LIVERMORE
CALIFORNIA

CITY COUNCIL

AGENDA
MONDAY, JUNE 24, 2024

REGULAR MEETING – 7:00 PM

MEETING PARTICIPATION INFORMATION CAN BE FOUND AT THE END OF THE AGENDA

CIVIC CENTER MEETING HALL
CITY COUNCIL CHAMBERS
1016 S. LIVERMORE AVENUE

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

TV29:
Comcast TV Channel 29
tv29live.org

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

1. CLOSED SESSION - NONE.

2. CALL TO ORDER

ROLL CALL

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

PLEDGE OF ALLEGIANCE

3. PROCLAMATIONS AND PRESENTATIONS

3.1 Proclamation declaring July 28 through August 4, 2024, as Play Ball Week presented to Kathleen Minser, Little League World Series Marketing & Media Director.

Recommendation:
Staff recommends City Council declare July 28 through August 4, 2024, as Play Ball Week.

Staff Report
Attachments:
1. Proclamation

4. OPEN FORUM

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

5. CONSENT CALENDAR

Consent Calendar items are considered routine and are acted upon by the City Council with a single action. Members of the audience wishing to provide public input must submit a speaker card found at the entrance of the Council Chambers. A speaker is limited to a single comment with a maximum of three minutes for the entire Consent Calendar. If Consent Calendar items are pulled for discussion by the City Council, a speaker will be allowed one comment per item on the items pulled for discussion and a separate comment for the remaining Consent Calendar. The one comment limit applies 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 Introduce an ordinance and waive the first reading revising Municipal Code Chapter 2.68, Contracts and Purchasing, to change contract approval authorities, add department head contract and purchasing responsibilities, add solicitation procedures for professional services contracts, and other miscellaneous revisions.

Recommendation:
Staff recommends the City Council **introduce an ordinance** and waive the first reading revising Municipal Code Chapter 2.68, Contracts and Purchasing, to change contract approval authorities, add department head contract and purchasing responsibilities, add solicitation procedures for professional services contracts, and other miscellaneous revisions.

Staff Report
Attachments:
1. Redlined LMC 2.68
2. Ordinance
3. Exhibit A - LMC 2.68

5.2 Resolution authorizing execution of a first amendment to the agreement with Precision Emprise, LLC, dba Precision Concrete Cutting for on-call concrete cutting services increasing the not-to-exceed contract amount from $500,000 to $1,000,000 and extending the term of the agreement to December 30, 2027.

Recommendation:
Staff recommends the City Council adopt a resolution authorizing the City Manager to execute the first amendment to the agreement with Precision Emprise, LLC, dba Precision Concrete Cutting for on-call concrete cutting services increasing the not-to-exceed contract amount from $500,000 to $1,000,000 and extending the term of the agreement to December 30, 2027.

Staff Report
Attachments:
1. Resolution
2. Exhibit A - First Amendment

5.3 Resolution authorizing execution of a fourth amendment to the agreement with Watry Buehler Collaborative, LLP increasing the not-to-exceed amount from $1,792,800 to $2,091,800 for additional engineering services during construction associated with the Livermore Village Parking Garage Construction Project 586003.

Recommendation:
Staff recommends the City Council adopt a resolution authorizing the City Manager to execute a fourth amendment to the agreement with Watry Buehler Collaborative, LLP increasing the not-to-exceed amount from $1,792,800 to $2,091,800 for additional engineering services during construction associated with the Livermore Village Parking Garage Construction Project 586003.

Staff Report
Attachments:
1. Site Plan

2. Resolution
3. Exhibit A - Fourth Amendment

5.4 Resolution authorizing the following actions for the Resurfacing and Sidewalk Improvements Project composed of the Street Resurfacing 2022 Project 2022-01, Sidewalk Repair 2023 Project 2023-02, and ADA Access Ramps 2021 Project 2021-07: Reject the Bid Proposal from apparent lowest bidder, Mountain Cascade Inc., finding the bid to be incomplete and non-responsive, authorize supplemental appropriations in FY 2024-25, and award a construction agreement to A. Teichert & Son, Inc., dba Teichert Construction in an amount of $4,178,975.

Recommendation:
Staff recommends the City Council adopt a resolution authorizing the following actions for the Resurfacing and Sidewalk Improvements Project composed of the Street Resurfacing 2022 Project 2022-01, Sidewalk Repair 2023 Project 2023-02, and ADA Access Ramps 2021 Project 2021-07:

1. Reject the Bid Proposal from Mountain Cascade Inc., finding the bid to be incomplete and non-responsive;
2. Authorize a supplemental appropriation of $1,070,000 from Gas Tax - Senate Bill 1 to the FY 2024-25 budget for Street Resurfacing 2022 Project 2022-01;
3. Authorize a supplemental appropriation of $450,000 in Gas Taxes to the FY 2024-25 budget for the ADA Access Ramps 2021 Project 2021-07;
4. Award and authorize execution of a construction agreement with A. Teichert & Son, Inc. dba Teichert Construction in the amount of $4,178,975 for construction of the project pursuant to Livermore Code section 2.68.580 (C); and
5. Reject all other Bid Proposals.

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

5.5 Resolution approving Final Tract Map 8657; authorizing execution of a Subdivision Improvement Agreement for the Triad Drive East Development (Amarone); and accepting on behalf of the public all real property offered for dedication within the Final Tract Map 8657 except for the certain easements which City Council reserves the right to accept at a future date.

Recommendation:
Staff recommends the City Council adopt a resolution:
1. Finding that the requirements of the California Environmental Quality Act have been satisfied;
2. Approving Final Tract Map 8657 for recording;
3. Approving and authorizing execution of the Subdivision Improvement Agreement which includes a 12-month extension (24 months in total) to complete the required improvements; and
4. Accepting, on behalf of the public, all real property offered for dedication within Final

Tract Map 8657 in conformance with the terms of the offer except for the following, which the Council rejects at this time reserving the right to accept the offer at a future date: Public Utility Easement (P.U.E.), Sanitary Sewer Easement (S.S.E.), Waterline Easement (W.L.E.), Emergency Vehicle Access Easement (E.V.A.E.) and Public Sidewalk Easement (S.W.E.)

Staff Report
Attachments:
1. Vicinity Map
2. Resolution
3. Exhibit A - Final Tract Map 8657
4. Exhibit B - Subdivision Improvement Agreement

5.6 Resolution authorizing execution of an agreement with Holloway Environmental Solutions, LLC for Biosolids Hauling and Disposal Services in an amount not-to-exceed $2,288,790, a term ending June 30, 2027, and an appropriation increase of $103,430 to the Sewer Fund Operating Budget for FY 2024-25.

Recommendation:
Staff recommends that the City Council adopt a resolution authorizing execution of an agreement with Holloway Environmental Solutions, LLC for Biosolids hauling and disposal services in an amount not-to-exceed $2,288,790, a term ending June 30, 2027, and an appropriation increase of $103,430 to the Sewer Fund operating budget for FY 2024-25.

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

5.7 Resolution authorizing the execution of an agreement for services with Kemira Water Solutions, Inc. for the supply and delivery of ferric chloride for use at the Water Reclamation Plant in an amount not-to-exceed $200,000.

Recommendation:
Staff recommends that the City Council adopt a resolution authorizing the execution of an agreement with Kemira Water Solutions, Inc. for the supply and delivery of ferric chloride for use at the Water Reclamation Plant in an amount not-to-exceed $200,000.

Staff Report
Attachments:
1. BACC Award Letter
2. Resolution
3. Exhibit A - Agreement

5.8 Resolution authorizing the execution of an agreement with Gigantic Idea Studio, Inc. to assist with recycling and organics diversion outreach campaign services for the term of July 1, 2024 to June 30, 2026 in the amount not-to-exceed $215,000.

Recommendation:
Staff recommends the City Council adopt a resolution authorizing the City Manager to execute an agreement with Gigantic Idea Studio, Inc. to assist with recycling and organics diversion outreach campaign services for the term of July 1, 2024 to June 30, 2026 in the amount not-to-exceed $215,000.

