, and trusted		Spring 2023	
2.	**Modernize Key Business Systems**	**Status Update**	**Estimated Completion**	**Lead**
	A) Microsoft Modern Workplace Roadmap [Office 365 / Microsoft 365]			
✓	1. Execute contract with consultant		Completed	ASD
✓	2. Identity and Authentication		Completed	ASD
	a) Determine high-level desired identity and authentication outcomes			

GOAL – MODERNIZATION, TRAINING and WORKPLACE ENHANCEMENTS: *Develop a systematic approach to modernizing the City's aging business systems, reviewing processes for alignment with industry best practices, and providing our workforce with the tools and training necessary to effectively deliver services to the community.*

Action Items

2.	Modernize Key Business Systems	Status Update	Estimated Completion	Lead
	b) Discovery and design sessions c) Develop recommendations and Action Plan			
✓	3. Device Management a) Review current practice and policy b) Outline organization-specific measures of success c) Discovery sessions d) Envisioning and Roadmap e) Develop strategic recommendations f) Finalize recommendations		Completed	ASD
✓	4. O365 Collaboration and Productivity a) Determine high-level desired collaboration and productivity outcomes b) Outline organization-specific measures of success		Completed	ASD

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Action Items

2.	Modernize Key Business Systems	Status Update	Estimated Completion	Lead
	c) Discovery sessions d) Develop strategic recommendations			
✓	5. Security and Compliance a) Determine high-level desired security and compliance strategy outcomes b) Outline organization-specific measures of success c) Discovery sessions d) Envisioning and Roadmap sessions e) Develop strategic recommendations		Completed	ASD
✓	6. Change Management Outcomes a) Determine high-level desired change management strategy outcomes b) Outline organization-specific measures of success		Completed	ASD

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Action Items

2.	Modernize Key Business Systems	Status Update	Estimated Completion	Lead
	c) Discovery sessions d) Develop plans and recommendations			
	B) Enterprise Resource Planning (ERP)			
✓	1. Approve selection consultant		Completed	ASD
✓	2. ERP Project coordination and initiation		Completed	ASD
✓	3. Needs assessment		Completed	ASD
✓	4. RFP Development		Completed	ASD
✓	5. Evaluate proposals		Completed	ASD
	6. Selection of ERP system		Fall 2022	ASD
	7. Implementation of new ERP System		Spring 2025	ASD
	C) Records Management System			
✓	1. Needs Assessment, upgrade or replace a) Provide residents access and search capabilities via the website to all non-privileged data		Completed	ASD

GOAL – MODERNIZATION, TRAINING and WORKPLACE ENHANCEMENTS: *Develop a systematic approach to modernizing the City's aging business systems, reviewing processes for alignment with industry best practices, and providing our workforce with the tools and training necessary to effectively deliver services to the community.*

Action Items

2.	Modernize Key Business Systems	Status Update	Estimated Completion	Lead
✓	2. Identify Solution – vendor demonstrations		Completed	ASD
✓	3. Procure solution		Completed	ASD
✓	4. Develop migration plan		Completed	ASD
	5. Implement new system		Fall 2022	ASD
	6. Migrate data		Winter 2022-23	ASD
	7. Test new system		Winter 2022-23	ASD
	8. Develop the policies and procedures required and Implement system		Winter 2022-23	ASD
	9. Integrate with other City software		Spring 2023	ASD
	D) Website			
	1. Migrate to new platform			ASD
✓	a) Re-start data transfer process to new site to encompass COVID driven and other changes		Completed	
✓	b) Conduct user training		Completed	
✓	2. Expand the financial information available on the City's website to include compliance reports and historic records		Completed	ASD

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Action Items

2.	Modernize Key Business Systems	Status Update	Estimated Completion	Lead
	3. Self-service options (on the City's website) for utility customers		Winter 2022-23	ASD
	E) New Agenda Management System			
✓	1. Train staff		Completed	ASD
✓	2. Implement system across all advisory bodies		Completed	ASD
✓	3. Board and commissions module - Granicus		Completed	ASD
	a) Implement and use boards and commissions module			
	b) Load past boards and commissions data			
	c) Train advisory body liaisons on the use of boards and commissions module			
✓	4. Granicus for live Council meetings a) Implement electronic voting in Civic Center Meeting Hall		Completed	ASD

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Action Items

2.	Modernize Key Business Systems	Status Update	Estimated Completion	Lead
	b) Train City Council and advisory bodies on the use of i-Legislate c) Provide e-Comment and electronic speaker sign up to the public			
	F) Cybersecurity Threat Detection and Response			ASD
✓	1. Research available solutions and industry trends		Completed	
✓	2. Evaluate current solution		Completed	
✓	3. Needs analysis		Completed	
✓	4. Vendor demos		Completed	
	G) Integrated Library System			LIB/ASD
✓	1. Migrate to cloud-based solution a) Needs analysis b) Identify solution c) Procure solution d) Develop a migration plan		Completed	

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Action Items

2.	Modernize Key Business Systems	Status Update	Estimated Completion	Lead
	e) Migrate data f) Test new system g) Train staff			
	H) Utilize modern fleet management technologies for tracking and diagnostics to increase fleet efficiencies 1. Needs analysis 2. Identify solution 3. Procure solution 4. Develop a migration plan 5. Migrate data 6. Test new system 7. Train staff		Winter 2022-23	PW
	I) Electronic Plan Review			CDD
✓	1. Needs analysis		Completed	
✓	2. Identify electronic plan review Platform that integrates with Accela Permit System		Completed	
✓	3. Procure solution		Completed	
✓	4. Develop implementation plan		Completed	

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Action Items

2.	Modernize Key Business Systems	Status Update	Estimated Completion	Lead
	5. Implement solution 6. Train staff 7. Launch system		Winter 2022-23 Winter 2022-23 Winter 2022-23	
	J) Engineering Resource Management System 1. Select Platform a) Needs assessment b) Available platform review c) Procure system 2. Implement system a) Integrate existing data b) Integrate with other systems as applicable 3. Train staff 4. Launch system		Spring 2024	CDD

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Action Items

2.	Modernize Key Business Systems	Status Update	Estimated Completion	Lead
	K) Transition to laptops as main computing device			ASD
✓	1. Perform feasibility assessment to transition from desktops to laptops for each member of staff		Completed	
✓	2. Make recommendation		Completed	
	L) Smart Device Deployment		Fall 2022	ASD
	1. Increase Smart Device deployment to identified workforce to interface with new Asset Management software and other related in field systems			
	M) Council Chamber Technology			ASD
✓	1. Evaluate Zoom enhancements allowing remote public access to live meetings		Completed	
✓	2. Conduct proof of concept testing		Completed	
✓	3. Train staff and Council		Completed	

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Action Items

2.	Modernize Key Business Systems	Status Update	Estimated Completion	Lead
	N) Modernize Library's Online Public Access Catalog			LIB
✓	1. Onboarding BiblioCore Discovery Layer		Completed	
✓	2. Review the new catalog		Completed	
✓	3. Launch initial public trial run		Completed	
✓	4. Official launch		Completed	
	O) New Library App			LIB
✓	1. Evaluate options		Completed	
✓	2. Select solution		Completed	
✓	3. Procure solution		Completed	
✓	4. Implement solution		Completed	
✓	5. Train staff		Completed	
	P) Virtual Reality simulator training System for Police			PD
✓	1. Conduct research		Completed	
✓	2. Prepare informal requests for quotes		Completed	

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Action Items

2.	Modernize Key Business Systems	Status Update	Estimated Completion	Lead
✓	3. Seek Council authorization for system procurement		Completed	
	Q) Crossroads traffic collision and citation software			PD
✓	1. Research installation into vehicle computers, desktops, and digital citation units		Completed	
✓	2. Install software		Completed	
	3. Train staff		Fall 2022	
✓	4. Launch system		Completed	
	R) In car digital cameras			PD
✓	1. Research cost and installation options for patrol vehicles		Completed	
✓	2. Make recommendation		Completed	
	3. Procure required devices and software	Contract was approved and an order was made for the devices/software. Awaiting product availability due to supply shortage.	Winter 2022-23	
	4. Implement and deploy solution		Winter 2022-23	
	5. Train staff		Winter 2022-23	

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Action Items

2.	Modernize Key Business Systems	Status Update	Estimated Completion	Lead
	S) Integrating Water Resources Division (WRD) databases and data sources			PW
✓	1. Create a WRD data team to evaluate existing data sources, business intelligence products, and develop data management best practices		Completed	
	2. Document the data, where it is located, what format it is stored in, and how it can contribute overall efficiency		Fall 2022	
	3. Test various business intelligence programs to integrate databases		Fall 2022	
	4. Perform background research and if appropriate, design a pilot program to add additional data gathering capabilities to wet utilities such as pressure monitors, district meters, sewer / storm flow monitors, etc.		Fall 2022	

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Action Items

2.	Modernize Key Business Systems	Status Update	Estimated Completion	Lead
	T) WRD Technology Master Plan [Follows IT & Cybersecurity Strategic Plan]			PW/ASD
✓	1. Review and document existing technology being used by the various sections		Completed	
✓	2. Evaluate the effectiveness of these technologies		Completed	
✓	3. Identify potential improvements		Completed	
✓	4. Make recommendations		Completed	
	5. Implement approved re-commendations		Winter 2022-23	
	6. Reevaluate their effectiveness		Winter 2022-23	
	U) Hardware Refresh			PD
✓	1. Evaluate existing hardware		Completed	
✓	2. Conduct needs assessment		Completed	
✓	3. Identify staff that need work-station enhancements (computer & monitor)		Completed	
✓	4. Develop a refresh plan		Completed	
	5. Implement plan		Fall 2022	

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Action Items

3.	Training: Program and Governance	Status Update	Estimated Completion	Lead
	A) Governance Charter and Committee 1. Conduct a training needs assessment 2. Gather training resources 3. Determine and implement training platform/s a) Develop training library b) Find external sources for training 4. Set training goals 5. Setup employee learning plan, establish, and review process 6. Centralize training reporting (reporting dashboard)		Winter 2023-24	ASD
	B) Continuous monitoring of the program 1. Establish a new process to continuously evaluate training needs a) New employee onboarding training b) HR training		Winter 2023-24	ASD

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Action Items

3.	Training: Program and Governance	Status Update	Estimated Completion	Lead
	c) Cybersecurity training d) Safety training e) Ethics training f) Management & soft skills training g) Organizational Culture and History (Knowledge Transfer) h) Credential or Continuing Professional Education i) General Business Applications: Office 365 training j) Line of business process and application training			
	C) Training: Knowledge Transfer Program 1. Mitigate Key IT Employee Knowledge Loss a) Identify current and target state of maturity for knowledge transfer b) Define key knowledge transfer metrics		Winter 2022-23	ASD

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Action Items

3.	Training: Program and Governance	Status Update	Estimated Completion	Lead
	c) Identify project team and their responsibilities d) Build the project charter and obtain stakeholder buy-in 2. Identify Knowledge Priorities a) Identify knowledge sources and risk profile b) Review and prioritize list of knowledge sources 3. Build Knowledge Transfer Plans a) Build a knowledge transfer plan b) Interview knowledge sources c) Identify when to use knowledge transfer tactics 4. Build Knowledge Transfer Roadmap a) Prioritize the sequence of initiatives b) Define knowledge transfer initiatives timeframe		Spring 2023 Spring 2023 Spring 2023	ASD ASD ASD

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Action Items

3.	Training: Program and Governance	Status Update	Estimated Completion	Lead
	c) Complete the project roadmap d) Prepare a presentation for project team and sponsor			
4.	**IT & Cybersecurity**	**Status Update**	**Estimated Completion**	**Lead**
	A) Conduct IT Assessments			ASD
✓	1. CEO CIO Alignment		Completed	
✓	2. CIO Business Vision		Completed	
✓	3. End User Satisfaction Survey		Completed	
✓	4. IT Staffing Assessment		Completed	
✓	5. Security Business Satisfaction & Alignment		Completed	
✓	6. Security Governance & Management Scorecard		Completed	
✓	7. Network Vulnerability Assessment		Completed	
✓	8. Core IT Processes		Completed	

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Action Items

4.	IT & Cybersecurity	Status Update	Estimated Completion	Lead
	B) Develop IT & Cybersecurity Strategy 1. Document IT Vision, mission statement, guiding principles and goals 2. Document target state IT capabilities 3. Document initiatives 4. Document risks 5. Document IT strategy road map		Winter 2022-23	ASD
5.	**Facility Improvements**	**Status Update**	**Estimated Completion**	**Lead**
	A) Increase number of electric vehicle charging stations available to employees and the public		Winter 2022-23	PW
✓	**B)** In Person Touchless Check-In 1. Conduct needs analysis 2. Analyze various electronic check-in systems 3. Select and procure electronic check-in system	With COVID regulation changes, this item not needed	Spring 2022	CDD

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Action Items

5.	Facility Improvements	Status Update	Estimated Completion	Lead
	4. Implement system – Launch electronic check-in system 5. Train staff			
	C) Customer Experience 1. Analyze workstations at Permit Center counter from customer perspective 2. Implement enhancements that will improve customer experience i.e. large monitors, self-help station, etc. 3. Develop plan to implement upgrades 4. Procure and install customer station enhancements and other items		Fall 2022	CDD

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Action Items

5.	Facility Improvements	Status Update	Estimated Completion	Lead
	D) Wireless Connectivity			ASD
	1. Modernize current "Livermore Public" WiFi channel to encompass all primary City sites		Spring 2022	
	2. Implement new secured employee WiFi channel on modernized WiFi to provide City Network Smart Device Connectivity at designated City sites	Project being redesigned	TBD	
	3. Extend secured WiFi channel broadcasting to outside yard areas of designated City sites so work force may conduct City business via Smart Devices	Project being redesigned	TBD	ASD
	E) Online Public Room Reservation System			LIB
✓	1. Determine if LibCal can be used for online option to reserve study rooms		Completed	
	2. Configure software for online reservation of study rooms		Fall 2022	
	3. Go live with online reservation		Fall 2022	

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Action Items

5.	Facility Improvements	Status Update	Estimated Completion	Lead
	F) Audio Visual (AV) equipment improvements to the Community Rooms at the Civic Center Library 1. Contact vendors for proposals and quotes 2. Evaluate proposal and quotes 3. Recommend solution 4. Procure solution 5. Implement 6. Train staff		Winter 2022-23	LIB

City of Livermore

FY 2021-23 GOALS AND PRIORITIES Oct. 24, 2022 Update



The City Council establishes goals and priorities every two years to respond to community needs and guide budgetary decisions. Here is a brief snapshot of accomplishments.

Asset Management and Stormwater

Establish and maintain comprehensive Asset Management and Stormwater Management Programs, ensuring the community continues to receive vital services through a sustainable infrastructure strategy.

- Transitioned to more efficient software for managing assets and work orders.
- Began testing a new app to collect real-time maintenance, rehabilitation and replacement data.
- Updated the City's Stormwater Master Plan.
- Completed the mid-term update of the Tri-Valley Hazard Mitigation Plan.



Downtown

Enhance the City's vibrancy by completing critical projects downtown, ensuring the right balance of local amenities to support quality of life.

- Completed I Street Garage.
- Began construction of L Street Garage.
- Completed Livermorium Plaza.
- Transferred properties to Eden Housing and SPARC.
- Approved license agreement with Quest Science Center.
- Approved Development Agreement for boutique hotel.

Scan for Goals and Priorities full report

General Plan Update

Comprehensively update the Livermore General Plan to address changes in regional and state policy, market trends, and community preferences, to plan for growth and conservation for the next 25 years, and support and enhance Livermore quality of life.

- Formed the General Plan Advisory Committee.
- Prepared an Existing Conditions Report, the first major step that informs the General Plan Update.
- Conducted visioning workshops with community and focus groups.
- Developed a project website with a variety of online engagement tools.
- Completed the Housing Element Administrative Draft.

Modernization, Training, and Workplace Enhancements

Develop a systematic approach to modernizing the City's aging business systems, reviewing processes for alignment with industry best practices, and providing our workforce with the tools and training necessary to effectively deliver services to the community.

- Implemented a new public online records request portal.
- Updated City Council Chamber technology to allow remote public access to live meetings.
- Modernized the Library's online public access catalogue.
- Created a virtual reality simulator training system for police.
- Launched new traffic collision and citation software.
- Completed needs analysis for tracking cyber risks.

Homelessness and Affordable Housing

Establish a homelessness strategy, engaging local partners to develop a coordinated response, and expand diversity of affordable housing opportunities.

- Began construction of Vineyard 2.0 to build 24 apartments for extremely low-income people experiencing homelessness, along with a commercial kitchen and Homeless Resource Center.
- Completed construction of Avancé, offering 44 units of permanent affordable housing with onsite programming for people with developmental disabilities.
- Approved plans for Pacific Avenue Senior Apartments to build 140 units of affordable rental housing for seniors with a preference for Veterans.
- Worked with Goodness Village to develop 28 tiny homes for homeless community members.



1.	Frequency of Key to the City Program	Status Update	Estimated Completion	Lead
	A) Explore reformatting how program is administered to accommodate additional sessions each year (held in the fall and spring).	Using this program as a staff development opportunity, a rotational coordinator role is being established. Staff is planning one Key to the City session in Fall 2023 and two sessions in 2024.	Spring 2023	CMO
2.	**Youth Key to the City Program**	**Status Update**	**Estimated Completion**	**Lead**
	A) Explore establishing a Youth Key to the City program with input from LVJUSD and LARPD. Some ideas include a series at the Livermore Library and school district curriculum.	Youth Key to the City item discussed in March Public Communications Strategies (PCS) inter-agency meeting. LVJUSD staff indicate Teen Academy is the preferred program to target because of the timing (not competing with school and sports during school year). Conversations continue amongst the agencies. Also exploring ways to integrate with Youth in Government	Winter 2022-23	CMO/LIB
	B) Explore incorporating Key to the City elements into existing youth programs (i.e., Livermore Teen Academy, LAYAC, LVJUSD programs).	Library staff have begun exploring adjustments to Teen Academy program and other opportunities to involve youth in government.	Winter 2022-23	CMO/LIB

3.	Outreach and Community Engagement	Status Update	Estimated Completion	Lead
	A) Collaborate with community partners to communicate the availability of Key to the City programs. • social media and websites • downtown kiosk posters • flyers at places of business		Spring 2023	CMO
	B) Explore creating short videos or session recordings to post to website.		Spring 2023	CMO

1.	Inter-agency communications regarding youth programming	Status Update	Estimated Completion	Lead
✓	**A)** Add standing item to inter-agency Public Communications Strategies (PCS) agenda.	PCS meets monthly every third Wednesday. Youth engagement item added to and discussed at March meeting.	Completed	CMO
2.	**Local Youth Training Programs**	**Status Update**	**Estimated Completion**	**Lead**
✓	**A)** Research programs from Las Positas College (LPC), LVJUSD, and Chamber.	Programs researched and added to Library web page.	Completed	CMO
✓	**B)** Create a youth-specific web page on digital library with links to programs from partner agencies and organizations.	Established Local Youth Training and Engagement Programs web page of resources: https://library.livermoreca.gov/digital-library/teens/local-youth-training-and-engagement-programs	Completed	Library
✓	**C)** Schedule regular check-ins for updates to programs.	Staff to discuss at monthly internal Communications Team meetings and inter-agency PCS meetings.	Completed	CMO

2.	Local Youth Training Programs	Status Update	Estimated Completion	Lead
✓	**D)** Collaborate with public safety departments on engaging youth in career pathways and opportunities. 1. Attend youth sporting events. 2. Represent at career fairs.	 LPD and LPFD tabled at the Little League Intermediate World Series which took place July 31 to Aug. 7, 2022. Public safety staff have tabled at the famers market on Aug. 5, 2021, Oct. 7, 2021, and Aug. 11, 2022, and also at Downtown StreetFest on May 14-15, 2022. Public safety staff are scheduled to table at the farmers market on Oct. 6. Public safety staff participated in the local high school career fairs virtually during COVID and are scheduled to attend the Tri-Valley College & Career Fair on Oct. 24 at Granada HS.	Ongoing	LPFD/PD
3.	**Calendar of Events**	**Status Update**	**Estimated Completion**	**Lead**
	A) Research where a calendar might be most appropriately hosted online. • Check local online news publications (Patch, Livermore Vine, Independent, etc.).	Staff will revisit with the intergovernmental group with change in leadership at LVJUSD.	Winter 2022-23	CMO

3.	Calendar of Events	Status Update	Estimated Completion	Lead
	• Check LVJUSD, LARPD, Livermore Downtown Inc., Chamber, Visit Tri-Valley sites.			
4.	**"Livermore Day" for the Community**	**Status Update**	**Estimated Completion**	**Lead**
✓	**A)** Explore opportunities to leverage resources by combining a "Livermore Day" event with an existing city-sponsored event such as Community Service Day, or an LARPD, LVJUSD, or Livermore Downtown Inc. event. • Incorporate storytelling elements	Staff are in planning stage for a week-long Unity Day communications campaign in October 2022 with LVJUSD, LARPD, and Las Positas College. Staff are also exploring including a storytelling element at Community Service Day 2023.	Completed	CMO

	5. Outreach and Communication	Status Update	Estimated Completion	Lead
✓	**A)** Post to city social media accounts about youth-focused events and training opportunities.	City staff shared posts about Library programs, WRD youth art contest, family disaster preparedness, LAYAC recruitment, Tri-Valley Innovation Fair, Arbor Day tree planting event, High School Senior Arts Awards, LVJUSD Science Odyssey, and various holidays in the recent months. Staff will continue to post and share partner agency and organization events as well.	Completed	CMO
✓	1. Explore ways to expand outreach of department events and activities using partner agencies/ organizations' social media accounts and websites, city downtown kiosks, flyers and banners.	Posters in downtown kiosks for department events have been consistently displayed since July 2021, including posters about Summer Reading, Black History Month, Latinx/Hispanic Heritage Month, Water Resources art contest, and Livermore Reads Together.	Completed	CMO
✓	2. Conduct collaborative communications campaigns with partner agencies and organizations using social media, websites, kiosks, and banners.	Staff from city, LVJUSD, and LARPD have agreed to coordinate a Unity Day event in October 2022 and will design a communications campaign around it.	Completed	CMO

1.	Outreach	Status Update	Estimated Completion	Lead
	A) Social Media Posts			CMO/ASD
✓	1. Post information and invitations to attend meetings during non-recruitment periods.	Posted six times during recent recruitment period.	Completed	CMO
✓	2. Post solicitation for applications during open recruitment periods.	Most recent posts in March and April 2022.	Completed	CMO/ASD
✓	3. Consider paying for social media ads during recruitment periods.	Staff have built into the recruitment process the option to pay for social media ads. The recent LAYAC recruitment was shared by partner agencies and other city social media accounts and resulted in a high number of applicants. Staff did not feel the needs to pay for ads because of the organic reach through account sharing.	Completed	CMO/ASD
✓	**B)** Email distribution lists during open recruitment periods.	Included in March 25, 2022 e-newsletter.	Completed	CMO
✓	**C)** Include information in community newsletters.	Advisory Body participation and recruitment information included in Fall 2022 newsletter.	Completed	CMO
✓	**D)** Advertise in local newspapers in print and online.	Advertised in Independent in March, August, and September 2022.	Completed	ASD

1.	Outreach	Status Update	Estimated Completion	Lead
	E) Direct outreach to segments of the community that may be underrepresented on advisory bodies. 1. Conduct a survey of existing advisory body demographics to inform where to direct outreach.		Winter 2022-23	
✓	2. Email flyers to local businesses, libraries, community organizations.	Supplied printed Kids and Teens Resources flier with LAYAC information to Library in July 2022.	Completed	CMO/ASD
✓	3. Email flyer to LVJUSD to communicate with families.	Requested LVJUSD and LARPD amplify our recruitment messaging and specifically target students to fill LAYAC vacancies in March and August 2022.	Completed	
	4. Partner with LVJUSD school counselors regarding vacancies on LAYAC.			
2.	**Communicate what advisory bodies do and the value to volunteers**	**Status Update**	**Estimated Completion**	**Lead**
	A) Develop easy-to-understand descriptions about each advisory body that includes the value to volunteers for participating on that particular body for website.		Spring 2023	ASD/CMO

2.	Communicate what advisory bodies do and the value to volunteers	Status Update	Estimated Completion	Lead
	B) Create accompanying graphics for social media.		Spring 2023	ASD/CMO
	C) Add Rules of Procedure, Brown Act, Form 700 documents to advisory bodies web pages.		Spring 2023	ASD/CMO
	D) Create informational videos about each advisory body for advisory body web pages and for posting to social media during recruitment and non-recruitment periods.		Spring 2023	ASD/CMO

1.	Community Outreach	Status Update	Estimated Completion	Lead
✓	**A)** Identify and outreach to communities most affected by housing issues.	Email distribution lists established for nonprofits and services providers who work most closely with local vulnerable populations.	Completed	CDD
✓	**B)** Share information regarding housing related matter with the community.	Staff email various housing-related resources, webinars, and assistance opportunities to email distribution lists that include local and regional nonprofits and service providers with a request to share with their networks.	Completed	CDD
2.	**Website Resources**	**Status Update**	**Estimated Completion**	**Lead**
✓	**A)** Ongoing update of housing resources on website.	City website has been updated to include latest information on affordable housing projects and resources and will be updated regularly.	Completed	CDD
✓	**B)** Explore creating informational videos on housing matters for website. • Share videos with community partners training programs and events.	Housing Element informational video and StoryMap added to General Plan website. The General Plan Advisory Committee is tasked with sharing the video amongst their networks. Staff will continue to post about General Plan Update and Housing Element to social media throughout the process. Staff is also working on a series of Livermore-specific housing resource and informational videos.	Completed	CDD

1.	Stop and Arrest Data Report	Status Update	Estimated Completion	Lead
✓	**A)** Outreach to Subgroup B at project milestones.	Completed.	Completed	PD
✓	**B)** Present final report to City Council	Stop and Arrest Data report presented to City Council at their February 14, 2022 meeting.	Completed	PD
✓	**C)** Prepare to update report annually, with goal to have consultant review and renew report every three to five years.	Noted.	Completed	PD
2.	**Mental Health Clinician Ride-Along Pilot Program**	**Status Update**	**Estimated Completion**	**Lead**
✓	**A)** Identify key components of an effective service delivery model. 1. Research similar programs 2. Identify best practices that may be suitable in Livermore 3. Create pilot program	After researching programs, staff determined a suitable program for Livermore is the co-responder model, which includes a clinician paired with an officer, and this team is able to respond to reports of mental health issues and provide the appropriate assistance. The team will also conduct follow-up contacts and provide education and proactive efforts to address community needs.	Completed	PD

2.	Mental Health Clinician Ride-Along Pilot Program	Status Update	Estimated Completion	Lead
	B) Explore collaboration opportunities with Pleasanton and Dublin.	Staff is discussing with Pleasanton Police Department as they are currently going through the beginning stages of their program. Initial discussions have taken place with Dublin. We will continue to coordinate with them as we move forward.	Spring 2023	PD
	C) Implement pilot program.	Funding was approved by City Council with the budget in June 2022. Recruitment for position is in process.	Spring 2023	PD
3.	**Chief's Advisory Group**	**Status Update**	**Estimated Completion**	**Lead**
✓	**A)** Invite Subgroup B to participate in creation of Chief's Advisory Group.	Invitations were issued Aug. 12, 2021.	Completed	PD
✓	**B)** Establish first Chief's Advisory Group.	All Subgroup B members who accepted the invitation to participate are current Advisory Group members. The Chief's Advisory Group first meeting was held on Oct. 18, 2021.	Completed	PD
	C) Define expectations and an application/vetting process, including training requirements for future participation (i.e., ride-alongs, Citizen's Police Academy, Key to the City)	Staff and Advisory Group members are working on defining the requirements and process for future participants. Current members will serve 24 months. Job posting description approved by HR.	Spring 2023	PD

LIVERMORE
CALIFORNIA

CITY COUNCIL STAFF REPORT **ITEM NO. 7.2**

DATE: October 24, 2022

TO: Honorable Mayor and City Council

FROM: Paul Spence, Community Development Director

SUBJECT: Discussion and direction regarding Livermore Development Code Chapter 4.06 Sign Standards for Temporary Signs.

RECOMMENDED ACTION

Staff recommends the City Council discuss the provisions in the Livermore Development Code regarding temporary signs placed on public property and in the designated public right-of-way and direct staff to address ongoing challenges with allowing temporary signs, including vandalism and theft.

SUMMARY

On August 24, 2020, the Livermore City Council adopted Ordinance No. 2099 amending the Livermore Development Code to include provisions regarding temporary signs, and signs on public property and placed in the designated public right-of-way. The intent of the adopted ordinance is to address challenges with allowing temporary signs including visual impacts, vandalism, and theft. The ordinance includes the following measures:

- Eliminates the restriction on displaying temporary signs to certain hours of the day;
- Permits the placement of temporary signs related to an event to be placed in the designated public right-of-way up to 60 days before the event; and
- Revises the definition of "stake sign" to include one or more devices, including metal rods and rigid wire, among the structural supports affixing a sign to the ground.

The City Council is receiving complaints that campaign signs continue to be vandalized, stolen, and installed inconsistent with the City’s existing regulations. Staff recommends the City Council review the existing ordinance regarding temporary signs and direct staff regarding amendments to address visual impacts, vandalism and theft, and installations inconsistent with the existing standards.

DISCUSSION

In January and February 2020, the City Council received several complaints that campaign signs were being vandalized, stolen, and installed inconsistent with the City's existing regulations for commercial and non-commercial temporary signs. On March 9, 2020, the City Council directed staff to develop options for an ordinance to limit the placement of campaign signs in the public right of way.

Staff returned to the City Council on July 27, 2020 recommending the following amendments to address installation issues with temporary signs, vandalism, and theft:

- Restrict the placement of commercial and non-commercial temporary signs in the right-of-way to daylight hours between 9:00 a.m. and 5:00 p.m. Signs could only be placed after 9:00 a.m. and would need to be removed before 5:00 p.m. each day.
- Signs must relate to an event scheduled for a specific date and shall not be displayed sooner than 90 days before that event. Signs must still be removed within five days following the associated event.
- Stake signs shall be constructed of paper or plastic mounted on a wood or metal stick that is pushed or hammered into the ground, and signs shall be no taller than 36 inches above the ground.
- In the Downtown Specific Plan (DSP) area only, commercial and non-commercial temporary signs are not permitted in the designated public right-of-way with the exception of A-frame signs. A-frame signs must be:
    - No larger than 30 inches wide by 48 inches tall,
    - Displayed only between 9 a.m. to 7 p.m.,
    - Located within five feet of a front building entrance of commercial uses,
    - Allow for adequate ADA and public access on the sidewalk, and
    - Subject to DSP Chapter 6 design standards, including standards for portable signs.
- Any commercial or noncommercial temporary sign placed in the public right-of-way or public property in violation of this section would be subject to removal by the City.

Attachment 1 is the July 27, 2020 staff report, including attachments.

After hearing public comments, and deliberation, the Council voted to deny introducing the ordinance recommended by staff, due in part to concerns with implementation and enforcement. The Council then directed staff to return with a modified ordinance to allow signs to be placed 60 days prior to an election, with no restrictions on the hours signs can be displayed. The City Council subsequently adopted Ordinance 2099 (Attachment 2) on August 24, 2020.

The City Council continues to receive complaints regarding vandalism, theft, and installations inconsistent with the City's standards. Enforcement of the existing ordinance requires significant staff time and resources. Staff recommends the City Council review and discuss the existing ordinance and direct staff regarding additional amendments to address these ongoing issues.

FISCAL AND ADMINISTRATIVE IMPACTS

There are no fiscal and administrative impacts associated with receiving this information. Neighborhood Preservation staff currently spends significant time policing the public right-of-way for sign violations and responding to inquiries from the public regarding alleged violations.

ATTACHMENTS

1. July 27, 2020 Staff Report
2. Ordinance No. 2099

Prepared by: Steve Stewart
Planning Manager

Approved by:

Marianna Marysheva
City Manager

Fiscal Review by:

Tina Olson
Administrative Services Director

LIVERMORE
CALIFORNIA

CITY COUNCIL STAFF REPORT ITEM 5.01

DATE: July 27, 2020

TO: Honorable Mayor and City Council

FROM: Paul Spence, Community Development Director

SUBJECT: Development Code Amendment 20-003, Temporary Signs

RECOMMENDED ACTION

Staff recommends the City Council introduce an ordinance approving Development Code Amendment 20-003, Temporary Signs.

SUMMARY

In January and February 2020, the City Council received several complaints that campaign signs were being vandalized, stolen, and installed inconsistent with the City's existing regulations for commercial and non-commercial temporary signs. On March 9, 2020, the City Council directed staff to develop options for an ordinance to limit the placement of campaign signs in the public right of way.

Staff reviewed several approaches to regulating temporary signs to avoid potential theft or vandalism including: prohibiting temporary signs in the public right-of-way; limiting the placement of temporary signs to certain hours of the day; and limiting the placement of temporary signs to a specific time in advance of an event. The options and staff recommendation are discussed below.

DISCUSSION

First Amendment jurisprudence recognizes a distinction between commercial and noncommercial speech, and that governmental officials must place a message into one or the other category for the purposes of regulation. While the First Amendment protects both commercial and noncommercial speech, it affords noncommercial speech a greater degree of protection. Therefore, care must be taken when crafting a sign ordinance to avoid imposing greater restrictions on noncommercial signs in favor of commercial signs.

The proposed amendments respect that jurisprudence and are intended to further the City's existing interests for sign regulations and its new interests to add additional

requirements to help address the vandalism and theft of signs, which primarily occurs at night, while preserving the opportunity to place signs in the designated public right-of-way.

The Livermore Development Code (LDC) in Section 4.06.140 regulates commercial and non-commercial temporary signs. Commercial temporary signs are sponsored by a commercial entity with prevailing messages that propose a commercial transaction (real estate leasing and selling activities, temporary retail sales or "now opening" signs). Non-commercial temporary signs provide commentary or advocacy on topics of public debate or concern. Political or campaign signs are non-commercial temporary signs.

Non-commercial temporary signs are currently and will continue to be allowed on private property in all zoning districts. Non-commercial and commercial signs are generally not allowed on any public property except in the public right-of-way as explained below.

Currently non-commercial temporary signs may be placed in the public right-of-way. The public right-of-way includes the street and an area about ten feet wide behind the curb. These signs are typically located adjacent to sidewalks in landscaped areas but are prohibited on street medians, sidewalks or streets, traffic signals, streetlight poles, and utility poles. In addition, temporary signs are prohibited within school sites, parks and other public property and have minimum spacing requirements (see Attachments 1 and 3 for existing temporary sign regulations). Commercial and non-commercial A-frame signs are also permitted in the public right of way in the Downtown area per the requirements of the Downtown Specific Plan.

Staff is recommending Development Code amendments to address the challenge of allowing temporary signs and addressing vandalism and theft. The size and placement restrictions in the existing ordinance summarized above would generally be preserved with the following key additional requirements (see Attachment 2 – redline version of Code changes):

- Restrict the placement of commercial and non-commercial temporary signs in the right-of-way to daylight hours between 9:00 a.m. and 5:00 p.m. Signs could only be placed after 9:00 a.m. and would need to be removed before 5:00 p.m. each day.

- Signs must relate to an event scheduled for a specific date and shall not be displayed sooner than 90 days before that event. Signs must still be removed within five days following the associated event.

- Stake signs shall be constructed of paper or plastic mounted on a wood or metal stick that is pushed or hammered into the ground, and signs shall be no taller than 36 inches above the ground.

- In the Downtown Specific Plan (DSP) area only, commercial and non-commercial temporary signs are not permitted in the designated public right-of-way with the exception of A-frame signs. A-frame signs must be:
    - No larger than 30 inches wide by 48 inches tall,
    - Displayed only between 9 a.m. to 7 p.m.,
    - Located within five feet of a front building entrance of commercial uses,
    - Allow for adequate ADA and public access on the sidewalk, and
    - Subject to DSP Chapter 6 design standards, including standards for portable signs.

- Any commercial or noncommercial temporary sign placed in the public right-of-way or public property in violation of this section would be subject to removal by the City. If this amendment is approved, Neighborhood Preservation staff will develop enforcement protocols for the removal and storage of those signs, as well as for their retrieval and possible destruction if not retrieved.

This approach allows signs to be displayed during the most active times of the day. Removing signs during nighttime hours would significantly reduce vandalism and theft. Additionally, this approach requires increased responsibility for those wishing to display temporary signs within the public right-of-way.

Less significant temporary sign Development Code changes are also proposed for formatting and internal consistency (see Attachment 2).

The proposed Development Code amendment is exempt from review under the California Environmental Quality Act (CEQA) under Section 15061(b)(3) - the activity is covered by the common sense exemption that CEQA applies only to projects which have the potential for causing a significant effect on the environment.

PLANNING COMMISSION RECOMMENDATION

The Planning Commission held a public hearing on the proposed project at its meeting of July 7, 2020. The Planning Commission expressed concern regarding the time of day limitations (i.e. 9 a.m. to 5 p.m.) for temporary signs. Such limitations could create an undue burden on persons wishing to display temporary signs. They were generally in agreement with limiting temporary signs to a specified time period prior to an event, but some thought 90 days may be too long.

The Planning Commission voted 2-1 (two Commissioners were absent) to recommend denial of the Development Code amendment as proposed. The Commission did, however, recommend on a 2-1 vote that the City Council consider allowing non-commercial and commercial temporary signs only up to 30 days before a scheduled event, instead of the 90 days that staff is recommending. See Attachments 4, 5 and 6 for the Planning Commission staff report, draft minutes and resolution.

FISCAL AND ADMINISTRATIVE IMPACTS

There are no direct initial costs other than printing new public information flyers. Neighborhood Preservation staff currently spends significant time policing the public right-of-way for sign violations. This Code amendment will initially require additional staff time to explain and enforce the new standards. The proposed Code amendments would better describe a violation and allow City staff to develop enforcement protocols for the removal, storage and retrieval of those signs.

ATTACHMENTS

1. Current Livermore Development Code Section 4.06.140
2. Redline Edits of Livermore Development Code
3. City's Existing Public Information Political Campaign Flyer
4. Planning Commission Staff Report July 7, 2020
5. Planning Commission Draft Meeting Minutes July 7, 2020
6. Planning Commission Resolution

Prepared by:

Susan Frost,
Special Projects Coordinator

Approved by:

Marc Roberts
City Manager

Fiscal Review by:

Douglas Alessio
Administrative Services Director

B. Each sign, including a sign located on a temporary or portable building, shall be subject to the requirements of this chapter.

C. No wall sign shall project more than one foot from a building. A sign which projects more than four inches from a building shall be placed no less than 10 feet above the ground.

D. Each sign shall be faced parallel to the street (or frontage if the building does not face a street) on which the sign is located, except that:

1. A freestanding sign may be faced perpendicular to the street on which the sign is located.

2. A freeway-oriented sign may be perpendicular to the freeway.

3. A projecting wall or icon sign may be faced perpendicular to the street on which the sign is located.

4. In the case of a corner lot, freestanding signs may be diagonal at the corner.

E. A freeway, freestanding or temporary sign is permitted within a required setback area, provided it is:

1. Located within a permanently maintained landscaped planter area having an area at least twice that of the sign area;

2. Not closer than 10 feet from any property line and 10 feet from any access driveway; and

3. Not within a radius of 20 feet of the intersection of the rights-of-way of two intersecting streets.

F. The area of a freestanding sign is deducted from the allowable area on the nearest comparable building frontage.

G. A freestanding sign up to eight feet in height shall be a monument style sign. A freestanding pole sign is only permitted for a sign in excess of eight feet in height.

H. Each sign containing commercial sign copy must be located on-site, except for a sign authorized pursuant to *Civil Code Section 713*, which advertises that a property is for sale, lease or exchange by the owner or his agent, and gives directions to the property and the owner's or agent's name, address and telephone number.

I. The area of a supporting structure of a monument sign may not exceed the area of its approved sign face.

4.06.060 Signs on Public Property

No signs are allowed on public property, except for the following:

A. A public sign erected by or on behalf of the City or other public entity to post legal notices, identify public property, convey public information, or direct or regulate pedestrian or vehicular traffic.

B. An informational sign of a public utility or transit company regarding its poles, lines, pipes, facilities, or routes.

C. An emergency warning sign erected by the City or other public entity, a public utility company, or contractor doing authorized or permitted work on public property.

D. A temporary sign in a residential zoning district as authorized under Section 4.06.140.B (Temporary Signs in Residential Zoning Districts).

E. Signs constructed by the City to direct persons to specific districts, regions, or public facilities.

F. A single banner sign over Fourth Street between South J Street and South K Street and over North Livermore Avenue between Chestnut Street and Railroad Avenue. All such signs are subject to the following regulations:

1. The permitted sign shall be:

   a. Noncommercial; or

   b. Associated with a civic, community, educational, or cultural event.

2. The sign applicant must apply for an encroachment permit with the City engineer or his or her designee.

3. The City engineer upon review and approval by the planning division shall allow such signs on a first-come, first-served basis for a period not to exceed 14 days per sign.

4. A reservation for installation of a sign is not transferable. The sign locations shall be reserved for use by the City of Livermore during the three weeks prior to any local election.

5. The sign must be installed by the City.

6. The City may charge a reasonable fee to cover the cost of installing the sign, as determined by a resolution of the City Council. Livermore Unified School District and the Livermore area recreation and park district shall each be granted two free banner installations in a calendar year.

G. A sign constructed by a public agency on its property, which is permitted in the zoning district in which the property is located. (Ord. 1942 § 1, 2011)

4.06.070 Measurement of Sign Area and Height

A. The area of a sign shall be measured by enclosing the shape in the simplest regularly shaped geometric figure, such as a circle, triangle, diamond, square, rectangle, or other figure having not more than six sides. Where one or more messages consist of letters, panels, or symbols attached to a surface, then the sign area shall be the sum of the areas of each message.

B. The area of a sphere shall be computed as 50 percent of its surface.

C. The area of a multi-sided sign shall be the total of each exposed sign face, except where signs are parallel back-to-back and attached to opposite sides of a supporting structure. The area of a motor fuel price sign shall be the total of each exposed face, regardless of the orientation of each face.

D. The height of a freestanding or temporary sign shall be measured from the top of curb of the nearest street to the uppermost part of the sign or its supporting structure.

E. The height of a freestanding freeway sign shall be measured from the basic grade of the lot on which the sign is placed to the uppermost part of the sign or its supporting structure.

C. Each sign shall manifest balanced scale and proportions in its design and in its visual relationship to nearby buildings, its site, and surrounding land uses.

D. Each permanent sign shall complement the architecture of the building with which it is principally associated, by incorporating compatible materials, colors, and shapes of the building. In addition, each permanent sign shall generally display restrained and harmonious colors, type, styles, and lighting, and shall be constructed of durable materials.

E. Each sign shall be compatible with the general appearance of other signs visible from its site, and shall not compete for attention in a manner taking advantage of extreme, disharmonious, or clashing colors, shapes, locations, or materials.

4.06.130 Master Sign Program

A. The owners of a commercial or industrial complex and any joint freeway sign shall submit a master sign program for approval by the Planning Commission.

B. A master sign program shall include the sign locations, sign types, colors, designs, faces, materials, restrictions, prohibitions, and other general criteria for signs. A sign which is consistent with an approved master sign program is not subject to further design review.

4.06.140 Temporary Signs

A. **Temporary signs in commercial and industrial zoning districts.** In addition to the permanent signs allowed in this chapter, temporary signs are permitted in the following zoning districts designated as Neighborhood Business Commercial (CNB), Commercial Service (CS), Highway Service Commercial (CHS), Commercial Office (CO), Professional Office (CP), Research and Development (I-1), Light Industrial (I-2), Heavy Industrial (I-3), T4 Neighborhood-Open, and Neighborhood Mixed Use (NMU), subject to the following:

1. Only the following types of temporary signs are permitted:
   a. A freestanding A-frame sign;
   b. A window painting;
   c. A banner sign;
   d. A beacon;
   e. A stake sign constructed of paper or plastic mounted on a wood or metal stick.
2. Prior to displaying a temporary sign which contains commercial sign copy, the owner of such a sign shall register the sign with the planning division by completing a form provided by the City. The form shall include the owner's name, address and telephone number, as well as dates the owner intends on displaying the sign. The City may charge a reasonable registration fee to cover the cost of inspection and enforcement, as determined by resolution of the City Council.
3. A freestanding A-frame sign, window painting or banner sign shall be displayed no more than 35 days in any three-month period on private property.
4. Each parcel shall have no more than one freestanding A-frame sign, window painting or banner sign.

5. For commercial and noncommercial signs on developed parcels, the maximum sign area of a freestanding A-frame sign, stake, or banner sign is one-half of the sign area permitted for a permanent sign in the district in which the parcel is located. For vacant parcels, no commercial signs are permitted. Noncommercial signs are permitted as long as the signs do not exceed four square feet per sign and no two signs with the same copy are located closer than 50 feet from each other.
6. A temporary sign may not be illuminated.
7. A window painting may cover only up to 50 percent of the window area.
8. A temporary freestanding A-frame sign is subject to the following requirements:
    a. Maximum size of temporary freestanding A-frame signs is 30 inches wide by 48 inches tall; and
    b. A temporary freestanding A-frame sign must be placed on private property or in a landscaped area.
9. Each parcel shall have no more than one beacon, subject to the following requirements:
    a. A beacon may be displayed no more than 10 days per year;
    b. A beacon must be located on-site;
    c. A beacon may not create a hazard to pedestrians, vehicles, or aircraft due to its location or movement; and
    d. A beacon may only operate during the business hours of the use being identified.
10. Public property and public right-of-way signs located on public property or the designated public right-of-way are subject to the following regulations:
    a. No commercial or noncommercial signs are permitted on public property; and
    b. No commercial signs are permitted on the designated public right-of-way. Non-commercial signs are permitted in all zoning districts; provided, signs do not exceed four square feet per sign and no two signs with the same copy are located closer than 50 feet from each other, per street frontage. Corner properties may have two of the same sign at the corner.

B. **Temporary signs in residential zoning districts.**
In addition to permanent signs allowed in this chapter, temporary signs are permitted in zoning districts designated as Downtown Specific Plan (DSP), Suburban Multiple Residential (RG), Multi-Family Residential (MFR), Suburban Residential (RS), Low Density Residential (RL), Rural Residential (R-R), T3 Neighborhood, and T4 Neighborhood, subject to the following:

1. A temporary sign may be placed on private property subject to the following:
    a. Noncommercial signs.
        (1) Maximum four square feet per sign;
        (2) No limit on the number of signs permitted; and
        (3) Signs must be a stake sign.
    b. Commercial signs.
        (1) Signage pursuant to *Civil Code Section 713* may be freestanding or wall-mounted; and

(2) Signs pursuant to a master sign program associated with a residential development are exempt; except they may not exceed 32 square feet and may not exceed one per parcel.

2. A temporary sign may be placed in the designated public right-of-way subject to the following:

   a. Noncommercial signs.

      (1) Signs must be stake signs with a maximum size of four square feet;

      (2) No two signs with the same copy shall be placed closer than 50 feet from each other per street frontage;

      (3) Corner properties may have two of the same sign at the corner;

      (4) All temporary noncommercial signs shall be removed within five days after the event to which they pertain.

   b. Commercial signs (including garage sale signs and real estate signs).

      (1) Signs must relate to an activity permitted within a residential zoning district;

      (2) Signs are only allowed on Thursdays, Saturdays and Sundays;

      (3) Signs are limited to four square feet;

      (4) Only one sign per each advertised activity (e.g., a house for sale, etc.) may be placed at each street intersection leading from the two nearest major streets (reflecting two independent access routes) to the site of the advertised activity.

      (5) Only one sign per each advertised activity, up to a maximum of three signs, may be placed at any street intersection corner; and

      (6) The sign must be placed so that a minimum of four and one-half feet remains clear on the sidewalk for pedestrians.

3. All temporary commercial signs are permitted for a total of 35 days per a calendar quarter.

4. No temporary commercial or noncommercial signs are permitted on public property or to be placed in the street or median areas.

4.06.150 Transect Zones (T4 Neighborhood-Open,T4 Main Street-Open,T4 Main Street)

In a Transect zone (T4N-O, T4MS-O, T4MS) permanent signs are permitted as follows:

A. **Lighting.** Signage shall be externally illuminated.

B. **Permitted signs.** Only the following types of signs are permitted and shall follow the following regulations:

   1. Projecting wall sign. See Subsection 4.06.150.C
   2. Awning/Canopy. See Subsection 4.06.150.D
   3. Wall. See Subsection 4.06.150.E
   4. Free-standing sidewalk sign. See Subsection 4.06.150.F
   5. Window sign. See Subsection 4.06.150.G

Livermore Development Code

4.06.060 Signs on Public Property and in the Designated Public Right-of-Way

No signs are allowed on public property or in the designated public right-of-way, except for the following:

A. A public sign erected by or on behalf of the City or other public entity to post legal notices, identify public property, convey public information, or direct or regulate pedestrian or vehicular traffic.
B. An informational sign of a public utility or transit company regarding its poles, lines, pipes, facilities, or routes.
C. An emergency warning sign erected by the City or other public entity, a public utility company, or contractor doing authorized or permitted work on public property.
D. ~~A c~~Commercial and noncommercial temporary signs ~~in a residential zoning district as authorized under~~ that satisfy the requirements in Section 4.06.140~~.B~~ (Temporary Signs ~~in Residential Zoning Districts~~).
E. Signs constructed by the City to direct persons to specific districts, regions, or public facilities.
F. A single banner sign over Fourth Street between South J Street and South K Street and over North Livermore Avenue between Chestnut Street and Railroad Avenue. All such signs are subject to the following regulations:
    1) The permitted sign shall be:
        a) Noncommercial; or
        b) Associated with a civic, community, educational, or cultural event.
    2) The sign applicant must apply for an encroachment permit with the City engineer or his or her designee.
    3) The City engineer upon review and approval by the planning division shall allow such signs on a first-come, first-served basis for a period not to exceed 14 days per sign.
    4) A reservation for installation of a sign is not transferable. The sign locations shall be reserved for use by the City of Livermore during the three weeks prior to any local election.
    5) The sign must be installed by the City.
    6) The City may charge a reasonable fee to cover the cost of installing the sign, as determined by a resolution of the City Council. Livermore Valley Joint Unified School District and the Livermore ~~a~~Area ~~r~~Recreation and ~~p~~Park ~~d~~District shall each be granted two free banner installations in a calendar year.

4.06.140 Temporary Signs

A. Temporary signs in commercial and industrial zoning districts. In addition to the permanent signs allowed in this chapter, temporary signs are permitted in Specific Plans, Planned Unit Development (PUD) and Planned Development (PD) district areas that allow commercial and industrial uses and the following zoning districts designated as Neighborhood Business Commercial (CNB), Commercial Service (CS), Highway Service Commercial (CHS), Commercial Office (CO), Professional Office (CP), Research and Development (I-1), Light Industrial (I-2), Heavy Industrial

(I-3), T4 Neighborhood-Open, and Neighborhood Mixed Use (NMU), subject to the following:

1) Only the following types of temporary signs are permitted:
   a) A freestanding A-frame sign;
   b) A window painting;
   c) A banner sign;
   d) A beacon;
   e) A stake sign ~~constructed of paper or plastic mounted on a wood or metal stick~~.
2) Prior to displaying a temporary sign which contains commercial sign copy, the owner of such a sign shall register the sign with the Planning Division by completing a form provided by the City. The form shall include the owner's name, address and telephone number, as well as dates the owner intends on displaying the sign. The City may charge a reasonable registration fee to cover the cost of inspection and enforcement, as determined by resolution of the City Council.
3) A freestanding A-frame sign, window painting or banner sign shall be displayed no more than 35 days in any three-month period on private property.
4) Each parcel shall have no more than one freestanding A-frame sign, window painting or banner sign.
5) For commercial and noncommercial signs on developed parcels, the maximum sign area of a freestanding A-frame sign, stake, or banner sign is one-half of the sign area permitted for a permanent sign in the district in which the parcel is located. For vacant parcels, no commercial signs are permitted. Noncommercial signs are permitted as long as the signs do not exceed four square feet per sign and no two signs with the same copy are located closer than 50 feet from each other.
6) A temporary sign may not be illuminated.
7) A window painting may cover only up to 50 percent of the window area.
8) A temporary freestanding A-frame sign is subject to the following requirements:
   a) Maximum size of temporary freestanding A-frame signs is 30 inches wide by 48 inches tall; and
   b) A temporary freestanding A-frame sign must be placed on private property or in a landscaped area.
9) Each parcel shall have no more than one beacon, subject to the following requirements:
   a) A beacon may be displayed no more than 10 days per year;
   b) A beacon must be located on-site;
   c) A beacon may not create a hazard to pedestrians, vehicles, or aircraft due to its location or movement; and
   d) A beacon may only operate during the business hours of the use being identified.
10) Commercial and noncommercial temporary signs are not permitted on public property. For clarification, the term public property for this prohibition means both real property owned by a public entity as well as physical property, including but not limited to, traffic lights, street lights, and utility infrastructure.

11) In the Downtown Specific Plan (DSP) area only, commercial and non-commercial temporary signs are not permitted in the designated public right-of-way with the exception of A-frame signs, which must be:
   a) No larger than 30 inches wide by 48 inches tall;
   b) Displayed only between 9 a.m. to 7 p.m.;
   c) Located within five feet of a front building entrance of only commercial uses;
   d) Allows for adequate ADA and public access on the sidewalk; and
   e) Subject to DSP Chapter 6 design standards, including standards for portable signs.

~~10)~~ Noncommercial temporary signs (including campaign and political signs) are permitted i~~Public property and public right-of-way signs located on public property or the designated public right-of-way are subject to the following regulations:~~

~~a) No commercial or non-commercial signs are permitted on public property; and~~

~~11)~~12) ~~No commercial signs are permitted i~~n the designated public right-of-way, but not in the street, street median, ~~. Non-commercial signs are permitted in all zoning districts;~~or sidewalk in commercial and industrial zones other than the DSP, subject to the following: ~~provided, signs do not exceed four square feet per sign and no two signs with the same copy are located closer than 50 feet from each other, per street frontage. Corner properties may have two of the same sign at the corner.~~

~~a) No commercial or noncommercial signs are permitted on public property; and~~

~~b) No commercial signs are permitted on the designated public right-of-way. Non commercial signs are permitted in all zoning districts; provided signs do not exceed four square feet per sign and no two signs with the same copy are located closer than 50 feet from each other, per street frontage. Corner properties may have two of the same sign at the corner.~~

   a) The signs must relate to an event scheduled for a specific date and shall not be displayed sooner than 90 days before that event;
   b) May only be displayed between the hours of 9 a.m. and 5 p.m. each day;
   c) Signs must be stake signs with a maximum size of four square feet;
   d) No two signs with the same copy shall be placed closer than 50 feet from each other per street frontage;
   e) Corner properties may have two of the same sign at the corner; and,
   f) All noncommercial temporary signs shall be removed within five days after the event to which they pertain.

B. Temporary signs in residential zoning districts. In addition to permanent signs allowed in this chapter, temporary signs are permitted in Specific Plans, Planned Unit Development (PUD) and Planned Development (PD) district areas that allow residential uses and in zoning districts designated as Downtown Specific Plan (DSP), Suburban Multiple Residential (RG), Multi-Family Residential (MFR), Suburban Residential (RS), Low Density Residential (RL), Rural Residential (R-R), T3 Neighborhood, and T4 Neighborhood, subject to the following:
   1) A temporary sign may be placed on private property subject to the following:
      a) Noncommercial signs.

(1) Maximum four square feet per sign;
(2) No limit on the number of signs permitted; and
(3) Signs must be a stake sign.

b) Commercial signs.
(1) Signage pursuant to Civil Code Section 713 may be freestanding or wall mounted; and
(2) Signs pursuant to a master sign program associated with a residential development are exempt; except they may not exceed 32 square feet and may not exceed one per parcel.
(3) A temporary commercial sign shall not be displayed for more than 35 days in any three- month period on private property.

2) A noncommercial temporary sign (including campaign and political signs) may be placed in the designated public right-of-way, but not the street, street median, or sidewalk, subject to the following:
~~a) Noncommercial signs;~~
a) Signs must related to an event scheduled for ra specific date and shall not be installed sooner than 90 days before that event;
b) Signs shall only be displayed in the public right-of-way between the hours of 9:00 a.m. and 5:00 p.m. each day;
~~b)~~c) Signs must be stake signs with a maximum size of four square feet;
~~c)~~d) No two signs with the same copy shall be placed closer than 50 feet from each other per street frontage;
~~d)~~e) Corner properties may have two of the same sign at the corner;
~~e)~~f) All ~~temporary~~ noncommercial temporary signs shall be removed within five days after the event to which they pertain.

3) A ~~C~~commercial temporary sign~~s~~ (including garage sale signs and real estate signs) may be placed in the designated public right-of-way, but not the street, street median, or sidewalk, subject to the following:
~~a) A temporary commercial sign shall not be displayed for more than 35 days in any three-month period on private property.~~
~~b)~~a) Signs must relate to an activity permitted within a residential zoning district;
~~c)~~b) Signs are only allowed on Thursdays, Saturdays and Sundays between the hours of 9:00 a.m. and 5:00 p.m.;
~~d)~~c) Signs are limited to four square feet;
~~e)~~d) Only one sign per each advertised activity (e.g., a house for sale, etc.) may be placed at each street intersection leading from the two nearest major streets (reflecting two independent access routes) to the site of the advertised activity;
~~f)~~e) Only one sign per each advertised activity, up to a maximum of three signs total, may be placed at any street intersection corner; and
~~g)~~f) The sign must be placed so that a minimum of four and one-half feet remains clear on the sidewalk for pedestrians if not other location is possible.

~~4) All temporary commercial signs are permitted for a total of 35 days per a calendar quarter.~~

~~5)~~4) Commercial and non-commercial temporary signs are not permitted on public property. For clarification, the term public property for this prohibition means

both real public property and physical public property, including but not limited to traffic lights, street lights, and utility infrastructure

~~6) No temporary commercial or noncommercial signs are permitted on public property or to be placed in the street or median areas.~~

C. Enforcement. Any commercial or noncommercial temporary sign placed in the public right-of-way or public property in violation of this section shall be subject to removal by the City and enforcement using the remedies in Chapters 1.20, 8.14, and 8.15 in the Municipal Code, and such other remedies the City may have. The Neighborhood Preservation staff shall develop enforcement protocols for the removal and storage of those signs, as well as for their retrieval and possible destruction if not retrieved.

Section 11.01.020 Definitions of Specialized Terms and Phrases

Stake sign. A sign constructed of paper or plastic mounted on a wood or metal stick that is pushed or hammered into the ground, and the top of which is less than 36 inches above the ground.

Enforcement and Filing a Complaint

Signs found to be in violation of the Livermore Municipal Code may be removed and/or discarded. City staff will make every attempt to notify campaigns of improperly placed signs. Campaigns or property owners will have 24 hours to correct the signs. A citation may be issued to a campaign or property owner for improperly placed signs on private or public property.

All campaign signs shall be removed within five days after the election to which they pertain.

Complaints concerning sign violations may be reported by calling (925) 960-4444, or by visiting our website at www.cityoflivermore.net and providing the address or location of the violation along with your name, address and phone number.

All complaint information will be kept confidential.

Reference Guide to Political Campaign Signs

Information contained in this brochure is a brief summary of Livermore's sign ordinance (Livermore Development Code § 4.06.140 — Temporary Signs) and reflects our commitment to ensuring a safe community free from visual distractions and obstructions.

This reference guide is intended to provide information on the permissible location and size of political campaign signs in compliance with the Livermore Development Code.

Complete information on Livermore's sign ordinance is located on the City's website: www.cityoflivermore.net

For additional assistance or information regarding campaign signs, please contact the following Building Division staff:

Doug Martin, (925) 960-4422
Paul Spence, (925) 960-4474

LIVERMORE
CALIFORNIA

1052 South Livermore Avenue
Livermore, CA 94550-4899

phone: (925) 960-4437
fax: (925) 960-4429
TDD: (925) 960-4104

www.cityoflivermore.net

Reference Guide to Political Campaign Signs

ATTACHMENT 1
ATTACHMENT 3

LIVERMORE
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Join In Keeping Livermore A Beautiful Place

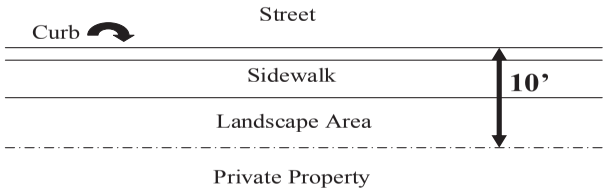
Definitions

"Stake Signs" are mounted on a wooden or metal stick and placed in the ground:



"Public Property" is any property publicly owned outside of the public right-of-way, including parks, City Hall, the Civic Center area, libraries, Police and Fire Departments, and schools.

"Public Right-of Way" is the area within ten feet of the curb face (see drawing below):



Signs on Private Property (Greater than ten feet from curb)

Campaign signs placed on private properties must meet the following requirements:

- Maximum size of four square feet per sign
- Signs must be stake signs
- No limit to number of signs

Signs in the Public Right-of-Way (Within ten feet of the curb)

Campaign signs placed in the public right-of-way must meet the following requirements:

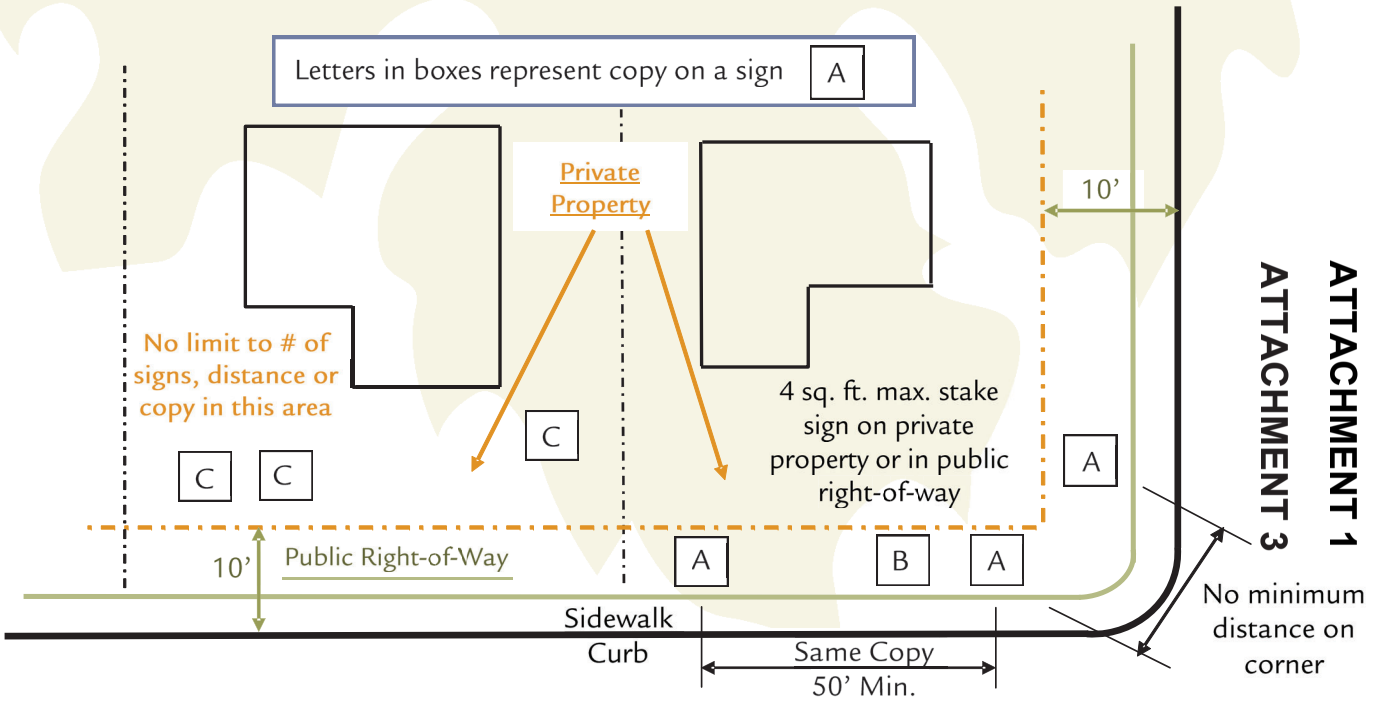
- Maximum size of four square feet per sign
- Signs must be stake signs
- No two signs with the same copy may be closer than fifty feet from each other
- Corner properties may have identical signs on both corners

Prohibited Sign Locations

For the safety of drivers and pedestrians, the following areas are prohibited from sign placement:

- Street Medians
- Sidewalks or Streets
- Traffic Signals
- Street Light Poles
- Power Poles
- Schools
- Parks
- Public Property

Signs placed in these areas will be removed and discarded.



ATTACHMENT 1
ATTACHMENT 3

LIVERMORE CALIFORNIA

LIVERMORE
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PLANNING COMMISSION STAFF REPORT

TO: Chairperson Fagundes and
Members of the Planning Commission

PREPARED BY: Susan Frost, Special Projects Coordinator

REVIEWED BY: Steve Stewart, Planning Manger
Steve Riley, Principal Planner

DATE: July 7, 2020

SUBJECT: Development Code Amendment 20-003, Temporary Signs

SUMMARY RECOMMENDATION

Staff recommends that the Planning Commission adopt a resolution recommending the City Council instruct staff to file a Notice of Exemption and approve Development Code Amendment (DCA) 20-003 to implement stricter limitations on temporary signs relating the location, time of day, number of days for commercial and non-commercial temporary signs in the public right of way in all zoning districts.

BACKGROUND

In January and February 2020, the City Council received several complaints that campaign signs were being vandalized, stolen, and installed inconsistent with the City's existing regulations for commercial and non-commercial temporary signs. On March 9, 2020, the City Council directed staff to develop options for an ordinance to limit the placement of campaign signs in the public right of way.

Campaign signs are vandalized or stolen in nearly every election. Many are inadvertently placed in locations that are inconsistent with the City's existing regulations. This problem impacts nearly every candidate and ballot measure, as well as the campaigns advocating for or against them. Those activities are illegal, but the high number of campaign signs placed during an election make it problematic to enforce compliance and identify responsible parties.

The problem is magnified in Livermore since its ordinances allow campaign signs to the placed in the public right of way. Unlike campaign signs on private property that are generally supervised by people at those locations, campaign signs placed in the public

right are left largely unattended. The absence of regular oversight makes those signs vulnerable to vandalism and theft.

Earlier this year, the campaigns participating in Livermore's March 2020 election expressed a shared complaint that the problem was more rampant than ever before, and that reactions and accusations were becoming increasing hostile. For example, there were allegations that campaign signs were repeatedly stolen from certain locations, that signs were cut to pieces in a threatening manner, and that signs were marred by graffiti to alter their meaning. That experience added to the natural tension inherent in every election.

Many community members expressed concern that the activities were unnecessarily dividing the community. Rather than focusing the campaign conversation on the merits of the measure, the campaigns for and against the measure exchanged accusations against each other that their supporters were engaged in illegal activities.

Staff has identified the following options to amend the City's sign ordinance to address campaign sign theft and vandalism, and the constitutional requirements to respect the hierarchy of non-commercial and commercial speech.

STAFF ANALYSIS

First Amendment jurisprudence recognizes a distinction between commercial and noncommercial speech, and that governmental officials must place a message into one or the other category for the purposes of regulation. While the First Amendment protects both commercial and noncommercial speech, it affords noncommercial speech a greater degree of protection. Therefore, care must be taken when crafting a sign ordinance to avoid imposing greater restrictions on noncommercial signs in favor of commercial signs.

The City has exercised its authority to adopt a sign ordinance to regulate signs in Livermore to implement its interest in community aesthetics through the control of visual clutter, for pedestrian and driver safety, and based upon the findings and determinations when the ordinance was first adopted.

The proposed amendments respect that jurisprudence and are intended to further the City's existing interests for its sign regulations and its new interests to add additional requirements to help address the vandalism and theft of signs, which primarily occurs at night, while preserving the opportunity to place signs in the designated public right-of-way.

The Livermore Development Code (LDC) in Section 4.06.140 regulates commercial and non-commercial temporary signs and the City summarizes these regulations in a public flyer (see Attachments 1 and 2). Commercial temporary signs are sponsored by a commercial entity with prevailing messages that propose a commercial transaction (real estate leasing and selling activities, temporary retail sales or "now opening" signs). Non-

commercial temporary signs provide commentary or advocacy on topics of public debate or concern. Political or campaign signs are non-commercial temporary signs.

Generally, the City cannot create or enforce stricter regulations on temporary non-commercial signage, than for temporary commercial signage. The City can consider different regulations for different parts of the City if the regulations within that geographic area do not favor commercial signs over non-commercial signs.

Non-commercial temporary signs are currently allowed on private property in all zoning districts. Non-commercial temporary signs may also be placed in the public right-of-way (ROW) (generally within 10 feet of back of curb (but varies some older parts of City) and must meet the following restrictions among others:

- maximum of four square feet per sign;
- signs must be stake signs;
- no two signs with the same copy may be closer than 50 feet of each other per street frontage;
- corner properties may have two of the same signs at the corner; and
- signs must be removed within five days following the associated event (e.g. after the election date)

These signs are typically located adjacent to sidewalks in landscaped areas but are prohibited on street medians, sidewalks or streets, traffic signals, streetlight poles, utility poles, schools, parks and public property.

Commercial and non-commercial A-frame signs are also permitted in the public ROW in the downtown area per the requirements of the Downtown Specific Plan.

As discussed above, the primary concern with temporary campaign signs is vandalism and theft, particularly signs placed in the ROW. Potential solutions include:

1. prohibiting placement of all temporary signs in the ROW (except governmental public information and traffic safety signs);
2. prohibiting the placement of commercial and non-commercial temporary signs in the ROW during certain hours of the day; and
3. prohibiting placement of commercial and non-commercial temporary signs in the ROW during a specific time in advance of standard election dates.

The first option above would prohibit both commercial and non-commercial temporary signs in the ROW. This would limit campaign signs to private property only (with property owner's permission) and have little effect on campaign signs on private residential property. However, it would require that campaign signs be placed on private commercial property with property owner permission and outside of the public ROW. It may be more difficult to get a commercial property owner to agree to signage and time consuming to find the right person to get said permission.

The second option would be to allow commercial and non-commercial temporary signs in the ROW only during certain hours of the day, for example, 9 a.m.- 5 p.m., or 6 a.m. to 8 p.m. to allow more exposure to daily commuters. With this approach, temporary signs would be placed in the morning and removed in the evening each day. While this approach would likely decrease potential problems with vandalism and theft, it would require additional effort and possibly cost for those wishing to display temporary signs. It may also present enforcement challenges for the City's Neighborhood Preservation staff.

The third option is prohibiting the placement of commercial and non-commercial temporary signs in the ROW during a specific time in advance of standard election dates, such as 60 or 90 days and letting signs stay out all day and night with no time restrictions.

A fourth option is to create a hybrid amendment that includes elements from the different options above. One option would be to allow temporary signs during certain hours and establishing a specific time they are out, 60 or 90 days before the election.

RECOMMENDATON

Staff is recommending Development Code amendments as shown in Attachment 3 to address the challenge of allowing temporary signs and addressing vandalism and theft. The size and placement restrictions in the existing ordinance described above would generally be preserved with the following key additional requirements:

- Restrict the placement of commercial and non-commercial temporary signs in the ROW to daylight hours between 9:00 a.m. and 5:00 p.m. Signs could only be placed after 9:00 a.m. and would need to be removed before 5:00 p.m. each day.

- Signs must relate to an event scheduled for a specific date and shall not displayed sooner than 90 days before that event. Signs must still be removed within five days following the associated event.

- Stake signs shall be constructed of paper or plastic mounted on a wood or metal stick that is pushed or hammered into the ground, and signs shall be no taller than 36 inches above the ground.

- Any commercial or noncommercial temporary sign placed in the public right-of-way or public property in violation of this section shall be subject to removal by the City. Neighborhood Preservation staff shall develop enforcement protocols for the removal and storage of those signs, as well as for their retrieval and possible destruction if not retrieved.

This approach allows signs to be displayed during the most active times of the day. Removing signs during nighttime hours would significantly reduce vandalism and theft.

Additionally, this approach requires increased responsibility for those wishing to display temporary signs within the ROW.

Neighborhood Preservation currently spends significant time policing the ROW for sign violations. The ordinance amendments would better describe a violation and allow City staff to develop enforcement protocols for the removal and storage of those signs.

In addition to the amendments summarized above, less significant changes are proposed for formatting and internal consistency.

SUMMARY

The proposed Development Code amendment revises the regulations for the placement of temporary commercial and non-commercial signs in the public right-of-way. The revisions are intended to support and provide for free speech in the community through temporary signs while addressing concerns with vandalism, theft, aesthetics and public safety.

OTHER AGENCY/DEPARTMENT COMMENTS

None

ENVIRONMENTAL DETERMINATION

The proposed project is exempt from review under the California Environmental Quality Act (CEQA) under Section 15061(b)(3) - the activity is covered by the common sense exemption that CEQA applies only to projects which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA.

Staff finds that the proposed amendments to the Development Code would not result in significant effect on the environmental as the ordinance addresses temporary signs and not permanent alternations to the environment.

ATTACHMENTS

1. Development Code Temporary Sign Section 4.06.140
2. Flyer for current regulations of campaign signs
3. Draft Ordinance showing redline changes to Development Code
4. Planning Commission Resolution

LIVERMORE CALIFORNIA

PLANNING COMMISSION
DRAFT MEETING MINUTES

JULY 7, 2020

5. PUBLIC HEARINGS

5.03 Hearing to consider amending the Livermore Development Code regarding, Temporary Signs, including Section 4.06.140, to update sections relating the location, time of day, number of days for commercial and non-commercial temporary signs in all zoning districts.

- Location: Citywide
- Site Area: Not applicable
- Applicant: City of Livermore
- Application Number: Development Code Amendment (DCA) 20-003
- Public improvements: Not applicable
- Zoning: Various
- General Plan: Various
- Historic Status: Not applicable
- CEQA: Recommend finding the project is exempt from the California Environmental Quality Act under Section 15061(b)(3) that the activity is covered by the common sense exemption that CEQA applies only to projects which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA.
- Project Planner: Susan Frost, Special Projects Coordinator

Recommendation: Staff recommends the Planning Commission adopt a resolution recommending the City Council instruct staff to file a Notice of Exemption with the Alameda County Clerk and approve Development Code Amendment (DCA) 20-003.

Susan Frost, Special Projects Coordinator, presented the staff report.

Chairperson Fagundes opened the public hearing. No one came forward and the public hearing was closed.

Commissioner Bonanno asked and confirmed that the A-frame signs similar to the ones seen on First Street in front of restaurants in the evening would still be allowed and the ordinance amendment allows them to be displayed between 9AM and 7PM or 2 hours longer than the cut-off in other areas other than the downtown.

Commissioner Bonanno said she supports the ordinance change but worries about businesses downtown that hold evening business, such as Aviation who has an A-frame that directs people in the evening. She asked if these would not be allowed after 7PM, and Ms. Frost confirmed.

Commissioner Bonanno asked and confirmed with staff that the Planning Commission is making a recommendation to the City Council. She believed there were parts of the City where it is an undue restriction on places that are active after 7PM.

Commissioner Stein asked if it was possible to distinguish between commercial and campaign signs in any way and asked how this will be enforced given it is outside of normal working hours, noting it may be hazardous if people are putting up and taking down signs in the dark.

He also asked how regional campaign signs will be managed if non-City agencies do not read the City's ordinance. Lastly, this tends to favor incumbents and one of the major uses of signs is to get the candidate s' names before the public.

Principal Planner Steve Riley responded that the City must allow commercial and non-commercial signs under the same regulations and cannot impose restrictions on one and not the other.

Ms. Frost added that the ordinance specifically relates to commercial signs and non-commercial and not just campaign signs which are a form of non-commercial signs but the distinction is really commercial and non-commercial. They are being treated similarly.

She said staff wanted to do something less restrictive than prohibiting all signs altogether in the public right-of-way, so this was a compromise as a way to achieve goals while still providing some form of restrictions.

Mr. Stewart said in terms of enforcement it is always a challenge with these types of signs during any time of the year. Enforcement would be through the City's Neighborhood Preservation Department and the Police Department and their employees. It does offer enforcement opportunities around the clock, but it is difficult on weekends, given higher priorities. He stated Doug Martin, Neighborhood Preservation Manager, is present and can add to his comments.

Neighborhood Preservation Manager Doug Marin referred to enforcement outside of normal working hours and said staff most likely would not be doing any enforcement in the evenings past 5PM and staff starts at 7AM so the 9AM timing provides the opportunity for staff to monitor those areas and remove any signs. This also could have some influence on the downtown A-frame signs if those needed to go a little later.

Again, he said they would monitor in the morning when they are not likely to be out, and an extension of hours in the evening is much less of a burden to staff than the earlier morning hours would be.

Mr. Riley said in regards to getting information out to the different campaigns, when folks file to run in the local elections they must review rules and procedures relating to signs with the City Clerk. The City Clerk would convey the new code amendments to those running for office to ensure they know the rules.

Chairperson Fagundes re-opened the public hearing to accept two comments that came in during the public hearing.

Evan wrote: After the vandalism from the last campaign season, he encouraged the Commission to pass this ordinance and encourage the time to be extended by about 2 hours on each end.

Chad wrote: What is the goal of restriction of campaign signs the Commission intends to achieve?

Chairperson Fagundes closed the public hearing.

Chairperson Fagundes said he has concerns with the risk associated with installing signs along the roadway which causes hazards as well as having them gathered after the election. He thinks enforcement will be difficult and does not know how practical the timeframe is.

Commissioner Bonanno said she would support increasing the time to make it more open, cited issues with campaign signs which have been defaced, destroyed, thrown into the landscape, and thinks this is primarily what this is intended to address.

She said she still finds signs from over a year ago when walking and thinks this addresses the issue and would like to see the window expanded so as not to penalize businesses. She also appreciates Mr. Martin's comments, and thinks the hazards of people pulling signs out of the right-of-way will not happen often. And, while unfortunate to take this action, she completely supports it.

Commissioner Stein said he generally is opposed to vandalism but it is a balance between free speech and over-regulation and said he will probably oppose the recommendation. He thinks the campaign signs for individuals are generally less often vandalized than the initiative where feelings run high but overall, it is a balance between free speech and regulation and he is willing to tolerate the vandalism. He wished people would remove signs at the end of a campaign but stated he will probably not support the change in the sign ordinance.

Chairperson Fagundes agreed and if a sign is seen lying in a ditch the City should be enforcing fines if they are not picked up within five days past the event. But, when putting out signs, unfortunately there are vandals and these are just some of the things that happen. This is the risk someone takes for putting signs out in the public right-of-way and he does not think there is anything stopping people from picking up their signs, so he thinks this is a bit stiff.

He could support something where the window to put signs out before an election or event for a 60 to 90 day period, but if anything is changed they should establish a window of days rather than hours. Enforcing it will be difficult as well and thinks this causes more enforcement and hazards and could not support the change. He could support narrowing down the days to between 60 and 90 days.

Commissioner Bonanno said she thought there was already a restriction of when signs can be put up.

Mr. Martin stated there currently is no time limit preceding an election.

Chairperson Fagundes stated he would not mind making a recommendation to indicate between 75 days or 90 days.

Commissioner Stein asked if the Commission could separate the motion and asked if 60 days had any support.

Commissioner Bonanno said she thinks people do not put signs out before 60 days anyway so she did not think it would make much of a difference.

Chairperson Fagundes agreed and thinks it has been around 60 days. He said he could not support the recommendation but also was not sure there was a motion.

Commissioner Bonanno made a motion for approval. There was no second and the motion died.

Senior Assistant Attorney Kim Cilley stated there is some case law on regulating a certain number of days prior to an election. If this is something staff would like her to look into, she would need additional time because this was not considered.

Mr. Stewart stated the Commission would need to make a recommendation to the City Council and stated in the staff report there is a provision that states, “Signs shall not be displayed sooner than 90 days before the event” so this would be a new one. He assumes this has been vetted against any law in place now. Therefore, the Commission could add that back in, but staff would need a recommendation to the City Council.

Ms. Cilley added that it would be for non-commercial and not just political signs.

AMENDING MOTION BY STEIN, SECONDED BY FAGUNDES, TO APPROVE THE 90-DAY LIMITATION ON COMMERCIAL AND NON-COMMERCIAL SIGNS WITH NO TIME LIMITS.

VOTE ON AMENDING MOTION:

AYES: FAGUNDES, STEIN.
NOES: BONANNO
ABSENT: ANDERSON, BJORKLUND.

Mr. Stewart clarified that the Commission needs to be clear that there is an amending motion for the 90 day limitation and the main motion would need to reflect the Commission's recommendation to the City Council.

Commissioner Stein stated if the Commission votes down the main motion, he asked if this means the amending motion is voted down, given they were not separating them.

Ms. Cilley stated the main motion would be either to recommend the City Council approve or deny. The Commission can make a recommendation of approval and then have amending motions of what the Commission would want changed from what the Resolution is recommending to the Council. Or, the Commission could recommend denial of the Resolution and provide follow-up direction to the Council.

Commissioner Stein stated his intent is that there be a limitation on days before an event for commercial or non-commercial signs, but no limitations as to time of day.

Ms. Cilley stated this would be a recommendation that the City Council approve the change in the ordinance as modified. The Planning Commission resolution would either recommend approval or not and then amending motions to make changes to that proposed ordinance, how the Commission would like it to be different, and to handle those in amending motions.

Commissioner Bonanno asked Mr. Martin when signs usually go up. She thinks the 90-day restriction may be a red herring, so the Commission might be making this more complicated than it needs to be.

Mr. Martin stated 30 days is very typical but staff did receive a complaint of signs going up in the Springtown area already. So, this is very unusual to see them that early.

MOTION BY STEIN, SECONDED BY FAGUNDES, TO DENY STAFF'S RECOMMENDATIONS AND ADOPT RESOLUTION NO. 21-20, RECOMMENDING THE CITY COUNCIL DENY DEVELOPMENT CODE AMENDMENT (DCA) 20-003.

AMENDING MOTION BY STEIN, SECONDED BY BONANNO, TO LIMIT COMMERCIAL AND NON-COMMERCIAL SIGNS TO A FIXED PERIOD OF 30 DAYS BEFORE THE EVENT.

VOTE ON AMENDING MOTION:

AYES: BONANNO AND STEIN.
NOES: FAGUNDES.
ABSENT: ANDERSON AND BJORKLUND.

VOTE ON MAIN MOTION:

AYES: FAGUNDES AND STEIN.
NOES: BONANNO.
ABSENT: ANDERSON AND BJORKLUND.

Chairperson Fagundes stated the main motion passes by a vote of 2-1 and he confirmed with Mr. Stewart that staff had direction to recommend to the City Council.

ATTACHMENT 1

ATTACHMENT 6

IN THE PLANNING COMMISSION OF THE CITY OF LIVERMORE STATE OF CALIFORNIA

A RESOLUTION RECOMMENDING DENIAL

DEVELOPMENT CODE AMENDMENT 20-003 TEMPORARY SIGNS

The City initiated an application to amend Livermore Development Code Section 4.06.140 to implement stricter limitations on temporary signs relating to the location, time of day, and number of days for commercial and non-commercial temporary signs in the public right of way in all zoning districts

A Public Hearing Notice was duly published in a newspaper of local circulation.

The Planning Commission held a public hearing on July 7, 2020, considered the staff recommendation for approval, and heard public testimony.

The Planning Commission could not make the appropriate findings and recommended the City Council deny the subject application.

NOW, THEREFORE, BE IT RESOLVED by the Planning Commission of the City of Livermore that, Development Code Amendment 20-003, as shown in Exhibit A, is recommended to the City Council for denial.

On the motion by Commissioner Stein, seconded by Commissioner Fagundes, the foregoing Resolution was adopted at the Planning Commission meeting of July 7, 2020, by the following vote:

AYES: FAGUNDES AND STEIN.
NOES: BONANNO.
ABSENT: ANDERSON AND BJORKLUND.

Bryan Fagundes, Chairperson

by Steve Stewart, Planning Manager
Secretary to the Planning Commission

Exhibit A – Livermore Development Code Temporary Signs

Livermore Development Code

4.06.060 Signs on Public Property and in the Designated Public Right-of-Way

No signs are allowed on public property or in the designated public right-of-way, except for the following:

A. A public sign erected by or on behalf of the City or other public entity to post legal notices, identify public property, convey public information, or direct or regulate pedestrian or vehicular traffic.

B. An informational sign of a public utility or transit company regarding its poles, lines, pipes, facilities, or routes.

C. An emergency warning sign erected by the City or other public entity, a public utility company, or contractor doing authorized or permitted work on public property.

D. Commercial and noncommercial temporary signs that satisfy the requirements in Section 4.06.140 (Temporary Signs).

E. Signs constructed by the City to direct persons to specific districts, regions, or public facilities.

F. A single banner sign over Fourth Street between South J Street and South K Street and over North Livermore Avenue between Chestnut Street and Railroad Avenue. All such signs are subject to the following regulations:

1. The permitted sign shall be:

   a. Noncommercial; or

   b. Associated with a civic, community, educational, or cultural event.

2. The sign applicant must apply for an encroachment permit with the City engineer or his or her designee.

3. The City engineer upon review and approval by the planning division shall allow such signs on a first-come, first-served basis for a period not to exceed 14 days per sign.

4. A reservation for installation of a sign is not transferable. The sign locations shall be reserved for use by the City of Livermore during the three weeks prior to any local election.

5. The sign must be installed by the City.

6. The City may charge a reasonable fee to cover the cost of installing the sign, as determined by a resolution of the City Council. Livermore Valley Joint Unified School District and the Livermore Area Recreation and Park District shall each be granted two free banner installations in a calendar year.

4.06.140 Temporary Signs

A. Temporary signs in commercial and industrial zoning districts.

In addition to the permanent signs allowed in this chapter, temporary signs are permitted in Specific Plans, Planned Unit Development (PUD) and Planned Development (PD) district areas that allow commercial and industrial uses and the following zoning districts designated as Neighborhood Business Commercial (CNB), Commercial Service (CS), Highway Service Commercial (CHS), Commercial Office (CO), Professional Office (CP), Research and Development (I-1), Light Industrial (I-2), Heavy Industrial (I-3), T4 Neighborhood-Open, and Neighborhood Mixed Use (NMU), subject to the following:

1. Only the following types of temporary signs are permitted:

   a. A freestanding A-frame sign;

   b. A window painting;

   c. A banner sign;

   d. A beacon;

   e. A stake sign.

2. Prior to displaying a temporary sign which contains commercial sign copy, the owner of such a sign shall register the sign with the Planning Division by completing a form provided by the City. The form shall include the owner's name, address and telephone number, as well as dates the owner intends on displaying the sign. The City may charge a reasonable registration fee to cover the cost of inspection and enforcement, as determined by resolution of the City Council.

3. A freestanding A-frame sign, window painting or banner sign shall be displayed no more than 35 days in any three-month period on private property.

4. Each parcel shall have no more than one freestanding A-frame sign, window painting or banner sign.

5. For commercial and noncommercial signs on developed parcels, the maximum sign area of a freestanding A-frame sign, stake, or banner sign is one-half of the sign area permitted for a permanent sign in the district in which the parcel is located. For vacant parcels, no commercial signs are permitted. Noncommercial signs are permitted as long as the signs do not exceed four square feet per sign and no two signs with the same copy are located closer than 50 feet from each other.

6. A temporary sign may not be illuminated.

7. A window painting may cover only up to 50 percent of the window area.

8. A temporary freestanding A-frame sign is subject to the following requirements:

   a. Maximum size of temporary freestanding A-frame signs is 30 inches wide by 48 inches tall; and

b. A temporary freestanding A-frame sign must be placed on private property or in a landscaped area.

9. Each parcel shall have no more than one beacon, subject to the following requirements:

a. A beacon may be displayed no more than 10 days per year;

b. A beacon must be located on-site;

c. A beacon may not create a hazard to pedestrians, vehicles, or aircraft due to its location or movement; and

d. A beacon may only operate during the business hours of the use being identified.

10. Commercial and noncommercial temporary signs are not permitted on public property. For clarification, the term public property for this prohibition means both real property owned by a public entity as well as physical property, including but not limited to, traffic lights, street lights, and utility infrastructure.

11. In the Downtown Specific Plan (DSP) area only commercial and non-commercial temporary signs are not permitted in the designated public right-of-way with the exception of A-frame signs which are permitted only if no larger than 30 inches wide by 48 inches tall, displayed only between 9 a.m. to 7 p.m., shall be within five feet of a front building entrance of only commercial uses, allows for adequate ADA and public access on the sidewalk, and subject to DSP Chapter 6 design standards, including standards for portable signs

12. Noncommercial temporary signs (including campaign and political signs) are permitted in the designated public right-of-way, but not in the street, street median, or sidewalk, subject to the following:

a. The signs must relate to an event scheduled for a specific date and shall not displayed sooner than 90 days before that event;

b. May only be displayed between the hours of 9 a.m. and 5 p.m. each day;

c. Signs must be stake signs with a maximum size of four square feet;

d. No two signs with the same copy shall be placed closer than 50 feet from each other per street frontage;

e. Corner properties may have two of the same sign at the corner; and,

f. All noncommercial temporary signs shall be removed within five days after the event to which they pertain.

B. Temporary signs in residential zoning districts.

In addition to permanent signs allowed in this chapter, temporary signs are permitted in Specific Plans, Planned Unit Development (PUD) and Planned Development (PD) district areas that allow residential uses and in zoning districts designated as Downtown Specific Plan (DSP), Suburban Multiple Residential (RG), Multi-Family Residential (MFR), Suburban Residential (RS), Low Density Residential (RL), Rural Residential (R-R), T3 Neighborhood, and T4 Neighborhood, subject to the following:

1. A temporary sign may be placed on private property subject to the following:

a. Noncommercial signs.

(1) Maximum four square feet per sign;

(2) No limit on the number of signs permitted; and

(3) Signs must be a stake sign.

b. Commercial signs.

(1) Signage pursuant to Civil Code Section 713 may be freestanding or wall mounted; and

(2) Signs pursuant to a master sign program associated with a residential development are exempt; except they may not exceed 32 square feet and may not exceed one per parcel.

(3) A temporary commercial sign shall not be displayed for more than 35 days in any three- month period on private property

2. A noncommercial temporary sign (including campaign and political signs) may be placed in the designated public right-of-way, but not the street, street median, or sidewalk, subject to the following:

a. Signs must relate to an event scheduled for a specific date and shall not be installed sooner than 90 days before that event;

b. Signs shall only be displayed in the public right-of-way between the hours of 9 a.m. and 5 p.m. each day;

c. Signs must be stake signs with a maximum size of four square feet;

d. No two signs with the same copy shall be placed closer than 50 feet from each other per street frontage;

e. Corner properties may have two of the same sign at the corner; and,

f. All noncommercial temporary signs shall be removed within five days after the event to which they pertain.

3. A commercial temporary sign (including garage sale signs and real estate signs) may be placed in the designated public right-of-way, but not the street, street median, or sidewalk, subject to the following:

a.

b. Signs must relate to an activity permitted within a residential zoning district;

b. Signs are only allowed on Thursdays, Saturdays and Sundays between the hours of 9 a.m. and 5 p.m.;

c. Signs are limited to four square feet;

d. Only one sign per each advertised activity (e.g., a house for sale, etc.) may be placed at each street intersection leading from the two nearest major streets (reflecting two independent access routes) to the site of the advertised activity;

e, Only one sign per each advertised activity, up to a maximum of three signs total, may be placed at any street intersection corner; and

f. The sign must be placed so that a minimum of four and one-half feet remains clear on the sidewalk for pedestrians if no other location is possible..

4. Commercial and non-commercial temporary signs are not permitted on public property. For clarification prohibition, the term public property for this prohibition means both real public property and physical public property, including but not limited to traffic lights, street lights, and utility infrastructure

C. Enforcement. Any commercial or noncommercial temporary sign placed in the public right-of-way or public property in violation of this section shall be subject to removal by the City and enforcement using the remedies in Chapters 1.20, 8.14, and 8.15 in the Municipal Code, and such other remedies the City may have. The Neighborhood Preservation staff shall develop enforcement protocols for the removal and storage of those signs, as well as for their retrieval and possible destruction if not retrieved.

11.01.020 Definitions of Specialized Terms and Phrases.

Stake sign. A sign constructed of paper or plastic mounted on a wood or metal stick that is pushed or hammered into the ground, and the top of which is less than 36 inches above the ground.

IN THE CITY COUNCIL OF THE CITY OF LIVERMORE, CALIFORNIA

AN ORDINANCE AMENDING THE LIVERMORE DEVELOPMENT CODE, AS AMENDED, OF THE CITY OF LIVERMORE, BY AMENDING PART 4 (GENERAL TO ZONES), CHAPTER 4.06 (SIGN STANDARDS), SECTION 4.06.060 (SIGNS ON PUBLIC PROPERTY) AND SECTION 4.06.140 (TEMPORARY SIGNS); AND PART 11 (DEFINITIONS), CHAPTER 11.01 (DEFINITIONS), SECTION 11.01.020 (DEFINITIONS OF SPECIALIZED TERMS AND PHRASES)

THE CITY COUNCIL OF THE CITY OF LIVERMORE DOES ORDAIN AS FOLLOWS:

Section 1. Section 4.06.060 (Signs on Public Property) of the Livermore Development Code is amended to read as follows:

4.06.060 Signs on Public Property and in the Designated Public Right-of-Way

No signs are allowed on public property or in the designated public right-of-way, except for the following:

A. A public sign erected by or on behalf of the City or other public entity to post legal notices, identify public property, convey public information, or direct or regulate pedestrian or vehicular traffic.
B. An informational sign of a public utility or transit company regarding its poles, lines, pipes, facilities, or routes.
C. An emergency warning sign erected by the City or other public entity, a public utility company, or contractor doing authorized or permitted work on public property.
D. Commercial and noncommercial temporary signs that satisfy the requirements in Section 4.06.140 (Temporary Signs).
E. Signs constructed by the City to direct persons to specific districts, regions, or public facilities.
F. A single banner sign over Fourth Street between South J Street and South K Street and over North Livermore Avenue between Chestnut Street and Railroad Avenue. All such signs are subject to the following regulations:
    1) The permitted sign shall be:
        a) Noncommercial; or
        b) Associated with a civic, community, educational, or cultural event.
    2) The sign applicant must apply for an encroachment permit with the City engineer or his or her designee.
    3) The City engineer upon review and approval by the planning division shall allow such signs on a first-come, first-served basis for a period not to exceed 14 days per sign.

4) A reservation for installation of a sign is not transferable. The sign locations shall be reserved for use by the City of Livermore during the three weeks prior to any local election.
5) The sign must be installed by the City.
6) The City may charge a reasonable fee to cover the cost of installing the sign, as determined by a resolution of the City Council. Livermore Valley Joint Unified School District and the Livermore Area Recreation and Park District shall each be granted two free banner installations in a calendar year.

Section 2. Section 4.06.140 (Temporary Signs) of the Livermore Development Code is amended to read as follows:

4.06.140 Temporary Signs

A. Temporary signs in commercial and industrial zoning districts. In addition to the permanent signs allowed in this chapter, temporary signs are permitted in Specific Plans, Planned Unit Development (PUD) and Planned Development (PD) district areas that allow commercial and industrial uses and the following zoning districts designated as Neighborhood Business Commercial (CNB), Commercial Service (CS), Highway Service Commercial (CHS), Commercial Office (CO), Professional Office (CP), Research and Development (I-1), Light Industrial (I-2), Heavy Industrial (I-3), T4 Neighborhood-Open, and Neighborhood Mixed Use (NMU), subject to the following:
   1) Only the following types of temporary signs are permitted:
      a) A freestanding A-frame sign;
      b) A window painting;
      c) A banner sign;
      d) A beacon;
      e) A stake sign.
   2) Prior to displaying a temporary sign which contains commercial sign copy, the owner of such a sign shall register the sign with the Planning Division by completing a form provided by the City. The form shall include the owner's name, address and telephone number, as well as dates the owner intends on displaying the sign. The City may charge a reasonable registration fee to cover the cost of inspection and enforcement, as determined by resolution of the City Council.
   3) A freestanding A-frame sign, window painting or banner sign shall be displayed no more than 35 days in any three-month period on private property.
   4) Each parcel shall have no more than one freestanding A-frame sign, window painting or banner sign.
   5) For commercial and noncommercial signs on developed parcels, the maximum sign area of a freestanding A-frame sign, stake, or banner sign is one-half of the sign area permitted for a permanent sign in the district in which the parcel is located. For vacant parcels, no commercial signs are

permitted. Noncommercial signs are permitted as long as the signs do not exceed four square feet per sign and no two signs with the same copy are located closer than 50 feet from each other.

6) A temporary sign may not be illuminated.
7) A window painting may cover only up to 50 percent of the window area.
8) A temporary freestanding A-frame sign is subject to the following requirements:
   a) Maximum size of temporary freestanding A-frame signs is 30 inches wide by 48 inches tall; and
   b) A temporary freestanding A-frame sign must be placed on private property or in a landscaped area.
9) Each parcel shall have no more than one beacon, subject to the following requirements:
   a) A beacon may be displayed no more than 10 days per year;
   b) A beacon must be located on-site;
   c) A beacon may not create a hazard to pedestrians, vehicles, or aircraft due to its location or movement; and
   d) A beacon may only operate during the business hours of the use being identified.
10) Commercial and noncommercial temporary signs are not permitted on public property. For clarification, the term public property for this prohibition means both real property owned by a public entity as well as physical property, including but not limited to, traffic lights, street lights, and utility infrastructure.
11) In the Downtown Specific Plan (DSP) area only, commercial and non-commercial temporary signs are not permitted in the designated public right-of-way with the exception of A-frame signs, which must be:
   a) No larger than 30 inches wide by 48 inches tall;
   b) Displayed only between 9 a.m. to 7 p.m.;
   c) Located within five feet of a front building entrance of only commercial uses;
   d) Allow for adequate ADA and public access on the sidewalk; and
   e) Subject to DSP Chapter 6 design standards, including standards for portable signs.
12) Noncommercial temporary signs (including campaign and political signs) are permitted in the designated public right-of-way, but not in the street, street median, or sidewalk, in commercial and industrial zones other than the DSP, subject to the following:
   a) The signs must relate to an event scheduled for a specific date and shall not be displayed sooner than 90 days before that event;
   b) May only be displayed between the hours of 9 a.m. and 5 p.m. each day;
   c) Signs must be stake signs with a maximum size of four square feet;
   d) No two signs with the same copy shall be placed closer than 50 feet from each other per street frontage;
   e) Corner properties may have two of the same sign at the corner; and,

f) All noncommercial temporary signs shall be removed within five days after the event to which they pertain.

B. Temporary signs in residential zoning districts. In addition to permanent signs allowed in this chapter, temporary signs are permitted in Specific Plans, Planned Unit Development (PUD) and Planned Development (PD) district areas that allow residential uses and in zoning districts designated as Downtown Specific Plan (DSP), Suburban Multiple Residential (RG), Multi-Family Residential (MFR), Suburban Residential (RS), Low Density Residential (RL), Rural Residential (R-R), T3 Neighborhood, and T4 Neighborhood, subject to the following:

1) A temporary sign may be placed on private property subject to the following:
   a) Noncommercial signs.
      (1) Maximum four square feet per sign;
      (2) No limit on the number of signs permitted; and
      (3) Signs must be a stake sign.
   b) Commercial signs.
      (1) Signage pursuant to Civil Code Section 713 may be freestanding or wall mounted; and
      (2) Signs pursuant to a master sign program associated with a residential development are exempt; except they may not exceed 32 square feet and may not exceed one per parcel.
      (3) A temporary commercial sign shall not be displayed for more than 35 days in any three- month period on private property.

2) A noncommercial temporary sign (including campaign and political signs) may be placed in the designated public right-of-way, but not the street, street median, or sidewalk, subject to the following:
   a) Signs must relate to an event scheduled for a specific date and shall not be installed sooner than 90 days before that event;
   b) Signs shall only be displayed in the public right-of-way between the hours of 9 a.m. and 5 p.m. each day;
   c) Signs must be stake signs with a maximum size of four square feet;
   d) No two signs with the same copy shall be placed closer than 50 feet from each other per street frontage;
   e) Corner properties may have two of the same sign at the corner; and,
   f) All noncommercial temporary signs shall be removed within five days after the event to which they pertain.

3) A commercial temporary sign (including garage sale signs and real estate signs) may be placed in the designated public right-of-way, but not the street, street median, or sidewalk, subject to the following:
   a) Signs must relate to an activity permitted within a residential zoning district;
   b) Signs are only allowed on Thursdays, Saturdays and Sundays between the hours of 9 a.m. and 5 p.m.;
   c) Signs are limited to four square feet;

d) Only one sign per each advertised activity (e.g., a house for sale, etc.) may be placed at each street intersection leading from the two nearest major streets (reflecting two independent access routes) to the site of the advertised activity;
e) Only one sign per each advertised activity, up to a maximum of three signs total, may be placed at any street intersection corner; and
f) The sign must be placed so that a minimum of four and one-half feet remains clear on the sidewalk for pedestrians if no other location is possible.

4) Commercial and non-commercial temporary signs are not permitted on public property. For clarification, the term public property for this prohibition means both real public property and physical public property, including but not limited to traffic lights, street lights, and utility infrastructure

C. Enforcement. Any commercial or noncommercial temporary sign placed in the public right-of-way or public property in violation of this section shall be subject to removal by the City and enforcement using the remedies in Chapters 1.20, 8.14, and 8.15 in the Municipal Code, and such other remedies the City may have. The Neighborhood Preservation staff shall develop enforcement protocols for the removal and storage of those signs, as well as for their retrieval and possible destruction if not retrieved.

Section 3. Section 11.01.020 (Definitions of Specialized Terms and Phrases), Subsection S. (Definitions) of the Livermore Development Code is amended as follows:

Section 11.01.020 Definitions of Specialized Terms and Phrases

Stake sign. A sign constructed of paper or plastic mounted on a wood or metal stick that is pushed or hammered into the ground, and the top of which is less than 36 inches above the ground.

Section 4. The City Council finds that the proposed project is exempt from review pursuant to California Environmental Quality Act (CEQA) Section 15061(b)(3) - the activity is covered by the common sense exemption that CEQA applies only to projects which have the potential for causing a significant effect on the environment, and the City Clerk is directed to file a Notice of Determination with the Alameda County Clerk.

Section 5. This ordinance or a comprehensive summary thereof shall be published once in a newspaper of general circulation of the City of Livermore within fifteen days after its adoption and shall take effect and be in force thirty days from and after its adoption.

The foregoing ordinance was introduced at the meeting of the City Council of the City of Livermore City Council held on July 27, 2020, by the following vote:

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

The ordinance was adopted at the regular meeting of the City Council held on _____, by the following vote:

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

_____
MAYOR, CITY OF LIVERMORE

ATTEST:

_____
Marie Weber
City Clerk

APPROVED AS TO FORM:

_____
Jason Alcala
City Attorney

IN THE CITY COUNCIL OF THE CITY OF LIVERMORE, CALIFORNIA

AN ORDINANCE AMENDING THE LIVERMORE DEVELOPMENT CODE, AS AMENDED, OF THE CITY OF LIVERMORE, BY AMENDING PART 4 (GENERAL TO ZONES), CHAPTER 4.06 (SIGN STANDARDS), SECTION 4.06.060 (SIGNS ON PUBLIC PROPERTY) AND SECTION 4.06.140 (TEMPORARY SIGNS); AND PART 11 (DEFINITIONS), CHAPTER 11.01 (DEFINITIONS), SECTION 11.01.020 (DEFINITIONS OF SPECIALIZED TERMS AND PHRASES)

On July 27, 2020, the City Council conducted a public hearing for the introduction of this ordinance, and based upon the comments received at that meeting, directed staff to the following changes that are incorporated into this ordinance:

1. Eliminate the restriction that limited the display of temporary signs in the public right of way from 9 a.m. to 7 p.m. in the Downtown Specific Plan Area, and from 9 a.m. to 5 p.m. in all other designated zones;
2. Permit noncommercial temporary signs related to an event to be placed in the designated public right-of-way up to 60 days before the event, subject to the other restrictions set forth in the ordinance; and,
3. Revise the definition of "stake sign" to include one or more devices, including metal rods and rigid wire, among the structural supports affixing a sign to the ground.

The ordinance was reintroduced with those changes on August 10, 2020.