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

5.9 Resolution authorizing a purchase order to Baker & Taylor Books for purchases of library books and related materials in FY 2024-25, in an amount not-to-exceed $240,000.

Recommendation:
Staff recommends the City Council adopt a resolution authorizing issuance of a purchase order to Baker & Taylor Books for FY 2024-25 purchases of library books and related materials, not-to-exceed $240,000.

Staff Report
Attachments:
1. Resolution

5.10 Resolution authorizing a purchase order to OverDrive for the licensing of e-books, audiobooks, and electronic periodicals, in an amount not-to-exceed $140,000

Recommendation:
Staff recommends the City Council adopt a resolution authorizing issuance of a purchase order to OverDrive for FY 2024-25 licensing of e-Books, audiobooks, and electronic periodicals, in an amount not-to-exceed $140,000.

Staff Report
Attachments:
1. Resolution

5.11 Resolution adopting the Police Tow Service Franchise Fee Schedule.

Recommendation:
Staff recommends the City Council adopt a resolution adopting the Towing Franchise Fee Schedule.

Staff Report
Attachments:
1. Resolution
2. Exhibit A - Towing Franchise Fee Schedule
3. Exhibit B - Ordinance 5.44 Police Tow Services Franchises

5.12 Resolution authorizing execution of an agreement with NBS Government Finance Group to provide services in administering the City's Assessment Districts, Community Facilities

Districts, and Continuing Disclosures in an amount not-to-exceed $350,000 for a five-year term.

Recommendation:
Staff recommends that City Council authorize the execution of an agreement with NBS Government Finance Group (NBS) to provide services in administering the City's Assessment Districts, Community Facilities Districts, and Continuing Disclosures in an amount not-to-exceed $350,000 for fiscal years 2024-29.

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

5.13 Resolution amending the City of Livermore Salary Plan dated July 2024 to reflect salary increases for the Livermore Management Group, Livermore Police Management Association, Police Chief, Management Confidential, and Confidential Employees in accordance with California Code of Regulations, Title 2, Section 570.5.

Recommendation:
Staff recommends the City Council adopt a resolution amending the City of Livermore Salary Plan dated July 2024 to reflect salary increases for the Livermore Management Group, Livermore Police Management Association, Police Chief, Management Confidential, and Confidential Employees.

Staff Report
Attachments:
1. Resolution
2. Exhibit A - Salary Plan effective July 1, 2024

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 Hearing to receive and consider all evidence and reports regarding the adoption of a Master Fee Schedule. The Master Fee Schedule establishes fees for City services. The fee resolution and accompanying justification includes new, increased, and decreased fees into one document.

Recommendation:
Staff recommends the City Council adopt a resolution adopting the City's Master Fee Schedule, incorporating certain fee changes and superseding resolution 2023-128.

Staff Report
Attachments:
1. Tables 1-9
2. Resolution

3. Exhibit A - Master Fee Schedule

6.2 Hearing on Police Department Tow Franchise Proposals for RFP & Q No. 4262 to grant a non-exclusive tow franchise agreement, for a five-year term, from July 1, 2024 - June 30, 2029

Recommendation:
Staff recommends the City Council authorize the City Manager to grant a non-exclusive tow franchise agreement, for a five-year term, commencing July 1, 2024, and ending June 30, 2029, in substantial conformance to Exhibit A to the resolution to the following companies:

1. Action Road Solutions DBA Jack James Tow Service,
2. Central Towing & Transport, LLC,
3. ITN Holdings, LLC DBA First Street Tow,
4. Golden State Fleet Services, and
5. Norm's Tow Service

Staff Report
Attachments:
1. RFP & Q No. 4262 Checklist & Tabluation
2. Resolution
3. Exhibit A - Substantial Conformance Agreement

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 Appointment of Council Members to the City Council Subcommittee on Advisory Bodies for the period of July 1, 2024 - December 31, 2024.

Recommendation:
Staff recommends the Mayor appoint two Council Members to serve on the City Council Subcommittee on Advisory Bodies for the period of July 1, 2024 - December 31, 2024, with the City Council's approval.

Staff Report

7.2 Certification of referendum petition against Resolution No. 2022-085, action to either repeal the resolution, or call for an election for the voters to approve or set aside the legislative acts in the resolution for the construction of and improvements to Veterans Park, and consideration of a companion resolution ratifying the Amended and Restated Disposition, Development and Loan Agreement with Eden Housing, Inc.

Recommendation:
Staff recommends the City Council:
1. Adopt a resolution accepting the Alameda County Registrar of Voter's certification of sufficiency of the signatures on the referendum petition against Resolution No. 2022-085; and,
2. Take one of the following actions as provided by the Elections Code:

Option 1: Adopt a resolution repealing Resolution No. 2022-085; or,

Option 2: Adopt a resolution calling for an election to place Resolution No. 2022-085 on the ballot for the voters to approve or set aside the legislative acts in the resolution for the construction of and improvements to Veterans Park; requesting that the Alameda County Registrar of Voters conduct the election; and establishing dates for ballot measure arguments.

3. Staff further recommends the City Council adopt a companion resolution to ratify, reaffirm, and readopt the terms and conditions in the Amended and Restated Disposition, Development and Loan Agreement with Eden Housing, Inc., other than for construction of and improvements to Veterans Park, and to acknowledge that the agreement remains in effect as of the date it was signed.

Staff Report

Attachments:

1. Veterans Park Language
2. Memorandum, History of Veterans Park
3. Memorandum, Referenda and Case Analysis
4. Resolution - Accepting Certification
5. Exhibit A - Registrar of Voters Certification
6. Resolution - Repealing Resolution No. 2022-085
7. Resolution - Calling for and Giving Notice of Election
8. Exhibit A - Resolution No. 2022-085
9. Exhibit B - Veterans Park Language
10. Exhibit C - Referendum Measure
11. Resolution - Companion Resolution
12. Exhibit A - Resolution No. 2022-085
13. Exhibit B - Veterans Park Language

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

9. ADJOURNMENT

To a Regular City Council meeting on Monday, July 8, 2024 at 7:00 pm, Civic Center Meeting Hall, City Council Chambers, 1016 S. Livermore Avenue.

10. SUPPLEMENTAL MATERIALS

10.1 Supplemental materials received prior to the meeting.

Staff Report

Attachments:

1. Supplemental Materials

11. HOW TO PARTICIPATE IN YOUR CITY COUNCIL MEETING

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

Open Forum is an opportunity for the public to speak regarding items not listed on the agenda. Speakers are limited to a maximum of 3 minutes per person. To address the City Council in person, you must submit a speaker card to the City Clerk prior to the start of that

item. 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.

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 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. Please note that the City Council is prohibited by State law from taking action on any items that are not listed on the agenda. However, if your item requires action, the City Council may place it on a future agenda or direct staff to work with you and/or report to the City Council on the issue.

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

TV29: tv29live.org Comcast Cable 29

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

If you would like to deliver written materials to the City Council as part of your public comment, please provide 10 copies to the City Clerk with your speaker card.

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: June 24, 2024

TO: Honorable Mayor and City Council

FROM: Marianna Marysheva, City Manager

SUBJECT: Proclamation declaring July 28 through August 4, 2024, as Play Ball Week presented to Kathleen Minser, Little League World Series Marketing & Media Director.

RECOMMENDED ACTION

Staff recommends City Council declare July 28 through August 4, 2024, as Play Ball Week.