THE CITY COUNCIL OF THE CITY OF LIVERMORE DOES ORDAIN AS FOLLOWS:

Section 1. Section 4.06.060 (Signs on Public Property) of the Livermore Development Code is amended to read as follows:

4.06.060 Signs on Public Property and in the Designated Public Right-of-Way

No signs are allowed on public property or in the designated public right-of-way, except for the following:

A. A public sign erected by or on behalf of the City or other public entity to post legal notices, identify public property, convey public information, or direct or regulate pedestrian or vehicular traffic.
B. An informational sign of a public utility or transit company regarding its poles, lines, pipes, facilities, or routes.
C. An emergency warning sign erected by the City or other public entity, a public utility company, or contractor doing authorized or permitted work on public property.
D. Commercial and noncommercial temporary signs that satisfy the requirements in Section 4.06.140 (Temporary Signs).
E. Signs constructed by the City to direct persons to specific districts, regions, or public facilities.

F. A single banner sign over Fourth Street between South J Street and South K Street and over North Livermore Avenue between Chestnut Street and Railroad Avenue. All such signs are subject to the following regulations:
   1) The permitted sign shall be:
      a) Noncommercial; or
      b) Associated with a civic, community, educational, or cultural event.
   2) The sign applicant must apply for an encroachment permit with the City engineer or his or her designee.
   3) The City engineer upon review and approval by the planning division shall allow such signs on a first-come, first-served basis for a period not to exceed 14 days per sign.
   4) A reservation for installation of a sign is not transferable. The sign locations shall be reserved for use by the City of Livermore during the three weeks prior to any local election.
   5) The sign must be installed by the City.
   6) The City may charge a reasonable fee to cover the cost of installing the sign, as determined by a resolution of the City Council. Livermore Valley Joint Unified School District and the Livermore Area Recreation and Park District shall each be granted two free banner installations in a calendar year.

Section 2. Section 4.06.140 (Temporary Signs) of the Livermore Development Code is amended to read as follows:

4.06.140 Temporary Signs

A. Temporary signs in commercial and industrial zoning districts. In addition to the permanent signs allowed in this chapter, temporary signs are permitted in Specific Plans, Planned Unit Development (PUD) and Planned Development (PD) district areas that allow commercial and industrial uses and the following zoning districts designated as Neighborhood Business Commercial (CNB), Commercial Service (CS), Highway Service Commercial (CHS), Commercial Office (CO), Professional Office (CP), Research and Development (I-1), Light Industrial (I-2), Heavy Industrial (I-3), T4 Neighborhood-Open, and Neighborhood Mixed Use (NMU), subject to the following:
   1) Only the following types of temporary signs are permitted:
      a) A freestanding A-frame sign;
      b) A window painting;
      c) A banner sign;
      d) A beacon;
      e) A stake sign.
   2) Prior to displaying a temporary sign which contains commercial sign copy, the owner of such a sign shall register the sign with the Planning Division by completing a form provided by the City. The form shall include the owner's name, address and telephone number, as well as dates the owner intends on displaying the sign. The City may charge a reasonable registration fee to

cover the cost of inspection and enforcement, as determined by resolution of the City Council.

3) A freestanding A-frame sign, window painting or banner sign shall be displayed no more than 35 days in any three-month period on private property.
4) Each parcel shall have no more than one freestanding A-frame sign, window painting or banner sign.
5) For commercial and noncommercial signs on developed parcels, the maximum sign area of a freestanding A-frame sign, stake, or banner sign is one-half of the sign area permitted for a permanent sign in the district in which the parcel is located. For vacant parcels, no commercial signs are permitted. Noncommercial signs are permitted as long as the signs do not exceed four square feet per sign and no two signs with the same copy are located closer than 50 feet from each other.
6) A temporary sign may not be illuminated.
7) A window painting may cover only up to 50 percent of the window area.
8) A temporary freestanding A-frame sign is subject to the following requirements:
    a) Maximum size of temporary freestanding A-frame signs is 30 inches wide by 48 inches tall; and
    b) A temporary freestanding A-frame sign must be placed on private property or in a landscaped area.
9) Each parcel shall have no more than one beacon, subject to the following requirements:
    a) A beacon may be displayed no more than 10 days per year;
    b) A beacon must be located on-site;
    c) A beacon may not create a hazard to pedestrians, vehicles, or aircraft due to its location or movement; and
    d) A beacon may only operate during the business hours of the use being identified.
10) Commercial and noncommercial temporary signs are not permitted on public property. For clarification, the term public property for this prohibition means both real property owned by a public entity as well as physical property, including but not limited to, traffic lights, street lights, and utility infrastructure.
11) In the Downtown Specific Plan (DSP) area only, commercial and non-commercial temporary signs are not permitted in the designated public right-of-way with the exception of A-frame signs, which must be:
    a) No larger than 30 inches wide by 48 inches tall;
    b) Located within five feet of a front building entrance of only commercial uses;
    c) Allow for adequate ADA and public access on the sidewalk; and
    d) Subject to DSP Chapter 6 design standards, including standards for portable signs.
12) Noncommercial temporary signs are permitted in the designated public right-of-way, but not in the street, street median, or sidewalk, in commercial and industrial zones other than the DSP, subject to the following:

a) The signs must relate to an event scheduled for a specific date and shall not be displayed sooner than 60 days before that event;
b) Signs must be stake signs with a maximum size of four square feet;
c) No two signs with the same copy shall be placed closer than 50 feet from each other per street frontage;
d) Corner properties may have two of the same sign at the corner; and,
e) All noncommercial temporary signs shall be removed within five days after the event to which they pertain.

B. Temporary signs in residential zoning districts. In addition to permanent signs allowed in this chapter, temporary signs are permitted in Specific Plans, Planned Unit Development (PUD) and Planned Development (PD) district areas that allow residential uses and in zoning districts designated as Downtown Specific Plan (DSP), Suburban Multiple Residential (RG), Multi-Family Residential (MFR), Suburban Residential (RS), Low Density Residential (RL), Rural Residential (R-R), T3 Neighborhood, and T4 Neighborhood, subject to the following:

1) A temporary sign may be placed on private property subject to the following:
   a) Noncommercial signs.
      (1) Maximum four square feet per sign;
      (2) No limit on the number of signs permitted; and
      (3) Signs must be a stake sign.
   b) Commercial signs.
      (1) Signage pursuant to Civil Code Section 713 may be freestanding or wall mounted; and
      (2) Signs pursuant to a master sign program associated with a residential development are exempt; except they may not exceed 32 square feet and may not exceed one per parcel.
      (3) A temporary commercial sign shall not be displayed for more than 35 days in any three- month period on private property.

2) A noncommercial temporary sign may be placed in the designated public right-of-way, but not the street, street median, or sidewalk, subject to the following:
   a) Signs must relate to an event scheduled for a specific date and shall not be installed sooner than 60 days before that event;
   b) Signs must be stake signs with a maximum size of four square feet;
   c) No two signs with the same copy shall be placed closer than 50 feet from each other per street frontage;
   d) Corner properties may have two of the same sign at the corner; and,
   e) All noncommercial temporary signs shall be removed within five days after the event to which they pertain.

3) A commercial temporary sign (including garage sale signs and real estate signs) may be placed in the designated public right-of-way, but not the street, street median, or sidewalk, subject to the following:
   a) Signs must relate to an activity permitted within a residential zoning district;

b) Signs are only allowed on Thursdays, Saturdays and Sundays
c) Signs are limited to four square feet;
d) Only one sign per each advertised activity (e.g., a house for sale, etc.) may be placed at each street intersection leading from the two nearest major streets (reflecting two independent access routes) to the site of the advertised activity;
e) Only one sign per each advertised activity, up to a maximum of three signs total, may be placed at any street intersection corner; and
f) The sign must be placed so that a minimum of four and one-half feet remains clear on the sidewalk for pedestrians if no other location is possible.

4) Commercial and non-commercial temporary signs are not permitted on public property. For clarification, the term public property for this prohibition means both real public property and physical public property, including but not limited to traffic lights, street lights, and utility infrastructure

C. Enforcement. Any commercial or noncommercial temporary sign placed in the public right-of-way or public property in violation of this section shall be subject to removal by the City and enforcement using the remedies in Chapters 1.20, 8.14, and 8.15 in the Municipal Code, and such other remedies the City may have. The Neighborhood Preservation staff shall develop enforcement protocols for the removal and storage of those signs, as well as for their retrieval and possible destruction if not retrieved.

Section 3. Section 11.01.020 (Definitions of Specialized Terms and Phrases), Subsection S. (Definitions) of the Livermore Development Code is amended as follows:

Section 11.01.020 Definitions of Specialized Terms and Phrases

Stake sign. A sign constructed of paper or plastic mounted on one or more stakes, sticks, or rods made of wood or metal, or rigid wire pushed or hammered into the ground, and the top of which is less than 36 inches above the ground.

Section 4. The City Council finds that the proposed project is exempt from review pursuant to California Environmental Quality Act (CEQA) Section 15061(b)(3) - the activity is covered by the common sense exemption that CEQA applies only to projects which have the potential for causing a significant effect on the environment, and the City Clerk is directed to file a Notice of Determination with the Alameda County Clerk.

Section 5. This ordinance or a comprehensive summary thereof shall be published once in a newspaper of general circulation of the City of Livermore within fifteen days after its adoption and shall take effect and be in force thirty days from and after its adoption.

The foregoing ordinance was introduced at the meeting of the City Council of the City of Livermore City Council held on August 10, 2020, by the following vote:

AYES:	Council Members Carling, Coomber, Munro, Vice Mayor Woerner, Mayor Marchand
NOES:	None
ABSENT:	None
ABSTAIN:	None

The ordinance was adopted at the regular meeting of the City Council held on August 24, 2020 by the following vote:

AYES:	Council Members Carling, Coomber, Munro, Vice Mayor Woerner, Mayor Marchand
NOES:	None
ABSENT:	None
ABSTAIN:	None

John Marchand
MAYOR, CITY OF LIVERMORE

ATTEST:

Marie Weber
City Clerk

Date: August 25, 2020

APPROVED AS TO FORM:

Jason Alcala
City Attorney

LIVERMORE
CALIFORNIA

CITY COUNCIL STAFF REPORT **ITEM NO. 7.3**

DATE: October 24, 2022

TO: Honorable Mayor and City Council

FROM: Christine Martin, Assistant City Manager

SUBJECT: Discussion and direction on the City Council Subcommittee's recommended revisions to the City Council's Rules of Procedure and the City Council's Norms, Values and Principles of Governance

RECOMMENDED ACTION

The City Council Subcommittee recommends the City Council discuss and provide direction on the Subcommittee's recommended revisions to the City Council's Rules of Procedure and the City Council's Norms, Values, and Principles of Governance.

SUMMARY

Mayor Woerner and Council Member Carling are the Council Subcommittee that collaborated on revisions to the City Council's Rules of Procedure and the City Council's Norms, Values and Principles of Governance. The Council Subcommittee has prepared the attached revisions for Council discussion and direction.

DISCUSSION

Mayor Woerner selected Council Member Carling to be on the Council Subcommittee along with Mayor Woerner to develop revisions to the City Council's Rules of Procedure and the City Council's Norms, Values and Principles of Governance. The Council Subcommittee has prepared the attached revisions for Council discussion and direction.

The Subcommittee will walk through the proposed revisions with the City Council for discussion and direction. The proposed revisions are attached.

FISCAL AND ADMINISTRATIVE IMPACTS

There are no fiscal or administrative impacts associated with this item.

ATTACHMENTS

1. Proposed Revisions to Rules of Procedure
2. Proposed Revisions to Norms, Values, and Principles of Governance

Prepared by: Christine Martin
Assistant City Manager

Approved by:



Marianna Marysheva
City Manager

Fiscal Review by:



Tina Olson
Administrative Services Director

~~-~~CITY COUNCIL MEETING

RULES OF PROCEDURE

1. Authority

These rules of procedure are established for the effective and fair conduct of City Council meetings and to help promote public confidence in the integrity of local government. By adopting these rules, the City Council intends to balance a policy of full and free public action and debate with a need to manage its meetings effectively. [36813[1]].

The rules also include expectations for the appointments to the City's advisory bodies and their conduct consistent with these rules, and the Mayor's assignment of the Council Member's offices and seats on the dais.

2. Purpose

The purpose of these rules is to document the City Council's accepted practices and to clarify expectations by establishing guidelines for the orderly, consistent, and fair conduct of the City Council's business.

These rules of procedure are intended to help implement, but do not limit or supersede, the state and local laws that govern the requirements and responsibilities for the City Council's meetings. Those laws include, but are not limited to, the California Constitution, the Brown Act, the Political Reform Act, the Livermore Municipal Code, and the Livermore Development Code.

These rules of procedure are not intended to limit the inherent power or the general legal authority of the City Council, and failure to follow these rules will not invalidate a City Council action. [*City of Pasadena v. Paine, (1954) 126 Cal.App.2d 93].*

3. Rules of Parliamentary Procedure

The City Council has adopted *Rosenberg's Rules of Order, Revised 2011*, as its rules of parliamentary procedure. In the event of a conflict between *Rosenberg's Rules of Order* and these rules of procedure, these rules of procedure shall control.

4. Applicability

These rules of procedure apply to the preparation, posting, and distribution of the agendas for City Council meetings. They also relate to the orderly discussion of items and the City Council's voting procedures to take formal action or provide direction to staff. Lastly, they relate to respective powers for the Mayor and Council Members.

[1] All citations are to the California Government Code unless otherwise noted.

5. Presiding Officer

The Mayor is the presiding officer for each meeting of the City Council that the Mayor attends. In the Mayor's absence, the Vice Mayor shall be the presiding officer for the meeting when the Vice Mayor is present. In the absence of both the Mayor and the Vice Mayor, the Council Members present at the meeting shall select a presiding officer. [36802].

The presiding officer shall have the Mayor's duties and responsibilities for conducting City Council meetings.

6. Mayoral Duties and Responsibilities

The Mayor is directly elected at-large for a two-year term in November of each even-numbered year. The Mayor is a member of the City Council and has all the powers of a Council Member, except when exercising his or her unique mayoral duties. The Mayor enjoys, and shall not be deprived of, any rights and privileges as a Council Member. Additionally, the Mayor shall have all the powers and duties of an elective Mayor as provided by statute including. [34903, 36803; LMC 2.04.020; 81 Ops.Cal.Atty.Gen. 75 (1998)].

6.1 Appointment of Vice Mayor and Vice Mayor Duties and Responsibilities

The City Council ~~affirms that~~has the ~~Mayor, in~~ statutory power to appoint a Council Member as mayor pro tempore, which is the ~~Mayor's sole discretion, shall select the~~position titled Vice Mayor in Livermore. [34905, 36801].

The Vice Mayor shall be selected for a one-year term and shall be selected at the meeting certifying the election results in each even-numbered year and in December of each odd-numbered year~~, and affirms that the~~. The Vice Mayor shall have all the powers and duties of a mayor pro tempore as provided by statute. The ~~City~~ Council ~~has the power to appoint the~~Member selected as Vice Mayor ~~(mayor pro-tempore), but by the adoption of this rule by a majority of~~typically rotates among the Council Members ~~expressly delegate that authority to the Mayor. [34905, 36801].~~

If the Mayor is absent or unable to act, the Vice Mayor shall then serve for the Mayor, and shall have all of the powers and duties of the Mayor until such time as the Mayor returns or is again able to act. [34905, 36801].

~~6.2 Appointments to Intergovernmental Agencies~~

~~The Mayor, in the Mayor's sole discretion, shall appoint Council Members to serve on the various regional boards, commissions, and committees that require a City Council representative. [40605; LMC 2.04.020; 81 Ops.Cal.Atty.Gen. 75]. The appointments shall be made in December of each year, and periodically as the Mayor finds necessary.~~

~~The Mayor has the sole power to create and appoint Council Members to ad hoc City Council subcommittees.~~

6.2 Reserved

6.3 Seats on the Dais

The Mayor shall sit at the center of the dais for all City Council meetings. If the Mayor is absent, the ~~Presiding Officer~~presiding officer shall sit at the center of the dais.

In December of each year, the Mayor shall assign the seats for the Vice Mayor and the Council Members on the dais. The Mayor should ask Council Members if they have any special needs that should be accommodated before making the assignments.

6.4 Council Member ~~Offices~~Rooms

The Mayor shall have use of office 216 at City Hall, or such other designation as that office may be given.

In December of each even-numbered year, the Mayor shall assign the use of ~~offices~~rooms 218, 219, 220, and 222, or such other designation as those ~~offices~~rooms may be given, to the Vice Mayor and the Council Members. Once assigned for use, each Council Member has the right to stay in a room they are occupying. The Mayor and each Council Member shall vacate their assigned rooms within two weeks of the date their respective terms of office expire.

6.5 Conducting Meetings

The Mayor's duties and responsibilities for conducting City Council meetings as the presiding officer are as follows:

6.5.1 Call to Order

The Mayor shall call the meeting to order at the appointed time. If both the Mayor and the Vice Mayor are absent, then the City Clerk shall call the meeting to order and the Council Members present shall then select a presiding officer for that meeting~~.~~ who shall have the Mayor's duties and responsibilities for conducting the meeting.

6.5.2 Preservation of Order

The Mayor shall preserve strict order and decorum, and shall discourage personal, verbal attacks on Council Members, staff, and/or ~~citizens~~the public, but shall not prohibit criticisms of the policies, procedures, programs, or services of the City, or

of the acts or omissions of the City Council or members of the City staff. The Mayor shall confine debate to the item under discussion. [36813, 38638, 54954.3, 54957.9].

6.5.3 Questions of Parliamentary Procedure

The Mayor shall determine all questions of parliamentary procedure in consultation with the City Attorney and City Manager.

6.5.4 Reordering of Agenda

The Mayor may reorder the items on the agenda for a noticed meeting to accommodate members of the public who wish to speak on an agenda item that would otherwise be considered by the City Council later in the meeting. The Mayor shall announce the reorder prior to calling members of the public to speak during ~~citizens~~open forum.

6.5.5 Motion to Be Stated

The Mayor shall state all motions submitted for a vote by the City Council and announce the result of the vote and identify the no votes and any Council Members that abstained or recused themselves from the vote. A roll call vote shall be taken for all teleconferenced and hybrid meetings and taken upon the request of any Council Member. No action shall be taken by secret ballot, but electronic tabulation may be used to record and report roll call votes. [54953(b)(2) and (c)(2)].

7. General Rules – City Council Meetings

The City Council endorses, and agrees to comply with, the Brown Act. In the event of a conflict between the Brown Act and these rules of procedure, the Brown Act shall control. [54950 *et seq*., 54953].

City Council meetings shall be open to the public, but the public shall be excluded from closed sessions as authorized by state law. [54953(a), 54957].

City Council meetings, except for closed sessions, shall be open to the media. The media shall be excluded from closed sessions as authorized by state law. [54953, 54953.5, 54957, 54957.9].

City Council meetings may be recorded by the public and the media, provided such recordings do not interfere with orderly conduct of the meetings and do not constitute a persistent disruption of the proceedings.

7.1 City Council Meeting Schedule

Each July, the City Council shall approve and thereafter follow an annual calendar for its regular meetings in the upcoming year. The annual calendar shall also identify dates for anticipated special meeting workshops. [36805]. When scheduling meeting dates, care should be taken to avoid conflicts with national holidays or dates that would preclude participation by members of the public due to religious or other observances.

7.2 Quorum

The presence of three Council Members shall constitute a quorum of the City Council necessary to transact business at a meeting. In the event a quorum is not in attendance, those attending the meeting will be named in the minutes, and they shall adjourn the meeting to a set date, time, and location. If all Council Members are absent, the City Clerk shall adjourn the meeting to a set date, time, and location. [36810, 36811].

7.3 Absences

7.3.1 Absence and Compelling Attendance

Council Members who are unable to attend a City Council meeting must request that the Mayor ~~issue an~~recognize the absence as excused ~~absence~~. The purpose of an excused absence is not to relieve Council Members of their responsibility to be present, but is intended to provide the Mayor with an opportunity to ensure an absence is reasonable and to impress upon the Council Member, where necessary, the importance of regular attendance. The minutes shall note whether a Council Member's absence is excused. If a Council Member is repeatedly absent, the City Council may adjourn from day-to-day to compel the absent Council Member's attendance under the penalties prescribed by State law. [36513, 36810, 36813].

7.3.2 Absentee Participation

If a Council Member wants to participate remotely in a meeting ~~while absent from the City~~, the appropriate way to participate is through a teleconferenced or hybrid meeting as provided for in section 7.4.6. Absent Council Members are discouraged from communicating their opinions on agenda items to staff or other Council Members to present at the Council Meeting on behalf of the absent Council Member.

7.4 Types of Meetings

7.4.1 Regular Meetings

The City Council shall meet in the Civic Center Meeting Hall for all regular City Council meetings. The regular meetings shall begin at 7:00 p.m. on the second

and fourth Monday of each month, unless otherwise specified by posted notice. If the meeting date falls on a legal holiday, the City Council shall meet at a date and time designated by the City Council. Regular meetings with closed session items may begin at 6:00 or 6:30 p.m. depending upon the number and complexity of the matters to be discussed. [36805, 54954; LMC 2.06.030].

7.4.2 Special Meetings

Special meetings may be called by the Mayor, the City Manager, the City Attorney, or by a majority of Council Members~~.~~ consistent with applicable laws. The call and notice for a special meeting must specify the items to be considered and the date, time, and location for the meeting. [36807, 54956(a)].

The City Council may take final action at a special meeting that is not a workshop.

7.4.3 Special Meeting Workshops

The City Council may meet informally in special meetings designated as workshops that are called by the Mayor, the City Manager, or by a majority of Council Members. Workshops are special meetings intended for training purposes such as ethics training, sexual harassment prevention and education, and specific technical subjects such as land use. Special meeting workshops are also intended for the City Council to work with staff to develop administrative items such as the budget and City Council goals and priorities, for the City Council to receive public input on matters of community wide concern, and for similar activities.

Workshops are open to the public and are meetings for purposes of the Brown Act. The City Council may provide direction, but unlike other special meetings the City Council may not take a final action at a workshop. [54956].

7.4.4 Closed Session Meetings

Closed sessions may only be held as authorized by state law and shall be held in accordance with the provisions of the Brown Act. The closed sessions may precede or follow a regular meeting or be called as a special meeting. In addition to the provisions in Section 7.4.2 *Special Meetings*, the City Attorney or City Manager may call and notice closed session meetings as special meetings. [54954.5, 54956.5, 54956.7-54957.1, 54962].

After meeting in closed session, the City Council shall reconvene in open session and make a public report, either orally or in writing, of any reportable action taken in the closed session and the related vote tabulation. [54957.1, 54957.7].

Closed session matters should be managed within the expected time limits for all items. Lengthy closed session matters should be scheduled at the end of a Council Meeting or as a separate special meeting. If a closed session is scheduled before the start of a regular Council meeting, it should conclude no later than 10 minutes before the start time for the regular Council meeting. When necessary, the closed session can be continued to the end of the agenda for the regular Council meeting, but that should be avoided when possible.

7.4.5 Concurrent Meetings

Since the Council Members are also the members of the Livermore Successor Agency, the City Council may concurrently convene the meetings of the City and the Livermore Successor Agency as well as any other legislative body that includes all Council Members. [54952.3].

Joint meetings of the City Council and any other legislative body or bodies shall be noticed as a meeting for each body.

7.4.6 Teleconferenced and Hybrid Meetings

The City Council may meet from different locations connected by electronic means consistent with the provisions of the Brown Act effective at the time of the scheduled meeting. The City Council may adopt, by resolution, specific procedures for teleconferenced ~~meetings.~~and hybrid meetings consistent with state law. Those procedures should encourage staff and the City Council to monitor connectivity and to rapidly address the technical issues for orderly management of the meeting consistent with the applicable statutory requirements. [54953].

7.4.7 Adjourned Meetings, and Adjourned Regular Meetings

Any meeting of the City Council may be adjourned to a later date, time, and location, and the notice of adjournment shall be posted within 24 hours on or near the door of the place where the adjourned meeting was held. However, if the adjourned meeting is to reconvene less than 24 hours after adjournment, then a copy of the order or notice of the continuance shall be posted immediately following the meeting. [36809, 54955].

The Mayor, City Manager, or majority of Council Members may call for an adjourned regular meeting in consultation with the City Attorney to conduct a regular meeting on a date other than on a regular meeting date on the City Council's annual calendar. [54955]

7.4.8 Emergency Meetings

If at least three Council Members determine that a catastrophic event has caused an emergency situation to exist as defined by law, then the City Council may immediately hold an emergency meeting. [54956 and 54956.5].

7.4.9 City Council Committees

The ~~Mayor, in the Mayor's sole discretion~~City Council, may ~~form~~create standing and ad hoc City Council subcommittees ~~that do~~, which creation shall occur at a duly noticed Council Meeting.

Care should be taken to not ~~have final decision making authority. The Mayor, with the City Council's approval, may for form standing~~ overburden staff, and therefore, City Council subcommittees should only be created in consultation with the City Manager and the City Attorney. City Council subcommittees should be created judiciously. Staff support shall only be provided to those City Council committees duly created as set forth in these rules.

Ad hoc City Council subcommittees are intended to be useful and efficient vehicles for less than a quorum of Council Members, with appropriate support staff, to explore and develop items for placement on a duly noticed City Council meeting agenda for the City Council to discuss and then provide direction or take action.

City Council standing subcommittees comprised of less than a quorum of the City Council and that have continuing subject matter jurisdiction or a fixed meeting schedule established by the City Council, shall comply with the Brown Act and follow these rules of procedure. [54952(b)].

~~City Council Brown Act subcommittees comprised of less than a quorum of the City Council and that have other persons as members, shall comply with the Brown Act and follow these rules of procedure. [54952(b); *Joiner v. City of Sebastopol*, (1981) 125 Cal.App.3d 799].~~

Ad hoc City Council subcommittee's ~~–~~ comprised solely of less than a quorum of the City Council and that are limited to both a defined task and a duration that is less than one year, are not subject to the Brown Act and are not required to follow these rules of procedure. [54952(b); *Frazer v. Dixon Unified School District*, (1993) 18 Cal.App.4th 781].

Any City Council subcommittees comprised of less than a quorum of the City Council and have other persons as members, shall comply with the Brown Act and follow these rules of procedure. [54952(b); *Joiner v. City of Sebastopol*, (1981) 125 Cal.App.3d 799].

The City Manager shall keep a record of all standing and ad hoc City Council subcommittees that reflects the committee's creation date, composition, task, duration, and sunset date. The City Manager shall advise the City Council at a duly noticed Council Meeting of any ad hoc subcommittee that has not sunset within one year of its creation so that the City Council can consider whether to terminate the ad hoc subcommittee or reconstitute it as a standing committee.

7.5 Notice and Agenda Posting

The City Clerk shall post the notices and agendas for each City Council meeting in the kiosk in front of City Hall, on the City's website, and at the location where the meeting will be held. Any requirement to post notices and agendas at a remote teleconferenced meeting location outside the City's jurisdiction shall be the responsibility of the Council Member attending the meeting from that location. [54954.2].

7.5.1 Regular Meetings

It is the City Council's goal that the agendas for regular meetings should be posted at least 6 days before the meeting dates, but in no event shall the agenda for a regular meeting be posted less than 72 hours before the meeting date. [54954.2].

7.5.2 Special Meetings and Workshops

Notice of the call for a special meeting must be delivered and received by each Council Member and the media at least 24 hours before the special meeting, and must be posted at least 24 hours before the special meeting date. To the extent possible, it is the City Council's goal that the notice and agendas for special meeting workshops should be posted at least 6 days before the meeting dates, and in no event shall the notice and agenda for a workshop be posted less than 24 hours before the meeting date. [54956].

7.6 Actions Limited to Posted Agendas

The City Council shall not discuss or take action on any item not appearing on the posted notice or agenda for ~~that~~a duly noticed Council meeting. However, as permitted by the Brown Act, Council Members and staff may briefly respond to statements made or questions posed by the City Council or by members of the public addressing the City Council. City Council members should refrain from rejoinders to perceived derogatory or repugnant public comments during council meetings. Council Members may ask a question of City staff or a speaker for clarification, make a brief announcement, or make a brief report on their own activities.

Upon determination by three Council Members that an emergency situation exists as required by law, or upon a determination by four Council Members (or all members present if less than four are in attendance) that there is a need for immediate action that came to the City's attention after the meeting agenda was posted, the agenda may be

amended as provided by law to add an item for consideration and action. [54954.2, 54956, 54956.5].

7.7 Continuance of Agenda Items

Items listed on a posted agenda should not be continued or postponed absent good cause.

7.7.1 Discovery of Good Cause Before an Item is Considered

If good cause to continue an item is discovered by City staff after a notice or agenda is posted but before the meeting commences, then after calling the meeting to order the Mayor shall identify the item and announce that is has been continued.

7.7.2 Good Cause to Continue During Consideration

Once an item has been taken up for consideration, City staff, a Council Member, or a participating party as defined in Section 9.5.43 *Participating Parties* may request a continuance of the item. The item may only be continued following a majority vote of the Council Members present.

7.7.3 Public Comment for a Continued Item

If the opportunity for the public to address the City Council has concluded, or the public hearing portion of an item was formally closed, and the item was returned to the City Council for deliberation before it was continued, then the opportunity for public comment on the item will not be reopened absent a motion by the City Council. [54955].

7.8 Consideration of items after 11:00 p.m.

7.8.1 Canvass and Reorder

At 10:30 p.m., or as soon thereafter as practical, the Mayor shall canvass staff and Council Members present to identify the remaining agenda items for consideration. The Mayor will then identify what items will be considered or continued, and in what order. Once the Mayor outlines the balance of the agenda, it may not be amended absent an appeal by a Council Member.

If the City Manager, Mayor, or a City Council Member believes the duly noticed agenda for a Council meeting is not likely to completed in one day, then the City Clerk shall poll the Mayor and Council Members in advance of the meeting to determine their availability to reconvene later that same week. To accommodate members of the public so they do not have to rearrange their schedules, to the

extent possible, the public comment period for an item that was started should be completed before the continuance of an item.

7.8.2. No New Items Considered after 11:00 p.m.

~~Generally, the~~The City Council ~~will~~shall not begin consideration of any items on an agenda after 11:00 p.m., but may complete their consideration of an item that was commenced prior to 11:00 p.m.

7.8.3 Exceptions

The City Council may commence consideration of an item after 11:00 under the following circumstances:

a. An item is subject to a legal deadline, such as a project application subject to the Permit Streamlining Act; or,

b. The City Council votes to allow consideration of the item after 11:00 p.m.

7.9 Breaks.

The Mayor shall provide for a 10 min break after approximately every two hours of meeting time. The break should be called at a convenient point in the proceedings closest to the two-hour mark. Council Members may request breaks at other times as needed. Council Members and staff are expected to return promptly at the designated time to resume the meeting.

7.10 Points of Order, Privilege, and Personal Privilege

A Council Member may ask for a point of order, at which time the Mayor will ask for an explanation. Appropriate points of order relate to matters that a Council Member considers inappropriate conduct for the meeting, such as the failure to observe these Rules of Procedure, the City Council's Norms and Values, or the rules of parliamentary procedure.

A Council Member may seek a point of privilege. If so, the Mayor shall ask for an explanation of the Council Member's point. Points of privilege generally relate to matters that interfere with a normal flow or comfort of the City Council's meeting, such as the inability to hear testimony because of disruption.

A Council Member may ask for a point of personal privilege when the integrity, character, or motives of the Council Member are called into question by a speaker; or where the welfare of the City Council is concerned.

If a speaker is interrupted by a point of order, privilege, or personal privilege, the remainder of a speaker's time will be preserved by the City Clerk until the point is resolved.

7.~~10~~11 Minutes

7.~~10~~11.1. All Proceedings Recorded

An account of all open meetings of the City Council shall be recorded, and action minutes prepared, by the City Clerk. [36814, 40801]. After the City Council approves the meeting minutes, the City Clerk shall enter them into official minute books of the City Council. The City Attorney may prepare attorney work product notes for closed session meetings attended. [36814].

7.~~10~~11.2 Approval

The minutes for a City Council meeting shall be reviewed and approved as set forth in this section.

a. The City Council shall approve minutes for a regular meeting, special meeting, and special meeting workshops, except that City Council approval is not required for the City Attorney's closed session attorney work product notes.

b. A Council Member may not approve the minutes for any City Council meeting that the Council Member did not attend, unless the Council Member observed the meeting or reviewed a video or audio recording prepared for that meeting. Also, a Council Member may not approve the minutes for a meeting that they were not eligible to attend as a Council Member.

c. If no Council Members are eligible to approve the minutes for a City Council meeting, then the City Clerk shall attest to the accuracy of the meeting minutes and enter them into official minute books of the City Council.

7.~~10~~11.3 Preferred Method of Recordation and Minutes

City Council meetings may be recorded by electronic means. ~~Minutes of City Council meetings shall be action minutes that capture the final action taken by the City Council or the outcome of an agenda item. Action minutes are not verbatim.~~

The City Council may adopt a resolution to specify the preferred method of recording for its meetings. [54953].

7.~~11~~12 Staff Attendance

7.~~11~~12.1 City Manager

The City Manager shall attend all City Council meetings unless excused by the Mayor, and the City Manager's designee attends. [LMC 2.08.060.F]. The City Manager may make recommendations and shall have the right to take part in all discussions of the City Council, but shall have no vote.

7.~~11~~12.2 City Attorney

The City Attorney shall attend all City Council meetings unless excused by the Mayor, and an Assistant City Attorney attends. Upon the City Council's request, the City Attorney shall provide opinions and recommendations, either written or oral, on questions of law and procedure.

7.~~11~~12.3 City Clerk

The City Clerk shall attend all City Council meetings unless excused by the ~~Mayor~~City Manager, and in his or her absence, the City Clerk's designee shall attend. The City Clerk shall record, prepare, and maintain the official record of the City Council's proceedings and perform other related duties as may be prescribed by the City Council and the City Manager. [36814, 40801].

7.~~11~~12.4 Department Heads/Employees

Department Heads and employees shall attend City Council meetings as directed by the City Manager. The City Manager and City Attorney are encouraged to minimize the number of employees and consultants attending the meetings in person and maximize the opportunities for employees and consultants to participate remotely.

7.~~11~~12.5 Sergeant-at-Arms

A Sergeant-at-Arms, who shall typically be a sworn member of the City's Police Department, shall attend City Council meetings as directed by the ~~City Council or~~ the City Manager. [38638].

7.~~12~~13 Meetings That Are Not Subject to the Brown Act

As provided by the Brown Act, a quorum of the City Council may attend conferences and similar gatherings, open community meetings organized by a person or organization other than the City Council, open and noticed meetings of another legislative body other than a City advisory body, and social and ceremonial gatherings without complying with the notice and agenda requirements in these rules of procedure, provided that the Council Members do not discuss among themselves business of a specific nature that is within the City's subject matter jurisdiction. [54952.2(c)(3)-(5)].

Meetings of an ad hoc City Council subcommittee is not subject to these rules of procedure unless the Mayor or City Council expressly state that the committee shall follow these rules. [54952].

Briefings of less than a quorum of the City Council are not subject to these rules of procedure provided the briefings comply with the Brown Act. [54952.2; *Wolfe v. City of Fremont*, (2006) 114 Cal.App.4th 533].

8. Agenda Development ~~of Agenda~~

The City Manager is responsible for preparing the City Council's meeting agenda to present items requiring direction or action by the City Council. Items may also be placed on an agenda for City Council consideration in the following ways: by direction of ~~the Mayor~~a duly created City Council subcommittee; by direction of the City Attorney in consultation with the City Manager; by direction of a majority of Council Members during the matters initiated portion of the agenda to place an item on a future agenda; and under any processes set forth by statute or ordinance that requires City Council action, including City Council consideration of land use matters, appeals, and other matters as set forth in the Livermore Municipal Code and the Livermore Development Code.

The agenda shall contain a brief general description of each item of business to be transacted or discussed, including any items to be discussed in closed session. [54954.2, 54954.5].

9. Order of Business – Regular Meetings

The usual order of business for regular meetings shall be as follows:

9.1 Call to Order

This portion of the agenda is for roll call, the pledge of allegiance, and the reporting out from any closed session items that may have occurred prior to the meeting.

9.2 Proclamations and Presentations

This portion of the agenda is for City proclamations to recognize significant community events, people, or days. The Mayor shall read and present, or designate a Council Member to read and present, the proclamations. The City Manager, or his designee, may develop a policy regarding proclamations as a guide. ~~It is also for the City Council confirmation of appointments to advisory bodies and to administer the oath of office to advisory body members.~~ It is also for City advisory bodies to make brief presentations to the City Council on their activities. As authorized by the Mayor or the City Manager, this

portion of the agenda is also for other local, regional, or state legislative bodies and elected officials to make brief presentations to the City Council concerning activities of interest to the City.

These are ceremonial matters and not action items by the City Council. While the preference is for proclamations to be included in the posted agenda, the desire to recognize a significant community event, person, or day may arise or be discovered after an agenda is posted. In that case, the Mayor may make additional proclamations at a City Council meeting so long as they do not unduly interfere with the City Council's business.

~~Except for City Council confirmation of appointments to advisory bodies, members of the public do~~The Public does not have the right to address the City Council during this portion of the agenda. [54954.3(a); *Coalition of Labor, Agriculture & Business v. County of Santa Barbara Bd. of Supervisors, (2005) 129 Cal.App.4th 205].*

~~9.3 Citizens~~9.3 Confirmation of Advisory Body Appointments

This portion of the agenda is for City Council confirmation of appointments to advisory bodies and to administer the oath of office to advisory body members.

9.4 Open Forum

This portion of the agenda is for any member of the public to address the City Council on any item of interest to the public that is within the City Council's subject matter jurisdiction. However, to prepare and preserve a proper administrative record, public comments concerning an item listed elsewhere on the agenda should be reserved and addressed to the City Council when that item is called for consideration.

~~Citizens~~Open forum shall be limited to 30 minutes, usually before the consent calendar. If there are additional members of the public who wish to speak at the conclusion of the 30-minute time period, then the Mayor shall reconvene the ~~citizens~~open forum at the conclusion of the matters for consideration portion of the agenda unless the Mayor announces that ~~citizens~~open forum is reordered to a different place on the agenda.

The procedures for public comments during ~~the citizens~~open forum are set forth in Section 11 ~~*Citizens'*~~ *Speakers' Rights*.

9.4~~5~~ Consent Calendar

The consent calendar portion of the agenda is for routine items that are not expected to require City Council discussion. Examples of items for the consent calendar include the approval of minutes, resolutions confirming actions from a previous meeting, the introduction and adoption of ordinances, and the processing of administrative items such as the approval of contracts, the acceptance of public improvements, and other routine items requiring City Council approval by ordinance, resolution, or law. Any Council Member may pull an item for separate discussion. Members of the public may address

the City Council on consent calendar items by following the procedures set forth in Section 11 ~~*Citizens'*~~*Speakers' Rights*.

The items on the consent calendar are generally approved by the City Council by a single motion, but separate motions may be appropriate to accommodate a conflict of interest, an absence, or other Council Member interests.

9.5 Public Hearings

The public hearing portion of the agenda is reserved for items that require, by statute or practice, a noticed public hearing for action. The notices for public hearing items shall be posted in a newspaper of general circulation and mailed to property owners as required by law. [6060].

The procedures for public hearings are as follows:

9.5.1 Introduction

The Mayor shall call each item for hearing and consideration. If there are public hearing items, the Mayor has the discretion to concurrently call the items for hearing and consideration.

9.5.2 Staff Presentation

A member of City staff will then:

a. Introduce themselves and the item by identifying the report and other written material included in the agenda packet for the City Council's consideration, as well as any written comments received from the public.

b. Identify any supplemental written materials that have been provided to the City Council for consideration, which were received or prepared for the item after the meeting agenda was published.

c. Identify any other staff members or consultants that will be part of the staff presentation or are otherwise present and available for City Council questions.

d. State whether the applicant is present and whether the applicant intends to make a presentation to the City Council.

e. Make an oral report, unless waived by the City Council.

9.5.3 ~~City Council Questions or Comments~~

~~Following the staff presentation, the City Council may ask questions of City staff and consultants, or make comments on the item.~~

~~9.5.4~~ Participating Parties

Following ~~City Council questions and comments after~~ the staff presentation, the applicant, appellant, and other named participant in the item that is party to an agenda item (collectively "participating parties") may address the City Council. Participating parties shall address the City Council following the procedures set forth in Section 11 *Speakers' Rights*.

After the Mayor determines that no other participating parties wish to address the City Council on the hearing item, the Mayor will ~~then invite City Council questions or comments of the participating parties and staff concerning the item. Participating parties shall address the City Council following the procedures set forth in Section 11 *Citizens' Rights*~~open the public hearing.

9.5.~~5~~4 Opening and Closing the Public Hearing

The purpose of the public hearing is to provide members of the public with an opportunity to address the City Council concerning the hearing item, as well as to express their support or opposition of the item. The Mayor will formally announce the opening of the public hearing and invite members of the public to address the City Council on the hearing item. Public speakers shall address the City Council following the procedures set forth in Section 11 ~~*Citizens'*~~*Speakers' Rights*.

After the Mayor determines that no other member of the public wishes to address the City Council on the hearing item, the Mayor will formally close the public hearing and return the item to the City Council for ~~deliberation~~City Council questions and comments.

9.5.5 City Council Questions or Comments

Following the staff presentation, comments by the participating parties, receiving public comments during the public hearing, if any, the City Council may ask questions of City staff, consultants, and participating parties, and make comments on the item.

9.5.6 Deliberation

~~Once an item of business returns to the~~Following City Council ~~for deliberation~~questions and comments, the Mayor will invite the Council Members to discuss the item to develop concurrence for a motion. Council Members may continue to ask questions of staff, consultants, and the participating parties as part

of their deliberations. The procedures for City Council deliberation are set forth in Section 12 *City Council Deliberation.*

9.5.7. City Council Action

After City Council deliberation, the Mayor shall call for a motion and a second as set forth in Section 14 *Motions*, and the City Council may make such motions as set forth in that section.

If the motion seconded for consideration is substantially different than the recommended action in the published staff report, the Mayor may invite public comments on the motion. Each speaker will be limited to one minute to comment on the motion; and the City Council has discretion to decide not to hear further comment if they choose. Public speakers shall address the City Council following the procedures set forth in Section 11 ~~*Citizens'*~~*Speakers' Rights*.

9.6 Matters for Consideration

This portion of the agenda is for items of business that require City Council action, direction, or receipt of reports that do not also require a public hearing. Generally, the procedures for this portion of the agenda follow the same procedures found ~~insection~~in section 9.5 *Public Hearings*, except that the public hearing is replaced by the opportunity for the public to comment after the staff presentation.

Prior to deliberating on matters for consideration, the City Council shall receive public comment as provided for in Section 11 ~~*Citizens'*~~*Speakers' Rights*. After receiving public comment, the City Council shall deliberate as set forth in Section 12 *City Council Deliberation* and shall receive the report, take action, or provide direction as set forth in Section 14 *Motions*.

9.7 City Council Reports and Matters Initiated by Staff and City Council

This portion of the agenda is for:

1. Each member of the City Council to provide brief reports on any intergovernmental agency meetings, conferences, community meetings, meetings of other legislative bodies, or other events of interest to the community. For efficiency and completeness, each Council Member should use the activity reporting spreadsheet and submit their reports to the City Clerk by noon on the day of the Council meeting so the report can be included in the supplemental materials distributed in advance of the meeting. Council members are encouraged to highlight in their oral presentations only those events of most interest to the community. To the extent practical, Council members should report on significant decisions being considered by the regional boards, commissions, and committees to which they have been appointed for the City. For those events that the Council Member attended at the City's expense~~. It~~, it is the City Council's preference to satisfy

~~this~~the expense reporting ~~function~~requirement by submitting a written report of the activities attended. [53232.2(d)];

2. The City Manager, City Attorney, and City staff to provide information of community interest to the City Council and to seek direction from the City Council concerning items to be included on future agendas;

3. The City Council to provide guidance and direction to staff concerning items to be included on future agendas and information to be provided in response to questions raised during ~~citizens~~open forum;

4. The City Council to request a matters initiated for staff to provide information, perform studies, or undertake other administrative functions or to develop information for Council action at a future meeting. Before requesting a matters initiated, the initiating Council Member is expected to confirm with the City Manager that there is adequate staff resource capacity to address the request, and the City Attorney to the extent the matter involves legal review. If the requested action is routine in nature, the City Manager will direct staff to proceed. However, if the request cannot be accomplished within the approved budget or City Council priorities, or ~~if it~~ will involve substantial staff resources, the City Manager will report to the City Council at a subsequent City Council meeting and request further direction. At that time, the consensus of a majority of the City Council will be required to proceed.

Members of the public do not have the right to address the City Council during this portion of the agenda. [54954.3(a); *Coalition of Labor, Agriculture & Business v. County of Santa Barbara Bd. of Supervisors, (2005) 129 Cal.App.4th 205].*

9.8 Adjournment

This portion of the agenda is for the Mayor to adjourn the City Council meeting to its next meeting. The meeting may be adjourned to a regular meeting, special meeting, special meeting workshop, adjourned regular meeting, or adjourned special meeting. The Mayor may adjourn the meeting in honor of a distinguished Livermore resident or other person of community interest that has passed away.

Members of the public do not have the right to address the City Council during this portion of the agenda. [54954.3(a); *Coalition of Labor, Agriculture & Business v. County of Santa Barbara Bd. of Supervisors, (2005) 129 Cal.App.4th 205].*

Adjournment at any other point in the meeting requires a formal motion by the City Council.

10. Order of Business – Special Meetings and Workshops

No matters except those specified in the notice and agenda for a special meeting or special meeting workshop may be discussed at those meetings.

The usual order of business for special meetings and workshops shall be as follows:

10.1. Call to Order

This portion of the agenda is the same as it is for a regular meeting.

10.2. Public Comment

The purpose of this portion of the agenda is to provide the public with the opportunity to address the City Council on only those items listed in the posted notice and agenda for the special meeting or workshop. Public comment shall be received immediately following the call to order for a workshop, and should be received immediately after the staff presentation, if any, for a special meeting.

Public speakers shall address the City Council following the procedures set forth in Section 11 ~~*Citizens'*~~*Public's Rights*.

However, unlike a regular meeting, the agenda for a special meeting will not include ~~a citizens~~an open forum ~~or opportunity~~ for the public to address the City Council on any item of interest to the public that is within the City Council's subject matter jurisdiction, unless that opportunity is expressly included in the agenda.

10.3 Special Meeting Item and Workshop Item

Generally, the procedures for this portion of the agenda follow the procedures in Section 9.5.1 *Introduction,* 9.5.2 *Staff Presentation*, 9.5.~~3~~5 *City Council Questions and Comments,* and 9.5.6 *Council Deliberations.* The City Council may take a final action at a special meeting, but not at a workshop, as set forth in Section 7.4.2 *Special Meetings* and Section 7.4.3 *Special Meeting Workshops*

10.4 Adjournment

This portion of the agenda is the same as it is for a regular meeting.

11. ~~Citizens'~~Speaker's Rights

A City Council meeting is a limited public forum. [78 Ops.Cal.Atty.Gen. 224 (1995); *Kindt v. Santa Monica Rent Control Bd. (9th Cir. 1995) 67 F.3d 266; White v. City of Norwalk, (9th Cir. 1990) 900 F.2d 1421; Leventhal v. Vista Unified School District (SD Cal. 1997) 973 F.Supp. 951*]. Members of the public have the right to address the City Council and to attend its meetings, except for closed sessions and other meetings that permit the

public to be excluded as a matter of law. During the ~~citizens~~open forum portion of a regular meeting agenda, members of the public have a right to address the City Council on any item of interest to the public that is within the City Council's subject matter jurisdiction. Members of the public also have the right to address the City Council before the City Council considers or takes action on an item on any regular meeting agenda, except for items properly listed or considered in the *Call to Order*, *Proclamations and Presentations, City Council Reports and Matters Initiated by Staff and City Council*, and the *Adjournment* portions of the agenda. Members of the public shall be provided an opportunity to address the City Council concerning any item that is described in the notice for special meeting workshops and special meetings. [54954.3].

The procedures for addressing public comments to the City Council are as follows:

11.1 Addressing the City Council

Members of the public ~~that~~who want to address the City Council during ~~citizens~~open forum or before the City Council considers or takes action on an item must indicate their desire by personally submitting a request to speak to the City Clerk, or his or her designee, using the methods specified by the City Clerk in the agenda for that meeting. A member of the public may not submit a request to speak on behalf of any other person. The methods for addressing the City Council will be described at each meeting. The City Clerk will prominently display the methods to address the City Council in the City Council Chambers or other location where the City Council gathers in person for a meeting.

~~Before an item is considered by the City Council, the City Clerk shall identify or provide a list of the speakers to the presiding officer in the order that they are received for each agenda item. Generally, once the City Council begins its consideration of an item, no additional requests to speak will be accepted absent invitation by the presiding officer.~~

The Mayor shall open public comment during open forum and for agenda items by asking the City Clerk whether there are any members of the public who wish to address the City Council. If there are, the Mayor will then ask the City Clerk to manage the process for calling on speakers physically present and participating remotely as described in Section 11.3.1. Once there are no more persons physically present who have expressed an interest in addressing the City Council, the City Clerk will then call upon the speakers participating remotely. Speakers may request the opportunity to address the City Council until the City Clerk announces that there are no more speakers who have expressed their interest to address the City Council. At that time, the Mayor will close the public comment period. Once the Mayor closes the public comment period, no more additional requests to address the City Council during open forum or for the agenda item will be accepted absent invitation by the Mayor.

The purpose of submitting a request to speak is to help the ~~presiding officer~~Mayor conduct the City Council's meetings and to complete its business in an orderly fashion. The intent is not to limit testimony. Therefore, a member of the public will not be denied an opportunity to speak if a request to speak lacks information or because a speaker wants

to remain anonymous. Speakers who have not submitted a request to speak on time may be heard by the ~~presiding officer's~~Mayor's recognition or by another Council Member's successful appeal. [White v. City of Norwalk, (9th Cir. 1990) 900 F.2d 1421].

11.2 Speaker Time Limit

The amount of time allotted to each member of the public wishing to address the City Council shall be limited to a maximum of 3 minutes. Individual members of the public may not yield their allotted time, or any remaining portion thereof, to anyone else. The ~~presiding officer~~Mayor may reduce the amount of time allotted to each speaker based upon the number of persons wishing to speak, the complexity of the item if one is being considered, the anticipated time reasonably needed to complete the remaining items on the meeting agenda, and other reasonable factors.[54954.3(b); *Kindt v. Santa Monica Rent Control Bd. (9th Cir. 1995) 67 F.3d 266; Chaffee v. San Francisco Public Library Commission, (2005) 134 Cal.App.4th 109; 75 Ops.Cal.Atty.Gen. 89 (1992)*]. A speaker using an interpreter shall be allowed twice the allotted time. [54954.3].

Prior to calling for public comment during the ~~citizens~~open forum, as well as before the City Council considers or takes action on an item, the Mayor shall set and announce the time limit for each member of the public to speak before inviting members of the public to the lectern to address the City Council. For the purposes of these rules, lectern means the physical podium in the meeting room provided for the public to address the City Council, but includes the electronic location utilized by the City Clerk to accept electronic comments during a City Council Meeting.

Open forum will conclude after 30 minutes, but if there are remaining speakers at the conclusion of the 30 minute time period who wish to address the City Council, then the open forum shall be reconvened after the Matters for Consideration portion of the agenda as set forth in Section 9.4.

11.3 Members of the Public Addressing the City Council

11.3.1 A list of people who have requested to speak shall be used to call each speaker to the lectern to address the City Council. The City Clerk will manage the process for calling speakers to the lectern or to unmute themselves if they are participating remotely. The speakers physically present in the meeting will be called upon before those participating remotely. When calling a speaker to the lectern the next two speakers will also be identified so they are prepared to address the City Council when called to the lectern.

11.3.2 The Mayor may request each speaker to state his or her name and city of residence before addressing the City Council. A speaker is not required to provide his or her name or address in order to address the City Council. However, to the extent such information is relevant to the issues being considered by the City Council during a public hearing, the absence of

such information may bear on the speaker's credibility and the weight the City Council affords the speaker's comments.

11.3.3 Speakers shall address their comments only to the City Council as a body and not to a particular member.

11.3.4 Members of the public may only address the City Council from the lectern. No member of the public, other than the speaker at the lectern, may address the City Council, unless called upon by the Mayor.

11.3.5 No question shall be asked of Council Members by a speaker, except through the Mayor. No question shall be asked of a speaker by a Council Member, except through the Mayor. Council Members, the Mayor, and the speaker are not obligated to answer any questions asked. The Mayor may refer questions to staff for a brief answer while the speaker is at the lectern.

11.3.6 Speakers shall not use their time to unduly disrupt the orderly conduct of the City Council's meeting.

11.3.7 Speakers are encouraged to avoid repetition.

11.3.8 Speakers are encouraged to avoid making personal attacks.

11.3.9 Each speaker shall relinquish the lectern when his or her time to address the City Council has expired.

11.3.10 A speaker may use his or her allotted time to read letters or other documents, play electronic recordings at a non-amplified volume, or otherwise present information to the City Council in a non-disruptive manner, provided those activities are completed within the allotted time. The City will not provide the means for a speaker to play an electronic recording.

11.3.11 When called upon during ~~citizen's~~open forum, speakers may address the City Council on any item of interest to the public within the City Council's subject matter jurisdiction. [54954.3(a)].

11.3.12 When called upon to provide public comment on a specific item of business on the agenda, speakers shall focus their comments on that specific item of business before the City Council. [54954.3(a); *White v. City of Norwalk, (9th Cir. 1990) 900 F.2d 1421; 78 Ops.Cal.Atty.Gen 224 (1995)].*

11.3.13 Members of the public addressing the City Council are limited to one oral public comment per speaker per item regardless of format or time submitted.

11.4 Participating Parties Addressing the City Council

Participating parties shall comply with the procedures set forth in Section 11 ~~*Citizens'*~~*Public's Rights* when addressing the City Council, except that the participating parties shall each have up to a maximum of 10 minutes to address the City Council. The Mayor may set and announce the time limit for each active participant to address the City Council based upon the same criteria set forth in Section 11.2 *Speaker Time Limit.*

When the City Council is acting in its quasi-judicial capacity, the Mayor may further modify the rules of procedure in this section, or adopt such additional rules of procedure and speaker times as may be reasonably necessary, to afford the active participants with procedural due process commensurate with the rights at issue.

11.5 Public Criticism

Public criticism of the City's policies, procedures, programs, or services, or of the acts or omissions of the City Council, shall not be prohibited. However, the rights of each speaker to express his or her views is not absolute and nothing in these rules of procedure are intended to confer any privilege or protection for expression beyond that otherwise provided by law. [54954.3].

11.6 Disruptive Speech and Conduct

Any person unduly disrupting a City Council meeting may be requested by the Mayor to leave the meeting. The Mayor shall discourage demonstrations before the City Council, such as applauding or booing. Upon instructions by the Mayor, a Sergeant-at-Arms may be called for the purpose of removing any person who, in the Mayor's judgment, has disrupted the meeting. [36813, 38638, 54954.3, 54957.9, Penal Code 403]. When possible, the Mayor is encouraged to use alternative means, such as direction to speakers to avoid disruption or by taking a recess to review these rules with the speaker, to avoid disruptions to allow the City Council to complete its business.

11.7 Written Communications – Post Hearing Notice, and Post Agenda Publication

11.7.1 Submitted after the hearing notice, but before the Agenda Publication.

Any member of the public may submit written comments and materials to the City Council through the City Clerk's Office. All written comments and materials must be submitted between the date public hearing notices are published (10 days prior to the meeting or as otherwise required by statute) and noon on the day before agenda publication (7 days prior to the meeting). The City Clerk shall

deliver all written comments and materials received by 12:00 p.m. the days before agenda publication as part of the agenda packet for the posted agenda.

11.7.2 Submitted Post Agenda Publication.

Any member of the public may submit electronic comments to the City Council using the electronic submission process the City Clerk specifies and makes available on the City's website within the timeframe provided on the agenda. Any additional attachments can be submitted directly to the City Clerk. All comments submitted using the City Clerk's electronic process will be available to the public and the City Council immediately upon submission. The City Clerk shall post on the City's website and deliver any additional materials received by 12:00 p.m. the day of the meeting to the City Council in a supplemental packet prior to the meeting.

Physical copies of written comments and materials, and electronic and physical materials submitted to the Clerk's Office before 12:00 p.m. noon on the day of the City Council meeting, will be included in the supplemental packet. After 12:00 p.m. noon on the day of the City Council meeting, any member of the public ~~that~~who desires to submit materials to the City Council for consideration at that meeting is hereby instructed to present 8 copies of the materials to the City Clerk for distribution to the City Council at its meeting when the item is considered.

11.7.3 Special Meetings and Workshops.

For special meetings and workshops, the City Clerk shall specify the instructions and timeframes for the public to submit comments and materials in the agenda for those meetings.

11.8 Approaching the City Council

Once a meeting is called to order, no member of the public shall enter the area between the lectern and the dais without an invitation from the Mayor. Members of the public may enter the area before and after the meeting, and during a recess, for the purpose of interacting with the individual City Council Members and City staff.

12. City Council Deliberation

City Council deliberations shall be orderly and guided by the Mayor to reach a decision on the item before them or to provide the direction sought by staff.

Once an item is before the City Council for deliberation, the Mayor shall call upon each individual Council Member present, in turn, to comment on the item and the recommended action or direction sought by staff. When participating remotely, Council Members should use the raise hand feature, or other feature offered by the electronic platform used for the meeting, to indicate they wish to speak and the Mayor should call

upon them in the order they requested to speak. Council Members may debate the merits of the item and recommendation, but shall not interrupt any other Council Member ~~that~~who is speaking. After each Council Member has the opportunity to express an opinion on the item, the Mayor shall invite discussion and then a motion.

13. *Reserved*

14. Motions

14.1 Making a Motion

A motion may be made by the Mayor or a Council Member. Once a motion has been made, the Mayor will solicit a second. A motion shall die unless it receives a second. If a motion receives a second, the Mayor shall then invite debate and discussion on the motion and any amendments.

Any Council Member who makes a motion may withdraw it during debate and discussion, even to the point of interrupting a speaker to do so. If the motion is withdrawn, the Mayor may ask the person who seconded the motion if the Council Member wishes to make the motion, subject to another Council Member's second.

14.2 Categories of Motions

There are four categories of motions that the City Council may consider.

The first category is a basic motion, which is one that puts forward a decision for consideration. For example, a motion to approve City staff's recommendation.

The second category is a motion to amend an earlier motion. Such an amending motion changes a basic motion under discussion in a minor way, but does not supersede it. For example, adding a condition to a basic motion to approve staff's recommendation. If the maker of the basic motion, and the second, accept the amendment, then the amendment shall be incorporated into the original motion without the need for a second on the amending motion. If an amendment is not accepted into the basic motion by the moving Council Members, the process for voting on simultaneous motions is then followed.

The third category is a substitute motion. Such a motion completely does away with the basic motion under discussion and puts a new motion before the City Council. For example, if the basic motion is to approve staff's recommendation, a substitute motion would propose numerous changes to staff's recommendation or assembles multiple amending motions into a single motion. If a substitute motion is approved, the initial basic motion does not require action since it was substituted. If a substitute motion fails, the process for voting on simultaneous motions is then followed.

The fourth category is a hostile motion. A hostile motion is one that seeks to accomplish the opposite effect of the basic motion. For example, when a basic motion is to approve

a project, a hostile motion is one to deny the project. If a hostile motion is made, the process for voting on simultaneous motions is then followed.

A decision whether a motion is one to amend or substitute is left to the Mayor's sole discretion. A decision whether a motion is hostile is left to the Mayor in consultation with the City Attorney.

14.3 Simultaneous Motions

The City Council may consider up to three motions on the floor at one time. The Mayor may reject a fourth motion until the three before the City Council have been resolved. When two or three motions are before the City Council, after motions and seconds, the first vote will be on the last motion made. Generally, the discussion when a motion is before the City Council should focus on the last motion made. Once the vote on the last motion takes place, if necessary, discussion and decision on additional motions will take place in order.

However, a hostile motion shall not be in the floor at the same time as the motion it challenges. A hostile motion shall be considered after a vote on the basic motion and its amendments, that it challenges.

14.4 Debatable and Non-debatable Motions

Debatable motions are subject to Council Member comment and discussion before calling for a vote. Non-debatable motions are not subject to Council Member comment and discussion, and are to be voted on immediately.

14.4.1 Debatable Motions

Debatable motions are motions to take action on agenda items and other items of City business. For the purpose of these rules of procedure, all motions are debatable except those expressly identified in ~~subsection~~Subsection 14.4.2 *Non-Debatable Motions.* Debate on a motion should continue as long as Council Members wish to discuss an item, subject to the Mayor's decision that it is time to move on and take action.

14.4.2 Non-Debatable Motions

Non-debatable motions are procedural and terminating motions. Certain motions once made immediately stop the City Council's deliberations and, upon receipt of a second, should be voted on immediately. The City Council's non-debatable motions are as follows:

a. Motion to Adjourn. If passed, a motion to adjourn requires the City Council to immediately adjourn to its next regularly scheduled meeting.

b. Motion to Recess. If passed, a motion to recess requires the City Council to immediately take a recess, the length of which the Mayor will determine. The Mayor may order a recess without a motion, and without adjourning the meeting, as the Mayor determines necessary to maintain decorum and conduct the meeting in an orderly fashion.

c. Motion to Fix the Time to Adjourn. If passed, a motion to fix the time to adjourn the meeting requires the City Council to adjourn at a specific time set in the motion.

d. Motion to Table an Item. If passed, a motion to table an item postpones an item indefinitely or to a date and time certain set in the motion. If the motion does not contain a specific time, an additional motion is required to bring the item back to the City Council at a future meeting.

e. Motion to Continue an Item. A motion to continue an item has the same effect as a motion to table, but is generally used when good cause exists or in response to a request by staff, a Council Member, or a participating party, as set forth in Section 7.7 *Continuance of Agenda Items*, or a scheduling problem arises. If passed, the motion continues the item indefinitely or to the date and time set in the motion. If the motion does not contain a specific time, an additional motion is required to bring the item back to the City Council at a future meeting.

f. Motion to Call the Question. A motion to call the question, also known as moving the previous question or limiting debate, stops further City Council deliberation, debate, and discussion on an item. It can be stated as stopping debate or discussion within a certain period of time, such as 15 minutes. If seconded, the Mayor shall then call for a vote on the motion or motions pending before the City Council as provided for in Section 6.~~5~~7.5 *Motion to Be Stated.*

14.5 Miscellaneous Motions and Appeals

14.5.1 Motion to Suspend the Rules of Procedure

A motion to suspend these Rules of Procedure is debatable and to the extent possible should be addressed to a specific rule. If the Rules of Procedure are suspended in their entirety, such a motion does not supersede law or the Livermore Municipal Code.

14.5.2 Motion to Reconsider

A motion to reconsider any action taken by the City Council may be made as follows: (1) The motion must be made by a Council Member ~~that~~who voted along with majority that voted for the original motion that passed, although the motion for

reconsideration may be seconded by any Council Member; (2) The motion must be made either at the meeting at which the action to be reconsidered was taken, or, at the next regular meeting, provided appropriate due process is afforded to any participating parties; (3) The motion is debatable; (4) If any participating party has left the meeting, or if the motion comes at a subsequent meeting, the ultimate decision to be reconsidered must take place at a subsequent meeting; and, (5) If the original hearing was a public hearing, a new notice of hearing must be given before the matter is reconsidered.

14.5.3 Council Member Appeal

Any Council Member may appeal any ruling by the Mayor. If a Council Member so moves and the motion is seconded, after debate, the ruling of the Mayor may be reversed by majority vote. If an appeal is taken, the question shall be, "Shall the decision of the Mayor be sustained?"

15. Action and Direction

15.1 Votes, General Rules

Unless otherwise provided, the City Council's actions must be passed pursuant to a majority vote on a motion, and the motion may not be considered unless it is seconded. A simple majority vote by those Council Members present is necessary to pass a motion providing direction to staff or establishing administrative policy, however motions for the adoption of resolutions and ordinances require an affirmative vote of at least three Council Members to pass the motion as provided in Rule 17.4 *Majority Vote by Three City Council Members Required*.

Any Council Member may, before the "Nays" are called for, demand that a roll call vote be taken on the motion before the City Council. The Mayor's name shall be called last with other Council Members' names called in alphabetical order by the City Clerk. Council Members shall not give explanations for their vote during roll call.

If a motion does not receive the necessary majority vote for passage, the Mayor may solicit additional discussion and another motion for further deliberation and voting. If further discussion and deliberation does not result in a motion receiving a majority vote necessary to pass a motion, the Mayor may declare that "no action has been taken" and proceed with the remainder of the agenda. In the event of a tie vote, the procedures in section 15.2 *Tie Votes*, shall control.

If a Council Member is present at the meeting but abstains from voting on a motion or is silent during the vote on the motion, then the rules in section 15.3 *Abstentions and Silence* shall govern how the Council Member's silence or abstention is tabulated.

15.2 Tie Votes

Generally, a motion fails if there is a tie vote. After a tie vote, the Mayor may solicit additional discussion and another motion in an attempt to break the tie. If the tie vote occurs during a Council Member absence, and the absent Council Member does not have a conflict of interest related to the item being voted on, the City Council may continue the item to a subsequent City Council meeting when the absent Council Member is expected to be present in an effort to resolve the tie. If the tie vote is not resolved, the motion shall fail and the Mayor may declare that "no action has been taken" and proceed with the remainder of the agenda. However, if a decision is legally compelled under state law (such as the Permit Streamlining Act), the tie vote shall constitute a denial of the application, project, or appeal before the City Council and the decision shall be considered final.

15.3 Abstentions and Silence

The City Council discourages abstentions since abstentions without legal conflict may impede the City Council's actions, for example by causing a tie vote. Abstentions also deprive Livermore residents of one vote of five and may diminish accountability of Council Members on items of legitimate concern. At the same time, it is not the City Council's intention to impede any individual Council Member's right to choose not to speak or vote on an item.

If any Council Member wishes to abstain from voting on a motion, the Council Member must announce the abstention when the item of business is first called for consideration and must not participate in the consideration of the item, in which case the minutes will reflect that the Council Member abstained from the vote.

If the Council Member does not announce an abstention when the item of business is first called for consideration, or the Council Member participates in the consideration of the item, and the Council Member's abstains during the vote, then that Council Member's vote shall be tabulated in favor of the motion.

Silence of any Council Member shall be tabulated along with the majority of the votes cast by the Council Members present and voting on the motion since the silent Council Member is conceding to the majority's wishes.

This rule is intended to expressly modify *Rosenberg's Rues of Order* for counting votes with regard to abstentions and silence by a Council Member.

15.4 Protests

Any Council Member shall have the right to enter into public record reasons for dissent or protests against any motion carried by the majority.

16. Advisory Bodies

16.1 Implementation of Municipal Code

16.1.1 Creation and Appointments

The City Council may create boards, commissions, or committees, herein after collectively referred to as City advisory bodies, to advise the City Council. [LMC Title 2].

16.1.2 Appointments

The Mayor has the statutory authority, with the City ~~Council shall~~ Council's approval, to make all appointments to ~~the City's~~regional bodies that require an appointment from the City of Livermore and to City advisory bodies~~, except as noted in the Livermore Municipal Code.~~ [40605; LMC 2.04.020; 81 Cal.Ops.~~Cal.~~Atty.Gen. 75]. It is recommended that newly formed advisory bodies are limited to no more than 8 members due to the capacity of the recording system in the Mendenhall Room.

16.1.3 Eligibility of City Employees

While City employees are not precluded from serving on ~~citizen~~advisory boards, commissions, and committees, there is a potential for conflict. The City Council and any subcommittees to the City Council shall not make appointments that are potentially incompatible with City employment for any reason. For example, an appointment will be incompatible with City employment if:

a. An act of the ~~citizen~~advisory board, commission, or committee may later be subject directly to the control, inspection, review, audit, or enforcement of any other City officer or employee.

b. The time demands of the ~~citizen~~advisory board, commission, or committee would render performance of duties as a City employee less efficient.

16.1.4 Interviews of Members Eligible for Reappointment

The Mayor has the statutory authority, with the City Council's approval, to make all appointments to City advisory bodies. *[40605; LMC 2.04.020; 81 Cal.Ops.Atty.Gen. 75]* The purpose of the standing City Council subcommittee identified in this section is to interview candidates who apply for a City advisory body and to then recommend candidates to the Mayor for appointment, with the City Council's approval.

Members of City boards, commissions, and committees who are eligible for and interested in reappointment shall be interviewed by the standing City Council subcommittee, along with any other applicants for the position. Membership on this standing City Council subcommittee shall rotate among the Council Members who

will be appointed for staggered terms, if possible, to ensure that at least one Council Member has prior experience on the subcommittee. Based upon those interviews, the standing City Council subcommittee shall recommend a nominee for appointment by the ~~full~~Mayor, with the City ~~Council~~Council's approval. However, the entire City Council will interview Planning Commission applicants (including incumbents); and the Livermore Area Youth Advisory Commission incumbents do not need to be interviewed to be considered for reappointment.

16.2 Direction to ~~Citizen~~Advisory Boards, Commissions, and Committees

Within the scope of their duties and responsibilities established in Title 2 of the Livermore Municipal Code, or otherwise by the City Council, the boards, commissions, or committees, and standing City Council subcommittees (collectively referred to as "advisory bodies" or "advisory body" for the purposes of this subsection) created by the City Council are directed to:

1. Conform their respective rules of procedures to follow these rules of procedure for their meetings, with appropriate modifications to account for their individual structure including the number of members for the advisory body, the titles for their presiding officer and members, consistent with the restrictions set forth in subsection 3 below;

2. Follow *Rosenberg's Rules of Order* for parliamentary procedure as modified by these rules of procedure;

3. Conform their respective meeting rules to these rules of procedure to reflect the following restrictions directed by the City Council:
    a. Advisory bodies shall not meet through electronic means;
    b. Advisory bodies may ~~form~~create ad hoc committees, but shall not ~~form~~create standing committees without prior City Council approval;
    c. The staff liaison for each advisory body, with ~~input~~approval from the City Clerk, shall determine the preferred method of ~~-~~preparing ~~the~~action minutes for their advisory body meetings, with the exception of Planning Commission who will work with the City Clerk to determine the preferred method of preparing summary minutes for their advisory body minutes;
    d. Staff attendance and agenda development will be determined by the staff liaison for the advisory body, or as directed by the City Council;
    e. The City Clerk shall determine agenda format, software, and language for all advisory body meetings to ensure consistency and compliance with applicable laws and regulations;
    ~~e.~~f. Each advisory body, with input from the City Clerk and consistent with the uniform format provided by the City Clerk, may establish their own rules to specify the method to request, and the speaker time limits, for ~~citizens~~the public addressing the advisory body, but the advisory body must then administer them uniformly; ~~and,~~

g. The advisory body liaison, City Attorney or designee, and City Clerk must approve all advisory body agendas, notices, and cancellations; and,

~~f.~~h. Section 17 *Document Preparation and Approval* do not apply to advisory body agendas.

4. Coordinate with their assigned staff liaison and the liaison's Department Head to obtain the City Council's approval before beginning any self-initiated project that will require more than 8 hours of staff time to complete that year. However, advisory bodies may pursue self-initiated projects that can be accomplished utilizing the City resources currently allocated to the particular advisory body and that do not take resources away from that advisory body's anticipated work to fulfill its duties and responsibilities to the City Council.

16.3 Annual Reporting

1. Each of the following advisory bodies shall annually appoint one of their members to present a brief verbal update to the City Council describing that particular advisory body's activities for the past year:

   Airport Commission
   Beautification Committee
   Commission for the Arts
   Historic Preservation Commission
   Human Services Commission
   Library Board of Trustees
   Livermore Area Youth Advisory Commission.

2. Other advisory bodies may provide updates to the City Council as necessary or as directed by the City Council.

3. The City Clerk shall schedule the annual advisory body presentations and updates to the City Council in coordination with the staff liaisons to the advisory bodies.

17. Document Preparation and Approval for an Agenda

17.1 Ordinances

No ordinance shall be prepared for presentation to the City Council unless ordered by a majority vote of the City Council, prepared by the City Attorney on his or her own initiative, or recommended by the City Manager and developed with the City Attorney's assistance. [36936; LMC 1.08.060.E and 2.12.030.A.1.d].

17.2 City Attorney Approval as to Form

All ordinances, resolutions, and contracts shall be approved as to form by the City Attorney, or his or her attorney designee, before being placed on the agenda. [LMC 2.12.030.A.1.d]. If the City Manager finds it necessary or expedient to place a contract on a City Council agenda for authority to execute it, but the contract is not yet in final form or has not been signed by the other parties, the City Council shall condition its authorization to execute the contract on the final contract being in substantially the same form as the one presented for the City Council's consideration with such changes as may directed by the City Council, and upon the City Attorney's approval of the final contract as to form. If the contract is substantially changed or is not approved as to form by the City Attorney, then the contract must be placed on a subsequent agenda for the City Council's consideration.

17.3 Ordinance Introduction/Adoption

The City Council hereby establishes and directs that reading the title of a proposed ordinance will be considered to constitute a full reading of the ordinance, unless a majority of the City Council present asks for a full reading. [36934].

17.4 Majority Vote by Three Council Members Required

An affirmative vote of at least three members of the City Council shall be necessary to adopt an ordinance and a resolution, and to approve a contract for the expenditure of funds. An urgency (emergency) ordinance must be adopted by at least four members of the City Council. [36936, 54954.2, 54956, 54956.5].

17.5 Ordinance Preservation

Following adoption of an ordinance, the City Clerk will assign a number to the ordinance, publish a summary, and post the full text according to law. The ordinance shall be filed and preserved in the City Clerk's Office.

17.6 Consent Calendar, Public Hearing, or Matters for Consideration

Ordinances not requiring a public hearing may be presented to the City Council for introduction and adoption on either the consent calendar or matters for consideration portion of the agenda. The City Attorney shall determine the placement of an ordinance on a City Council agenda in consultation with the Mayor and City Manager, or as directed by the City Council.

18. City Council Norms and Values

The City Council has also adopted *City Council Norms and Values* that guide their interactions among each other.

19. City Council Expectations for Brown Act Compliance

The City Council has established an expectation that Council Members will not utilize electronic devices to communicate with themselves, the public, or anyone else during a City Council meeting on substantive matters related to City business. In addition, they have established an expectation that they will not maintain a social media presence as a Council Member, except on the City's official website, with the understanding that personal campaign activities are not official Council Member activities. They have also established an expectation that they will use their official City email address when communicating electronically about matters related to City business. [*San Jose v. Superior Court [Smith], 2 Cal.5th 608].* The City Council also directs staff to prepare formal policies to guide their utilization of electronic communications.

City Council Norms, Values, and Principles of Governance

COUNCIL NORMS

Demonstrate Respect
The City Council shows respect and compassion for community, staff, and other members of the City Council in all situations, including those involving disagreement and difference. We focus on forward thinking, while building on history and lessons learned from the past. We avoid responding to perceived derogatory or repugnant public comments during City Council meetings. Out of respect to each other, staff, and members of the public, we avoid using cell phones and other communication devices during City Council and other public meetings where we preside.

Take Responsibility
We are accountable to the community, staff, and to each other for our actions and words. We hold ourselves to the highest ethical standards. We act with integrity and lead by example.

Encourage Civic Engagement
We value and encourage the input of others, and challenge ideas not individuals in our role as policy makers. We recognize the importance of input from various groups and seek to actively engage the community.

Show Appreciation
When appropriate, we recognize and show genuine appreciation for the hard work and accomplishments of staff, advisory body members, community organizations, members of the public and fellow City Council members.

Maintain Transparent Communication
We strive to maintain transparent communication, in meetings and through online and written correspondence.

COUNCIL VALUES

Trust
We value and foster trust and honesty among staff and one another. We listen to others and seek to create an environment of mutual support.

Honest and Effective Communication
We commit to direct, respectful communication to seek a shared understanding. We value diversity of thought and will engage in open dialogue with each other and the public.

Data Driven Decision Making
We seek to make data driven policy decisions. Our findings will rely on fact-based evidence, not unvalidated assumptions.

Teamwork
We work as a team to create effective policy, focusing on the best outcomes for the community, as a whole.

Enthusiasm and Effort
We have a genuine enthusiasm for our role as policy makers and community leaders. We come to meetings well prepared and ready for robust discussion.

PRINCIPLES OF GOVERNANCE

The City Council will govern on an at-large basis to address the needs of the entire community. Resources will be allocated based on community-wide priorities. To ensure a community-wide focus, City Council members and residents may communicate directly regardless of the district the Council member represents or the district where the community member lives.

Council-Staff Relations
Council and staff work in partnership to achieve our goals. Consistent with Livermore's Council-Manager form of local government, the City Manager plays a central role in directing and ~~mediating~~facilitating Council-staff relations. Typically, Council members are expected to engage only with Department Directors and other executive staff, ~~not lower-level staff,~~ and to do so under the direction of the City Manager. Similarly, Council members are expected to engage with City Attorney staff only with the consent of the City Attorney. Trust and effective communication are key to ensure a productive partnership.

Council Responsibility
The primary role of the City Council is to act as policy makers and to govern the activities of the City of Livermore. We strive to understand and reflect the entire community's values and needs. To achieve this, we serve as an oversight body and provide clear policy direction to staff and follow ~~up/follow~~ through with the community. We recognize our responsibility of making sound financial decisions that enhance the quality of life for Livermore residents.

Council members are encouraged to seek information and advice from the City Manager and City Attorney as part of their due diligence when forming their own opinions and developing their courses of action on issues. The Council recognizes that staff time is a limited resource and that in some cases complying with Council direction may require substantial staff time. In such cases staff will inform Council if their direction cannot be absorbed and that reprioritization of other tasks may be necessary. Before requesting an item under Matters Initiated, a City Council member is expected to ask the City Manager if there is adequate staff resource capacity needed to address the requested item.

Staff Responsibility

It is the responsibility of staff, under the direction of the City Manager, to support the City Council and implement policies created by the Council. The City Manager is critical in helping to translate the policy direction for staff, and to ensure that there is sufficient clarity and context. The City Manager and staff shall not take any action requested by an individual Council Member even when that action is consistent with Council priorities.

To effectively support Council, staff will provide timely and complete information needed to make sound policy decisions. Reports and recommendations will be comprehensive and contain explicit and clear information including all facts. Staff will include options or alternatives when appropriate. Additionally, staff is expected to provide guidance and advice to Council, ensuring that they are complying with rules and procedures, and adhering to norms and values.

City Attorney Responsibility
It is the responsibility of the City Attorney, as the chief legal advisor of and attorney for the City and all its departments and office, to provide legal oversight of the City's governance, operation and public policy. The City Attorney provides legal advice and counseling to the City Council as a body and takes direction from a majority of the City Council. The City Attorney shall not take any action requested by an individual Council Member contrary to the desires of the City that have been expressed by a majority of the City Council. The City Attorney counsels and advises the City Council, City Manager, and staff of policy matters to help them make well informed decisions but does not create policy other than through the Risk Management Division's functions. The City Attorney advocates for the City and upholds the integrity of the City's ordinances, regulations, and policies.

As the advisor and advocate for the City, the City Attorney owes two duties directly to the public: to act as a check on governmental action in certain limited circumstances, and to accurately advise the public when called upon to do so. In addition, the City Attorney is a constitutional officer that has direct authority to take certain actions independent of direction from the City Council and must also fulfill the rules of professional responsibility as an attorney and as a government attorney.

Council- Advisory Body Relations
The City Council has created boards, commissions, and committees to advise the City Council. Advisory body members are appointed by and serve at the pleasure of the City Council. We recognize and value the role of advisory bodies to reflect the entire community through their recommendations to inform our policy decisions.

City Council Meeting Rules of Procedure

In addition, the City Council is also governed by City Council Meeting Rules of Procedure.

LIVERMORE
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CITY COUNCIL STAFF REPORT **ITEM NO. 10.1**

DATE: October 24, 2022

TO: Honorable Mayor and City Council

FROM: Tina Olson, Administrative Services Director

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.

3.2	Beautification Committee annual update presented by Vice Chair, Mark Goralka Material: PowerPoint Presentation
3.3	Presentation of the 2022 Beautification Awards Material PowerPoint Presentation
6.1	Adoption of an ordinance amending and revising the Building Code, Property Maintenance Code, Fire Code, Electrical Code, Mechanical Code, Plumbing Code, Residential Code, and the Green Building Standards Codes in the City's Municipal Code, to adopt by reference and amend the 2022 California Building Standards Code and the codes set forth therein Material: PowerPoint Presentation, Received Public Comment
6.2	Hearing to consider approving an Amended and Restated Disposition and Development Agreement with Red Bear Property Management, Inc. for development of downtown commercial uses, authorizing the City Manager to execute the agreement and all other necessary documents to implement that agreement, and to conform the Stockmen's Park easement to this project and others on the park site Material: PowerPoint Presentation, Counterpart-Signed Agreement
7.1	Update on the FY 2021-23 City Council Goals and Priorities and Equity and Inclusion workplan Material: PowerPoint Presentation

7.2	Discussion and direction regarding Livermore Development Code Chapter 4.06 Sign Standards for Temporary Signs Material: PowerPoint Presentation
7.3	Discussion and direction on the City Council Subcommittee's recommended revisions to the City Council's Rules of Procedure and the City Council's Norms, Values and Principles of Governance Material: PowerPoint Presentation
8.0	Council Committee Reports and Matters Initiated by City Manager, City Attorney, Staff, and Council Members Material: Council Reports

DISCUSSION

ATTACHMENTS

1. Supplemental Material.pdf

Prepared by: Clay James
Assistant City Clerk

Approved by:

Marianna Marysheva
City Manager

Fiscal Review by:

Tina Olson
Administrative Services Director



Beautification Committee Annual Update

October 24, 2022

Presented by Vice Chair Mark Goralka

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2022 Accomplishments

- Awarded four 2021 Beautification Committee Awards
- Presided over Abor Day 2022
- Conducted outreach at farmers market
- Presided over a denied tree removal permit appeal
- Participated in the Springtown Preserve Bioblitz
- Created a field guide of Livermore birds

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3



Presentation of the 2022 Beautification Awards

October 24, 2022

Presented by Joe Prime, Public Works Supervisor

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Beautification Committee Awards

- Improve curbside appeal
- Recognize drought tolerant landscape renovations
- Promote creativity and community pride
- Encourage citizen participation in beautifying Livermore

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Beautification Committee Awards

1824 Galaxy Court





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3

Beautification Committee Awards

3027 Chateau Way





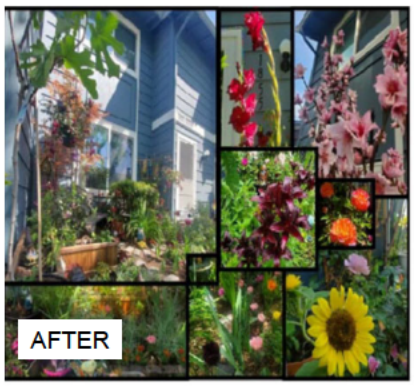
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Beautification Committee Awards

1855 Monterey Drive



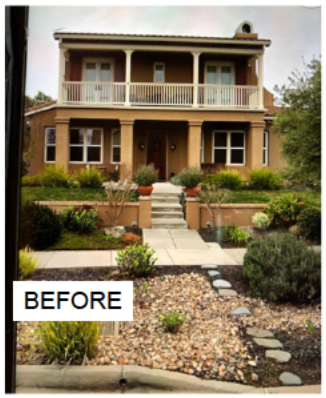


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Beautification Committee Awards

3002 Bertolli Drive





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6

Beautification Committee Awards

3032 Lagiss Drive





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Congratulations to the winners

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Building Code Adoption

Presented by

Franc Moufarrej, Chief Building Official

and

Tricia Pontau, Senior Planner

October 24, 2022

LIVERMORE CALIFORNIA

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Building Standards Law
California Building Standards Commission

- Building Codes are in CA Code of Regulations Title 24
- Health and Safety Code mandates:
  - ❑ CA Building Standards Commission adopt and publish Title 24
  - ❑ Code Applies to all building occupancies in California.
  - ❑ Code must be enforced by local governments (Code by default)
- Local governments can amend based on climatic, topographical, geological, and environmental conditions
- Local ordinances making amendments to Title 24 are neither effective nor operative until filed

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2

Life Safety & Environment

- Code changes focus on fire life safety and environmental protection
  - Fire sprinklers in all new buildings
  - Minimum Class B roofing material
  - Prohibit under slab plumbing
  - All electrical in new buildings
  - Electrical Vehicle Chargers

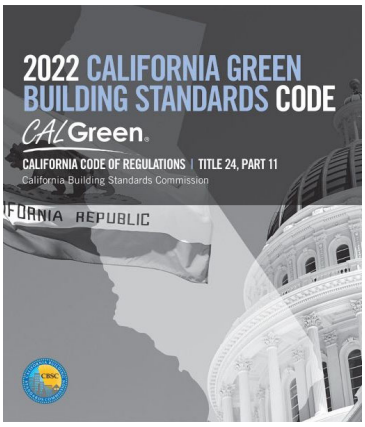


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2022 CALGreen Amendments

- **Reach Codes** – local requirements that are more stringent than State building code requirements
- Effective and flexible tool to implement local energy and climate policies
  - Energy efficiency, building electrification, electric vehicle (EV) charging, solar photovoltaics
- July 16, 2021 – City Council directed staff to pursue Reach codes for all-electric buildings and EV charging in new construction
- Developed in coordination with East Bay Community Energy and the Cities of Dublin and Pleasanton



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New Buildings All-Electric

- Requires most new buildings in Livermore to be constructed without natural gas or other fossil fuels
- Reach code does not apply to additions or renovations to existing buildings






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Electric Vehicle Charging

- Additional EV charging in new buildings
- One and two family:
  - 2 level 2 EV ready spaces
- Multi-family:
  - 15% level 2 EV charging stations
  - 85% level2 EV ready spaces
- Office:
  - 20% level 2 charging stations
  - 30% level 2 EV capable
- Hotels:
  - 5% level 2 Charging stations
  - 25% level2 EV ready spaces
  - 10% level 2EV capable spaces
- All other:
  - 10% level 2 EV charging stations
  - 10% level 2 EV capable spaces



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Recommendations

- Staff recommends adopting the 2022 California Code as revised and amended by Livermore Community Development Department and Livermore Pleasanton Fire department

7

Questions

LIVERMORE CALIFORNIA

8

What Powers You

October 19, 2022

The Honorable Bob Carling
City of Livermore
1052 S Livermore Ave
Livermore, CA 94550

RE: City of Livermore Building Electrification Reach Code

Dear Councilmember Carling,

Bloom Energy is pleased to provide comments on the proposed reach codes for building electrification. We would appreciate the opportunity to work with the City of Livermore (City) to help identify pathways to decarbonize the building sector. Bloom Energy hopes that these comments are helpful and would be happy to provide additional information as needed.

Bloom Energy is a leading clean energy company headquartered and with manufacturing facilities in the Bay Area. Bloom Energy Servers are a distributed energy resource that deliver reliable, uninterrupted power. Using solid oxide fuel cell technology, Bloom Servers convert natural gas, biogas, or hydrogen into electricity at a high efficiency and without combustion, significantly reducing environmental impacts. Utilizing the same solid oxide technology, Bloom Electrolyzers can be paired with renewable energy sources to create clean, low-cost hydrogen at industry-leading efficiency.

City staff recommends the adoption of a reach code through Part 11, Title 24 of the California Green Building Standards Code that would require newly constructed buildings to be built all-electric. The proposed reach code defines All-Electric Building and Combustion Equipment as follows:

- **ALL-ELECTRIC BUILDING**. A building that contains no combustion equipment or plumbing for combustion equipment serving space heating (including fireplaces), water heating (including pools and spas), cooking appliances (including barbeques),

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and clothes drying, within the building or building property lines, and instead uses electric heating appliances for service.

- **COMBUSTION EQUIPMENT**. Any equipment or appliance used for space heating, water heating, cooking, clothes drying and/or lighting that uses fuel gas.

We support building decarbonization and believe that successful decarbonization strategies are carefully structured to avoid the inadvertent consequences in the form of increased local air pollution and a lack of feasible options for energy reliability. In this letter we will briefly discuss some of the limitations of the proposed definitions of "all-electric building" and "combustion equipment" as currently written. We will also suggest minor changes to the proposed definitions will allow clean energy technologies such as fuel cells to directly support building electrification by providing electricity on site to power end uses for commercial and industrial users.

Limitations include (1) the potential to drive a significant increase in the deployment and use of diesel back-up generators, (2) precluding the use of alternative solutions that could reduce carbon emissions, eliminate emissions of harmful air pollutants, and provide resiliency through extended grid outages. These limitations also obstruct the City's ability to reach key goals of increasing microgrid deployment and exploring the use of renewable fuels as outlined in Livermore's Draft Climate Action Plan.

1. Building electrification reach codes should safeguard against a de facto monopoly for back up diesel generators, as can be the case when a full moratorium on natural gas infrastructure, including uses outside of the building, is enacted. Diesel generators release harmful air pollutants and are also source of greenhouse gas emissions.[1]

   Even as we are transitioning to a carbon neutral energy future, the population of diesel generators in California is growing due to an aging grid, increased extreme weather events, and the intermittent nature of wind and solar. In fact, the diesel generator population in Livermore increased by 15 percent between December 2018 and June

[1] M.Cubed, 2021. *Diesel Back-Up Generator Population Grows Rapidly in the Bay Area and Southern California*.p. p. 7.

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2020.[2] In June 2020, back-up diesel generators in the City had a total capacity of 53.6 MW.

As Livermore's Draft Climate Action Plan Section 3.2 and the City's Vulnerability Analysis states, expanding microgrid deployment is a key strategy to enhance energy resilience (40 and Appendix B 27).[3][4]Allowing resilient, clean fuel microgrids to utilize the existing natural gas infrastructure outside of the building can displace diesel generators and keep the power on, without diesel's harmful environmental and public health impacts.

2. Replacing gas appliances with electric appliances in addition to encouraging the switch to electric vehicles will lead to the increased demand for energy generation.[5] Despite this challenge, electrifying end use gas appliances is critical for improving indoor air quality and safety. Non-combustion energy solutions such as fuel cells connected to the decarbonized gas system can provide clean power to these end uses and meet the resulting increased demand.

   Priority Area 4 Action B-2.5 of the City's Draft Climate Action Plan outlines the City's goal of exploring opportunities to utilize biogas from the City's water treatment facility and expand the use of hydrogen fuels.[6] Slight modifications to the definitions in the Livermore's Reach Code would allow the City to work towards this goal more effectively.

   A biogas powered fuel cell could result in even lower GHG emissions than a non-emitting technology. Biogas powered non-combustion fuel cells can significantly reduce emissions by converting the methane, a potent GHG that would otherwise be released into the atmosphere, in biogas into CO2 by way of generating electricity.

[2] Ibid, p. 17.
[3] Livermore 2022 Climate Action Plan, Public Review Draft, October 2022, p. 40.
[4] Ibid, Appendix B p.27.
[5] NREL, July 2018. "NREL Analysis Explores Demand-Side Impacts of a Highly Electrified Future."
[6] Livermore 2022 Climate Action Plan, Public Review Draft, October 2022, p. 86.

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Because they provide reliability at a rate of 95%, they offset far more grid power than intermittent resources.[7]

As mentioned, minor modifications to the definitions would also position the City to support the use of clean hydrogen, a zero-carbon fuel that is widely seen as a critical tool in achieving a net-zero energy transition. Technologies like fuel cells can electrify buildings by using market based approaches, like directed hydrogen, to leverage existing infrastructure to generate onsite electricity as California's green hydrogen economy develops.[8]

As the City considers the best way to support electrification, we want you to be aware that fuel cells are an important part of this equation.

The issues outlined above could be addressed by minor edits to the definitions of "all-electric building" and "combustion equipment" as shown in redlined text below:

- **ALL-ELECTRIC BUILDING**. A building that contains no combustion equipment or plumbing for combustion equipment serving space heating (including fireplaces), water heating (including pools and spas), cooking appliances (including barbeques), and clothes drying, within the building ~~or building property lines~~, and instead uses electric heating appliances for service.
- **COMBUSTION EQUIPMENT**. Any equipment or appliance used for space heating, water heating, cooking, clothes drying and/or lighting that combusts ~~uses~~ fuel gas.
- **FUEL GAS.** A gas that is natural, manufactured, liquefied petroleum, or a mixture of these.

Thank you for the chance to provide input on Livermore's building electrification reach code. We believe sound policies that support building decarbonization and ensure energy reliability are key to the successful implementation of the goals of reducing greenhouse gas emissions and promoting resiliency. Please see us as an information resource as well as a technology provider and feel free to contact us with any questions.

[7] American Biogas Council, "Why Biogas"
[8] California Public Utilities Commission, Hydrogen Blending Impacts Study Final Report

Bloom Energy Corporation
4353 North First Street, San Jose, CA 95134
408 543 1500
www.bloomenergy.com

What Powers You

Best Regards,

Manaal Shafi

Government & Community Relations Coordinator

CC:
Mayor Bob Woerner
Vice Mayor Bonanno
Councilmember Brittni Kiick
Councilmember Trish Munro
Tricia Pontau, Livermore City Planner
Francois Mouffarrej, Chief Building Official
Marie Weber, City Clerk

Bloom Energy Corporation
4353 North First Street, San Jose, CA 95134
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www.bloomenergy.com

LIVERMORE
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Amended Disposition and Development Agreement for the Downtown Commercial Sites

City Council

October 24, 2022

Presented by Steve Stewart, Planning Manager

1

Project Location



LIVERMORE
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2

Disposition & Development Agreement

- Sale of the City-owned sites to Red Bear
- Construction and operation of 12,850 square feet of commercial retail space
- Building design that is compatible with Blacksmith Square and actively interfaces with Stockmen's Park
- Contributions to Stockmen's Park maintenance
- Public restrooms
- Schedule of performance

LIVERMORE CALIFORNIA

3

Recommendation

Staff recommends the City Council adopt resolutions and direct the following:

1. Finding that the Amended and Restated Disposition and Development Agreement with Red Bear Property Management, Inc., is within the scope of the 2004 Downtown Specific Plan Environmental Impact Report and the 2009 Downtown Specific Plan Subsequent Environmental Impact Report and subsequent addendums adopted by City Council, and determining that the properties are exempt from the Surplus Land Act, and

2. Adopt a resolution authorizing the City Manager to execute the Disposition and Development Agreement and all other necessary documents to implement that agreement and to conform the Stockmen's Park easement to this project and other projects on the park site.

LIVERMORE CALIFORNIA

4

AMENDED AND RESTATED DISPOSITION AND DEVELOPMENT AGREEMENT

by and between

CITY OF LIVERMORE

and

RED BEAR PROPERTY MANAGEMENT, Inc.

Retail/Commercial Project
Blacksmith Square, Stockmen's Park
Downtown Livermore

(Resolution Number _____)

Prior Agreements:

1. Disposition and Development Agreement, dated May 30, 2019, approved by City Council Resolution No. 2018-185.

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AMENDED AND RESTATED DISPOSITION AND DEVELOPMENT AGREEMENT

THIS AMENDED AND RESTATED DISPOSITION AND DEVELOPMENT AGREEMENT (this "Agreement") is made as of October __, 2022, by and between the City of Livermore, a municipal corporation ("City"), and Red Bear Property Management, Inc., a California corporation ("Developer"), (each of City and Developer is a "Party," and collectively they are the "Parties") with reference to the following facts, purposes, and understandings.

RECITALS

A. These Recitals refer to and utilize certain capitalized terms that are defined within this Agreement.

B. The City is the owner of a certain parcels of property that are approximately 5.5 acres, bounded by Railroad Avenue, Livermore Avenue, First Street, and L Street, and that is commonly referred to as the "Livermore Village Site."

C. On January 30, 2018, the City Council approved the Downtown Plan, a copy of which is attached hereto as Exhibit A, that provides for, among other things, the development of the Livermore Village Site. The Downtown Plan contemplates a public park with provisions for a science center, a black box theater, and retail space within the park area of the Livermore Village Site.

D. On January 30, 2018, the City Council granted a park easement to the Livermore Stockmen's Rodeo Association (recorded in the Official Records on April 18, 2018 as County Recorder number 2018076967) and amended said easement on June 6, 2022 (recorded in the Official Records on June 23, 2022 as County Record number 2022116128) ("Park Easement"), a copy of which is attached hereto as Exhibit B.

E. The Park Easement is subject to the terms and conditions set forth in the specific agreement between the City and the Livermore Stockmen's Rodeo Association titled *Third Amendment to Agreement for the Development of the Rodeo Grounds and Sunken Garden Area as a Civic Center and Parks and Recreation Area ("LSRA Agreement") Dated June 6, 2022 that was first amended January 30, 2018, and amended a second time September 27, 2019,* a copy of which is attached hereto as Exhibit C.

F. The Park Easement designates commercial use areas within the Easement identified as commercial use areas A, B, C, and D in Exhibit B. The commercial use areas A, B, C, and D, are collectively referred to in this Agreement as the "Commercial Property," the plat map and legal description for which from the Park Easement is attached as Exhibit D.

G. The LSRA Agreement states that the purpose of the Park Easement is to ensure, among other things, the Livermore Stockmen's Rodeo Association will have input on the development of the Commercial Property adjacent to Stockmen's Park to ensure its development integrates with the park area in an appealing manner and to ensure that its development does not overshadow the park and its memorial. The LSRA Agreement and Park Easement contemplate and allow for the City transfer of the Property to a third party.

H. The City is the owner of the City-owned parcels located on the southwest corner of South Livermore Avenue and Railroad Avenue in downtown Livermore (APNs: 098-0289-22, 098-0289-028, 098-0289-29, Veterans Way, and APNs: 098-0289-023 through 27), that are within the Park Easement granted to the Livermore Stockmen's Rodeo Association.

I. The Commercial Property areas to be conveyed from the City to the Developer ("Property") consisting of Parcel 5 of Tract Map 8574, recorded on December 23, 2020, in Book 365 of Maps at Pages 15-19 of Official County Records and Parcel C of Parcel Map 11239 recorded May 24, 2022 in Book 354 of Maps at Pages 95-97 of Official County Records., as more particularly described in Exhibit D attached to this Agreement.

J. On April 27, 2019, the City circulated a request seeking qualifications from developers interested in designing and constructing commercial retail uses on the Property to implement the Downtown Plan.

K. On June 18, 2018, the City selected the Developer for the disposition of the Property for its development to implement the Downtown Plan consistent with the Livermore General Plan, the Downtown Specific Plan, the Livermore Development Code, the Livermore Municipal Code, City design standards and guidelines, and other City guidelines, standards, and requirements for development (collectively "City Regulations").

L. On June 18, 2018, the City Council adopted resolution no. 2018-088 authorizing the City Manager to execute for the City, an Exclusive Negotiating Rights Agreement with Developer to negotiate this Agreement to:

- Maximize land use of the Property consistent with the Downtown Specific Plan and the goals articulated by the City Council upon its selection of Developer to negotiate for this Agreement;
- Develop the Property in a timely and efficient manner; and,
- Construct the development On the Property consistent with any City entitlements and requirements for the project, including the Downtown Specific Plan.

M. On October 22, 2018, the City Council adopted resolution no. 2018-185 authorizing execution of a Disposition and Development Agreement between the City of Livermore and Red Bear Property Management for the disposition of City owned parcels and development of downtown commercial property and authorizing the City Manager to execute a Disposition and Development Agreement and other documents necessary to effectuate the purposes of the that agreement. The City and Red Bear Property Management executed that agreement dated May 30, 2019, ("Original Disposition and Development Agreement"). The Original Disposition and Development Agreement included the following provisions for the sale of the property and development of the commercial project:

- Construction and operation of 8,600 square feet of commercial retail space on approximately 12,938 square feet of the Property;

- Building design that is compatible with Blacksmith Square and actively interfaces with Stockmen's Park;
- Contributions to Stockmen's Park maintenance;
- Public restrooms; and
- Schedule of Performance

N. Now, based on further analysis of the site development options, the Developer desires to develop the Property with the following considerations:

- Construct approximately 12,834 square feet of commercial retail space on approximately 24,790 square feet of the Property;
- Utilize architecture and design elements compatible with Blacksmith Square;
- Configure building walls for the commercial buildings adjacent to the Stockmen's Park so that they are oriented toward Stockmen's Park and designed to incorporate window and door openings so tenant spaces actively interface with Stockmen's Park;
- Revised Schedule of Performance; and,
- Construct public improvements related to the Improvements consisting of: frontage improvements, public art, public access to Stockmen's Park to and from Railroad Avenue and South Livermore Avenue, and public restrooms incorporated into the project.

O. The Developer also proposes to participate in the formation of, or annexation of the Property into, a community facilities district, or other assessment district, formed to fund the maintenance of Stockmen's Park and other designated downtown public facilities

P. The City desires to sell to the Developer the Property depicted and described in Exhibit D, and Developer desires to acquire said Property from the City, upon the terms and conditions set forth in this Agreement, and the City and Developer desire to amend and restate the Original Disposition and Development Agreement for that purpose.

Q. The City has determined that the Developer has the necessary expertise, skill, and ability to carry out the commitments contained in this Agreement.

R. Pursuant to CEQA, the City (in its capacity as "lead agency") has prepared, reviewed, and certified the Addendum to the 2009 Subsequent Environmental Impact Report, Subsequent Environmental Impact Report dated March 2009, and Downtown Specific Plan Environmental Impact Report dated February 9, 2004.

S. The Parties wish to clarify the scope of the City's present and future responsibilities and obligations with respect to Contamination (as hereafter defined) at, on, in, under or entering onto or emanating from the Property.

NOW, THEREFORE, the City and the Developer agree that the aforementioned recitals are true and correct, and further agree as follows:

ARTICLE 1.
DEFINITIONS

Section 1.1 Definitions. In addition to the terms defined elsewhere in this Agreement, the following capitalized words shall have the following meanings:

(a) "Affiliate" shall mean any Person which directly or indirectly through one or more intermediaries, Controls, or is Controlled by, or is under common Control with, the Developer.

(b) "Agreement" shall mean this Amended and Restated Disposition and Development Agreement.

(c) "Applicable Law(s)" means laws, regulations, statutes, codes, rules, orders, permits, policies, licenses, certifications, decrees, standards, or interpretations imposed by any Governmental Authority that apply to this Agreement and/or the Property.

(d) "Appurtenances" shall mean all rights, privileges and easements appurtenant to the Property, including, without limitation (to the extent in existence), all minerals, oil, gas, and other hydrocarbon substances on or under the Property, as well as development rights, air rights, riparian rights and water rights which the City may own and which relate to the Property and any rights-of-way or other appurtenances affecting the Property.

(e) "Building Permit" shall mean an excavation, demolition, grading, foundation, or other building permit issued by the City in connection with the construction of the Improvements.

(f) "CEQA" shall mean the California Environmental Quality Act (California Public Resources Code Section 21000 et seq.), and its implementing guidelines.

(g) "Certificate of Occupancy" shall mean that certificate issued by the City to the Developer to allow occupancy of the Improvements.

(h) "CFD" shall mean the community facility district created pursuant to the Mello-Roos Community Facilities Act of 1982.

(i) "City" shall mean the City of Livermore,

(j) "City Event of Default" shall mean any default by the City as more particularly described in Section 10.2.

(k) "City Fees" shall mean the estimated fees listed in Exhibit E, which fees are estimates only and will be finally determined at the issuance of the Building Permit.

(l) "Claim(s)" means any liability, loss, demand, damage, encumbrance, cause of action of any kind, order, subpoena, obligation, cost, royalty, fee, assessment, duty, requirement, charge, penalty, fine, judgment, interest, and award (including recoverable legal counsel fees and cost of litigation of the Person asserting the claim), whether arising by law, contract, tort, voluntary settlement, or in any other manner. For clarity, Claims do not include the initial inability to collect or obtain rent prior to the receipt of the Certificate of Occupancy due to Environmental Conditions, Remediation or Mitigation but do include any delay or inability to collect rent due to Environmental Conditions, Remediation or Mitigation after receipt of the Certificate of Occupancy.

(m) "Close of Escrow" shall have the meaning set forth in Section 3.5.

(n) "Compactor Facility" shall mean a trash facility to be located in close proximity to the L Street Parking Garage.