SUMMARY

DISCUSSION

ATTACHMENTS

1. Proclamation

Prepared by: Stephanie Egidio
Assistant to the City Manager

Approved by:

Marianna Marysheva
City Manager

Fiscal Review by:

Tina Olson
Administrative Services Director

Proclamation

of the

City of Livermore

Proclaiming

PLAY BALL WEEK

July 28 through August 4, 2024

WHEREAS, *the sport of baseball, known affectionately as America's National Pastime, has played a significant role in the cultural and social fabric of the United States for well over a century, bringing together people of all ages and backgrounds in a shared love of the game; and*

WHEREAS, *the United States Conference of Mayors and Major League Baseball have collaborated to establish June through August as Play Ball Summer, a season dedicated to promoting the joys and benefits of baseball and softball across communities nationwide; and*

WHEREAS, *Play Ball Summer aims to encourage families, friends, and neighbors to come together and actively participate in the game of baseball, fostering a spirit of unity and engagement that extends beyond the ballpark; and*

WHEREAS, *the City of Livermore is honored to host the prestigious Little League Intermediate (50/70) Baseball World Series, a thrilling and highly competitive youth baseball tournament that showcases the talents of players aged 11 to 13 from around the world; and*

WHEREAS, *this remarkable event brings together the best Little League 50/70 division baseball teams from various countries, making Livermore a global stage for what is now celebrated as the "World's Pastime";*

NOW, THEREFORE, *the City Council of the City of Livermore hereby proclaims July 28 through August 4, 2024, as "Play Ball Week" in Livermore and welcomes the participants, organizers and fans to the 2024 Little League Intermediate (50/70) World Series.*

Mayor John Marchand

CORPORATE SEAL OF THE CITY OF LIVERMORE, CA.

Vice Mayor Robert W. Carling

Council Member Ben Barrientos

Council Member Evan Branning

Council Member Brittni Kiick

LIVERMORE
CALIFORNIA

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

DATE: June 24, 2024

TO: Honorable Mayor and City Council

FROM: Tina Olson, Administrative Services Director

SUBJECT: Introduce an ordinance and waive the first reading revising Municipal Code Chapter 2.68, Contracts and Purchasing, to change contract approval authorities, add department head contract and purchasing responsibilities, add solicitation procedures for professional services contracts, and other miscellaneous revisions.

RECOMMENDED ACTION

Staff recommends the City Council **introduce an ordinance** and waive the first reading revising Municipal Code Chapter 2.68, Contracts and Purchasing, to change contract approval authorities, add department head contract and purchasing responsibilities, add solicitation procedures for professional services contracts, and other miscellaneous revisions.

SUMMARY

In 1999, the City Council approved Municipal Code Ordinance 1556, establishing policies for contracts and purchasing (Chapter 2.68). Since then, Chapter 2.68 has been revised three times to increase approval authorities, add types of contracts, and add contracting and procurement procedures. The proposed revisions will (1) increase the City Manager's contract approval authority from $100,000 to $200,000 and reduce the City Manager's contract amendment authority from $100,000 to a total contract up to $220,000, (2) increase the City Attorney's contract approval authority from $50,000 to $150,000, (3) eliminate specific department head contract approval authority and authorize the City Manager to delegate contract approval authority, (4) identify department heads' contract and purchasing responsibilities, (5) add solicitation procedures for professional services contracts, and (6) make various other revisions.

DISCUSSION

In the spring of 2023, the City contracted with a procurement and contracting consultant, Baker Tilly, to evaluate the City's contracting procedures, process, and policies to identify opportunities to streamline the process and improve accountability. Baker Tilly's review identified several areas where the City can improve the contracting procedures, process, and policies. For example, Baker Tilly noted the number of contracts and contract amendments that the City issues annually is excessive for the City's size, which

creates more work for City Attorney staff and adds to the time required to process a contract. Chapter 2.68 currently authorizes the City Manager to award contracts up to $100,000 and amend contracts up to another $100,000 which has incentivized staff to award the initial contract below $100,000 and then amend the contract for a greater amount later. The proposed revision to Chapter 2.68 to grant the City Manager contract approval authority of $200,000 and contract amendments up to a total contract of $220,000 is expected to reduce the number of contract amendments the City processes which will reduce the amount of time to complete a contract by reducing the number of contracts awaiting City Attorney review.

Baker Tilly also noted the City Attorney's Office has assumed responsibility for contract preparation that should be departments' responsibilities. The City Attorney should only be approving the contract as to form and the Risk Management Division sets the insurance requirements and then approves the insurance as to form when the certificates are provided by the contractor, consultant, or vendors. Department staff should be ensuring the scope of work, fee schedules, and the rest of the contract document are complete and internally consistent. The proposed addition to Chapter 2.68 of department head responsibilities clarifies department responsibilities for contract preparation and management which will also reduce the City Attorney's workload reviewing contracts and the time required to complete a contract.

Finally, Baker Tilly noted that Chapter 2.68 does not currently require competitive solicitation for professional services contracts. Professional services competitive solicitation through Requests for Proposals (RFPs) and Requests for Qualifications (RFQs) ensure the City provides opportunities to qualified firms and is contracting with the most qualified firm. As such, staff proposes to revise Chapter 2.68 to require competitive solicitation for professional services contracts.

Staff also proposes to remove specific contract approval authorities for department heads. Instead, staff proposes to revise Chapter 2.68 to allow the City Manager to delegate contract approval authority to department heads. Such delegation will occur in an Administrative Regulation issued by the City Manager.

There are other revisions to Chapter 2.68 including adding:

- leasing of equipment and personal property to the list of contracts that are subject to Chapter 2.68,
- requirements for disposing of surplus supplies and equipment, and
- a section on ethics that identifies conflicts of interest and circumstances that would disqualify a potential consultant, contractor, or vendor from participating in a solicitation.

FISCAL AND ADMINISTRATIVE IMPACTS

Adopting revisions to Chapter 2.68 will not have a fiscal impact.

COMMUNITY PILLAR

5: A City that Works

GOAL

13: Ensure the City's contracting process is fair, efficient, and inclusive.

ATTACHMENTS

1. Redlined LMC 2.68
2. Ordinance
3. Exhibit A - LMC 2.68

Prepared by: Tina Olson
Administrative Services Director

Approved by:

Marianna Marysheva
City Manager

Fiscal Review by:

Tina Olson
Administrative Services Director

Chapter 2.68
CONTRACTS AND PURCHASING

Article I. General

2.68.~~010~~ 100 Purpose~~.~~ and application.

~~2.68.020 City Council approval required.~~
2.68.110 Purchasing policy and implementing procedures.
2.68.~~030~~ 120 General procedural requirements for contracts.
2.68.~~040~~ 130 Definitions.
2.68.140 Purchasing oversight.
2.69.150 Purchasing responsibilities of Department Heads.

Article II. Contract Approval Authority

2.68.~~060~~ 200 City ~~Manager authority~~Council approval required.

~~2.68.070 City Attorney authority.~~

~~2.68.075 Assistant City Manager authority.~~

~~2.68.080 Administrative Services Director authority.~~

~~2.68.090 Public Works Director and Community Development Director authority.~~

~~2.68.100 Police Chief authority.~~

~~2.68.110 Library Services Director and innovation and economic development director authority.~~
2.68.210 Budget appropriation required.
2.68.220 Contract approval authorities.
2.68.230 Contract amendment approval authorities.
2.68.240 Contingency.
2.68.250 Delegation of contract approval authorities.
2.68.260 Discretion to not award a contract.

Article III. ~~Supplies, Equipment and~~ Solicitation Procedures

2.68.300 General ~~Services~~procedural requirements.

~~2.68.340 Short form contracts.~~
2.68.310 Contracts for goods and services up to $10,000.

2.68.~~350 Purchases of~~320 Contracts for goods and general services~~, sole source services or equipment, or supplies and equipment for $5,000 or less.~~
~~2.68.360 Purchases of general services or supplies and equipment for more~~greater than $~~5~~10,000 and up to $~~50~~100,000~~.~~ (informal solicitation).
2.68.~~370 Purchases of~~330 Contracts for goods and general services ~~or supplies and equipment for more~~greater than $~~50~~100,000~~.~~ (competitive bidding).
2.68.~~380 Negotiated purchases~~340 Contracts for professional services.
2.68.~~390 Purchases of supplies~~350 Competitive negotiation following a request for proposals.
2.68.360 Exceptions to, and ~~equipment~~exemptions from, solicitation procedures.
2.68.370 Contracts for goods and services procured through cooperative purchasing arrangements.