(o) "Contamination" or "Contaminated" means any Hazardous Materials or any other hazardous or toxic material, substance, chemical or waste, contaminant, emission, discharge or pollutant or comparable material listed, identified or regulated pursuant to any federal, state or local law, ordinance or regulation which has as a purpose the protection of health, safety or the environment, including, but not limited to, trichloroethene ("TCE" and its degradation products such as cis-1,2-dichloroethene and vinyl chloride), perchloroethylene ("PCE" and its degradation products such as TCE, cis-1,2-dichloroethene and vinyl chloride), and other volatile organic compounds ("VOCs"), and/or petroleum or petroleum products or wastes and/or perfluorooctanoic acid (PFOA) and perfluorooctane sulfonic acid (PFOS) substances (including similar and/or related substances), resulting from any cause, release, or source whether located on or off of the Property.

(p) "Control" shall mean (i) direct or indirect management or control of the managing member or members in the case of a limited liability company; (ii) direct or indirect management or control of the managing general partner or general partners in the case of a partnership and (iii) (a) boards of directors that overlap by fifty percent (50%) or more of their directors, or (b) direct or indirect control of a majority of the directors in the case of a corporation.

(q) "Developer" shall mean Red Bear Property Management, Inc., or any transferee of the Developer in accordance with Section 8.4.

(r) "Developer Event of Default" shall mean any default by the Developer as more particularly described in Section 10.3, subject to any applicable notice and cure rights set forth therein.

(s) "Effective Date" shall mean the date which is the later of (i) the date this Agreement is executed by the Developer and (ii) the date this Agreement is approved and executed by the City, which later date of execution shall be written in the first paragraph of this Agreement by City.

(t) "Entitlements" shall mean, collectively, zoning approvals, site plan review, design review, conditional use permit, and any other discretionary approvals required for

construction of the Improvements. For purposes of this Agreement, "Entitlements" do not include demolition, grading, building or other ministerial permits or approvals.

(u) "Environment" means all forms of fauna, flora, soil, natural resources; surface, subsurface, or ground waters; land, ground, surface, or subsurface strata; ambient air; or any other environmental medium, including the indoor environment, contained within, affecting the Property or operations thereon or associated in any way with Environmental Conditions.

(v) "Environmental Condition(s)" means Contamination at, on, in, under or entering onto or emanating from the Property which such Contamination was released (or continues to be released) into the Environment prior to the Close of Escrow (or continues to be released into the Environment from pre-Close of Escrow releases or disposals into utilities or into the Environment). Notwithstanding the foregoing, Environmental Conditions for the purposes of this Agreement do not include Contamination from uses on the Property after Close of Escrow or as between the Parties, such Contamination is proven to originate from property on Blacksmith Square (specifically 21 and 25 S. Livermore Avenue) owned by Developer.

(w) "Environmental Laws" means any Applicable Law relating to pollution; the protection of the Environment; the release, emission, discharge, or disposal of any material or chemical substance; human health or safety; Hazardous Materials; natural resource damage; product registration; hazard communication, each as from time to time has been or may be amended or adopted before or after the Effective Date, including, but not limited to any of the following: (A) the Occupational Safety and Health Act, 29 U.S.C.A. §651, et seq.; the Resource Conservation and Recovery Act, 42 U.S.C.A. §6901, et seq.; the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C.A. §9601, et seq.; the Clean Water Act, 33 U.S.C.A. §1251, et seq.; the Clean Air Act, 42 U.S.C.A. §7401, et seq.; the Safe Drinking Water Act, 42 U.S.C.A. §3001, et seq.; the Toxic Substances Control Act, 15 U.S.C.A. §2601, et seq.; the Oil Pollution Act of 1990, 33 U.S.C.A. §2701, et seq. and (B) the California Underground Storage of Hazardous Substances Act, H & S C §§ 25280, et seq.; the California Hazardous Substances Account Act, H & S C §§ 25300, et seq.; the California Hazardous Waste Control Act, H & S C §§ 25100, et seq.; the California Safe Drinking Water and Toxic Enforcement Act, H & S C §§ 24249.5, et seq.; and the Porter-Cologne Water Quality Act, Wat C §§ 13000, et seq.

(x) "Environmental Obligation(s)" means and includes all of the following, regardless of the sole, joint, or concurrent negligence, breach of contract, breach of warranty, strict liability, regulatory liability, statutory liability, or other fault or responsibility of any Person: (A) Claims and Losses incurred relating to any Environmental Condition; (B) Claims and Losses relating to Mitigation and/or Remediation; (C) Claims and Losses incurred resulting from injury or death to natural Persons caused by the exposure or alleged exposure to Hazardous Materials (including expenses associated with claims investigation, testing, assessment and monitoring); (D) Claims relating to the presence, release, emission, or discharge of Hazardous Materials, pollution, contaminant, or other regulated substances in or into the Environment; (E) Claims, Losses, or any increase in the cost of the Project due to or associated in any way with any delays by City in implementing or paying for any Remediation or Mitigation on or off of the Property; (F) Claims or Losses due to the initial inability to collect or obtain rent or any delay at any time in the ability to collect or obtain rent from the Project, when such inability or delay is associated in any way with Remediation and/or Mitigation. Notwithstanding the foregoing,

Environmental Obligations for the purposes of this Agreement, do not include Contamination from uses on the Property after Close of Escrow or, as between the Parties, such Contamination is proven to originate from property on Blacksmith Square (specifically 21 and 25 S. Livermore Avenue) owned by Developer. Except for the exclusions contained in the prior sentence, the Environmental Conditions do include Contamination on, from, or related to other property owned at any time by the City and/or for which the City in the past, now, or in the future, had, has, or will have any alleged relationship due to the City's ownership of property or as the result of a release by the City. Neither this definition, nor any provision in this Agreement is intended to create a right for a third-party beneficiary.

(y) "Escrow" shall mean the escrow opened with the Escrow Holder to close the transactions described in Article 3.

(z) "Escrow Holder" shall mean escrow company approved by the City and Developer.

(aa) "Final Construction Drawings" shall mean final drawings for the construction of the Improvements used to obtain a Building Permit from the City for the construction of the Improvements.

(bb) "Governmental Authority" means the United States of America, the State of California, the County, the City, and any agency, authority, court, department, commission, board, bureau, or instrumentality of any of them and specifically includes the San Francisco Bay Regional Water Quality Control Board (Regional Board).

(cc) "Grant Deed" shall mean the grant deed by which the City conveys its fee estate in the Property and Appurtenances to the Developer. A form of the Grant Deed is attached to this Agreement as Exhibit F.

(dd) "Hazardous Materials" shall mean:

(1) Those substances included within the definitions of "hazardous substances", "Hazardous Materials", "toxic substances", or "solid waste" in the Comprehensive Environmental Response Compensation and Liability Act of 1980 (42 U.S.C. §§ 9601 et seq.) ("CERCLA"), as amended by Superfund Amendments and Reauthorization Act of 1986 (Pub. L. 99-499 100 Stat. 1613) ("SARA"), the Resource Conservation and Recovery Act of 1976 (42 U.S.C. §§6901 et seq.) ("RCRA"), and the Hazardous Materials Transportation Act, 49 U.S.C. §§ 1801 et seq., and in the regulations promulgated pursuant to said laws, all as amended;

(2) Those substances listed in the United States Department of Transportation Table (49 CFR 172.101 and amendments thereto) or by the Environmental Protection Agency (or any successor agency) as hazardous substances (40 CFR Part 302 and amendments thereto);

(3) Any material, waste or substance which is (A) petroleum, (B) asbestos, (C) polychlorinated biphenyls, (D) designated as a "hazardous substance" pursuant to Section 311 of the Clean Water Act, 33 U.S.C. §§ 1251 et seq. (33 U.S.C. §§1321) or listed

pursuant to Section 307 of the Clean Water Act (33 U.S.C. §§ 1317); (E) flammable explosives; or (F) radioactive materials.

"Hazardous Materials" also includes, but is not limited to, all of the following: (1) a hazardous substance, as defined in Section 25281 or 25316 of the California Health and Safety Code; (2) a hazardous waste, as defined in Section 25117 of the California Health and Safety Code; (3) a waste, as defined in Section 470 of the California Health and Safety Code or as defined in Section 13050 of the California Water Code; and/or (4) any substance or material that is defined or designated as a hazardous waste, material or substance by any other applicable Environmental Laws, including, without limitation, PFAS/PFOS substances (including similar and/or related substances), asbestos, petroleum (including crude oil or any fraction thereof, natural gas, natural gas liquids, liquefied natural gas, or synthetic gas usable for fuel, or any mixture thereof), petroleum-based products and petroleum additives and derived substances, lead-based paint, mold, fungi or bacterial matter, polychlorinated biphenyls, urea formaldehyde, radon gas, radioactive matter, and chemicals which may cause cancer or reproductive toxicity; any toxic or hazardous waste, material or substance or any oil or pesticide listed in, covered by, or regulated pursuant to, any state or local law, ordinance, rule or regulation applicable to the Property, as heretofore or hereafter amended; and, such other substances, materials and wastes which are or become regulated as hazardous or toxic under applicable local, state or federal law, or the United States government, or which are classified as hazardous or toxic under federal, state, or local laws or regulations.

The term "Hazardous Materials" shall not include: construction materials, gardening materials, household products, office supply products or equipment, food service or preparation equipment or materials or janitorial supply products or equipment customarily used in the construction, maintenance, rehabilitation, use, occupancy or management of a commercial property, to the extent which the same are used and stored in accordance with all applicable environmental ordinances and regulations.

(ee) "Hazardous Materials Laws" shall mean environmental and health and safety laws, regulations, ordinances, administrative decisions, common law decisions (whether federal, state, or local) with respect to Hazardous Materials, including those relating to soil and groundwater conditions.

(ff) "Improvements" shall mean collectively the buildings and related works described in Article 4 of this Agreement, and as further defined in the Scope of Development, Project Documents, Entitlements, Final Construction Drawings, and other related permits and approvals for the commercial uses contemplated by this Agreement for the Property's development. For clarity, Improvements include Mitigation.

(gg) "Insurance Requirements" shall mean the insurance requirements for the Developer and its contractors and subcontractors contained in Exhibit G.

(hh) "License Agreement" shall mean that agreement contained in Exhibit K for access between City and Developer (which is assignable by Developer according to its terms) to the Property for work associated with complying with any Environmental Laws or as directed or requested by any Governmental Agency with respect to any Environmental Law or Hazardous

Material Laws or otherwise at the request of Developer all with respect to any matter involving Contamination or an Environmental Condition

(ii) "Loss" means any and all claims, suits, proceedings, actions, demands, liabilities, obligations, damages, penalties, fines, costs and expenses, but expressly excluding any fees and disbursements by and for attorneys, experts and consultants unless incurred by City as a result of any failure by Developer to perform any of its obligations under this Agreement.

(jj) "Memorandum of Amended and Restated Disposition and Development Agreement" shall mean the memorandum of this Agreement, substantially in the form of Exhibit H

(kk) "Mitigation" shall mean any measure, whether active or passive, intended to reduce, positively affect, manage, remove, eliminate, reverse, or prevent vapor intrusion of Contamination into indoor air and includes but is not limited to vapor barriers, soil vapor management systems, HVAC systems/HVAC system modifications, sewer controls and any other control and management technologies.

(ll) "Official Records" shall mean the Official Records of Alameda County.

(mm) "Parties" shall mean the City and the Developer.

(nn) "Party" shall mean either the City or the Developer depending on the context.

(oo) "Permitted Exceptions" shall mean the following exceptions to title with respect to the Property:

(1) the lien of any non-delinquent property taxes and assessments;

(2) the Park Easement and all other existing easements over, under and across the Property for ingress and egress and public utilities, which do not preclude Developer's intended use of the Property;

(3) any incidental easements or other matters affecting title which do not preclude or materially impair Developer's intended use of the Property;

(4) applicable building and zoning laws and regulations;

(5) the provisions of this Agreement;

(6) other matters created by, through or under Developer; and

(7) such other exceptions to title as may hereafter be mutually approved by the City and the Developer.

(pp) "Person" or "Persons" shall mean any individual, partnership, joint venture, corporation, limited liability company, limited liability partnership, trust or other entity, private or public with the power and authority to act and conduct business on its own behalf.

(qq) "Pro Forma" shall mean the preliminary sources and uses for the development of the Project delivered by the Developer under separate confidential cover.

(rr) "Project" shall collectively mean (i) the Property and (ii) the Improvements.

(ss) "Project Documents" shall mean the site plan, elevations and landscaping plans submitted by the Developer to enable the Developer to obtain the Entitlements for the Improvements, together with and all conditions of approval associated with the Entitlements.

(tt) "Property" shall mean the Commercial Property area depicted in the Park Easement located on the southwest corner of South Livermore Avenue and Railroad Avenue in downtown Livermore, and more particularly described in Recital I and Exhibit D attached to this Agreement to be transferred from the City to the Developer.

(uu) "Purchase Price" shall have the meaning set forth in Section 3.2.

(vv) "Reciprocal Access Easement" shall mean a permanent easement agreement between the Developer and the City, for public access over the relevant properties to the public restroom facility designated for public use pursuant to Section 5.3. The easement may be amended by agreement of the parties thereto, pursuant to which permanent easements are granted for access and encroachments between, by, and among the Property, the Park Easement, and the science center and blackbox theater contemplated for the Park Easement, for the construction, operation, repair and maintenance of utilities and utility lines (including sewers, water and gas pipes and systems, electrical power conduits, telephone conduits, lines and wires), storm drains and equipment, surface water runoff, landscaping, pedestrian access, and such other easements consistent with the Project Documents or as may be agreed upon by the Parties to implement the Downtown Plan and the uses contemplated by the Park Easement and the LSRA Agreement.

(ww) "Remediation" or "Remediate" shall mean any and all actions required to be taken under the Environmental Law to address Environmental Conditions, including investigation, monitoring, removal, corrective action, response action, Mitigation, treatment, decontamination, or cleanup of (1) Hazardous Materials, (2) pollution, or (3) Contamination, present or alleged to be present in the Environment.

(xx) "Schedule of Performance" shall mean the summary schedule of actions to be taken by the Parties pursuant to this Agreement to achieve the disposition of the Property to the Developer and the construction of the Project, as the same or components of the same may be extended pursuant to this Agreement. The Schedule of Performance is attached to this Agreement as Exhibit I

(yy) "Site Management Plan" or "SMP" shall mean any plan or directive issued by a Governmental Authority with respect to managing Contamination on the Property.

(zz) "Scope of Development" shall mean the Improvements described in Article 4 for this Agreement, which includes the Scope of Development attached to this Agreement as Exhibit J, and the Downtown Specific plan Design Guidelines, as refined in the Project Documents for the Improvements.

(aaa) "Security Financing Interests" shall have the meaning set forth in Section 9.1.

(bbb) "Outside Date" shall mean the last date for the commencement of construction as more particularly described in the Schedule of Performance.

(ccc) "Title Company" shall mean title company approved by the City and Developer.

(ddd) "Title Policy" has the meaning set forth in Section 2.2(f).

(eee) "Transaction Documents" shall mean, collectively, the Grant Deed, the Memorandum of Amended and Restated Development Agreement, and the Commercial Property Description as depicted in Exhibit D.

(fff) "Transfer" shall mean a transfer of this Agreement or an interest in the Developer, as more particularly described in Section 8.1.

Section 1.2 Exhibits. The following exhibits are attached to and incorporated into this Agreement:

Exhibit A: Downtown Plan.

Exhibit B: Park Easement.

Exhibit C: LSRA Agreement

Exhibit D: Property.

Exhibit E: City Fees.

Exhibit F: Grant Deed.

Exhibit G: Insurance Requirements.

Exhibit H: Memo of Amended and Restated DDA.

Exhibit I: Schedule of Performance.

Exhibit J: Scope of Development

Exhibit K: License Agreement

ARTICLE 2.
PREDISPOSITION REQUIREMENTS

Section 2.1 City's Conditions Precedent to Close of Escrow. As conditions precedent to the Close of Escrow for the Property, the predisposition conditions set forth in this Section 2.1 must first be met by the times specified for such conditions in the Schedule of Performance (as such times may be extended pursuant to Section 11.4 or other provisions of this Agreement) or, if no time is so specified, on or before the Close of Escrow. Satisfaction of these conditions depends on performance by the Developer. Only the City can waive satisfaction of the conditions in this Section 2.1.

(a) The Developer shall provide the City with the preliminary development Pro Forma setting forth the Developer's current estimate of sources and uses of funds for development of the Improvements. The Pro Forma is intended to serve as a guide for the review of the Developer's financing commitments. The Pro Forma and the information contained therein are privileged documents of the Developer containing trade secrets, private personal information, and/or the contents of real estate appraisals, engineering and/or feasibility estimates, evaluations and other proprietary information. No later than the time specified in the Schedule of Performance, the Developer has submitted a true copy of each letter of interest or letter of intent, which may be binding or non-binding, from lenders, mortgage brokers and/or equity partners to provide funds in the amounts necessary, together with the funds of Developer, to fully finance the projected costs of development of the Improvements. The City shall not make an exact copy of the Pro Forma, but may make such notes to record pertinent information from the Pro Forma to guide the City's determinations relative to the adequacy of the Pro Forma, which notes shall likewise be treated as privileged to the extent the notes reflect the Developer's private personal information, and/or the contents of real estate appraisals, engineering and/or feasibility estimates, evaluations and other proprietary information. The City shall return the original Pro Forma to the Developer upon the Developer's request.

(b) The Developer has obtained all Entitlements.

(c) There is no existing, pending or threatened litigation, suit, action or proceeding before any court or administrative agency affecting the City or the Developer or the Property that would, if adversely determined, materially adversely affect the Property or the Developer's or the City's ability to perform their obligations under this Agreement or the Developers' ability to develop and operate the Improvements.

(d) There shall exist no condition, event or act, which would constitute a Developer Event of Default or which, upon the giving of notice or the passage of time, or both, would constitute a Developer Event of Default.

(e) Within the time specified in the Schedule of Performance, the Developer shall furnish to the City the type and amounts of insurance specified in Exhibit G. The City shall be named as additional insured on the policies specified therein. The Developer shall require that all worker compensation insurance policies carried by the general contractor and subcontractors working on the Improvements include a waiver of subrogation in favor of the City.

(f) The Developer has deposited the Purchase Price into Escrow.

(g) RESERVED.

(h) RESERVED.

Section 2.2 Developer's Conditions Precedent to Close of Escrow. As conditions precedent to the Close of Escrow for the Property, the predisposition conditions set forth in this Section 2.2 must first be met by the times specified for such conditions in the Schedule of Performance (as such times may be extended pursuant to Section 11.4 or other provisions of this Agreement) or, if no time is so specified, on or before the Close of Escrow. Satisfaction of these conditions in Section 2.2(a) depends on performance by the City. Only the Developer can waive satisfaction of the conditions contained in this Section 2.2.

(a) The City has prepared and recorded in the Official Records a parcel map for the Property that includes the Commercial Property depicted in the Park Easement.

(b) The Developer has obtained all Entitlements.

(c) RESERVED.

(d) There is no existing, pending or threatened litigation, suit, action or proceeding before any court or administrative agency affecting the City or the Developer or the Property that would, if adversely determined, materially adversely affect the Property or the Developer's or the City's ability to perform their obligations under this Agreement or the Developers' ability to develop and operate the Improvements.

(e) There shall exist no condition, event or act which would constitute a City Event of Default or which, upon the giving of notice or the passage of time, or both, would constitute a City Event of Default.

(f) The is irrevocably and unconditionally committed to issue to Developer the Title Policy, free and clear of all liens, and subject only to the Permitted Encumbrances, within thirty (30) days of Close of Escrow. As used in this Agreement, the term "Title Policy" shall mean an ALTA extended coverage owner's policy of title insurance in the amount of the Purchase Price insuring fee simple title to the Property, subject only to the Permitted Encumbrances.

Section 2.3 Access for Investigations. Prior to Close of Escrow, the City grants to the Developer and the Developer's agents the right to enter upon the Property for the exclusive purpose of conducting geotechnical and environmental studies and investigations. Such entry shall be made only during regular business hours and upon not less than five (5) business days' advance telephonic, email, or written facsimile notice to the City's Community Development Director. Prior to exercise of the right of entry, the Developer shall provide the City with satisfactory evidence, in the form of a certificate of insurance, that the Developer's agents who obtain access to the Property are insured under comprehensive general liability and automobile liability insurance policy or policies in a manner acceptable to the City in its reasonable discretion. The Developer shall indemnify and defend the City, and its elected officials, officers,

directors, employees, contractors, consultants, attorneys, agents, and designated volunteers (collectively the "Indemnified Parties") against, and hold the Indemnified Parties and the Property harmless from and against, any and all costs, expenses (including, without limitation, attorneys' fees), damages, claims, liabilities, liens (including, without limitation, mechanics liens) encumbrances and charges to the extent such arise out of or are in any way directly related to any entry by the Developer or the Developer's agents upon the Property, but only to the extent such matters do not arise from the gross negligence or willful misconduct of the City or other Indemnified Party, from pre-existing conditions of the Property, or from Developer's discovery of any information potentially having a negative impact on the Property. The foregoing obligation of the Developer shall survive the expiration or termination of this Agreement. The City shall cooperate with the Developer in obtaining, for the benefit of the Developer, reliance letters from the appropriate parties with respect to any third party reports or studies commissioned or obtained by the City with respect to the Property.

ARTICLE 3.
DISPOSITION OF THE PROPERTY

Section 3.1 Purchase and Sale. Provided the predisposition requirements set forth in Article 2 and the additional closing conditions set forth in Section 3.4 have been satisfied or waived, the City shall sell to the Developer, and the Developer shall purchase from the City, the Property pursuant to the terms, covenants, and conditions of this Agreement.

Section 3.2 Purchase Price. The purchase price for the Property shall be Fifty Thousand Dollars ($50,000) to be paid by the Developer at the Close of Escrow (the "Purchase Price"). This purchase price reflects the cost of the Developer's participation in the Community Facility Maintenance District for Downtown Core Improvements, the cost of providing and maintaining a restroom facility for public use, the restrictions in design requiring the building improvements to front onto and activate Stockmen's Park, and the standards established by the Schedule of Performance.

Section 3.3 Opening Escrow; Costs of Escrow. To accomplish the transfer and conveyance of the Property from the City to the Developer, by the date specified in the Schedule of Performance, the Parties shall establish an escrow and execute and deliver to the Escrow Holder written instructions that are consistent with this Agreement. The City shall pay or cause to be paid (i) one half (½) of any escrow fee charged by the Escrow Holder and (ii) any and all City and County real estate documentary transfer taxes. The Developer shall pay (a) one half (½) of any escrow fee charged by the Escrow Holder, (b) all costs of the Title Policy (and any endorsements) issued based thereon, and (c) any recording fees. Each Party shall be responsible for the payment of its own attorney's fees, copying expenses and other costs incurred in connection with the negotiation of this Agreement and the consummation of the transaction contemplated hereunder. Any other closing costs and all prorations (if any) shall be split and accounted for as customary in Alameda County, California, for commercial real estate transactions.

Section 3.4 Closing and Closing Deliverables. Subject to the satisfaction or waiver of the closing conditions to, and the predisposition requirements for, the Close of Escrow set forth in Section 2.1 and Section 2.2, the Close of Escrow shall occur and the City shall convey, and the

Developer shall accept conveyance of, fee simple title to the Property and Appurtenances pursuant to the Grant Deed. At or before Close of Escrow, the City and the Developer, as applicable, shall deliver to the Title Company and Escrow Holder the following:

(a) The Developer shall deposit: (i) the Purchase Price, (ii) originals of each of the Transaction Documents executed and acknowledged (as applicable) by the Developer, and (iii) any other documents that may be reasonably requested by the Escrow Holder and the Title Company and that are customarily delivered in connection with the closing of real estate transactions in Alameda County, and any other documents that may be necessary in order to consummate the transactions contemplated under this Agreement.

(b) The City shall deposit: (i) originals of each of the Transaction Documents executed and acknowledged (as applicable), (ii) a FIRPTA Certificate, and (iii) any other documents that may be reasonably requested by the Escrow Holder and the Title Company and that are customarily delivered in connection with the closing of real estate transactions in Alameda County, and any other documents that may be necessary in order to consummate the transactions contemplated under this Agreement.

Section 3.5 Close of Escrow. Subject to the satisfaction or waiver of the closing conditions to, and the predisposition requirements for, the Close of Escrow set forth in Section 2.1 and Section 2.2 and provided that all of the documents and other items set forth in Section 3.4 have been deposited with Escrow Holder, Escrow Holder shall do all of the following:

(a) Complete all blank spaces, if any, in the Transaction Documents, including the effective dates thereof;

(b) Attach to all applicable Transaction Documents final and accurate legal descriptions consistent with the Title Policy;

(c) Deliver copies of fully executed originals of the Transaction Documents to the appropriate parties, including certified copies of the recordable Transaction Documents showing recording information; and

(d) Cause to be recorded or distributed (as more particularly described below) the following documents:

(1) Record in the Official Records the Grant Deed conveying the Property to the Developer;

(2) Record in the Official Records the Memorandum of Amended and Restated Disposition and Development Agreement;

(3) RESERVED;

(4) File any informational reports required by Internal Revenue Code Section 6045(e), as amended, and any other applicable requirements;

(5) Deliver the FIRPTA Certificate, if any, to the Developer;

(6) Forward to both the Developer and the City a separate accounting of all funds received and disbursed for each party and copies of all executed and recorded or filed documents deposited with Escrow Holder, with such recording and filing date and information endorsed thereon to the extent applicable;

(7) Issue the Title Policy to Developer or irrevocably and unconditionally commit to issue the Title Policy to the Developer within thirty (30) days of Close of Escrow; and

(8) Distribute or record such other documents as may be specified in the Parties' escrow instructions, if any.

The date on which the Escrow Holder completes the recordation of all of the recordable documents listed in this Section 3.5 shall be the "Close of Escrow."

Section 3.6 Additional Escrow Instructions. The Parties shall execute such further or additional escrow instructions as Escrow Holder may require or that any such Party desires. Such further or additional escrow instructions shall not require the imposition of any additional obligations or liabilities on a Party, unless agreed to by the Party, and shall not modify the provisions of this Agreement (unless the Parties otherwise expressly provide for such modification in such further or additional escrow instructions).

Section 3.7 Condition of the Property.

(a) "As Is" Conveyance.

(1) THE DEVELOPER SPECIFICALLY ACKNOWLEDGES AND AGREES THAT THE CITY IS CONVEYING THE PROPERTY ON AN "AS IS WITH ALL FAULTS" BASIS AND THAT THE DEVELOPER IS NOT RELYING ON ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND WHATSOEVER, (EXCEPT AS OTHERWISE EXPRESSLY SET FORTH IN THIS AGREEMENT) EXPRESS OR IMPLIED, FROM THE CITY AS TO ANY MATTERS CONCERNING THE PROPERTY, INCLUDING WITHOUT LIMITATION: (A) THE QUALITY, NATURE, ADEQUACY AND PHYSICAL CONDITION OF THE PROPERTY (INCLUDING, WITHOUT LIMITATION, TOPOGRAPHY, CLIMATE, AIR, WATER RIGHTS, WATER, GAS, ELECTRICITY, UTILITY SERVICES, GRADING, DRAINAGE, SEWERS, ACCESS TO PUBLIC ROADS AND RELATED CONDITIONS); (B) THE QUALITY, NATURE, ADEQUACY, AND PHYSICAL CONDITION OF SOILS, GEOLOGY AND GROUNDWATER, (C) THE EXISTENCE, QUALITY, NATURE, ADEQUACY AND PHYSICAL CONDITION OF UTILITIES SERVING THE PROPERTY, (D) THE DEVELOPMENT POTENTIAL OF THE PROPERTY, AND THE PROPERTY'S USE, HABITABILITY, MERCHANTABILITY, OR FITNESS, SUITABILITY, VALUE OR ADEQUACY OF THE PROPERTY OR ANY PARTICULAR PURPOSE, (E) THE ZONING OR OTHER LEGAL STATUS OF THE PROPERTY OR ANY OTHER PUBLIC OR PRIVATE RESTRICTIONS ON THE USE OF THE PROPERTY, (F) THE COMPLIANCE OF THE PROPERTY OR THEIR OPERATION WITH ANY APPLICABLE CODES, LAWS, REGULATIONS,

STATUTES, ORDINANCES, COVENANTS, CONDITIONS AND RESTRICTIONS OF ANY GOVERNMENTAL OR QUASI-GOVERNMENTAL ENTITY OR OF ANY OTHER PERSON OR ENTITY, (G) THE CONDITION OF TITLE TO THE PROPERTY. THE DEVELOPER AFFIRMS THAT THE DEVELOPER HAS NOT RELIED ON THE SKILL OR JUDGMENT OF THE CITY OR ANY OF ITS ELECTED OFFICIALS, OFFICERS, DIRECTORS, EMPLOYEES, CONTRACTORS, CONSULTANTS, ATTORNEYS, AGENTS, OR DESIGNATED VOLUNTEERS TO SELECT OR FURNISH THE PROPERTY FOR ANY PARTICULAR PURPOSE, AND THAT THE CITY MAKES NO WARRANTY THAT THE PROPERTY IS FIT FOR ANY PARTICULAR PURPOSE. THE DEVELOPER ACKNOWLEDGES THAT IT SHALL USE ITS INDEPENDENT JUDGMENT AND MAKE ITS OWN DETERMINATION AS TO THE SCOPE AND BREADTH OF ITS DUE DILIGENCE INVESTIGATION WHICH IT SHALL MAKE RELATIVE TO THE PROPERTY AND SHALL RELY UPON ITS OWN INVESTIGATION OF THE PHYSICAL, ENVIRONMENTAL, ECONOMIC AND LEGAL CONDITION OF THE PROPERTY (INCLUDING, WITHOUT LIMITATION, WHETHER THE PROPERTY IS LOCATED IN ANY AREA WHICH IS DESIGNATED AS A SPECIAL FLOOD HAZARD AREA, DAM FAILURE INUNDATION AREA, EARTHQUAKE FAULT ZONE, SEISMIC HAZARD ZONE, HIGH FIRE SEVERITY AREA OR WILDLAND FIRE AREA, BY ANY FEDERAL, STATE OR LOCAL AGENCY). THE DEVELOPER UNDERTAKES AND ASSUMES ALL RISKS ASSOCIATED WITH ALL MATTERS PERTAINING TO THE PROPERTY'S LOCATION IN ANY AREA DESIGNATED AS A SPECIAL FLOOD HAZARD AREA, DAM FAILURE INUNDATION AREA, EARTHQUAKE FAULT ZONE, SEISMIC HAZARD ZONE, HIGH FIRE SEVERITY AREA OR WILDLAND FIRE AREA, BY ANY FEDERAL, STATE OR LOCAL AGENCY.

(2) Developer's Release of City. Except with respect to the obligations of the City under this Agreement, and the Transaction Documents, and except as otherwise expressly set forth in this Agreement (and for clarity, specifically excluding any third-party claim or loss related in any way to the Environmental Conditions, Environmental Obligations, Remediation or Mitigation), the Developer, on behalf of itself and anyone claiming by, through or under the Developer hereby waives its right to recover from and fully and irrevocably releases the City, and its elected officials, officers, directors, employees, contractors, consultants, attorneys, agents, and designated volunteers (the "Released Parties") from any and all claims, responsibility and/or liability that the Developer may have or hereafter acquire against any of the Released Parties for any costs, loss, liability, damage, expenses, demand, action or cause of action arising from or related to (i) the condition (including any construction defects, errors, omissions or other conditions, latent or otherwise), valuation, salability or utility of the Property, or their suitability for any purpose whatsoever, and (ii) any information furnished by the Released Parties under or in connection with this Agreement.

(3) Scope of Release. Except as otherwise expressly set forth in this Agreement (and for clarity, expressly excluding any third-party claim or loss related in any way to the Environmental Conditions, Environmental Obligations, Remediation, or Mitigation), the release set forth in Section 3.7(a)(2) hereof includes: (a) claims of which the Developer is presently unaware or which the Developer does not presently suspect to exist which, if known by the Developer, would materially affect the Developer's release of the Released Parties; (b) the

Developer specifically waives the provision of any statute or principle of law that provides otherwise; (c) in this connection and to the extent permitted by law, the Developer agrees, represents and warrants that the Developer realizes and acknowledges that factual matters now unknown to the Developer may have given or may hereafter give rise to such causes of action, claims, demands, debts, controversies, damages, costs, losses and expenses which are presently unknown, unanticipated and unsuspected, and the Developer further agrees, represents and warrants that the waivers and releases herein have been negotiated and agreed upon in light of that realization and that the Developer nevertheless hereby intends to release, discharge and acquit the City from any such unknown causes of action, claims, demands, debts, controversies, damages, costs, losses and expenses; and (d) accordingly, the Developer, on behalf of itself and anyone claiming by, through or under the Developer, hereby assumes the above-mentioned risks and hereby expressly waives any right the Developer and anyone claiming by, through or under the Developer, may have under Section 1542 of the California Civil Code, which reads as follows:

> **"A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR."**

Developer's Initials: 

(4) Exception for Contamination; City's Responsibilities Concerning Contamination.

(A) Notwithstanding the foregoing, the City acknowledges the existence of Contamination on and off of the Property. Consequently, the City agrees that it is now and will at all times remain responsible as owner of the Property prior to the Close of Escrow for such Contamination, the Environmental Conditions, and the Environmental Obligations in any way alleged to be related to or associated with the Property. Further, for clarity the City agrees, as between the Parties, that it will, at all times, perform all Remediation and is solely responsible for and shall pay all costs associated in any way with Remediation, Mitigation, the Environmental Conditions and the Environmental Obligations for the commercial use of the Property. Such costs include (but are not limited to), are, for example, those described in Section 1.1 (x). The City agrees to make commercially reasonable and diligent efforts to Remediate the Environmental Conditions for the commercial use of the Property in a timely fashion in accordance with applicable laws and regulations (including but not limited to Environmental Laws) and timely achieve "no further action" or "closure" status for the Property, i.e., no further action other than customary operation and maintenance associated with Mitigation and/or an SMP as those terms are defined herein for comparable Regional Board supervised projects. Further, the City agrees to make commercially reasonable and diligent efforts to promptly Remediate the Environmental Conditions and promptly pay for any required Mitigation or modifications to existing Mitigation should any no "further action" or "closure" for the Property be "reopened" (or a new matter related in any way to the Environmental Conditions be initiated) by any Governmental Authority, except for a "reopening" due to action or inaction by the Developer, or an agent or tenant of Developer. The City will, at all times, cooperate with

Developer in performing the foregoing and agrees to make best efforts to: i) comply with the License; ii) cooperate with Developer's work on the Property; and iii) not unreasonably interfere with Developer's activities or the Project. For further clarity, the City is not obligated, and has no responsibility, to Developer for: (a) Contamination, Environmental Conditions, or Environmental Obligations that arise due to a change in the Property's use from commercial use to residential use; (b) as between the Parties, such Contamination is proven to originate from property on Blacksmith Square (specifically 21 and 25 S. Livermore Avenue) owned by Developer; and (c) Contamination from uses on the Property after Close of Escrow. Except for the exclusions contained in the prior sentence, the City is obligated and is responsible for Contamination on, from, or related to other property owned at any time by the City and/or for which the City in the past, now, or in the future, had, has, or will have any alleged relationship due to the City's ownership of property or as the result of a release by the City. For further clarity, Developer is and shall remain responsible, at its sole cost, for the operation, maintenance, repair, and replacement of Mitigation measures as Improvements beginning five (5) calendar years after the completion of the installation of such Mitigation, with the express understanding that the City is responsible for the same for the first five (5) calendar years.

(B) The City agrees to comply with all Environmental Laws with respect to the Environmental Conditions and the Environmental Obligations. Further, for clarity, the City agrees, as between the Parties, that it will, at all times, perform and is solely responsible to pay all costs to comply with Environmental Laws for the commercial use of the Property. Such costs include, but are not limited to Remediation (including soil excavation, vapor management systems, vapor extraction systems., etc.) for the commercial use of the Property, and the City agrees that it will be responsible for the costs of any additional excavation, construction, operating or maintenance reasonably attributable to the Environmental Conditions (such as, for example, the incremental cost to dispose of excavated contaminated soil or groundwater over the cost to dispose of non-contaminates soil or groundwater; the incremental cost of a larger HVAC system to mitigate vapor intrusion over the cost of a standard HVAC system; the cost to prevent sub-surface vapors intruding from an elevator pit over no requirement to otherwise do so; the cost of a specialized vapor barrier over the cost of a standard moisture barrier, etc.). To the extent possible or permitted by law or regulation, all manifests for Contaminated soil and/or Contaminated groundwater removed from the Property will not identify Developer as the generator and City (or its agents) shall be identified as the sole generator, shall be responsible for obtaining any necessary EPA generator identification number, and shall dispose of any such Contamination at an appropriately licensed disposal facility. City ensure that all work associated with the Environmental Conditions the Environmental Obligations, will be supervised, directed and performed by consultants, contractors, and/or other vendors each of whom shall be duly licensed, qualified, and insured environmental professionals who shall perform consistent with service standards adhered to at environmental projects in the San Francisco Bay Area that involve complexity comparable to those associated with the Property. Contractors and consultants performing work on the Property pursuant to this Agreement shall carry no less than the amounts and types of insurance commonly carried by contractors and consultants work on environmental projects in the San Francisco Bay Area that involve complexity comparable to those associated with the Property. Prior to the commencement of any work on the Property by City after Close of Escrow, Developer shall be provided with reasonable and customary documentation confirming that such contractors and consultants have such insurance and that Developer has additional insured status under all

policies where such status is customary for similar work. City waives all rights of recovery against Developer on account of loss and damage occasioned to City and its consultants, contractors and agents to the extent that such loss or damage is insured or is required to be insured against under any of the required insurance policies. City and its consultants, contractors and agents will, on obtaining policies of insurance pertaining to the Property, give notice to its insurance carriers that this waiver of subrogation is contained in this Agreement and will cause each insurance policy carried by it pertaining to the Property to provide that the insurance company acknowledges acceptance of the foregoing waiver (*i.e.,* waiver of subrogation) of claims. For further clarity, the City is not obligated, and has no responsibility, to Developer for: (a) Contamination, Environmental Conditions, or Environmental Obligations that arise due to a change in the Property's use from commercial use to residential use; (b) as between the Parties, such Contamination is proven to originate from property on Blacksmith Square (specifically 21 and 25 S. Livermore Avenue) owned by Developer; and, (c) Contamination from uses on the Property after Close of Escrow. Except for the exclusions contained in the prior sentence, the City is obligated and is responsible for Contamination on, from, or related to other property owned at any time by the City and/or for which the City in the past, now, or in the future, had, has, or will have any alleged relationship due to the City's ownership of property or as the result of a release by the City. For further clarity, Developer is and shall remain responsible, at its sole cost, for the operation, maintenance, repair, and replacement of Mitigation measures as Improvements beginning five (5) calendar years after the completion of the installation of such Mitigation, with the express understanding that the City is responsible for the same for the first five (5) calendar years.

(C) It is possible that the Regional Board may require a Site Management Plan for the commercial use of the Property that will identify, based on the Property's history, Contamination that could be discovered during the Project or thereafter. The methodology and assumed exposure pathways identified in the SMP will be consistent with the City's commercial remediation goals for the Environmental Conditions. The City and Developer will cooperate in the development of the SMP; the SMP shall not unreasonably interfere with the development or long-term operation and/or maintenance of the Project, but may include Mitigation (which may be required by the Regional Board).

(D) After close of escrow, Developer shall receive all correspondence between any Governmental Authority and the City with respect to the Environmental Conditions and/or Environmental Obligations and City shall provide Developer no less than five (5) business days advance notice of any meeting between City and any Governmental Authority with respect to the same and Developer may, at its option, attend such meetings. Developer will be provided with copies of all reports in any way related to Environmental Conditions and/or Environmental Obligations. For each submittal by the City to any Governmental Authority that concerns to any extent the Environmental Conditions and/or Environmental Obligations, the City shall provide Developer no less than ten (10) business days to review and provide comments on the submittal. The Parties shall meet and confer in good faith during that period to consider an comments or requested changes.

(b) No-Third Party Benefit. Nothing in this section is intended to create, nor does it to create, not shall in be interpreted to create, a right for a third-party beneficiary.

(c) Survival. The provisions of this section shall survive the Close of Escrow and any termination of this Agreement.

Section 3.8 Real Estate Commissions. The City shall not be liable for any real estate commissions or brokerage fees that may arise from this Agreement. The Developer represents that it has not obtained or engaged the services of a real estate broker in this transaction. If a real estate commission is claimed through either Party in connection with the transaction contemplated by this Agreement, then the Party through whom the commission is claimed shall indemnify, defend and hold the other Party harmless from any liability related to such commission. The provisions of this Section shall survive termination of this Agreement.

Section 3.9 Challenge to this Agreement or the Entitlements. In the event a claim is filed in a court of competent jurisdiction regarding the validity of this Agreement or to the City's action in issuing the Entitlements for the Improvements, which claim proves successful, or in the event a referendum is initiated with respect to the validity of this Agreement or to the City's action in issuing the Entitlements for the Improvements, which referendum proves successful, upon sixty (60) days prior written notice the Developer may elect to not proceed with the Project. If Developer elects not to proceed with the Project pursuant to the preceding sentence, promptly following delivery of such written notice Developer will convey the Property to the City and the City will reacquire the Property and acquire the Developer's interest in Project related work product by paying the Purchase Price. Upon the required payment by the City, the Developer will assign its interest in the plans and specifications for the Improvements and all engineering and architect contracts to the City, without representation or warranty.

Section 3.10 Parcel Map for Property. The City has subdivided the Property consistent with the Downtown Core Plan and as depicted in the Park Easement. In the event the Developer elects to subdivide or merge one or more of the Property parcels with its adjacent property commonly known as Blacksmith Square, the Developer shall prepare an appropriate parcel map and to ensure those portions of the merged parcel(s) that are within the Park Easement continue to lie within the Commercial Property areas depicted in the Park Easement. The developer shall prepare all required documents to amend the LSRA Agreement and Park Easement and be responsible for all other associated costs with amending said documents.

ARTICLE 4.
IMPROVEMENTS AND DESIGN REQUIREMENTS

Section 4.1 Improvements. Within the time specified in the Schedule of Performance, the Developer shall construct commercial buildings on approximately 13,423 square feet of the Property, utilizing architecture and design elements compatible with Blacksmith Square, and configuring the building walls adjacent to the Stockmen's Park so that they are oriented toward Stockmen's Park and designed to incorporate window and door openings so tenant spaces actively interface with Stockmen's Park, as more specifically described in the Scope of Development, attached as Exhibit J to this Agreement and the City's Downtown Specific Plan Design Guidelines.

Section 4.2 Design in Conformance with Project Documents. In designing and constructing the Improvements, the Developer shall cause all subsequent design documents prepared by the Developer to be substantially consistent with the Scope of Development and City Design Guidelines attached as Exhibit J, and the Project Documents. In addition, the Project design shall include the provision of restroom facilities, which shall be open and available to the

public. The restroom may be part of a tenant space or a stand-alone facility, but restroom users will not be required to be customers or tenants of the commercial project. The Scope of Development, City Design Guidelines, and the Project Documents shall establish the baseline design standards from which the Developer shall prepare the Final Construction Drawings.

Section 4.3 Additional Permits and Approvals. Within the time specified in the Schedule of Performance (as such times may be extended pursuant to Section 11.4 or by mutual agreement of the Parties or by other provisions of this Agreement), Developer shall obtain all Entitlements, permits, and approvals necessary to construct the Improvements. All applications for such Entitlement, permits, and approvals shall be consistent with the approved Project Documents. The Developer acknowledges that execution of this Agreement by the City does not constitute approval by the City of any required permits, applications, or allocations, and in no way limits the discretion of the City in the permit, allocation, and approval process. The City shall provide reasonable assistance to the Developer in securing such permits and approvals.

Section 4.4 City Review. The Developer shall be solely responsible for all aspects of the Developer's conduct in connection with the Improvements, including, but not limited to, the design of the Improvements, the quality and suitability of the Project Documents related to the Improvements, the supervision of construction work, and the qualifications, financial condition, and performance of all architects, engineers, contractors, subcontractors, suppliers, consultants, and property managers. Any review or inspection undertaken by the City with reference to the Project is solely for the purpose of determining whether the Developer is properly discharging its obligations to the City under this Agreement, and should not be relied upon by the Developer or by any third parties as a warranty or representation by the City as to the quality of the design or construction of the Improvements.

Section 4.5 Basic Concept Drawings. The Developer submitted Basic Concept Drawings in July 2021, for the City's review and approval as property owner transferring the Commercial Property to the Developer, and not in the City's exercise of its municipal regulatory authority. The City found the Basic Concept Drawings consistent with the Scope of Development and City Design Guidelines and approved them on August 20, 2022.

Section 4.6 Public Restroom Facility. A deed restriction shall be executed and recorded in favor of the City and burdening the Property, or a portion thereof, to require that upon development there shall be a public restroom facility on the Property that is open and available to the public between 10:00 a.m. and dusk, every day of the week. The deed restrictions shall provide that the Developer or its successor shall be responsible, at its own cost and expense, for all aspects of constructing, owning, operating, maintaining and replacing the public restroom. The deed restriction must be approved by the City and must include a clause stating that it cannot be altered without the City's prior written consent. The City and Developer shall, cooperate in good faith to agree upon, execute, acknowledge (as applicable), deliver, and record (as applicable) the deed restriction for the public restroom facility prior the earlier of the issuance of a building permit for construction of the Project or February 6, 2023, as set forth in the Schedule of Performance, whichever occurs first.

ARTICLE 5.
PRECONDITIONS TO COMMENCEMENT OF CONSTRUCTION

Section 5.1 Approvals. All applicable Entitlements, permits, and approvals necessary to construct the Improvements have been obtained.

Section 5.2 City Fees. All applicable pre-development City Fees have been paid. The Developer shall be responsible for all Development Impact fee costs at time of building permit. The current estimated cost of these fees is $1,132,568. The Developer shall be entitled to development fee credits for utility connections and other impact fees from the previous commercial use of the Property based upon the fee rates at the time of building permit. The current estimated value of these credits is $490,416. The Developer shall be eligible for an additional credit of $272,465 recognizing the costs associated with the construction costs and fees associated with the provision of restroom facilities which are available to the public. The Developer shall also be responsible for the payment of the City's Parking In-Lieu Fee based upon the fee rate at the time of building permit. The current estimated Parking In-Lieu Fee is $952,740. The Developer is entitled to Parking In-Lieu Fee Credits based upon the fee rate at the time of building permit. The current estimated value of this credit is $362,949 recognizing a further portion of the project's contribution to publicly available restroom facilities, credit for City provision of eight new surface parking in the vicinity of the property, and the Developer's deed restriction at 39 South Livermore Avenue (APN 097-0001-033) to require that 23 parking spaces on that property shall be open and available to the public. The deed restriction shall provide that the 23 parking spaces shall be available for public use on a first come first served basis subject to the City's regulations for off-street parking, and shall not be reserved or assigned to individual tenants or users. The deed restriction must be approved by the City and must include a clause stating that it cannot be altered without the City's prior written consent. Upon recordation of said deed restriction, the City shall satisfy and pay the Parking In-Lieu Fee Credit obligation in this Section 5.2 on behalf of the Developer for the Property as the fee at the time of the building Permit. The City and Developer shall cooperate in good faith and agree upon, execute, acknowledge, deliver, and record the deed restriction shall be recorded prior the earlier of the issuance of a building permit for construction of the Project or February 6, 2023, as set forth in the Schedule of Performance, whichever occurs first. The Parking In-Lieu Fees shall be paid no later than building occupancy. Payment of the Parking In-Lieu fees proportional for each building may be phased with each building occupancy. The Developer shall be entitled to an additional credit up to $15,000 to cover production costs related to three Downtown Artistic Renderings. The Downtown Artistic Renderings include two eye-level views and one aerial view. The Downtown Artistic Renderings show visual perspectives of the Downtown Core Plan following buildout of the Blacksmith Square expansion, Quest science center, and SPARC black box theater. Actual credit for the Downtown Artistic Renderings will be based upon invoices for rendering production services. The Developer shall be entitled to an additional credit up to $15,000 for additional Downtown Artistic Renderings. Finally, the Developer shall be entitled to an additional $120,000 credit to cover construction costs related to remediation of hazardous materials.

Section 5.3 Execution and Recordation of Reciprocal Access Easement. As a condition to commencement of construction of the Project, the Reciprocal Access Easement shall have been agreed to by all applicable parties, and executed, acknowledged (as applicable) and delivered by all applicable parties, and recorded (as applicable) in the Official Records. The City and Developer shall, , cooperate in good faith to agree upon, execute, acknowledge (as

applicable), deliver, and record (as applicable) the Reciprocal Access Easement prior the earlier of the issuance of a building permit for construction of the Project or February 6, 2023, as set forth in the Schedule of Performance, whichever occurs first.

Section 5.4 Building Permits. Building Permits to enable the Project to be constructed have been issued by the City or are ready to issue.

Section 5.5 Updates to Title Policy. It is anticipated that, prior to commencing construction of the Project, Developer will obtain updates to the Title Policy necessary to reflect Security Financing Instruments and other encumbrances contemplated by this Agreement, placed in connection with the construction of the Improvements. The City shall cooperate with Developer in connection with such updates to the Title Policy and any such title policies for Encumbrance Holders, including, without limitation, delivering such documents as may be reasonably requested by the Title Company with respect to the same.

Section 5.6 Insurance. The Developer shall procure, maintain, and furnish to the City evidence of the type and amounts of insurance specified in Exhibit G for the term of this Agreement. The City shall be named as additional insured on the commercial general liability policies specified therein.

ARTICLE 6.
CONSTRUCTION OF THE IMPROVEMENTS

Section 6.1 Commencement of Construction. The Developer shall commence construction of the Improvements within the time set forth in the Schedule of Performance. Construction shall be deemed to commence on the date physical work on the Property starts pursuant to a valid Building Permit from the City.

Section 6.2 Completion of Construction. The Developer shall diligently prosecute to completion the construction of the Improvements and shall complete construction of the Improvements within the time set forth in the Schedule of Performance. The Developer shall be solely responsible for the construction of the Improvements by the time set forth for such completion in the Schedule of Performance, including all costs of design and construction.

Section 6.3 Construction Pursuant to Scope of Development and Project Documents.

(a) The Developer shall construct the Improvements in accordance with the Scope of Development, the Project Documents, the approved Final Construction Drawings, and the terms and conditions of all City and other governmental approvals.

(b) The Developer shall submit or cause to be submitted for the City's approval as property owner transferring the Property to the Developer, and not in the City's regulatory capacity, any proposed change in the Final Construction Drawings which materially changes the size, location, or elevations of the Improvements, including the landscape and/or hardscape, or signage of the Improvements, or which materially changes the quality or appearance of the exterior materials of the Improvements, or which would require an amendment to any Entitlements prior to making such change. The City shall reasonably approve or disapprove a proposed material change within fifteen (15) days after receipt by the City. Failure

to approve or disapprove within fifteen (15) days shall be deemed to be disapproval of such change. If the City rejects the proposed material change and upon the Developer's request, the City shall provide the Developer with the specific reasons therefor, and the approved Final Construction Drawings shall continue to control.

(c) No change which is required for compliance with building codes, government health and safety regulations or other applicable laws or regulations, or to comply with changes or corrections required of the Developer in the plan check process shall be deemed material. However, the Developer must submit to the City any change that is required for such compliance within ten (10) days after making such change, and such change shall become a part of the approved Final Construction Drawings, binding on the Developer.

Section 6.4 Mechanics' Liens. The Developer shall indemnify the City and hold the City harmless against and defend the City in any proceeding related to any mechanic's lien, stop notice or other claim brought by a subcontractor, laborer or material supplier who alleges having supplied labor or materials in the course of the construction of the Improvements by the Developer. The City shall indemnify the Developer and hold the Developer harmless against and defend the Developer in any proceeding related to any mechanic's lien, stop notice or other claim brought by a subcontractor, laborer or material supplier who alleges having supplied labor or materials in the course of the City conducting Remediation or any other activity associated with the Environmental Obligations on or related to the Property. These indemnity obligations shall survive the issuance of a Certificate of Occupancy by the City and the termination of this Agreement.