~~2.68.400 Equipment leasing.~~

~~2.68.410 Inspection and testing.~~

~~2.68.420 *Repealed.*~~

~~2.68.430 Surplus supplies and equipment.~~

Article IV. Emergency Contract Approval Authority and Procedures

2.68.400 Emergency procurement authority.
2.68.410 Emergency procurement procedures.

Article V. Public Projects

2.68.500 Public project contracting procedures.
2.68.510 Bid splitting prohibited.
2.68.520 Contractors list.
2.68.530 Informal bidding – Notice.
2.68.540 Formal bidding – Notice.
2.68.550 Exceptions.

2.68.560 ~~Modification of public works contracts.~~
~~2.68.570~~ Contracts for maintenance and other work.
2.68.~~580~~570 Award of public works contracts.
2.68.~~590~~580 Rejection of bids.
~~2.68.600~~2.68.690 Change orders to public works contracts.
2.68.595 Approval of plans, specifications, and designs.

Article VI. Additional Requirements

2.68.600 Leasing equipment and personal property.
2.68.610 Inspection and testing.
2.68.620 Surplus supplies and equipment.
2.68.630 Ethics.
2.68.640 Environmentally preferable purchases.

Article I. General

2.68.~~010~~100 Purpose and application.

The purpose of this chapter is to:

a. ~~A. Provide for the~~ Clearly define authority ~~of city officers~~for the City's purchasing function and delegate authority to ~~enter into~~persons to sign City contracts ~~and to set forth procedural requirements;~~to procure goods and services, and for public projects;

b. ~~B.~~ Establish efficient procedures ~~for the purchase of supplies, equipment~~to award and sign City contracts to procure goods, general services, and professional services;

c. Establish efficient procedures to award and sign public works contracts for the City;

d. Ensure City contracts for goods, general services, and public projects are awarded at the lowest possible cost commensurate with quality needed~~, to exercise~~;

e. Ensure contracts for qualified professional services are awarded to qualified consultants at the lowest possible cost commensurate with quality needed, and all contracts for professional services are awarded to the consultants best able to provide the needed services at a cost commensurate with the quality needed;

f. Ensure the quality of the goods and services purchased by the City are fit for their intended purpose; and,

g. Exercise positive financial control over ~~purchases, to clearly define authority for the purchasing function, and to assure the quality of purchases. (Reference: Government Code Sections 54201 through 54205.)~~ City procurement contracts.

~~**2.68.020 City Council approval required.**~~

~~City Council approval is required for all contracts unless~~Except as otherwise ~~specified in~~provided herein, this chapter ~~or code~~applies to all City contracts goods, services, and public projects, but it does not apply to other City contracts.

2.68.110 Purchasing policy and implementing procedures.

Other relevant provisions of law or regulation notwithstanding, this chapter establishes the City's purchasing policy. For operational efficiency and effectiveness, the City Manager is directed to prepare administrative regulations to implement the provisions of this chapter in coordination with the Administrative Services Director and the City Attorney, or ~~in another provision~~their respective designees. In the event of a conflict between the administrative regulations and the provisions of this chapter, the provisions of this chapter shall govern. In the event of a conflict between this chapter and a state or federal ~~or state law.~~ law, the provisions of the state or federal law shall govern.

2.68.~~030~~120 General procedural requirements for contracts.

A. All City contracts for goods, services, and public projects shall conform with the procedural requirements set forth in this ~~section unless~~chapter to solicit, award, and sign contracts for the City, except as otherwise specified elsewhere in ~~this chapter or code~~the LMC, or in ~~another provision of federal~~ state or ~~state~~federal law.

~~A.~~ B. The general procedural requirements for all City contracts for goods, services, and public projects are as follows:

1. All City contracts ~~must~~for goods, services, and public projects shall be in writing and ~~be~~shall be awarded as set forth in this chapter and signed in the name of the City~~.~~ by the body or person with the appropriate approval authority. Oral contracts are specifically prohibited and shall not be binding on the City;

~~B. All~~ 2. As applicable, all City contracts for goods, services, and public projects must include appropriate insurance ~~and indemnification~~ provisions ~~and be reviewed~~as required by the City's ~~risk manager.~~Risk Manager or their designee, and indemnity provisions as required by the City Attorney or their designee;

~~C. All contracts must be approved as to form by the City Attorney.~~

~~D.~~ 3. As applicable, all public works contracts must include the appropriate bonds or other security as required by the California Civil Code, the California Public Contracts Code, and other applicable law and regulation for the public work, in the maximum amounts allowed by law, as well as warranty and maintenance bonds specified by the City Manager in the administrative regulations for public projects;

4. All City contracts for goods, services, and public projects must be approved as to form by the City Attorney or their designee, all bonds or security for public projects must be approved as to form by the City Attorney or their designee, and all insurance certificates must be approved as to form by the Risk Manager or their designee;

5. A signed original of each City contract ~~entered into must be~~ for goods, services, and public works shall be filed with the ~~city clerk's office, except for copies~~City Clerk's Office, except for purchase orders that shall be filed in the Administrative Services Department as directed by the Administrative Services Director;

6. For operational efficiency and effectiveness, the City Manager or their designee may, in coordination with the City Attorney and Risk Manager, establish the conditions for the use of purchase orders ~~evidencing the purchase of supplies, equipment or general services which must be filed in the office of the Administrative Services Director.~~ or other efficient forms or methods of procurement in place of, or in addition to, duly signed written contracts, which conditions shall be reflected in the administrative regulations; and,

7. When a City contract for goods, services, or a public project is funded by money the City receives through assistance, contract funding, grant funding, or other governmental sources provided by a county, regional, state, or federal government, then the procurement shall be conducted in accordance with mandatory applicable county, regional, state, and federal laws and regulations.

2.68.~~040~~130 Definitions.

For the purposes of this chapter, the following definitions shall apply:

A. "Administrative Services Director" means the Administrative Services Director of the City ~~or his or her designee, who shall also act as~~who is the City's purchasing agent ~~for the City~~ pursuant to ~~Chapter~~ LMC 2.28 ~~LMC~~.030.

B. "Amendment" means any change to a contract.

C. "Best value" means the best overall value to the City for goods, general services, and qualified professional services contracts based on all factors, including, but not limited to, the following:

1. ~~Cost;~~ Total cost;

2. The ability, capacity, and skill of the consultant, contractor, or vendor to ~~perform the contract or~~ provide the ~~supplies,~~desired goods and services ~~or equipment required~~;

3. The ability of the consultant, contractor, or vendor to provide the ~~supplies,~~desired goods and services~~, or equipment~~ promptly or within the time specified without delay or interference;

4. The character, integrity, reputation, judgment, experience, and efficiency of the consultant, contractor, or vendor;

5. The quality of the ~~contractor's~~consultant, contractor, or vendor's performance on previous purchases or contracts with the City~~; and~~ or requested references;

6. The consultant's demonstrated competence for qualified professional services contracts; and,

7. The ability of the consultant, contractor, or vendor to provide future maintenance, repair, parts, and services for the use of the supplies purchased.

~~C. "Change order" means a change or addendum to an executed contract.~~

~~D.~~ D. "Change order" means an amendment to a public works contract that changes the contract's scope of work to be performed, the amount of time to complete the work, the compensation to be paid for materials, labor, or equipment, and other material terms, conditions, and aspects of work.

E. "Consultant" means the party to a contract who is providing professional services to the City.

F. "Contract" for the purpose of this chapter means any formal written agreement ~~to do a certain thing. "Contract~~between the City and a consultant, contractor, or vendor that creates mutual obligations that are enforceable by law. The basic elements for a contract are mutual assent, a valid offer and acceptance, consideration, capacity, and legality. For the purposes of this chapter, the terms "contract" and "agreement" are synonymous~~. The~~, and the term "contract" includes, but is not limited to, a purchase order ~~or~~, blanket purchase order, ~~a~~ contract for general services, ~~a~~contract for professional services, contract for maintenance, leasing ~~of~~ agreement for personal property or equipment, ~~an addendum or change order, a~~ letter agreement, ~~a~~ memorandum of agreement, and an amendment to any of those documents. The term "contract" does not include memorandums of understanding ~~or memorandum of agreement~~that do not create mutual obligations that are enforceable by law.

~~E.~~ G. "Contractor" means the party to a general services contract who is providing general services to the City, and the party to a public works contract with the City for a public project.

H. "Demonstrated competence" means the ability to apply, and prior experience applying, the knowledge and skills required to perform the critical functions specified in the scope of work for a professional services agreement.

I. "Emergency" means a sudden, unexpected occurrence that poses a clear and imminent danger, requiring immediate action to prevent or mitigate the loss or impairment of life, health, property, or essential public services~~. (Reference:~~ as defined by California Public Contract Code Section ~~1101).~~ 1102, and the conditions defined as an "emergency" in LMC 2.56.020.

~~F.~~ J. "General services" means and includes any work performed or services rendered by an independent contractor, with or without the furnishing of materials, including~~,~~ but not limited to~~,~~ the following, but does not include work on a public project:

1. "Maintenance work" as defined by California Public Contract Code Section 22002, as it may be amended from time to time, which includes all of the following:

   a. Routine, recurring, and usual work for the preservation or protection of any publicly owned or publicly operated facility for its intended purposes.

   b. Minor repainting.

   c. Resurfacing of streets and highways less than one inch.

d. Landscape maintenance, including mowing, watering, trimming, pruning, planting, replacement of plants, and servicing of irrigation and sprinkler systems.

e. Work performed to keep, operate, and maintain publicly owned water, power, or waste disposal systems, including, but not limited to, dams, reservoirs, power plants, and electrical transmission lines of 230,000 volts and higher.

2. Repair, modification, and maintenance of ~~city~~City equipment and ~~software;~~technology products.

3. Cleaning, analysis, testing, moving, removal or disposal (other than by sale) of ~~city supplies and equipment~~City goods;

4. Providing other miscellaneous services to facilitate ~~city~~City operations;

5. Performing repair, demolition, or other work required to abate nuisances ~~under this code~~;

6. Licensing software;

7. Leasing ~~or rental~~ of equipment ~~(~~and personal property~~)~~ for use by the City~~;~~ as set forth in LMC 2.68.600; and,

8. A maintenance agreement for equipment owned or leased by the City~~;~~.

~~9. Sole source services.~~

~~"General services" does not include work defined as a public works contract."~~

~~G.~~ K. "Goods" means and includes all such supplies, materials, equipment, personal property, and other items purchased for the City for its operations, but "goods" does not include items furnished for a public project. The term "goods" also includes equipment and personal property leased by the City as set forth in LMC 2.68.600.

L. "Low bid" means the bid with the lowest compensation amount proposed by a responsive bidder to a contract solicitation.

M. "Lowest responsive and responsible bidder" means the bidder for a public works contract who submits a bid that conforms to the material requirements set forth in the City's solicitation document and who has also demonstrated the attribute of trustworthiness, as well as quality, fitness, capacity, and experience to satisfactorily perform the work required.

N. "Professional services" means the services of ~~an attorney, engineer, doctor,~~a specially trained and experienced person, firm, or corporation for special services in financial ~~consultant, land surveying consultant, planning, environmental consultant, construction project manager, investment advisor, bank or trustee officer, or other professional or independent contractor.~~, economic, accounting, engineering legal, and administrative matters within the scope of California Government Code Section 37103 as it may be amended from time to time, as well as similar services and other services such as medical services that require special training, experience, and educational certifications. "Professional services" shall also include ~~use~~contracts with providers of temporary personnel services.

~~H.~~ O. "Public ~~works contract" means any city contract for the performance of a "public~~ project" means a public project as defined by California Public Contract Code Sections 20161 and 22002, as ~~they~~those statutes may be amended from time to time~~. "Public project" means any of~~, and includes the following:

1. Construction, reconstruction, erection, alteration, renovation, improvement, demolition, and repair work involving any publicly owned, leased, or operated facility.

2. Painting or repainting of any publicly owned, leased or operated facility.

3. In the case of a publicly owned utility system, "public project" shall include only the construction, erection, improvement, or repair of dams, reservoirs, power plants, and electrical transmission lines of 230,000 volts and higher.

~~I.~~ P. "Public works contract" means a City contract for a public project.

Q. "Qualified professional services" means architectural, landscape architectural, engineering, land surveying, and construction management services that are covered by California Government Code Section 4525 *et seq.*, as those statutes may be amended from time to time, and that are required to be procured on the basis of demonstrated competence and professional qualifications.

R. "Responsible bidder~~," as used in this chapter,~~" means a bidder for a public works contract who has demonstrated the attribute of trustworthiness, as well as quality, fitness, capacity and experience~~,~~ to satisfactorily perform the work required.

S. "Responsive bidder" means a bidder for a contract for goods, services, or qualified professional services whose submitted bid conforms to the material requirements set forth in the City's solicitation documents.

T. "Single source" means a consultant, contractor, or vendor of goods or services that are available from more than one source, but there is a compelling and justifiable reason such as product standardization to select a single consultant, contractor, or vendor.

U. "Sole source" means a consultant, contractor, or vendor who, to the best of the City's knowledge based upon thorough research, is the only one capable of providing the City's required goods or services solicited for the City's needs and circumstances.

V. "Technology product" means hardware, software, and communications equipment, as well as related equipment or goods that incorporate any such items.

W. "Vendor" means the party to a contract who is selling goods, or leasing equipment or personal property, to the City.

2.68.140 Purchasing oversight.

The Administrative Services Director shall oversee and facilitate compliance with this chapter and the corresponding administrative regulations, including:

a. Staying informed of current developments in the field of purchasing;
b. Staying informed of the procurement needs in the City's departments;
c. Prescribing and maintaining such forms as are reasonably necessary to the operation of this chapter and the purchasing policy;
d. Recommending updates to this chapter and making revisions to the administrative regulations, as needed;
e. Evaluating and recommending to the appropriate approval authority organization structures in City departments and divisions that optimize the procurement function; and,
f. Coordinating the purchasing of goods and services that will be used by multiple City departments where feasible and practical.

2.68.150 Purchasing responsibilities of Department Heads.

Each Department Head shall be aware of the procurement needs within their respective departments, and shall ensure that all City contracts for goods, services, and public projects for their respective departments are made in compliance with this chapter. The Community Development Director has the additional responsibility for ensuring the City Engineer complies with this chapter for public works contracts. Each Department Head shall ensure the persons preparing contracts for goods and services within their respective departments comply with the following:

a. Prepare solicitation materials, as needed, for each procurement;
b. Make a good faith estimate of the compensation amount for each procurement to determine the appropriate solicitation procedure;
c. Ensure that the proper solicitation procedure is followed based on the estimated compensation amount for the procurement;
d. Evaluate received bids or proposals in accordance with the selection criteria and process described in this chapter and the administrative regulations;
e. Ensure that each contract for goods and services is awarded consistent with the requirements in this chapter and the administrative regulations;
f. Ensure that sufficient funds are appropriated to pay the compensation amount specified in ~~notice inviting bids, including the project~~the contract;
g. Ensure that the consultant, contractor, or vendor selected for the contract award has obtained appropriate insurance certificates with endorsement meeting the contract requirements, as applicable, before the contract is signed for the City, and thereafter maintains appropriate insurance certificates at all times during the term of the agreement;
h. Ensure that the consultant, contractor, or vendor selected for the contract award has obtained an appropriate City business license before the contract is signed for the City, and thereafter maintains an appropriate business license all times during the term of the agreement;
i. Ensure that each contract for goods and services is signed by the consultant, contractor, or vendor before it is signed for the City;
j. Ensure that each contract for goods and services is signed for the City by a person or body with appropriate approval authority based on the contract's compensation amount;
k. Inspect goods, general services, equipment, and personal property delivered to the City to ensure their conformance with the contract specifications~~, prepared for the project bid by the City, to satisfactorily perform the public works contract. (Reference: Public Contract Code Section 1103).~~;