Section 6.5 Compliance with Applicable Law. The Developer shall cause all work performed in connection with construction of the Improvements to be performed in compliance with (a) all applicable laws, ordinances, rules and regulations of federal, state, county or municipal governments or agencies now in force or that may be enacted hereafter, and (b) all directions, rules and regulations of any fire marshal, health officer, building inspector, or other officer of every governmental agency now having or hereafter acquiring jurisdiction. The work shall proceed only after procurement of each permit, license, or other authorization that may be required by any governmental agency having jurisdiction, and the Developer shall be responsible for the procurement and maintenance thereof, as may be required of the Developer and all entities engaged in the work of constructing the Improvements.

Section 6.6 Progress Reports. Until a Certificate of Occupancy has been issued by the City, the Developer shall provide the City with periodic progress reports, as reasonably requested by the City (but not more than once every calendar month), regarding the status of the construction of the Improvements. Such report shall consist of an executive summary of the work to date, including, but not limited to, the causes for any delays and the work that is anticipated for the following month, a reasonable number of construction photographs taken since the last report submitted to the City, and shall be in form reasonably acceptable to the City.

Section 6.7 Entry by City. Until a Certificate of Occupancy has been issued by the City, the Developer shall permit the City, upon reasonable prior notice, through its officers, agents, or employees, to enter the Property during normal business hours to inspect the work of construction to determine that such work is in substantial conformity with the Scope of

Development, the Project Documents, and the approved Final Construction Drawings or to inspect the Property for compliance with this Agreement. The City is under no obligation to (a) supervise construction, (b) inspect the Property, or (c) inform the Developer of information obtained by the City during any inspection. The Developer shall not rely upon the City for any supervision or inspection. The rights granted to the City pursuant to this Section 6.7 are in addition to any rights of entry and inspection the City may have in the exercising of its municipal regulatory authority.

Section 6.8 Non-Discrimination During Construction; Equal Opportunity. The Developer (for purposes of this Section 6.8, the term "Developer" shall include Developer's contractors), for itself, its successors and assigns, and transferees agrees that in the construction of the Project provided for in this Agreement:

(a) The Developer will not discriminate against any employee or applicant for employment because of race, color, religion, creed, national origin, ancestry, disability, actual and perceived, medical condition, age, marital status, sex, sexual orientation, Acquired Immune Deficiency Syndrome (AIDS), actual or perceived, or retaliation for having filed a discrimination complaint ("Nondiscrimination Factors"). The Developer will take affirmative steps to ensure that applicants are employed by the Developer or its applicable contractor, and that its employees are treated without regard to the Nondiscrimination Factors during employment including, but not limited to, activities of: upgrading, demotion or transfer; recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Developer or its applicable contractor shall post in conspicuous places, available to its employees and applicants for employment, the applicable nondiscrimination clause set forth herein.

(b) The Developer will ensure that its or its applicable contractor's solicitations or advertisements for employment are in compliance with the aforementioned nondiscrimination factors.

Section 6.9 Insurance Requirements. Developer, its contractors, subcontractors and/or agents shall procure, maintain, and furnish, or cause to be furnished, to the City duplicate originals of the insurance policies or other written evidence of binding coverage, complete with additional insured and loss payee endorsements, as applicable pursuant to Exhibit G.

Section 6.10 Certificate of Occupancy. Upon the Developer's completion of construction for that portion of the Improvements to be constructed on particular parcel of the Property, the City shall issue the Developer a Certificate of Occupancy for that improvement on the corresponding parcel of the Property. Once the Developer receives Certificates of Occupancy from the City for each of the Improvements to be constructed on a particular parcel of the Property, then that parcel will no longer be subject to the Security Financing Interests more particularly described in Article 9, except for the provisions in that Article 9 that continue through and beyond the completion of the construction or otherwise survive as provided for in this Agreement.

ARTICLE 7.
OBLIGATIONS WHICH CONTINUE THROUGH AND BEYOND THE COMPLETION OF CONSTRUCTION

Section 7.1 Commercial Use. The Developer covenants to use the Property only for the development and operation of commercial uses authorized by the Downtown Specific plan for a term of not less than thirty (30) years following the date of the issuance of the Certificate of Occupancy without the prior written approval of the City, which shall not be unreasonably withheld or delayed.

Section 7.2 Community Facility Maintenance District for Downtown Core Improvements. The Developer agrees to participate in a maintenance district or districts created to fund the maintenance of Stockmen's Park and other designated downtown public facilities ("Downtown Core Maintenance District"). The Downtown Core Maintenance District and assessment shall be placed onto the Property no earlier than one (1) year following the issuance of the Certificate of Occupancy and shall be placed on the annual tax bill of the Property in the approximate initial amount not to exceed $22,000 and increasing annually thereafter at the percent year-over-year change in the Consumer Price Index For All Urban Consumers – San Francisco Area plus one percent (1%). The assessment for the Downtown Core Maintenance District shall be apportioned to each parcel of the Property as provided for in the methodology for the district's assessment.

Section 7.3 Maintenance. The Developer hereby agrees that, after the Close of Escrow and prior to completion of construction of the Improvements, the Improvements shall be maintained in a neat and orderly condition and in accordance with industry health and safety standards, and that, once the Improvements are completed, they shall be maintained in accordance with industry standards as to both external and internal appearance of the buildings, and common areas. At all times, the Developer shall maintain or cause to be maintained the Improvements in good repair and working order, and in a neat, clean and orderly condition, including the walkways and landscaping, reasonable wear and tear excepted, and from time to time make all necessary and proper repairs, renewals, and replacements. In the event that there arises a condition in contravention of the above maintenance standard, then the City shall notify the Developer in writing of such condition, giving the Developer thirty (30) days from receipt of such notice to commence and thereafter diligently to proceed to cure said condition. In the event the Developer fails to cure or commence to cure the condition within the time allowed, the City shall have the right to perform all acts necessary to cure such a condition. The City shall receive from the Developer the City's reasonable cost in taking such action and shall provide reasonable evidence of such costs to the Developer.

Section 7.4 Developer To Indemnify City.

(a) **EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT WITH RESPECT TO THE ENVIRONMENTAL CONDITIONS AND THE ENVIRONMENTAL OBLIGATIONS,** the Developer shall indemnify, defend (with counsel approved by the City) and hold harmless the City, and its elected officials, officers, directors, employees, contractors, consultants, attorneys, agents, and designated volunteers (collectively, the "Indemnitees") from and against any and all liabilities, losses, costs, expenses (including

without limitation attorneys' fees and costs of litigation), claims, demands, actions, suits, causes of action, writs, judicial or administrative proceedings, penalties, deficiencies, fines, orders, judgments and damages (all of the foregoing collectively "Claims") which in any manner, directly or indirectly, in whole or in part, are caused by, arise in connection with, result from, relate to, or are alleged to be caused by, arise in connection with, result from, or relate to: (i) approval of this Agreement and/or the Improvements; (ii) performance of this Agreement on the part of the Developer or any contractor or subcontractor of Developer; and/or (iii) the development, operation, maintenance or management of the Improvements, whether or not any insurance policies shall have been determined to be applicable to any such Claims. It is further agreed that the City does not and shall not waive any rights against Developer which they may have by reason of this indemnity and hold harmless agreement because of the acceptance by the City, or Developer's deposit with the City of any of the insurance policies described in this Agreement.

(b) The Developer shall pay immediately upon the Indemnitees' demand any amounts owing under this indemnity. The duty of Developer to indemnify includes the duty to defend the Indemnitees or, at the Indemnitees' choosing, to pay the Indemnitees' costs of its defense in any court action, administrative action, or other proceeding brought by any third party arising from the Improvements. The Indemnitees shall have reasonable approval rights regarding decisions with respect to their representation in any legal proceeding, including, but not limited to, the selection of attorney(s). Developer's obligations set forth in this Section shall survive the issuance of the Certificate of Occupancy by the City, and termination of this Agreement. Notwithstanding the foregoing, Developer's indemnification obligations set forth in this Section 7.4 shall not apply to Claims to the extent arising from the gross negligence or willful misconduct of the Indemnitees, or any Claims arising from the activities of any Indemnitee on the Property, or any Claims arising from the breach by the City of any of its obligations under this Agreement or the Transaction Documents.

Section 7.5 Hazardous Materials.

(a) Certain Covenants and Agreements. Following possession of the Property, the Parties covenant and agree that:

(1) The Developer shall not knowingly permit the Property or Improvements, or any portion thereof, to be a site for the use, generation, treatment, manufacture, storage, disposal or transportation of Hazardous Materials or otherwise knowingly permit the presence of Hazardous Materials in, on or under the Property (other than with respect the Environmental Conditions, with the express understanding that the Developer is not permitting the Environmental Conditions to be on the Property) in violation of any applicable law;

(2) Other than with respect the Environmental Conditions, with the express understanding that the Developer is not permitting the Environmental Conditions to be on the Property, the Developer shall keep and maintain the Property and Improvements, and each portion thereof, in compliance with, and shall not cause or permit the Property or Improvements, or any portion thereof, to be in violation of, any Hazardous Materials Laws ;

(3) With respect the Environmental Conditions as defined herein and any Hazardous Materials released on the Property after Developer takes possession of the Property, upon receiving actual knowledge of the same the Developer shall within ten (10) days advise the City in writing of: (A) any and all enforcement, cleanup, removal or other governmental or regulatory actions instituted, completed or threatened against the Developer or the Property or Improvements pursuant to any applicable Hazardous Materials Laws; (B) any and all claims made or threatened by any third party against the Developer or the Property or Improvements relating to damage, contribution, cost recovery, compensation, loss or injury resulting from any Hazardous Materials (the matters set forth in the foregoing clause (A) and this clause (B) are hereinafter referred to as "Hazardous Materials Claims"); (C) the presence of any Hazardous Materials in, on or under the Property in such quantities which require reporting to a government agency; or (D) the Developer's discovery of any occurrence or condition on any real property adjoining or in the vicinity of the Property (other than the Environmental Conditions) or Improvements or to be otherwise subject to any restrictions on the ownership, occupancy, transferability or use of the Property or Improvements under any Hazardous Materials Laws.

(b) Indemnity from Developer. Without limiting the generality of the indemnification set forth in Section 7.4, the Developer hereby agrees to indemnify, protect, hold harmless and defend (by counsel reasonably satisfactory to the City) the City, and its elected officials, officers, directors, employees, contractors, consultants, attorneys, agents, and designated volunteers from and against any and all claims, losses, damages, liabilities, fines, penalties, charges, administrative and judicial proceedings and orders, judgments, remedial action requirements, enforcement actions of any kind, and all costs and expenses incurred in connection therewith (including, but not limited to, reasonable attorney's fees and expenses), arising directly or indirectly, in whole or in part, out of: (1) the failure of the Developer, its agents, employees, or contractors to comply with any Hazardous Materials Law relating in any way whatsoever to the handling, treatment, presence, removal, storage, decontamination, cleanup, transportation or disposal of Hazardous Materials other than the Environmental Conditions into, on, under or from the Property or Improvements at any time following the Close of Escrow; (2) other than the Environmental Conditions, the presence in, on or under the Property or Improvements of any Hazardous Materials or any releases or discharges of any Hazardous Materials into, on, under or from the Property; or (3) other than the Environmental Conditions, any activity carried on or undertaken on or off the Property of Improvements, subsequent to the Close of Escrow, and whether by the Developer or any employees, agents, contractors or subcontractors of the Developer at any time occupying or present on the Property, in connection with the handling, treatment, removal, storage, decontamination, cleanup, transport or disposal of any Hazardous Materials at any time located or present on or under the Property (collectively "Indemnification Claims"). The foregoing indemnity shall not apply to any Environmental Conditions or Contamination released or detected at any time prior to Close of Escrow from, on, or at any location, including, but not limited to, the Property, but shall apply only to any Contamination due directly and solely to Hazardous Materials released on the Property after Developer takes possession of the Property that are detected on or under the Property, or affecting any natural resources, and to any Contamination of any property or natural resources arising in connection with the generation, use, handling, treatment, storage, transport or disposal of any such Hazardous Materials after Close of Escrow, and irrespective of whether any of such activities were or will be undertaken in accordance with Hazardous Materials Laws. Notwithstanding the foregoing, Developer's indemnity under this Section 7.5(b) shall apply to

any Environmental Conditions related to the Contamination that are the result of actions by the Developer or its agents or tenants that impede, interfere, obstruct, or otherwise compromise a Mitigation, but shall not apply to any Claims to the extent arising solely from the gross negligence or willful misconduct of any of the City, its board members, officers, employees, or contractors. Developer's obligations set forth in this Section shall survive the issuance of the Certificate of Occupancy by the City, and termination of this Agreement.

(c) Indemnity from City. At all times, the City hereby agrees to indemnify, protect, hold harmless and defend (by counsel reasonably satisfactory to the Developer) the Developer, and its officers, directors, employees, members, contractors, consultants, attorneys, agents, and permitted transferees under Section 8, from and against any and all claims, losses, demands, allegations, damages, liabilities, fines, penalties, charges, administrative and judicial proceedings and orders, judgments, Governmental Agency requests/requirements, remedial action requirements, enforcement actions of any kind, and all costs and expenses incurred in connection therewith (including, but not limited to, reasonable attorney's, consultant, and expert witness fees, and expenses), arising directly or indirectly, in whole or in part, out of: (1) the failure of the City, its agents, employees, or contractors to comply with any Environmental Law relating in any way whatsoever to the Environmental Conditions at any time whether before or after the Close of Escrow; (2) the presence of Contamination in, on or under the Property or Improvements; (3) the, Environmental Conditions and/or Environmental Obligations; (4) implementing and/or complying with any Regional Board or Governmental Authority's requirement, demand, or request made at any time with respect to the Environmental Conditions; (5) any incremental Improvement, construction, operating, or maintenance cost reasonably attributable to the Environmental Conditions (e.g., specialized materials necessitated by the presence of residual VOCs or VOC vapors, larger capacity HVAC systems, vapor barrier, etc., with the express understanding that, if, for any reason, Developer determines, in its sole discretion, that it is in its best interest that a vapor barrier be installed as a mitigative measure, the City shall pay all costs associated with such installation); (6) the failure of any Remediation or the failure to implement or pay for any Remediation or Mitigation; (7) impacts of the Environmental Conditions on (x) any persons or entities not party to this Agreement and (y) any property other than the Property, and/or (z) natural resources (collectively, "Third Party Claims" with Third Party Claims including but not being limited to claims asserted by any Governmental Authority whether before or after issuance of any "no further action" or other "closure" document with respect to the Property or any properties); (8) any activity carried on or undertaken on or off the Property at any time in connection with the handling, treatment, removal, storage, decontamination, cleanup, transport or disposal of Contamination or any Hazardous Materials associated with the Environmental Conditions; (collectively "Indemnification Claims"). The foregoing indemnity shall further apply to any Contamination of any property or natural resources arising in connection with the generation, use, handling, treatment, storage, transport, or disposal of any such Hazardous Materials associated with the Environmental Conditions, and irrespective of whether any of such activities were or will be undertaken in accordance with Hazardous Materials Laws. Notwithstanding the foregoing, City's indemnity under this Section 7.5(c) shall not apply to any Claims to the extent arising solely from the gross negligence or willful misconduct of any of the Developer, its officers, employees, or contractors, nor shall it apply to any claims related Environmental Conditions due to actions by the Developer or its agents or tenants that impede, interfere, obstruct, or otherwise compromise a Mitigation. City's obligations set forth in this Section shall survive the issuance of

the Certificate of Occupancy by the City, and termination of this Agreement. In the event this indemnity is judicially determined to exceed that permitted by Applicable Law, then such indemnity shall be construed as to preserve the maximum indemnity permitted thereby.

Section 7.6 No Liability for Breaches of Security The foregoing and anything to the contrary contained in this Agreement notwithstanding, the City and Developer shall have no liability to the other Party, or any obligation to indemnify the other Party for any third party claims, for any injury to person or property caused by the acts of third persons in connection with any alleged breach of or failure to provide reasonable security, including criminal acts or other losses, nor shall this Agreement establish any duty owed in tort to, or standard of care in tort as to, either Party or any third party.

Section 7.7 Non-Discrimination.

(a) The Developer covenants and agrees for itself, its successors and its assigns in interest to the Property or any part thereof, that there shall be no discrimination against or segregation of any person or persons on 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. All deeds, leases, or contracts for the sale, lease, sublease, or other transfer of the Property shall contain or be subject to the nondiscrimination or non-segregation clauses hereafter prescribed.

(b) Notwithstanding subdivision (a), with respect to familial status, subdivision (a) shall not be construed to apply to housing for older persons, as defined in Section 12955.9 of the Government Code. With respect to familial status, nothing in subdivision (a) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11, and 799.5 of the Civil Code, relating to housing for senior citizens. Subdivision (d) of Section 51 and Section 1360 of the Civil Code and subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall apply to subdivision (a).

(c) Developer's obligations set forth in this Section shall survive the issuance of the Certificate of Occupancy by the City, and termination of this Agreement.

Section 7.8 CFD Assessment. Nothing is this Agreement is intended to prevent the Developer from passing-through all or a portion of any CFD assessment applicable to the tenants occupying the Improvements.

Section 7.9 Deed Restriction. The Parties acknowledge that the Regional Board may require the recordation of a Covenant and Environmental Restriction ("Covenant") that: (a) runs with the land pursuant to California Civil Code Section 1471, (b) specifies that groundwater at the Site may not be used without prior Regional Board authorization, (c) requires compliance with an SMP and Mitigation, as those terms are defined in this Agreement, and/or (c) contains other provisions that are routinely required by the Regional Board on comparable sites. If the Regional Board requires such a Covenant, then, within the sooner of (x) a deadline imposed by the Regional Board, or (y) thirty (30) calendar days after a certificate of occupancy is issued for

the Project, Developer shall cause to be recorded in the Alameda County Recorder's Office a Covenant the terms of which are mutually acceptable to the Parties, and the Regional Board. Neither Party shall unreasonably withhold its acceptance of the Covenant's terms. The Covenant shall include, but not be limited to, a commercially reasonable notice to future owners of all or any portion of the Property confirming (i) the existence and Remediation and/or Mitigation of the Environmental Conditions; and (ii) any obligations future landowners may have in connection with ongoing risk management protocols described in the SMP applicable to the Site.

Section 7.10 Survival. The provisions of this section shall survive the termination of this Agreement.

ARTICLE 8.
ASSIGNMENT AND TRANSFERS

Section 8.1 Definitions. As used in this Article 8, the term "Transfer" shall mean:

(a) Any total or partial sale, assignment or conveyance, or any trust or power, or any transfer in any other mode of form, of or with respect to this Agreement, or of the Property, or any part thereof or any interest therein or of the Improvements constructed thereon, or any contract or agreement to do any of the same; or

(b) Any total or partial sale, assignment or conveyance, or any trust or power, or any transfer in any other mode or form, of or with respect to more than a fifty percent (50%) ownership interest in the Developer, or any contract or agreement to do any of the same.

Section 8.2 Purpose of Restrictions on Transfer. This Agreement is entered into solely for the purpose of development and operation of the Improvements on the Property and their subsequent use in accordance with the terms of this Agreement. The qualifications and identity of the Developer are of particular concern to the City, in view of:

(a) The importance of the redevelopment of the Property to the general welfare of the community; and

(b) The fact that a Transfer as defined in Section 8.1 above is for practical purposes a transfer or disposition of the Property.

It is because of the qualifications and identity of the Developer that the City is entering into this Agreement with the Developer and that Transfers are permitted only as provided in this Agreement.

Section 8.3 Prohibited Transfers. The limitations on Transfers set forth in this Article 8 shall apply from the Effective Date of this Agreement until the issuance of a Certificate of Occupancy by the City as more particularly described in Section 6.10. Except as expressly permitted in this Agreement, the Developer represents and agrees that the Developer has not made or created and will not make or create or suffer to be made or created, any Transfer, either voluntarily or by operation of law, without the prior approval of the City, which shall not be unreasonably withheld, conditioned, or delayed. Any Transfer made in contravention of this

Section 8.3 shall be void and shall be deemed to be a default under this Agreement, whether or not the Developer knew of or participated in such Transfer.

Section 8.4 Permitted Transfers. Notwithstanding the provisions of Section 8.3, the following Transfers shall be permitted (subject to satisfaction of the conditions of Section 8.5), so long as such Transfer is permitted under, and accomplished in accordance with this Agreement:

(a) Any Transfer creating a Security Financing Interest (defined in Section 9.1).

(b) Any Transfer directly resulting from the foreclosure of a Security Financing Interest or the granting of a deed in lieu of foreclosure of a Security Financing Interest.

(c) Any Transfer resulting directly from the death or mental incapacity of an individual.

(d) The conveyance or dedication of a portion of the Property to any public entity, including a public utility, required to allow for the development of the Project.

(e) The granting of temporary or permanent easements or permits to facilitate development of the Project.

(f) A Transfer to an Affiliate of Developer.

(g) Any Transfer contemplated by or permitted pursuant to any other provision of this Agreement,

(h) The lease of any space within the Improvements to a third party.

(i) Any Transfer resulting in up to ninety percent (90%) in the aggregate of the direct or indirect ownership or beneficial interests in Developer, provided that, following such Transfer, Red Bear Property Management, Inc. (or any Affiliate of such entity, "Red Bear") remains in Control of Developer.

(j) A Transfer otherwise approved by the City.

As a condition of the City approval of a Transfer described in Section 8.4(f) and Section 8.4(g) above, the transferee must concurrently assume the obligations of the Developer under this Agreement. As a condition of the City's approval of a Transfer described in Section 8.4(f) above, the City must review and approve the transferee's organizational documents for the purposes of determining that such transferee is an Affiliate of the Developer. As a condition of the City's approval of a Transfer described in Section 8.4(i) above, the City must review and approve Developer's organizational documents for the purposes of determining that Red Bear remains in Control.

Section 8.5 Effectuation of Permitted Transfers.

(a) Other than as permitted in Section 8.4, no Transfer of a direct interest in this Agreement shall be permitted unless, at the time of the Transfer, the person or entity to which such Transfer is made, by an agreement reasonably satisfactory to the City and in form recordable among the land records, expressly agrees to perform and observe, from and after the date of the Transfer, the obligations, terms and conditions of this Agreement; provided, however, that no such transferee shall be liable for the failure of its predecessor to perform any such obligation. The City shall grant or deny approval of a proposed Transfer within sixty (60) days of receipt by the City of the Developer's request for approval of a Transfer, which request shall include evidence of the proposed transferee's business expertise and financial capacity. Subject to the provisions of Section 11.5 of this Agreement, failure by the City to approve or disapprove the proposed Transfer within sixty (60) days after receipt of the Developer's written request shall be deemed to be approval of the proposed Transfer by the City.

(b) Any assignment of rights and/or delegation of obligations under this Agreement in connection with a Transfer of a direct interest in this Agreement (whether or not the City approval is required) shall be in writing executed by Developer and the assignee or transferee, which written agreement shall name the City as an express third party beneficiary with respect to such agreement (the "Assumption Agreement") with a copy thereof delivered to the City within thirty (30) days after the effective date thereof. Upon Transfer of a direct interest in this Agreement pursuant to an Assumption Agreement, the assignor shall be relieved of liability with respect to any such obligations relating to the Project accruing from and after the date of such assignment or Transfer. Notwithstanding the foregoing, unless such assignee specifically assumes pursuant to the Assumption Agreement the obligations under this Agreement to indemnify the City with respect to the Property and Improvements, the assignor will retain such obligations and remain jointly and severally liable for such indemnity obligations with such assignee; however, in the event of such an assumption of the indemnification obligation, Developer shall be released from all liability under such indemnity obligations.

ARTICLE 9.
SECURITY FINANCING AND RIGHTS OF HOLDERS

Section 9.1 Encumbrances. Mortgages, deeds of trust, assignment of rents and security agreements, and other real and personal property security instruments to secure the funds necessary for acquisition of the Property, or the construction and permanent financing of the Property or Improvements, and any other expenditures incurred in connection with the design, construction and operation of the Property or Improvements, are permitted to be placed upon the Property or any personal property thereon or therein or the limited liability company interests in Developer. Such permitted security instruments and related interests shall be referred to "s "Security Financing Interests". The Developer shall promptly notify the City of any Security Financing Interest that has been or will be created or attached to Developer's fee simple interest in the Property or the limited liability company interests in Developer. The foregoing notwithstanding, until the Developer is entitled to issuance of a Certificate of Occupancy as more particularly described in Section 6.10, the Developer may place Security Financing Interests only for the purpose of securing acquisition of the fee interest and for development, construction and permanent financing. As used herein: (a) "Encumbrance Holder" shall mean the holder of record

of any Security Financing Interest; (“) "Foreclosure Transfer" shall mean any transfer of all or a portion of the Property or of any associated personal property or limited liability company interests in Developer pursuant to any judicial or non-judicial foreclosure or other enforcement of remedies under or with respect to a Security Financing Interest, or by voluntary deed or assignment or other transfer in lieu thereof; and "Foreclosure Transferee" shall mean any transferee (including without limitation an Encumbrance Holder) which acquires title in the Property or interest therein or of any associated personal property or of the limited liability company interests in Developer pursuant to a Foreclosure Transfer.

Section 9.2 Holder Not Obligated to Construct. No Encumbrance Holder or Foreclosure Transferee is obligated to construct or complete any Improvements, or to guarantee such construction or completion. Nothing in this Agreement shall be deemed to permit or authorize any such Encumbrance Holder or Foreclosure Transferee to devote the Property or any portion thereof to any uses, or to construct any improvements thereon, other than those uses or Improvements provided for or authorized by this Agreement. A Developer Event of Default or other breach will not defeat or render invalid any Security Financing Interest. No Encumbrance Holder or Foreclosure Transferee of any Security Financing Interest shall be personally liable for the performance or observance of any covenants or conditions to be performed by the Developer under this Agreement, any Transaction Document or any Project Documents unless and until such Encumbrance Holder or Foreclosure Transferee acquires the Developer's interest in the Property and at the election of Encumbrance Holder or Foreclosure Transferee enters into a new agreement with the City. The City agrees that such Encumbrance Holder or Foreclosure Transferee may sell, assign, or otherwise dispose of any interest to which it has so succeeded or which it has so acquired. Upon such sale, assignment or disposition, such Encumbrance Holder or Foreclosure Transferee shall be released from all obligations and liabilities of the Developer whatsoever arising under this Agreement, any Transaction Document or any other document from and after the date of such sale, assignment or disposition.

Section 9.3 Notice of Default and Right to Cure. Whenever the City pursuant to its rights set forth in Article 10 delivers any notice to the Developer of the occurrence of a Developer Event of Default or any other matter which may give rise to a right of termination or other claim “a "Cure Notice"), the City shall not exercise any remedy available to it unless and until each of the following have occurred: (a) a Cure Notice describing the is provided to each and every then-existing Encumbrance Holder that has notified the City in writing of (i) its interest in receiving such a notice, and (ii) its address for the receipt of such notice; and (b) such Developer Event of Default remains uncured after the expiration of the applicable cure period set forth in Section 9.4. The Cure Notice shall be sent simultaneously with any similar notice or notices of a Developer Event of Default that the City may be required to provide to Developer pursuant to Article 10. An Encumbrance Holder shall have the right and the power to cure any Developer Event of Default specified in a Cure Notice within the cure periods set forth in Section 9.4 below, and, if such Developer Event of Default is so cured, this Agreement shall remain in full force and effect. Nothing contained in this Agreement shall be deemed to permit or authorize any Encumbrance Holder or Foreclosure Transferee to undertake or continue the construction or completion of the Improvements or any other work (beyond the extent necessary to conserve or protect such improvements or construction already made) without first having expressly assumed in writing the Developer's obligations to the City under this Agreement. The Encumbrance Holder in that event must agree to complete, in the manner provided in this

Agreement, the construction of the Improvements. Any such Encumbrance Holder properly completing construction of the Improvements pursuant to this Section 9.3 shall assume all rights and obligations of Developer under this Agreement and shall be entitled, upon written request made to the City, to a Certificate of Occupancy from the City.

Section 9.4 Cure of Developer Defaults. Developer Events of Default may be cured by any Encumbrance Holder in the following manner within the following time frames:

(a) For all Developer Events of Default, an Encumbrance Holder shall have (a) sixty (60) days after the later of (i) its receipt of the earliest Cure Notice issued by the City to such Encumbrance Holder setting forth such Developer Event of Default, or (ii) expiration of the applicable Cure Period set forth in Section 10.3(b) to cure such Developer Event of Default if such Developer Event of Default can reasonably be cured by an Encumbrance Holder within such sixty (60)-day period; or (b) if an Encumbrance Holder has promptly commenced to cure such Developer Event of Default within such applicable period and has been diligently prosecuting the same, but such Developer Event of Default cannot reasonably be cured by such Encumbrance Holder within such applicable period, then such Encumbrance Holder shall be provided with such additional time as is necessary to complete the cure, provided such Encumbrance Holder continues to diligently pursue such cure to completion.

(b) If a Developer Event of Default cannot practicably be cured by an Encumbrance Holder without the need for such Encumbrance Holder to obtain possession of the Property or any portion thereof or to obtain control of the Developer, or if a Developer Event of Default cannot be cured by an Encumbrance Holder (for example, the insolvency of Developer), then, in each case, if at least one Encumbrance Holder has delivered to the City within sixty (60) days after its receipt of a Cure Notice a written undertaking wherein such Encumbrance Holder agrees (1) that it will commence foreclosure proceedings forthwith, and (2) will cure or obtain an agreement from the Foreclosure Transferee that such Foreclosure Transferee will cure such Developer Event of Default (to the extent that it can be cured) upon completion of the foreclosure and the resultant Foreclosure Transfer, and if thereafter any such Encumbrance Holder actually commences foreclosure proceedings and prosecutes the same thereafter with due diligence, then the cure period shall not commence until completion of such foreclosure proceedings and the resultant Foreclosure Transfer; provided, that if said Encumbrance Holder is prevented from commencing or continuing foreclosure proceedings by any bankruptcy stay, or any order, judgment or decree of any court or regulatory body of competent jurisdiction, and said Encumbrance Holder diligently seeks release from or reversal of such stay, order, judgment or decree, then the cure period shall not commence until such stay, order, judgment or decree is released or reversed, and such foreclosure proceedings and the resultant Foreclosure Transfer are thereafter actually commenced and prosecuted thereafter with due diligence to completion. Upon completion of any such Foreclosure Transfer, the Foreclosure Transferee (whether such Foreclosure Transferee is the Encumbrance Holder or another party) shall have until the expiration of the applicable cure periods set forth in this Section 9.4 to cure the Developer Event of Default giving rise to such Foreclosure Transfer, to the extent curable by such Foreclosure Transferee (unless such Developer Event of Default has already been cured), and any other Developer Events of Default that may then exist and be curable by such Foreclosure Transferee. The Encumbrance Holder shall have the right to terminate its foreclosure proceedings hereunder in the event of a cure of a Developer Event of Default giving rise to such foreclosure

proceedings. If an Encumbrance Holder or a Foreclosure Transferee obtains possession through foreclosure proceedings and assumes obligations to construct Improvements, the Schedule of Performance will be extended as needed to account for the time expended by such Encumbrance Holder or Foreclosure Transferee to commence and then complete such foreclosure proceedings. Upon the curing of any Developer Event of Default by an Encumbrance Holder or Foreclosure Transferee within the time provided in this Section 9.4, the City's right to pursue any remedies for the cured Developer Event of Default shall terminate.

Section 9.5 Failure of Holder to Complete Improvements. Subject to Section 10.3(b), in any case where after a default by the Developer in completion of construction of the Improvements under this Agreement, the Encumbrance Holder or Foreclosure Transferee, having first exercised its option to construct and also obtained possession of the Property or control of Developer, has not proceeded diligently with construction within six (6) months after obtaining possession of the Property, the City shall be afforded those rights against such Encumbrance Holder or Foreclosure Transferee it would otherwise have against the Developer under this Agreement.

Section 9.6 Right of the City to Cure. In the event of a default or breach by the Developer of a Security Financing Interest prior to the completion of construction of the Improvements, and if the Encumbrance Holder or Foreclosure Transferee has not exercised its option to complete the construction of the Improvements, the City may cure such default, provided that Developer is given ten (10) days prior notice of the City's intention to cure such default and does not thereafter immediately commence and continue with due diligence to complete to cure such default, and provided that City's right to cure shall be coterminous with the Developer's cure rights under the Security Financing Interest. In such event, the City shall be entitled to reimbursement from the Developer of all reasonable costs and expenses incurred by the City in curing the default.

Section 9.7 Right of the City to Satisfy Other Liens. After the Close of Escrow and after the Developer has had a reasonable time to challenge, cure, or satisfy any liens or encumbrances on the Property, or any portion thereof, which is not permitted under this Agreement, and has failed to do so, in whole or in part, the City shall, upon at least ten (10) d'ys' prior written notice to the Developer, have the right to satisfy any such lien or encumbrances; provided, however that nothing in this Agreement shall require the Developer to pay or make provision for the payment of any tax, assessment, lien, or charge so long as the Developer in good faith shall contest the validity or amount thereof and so long as such delay in payment shall not subject the Property or any portion thereof to forfeiture or sale.

Section 9.8 Holder to be Notified. To the extent deemed necessary by the City, the Developer shall use good faith efforts to insert each applicable term contained in this Article 9 related to Security Financing Interest or the rights of Encumbrance Holders into each Security Financing Interest or shall procure acknowledgement of such terms by each prospective Encumbrance Holder prior to its coming into any security right or interest in the Property or portion thereof.

Section 9.9 Modifications. If an Encumbrance Holder should, as a condition of providing financing or funding for development of all or a portion of the Improvements or other

portions of the Project, request any modification of this Agreement, the Transaction Documents or any documents in order to protect its interests in the Project, the City shall consider such request in good faith consistent with the purpose and intent of this Agreement and the rights and obligations of the Parties under this Agreement. In addition, (a) the City agrees to cooperate reasonably with each Encumbrance Holder or prospective Encumbrance Holder in confirming or verifying the rights and obligations of each Encumbrance Holder under this Agreement, the Transaction Documents, and the Project Documents, and (b) the City agrees to cooperate reasonably with Developer in including the provisions of this Article 9 in the Reciprocal Access Easement.

Section 9.10 Estoppel Certificates. Either Party, at any time and from time to time following Close of Escrow, within fifteen (15) days of receipt of a written request from the other Party, shall execute and deliver to such Party a written statement that, to the knowledge of the certifying Party (i) this Agreement, the Transactions Documents and the Project Documents are in full force and effect and binding obligation of the Parties, (ii) this Agreement, Transaction Documents, and the Project Documents have not been amended or modified, or if so amended or modified, identifying the amendments or modifications, 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.

Section 9.11 Participation in Insurance and Condemnation Proceedings. It is agreed, notwithstanding any other provision of this Agreement to the contrary, that, at all times while a Security Financing Interests remains in effect, all policies of insurance required to be maintained by the Developer under this Agreement or otherwise in effect for the Project contain a standard mortgagee protection endorsement, and the Encumbrance Holder shall be entitled to hold the originals of all such policies. The Encumbrance Holder shall be entitled to participate in the settlement or adjustment of any losses covered by such policies of insurance and no such settlement or adjustment shall be accepted or approved without the specific consent in writing of such Encumbrance Holder. In addition, at all times while a Security Financing Interests remains in effect, the Encumbrance Holder shall be entitled to participate in any settlement of or any stipulation of judgment with respect to any condemnation proceeds affected all or any portion of the Property or any agreement to sell all or any portion of the Property in lieu of condemnation, and no such settlement, stipulation or agreement shall be made or entered into without the specific consent in writing of such Encumbrance Holder.

Section 9.12 Multiple Encumbrance Holders. If at any time there is more than one Security Financing Interest constituting a lien on the Property or any interest therein, the lien of the Encumbrance Holder prior in time to all others shall be vested with the rights under this Article 9 to the exclusion of the holder of any other Security Financing Interest; provided, however, that if the holder of a senior Security Financing Interest fails to exercise the rights set forth in this Article 9, each holder of a junior Security Financing Interest shall succeed to the rights set forth in this Article 9 only if the holders of all Security Financing Interests senior to it have failed to exercise the rights set forth in this Article 9.

ARTICLE 10.
DEFAULT AND REMEDIES

Section 10.1 Application of Remedies. The provisions of this Article 10 shall govern the Parties' remedies for breach of this Agreement.

Section 10.2 Fault of City.

(a) Event of Default. Following notice and cure as more particularly described in Section 10.2(b) below, each of the following events constitutes "a "City Event of Default" and a basis for the Developer to take action against City:

(1) The City fails to convey the Property as provided in this Agreement and the Developer is otherwise entitled by this Agreement to such conveyance.

(2) The City breaches any other material provision of this Agreement.

(b) Notice and Cure Procedure; Remedies. Upon the occurrence of any of the above-described events, the Developer shall first notify the City in writing of its purported breach or failure, giving the City thirty (30) days from receipt of such notice to cure such breach or failure. In the event the City does not then cure the default within such thirty (30)-day period (or, if the default is not reasonably susceptible of cure within such thirty (30)-day period, the City fails to commence the cure within such period and thereafter to prosecute the cure diligently to completion), then the Developer shall be entitled to any rights afforded it in law or in equity by pursuing any or all of the following remedies: (1) terminating this Agreement by written notice to the City; (2) prosecuting an action for damages (subject to the limitation of liability more particularly described in Section 11.3, and excluding punitive damages and consequential damages); or (3) seeking any other remedy available at law or in equity (excluding punitive damages and consequential damages), including, without limitation, an action for specific performance.

Section 10.3 Fault of Developer.

(a) Event of Default. Following notice and cure as more particularly described in Section 10.3(b) below, each of the following events constitutes "a "Developer Event of Default" and a basis for the City to take action against the Developer:

(1) The Developer does not attempt diligently and in good faith to cause satisfaction of the conditions in Article 2 benefiting the Developer within the reasonable control of the Developer by the time set forth in the Schedule of Performance.

(2) The Developer fails to construct the Improvements in accordance with in Article 6 within the time set forth in the Schedule of Performance.

(3) The Developer has breached its obligations under Section 7.1.

(4) Prior to the issuance of a Certificate of Occupancy for the Improvements as more particularly described in Section 6.10, the Developer attempts or completes a Transfer except as permitted under Article 8.

(5) The Developer's: (1) filing for bankruptcy, dissolution, or reorganization, or failure to obtain a full dismissal of any such involuntary filing brought by another party before the earlier of final relief or ninety (90) days after the filing; (2) making a general assignment for the benefit of creditors; (3) applying for the appointment of a receiver, trustee, custodian, or liquidator, or failure to obtain a full dismissal of any such involuntary application brought by another party before the earlier of final relief or ninety (90) days after the filing; (4) insolvency as evidenced by an entered decree by a court of competent jurisdiction; or (5) failure, inability or admission in writing of its inability to pay its debts as they become due.

(6) Following the Close of Escrow and prior to the issuance of a Certificate of Occupancy for the Improvements, the Developer defaults under any Security Financing Interest, has not cured such default within the applicable cure period contained in such agreement evidencing such Security Financing Interest and the applicable Encumbrance Holder has elected in writing to accelerate the debt secured by such Security Financing Interest.

(7) The Developer breaches any other material provision of this Agreement.

(b) Notice and Cure Procedure. Upon the happening of any of the above-described events the City shall first notify the Developer in writing of its purported breach or failure, giving the Developer thirty (30) days from receipt of such notice to cure such breach or failure. If the Developer does not cure the default within such thirty (30)-day period (or if the default is not reasonably susceptible of being cured within such thirty (30)-day period, the Developer fails to commence the cure within such period and thereafter to prosecute the cure diligently to completion), then the City shall be afforded all of its rights at law or in equity by taking any or all of the following remedies: (1) terminating this Agreement by written notice to the Developer; (2) prosecuting an action for damages (subject to the limitation of liability more particularly described in Section 11.3, and excluding specific performance, punitive damages and consequential damages); or (3) seeking any other remedy available at law or in equity (excluding punitive damages and consequential damages). If the City elects to terminate this Agreement, the provisions of this Agreement that are specified to survive such termination shall remain in full force and effect.

Section 10.4 Right of Reverter. Following the Close of Escrow, if the Developer fails to commence the construction of the Improvements by the Outside Date (as the Outside Date may be extended pursuant to Section 11.4 or other provisions of this Agreement), then the City may, in addition to other rights granted in this Agreement, re-enter and take possession of the Property with all improvements on the Property, and revest in the City the estate previously conveyed to the Developer by the City with respect to the Property subject to the provisions set forth below. The City's rights under this Section 10.4 shall terminate and be of no further force and effect once the City issues a Certificate of Occupancy as more particularly described in Section 6.10.

The interest created pursuant to this Section 10.4 shall be "a "Power of Termination" as defined in California Civil Code Section 885.010. The City's Power of Termination shall be subordinate and subject to and be limited by and shall not defeat, render invalid, or limit:

(a) Any Security Financing Instrument with respect to the Property; or

(b) Any rights or interests provided in this Agreement for the protection of the holder of a Security Financing Interest with respect to the Property.

(c) Any leases affecting the Property as of the date of such termination.

Upon revesting in the City of title to the Property as provided in this Section 10.4, the City shall, pursuant to its responsibilities under state law, use its best efforts to resell the Property as soon as possible, in a commercially reasonable manner and consistent with the objectives of such law, to a qualified and responsible party or parties (as reasonably determined by the City) who will assume the obligation of making or completing such improvements as are acceptable to the City in accordance with the uses specified for the Property and in a manner satisfactory to the City. Upon such resale of the Property the proceeds thereof shall be applied as follows:

(1) First to reimburse the City on its own behalf for all costs and expenses incurred by the City, including but not limited to salaries of personnel and legal fees incurred in connection with the recapture, management, and resale of the Property (but less any income derived by the City from any part of the Property in connection with such management); all taxes, installments of assessments payable prior to resale, and water and sewer charges with respect to the Property (or, in the event the Property is exempt from taxation or assessment or such charges during the period of ownership by the City, an amount equal to the taxes, assessments, or charges that would have been payable if the Property was not so exempt); any payments made or necessarily to be made to discharge any encumbrances or liens existing on the Property at the time of revesting of title in the City or to discharge or prevent from attaching or being made any subsequent encumbrances or liens due to obligations, defaults, or acts of the Developer, its successors or transferees; expenditures made or obligations incurred with respect to the making or completion of the Property or any part thereof; and any amounts otherwise owing the City by the Developer and its successors or transferee.

(2) Second, to reimburse the Developer, its successor or transferee, up to the amount equal to: the Purchase Price for the Property, plus the fair market value of the Improvements the Developer has placed on the Property, less any funds paid by the City to remove any encumbrances or liens and gains or income withdrawn or made by the Developer from the Property or the improvements thereon. Notwithstanding the foregoing, the amount calculated pursuant to this paragraph (2) shall not exceed the fair market value of the Property together with the Improvements thereon as of the date of the default or failure which gave rise to the City's exercise of the right of reverter.

(3) Third, any balance remaining after such reimbursements shall be retained by the City as its property.

The rights established in this Section 10.4 are to be interpreted in light of the fact that the City will convey the Property to the Developer for development and not for speculation.

Section 10.5 Rights and Remedies Cumulative. Except as otherwise provided, the rights and remedies of the Parties are cumulative, and the exercise or failure to exercise any right

or remedy shall not preclude the exercise, at the same time or different times, of any right or remedy for the same default or any other default.

Section 10.6 Survival. Upon termination of this Agreement under this Article 10, the following provisions of this Agreement shall survive: Section 2.3, Section 3.7, Section 3.8, Section 6.4, Section 6.8, Section 7.4, and Section 7.5. This Section 10.6 exists for reference purposes only, and does not alter the scope or nature of the surviving provisions.

ARTICLE 11.
GENERAL PROVISIONS

Section 11.1 Identity of Developer. The Developer represents and warrants to the City as of the Effective Date and as of the Close of Escrow, as follows:

(a) Organization. The Developer is a corporation, duly organized, validly existing and in good standing under the laws of California with full power and authority to conduct its business as presently conducted and to execute, deliver and perform its obligations under this Agreement.

(b) Authorization. The Developer has taken all necessary action to authorize its execution, delivery and, subject to any conditions set forth in this Agreement performance of the Agreement. Upon the Effective Date of this Agreement, this Agreement shall constitute a legal, valid and binding obligation of the Developer, enforceable against the Developer in accordance with its terms, subject to all applicable bankruptcy laws and laws affecting the rights of creditors generally.

(c) No Conflict. The execution, delivery and performance of this Agreement by the Developer does not and will not conflict with, or constitute a violation or breach of, or constitute a default under (i) the charter or incorporation documents of the Developer, (ii) any applicable law, rule or regulation binding upon or applicable to the Developer, or (iii) any material agreements to which the Developer is a party.

(d) No Litigation. To the Developer's actual knowledge, there is no pending or threatened litigation, suit, action or proceeding before any court or administrative agency affecting the Developer or the Property that would, if adversely determined, materially and adversely affect the Developer or the Property or the Developer's ability to perform its obligations under this Agreement or to develop and operate the Project.

(e) No Material Adverse Change. There has been no material adverse change in the financial condition of the Developer since the Effective Date.

(f) Default Under Other Agreements. There is no event, act or omission which constitute, or but for the passage of time or the giving of notice, or both, would constitute a breach, violation or default by Developer under any agreement materially related to the development or operation of the Property or Improvements, including but not limited any other partnership agreement, joint venture agreement, or loan agreement.

Until the Close of Escrow, Developer shall, upon learning of any fact or condition which would cause any of the warranties and representations in this Section 11.1 not to be true, immediately give written notice of such fact or condition to the City. Upon the Developer's Transfer prior to the Close of Escrow, the Developer shall cause the Developer's assignee to update the representations and warranties set forth above.

Section 11.2 Notices, Demands and Communications. Formal notices, demands, submittals and communications between the City and the Developer shall be sufficiently given if, and shall not be deemed given unless, delivered personally, or dispatched by certified mail, return receipt requested, or by reputable overnight delivery service with a receipt showing date of delivery, to the principal offices of the City and the Developer as follows:

City:
City of Livermore
1052 S. Livermore Avenue
Livermore, California 94550
Attn: City Manager

Developer
Red Bear Property Management, Inc.
5955 Coronado Lane
Pleasanton, CA 94588
Attn: Mike Madden

Such written notices, demands and communications may be sent in the same manner to such other addresses as the affected Party may from time to time designate by mail as provided in this Section 11.2. Delivery shall be deemed to have occurred at the time indicated on the receipt for delivery or refusal of delivery.

Section 11.3 Non-Liability of Officials, Employees and Agents. The Parties acknowledge that neither Party would have entered into this Agreement had it been exposed to damage claims from the other Party for any breach thereof. As such, the Parties agree that in no event shall either Party be entitled to recover damages against the other Party for breach of this Agreement. In addition, no member, partner, beneficial interest holder, official, officer, director, employee, contractor, consultant, attorney, agent, or designated volunteer of a Party shall be personally liable to the other Party, or any successor in interest to the other Party, in the event of any default or breach or for any amount or on any obligation under the terms of this Agreement.

Section 11.4 Enforced Delay. In addition to specific provisions of this Agreement, performance by any Party hereunder shall not be deemed to be in default, and all performance and other dates specified in this Agreement or the Schedule of Performance shall be extended, where delays or defaults are due to war; insurrection; strikes; lock-outs; riots; floods; earthquakes; fires; casualties; acts of God; acts of the public enemy; epidemics; quarantine restrictions; freight embargoes; lack of transportation; governmental restrictions or priority (except for restrictions or priorities established by the Party required to perform the action required under this Agreement); litigation; unusually severe weather; inability to secure

necessary labor, materials or tools; or acts or the failure to act of the City or any other public or governmental agency or entity including breaches by the City under this Agreement, any Transaction Document, or Project Document; or any other cause beyond the affected Party's reasonable control (except that acts or the failure to act of a Party shall not excuse performance by such Party, including without limitation the Developer's inability to obtain financing for the Project or the economic infeasibility of the Project" ("Force Majeure"). An extension of time for Force Majeure shall only be for the period of the enforced delay, which period shall commence to run from the time of the notification of the delay by the Party requesting the extension to the other Party. The Party requesting an extension of time under this Section 11.4 shall give notice promptly following knowledge of the delay to the other Party. If, however, notice by the Party claiming such extension is sent to the other Party more than thirty (30) days after knowledge of the commencement of the delay, the period shall commence to run upon the earlier of (i) thirty (30) days prior to the giving of such notice or (ii) the date that the other Party received knowledge of the events giving rise to the delay. Notwithstanding the foregoing, the City shall be responsible for the costs of any delay due to Environmental Obligations as defined in Section 1.1 (x).

Section 11.5 Delegation of Authority. Upon approval of this Agreement by the City Council, the City Manager is authorized to execute any and all and Transaction Documents, including but not limited to the recording in the Official Records the parcel map for the Property.

Section 11.6 Cooperation, On-going Technical/Schedule Consultation, Related Agreements. The Parties acknowledge that achieving the purposes of this Agreement will require ongoing cooperation among them and may require preparation and execution of documents or agreements that were not fully anticipated and specifically described in this Agreement. The Parties therefore agree to participate in meetings to keep each other apprised of any developments that may impact their performance under this Agreement or accomplishing the objectives of this Agreement. Neither the need for such cooperation nor the failure of this Agreement to comprehensively anticipate and provide for such additional documents or agreements shall be deemed a defect in this Agreement or an indication that the Parties had not reached an enforceable agreement as of the Effective Date. Rather, the Parties agree to cooperate in the preparation and execution of such other, related and commercially reasonable agreements as may arise in connection with promptly fulfilling the purposes and intent of this Agreement provided that such secondary agreements do not substantially change the scope or cost of the obligations negotiated by the Parties pursuant to this Agreement or diminish the benefits provided for in this Agreement.

Section 11.7 Inspection of Books and Records. The City has the right at all reasonable times and upon five (5) business days prior written notice to inspect the books, records and all other documentation of the Developer pertaining to its obligations under this Agreement. Such books, records and documentation are privileged documents of the Developer containing trade secrets, private personal information, and/or the contents of real estate appraisals, engineering and/or feasibility estimates, evaluations, and other proprietary non-public information.

Section 11.8 Title of Parts and Sections. Any titles of the sections or subsections of this Agreement are inserted for convenience of reference only and shall be disregarded in interpreting

any part of its provision. References to "Articles" and "Sections" are to sections of this Agreement, unless otherwise specifically provided.

Section 11.9 Applicable Law. This Agreement shall be interpreted under and pursuant to the laws of the State of California.

Section 11.10 Severability. If any term, provision, covenant or condition of this Agreement is held in a final disposition by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions shall continue in full force and effect unless the rights and obligations of the Parties have been materially altered or abridged by such invalidation, voiding or unenforceability.

Section 11.11 Legal Actions. In the event any legal action is commenced to interpret or to enforce the terms of this Agreement or to collect damages as a result of any breach thereof, each Party shall bear their own attorneys' fees and no attorneys' fees may be awarded to the Party prevailing in the action.

Section 11.12 Binding Upon Successors; Covenants to Run With Land. This Agreement shall be binding upon and inure to the benefit of the heirs, administrators, executors, successors in interest, and assigns of each of the Parties; provided, however, that there shall be no Transfer except as permitted in under the terms of this Agreement. Any reference in this Agreement to a specifically named Party shall be deemed to apply to any successor, heir, administrator, executor, successor, or assign of such Party who has acquired an interest in compliance with the terms of this Agreement or under law.

The terms of this Agreement shall run with the land, and shall bind all successors in title to the Property until the termination of this Agreement, except that the provisions of this Agreement that are specified to survive termination of this Agreement shall run with the land in perpetuity and remain in full force and effect following such termination. Every contract, deed, or other instrument hereafter executed covering or conveying the Property, or any portion thereof, shall be held conclusively to have been executed, delivered and accepted subject to such covenants and restrictions, regardless of whether such covenants or restrictions are set forth in such contract, deed or other instrument, unless the City expressly releases the Property, or the applicable portion of the Property, from the requirements of this Agreement.

Section 11.13 Parties Not Co-Venturers. Nothing in this Agreement is intended to or does establish the Parties as partners, co-venturers, or principal and agent with one another.

Section 11.14 Entire Understanding of the Parties. This Agreement constitutes the entire understanding and agreement of the Parties with respect to the conveyance of the Property and the development of the Project, and expressly supersedes the Exclusive Negotiating Rights Agreement dated July 26, 2018, and the Original Disposition and Development Agreement between the City and Red Bear Property Management.

Section 11.15 Counterparts. This Agreement may be executed in counterparts and multiple originals.