~~J. "Short form contracts" are contracts, not to exceed $1,000, for the performance of short-term (e.g., hourly) services such as, for example, on-site training sessions, book readings, art instruction, artistic rendering or slideshow presentations determined to be of limited risk of liability to the City by the risk manager.~~

~~K. "Supplies and equipment" means and includes all such items purchased on behalf of the City except for supplies or materials finished for a public works project.~~

~~L. "Technology product" means hardware, software, or communications equipment; or related equipment or goods which incorporate any such items.~~

l. Inspect all equipment and personal property leased to the City to ensure it is in a fit and satisfactory condition for the City's use and is free from defect so that it may be safely used for its intended purpose;
m. Monitor the performance of consultant, contractor, or vendor under approved contracts to ensure compliance with contract requirements;
n. Recommend and prepare contract amendments as needed and ensuring that the amendments are approved and signed by a person or body with appropriate approval authority, and that sufficient funds are appropriated to pay for the compensation specified by the amendment;

o. Ensure that due diligence is performed before preparing a written justification for submission to the Administrative Services Director requesting an exception pursuant to LMC 2.68.360(B) to forego an informal solicitation or a competitive purchase process for a sole source or single source contract in accordance with this chapter and the administrative regulations;
p. Take reasonable steps to avoid conflicts of interest in the purchasing process;
q. Keep sufficient records of all departmental contracts and expenditures and ensuring that such records are properly filed and stored in accordance with the City's records retention schedule; and,
r. Submit reports to the Administrative Services Director showing all departmental supplies and equipment that are no longer used or have become obsolete or worn out so that the City Manager or their designee can transfer surplus or unused goods between departments, or sell, exchange, or trade in such supplies and equipment, if desired,

Article II. Contract Approval Authority

2.68.~~060 City Manager authority.~~

~~A. The City Manager is authorized to enter into and sign for and on behalf of the City, without the prior approval of the~~ **200 City Council**~~, general or professional service contracts or contracts for supplies and equipment:~~ **approval required.**

~~1. Which contain maximum compensation up to $100,000. The City Manager may approve a change order or amendment to a general or professional service contract initially approved by the City Manager or the City Council, in an amount not to exceed an additional $100,000. However, amendments to a general or professional service contract initially approved by the City Manager that cumulatively exceed $100,000 must be approved by the City Council; and~~

~~2. For which moneys have been appropriated or will be appropriated at the earliest practicable time but in no event later than the next budget adoption.~~

~~B. In addition to the authority in subsection A of this section, the City Manager is authorized to enter into and execute, for and on behalf of the City, the following contracts:~~

~~1.~~ City Council approval is required for all City contracts for goods, services, and public projects unless otherwise specified in this chapter, the LMC, or in another provision of federal or state law.

2.68.210 Budget appropriation required.

No City contract for goods, services, or public projects shall be awarded or signed for the City unless there exists an underlying and unencumbered budget appropriation in the fiscal year that the contract is awarded and signed. Contracts awarded in a fiscal year that are anticipated to extend into a subsequent fiscal year or years may be awarded by a person for body with the appropriate approval authority for the total compensation amount specified in the contract, but the contract shall be subject to the appropriation requirements specified in this section for subsequent years. Absent an existing unencumbered budget appropriation at the time of contract award, then a supplemental appropriation by the City Council is required before the City contract can be awarded and signed for the City.

2.68.220 Contract approval authorities.

A. General. All City contracts for goods, services, and public projects shall only be awarded and signed by a person or body with the appropriate approval authority for the City as set forth in this subsection 2.68.220 or

as otherwise authorized by City Council resolution. Likewise, all amendments to contracts for goods and services, and all change orders to public works contracts, shall only be signed by a person or body with the appropriate approval authority as set forth herein.

B. Approval Authority. The authority to award, approve, and sign City contracts for goods, services, and public works projects for the City is as follows:

1. City Council. The City Council shall be the contract approval authority to award the following contracts by resolution, and may duly authorize a City officer or employee to sign the contracts for the City after City Council approval:

   a. Contracts for goods and services that have a compensation amount greater than $200,000.

   b. Public works contracts resulting from formal bidding procedures greater than the amount specified in California Public Contract Code Section 22032(c), as set forth in LMC 2.68.540, and change orders to public works contracts consistent with LMC 2.68.590.

2. City Manager. The City Manager shall be the contract approval authority for:

   a. Contracts for goods and services that have a compensation amount up to $200,000, and amendments to contracts for goods and services as set forth in LMC 2.68.230.

   b. Public works contracts for resulting from informal bidding procedures up to the amount specified in California Public Contract Code Section 22032(b), as set forth in LMC 2.68.530, and change orders to public works contracts consistent with LMC 2.68.590.

   c. Goods and services contracts, the cost of which will be fully paid or reimbursed to the City, regardless of the compensation amount.

d. Contracts with public agencies or public utility companies regarding construction ~~or use~~ of public improvements or utility facilities, ~~which require no payment of money by the City in excess of $100,000, or which provide for payment of money to the City under each contract.~~

~~2. Contracts for~~ or for community social or recreational services, or for the use of ~~city~~City property or facilities~~,~~ in accordance with established administrative regulations and guidelines, which require no payment of money by the City in excess of $~~100~~200,000~~,~~ or which provide for payment of money to the City under each contract.

~~3. Contracts for professional services in an amount up to $250,000 if:~~

~~a. A developer has deposited the full amount of the contract into a trust fund account.~~

~~b. The deposited funds are to be used for a city-managed professional services contract, such as an environmental impact report.~~

~~c. For contracts entered into and executed by the City Manager as provided in subsection (B)(3) of this section, alterations, deviations, additions or deletions from the original scope of work for a professional services contract, which are determined by the City to be necessary during the progress of work, shall be documented by a supplemental agreement. The City Manager is authorized to enter into and execute, for~~

~~and on behalf of the City, supplemental agreements for professional service contracts in the amount up to $50,000.~~

~~4. Public works contracts in accordance with the monetary limits for informal bidding set forth in Public Contract Code Section 22032, as it may be amended from time to time.~~

~~C. In an emergency endangering the lives, property or welfare of the people of the City or the property of the City, the City Manager may authorize the expenditure of any unencumbered moneys in the operating stabilization fund balance, notwithstanding the fact that such moneys may not have been appropriated for such purpose, to the extent that other moneys have not been appropriated or are otherwise unavailable therefor.~~

~~D. The City Manager may delegate in writing to any city department head or the Assistant City Manager, the authority to purchase or contract for specified supplies, services, and equipment as long as such purchases or contracts are made in conformity with the procedures established by this chapter.~~

~~**2.68.070** e.~~ The City Manager's authority to enter into contracts and other documents for the City to settle litigation, government claims, and administrative proceedings is set forth in LMC Chapter 3.40.

f. For operational efficiency and effectiveness, the City Manager may:

1. Delegate the approval authorities specified in this subsection to Department Heads as set forth in LMC 2.68.250, which delegations shall be reflected in writing and incorporated into the City Manager's administrative regulations.

2. Approve, or delegate the approval, for the assignment of City contracts by a consultant, contractor, or vendor to a respective successor upon determining that the successor has the qualifications to satisfy the contract's requirements and the successor has been assigned and has assumed all responsibilities in the contract owed to the City. Delegations shall be reflected in writing and incorporated into the City Manager's administrative regulations, and all assignment approvals shall be in writing and retained with the contract.

3. Approve, or delegate the approval, for a consultant, contractor, or vendor's use of subcontractor. Delegations shall be reflected in writing and incorporated into the City Manager's administrative regulations, and all subcontractor approvals shall be in writing and retained with the contract.

3. City Attorney ~~**authority.**~~

~~A.~~ The City Attorney ~~is authorized to enter into and execute for and on behalf of the City, without the prior approval of the City Council, contracts~~shall be the contract approval authority for:

~~1. Which contain a maximum compensation up to $50,000 or less. As to a change order or amendment, the limit of authority may not exceed an additional $50,000; and~~

~~2. The object or purpose of which is~~a. Contracts for goods and services related to the activities or functions of the office of the City Attorney~~; and~~ that have a compensation amount up to $150,000, and amendments to those contracts consistent with LMC 2.68.230.

~~3. For which moneys have been appropriated and for which there is an unexpended and unencumbered balance of such appropriation sufficient to pay the expense of the contract; and~~

~~4. Which is for consultant or professional services, or for books, periodicals or other legal reference materials.~~

~~B. Additionally, the City Attorney is authorized to enter into and execute for and on behalf of the City, without the prior approval of the City Council, contracts:~~

~~1. Which~~b. Contracts to appoint and retain outside legal counsel to prosecute lawsuits for the City or defend ~~lawsuits against the City.~~

~~2. Which settle claims or litigation against the City for an amount not to exceed $100,000, without prior approval of the City Council. A legal settlement in excess of $10,000 requires the concurrence of the City Manager.~~

~~3. Which~~the City against lawsuits regardless of the compensation amount but subject to budget appropriation. The City Attorney's authority to enter into contracts and other documents for the City to settle ~~workers' compensation claims or~~ litigation, government claims, worker's compensation claims, and administrative proceedings is set forth in LMC Chapter 3.40.

~~4. Which are~~c. Contracts for the City's membership in public agencies organized and operating under California Government Code Section ~~-~~ 6507 ~~-~~ and related provisions of law that authorize the creation and operation of governmental joint powers authorities under California Law to self-insure and pool resources for excess losses, regardless of the compensation amount but subject to budget appropriation.

~~5. Which are to purchased~~. Contracts for insurance to protect and cover ~~city~~City facilities and operations, and for trust accounts maintained to satisfy the City's trust fund requirements for its excess liability pools, regardless of the compensation amount but subject to budget appropriation.

~~C. The City Attorney may designate in writing any senior assistant City Attorney or assistant City Attorney to purchase or contract for specified supplies, services and equipment as long as such purchases or contracts are made in conformity with the procedures established by this chapter.~~

~~2.68.075 Assistant City Manager authority.~~

~~A. The Assistant City Manager is authorized to enter into and execute for and on behalf of the City, without the prior approval of the City Manager or City Council, a contract for the purchase of general or professional services or contract for supplies and equipment:~~

~~1. Which contains a maximum compensation amount of $50,000. As to a change order or amendment, the limit of authority is 100 percent of the original contract, not to exceed a cumulative additional amount of $50,000; and~~

~~2. For which moneys have been appropriated and for which there is unexpended and unencumbered balance of such appropriation sufficient to pay the expense of the contract.~~

~~B. The Assistant City Manager, with approval of the City Manager, may delegate in writing to any city department head the authority to purchase or contract for specified supplies, services and equipment as long as such purchases or contracts are made in conformity with the procedures established by this chapter.~~

~~C. The Assistant City Manager may execute contracts not to exceed $100,000, in the absence of the City Manager.~~

~~2.68.080~~ ~~4.~~ Administrative Services Director ~~**authority.**~~

~~A.~~ The ~~City~~ Administrative Services Director ~~is authorized to enter into and execute for and on behalf of the City, without the prior approval of the City Manager or City Council, a contract for the purchase of general or professional services or contract for supplies and equipment~~shall be the contract approval authority for:

~~1. Which contains~~ a ~~maximum.~~ Contracts for goods and general services that have a compensation amount ~~of $25~~up to $150,000~~. As to a change order or~~, and amendments those contracts consistent with LMC 2.68.230.

b. Contracts for professional services that have a compensation amount up to $100,000, and amendments those contracts consistent with LMC 2.68.230.

2.68.230 Contract amendment~~,~~ approval authorities.

A. All contract amendments must be in writing, signed by a person or body with the ~~limit of~~ appropriate approval authority ~~is 100 percent of~~ specified in LMC 2.68.220, and properly filed and stored with the original contract~~,~~ in accordance with the City's records retention schedule. Oral contract amendments are specifically prohibited and shall not be binding on the City.

B. All amendments to contracts for goods and services, and change orders to public works contracts, shall be approved by the City Council or an officer or employee with the appropriate approval authority as set forth in either: (i) LMC 2.68.220 based upon the compensation amount in the amended contract, or at set forth; or, (ii) based upon the authority duly authorized by the City Council by resolution.

2.68.240 Contingency.

To account for unforeseen conditions that may impact the scope of work, pricing offered, quantity of goods or terms in a contract for goods and services, the City Manager has authority for an additional contract contingency amount not to exceed ~~a cumulative additional amount of $25,000; and~~$20,000, which is in addition to the approval authority set forth in LMC 2.68.220, that may be used in the City Manager's discretion to approve an amendment to a contract for goods and to ensure successful contract completion..

~~2. For which moneys have been appropriated and for which there is unexpended and unencumbered balance of such appropriation sufficient to pay the expense of the contract.~~

~~B.~~ **2.68.250 Delegation of contract approval authorities.**

The contract approval authorities set forth in LMC 2.68.220 may be delegated as follows:

a. The City Manager may delegate contract approval and amendment authority in writing to a Department Head or other City employee if such delegation is deemed necessary for effective procurement. Such

delegated contract approval authority shall not exceed the City Manager's contract approval authority in LMC 2.68.220.

b. The City Attorney may delegate contract approval and amendment authority in writing to other employees in the City Attorney's Office if such delegation is deemed necessary for effective procurement. Such delegated contract approval authority shall not exceed the City Attorney's contract approval authority in LMC 2.68.220. However, the City Attorney may only delegate the authority to review and approve contracts, bonds, or security as to form to attorneys within the City Attorney's Office or otherwise designated by the City Attorney.

c. The Administrative Services Director may delegate contract approval and amendment authority in writing to other employees in the Administrative Service Department if such delegation is deemed necessary for effective procurement. Such delegated contract approval authority shall not exceed the Administrative Services Director's contract approval authority in LMC 2.68.220.

2.68.260 Discretion to not award a contract.

Nothing in this chapter requires the City to award a contract for goods, services, or public works if the person or body with the appropriate approval authority for the contract determines, in that person or body's discretion, that the award of the contract is not in the best interest of the City, and that person or body rejects all bids.

Article III. ~~in writing to any City~~Solicitation Procedures

2.68.300 General procedural requirements.

A. Prior to contracting for goods and services, the Department Head or their designee for the initiating department ~~or division head the authority to purchase or contract for specified supplies, services and equipment as long as such purchases or contracts are made in conformity~~shall:

1. Be responsible for conducting solicitations for needed goods or services, except as otherwise specified by the City Manager or Administrative Services Director or as specified in the administrative regulations;

2. Make a reasonable and good faith estimate of the anticipated compensation amount to be paid for the goods and services, which estimate shall be filed in the department's procurement file;

3. Ensure solicitation is conducted in strict accordance with the procedures established ~~by this chapter.~~in this Article III Solicitation Procedures and the administrative regulations;

~~**2.68.090 Public Works Director and Community Development Director authority.**~~

~~A. The Public Works Director and the Community Development Director are each authorized to enter into and sign for and on behalf of the City, without the prior approval of the City Council or the City Manager, a contract:~~

~~1. Which does not exceed $25,000. As to a change order or amendment, the limit of authority is 100 percent of the original contract, not to exceed a cumulative additional amount of $25,000; and~~

~~2. For which moneys have been appropriated and for which there is an unexpended and unencumbered balance of such appropriation sufficient to pay the expense of the contract; and~~

~~3. Which is for general or professional services; or~~

~~4. Which is any one of the following:~~

a. Is required as a condition of approval by the City Council or the Planning Commission; or

b. The consideration to be paid by the City is to be reimbursed in full by an applicant for a land use permit; or

c. Is between the City and a public utility for work to be done for the City on property that is the direct concern to both the City and the public utility and, in addition, in the Director's opinion, can be best or better performed, or more efficiently or expeditiously performed, or performed with less inconvenience to the public, or be more inexpensively performed, or be more safely performed, by the public utility than by others.