Section 11.16 Amendments. The Parties can amend this Agreement only by means of a writing signed by both Parties.

Section 11.17 Recordation of Memorandum of Amended and Restated Disposition and Development Agreement. The Parties consent to the recordation of the Memorandum of Amended and Restated Disposition and Development Agreement in the Official Records against the Developer's interest in the Property.

Section 11.18 Standard of Approval. Any consents or approvals required or permitted under this Agreement shall not be unreasonably withheld or made, except where it is specifically provided that a sole discretion standard applies.

Section 11.19 Effectiveness of Agreement. This Agreement is dated for convenience only and shall only become effective on the Effective Date.

Section 11.20 Interpretation. The use in this Agreement of the words "including", "such as" or words of similar import when following any general term, statement or matter shall not be construed to limit such statement, term or matter to the specific statements, terms or matters, whether or not language of non-limitation, such as "without limitation" or "but not limited to", or words of similar import, is used with reference thereto.

Section 11.21 No Gift or Dedication. Except as otherwise specified herein, this Agreement shall not be deemed to be a gift or dedication of any portion of the Property to the general public, for the general public, or for any public use or purpose whatsoever. Except as provided for the REA, the Developer shall have the right to prevent or prohibit the use of or access to any portion of the Project by any member of the general public.

[SIGNATURES ON THE FOLLOWING PAGE]

WHEREFORE, the Parties have executed this Agreement as of the date first above written.

City:

By: _____
Marianna Marysheva
Its: City Manager

Date: _____

APPROVED AS TO FORM

By: _____
Jason R. Alcala, City Attorney

DEVELOPER:
RED BEAR PROPERTY MANAGEMENT, Inc., a California Corporation

By:

By: _____

Name: MICHAEL J. MADDEN

Title: PRESIDENT

CALIFORNIA ACKNOWLEDGMENT CIVIL CODE § 1189

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 October 24, 2022 (Date) before me, Laura Albert, Notary Public, (Here Insert Name and Title of the Officer)

personally appeared Michael J. Madden (Name(s) of Signer(s))

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.

LAURA ALBERT
Notary Public - California
Alameda County
Commission # 2287490
My Comm. Expires May 4, 2023

Place Notary Seal and/or Stamp Above

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 Laura Albert
Signature of Notary Public

OPTIONAL

Completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached Document
Title or Type of Document: Amended and Restated Disposition and Development Agreement
Document Date: October 24, 2022 Number of Pages: 99
Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: Michael J. Madden	Signer's Name: _____
☐ Corporate Officer – Title(s): _____	☐ Corporate Officer – Title(s): _____
☐ Partner – ☐ Limited ☐ General	☐ Partner – ☐ Limited ☐ General
☐ Individual ☐ Attorney in Fact	☐ Individual ☐ Attorney in Fact
☐ Trustee ☐ Guardian or Conservator	☐ Trustee ☐ Guardian or Conservator
☒ Other: President	☐ Other: _____
Signer is Representing: _____	Signer is Representing: _____

©2018 National Notary Association

CALIFORNIA ACKNOWLEDGMENT CIVIL CODE § 1189

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 _____ }

On _____ before me, _____,
Date *Here Insert Name and Title of the Officer*

personally appeared _____
Name(s) of Signer(s)

_____,

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 _____
Signature of Notary Public

Place Notary Seal and/or Stamp Above

OPTIONAL

Completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached Document

Title or Type of Document: _____

Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____
☐ Corporate Officer – Title(s): _____
☐ Partner – ☐ Limited ☐ General
☐ Individual ☐ Attorney in Fact
☐ Trustee ☐ Guardian or Conservator
☐ Other: _____
Signer is Representing: _____

Signer's Name: _____
☐ Corporate Officer – Title(s): _____
☐ Partner – ☐ Limited ☐ General
☐ Individual ☐ Attorney in Fact
☐ Trustee ☐ Guardian or Conservator
☐ Other: _____
Signer is Representing: _____

©2018 National Notary Association


Downtown Plan
Parking improvements begin this summer!
Railroad Avenue
L Street
Livermore Avenue
First Street
Surface Parking
Multifamily Residential
Multifamily Residential
Multifamily Residential
Multifamily Residential
Science + Society Center
Retail
Blacksmith Square
Retail
Retail
Blackbox Theater
Retail
Hotel
Bankhead Theater
Livermore 13 Cinemas
Bankhead Theater Plaza
Parking Structure
Surface Parking
Uncle Yu's
Lizzie Fountain
Livermorium Plaza
Flagpole Plaza
N
Project Boundary
LIVERMORE
CALIFORNIA
For more information visit
cityoflivermore.net/downtown
EXHIBIT A

RECORDING REQUESTED BY:
and

WHEN RECORDED MAIL TO:

CITY CLERK
CITY OF LIVERMORE
1052 S. LIVERMORE AVENUE
LIVERMORE, CA 94550-4899

2022116128 06/23/2022 11:26 AM 11 PGS
OFFICIAL RECORDS OF ALAMEDA COUNTY
MELISSA WILK, CLERK-RECORDER
RECORDING FEES: $0 00

11
HT

THIS SPACE FOR RECORDER'S USE ONLY

MAIL TAX STATEMENTS TO:

SAME AS ABOVE

The Undersigned grantor(s) declare(s):
CITY TRANSFER TAX $
DOCUMENTARY TRANSFER TAX $
SURVEY MONUMENT FEE $
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: 098-0289-23, 098-0289-24, 098-0289-25,
098-0289-26, 098-0289-27

LOG NO. 22-233

No Fee Recording Government Code 6103, 27383, & 27388 1
The Undersigned Grantor declares No Tax Due – R&T 11911
Consideration less than $100

AMENDMENT TO GRANT OF EASEMENT

THIS PAGE ADDED TO PROVIDE ADEQUATE SPACE FOR RECORDING INFORMATION (Govt. Code 27361.6)
(Additional recording fee applies)

RECORDING REQUESTED BY
and

WHEN RECORDED MAIL TO
City Clerk
City of Livermore
1052 South Livermore Avenue
Livermore, CA 94550

MAIL TAX STATEMENTS TO: 22-233

ABOVE THIS LINE FOR RECORDER'S USE

SAME AS ABOVE

The Undersigned grantor(s) declare(s):
CITY TRANSFER TAX $
DOCUMENTARY TRANSFER TAX $
SURVEY MONUMENT FEE $
Computed on the consideration or value or property conveyed, OR
Computed on the consideration or value less liens or encumbrances remaining a t time of sale.

APN #'s 098-0289-23, 098-0289-24, 098-0289-25
098-0289-26, 098-0289-27

No Fee Recording Government Code 6103, 27383, & 27388 1
The undersigned Grantor declares· No Tax Due – R&T 11911 Consideration less than $100

AMENDMENT TO GRANT OF EASEMENT

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged,

The City of Livermore, a municipal corporation ("City" or "Grantor"), owner of the property being all of the lots shown on Tract Map 8574 and on Parcel Map 11239 and the Livermore Stockmen's Rodeo Association ("Grantee"), owner of the Park Easement described in the Grant of Easement recorded on April 18, 2018 under document number 2018076967 Official Records of Alameda County hereby amends said Park Easement to revise the boundaries of the Cultural Facilities Use Area, Commercial Areas, and the Park Area within the Park Easement as described in Exhibit "D" and subject to the terms and conditions set forth in that specific agreement titled *First Amendment to Agreement for the Development of the Rodeo Grounds and Sunken Garden Area as a Civic Center and Parks and Recreation Area,* dated January 30, 2018, the *Second Amendment to Agreement for the Development of the Rodeo Grounds and Sunken Garden Area as a Civic Center and Parks and Recreation Area.* dated September 27, 2019, and *Third Amendment to Agreement for the Development of the Rodeo Grounds and Sunken Garden Area as a Civic Center and Parks and Recreation Area.* dated ~~May~~ June 6, 2022 and on file with the City Clerk for the City of Livermore ("Agreement"). The rights, duties, and obligations of the City and the Livermore Stockmen's Rodeo Association concerning the use of the Park Area, Cultural Facility Use Area, and the Commercial Use Areas of this Amended Park Easement are set forth in that Agreement.

This Amended Park Easement may be used by the City for parking prior to the construction of the park facilities, cultural facilities, and commercial uses in those areas designated as the Park Area, Cultural Facility Use Area, and Commercial Use Areas, respectively. The Cultural Facility Use Area and the Commercial Use Areas A, B, C and D may be used by the City as a park if the respective locations are no longer needed for parking, prior to the construction of a cultural facility or commercial facilities in those respective areas. The City may use any and all portions of the Amended Park Easement for public infrastructure that does not interfere with other uses allowed in the easement area.

**FOR DESCRIPTION SEE THE ATTACHED EXHIBIT "D"
ATTACHED HERETO AND MADE A PART HEREOF**

[***Signature appears on following page***]

Grantor Signature:

CITY OF LIVERMORE
A municipal corporation of the State of California

DATED: 6/6/2022

~~Marc Roberts~~, City Manager
Marianna Marysheva

Grantee Signature:

LIVERMORE STOCKMEN'S RODEO ASSOCIATION:

DATED: 05-18-22

David Finster, ~~President~~ Director

APPROVED AS TO FORM:

Kimberly Cilley
Sr. Asst. City Attorney

APPROVED AS TO INSURANCE:

Risk Manager/Analyst

EXHIBIT B - PARK EASEMENT

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 June 6, 2022 before me, MARIE WEBER, CITY CLERK,

personally appeared Marianna Marysheva, City Manager,
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.

CORPORATE SEAL OF THE CITY OF LIVERMORE, CA.

Signature Marie Weber

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
County of Alameda)

On May 18, 2022 before me, Deborah S. Davis, Notary Public
(insert name and title of the officer)

personally appeared David Finster,
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.

DEBORAH S. DAVIS
Notary Public - California
Alameda County
Commission # 2357707
My Comm. Expires May 15, 2025

Signature Deborah S. Davis (Seal)

EXHIBIT "D"

EXHIBIT B - PARK EASEMENT

LEGAL DESCRIPTION AMENDED PARK EASEMENT

REAL PROPERTY SITUATED IN THE CITY OF LIVERMORE, COUNTY OF ALAMEDA, STATE OF CALIFORNIA, AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEING ALL OF PARCEL 2 AND PARCEL 5, OF TRACT 8574, RECORDED DECEMBER 23,2020, IN BOOK 365 OF MAPS AT PAGES 15-19, AND ALL OF PARCEL'S A, B, & C OF PARCEL MAP 11239 RECORDED May 24, 2022, IN BOOK 354 OF MAPS AT PAGES 95-97 ALAMEDA COUNTY RECORDS.

CONTAINING 78,671± SQUARE FEET OF LAND MORE OR LESS

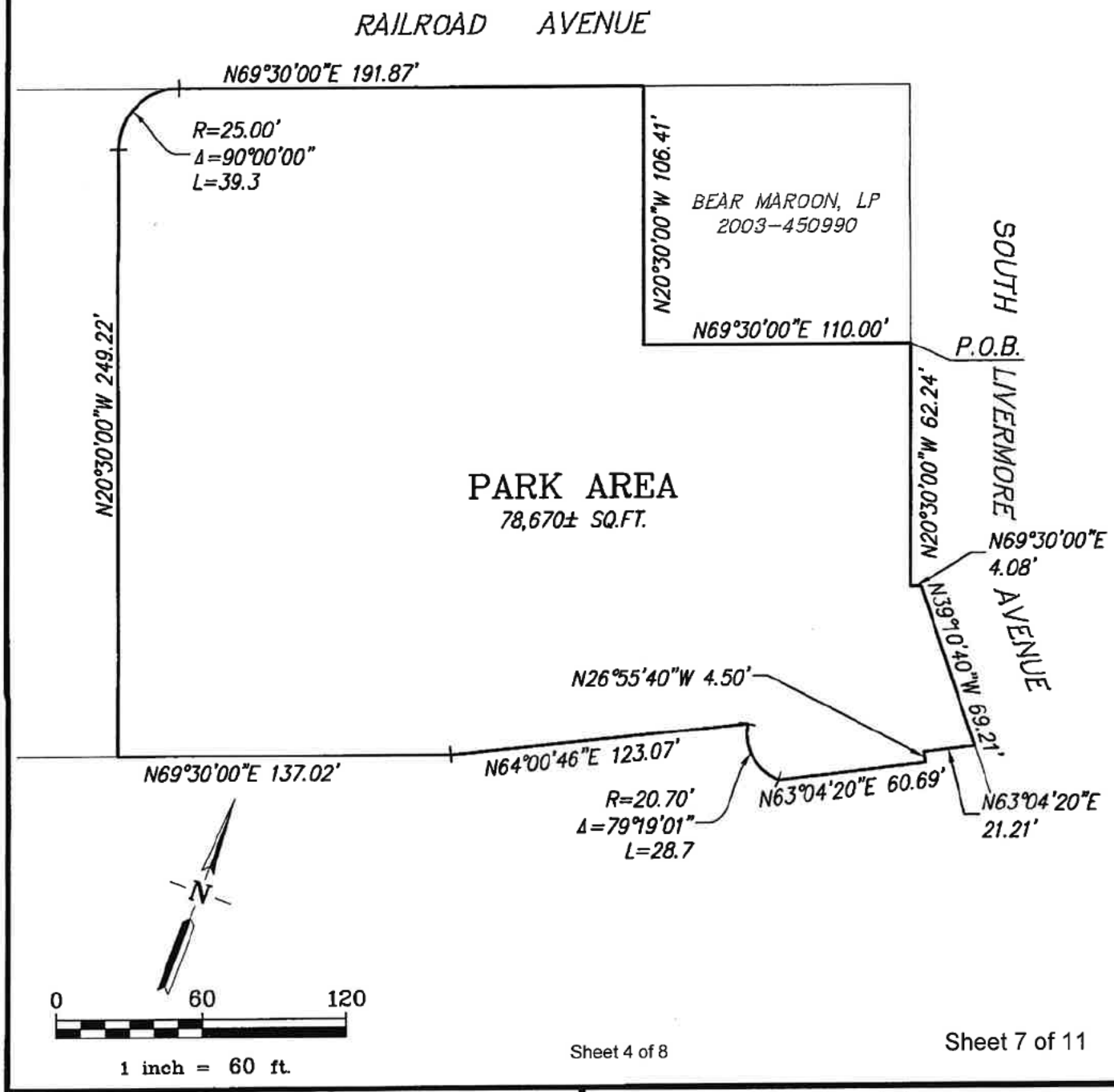
APN's: 098-0289-23, 098-0289-24, 098-0289-25, 098-0289-26, 098-0289-27

5-5-22

EXHIBIT B - PARK EASEMENT

LEGEND

———	BOUNDARY
P.O.B.	POINT OF BEGINNING
SQ.FT.	SQUARE FEET



Sheet 4 of 8

Sheet 7 of 11

EXHIBIT D

PLAT TO ACCOMPANY LEGAL DESCRIPTION
FOR
PARK AREA

CITY OF LIVERMORE, ALAMEDA COUNTY, CALIFORNIA

RJA
RUGGERI-JENSEN-AZAR
ENGINEERS ▪ PLANNERS ▪ SURVEYORS
4690 CHABOT DRIVE, SUITE 200 PLEASANTON, CA 94588
PHONE (925) 227-9100 FAX (925) 227-9300

SCALE:	DATE:	JOB NO.:
1" = 60'	MAY-5-2022	211010-015

G:\JOB2021\211010-015\SURVEY\CAD FILES\PLATS\PARK AREA.DWG 5/5/2022 11:54:17 AM JESSE MA

EXHIBIT "D"

LEGAL DESCRIPTION CULTURAL FACILITY USE AREA

REAL PROPERTY SITUATED IN THE CITY OF LIVERMORE, COUNTY OF ALAMEDA, STATE OF CALIFORNIA, AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEING ALL OF PARCEL 2 OF TRACT 8574, RECORDED December 23,2020, IN BOOK 365 OF MAPS AT PAGES 15-19, AND ALL OF PARCEL A, AND A PORTION OF PARCEL B OF PARCEL MAP 11239 RECORDED May 24, 2002, IN BOOK 354 OF MAPS AT PAGES 95-97 ALAMEDA COUNTY RECORDS AS SHOWN ON ATTACHED PLAT, EXHIBIT D.

CONTAINING 31,146± SQUARE FEET OF LAND MORE OR LESS

APN's: 098-0289-23, 098-0289-24, & 098-0289-25 (PORTION)



5-5-22

EXHIBIT B - PARK EASEMENT

LEGEND

———	BOUNDARY
P.O.B.	POINT OF BEGINNING
P.O.C.	POINT OF COMMENCEMENT
SQ.FT.	SQUARE FEET

GENERAL NOTE:

1. THE CULTURAL FACILITY AREA SHALL NOT EXCEED 20,100 SQUARE FEET.

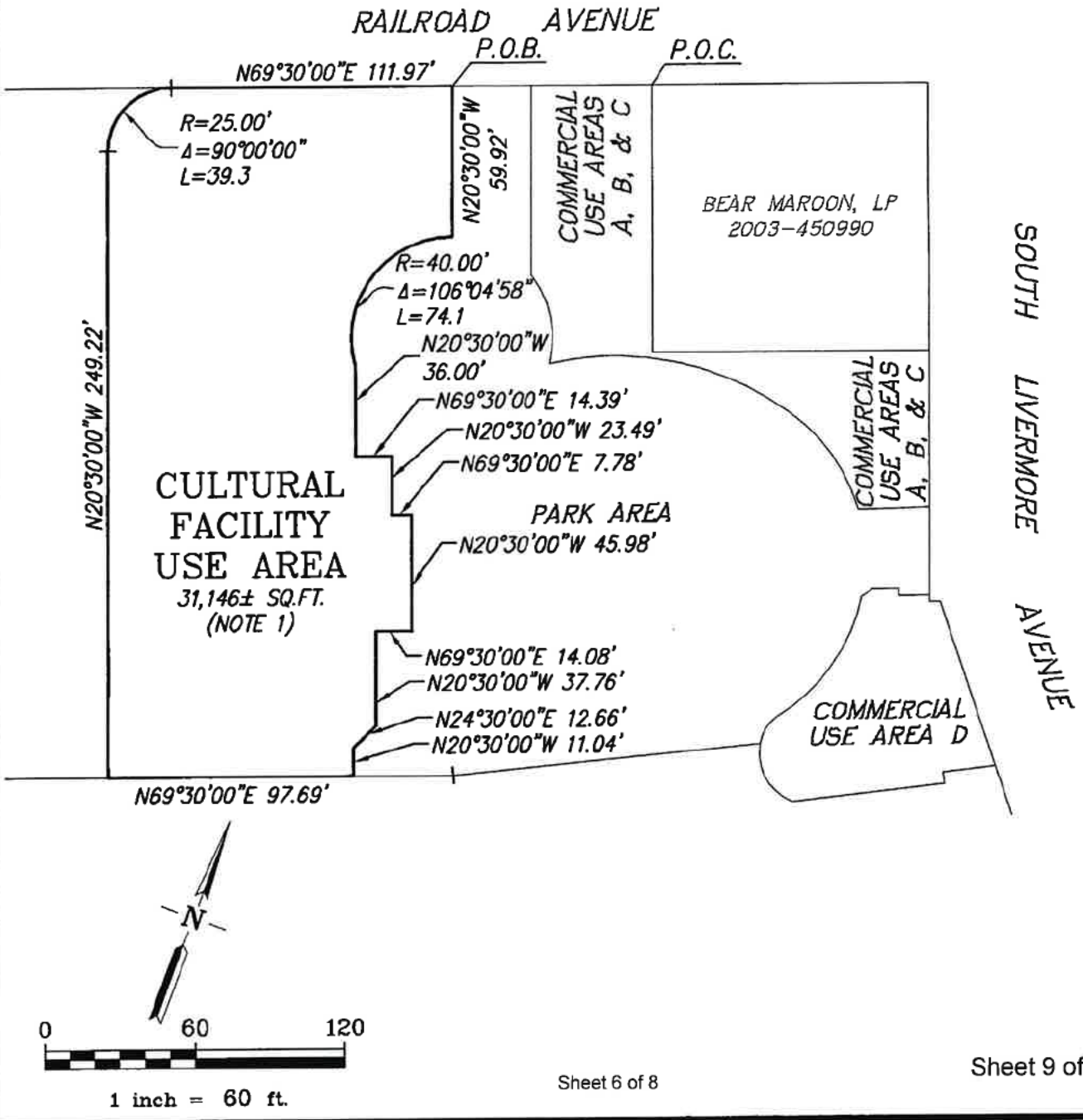


EXHIBIT D

PLAT TO ACCOMPANY LEGAL DESCRIPTION
FOR
CULTURAL FACILITY USE AREA

CITY OF LIVERMORE, ALAMEDA COUNTY, CALIFORNIA

RJA
RUGGERI-JENSEN-AZAR
ENGINEERS • PLANNERS • SURVEYORS
4690 CHABOT DRIVE, SUITE 200 PLEASANTON, CA 94588
PHONE. (925) 227-9100 FAX. (925) 227-9300

SCALE:	DATE:	JOB NO.:
1" = 60'	MAY 5, 2022	211010-015

G:\JOB2021\211010-015\SURVEY\CAD FILES\PLATS\CULTURAL FACILITY USE AREA.DWG 5/5/2022 11:54:23 AM JESSE MA

EXHIBIT "D"

EXHIBIT B - PARK EASEMENT

LEGAL DESCRIPTION COMMERCIAL USE AREA

REAL PROPERTY SITUATED IN THE CITY OF LIVERMORE, COUNTY OF ALAMEDA, STATE OF CALIFORNIA, AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEING ALL OF PARCEL 5, OF TRACT 8574, RECORDED December 23,2020, IN BOOK 365 OF MAPS AT PAGES 15-19, AND ALL OF PARCEL C OF PARCEL MAP 11239 RECORDED MAY 24, 2002, IN BOOK 254 OF MAPS AT PAGES 95-97 ALAMEDA COUNTY RECORDS.

CONTAINING 13,423± SQUARE FEET OF LAND MORE OR LESS

APN's: 098-0289-26 & 098-0289-27

5-5-22

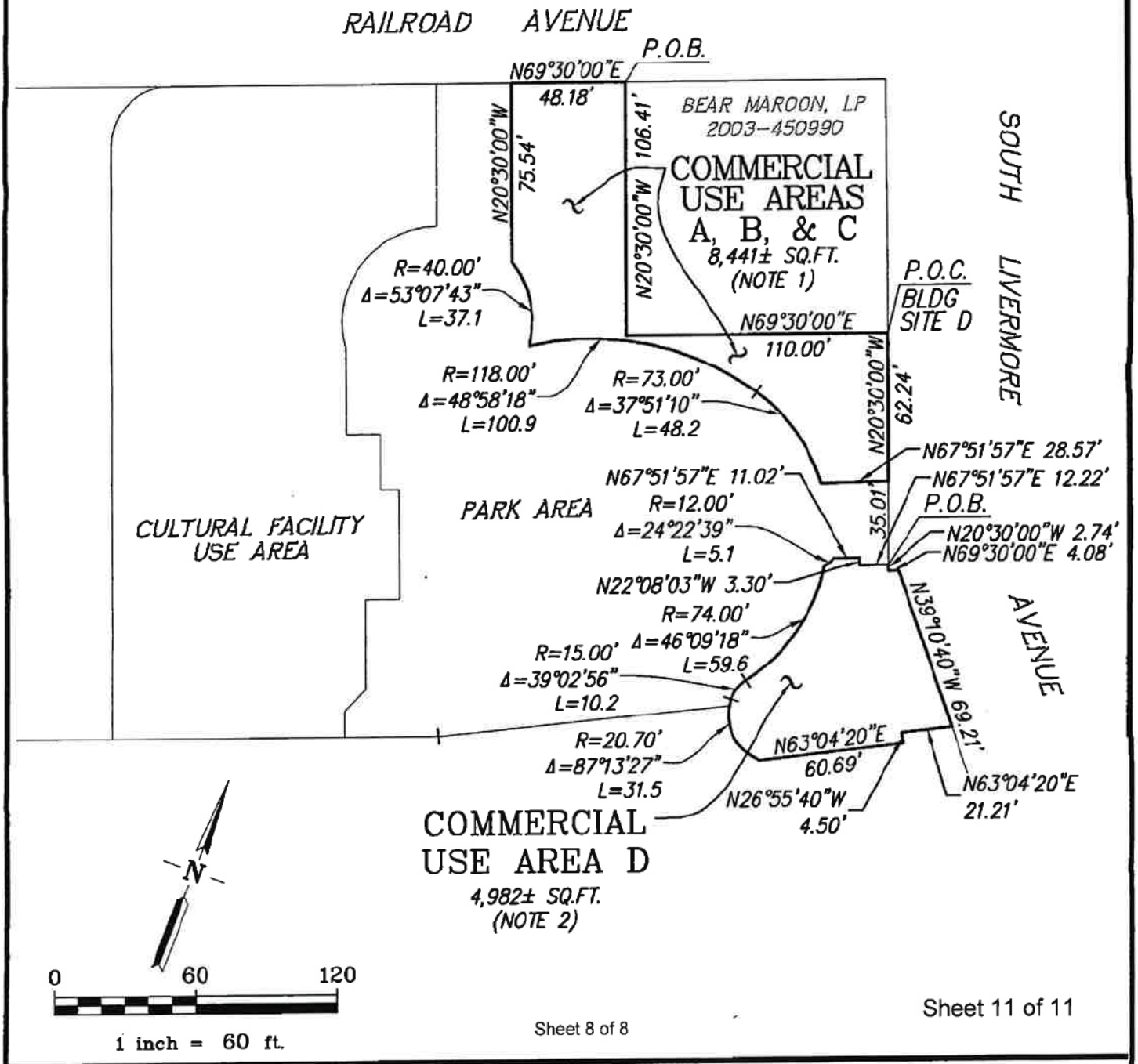
EXHIBIT B - PARK EASEMENT

LEGEND

———	BOUNDARY
P.O.B.	POINT OF BEGINNING
P.O.C.	POINT OF COMMENCEMENT
SQ.FT.	SQUARE FEET

GENERAL NOTES:

1. THE BUILDABLE FOOTPRINT WITHIN THE COMMERCIAL USE AREAS A, B & C SHALL NOT EXCEED 8,441 SQUARE FEET.
2. THE BUILDABLE FOOTPRINT WITHIN THE COMMERCIAL USE AREA D SHALL NOT EXCEED 2,900 SQUARE FEET.



Sheet 8 of 8

Sheet 11 of 11

EXHIBIT D

PLAT TO ACCOMPANY LEGAL DESCRIPTION FOR

COMMERCIAL USE AREAS

CITY OF LIVERMORE, ALAMEDA COUNTY, CALIFORNIA

RJA
RUGGERI-JENSEN-AZAR
ENGINEERS • PLANNERS • SURVEYORS
4690 CHABOT DRIVE, SUITE 200 PLEASANTON, CA 94588
PHONE (925) 227-9100 FAX (925) 227-9300

SCALE:	DATE:	JOB NO.:
1" = 60'	MAY 5, 2022	211010-015

G:\JOB2021\211010-015\SURVEY\CAD FILES\PLATS\COMMERCIAL USE AREAS.DWG 5/5/2022 11:59:51 AM JESSE MA

THIRD AMENDMENT TO AGREEMENT FOR THE DEVELOPMENT OF THE RODEO GROUNDS AND SUNKEN GARDEN AREA AS A CIVIC CENTER AND PARKS AND RECREATION AREA

THIS THIRD AMENDMENT, made and entered into this 6th day of June, 2022, by and between the City of Livermore, a municipal corporation (hereinafter referred to as "City"), and the Livermore Stockmen's Rodeo Association, a California Corporation, (hereinafter referred to as "Association").

RECITALS

On January 8, 1962, in exchange for due consideration, the City and Association entered into an agreement ("Original Agreement") to, among other things, transfer 33 acres of real property ("Civic Center Property") from the Association to the City to be developed as a civic center and a park and recreation facility.

The Association transferred the property to the City with the expectation that a portion of the Civic Center Property would be used as a memorial to the residents of Murray and Pleasanton Townships who served in the armed forces of the United States. As of January 2018, the City had not developed a park or the memorial on the Civic Center Property.

On January 30, 2018, the City and Association entered into a first amendment to the Original Agreement ("First Amendment"). The purpose of the First Amendment was:

A. To allow:

1. A portion of the Civic Center Property to be used for affordable housing purposes for seniors with a preference for veterans, in addition to public purposes;

2. The City, either itself or through a partnership or support of a third-party non-profit agency, and/or others, to develop affordable housing for seniors with a preference for veterans in that portion of the Civic Center Property;

3. The City to dispose of portions of the Civic Center Property to third-party non-profit agencies for the development of affordable housing for seniors with a preference for veterans and not for private gain; and,

B. To require:

1. The City to grant a park easement to the Association in the downtown area for Stockmen's Park and a Memorial subject to the terms and conditions set forth in the First Amendment and the boundaries of the easement set forth in Exhibit D to the First Amendment;

2. Certain portions of the Park Easement to be designated as a "Cultural Facility Area" for the development of cultural facilities such as a black box theater, a science and society center, and open space support, and other portions to be designated as "Commercial Use Areas" for the development of commercial uses, which uses were to integrate with the park in an appealing manner but not overshadow the park and the memorial;

3. The City, at its own expense, to design and construct the park and memorial;

4. The City to obtain the Association's written approval that the design and amenities for park and memorial are acceptable to the Association;

5. The City to allow the Association the opportunity to comment and provide input on the cultural facilities and commercial uses to be constructed in the "Cultural Facility Area" and the "Commercial Use Areas" in the Park Easement. The purpose of the opportunity to comment and provide input was to ensure the cultural facility and commercial uses do not overshadow the park and memorial and integrate with the Park Area in an appealing manner.

On April 18, 2018, the City recorded the grant of a park easement (County Recorders' No. 2018076967) to the Association, subject to the terms and conditions in the First Amendment.

On September 27, 2019, the City and Association entered into a second amendment to the Original Agreement ("Second Amendment"). The purpose of the Second Amendment was to adjust the edges of the Cultural Facility Use Area and the Commercial Use Areas in the park easement. In exchange for the adjustments, the City was required to obtain Association approval for the design and location of the cultural facility use and the commercial uses to ensure that said uses do not overshadow the Park and the Memorial and integrate with the Park Area in an appealing manner. The parties agreed to a revised Exhibit D which identified an adjusted Cultural Facility Use Area and Commercial Use Areas within the park easement.

The City desires to further adjust the edges of the Cultural Facility Use Area, the Commercial Use Areas, and the Park Area in the park easement.

City and Association desire to enter into the Third Amendment to the Original Agreement.

AGREEMENT

NOW, THEREFORE, City and Association hereby agree that the aforementioned recitals are true and correct and further agree as follows:

1. City and Association agree that all obligations under the Original Agreement, except for the City's development of a park and the Memorial on Area A.

2. Section 16 and Exhibit D were added to the Original Agreement by the First

Amendment to identify the park easement granted by the City to the Association, and to identify the Cultural Facility Use Area and the Commercial Use Areas within that park easement. The Second Amendment to the Original Agreement adjusted the edges of the Cultural Facility Use Area and the Commercial Use Areas within the Park Easement, as set forth in the Exhibit D to the Second Amendment. The Exhibit D attached to this Third Amendment and dated June 6, 2022 hereby replaces and supersedes for all purposes the Exhibit D identified in the First and Second Amendments to the Original Agreement. The Exhibit D attached to this Third Amendment identifies an amended park easement granted by the City to the Association, and identifies the adjusted Cultural Facility Use Area, the Commercial Use Areas, and the Park Area within the park easement. Upon approval of this Third Amendment, the parties agree to record an Amendment to the Grant of Easement as set forth Exhibit D.

3. The revisions in this Third Amendment are prospective and only apply after the execution of this Third Amendment. Unless otherwise stated herein, this Third Amendment does not and shall not relieve the parties of the terms and conditions of the Original Agreement as amended by the First and Second Amendments and in effect prior to this Third Amendment.

4. If there are any conflicts between the provisions in this Third Amendment and the provisions in the Original Agreement as amended by the First and Second Amendments, then the provisions of this Third Amendment shall control.

5. Except as revised above, the Original Agreement as amended by the First and Second Amendments shall remain in full force and effect.

****

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 caused this Third Amendment to be executed on the date first written above.

LIVERMORE STOCKMEN'S
RODEO ASSOCIATION:

By: David Finster
Title: ~~President~~ Director

6/6/22
Date

CITY OF LIVERMORE

~~Marc Roberts~~ Marianna Marysheva
City Manager

APPROVED AS TO FORM:

Kimberly Cilley
Senior Assistant City Attorney

APPROVED AS TO INSURANCE:

Risk Manager/Analyst

Attachment:

Exhibit D — Amendment to Grant of Easement

RECORDING REQUESTED BY:
and

WHEN RECORDED MAIL TO:
City Clerk
City of Livermore
1052 South Livermore Avenue
Livermore, CA 94550

EXHIBIT D

MAIL TAX STATEMENTS TO:

SAME AS ABOVE

ABOVE THIS LINE FOR RECORDER'S USE

The Undersigned grantor(s) declare(s):
CITY TRANSFER TAX $
DOCUMENTARY TRANSFER TAX $
SURVEY MONUMENT FEE $
Computed on the consideration or value or property conveyed; OR
Computed on the consideration or value less liens or encumbrances remaining a t time of sale.

APN #'s 098-0289-23, 098-0289-24, 098-0289-25
098-0289-26, 098-0289-27

No Fee Recording Government Code 6103, 27383, & 27388.1
The undersigned Grantor declares: No Tax Due – R&T 11911 Consideration less than $100

AMENDMENT TO GRANT OF EASEMENT

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged,

The City of Livermore, a municipal corporation ("City" or "Grantor"), owner of the property being all of the lots shown on Tract Map 8574 and on Parcel Map 11239 and the Livermore Stockmen's Association ("Grantee"), owner of the Park Easement described in the Grant of Easement recorded on April 18, 2018 under document number 2018076967 Official Records of Alameda County hereby amends said Park Easement to revise the boundaries of the Cultural Facilities Use Area, Commercial Areas, and the Park Area within the Park Easement as described in Exhibit "D" and subject to the terms and conditions set forth in that specific agreement titled *First Amendment to Agreement for the Development of the Rodeo Grounds and Sunken Garden Area as a Civic Center and Parks and Recreation Area*, dated January 30, 2018, the *Second Amendment to Agreement for the Development of the Rodeo Grounds and Sunken Garden Area as a Civic Center and Parks and Recreation Area*, dated September 27, 2019, and *Third Amendment to Agreement for the Development of the Rodeo Grounds and Sunken Garden Area as a Civic Center and Parks and Recreation Area*, dated May__, 2022 and on file with the City Clerk for the City of Livermore ("Agreement"). The rights, duties, and obligations of the City and the Livermore Stockmen's Rodeo Association concerning the use of the Park Area, Cultural Facility Use Area, and the Commercial Use Areas of this Amended Park Easement are set forth in that Agreement.

This Amended Park Easement may be used by the City for parking prior to the construction of the park facilities, cultural facilities, and commercial uses in those areas designated as the Park Area, Cultural Facility Use Area, and Commercial Use Areas, respectively. The Cultural Facility Use Area and the Commercial Use Areas A, B, C and D may be used by the City as a park if the respective locations are no longer needed for parking, prior to the construction of a cultural facility or commercial facilities in those respective areas. The City may use any and all portions of the Amended Park Easement for public infrastructure that does not interfere with other uses allowed in the easement area.

**FOR DESCRIPTION SEE THE ATTACHED EXHIBIT "D"
ATTACHED HERETO AND MADE A PART HEREOF**

[Signature appears on following page]

EXHIBIT D

Grantor Signature:

CITY OF LIVERMORE
A municipal corporation of the State of California

DATED: _____

_____
Marc Roberts, City Manager

Grantee Signature:

LIVERMORE STOCKMEN'S RODEO ASSOCIATION:

DATED: _____

_____
David Finster, President

APPROVED AS TO FORM:

_____
Kimberly Cilley
Sr. Asst. City Attorney

EXHIBIT D

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
County of _____)

On _____ before me, _____
(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)**

EXHIBIT D

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
County of _____)

On _____ before me, _____
(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)**

EXHIBIT "D"

LEGAL DESCRIPTION AMENDED PARK EASEMENT

REAL PROPERTY SITUATED IN THE CITY OF LIVERMORE, COUNTY OF ALAMEDA, STATE OF CALIFORNIA, AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

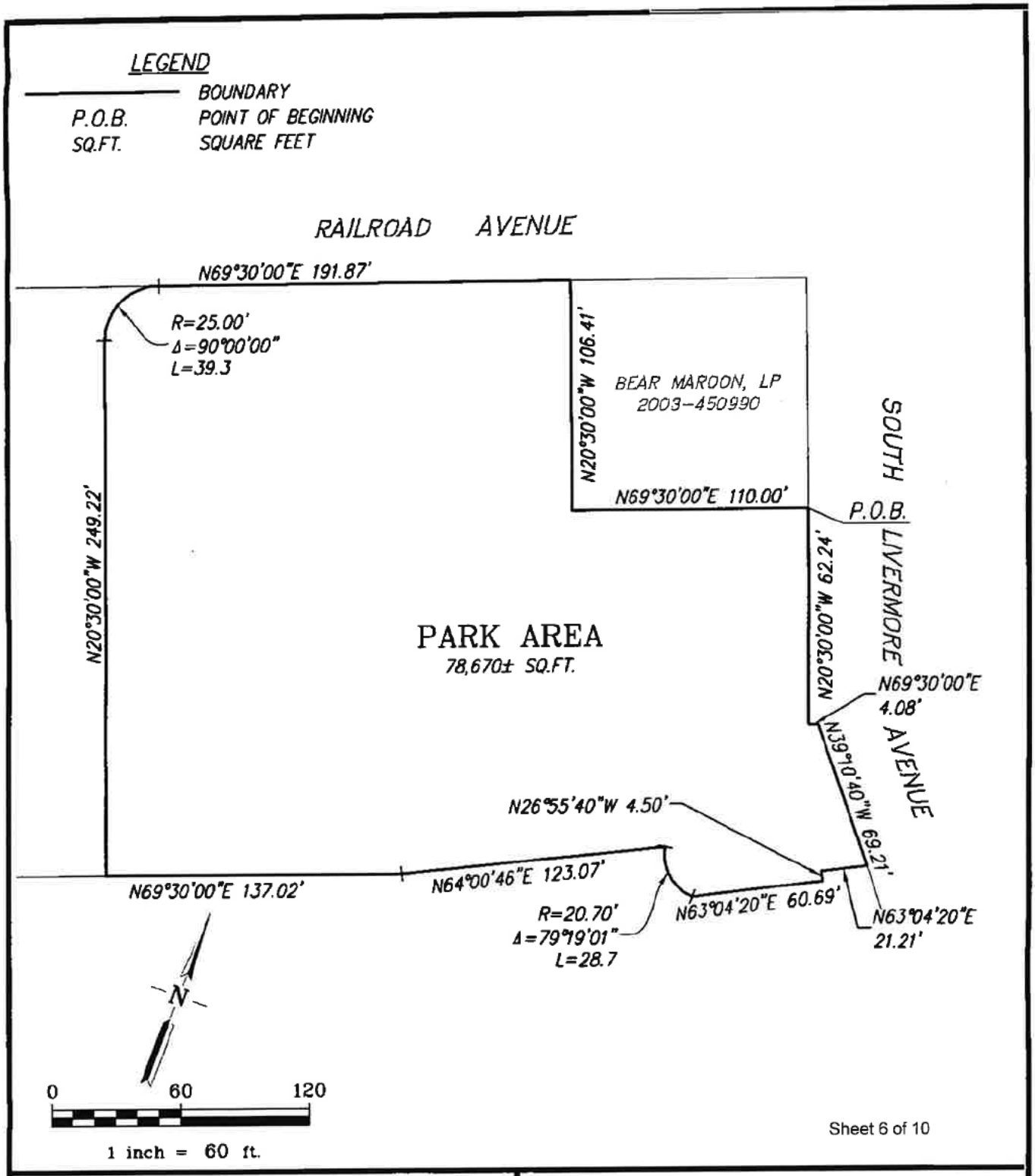
BEING ALL OF PARCEL 2 AND PARCEL 5, OF TRACT 8574, RECORDED DECEMBER 23,2020, IN BOOK 365 OF MAPS AT PAGES 15-19, AND ALL OF PARCEL'S A, B, & C OF PARCEL MAP 11239 RECORDED _____, IN BOOK ____ OF MAPS AT PAGES _____ ALAMEDA COUNTY RECORDS.

CONTAINING 78,671± SQUARE FEET OF LAND MORE OR LESS

APN's: 098-0289-23, 098-0289-24, 098-0289-25, 098-0289-26, 098-0289-27



5-5-22



Sheet 6 of 10

EXHIBIT D

PLAT TO ACCOMPANY LEGAL DESCRIPTION FOR

PARK AREA

CITY OF LIVERMORE, ALAMEDA COUNTY, CALIFORNIA

RJA
RUGGERI-JENSEN-AZAR
ENGINEERS ▪ PLANNERS ▪ SURVEYORS
4690 CHABOT DRIVE, SUITE 200 PLEASANTON, CA 94588
PHONE: (925) 227-9100 FAX: (925) 227-9300

SCALE:	DATE:	JOB NO.:
1" = 60'	MAY-5-2022	211010-015

G:\JOB2021\211010-015\SURVEY\CAD FILES\PLATS\PARK AREA.DWG 5/5/2022 11:54:17 AM JESSE MA

Sheet 10 of 14

EXHIBIT "D"

LEGAL DESCRIPTION CULTURAL FACILITY USE AREA

REAL PROPERTY SITUATED IN THE CITY OF LIVERMORE, COUNTY OF ALAMEDA, STATE OF CALIFORNIA, AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

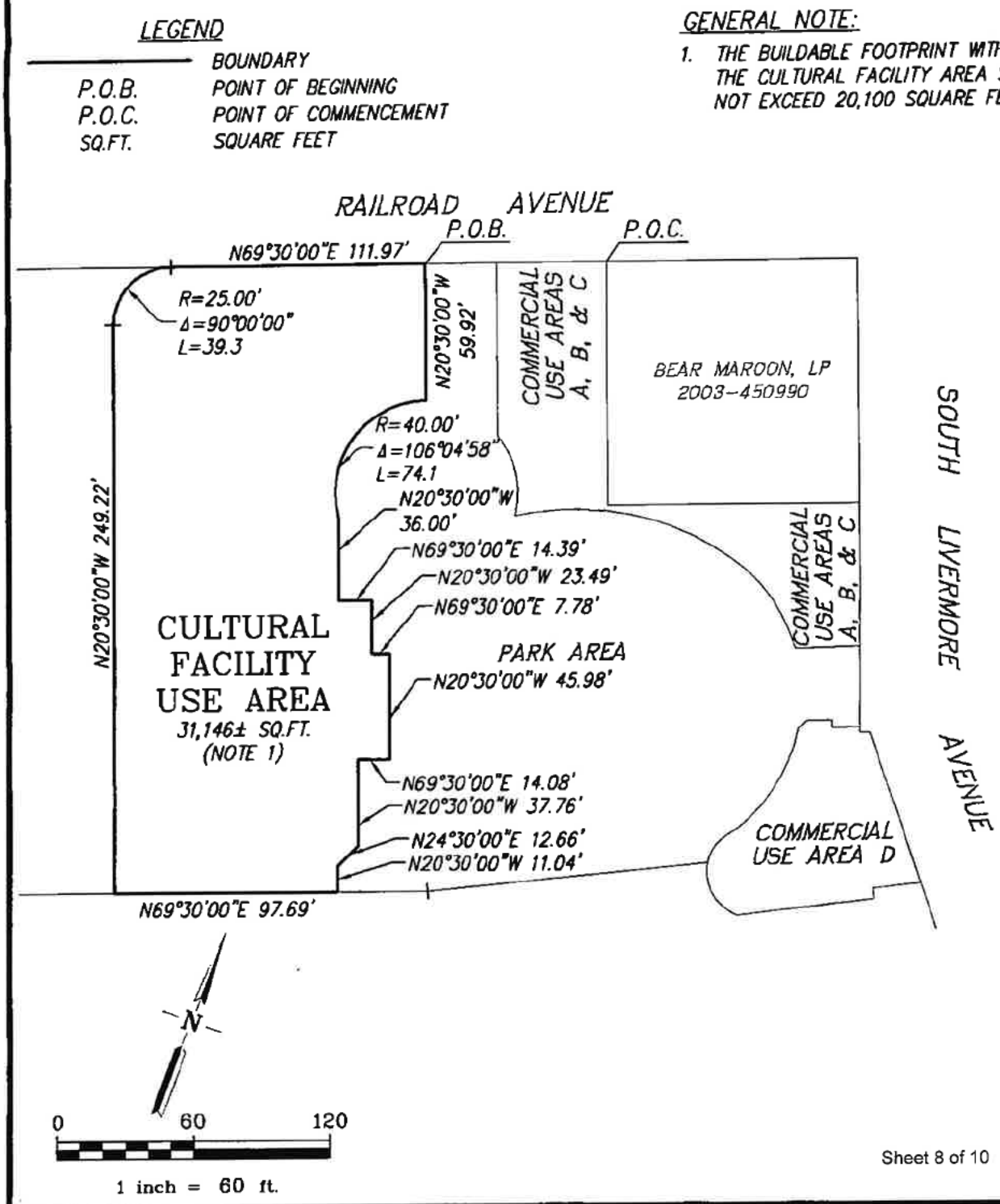
BEING ALL OF PARCEL 2 OF TRACT 8574, RECORDED December 23,2020, IN BOOK 365 OF MAPS AT PAGES 15-19, AND ALL OF PARCEL A, AND A PORTION OF PARCEL B OF PARCEL MAP 11239 RECORDED _____, IN BOOK ____ OF MAPS AT PAGES _____ALAMEDA COUNTY RECORDS AS SHOWN ON ATTACHED PLAT, EXHIBIT D.

CONTAINING 31,146± SQUARE FEET OF LAND MORE OR LESS

APN's: 098-0289-23, 098-0289-24, & 098-0289-25 (PORTION)



5-5-22



Sheet 8 of 10

EXHIBIT D

PLAT TO ACCOMPANY LEGAL DESCRIPTION FOR

CULTURAL FACILITY USE AREA

CITY OF LIVERMORE, ALAMEDA COUNTY, CALIFORNIA

RUGGERI-JENSEN-AZAR
ENGINEERS • PLANNERS • SURVEYORS
4690 CHABOT DRIVE, SUITE 200 PLEASANTON, CA 94588
PHONE: (925) 227-9100 FAX: (925) 227-9300

SCALE:	DATE:	JOB NO.:
1" = 60'	MAY 5, 2022	211010-015

G:\JOB2021\211010-015\SURVEY\CAD FILES\PLATS\CULTURAL FACILITY USE AREA.DWG 5/5/2022 11:54:23 AM JESSE MA

Sheet 12 of 14

EXHIBIT "D"

LEGAL DESCRIPTION COMMERCIAL USE AREA

REAL PROPERTY SITUATED IN THE CITY OF LIVERMORE, COUNTY OF ALAMEDA, STATE OF CALIFORNIA, AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

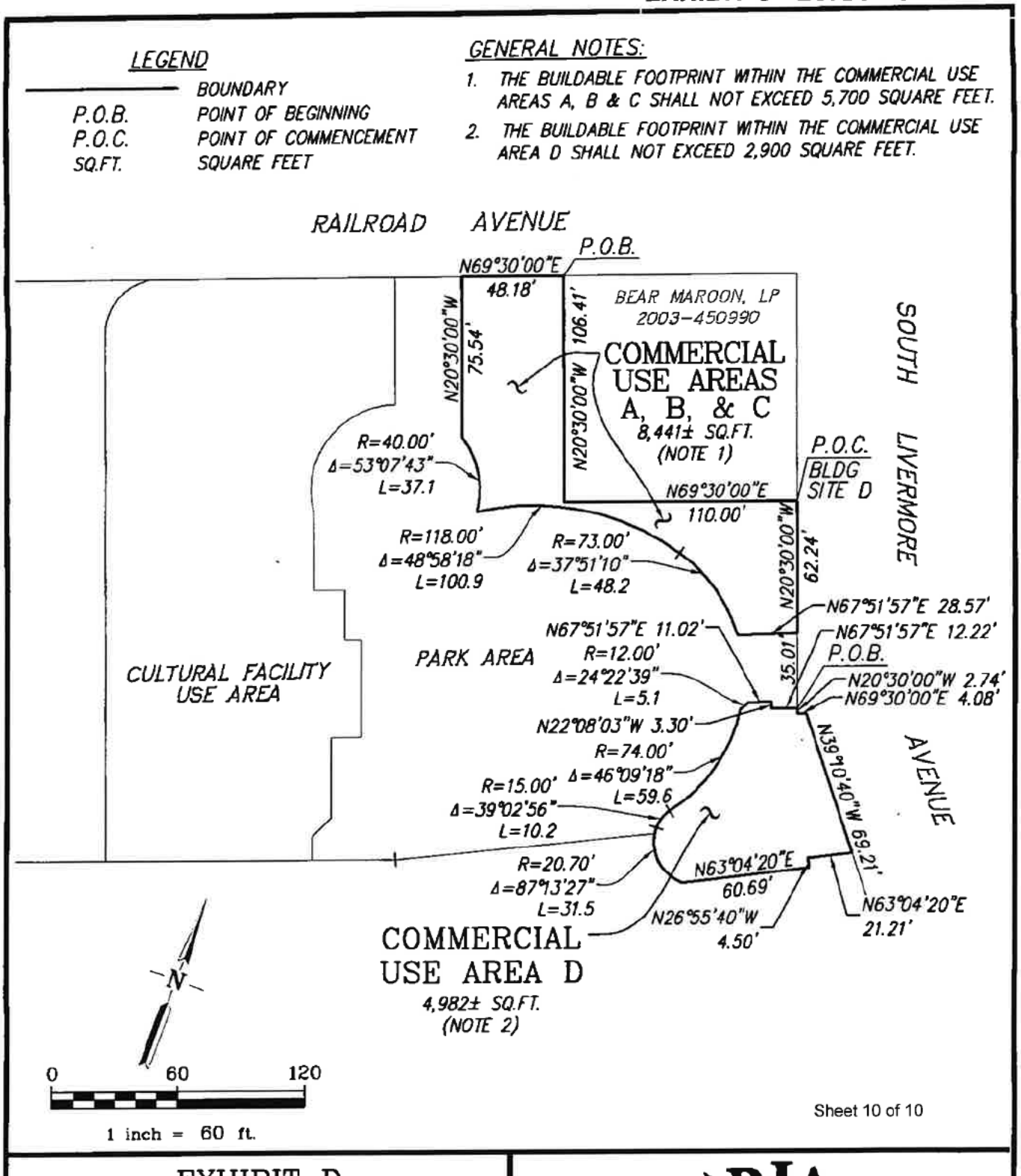
BEING ALL OF PARCEL 5, OF TRACT 8574, RECORDED December 23,2020, IN BOOK 365 OF MAPS AT PAGES 15-19, AND ALL OF PARCEL C OF PARCEL MAP 11239 RECORDED _____, IN BOOK ____ OF MAPS AT PAGES _____ALAMEDA COUNTY RECORDS.

CONTAINING 13,423± SQUARE FEET OF LAND MORE OR LESS

APN's: 098-0289-26 & 098-0289-27



4-5-22



Sheet 10 of 10

EXHIBIT D

PLAT TO ACCOMPANY LEGAL DESCRIPTION FOR

COMMERCIAL USE AREAS

CITY OF LIVERMORE, ALAMEDA COUNTY, CALIFORNIA

RJA
RUGGERI-JENSEN-AZAR
ENGINEERS • PLANNERS • SURVEYORS
4690 CHABOT DRIVE, SUITE 200 PLEASANTON, CA 94588
PHONE: (925) 227-9100 FAX: (925) 227-9300

SCALE:	DATE:	JOB NO.:
1" = 60'	MAY 5, 2022	211010-015

G:\JOB2021\211010-015\SURVEY\CAD FILES\PLATS\COMMERCIAL USE AREAS.DWG 5/5/2022 11:59:51 AM JESSE MA

Sheet 14 of 14

EXHIBIT "D"

LEGAL DESCRIPTION COMMERCIAL USE AREA

REAL PROPERTY SITUATED IN THE CITY OF LIVERMORE, COUNTY OF ALAMEDA, STATE OF CALIFORNIA, AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEING ALL OF PARCEL 5 OF TRACT 8574, RECORDED DECEMBER 23, 2020, IN BOOK 365 OF MAPS AT PAGES 15-19, AND ALL OF PARCEL C OF PARCEL MAP 11239 RECORDED MAY 22, 2022, IN BOOK 354 OF MAPS AT PAGES 95-97, ALAMEDA COUNTY RECORDS.

CONTAINING 13,423± SQUARE FEET OF LAND MORE OR LESS

APN: 098-0289-26 & 098-0289-27



g:\job2021\21010-023\survey\documents\exhibit d - commercial use area.docx

EXHIBIT D - PROPERTY

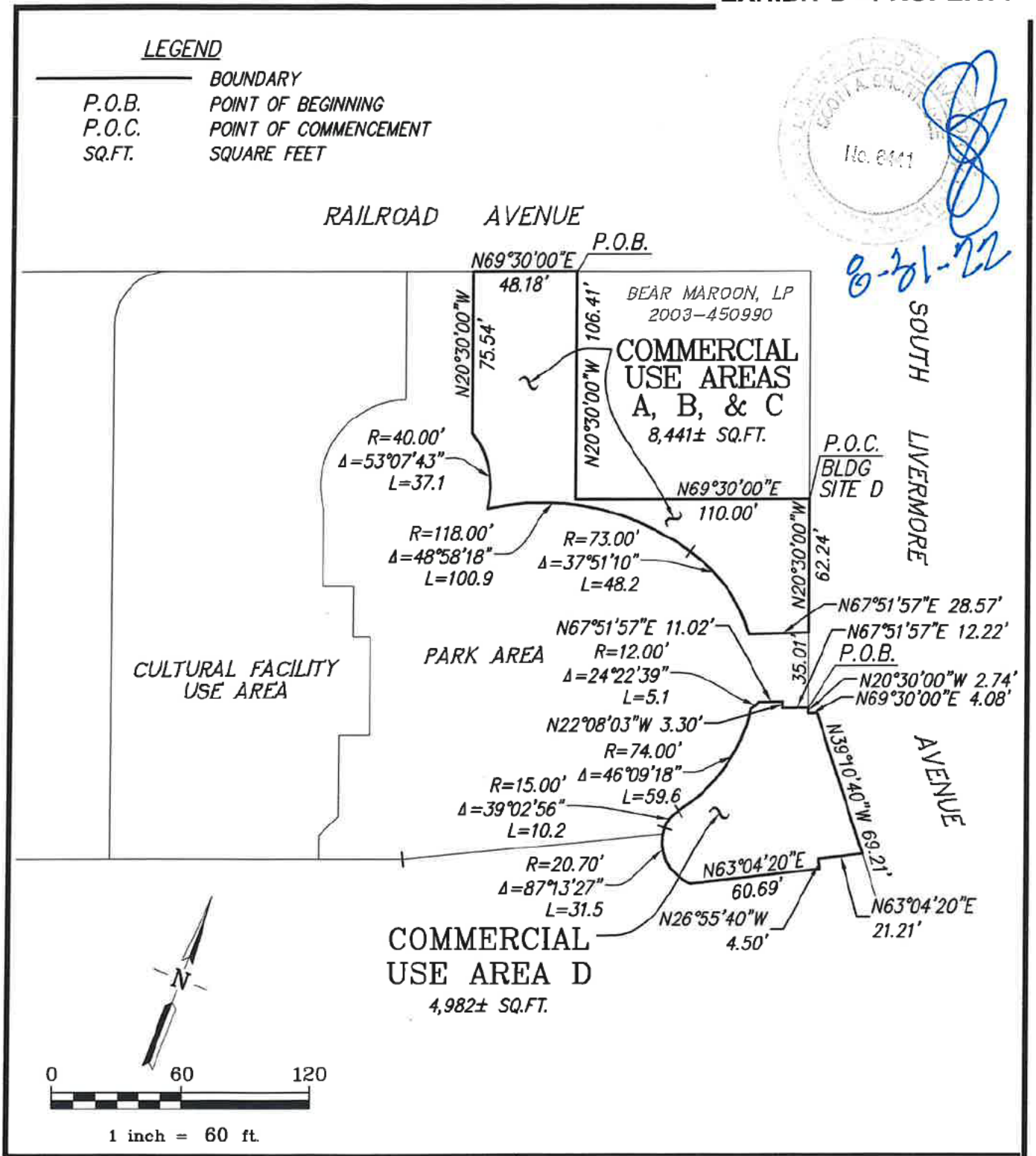


EXHIBIT D

PLAT TO ACCOMPANY LEGAL DESCRIPTION FOR

COMMERCIAL USE AREAS

CITY OF LIVERMORE, ALAMEDA COUNTY, CALIFORNIA

RJA
RUGGERI-JENSEN-AZAR
ENGINEERS • PLANNERS • SURVEYORS
4690 CHABOT DRIVE, SUITE 200 PLEASANTON, CA 94588
PHONE: (925) 227-9100 FAX: (925) 227-9300

SCALE:	DATE:	JOB NO.:
1" = 60'	8-30-2022	211010-015

G:\JOB2021\211010-015\SURVEY\CAD FILES\PLATS\COMMERCIAL USE AREAS.DWG 8/30/2022 9:46:03 AM ALAN MULLEN

Sheet 2 of 2

Black Smith Square Fee Estimate Summary - With Credits by Bldg SF*

		Future Retail B/Bldg 3	Future Retail C/Bldg 4	Future Retail D/bldg 5	Retail A, B, C, D Subtotal
1	City Storm Drainage Fee [1]				
2	City Storm Drainage Fee Credit [1]				
3	County Storm Drainage Fee [1]				
4	County Storm Drainage Fee Credit [1]				
5	Sanitary Sewer Connection Fees	$15,676.69	$10,202.36	$30,462.21	$686,898.73
6	Sanitary Sewer Fee Credit - Mixed Use	$4,906.80	$3,193.34	$9,534.67	
7	Park Facilty Fee	$11,348.64	$7,385.67	$22,052.14	$40,786.45
8	Park Facilty Fee Credit - Commercial	$9,657.88	$11,401.18	$18,610.40	$39,669.46
9	City Water Connection Fee - N/A Calwater	$0.00	$0.00	$0.00	
10	ACWFC Zone 7 Connection Fee - 1" Domestic	$79,775.00	$79,775.00	$79,775.00	$239,325.00
11	ACWFC Zone 7 Connection Fee - 3/4" Domestic				
12	ACWFC Zone 7 Connection Fee - 3" Domestic [2]				
13	ACWFC Zone 7 Connection Fee - 1" Irigation	$79,775.00	$79,775.00	$79,775.00	$239,325.00
14	ACWFC Zone 7 Connection Fee - 1.5" Irrigation				
15	ACWFC Zone 7 Connection Fee - 5/8" Fee Credits	$21,273.33	$21,273.33	$21,273.33	$63,820.00
16	ACWFC Zone 7 Connection Fee - 2" Fee Credits	$42,546.67	$42,546.67	$42,546.67	$127,640.00
17	Low Income Housing Impact Fee	$8,498.98	$5,531.12	$16,514.82	$30,544.92
18	Low Income Housing Impact Credit - Retail	$8,498.98	$5,531.12	$16,514.82	$30,544.92
19	Traffic Impact Fee	$52,118.75	$33,918.78	$101,274.71	$187,312.23
20	Traffic Impact Fee Credit - Commercial	$52,118.75	$33,918.78	$101,274.71	$187,312.23
21	Tri-Valley Transportation Development Fee	$13,355.54	$8,691.76	$25,951.86	$47,999.16
22	Tri-Valley Transportation Fee Credit	$4,239.69	$5,004.98	$8,169.73	$17,414.39
23	Social / Human Services Facility Fee	$17.86	$11.62	$34.70	$64.17
24	Social / Human Services Facility Credit	$5.67	$6.69	$10.92	$23.28
25	City Wide General Plan Recovery Cost	$1,392.69	$906.36	$2,706.21	$5,005.26
26	City Wide General Plan Recovery Credit - Speedy Lube	$501.93	$376.74	$1,129.44	$2,008.11
27	Encroachment Permit Fee				
28	Encroachment Permit Inspection Fee				
29	School Mitigation Fees	$2,228.30	$1,450.18	$4,329.94	$8,008.42
30	School Mitigation Fee Credit - Retail	$707.37	$835.05	$1,363.08	$2,905.50
31	Engineering Plan Check Fees				
32	Downtown specific plan cost recovery	$1,107.01	$720.44	$2,151.09	$3,978.54
33	Downtown specific plan Credit	$351.42	$414.85	$677.17	$1,443.44
34	Downtown revitalization fee	$76,205.14	$49,594.16	$148,078.26	$273,877.56
35	Downtown revitalization credit	$0.00	$0.00	$0.00	
36	Art in Public Places				

Fee Estimate Subtotal	$341,499.59	$277,962.45	$513,105.93	$1,132,567.97
Previous Development Credit	$144,808.48	$124,502.73	$221,104.94	$ (490,416.15)
Restroom Construction Credit				$ (272,465.00)
Total Fee Estimate				**$369,686.81**
Parking In Lieu Estimate				$ 952,740.00
Parking In Lieu Credits				$ (362,948.64)
Total Parking In Lieu Fees				$ 589,791.36

* Actual fees paid will be based on total building square footage and related construction details. Fees charged will be based on the cost of the fees at the time the fee is paid.

1 *City & County Storm Drainage fees. No Fees or credits required because new impervious surface is less than existing impervious surface.*

RECORDING REQUESTED BY:
Order No.
Escrow No.
Loan No.

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 $ Government Agency
DOCUMENTARY TRANSFER TAX $ Acquiring Title
SURVEY MONUMENT FEE $ Tax Code §§ 11922
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 # 098-0289-026 & 098-0289-027

Exempt from filing fees per Government Code Section §§ 27383 & 6103

GRANT DEED

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged,

The City of Livermore, A Municipal Corporation ("Grantor")

hereby Grant(s) in fee to
Red Bear Management, Inc. ("Grantee")

the real property in the City of Livermore
County of Alameda, State of California, as described with the following restrictions:

POWER OF TERMINATION (Civil Code section 885.010)

In the event that Red Bear Property Management, Inc., or its successors or assigns, (Grantee) fails to commence construction of the improvements as set forth and defined in section 10.4 of the disposition and development agreement between the City and Red Bear Property Management, Inc. for the transfer of the property herein described, then the property herein described shall revert to the City of Livermore, or its successors or assigns, free and clear of any claims of Red Bear Property Management, Inc., or its successors or assigns.

PUBLIC RESTROOM

Grantee does hereby grant to the City of Livermore (Grantor), upon development of the property a public restroom facility on the Property that is open and available to the public between 10:00 a.m. and dusk, every day of the week. The deed restrictions shall provide that the Grantee or its successor shall be responsible, at its own cost and expense, for all aspects of constructing, owning, operating, maintaining and replacing the public restroom.

FOR PLAT MAP AND LEGAL DESCRIPTION
SEE EXHIBIT "D" ATTACHED HERETO AND MADE A PART HEREOF

[SIGNATURES ON THE FOLLOWING PAGE]

GRANTOR:
City of Livermore, a municipal corporation

Signature:
Name:
Title:

GRANTEE:
Red Bear Management, Inc.

By:
Its:

Approved as to Form and Text:

By:
Its:

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)
County of_____)

On_____before me, _____
(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)**

INSURANCE REQUIREMENTS

1. General

Developer is required to procure and provide proof of insurance coverage required by these Insurance Requirements in the form of certificates and endorsements. The required insurance must cover the activities of the Developer, its Contractor and Subcontractors relating to or arising from the project described in the agreement to which these requirements are attached ("Project"), and must remain in full force and effect at all times during the period covered by the Agreement until the date of Acceptance. All required insurance must be issued by a company licensed to do business in the State of California, and each such insurer must have an A.M. Best's financial strength rating of "A" or better and a financial size rating of "VII" or better, and be approved by the City Attorney and City's Risk Manager before the Agreement is awarded. (Any waiver may only apply under written waiver from the Risk Manager.)

2. Required policies and limits.

The following insurance policies and limits are required for this Contract:

2.1. General.

Any available insurance proceeds broader than or in excess of the specified minimum insurance coverage requirements and/or limits must be available to the additional insured. Furthermore, the requirements for coverage and limits must be (1) the minimum coverage and limits specified in the Contract Documents; or (2) the broader coverage and maximum limits of coverage of any insurance policy or proceeds available to the named insured; whichever is greater.

2.2. Limits.

The limits of required insurance may be satisfied by a combination of primary and umbrella or excess insurance. Any umbrella or excess insurance must contain or be endorsed to contain a provision that the coverage will also apply on a primary and non-contributory basis for the benefit of the City before the City's own insurance or self-insurance may be called upon to protect it as a named insured.

3. Minimum Scope of Insurance.

Coverage must be at least as broad as the following:

3.1. Insurance Services Office Commercial General Liability coverage: (a) Blanket contractual liability; (b) Broad form property coverage; and (c) Personal injury;

3.2. Insurance Services Office form covering Automobile Liability, code 1 (any auto);

3.3. Workers' Compensation insurance as required by the State of California and Employer's Liability insurance. A waiver of subrogation is required for Workers'

Compensation insurance; and

3.4. Other. Any other insurance coverages and limits required in the Contract Documents.

4. Minimum Limits of Insurance.

Contractor must maintain limits no less than:

4.1. General Liability: $5,000,000 per occurrence for bodily injury, personal injury and property damage and a $10,000,000 aggregate. If Commercial General Liability insurance or other form with a general aggregate liability is used, either the general aggregate limit must apply separately to this Project or must be designated as project specific, or the general aggregate limit must be twice the required occurrence limit.

4.2. Automobile Liability: $2,000,000 per accident for bodily injury and property damage.

4.3. Workers' Compensation/Employer's Liability: In conformance with California state requirements including $1,000,000 Employers' Liability per accident, per employee for bodily injury or disease. A waiver of subrogation is required for Workers' Compensation.

4.4. Builder's Risk Insurance: The Builder's Risk Insurance policy must be issued on occurrence basis, for all-risk coverage on a 100% completed value basis on the insurable portion of the Project for the benefit of the City. This insurance must protect the Contractor and the City against risks of damage to buildings, structures, and materials and equipment. Builder's Risk insurance must name the City as loss payee. The policy must contain a provision that in the event of payment for any loss under the coverage provided, the insurance company will have no rights of recovery against the Contractor and the City. The Builder's Risk policy must insure against all risks of direct physical loss or damage to property from any external cause. Allowable exclusions, if any, must be as specified in the Special Conditions and approved by the City's Risk Manager.

4.5. Completed Operations: Contractor shall maintain insurance as required by this contract for a minimum of five years following the completion of this Project. In the event the Contractor fails to obtain or maintain completed operations coverage as required by this agreement, the City of Livermore at its sole discretion may purchase the coverage required and the cost will be paid by the Contractor. Completed Operations endorsement or coverage shall be at least as broad as Insurance Services Office CG 20 37. Contractor shall require and verify that all subcontractors or other parties hired for this Agreement purchase and maintain coverage for indemnity and insurance requirements at least as broad as specified in this Agreement to the extent they apply to the scope of the subcontractor's work with the same Certificate of Insurance requirements and naming as additional insureds all parties to this Agreement. Contractor shall include the following language in their agreements with Subcontractors: "Subcontractor agrees to be bound to Contractor and City in the same manner and to the same extent as Contractor is bound to City under the Agreement. Subcontractor further agrees to include the same

requirements and provisions of this Agreement, including the indemnity and insurance requirements, with any sub-subcontractor to the extent they apply to the scope of the subcontractor's work. A copy of the City Contract Document Indemnity and Insurance provisions will be furnished to the Subcontractor upon request." Contractor shall provide proof of such compliance and verification to the City upon request.

5. Deductibles and Self-Insured Retentions

5.1. City Approval. Any deductibles or self-insured retentions must be declared to and approved by the City. At the option of the City, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City, its officers, officials, employees, and volunteers; or the Contractor shall procure a bond guaranteeing payment of losses and related investigations, claims administration and defense expenses.

5.2. Self-Insured Retention. 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.

5.3. Copies. The City reserves the right to obtain a full certified copy of any insurance policy and endorsement. Failure to exercise this right shall not constitute a waiver of right to exercise later.

6. Other Insurance Provision Requirements.

The required general liability and automobile policies are to contain, or be endorsed to contain the following provisions:

6.1. The City, its officers, officials, employees, agents and designated volunteers are to be covered as additional insureds as respects alleged liability arising out of activities performed by or on behalf of the Contractor; products and completed operations of the Contractor; premises owned, occupied or used by the Contractor; or automobiles owned, leased, hired or borrowed by the Contractor. The coverage shall contain no special limitations on the scope of protection afforded to the City, its officers, officials, employees, agents or volunteers.

6.2. Any failure to comply with reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to the City, its officers, officials, employees, agents or designated volunteers.

6.3. Contractor must furnish properly executed Certificates of Insurance from insurance companies acceptable to the City and signed copies of the specified endorsements for each policy before beginning Work under the Contract. That documentation must clearly evidence all coverages required above including specific evidence of separate endorsements naming the City and must provide that such insurance shall not be materially changed, terminated or allowed to expire in accordance with policy provisions by written notice and certified mail, return receipt requested, has been filed with the Risk Manager. Contractor shall replace such certificates for policies expiring before completion of Work.

7. Acceptability of Insurers.

Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A: VII.

8. Cross-Liability.

The Liability policy shall include a cross-liability or severability of interest endorsement.

9. Failure to Maintain Insurance Coverage.

If Contractor, for any reason, fails to maintain the required insurance coverage, it shall be deemed a material breach of contract. The City, at its sole option, may terminate this agreement and obtain damages from the Contractor resulting from the breach. Alternatively, the City may purchase the required insurance coverage, and without further notice to Contractor, the City may deduct from sums due to Contractor any premium costs advanced by the City for the insurance.

10. Primary and Non-Contributory.

For any claims related to this Project, the Contractor's insurance coverage shall be primary insurance as respects the City, its officers, officials, employees, agents and designated volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees, agents or designated volunteers shall be excess of the Contractor's insurance and shall not contribute with it.

The additional insured coverage under the 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 CG 20 01 04 13.

11. Subcontractors.

Contractor must require that every level of Subcontractor and every entity performing Work on the Project to be contractually bound to meet all of the requirements of the Contract Documents to the same extent as the Contractor, to the extent the requirements apply to such Work. Contractor shall require that every level of Subcontractor and every entity performing Work on the Project contractually provide the Contractor and City the right to enforce all applicable requirements of the Contract Documents, including all indemnity and insurance requirements. Contractor must require all Subcontractors and entities performing Project Work to provide valid certificates of insurance and required endorsements before beginning any Work and proof of such compliance to the City if requested.

12. Subrogation Waiver.

Contractor waives subrogation rights against City regardless of the applicability of any insurance proceeds, must require all Subcontractors, every entity performing Project Work, or others involved in any way with the Work to do likewise.

13. Verification of Coverage.

Contractor must furnish the City with original endorsements effecting coverage required by the Contract Documents. The endorsements are to be signed by a person authorized by the insurer to bind coverage on its behalf.

END OF DOCUMENT

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

City of Livermore
1052 South Livermore Avenue
Livermore, CA 94550
Attn: Director Community and Economic Development

No fee for recording pursuant
to Government Code Section 27383

MEMORANDUM OF AMENDED AND RESTATED DISPOSITION AND DEVELOPMENT AGREEMENT

THIS MEMORANDUM OF AMENDED AND RESTATED DISPOSITION AND DEVELOPMENT AGREEMENT (the "Memo of DDA") is made as of October __, 2022, by and between the City of Livermore, a municipal corporation (the "City") and Red Bear Property Management, Inc., a California corporation ("Developer") to confirm that the City and the Developer are parties to that certain Amended and Restated Disposition and Development Agreement dated as of October __, 2022, as may be amended from time to time (the "DDA"). The DDA concerns the sale of real property in Livermore, California, which real property is described in the attached Exhibit D and the development of approximately 15,000 square feet of commercial buildings. The DDA is a public document and may be reviewed at the in the office of the City Clerk of the City of Livermore. In the event, and to the extent, that any of the terms or provisions of this Memo of DDA are inconsistent with the terms or provisions of the DDA, the terms and provisions of the DDA shall govern and prevail.

IN WITNESS WHEREOF, the City and Developer have executed this Agreement by duly authorized representatives, all on the date first written above.

City:

By: _____

Its:

Date: _____

DEVELOPER:

APPROVED AS TO FORM

Name: _____

By: _____

Title: _____

EXHIBIT "D"

LEGAL DESCRIPTION COMMERCIAL USE AREA

REAL PROPERTY SITUATED IN THE CITY OF LIVERMORE, COUNTY OF ALAMEDA, STATE OF CALIFORNIA, AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEING ALL OF PARCEL 5 OF TRACT 8574, RECORDED DECEMBER 23, 2020, IN BOOK 365 OF MAPS AT PAGES 15-19, AND ALL OF PARCEL C OF PARCEL MAP 11239 RECORDED MAY 22, 2022, IN BOOK 354 OF MAPS AT PAGES 95-97, ALAMEDA COUNTY RECORDS.

CONTAINING 13,423± SQUARE FEET OF LAND MORE OR LESS

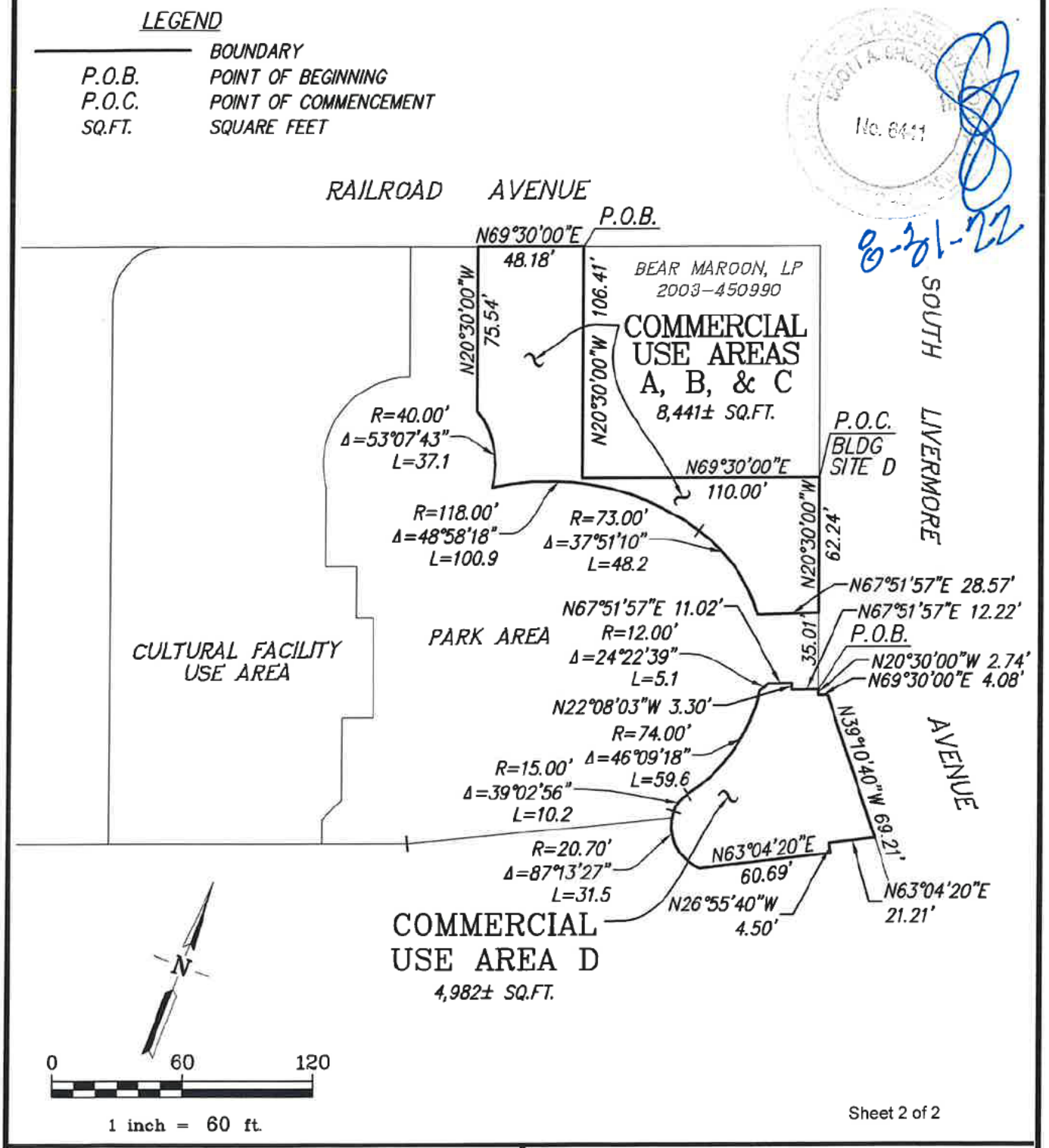
APN: 098-0289-26 & 098-0289-27

LICENSED LAND SURVEYOR
SCOTT A. SHORTLEY
No. 8441
STATE OF CALIFORNIA

8-31-22

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EXHIBIT H



Sheet 2 of 2

EXHIBIT D

PLAT TO ACCOMPANY LEGAL DESCRIPTION FOR

COMMERCIAL USE AREAS

CITY OF LIVERMORE, ALAMEDA COUNTY, CALIFORNIA

RJA
RUGGERI-JENSEN-AZAR
ENGINEERS ▪ PLANNERS ▪ SURVEYORS
4690 CHABOT DRIVE, SUITE 200 PLEASANTON, CA 94588
PHONE: (925) 227-9100 FAX: (925) 227-9300

SCALE:	DATE:	JOB NO.:
1" = 60'	8-30-2022	211010-015

G:\JOB2021\211010-015\SURVEY\CAD FILES\PLATS\COMMERCIAL USE AREAS.DWG 8/30/2022 9:46:03 AM ALAN MULLEN

Sheet 3 of 3

Commercial - DDA Schedule of Performance

EXHIBIT I

Prior to Close of Escrow	Due Date	Status	Who	Reference Doc/ Section
Preliminary Pro Forma	11/7/22		Developer	DDA Section 2.1a
Obtain Entitlements	11/7/22		Developer/City	DDA Section 2.1b
Determine Insurance Requirements per Activity	11/7/22		City	DDA Section 2.1e
Deposit Purchase Price into Escrow	11/7/22		Developer	DDA Section 2.1f
Right of Entry to Property for Developer	11/7/22		City	DDA Section 2.3
PreConditions to Begin of Construction Project				
Develop and Staff Approval of Concept Plans	8/20/22	Complete	Developer/City	DDA Section 4.5
City Approval of Entitlement Plans	10/31/22		City	DDA Section 5.1
Submit Construction and Building Permit Plans	12/5/22		Developer/City	
City Fees Paid	2/6/23		Developer	DDA Section 5.2
Obtain Reciprocal Access Easement	2/6/23		Developer	DDA Section 5.3
Deed restriction on 39 S. Livermore Ave. for public parking	2/6/23		Developer	DDA Section 2.1g
Deed Restriction for Public Restroom	2/6/23		Developer	DDA Section 2.1h
Obtain Building Permit	2/6/23		Developer	DDA Section 5.4
Existing Temporary Parking Lot vacated	1/27/23		City	
Construction of Project				
Begin Construction	3/1/23		Developer	
Complete Construction	3/1/24		Developer	

Due Dates assume CC Approval of DDA on October 10, 2022. If CC approval is delayed the due dates should be extended on a day for day basis.

EXHIBIT "J"
SCOPE OF DEVELOPMENT

Red Bear Property Management, Inc.(Red Bear) will maximize land use of the property consistent with the Downtown Specific Plan and the goals articulated by the City Council upon its selection of Red Bear to negotiate for the Disposition and Development Agreement. Red Bear will construct the development of the property consistent with any City entitlements and requirements for the project.

The project will consist of approximately 12,850 square feet of new commercial uses on approximately 24,790 square feet of the property. The project will utilize architecture and design elements compatible with Blacksmith Square. Building walls adjacent to Stockmen's Park will be oriented towards the park so that tenant spaces actively interface with Stockmen's Park.

The project will include its own trash enclosure and collection facilities. At such time as the L Street Parking Garage Compactor Facility becomes available for business use, the project may utilize these facilities, subject to standard City fees and requirements for use, which are applicable to all businesses users.

Red Bear will also construct public improvements related to the improvements consisting of: frontage improvements, public art, and public access to Stockmen's Park to and from Railroad Avenue and S. Livermore Avenue.

THIS LICENSE AGREEMENT (the "Agreement") is made as of _____, ("Effective Date" by and between the City of Livermore, a municipal corporation ("Licensee"), and Red Bear Property Management, Inc., a California corporation ("Licensor"); (Licensor and Licensee shall sometimes hereinafter be referred to individually as a "Party" and together as the "Parties") with reference to the following facts, purposes, and understandings

RECITALS

A. Licensor is the legal and rightful owner of a certain parcel of real property defined in Recital I of the Amended and Restated Disposition Agreement to which this Exhibit K is attached ("Property");

B. Licensee, in cooperation with the San Francisco Bay Regional Water Quality Control Board ("RWQCB"), now desires to enter the Property to perform and continue to perform environmental investigation, mitigation and/or remediation (including any system operation/maintenance) at, on, about, beneath, emanating from and/or entering the Property (the "Work"), with eventual site closure by the RWQCB;

C. The Parties desire to enter into this Agreement so that the soil, soil vapor, indoor and/or groundwater can be assessed, investigated, remediated and/or mitigated pursuant to environmental laws and regulations;

NOW THEREFORE, in consideration of the granting of the foregoing, the mutual premises, covenants, conditions and agreements hereinafter set forth, and other good and valuable consideration, the receipt and adequacy of which are acknowledged, the Parties hereby agree as follows:

1. **Grant of License** - Licensor hereby grants to Licensee, and its employees, representatives and/or contractors a limited, revocable (by Licensor), non-exclusive license (the "License") to enter upon the Property from time to time to conduct the activities described in Recitals Paragraph B and C above and shall not access the Property for any purpose other than the Work, with the further understanding that the Work shall be performed at Licensee's sole cost and expense. Further, Licensor shall cause any tenants or lessees of the Property, not a party hereto, to provide Licensee, including its consultant(s), and/or contractor(s), same License. This License shall commence on_____ (**Effective Date**) and shall end on _____ unless the Parties agree in writing to extend the term of the License. If Licensee is required by a government agency to maintain and/or operate a well, soil vapor extraction system, vapor management system or other equipment on the Property beyond the term of this License, then the License shall, on notice of such requirement to Licensor, be extended for _____. At no time shall anyone from Licensee conduct any of the Work without giving at least five (5) business days' prior notice to Licensor, who is identified in Section 8. Licensor shall not be listed as the owner or responsible for any waste generated or otherwise associated with sampling or any other aspect of the Work. Licensee agrees to lawfully handle, manage, transport, and dispose of any soil, debris or water generated as a result of the Work and to do so in compliance with all applicable laws. In particular, to the extent possible or permitted by law or regulation, all manifests for contaminated soil and/or contaminated groundwater removed from the Property will not identify Licensor as the generator

and Licensee (or its agents) shall be identified as the sole generator, shall be responsible for obtaining any necessary EPA generator identification number, and shall dispose of any such contamination at an appropriately licensed disposal facility. Licensor will be provided with copies of all reports related to the Work. This Agreement is not a grant of easement or any other interest in the Property. In no event will either Party record this Agreement on the title of the Property. Prior to the expiration of the License, Licensee shall, at no cost or expense to Licensor, (a) cause any excavations to be returned to the original gradient, (b) remove all equipment placed on the Property, (c) fill and level all ditches, ruts and depressions, if any, caused by the closure of the Licensee's excavation operations on the Property, properly close all wells and/or remedial and mitigation systems (as appropriate); properly repair any damage to the Property, including buildings, systems, and other improvements on the Property, and (d) remove all debris resulting therefrom. Licensee's obligations hereunder shall survive the termination, cancellation or expiration of this License Agreement.

2. **Compliance with Laws** - Licensee shall conduct all operations which are the subject of this License in compliance with all federal, state, and municipal statutes and ordinances, and with all regulations, orders, and directives of appropriate governmental agencies, as such statutes, ordinances, regulations, orders and directives now exist or provide.

3. **Permits** - Licensee, at no cost or expense to Licensor, shall be responsible for obtaining any and all governmental permits and approvals which may be necessary for it to conduct all Work under this Agreement. Licensor shall coordinate and cooperate with Licensee in Licensee's activities to obtain all necessary government permits and permissions.

4. **Liens and Claims** - Licensee will not permit any mechanics', materialmen's, or similar liens or claims to stand against the Property for labor or material furnished in connection with any work performed by Licensee under this Agreement. Upon reasonable and timely notice of any such lien or claim delivered to Licensee by Licensor, Licensee may bond and contest the validity and the amount of such lien, but Licensee will immediately pay any judgment rendered, will pay all proper costs and charges, and will have the lien or claim released at its sole expense. Licensee shall indemnify Licensor and hold Licensor harmless against and defend Licensor in any proceeding related to any mechanic's lien, stop notice or other claim brought by a subcontractor, laborer or material supplier who alleges having supplied labor or materials in the course of the Licensee conducting the Work or any other activity associated with the Work on or related to the Property.

5. **Cooperation and Insurance** - Licensee agrees to coordinate its activities with Licensor to minimize any impairment of access by customers or business invitees of Licensor or Licensor's tenants' to the Property and any inconvenience to or disruption of Licensor's or Licensor's tenants' business on the Property. Licensee or its agent(s) shall maintain combined liability and property damage insurance coverage in the amount of $1,000,000 per occurrence, $2,000,000 aggregate. Licensor shall be named as additional insured on the aforementioned policy with the express understanding that, with respect to any claim, Licensee and its agent(s) insurance is primary and Licensor's insurance is secondary. Prior to entering onto the Property for the commencement of Work under this Agreement, Licensee or its agent(s) shall provide Licensor with a valid certificate of insurance and endorsement evidencing such coverage and that Licensor is named as additional

insured. Licensee, or its agents, shall maintain Worker's Compensation Insurance in the statutorily required amount relating to the Work.

6. **Indemnity** - Licensee agrees that it will indemnify and hold Licensor harmless from and against any claims, demands, actions, suits, judgments, losses, damages, costs or expenses incurred as a result of personal injury, property damage, civil penalties or fines to the extent caused in whole or in part by the negligence, acts or omissions of Licensee or its authorized contractors and employees in conducting the Work. However, this indemnity and hold harmless obligation shall not apply to any such claims, demands, actions, suits, judgments, losses, damages, costs, or expenses to the extent caused by the gross negligence or willful misconduct of Licensor. This indemnity is expressly conditioned on the following:

(a) In the event Licensor shall identify any matter to which this indemnity may apply or receive a notice or claim from any third party of such matter, it shall immediately, and in every case within sixty (60) days of said notice or claim, notify Licensee in writing of such matter.

(b) Licensor shall cooperate with Licensee by allowing Licensee, its agents, representatives, contractors and consultants prompt and ready access to the Property for the purpose of investigating any matter to which this indemnity may apply. Licensor shall provide Licensee with copies of all investigative reports, data, or other information in any form which Licensor, its consultants or attorneys may have pertaining to any such matter, upon request of Licensee.

7. **Severability** - In case any one or more of the provisions contained in this Agreement shall be invalid, illegal or unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired thereby.

8. **Notices** - Any notice provided for herein or otherwise required to be given hereunder shall be deemed received when personally served or three (3) days after mailing by certified or registered United States mail, return receipt requested, postage prepaid, or by facsimile machine, with transmission and receipt confirmed, or by nationally recognized overnight delivery service, addressed as follows:

To Licensor:
Red Bear Property Management, Inc.
5955 Coronado Lane
Pleasanton, CA 94588
Attn: Mike Madden

To Licensee:
City of Livermore
1052 S. Livermore Avenue
Livermore, California 94550
Attn: City Manager

The person and the place to which notices are to be mailed may be changed by either Party by providing written notice of same to the other.

9. **Assignment** - This Agreement may not be assigned by any Party without the prior written consent of the non-assigning Party, which consent shall not be unreasonably withheld. However, after such assignment or transfer by Licensee, Licensee shall nevertheless not be released from any of the obligations and liabilities hereunder.

10. **Change in Ownership** - Licensor shall notify Licensee of any change in Property ownership within ten (10) business days of the close of Property's escrow or the recordation of a deed indicating Licensor has transferred the Property to another person(s) or entity(ies) by providing Licensee at a minimum, the new Property owner's name and contact information.

11. **Governing Law** - This Agreement shall be construed and interpreted and governed by and in accordance with the local law of the State of California without reference to any choice of law, rules, or policies which may refer the resolution of any dispute arising hereunder to the laws of any other jurisdiction.

12. **Entire Agreement** – Except as expressly provided herein to the contrary, this Agreement represents the full, complete and entire agreement between the Parties with respect to the subject matter hereof, and the rights and remedies of the Parties shall be solely and exclusively those herein contained, and in lieu of any remedies otherwise available at law or in equity. Nothing in this License is intended or shall be construed to modify or amend the Amended and Restated Disposition and Development Agreement ("ARDDA") (to which agreement this Agreement is Exhibit K) dated _____ between the Parties or waive any rights or claims between or among the Parties that may exist relating to the condition of the Property or otherwise. In any conflict in terms between this Agreement and the ARDDA, the text of the ARDDA shall control (and not this Agreement), and, where there is no conflict, any provision herein is in addition to the provisions contained in the ARDDA.

13. **Execution of Agreement** - Each of the undersigned hereby represents and warrants that they are authorized to execute this Agreement on behalf of the respective Parties to the Agreement, and that this Agreement, when executed by those Parties, shall become a valid and binding obligation, enforceable in accordance with its terms. Upon execution, this Agreement shall be binding as to the Parties' respective parent companies, subsidiaries, affiliates, successors, heirs and assigns.

14. **Counterparts** - This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, and all of which, taken together, shall constitute one and the same Agreement. The Parties have executed this Agreement in two (2) duplicate originals on the dates set forth below.

[Signature Page Follows]

LICENSOR

RED BEAR PROPERTY MANAGEMENT, Inc., a California Corporation

By:

By: _____

Name: _____

Title: _____

LICENSEE

By: _____

_____

Its: City Manager

Date: _____

APPROVED AS TO FORM

By: _____


LIVERMORE
CALIFORNIA
Update on
Fiscal Year 2021-2023
Goals and Priorities
Presented By City Manager
Marianna Marysheva
October 24, 2022
City Council meeting

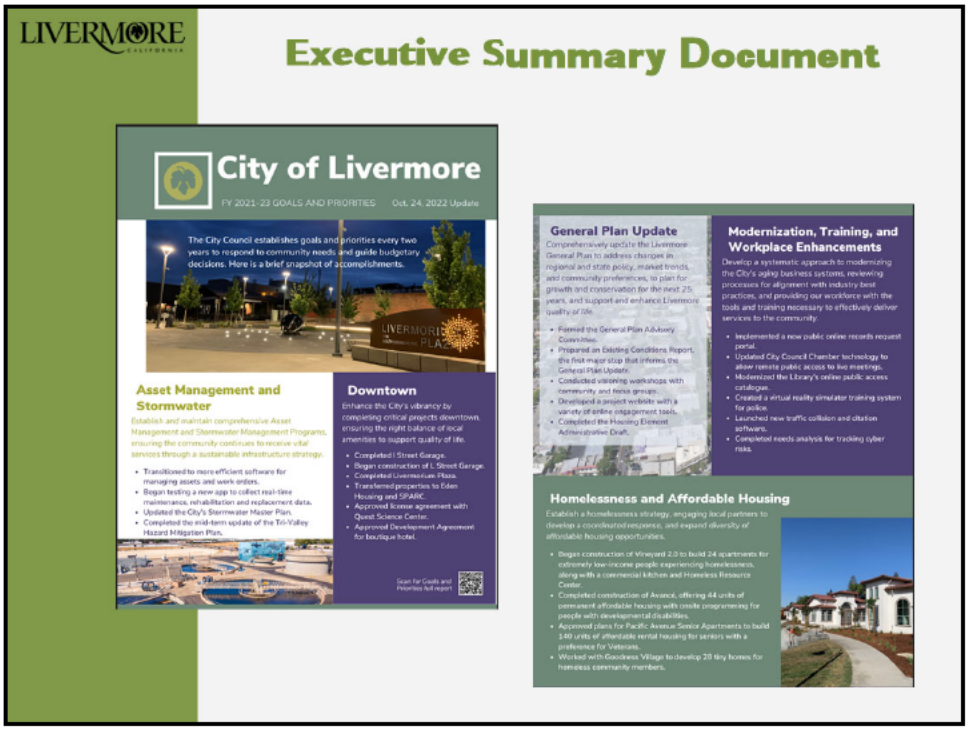
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LIVERMORE
CALIFORNIA
FY 21-23 Goals & Priorities
ASSET MANAGEMENT AND STORMWATER
Establish and maintain comprehensive Asset Management and Stormwater Management Programs, ensuring the community continues to receive vital services through a sustainable infrastructure strategy.
DOWNTOWN
Enhance the City's vibrancy by completing critical projects downtown, ensuring the right balance of local amenities to support quality of life.
GENERAL PLAN UPDATE
Comprehensively update the Livermore General Plan, including Housing Element and Programmatic EIR, to address changes in regional and state policy, market trends, and community preferences, to plan for growth and conservation for the next 25 years, and support and enhance Livermore quality of life.
HOMELESSNESS AND AFFORDABLE HOUSING
Establish a homelessness strategy, engaging local partners to develop a coordinated response, and expand diversity of affordable housing opportunities.
MODERNIZATION, TRAINING, AND WORKPLACE ENHANCEMENTS
Develop a systematic approach to modernizing the City's aging business systems, reviewing processes for alignment with industry best practices, and providing our workforce with the tools and training necessary to effectively deliver services to the community.
Video Update by:
Scott Lanphier, Public Works Director
Paul Spence, Community Development Director
Tina Olson, Administrative Services Director

2


FY 21-23 Goals & Priorities Update
LIVERMORE
CALIFORNIA

3

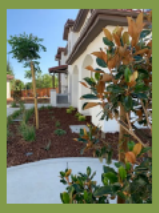

LIVERMORE
CALIFORNIA
Executive Summary Document
City of Livermore
FY 2021-23 GOALS AND PRIORITIES Oct. 24, 2022 Update
The City Council establishes goals and priorities every two years to respond to community needs and guide budgetary decisions. Here is a brief snapshot of accomplishments.
Asset Management and Stormwater
Establish and maintain comprehensive Asset Management and Stormwater Management Programs, ensuring the community continues to receive vital services through a sustainable infrastructure strategy.
Transitioned to more efficient software for managing assets and work orders.
Began testing a new app to collect real-time maintenance, rehabilitation and replacement data.
Updated the City's Stormwater Master Plan.
Completed the mid-term update of the Tri-Valley Hazard Mitigation Plan.
Downtown
Enhance the City's vibrancy by completing critical projects downtown, ensuring the right balance of local amenities to support quality of life.
Completed I Street Garage.
Began construction of L Street Garage.
Completed Livermorium Plaza.
Transferred properties to Eden Housing and SPARC.
Approved license agreement with Quest Science Center.
Approved Development Agreement for boutique hotel.
Scan for Goals and Priorities full report
General Plan Update
Comprehensively update the Livermore General Plan to address changes in regional and state policy, market trends, and community preferences, to plan for growth and conservation for the next 25 years, and support and enhance Livermore quality of life.
Formed the General Plan Advisory Committee.
Prepared an Existing Conditions Report, the first major step that informs the General Plan Update.
Conducted visioning workshops with community and focus groups.
Developed a project website with a variety of online engagement tools.
Completed the Housing Element Administrative Draft.
Modernization, Training, and Workplace Enhancements
Develop a systematic approach to modernizing the City's aging business systems, reviewing processes for alignment with industry best practices, and providing our workforce with the tools and training necessary to effectively deliver services to the community.
Implemented a new public online records request portal.
Updated City Council Chamber technology to allow remote public access to live meetings.
Modernized the Library's online public access catalogue.
Created a virtual reality simulator training system for police.
Launched new traffic collision and citation software.
Completed needs analysis for tracking cyber risks.
Homelessness and Affordable Housing
Establish a homelessness strategy, engaging local partners to develop a coordinated response, and expand diversity of affordable housing opportunities.
Began construction of Vineyard 2.0 to build 24 apartments for extremely low-income people experiencing homelessness, along with a commercial kitchen and Homeless Resource Center.
Completed construction of Avanci, offering 44 units of permanent affordable housing with onsite programming for people with developmental disabilities.
Approved plans for Pacific Avenue Senior Apartments to build 140 units of affordable rental housing for seniors with a preference for Veterans.
Worked with Goodness Village to develop 28 tiny homes for homeless community members.

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LIVERMORE CALIFORNIA

Equity & Inclusion Recommendations







Community Engagement: Key to the City

Expand community awareness of the inner workings of local government and ways to provide steppingstones to leadership opportunities. Expand outreach and advertisement of participation and volunteer opportunities in furtherance of the above. Create and conduct a Key to the City specifically for youth.

Policing

Invite Subgroup B (of the former Equity and Inclusion Subcommittee) to hear updates and provide input on the stop and arrest data project at milestones. Explore ways to deploy police department resources most efficiently and effectively in response to mental health related calls for service. Increase Police Chief and Police Department awareness of community-policing related matters

Housing

Expand outreach to communities most affected by housing issues. Share information on housing related matters with the community

Collaboration with Partner Agencies and Community Organizations

Collaborate on partnership opportunities with LVJUSD (and potentially also parent-teacher groups) and LARPD to create/implement complementary programming for youth. Collaborate with LPC, Chamber and other business organizations on youth training/career opportunities. Recognizing youth diversity and that not all students enroll in college directly out of high school, facilitate basic job skills building programs. Collaborate with LVJUSD, LARPD, LDI, Chamber and other community partners to share Livermore s cultural diversity

Recruitment for Advisory Bodies, Employment and Other Volunteer Opportunities

Expand outreach and advertisement efforts to reach all segments of the community

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LIVERMORE CALIFORNIA

Equity & Inclusion Update





Future Focus on:

Employees

Community Engagement

Business Participation

Community Engagement: Key to the City

- Key to the City Program scheduled to re-launch in 2023

Policing

- Established
  - Chief's Advisory Group
  - Faith Based Leadership Group

Housing

- Housing Element informational video and Story Map added to the General Plan website
- Housing presentations to community groups

Collaboration with Partner Agencies and Community Organizations

- Community Service Day scheduled for May 6, 2023
- Youth in Government initiatives under way

Recruitment for Advisory Bodies, Employment and Other Volunteer Opportunities

- Government 101 Video Series in progress

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LIVERMORE CALIFORNIA





Departmental Updates:

Budget Preparation

Climate Action Plan

Youth in Government

Business Outreach

Communications Plan

Citywide Strategic Plan 2023

- Strategic Planning Workshop - early 2023
- Citywide Strategic Plan organized under five priorities / pillars:
    1. A Safe Community That Thrives
    2. Economy That Prospers
    3. Environmental Legacy
    4. Inclusive and Inviting Spaces
    5. A City That Works
- Lead to the development of the two-year proposed budget for FY 2023-24 and 2024-25

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Discussion and direction regarding Livermore Development Code Chapter 4.06 Sign Standards for Temporary Signs

City Council

October 24, 2022

Presented by Steve Stewart, Planning Manager

1

Previously Proposed Regulations

- Restrict the placement of temporary signs in the right-of-way to daylight hours between 9:00 a.m. and 5:00 p.m. Signs could only be placed after 9:00 a.m. and would need to be removed before 5:00 p.m. each day.
- Signs must relate to an event scheduled for a specific date and shall not be displayed sooner than 90 days before that event. Signs must be removed within five days following the associated event.
- In the Downtown Specific Plan area only, commercial and non-commercial temporary signs would not be permitted in the designated public right-of-way with the exception of A-frame signs.

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Current Regulations

Noncommercial temporary signs are permitted in the designated public right-of-way, but not in the street, street median, or sidewalk, in commercial and industrial zones, other than the DSP, subject to the following:

- The signs must relate to an event scheduled for a specific date and shall not be displayed sooner than 60 days before that event;
- Signs must be stake signs with a maximum size of four-square feet;
- No two signs with the same copy shall be placed closer than 50 feet from each other per street frontage;
- Corner properties may have two of the same signs at the corner; and
- Signs shall be removed within five days after the event to which they pertain.

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Recommendation

Discuss the provisions in the Livermore Development Code regarding temporary signs placed on public property and in the designated public right-of-way and direct staff to address ongoing challenges with allowing temporary signs, including vandalism and theft.

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Discussion and direction on the City Council Subcommittee's recommended revisions to the City Council's Rules of Procedure and the City Council's Norms, Values and Principles of Governance

October 24, 2022

Introduced by Christine Martin, Assistant City Manager

LIVERMORE CALIFORNIA

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Summary

- Council Subcommittee: Mayor Woerner and Council Member Carling
- Subcommittee collaborated on revisions to:
  - Rules of Procedure and
  - Norms, Values and Principles of Governance
- Revisions presented for Council discussion and direction on following slides

LIVERMORE CALIFORNIA

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Key Changes

- Norms, Values and Principles of Governance
  - Additional language to promote Transparent Communication, and mutual Respect and Appreciation, and clarifying the relationship between City Council and staff

LIVERMORE CALIFORNIA

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Key Changes

- Rules of Procedure (Changes since publication are in red)
  - Clarifying roles and responsibilities of Mayor and City Council to be consistent with State statute, and providing clarification on roles of City Attorney and City Manager
  - Refining structure of Council meetings and public hearings, especially to incorporate hybrid meeting protocols
  - Refining agenda development:
    1) Items can be added to the agenda by a subcommittee with concurrence of the City Manager (Section 8)
    2) Council members initiating an item during the meeting are expected to consult with the City Manager / City Attorney ahead of time
    3) Council members are encouraged to avoid responding to perceived derogatory comments (Section 7.6 – consistent with the Norms)
  - Recommending limiting number of advisory body members to 7 (Section 16.1.2)

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Recommendation

The City Council Subcommittee recommends the City Council discuss and provide direction on the Subcommittee's recommended revisions to the City Council's Rules of Procedure and the City Council's Norms, Values, and Principles of Governance.

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Council Member	Committee Meeting Date	Committee	Agenda Link	Meeting Type
Vice Mayor Bonanno	10/10/2022	Alameda County Transportation Commission (ACTC)	https://d3n9y02raazwpg.cloudfront.net/alamedactc/8a793600-0237-11ed-baa3-0050569183fa-abb6aa12-d2c6-4f47-b79b-94121c557222-1665186174.pdf	Programs and Projects subcommittee
Vice Mayor Bonanno	10/12/2022	Dedication of Sculpture "Influx" in Springtown		community event
Vice Mayor Bonanno	10/10/2022	Visit/Tour of Form Factor's Manufacturing Facility		Business meet and greet
Vice Mayor Bonanno	10/13/2022	Annual Civic Appreciation Dinner		City event
Vice Mayor Bonanno		Livermore Downtown Inc		Board Meeting
Vice Mayor Bonanno		Community Service Day (CSD) 2023 Kick Off Event		City event
Vice Mayor Bonanno	10/20/2022	Intergovernmental Committee (CITY / LARPD / LVJUSD)		Committee
Vice Mayor Bonanno		Alameda County Transportation Commission (ACTC)		Clean Fuels Summit
Vice Mayor Bonanno		Alameda County Transportation Commission (ACTC)		City meeting-host ACTC Executive Director

Council Member	Committee Meeting Date	Committee	Agenda Link	Meeting Type
Mayor Woerner	10/12/2022	Tri Valley San Joaquin Regional Rail Authority	https://www.valleylinkrail.com/valleylink-project	Board Meeting
Mayor Woerner	10/12/2022	Alameda County Mayors Homeless Working Group		Meeting
Mayor Woerner	10/12/2022	Alameda County Mayors Conference	https://www.alamedacountymayorsconference.org/agenda-information/	
Mayor Woerner	10/13/2022	Civic Appreciation Dinner		
Mayor Woerner	10/16/2022	Young Men's Service League		
Mayor Woerner	10/18/2022	Chamber of Commerce		Leadership Livermore
Mayor Woerner	10/20/2022	Tri Valley Non Profit Alliance		Grant Presentation