B. In addition to the authority in subsection A of this section, the Public Works Director and Community Development Director are each authorized to enter into and execute, for and on behalf of the City, a public works contract which does not exceed $25,000.

C. The Public Works Director or the Community Development Director may delegate in writing to division heads within his or her department the authority to contract for general or professional services.

2.68.100 Police Chief authority.

A. The Police Chief is authorized to enter into and execute for and on behalf of the City, without the prior approval of the City Manager or City Council, a contract for the purchase of professional services:

1. Which contains a maximum compensation amount of $25,000. As to a change order, the limit of authority is 100 percent of the original contract, not to exceed a cumulative additional amount of $25,000; and

2. For which moneys have been appropriated and for which there is unexpended and unencumbered balance of such appropriation sufficient to pay the expense of the contract.

B. The Police Chief may delegate in writing to division heads within his or her department the authority to contract for professional services.

2.68.110 Library Services Director and Innovation and economic development director authority.

A. The Library Services Director and innovation and economic development director are each authorized to enter into and execute for and on behalf of the City, without the prior approval of the City Manager or City Council, a contract for general or professional services:

1. Which contains a maximum compensation amount of $25,000. As to a change order or amendment, the limit of authority is 100 percent of the original contract, not to exceed a cumulative additional amount of $25,000; and

2. For which moneys have been appropriated and for which there is unexpended and unencumbered balance of such appropriation sufficient to pay the expense of the contract.

B. The Library Services Director or innovation and economic development director may delegate in writing to division heads within his or her department the authority to contract for general or professional services.

Article III. Supplies, Equipment and General Services

2.68.340 Short form contracts.

Department heads or their designees are authorized to enter into short form contracts in an amount not to exceed $1,000.

2.68.350 Purchase of general services, solo source services or equipment, or supplies and equipment for $

4. Ensure all solicitations are in writing. Oral quotes, bids, or proposals shall not be accepted;

5,000 or less.

For purchases of general services or supplies and equipment for $5,000 or less, additional purchasing procedures shall be established by an administrative regulation of the City Manager.

2.68.360 Purchases of general services or supplies and equipment for more than $5,000 and up to $50,000,

A. Quotation Requirement. The purchase of supplies, equipment and general services in an amount that is greater than $5,000 but less than $50,000 may be made . Ensure the documents and instructions to be used for soliciting bids, proposals, or price quotations shall be those provided and required by the Administrative Services Director in the open market, following the procedure prescribed in this article.;

1. Minimum Number of Quotations. Open-market purchases shall, whenever possible, be based on at least three quotations.

2. Notice Inviting Quotations. The6. If submitted bids or proposals exceed the compensation amounts for the solicitation procedures used for the contract, conducting a new solicitation if directed by the City Manager or Administrative Services Director; and,

7. Ensuring procurements are not split or separated into smaller components for the purpose of circumventing the solicitation or contract approval requirements specified in this chapter.

B. No consultant, contractor, or vendor who assisted the City's decision to identify the goods or services to be procured, and no consultant, contractor, or vendor who assisted the City with the preparation of the solicitation, shall submit a bid, proposal, or quotation for the goods or services to be procured.

C. All potential consultant, contractor, or vendors shall avoid any behavior that might influence any elected or appointed officials to interfere with a solicitation, and they shall limit their communications with the City of Livermore to the person responsible for conducting that solicitation and the Administrative Services Director. Undue influence on a solicitation may result in the consultant, contractor, or vendor being disqualified from participating in a solicitation as set forth in the administrative regulations.

D. The solicitation procedures in this Article III shall be followed for contracts for goods and services, and the solicitation procedures in Article V shall be followed for public works contracts for public projects.

2.68.310 Contracts for goods and services up to $10,000.

A solicitation process is not required for City contracts to procure goods and services that have compensation amounts that do not exceed $10,000. These contracts may be negotiated in the open market as specified in the administrative regulations and awarded by the person or body with the appropriate approval authority. However, nothing shall preclude City staff members from conducting price comparisons, utilizing the informal procedures, or the competitive bidding procedures based upon the City's needs and circumstances to ensure the best overall value is obtained.

2.68.320 Contracts for goods and general services greater than $10,000 and up to $100,000 (informal solicitation).

An informal solicitation process is required for City contracts to procure goods and general services that have a compensation amount greater than $10,000 and that do not exceed $100,000. The informal solicitation process shall comply with the procedures specified in this subsection and the administrative regulations as follows:

a. Notice inviting quotations. The department representative shall invite quotations by written request (including facsimile or electronic mail) or telephone to prospective vendors. The administrative regulations may allow for the use of catalogs to obtain price quotes for the purposes of this subsection.

~~3.~~ b. Quotations. ~~Quotations~~ Written quotations shall be submitted to the ~~Administrative Services Director (or his or her designee),~~department representative, who shall keep a record of all open~~-~~ market ~~orders and~~ quotes for a period of one year after the submission of quotes ~~or placing of orders.~~. This record is open to public inspection. ~~For a purchase of up to $15,000, the quotations may be verbal or written. For a purchase in an amount between $15,000 and $50,000, the~~ All quotations ~~shall be written (including facsimile and electronic mail).~~must be in writing.

~~4.~~ c. Minimum number of quotations. The award of contracts using the informal solicitation process shall, whenever possible, be based on the solicitation of at least three written quotations.

d. No ~~Responsive Quotations~~responsive quotations. If no quotations, or no responsive quotations, are received after ~~inviting quotations under this section~~informal solicitation, the Administrative Services Director or City Manager may proceed to ~~hire or have services performed or purchase~~negotiate the ~~supplies~~ contract for the goods and services in the open market using the process set forth in LMC 2.68.310.

~~5. Award of Contract. The Administrative Services Director, or other department head if within his or her authority, is authorized to award a contract for $25,000 or less when the City Council has budgeted funds for the item(s) and the amount of the award is not more than the quoted amount.~~e. Basis for award. Under this ~~section~~subsection, a contract ~~shall~~may be awarded ~~to the quotation representing the~~ on either a best value ~~as defined in LMC 2.68.040.~~or low bid basis, as determined by the Administrative Services Director or their

designee prior to soliciting informal bids or proposals. The basis upon which the award is made shall be ~~in writing.~~

~~B. Exceptions. The quotation procedure under this section may be dispensed with:~~

~~1. In an emergency as defined in LMC 2.68.040;~~

~~2. Where it is determined that supplies and equipment are unique or available only from~~ included in the solicitation document, if one ~~source, so that the quotation procedure required by this section would be meaningless. The basis upon which this determination is made shall be~~ is used, or otherwise communicated in writing~~;~~ to prospective bidders in the same manner as the solicitation.

~~3. Where supplies and equipment are purchased through a cooperative purchasing arrangement pursuant to LMC 2.68.390;~~

~~4. Where supplies and equipment are purchased through competitive or noncompetitive negotiations pursuant to LMC 2.68.380.~~

~~2.68.370 Purchase of general services or supplies and equipment for more than $50,000,.~~

~~A. Bidding Requirement. The Administrative Services Director shall purchase supplies, equipment~~f. Award of contract and appropriation. The contract shall be awarded by the person or body with the appropriate approval authority to sign the contact for the City as set forth in LMC 2.68.210 based upon the contract's compensation amount, provided that the City Council has budgeted funds for the contract.

g. Payment and Performance Bonds. The Administrative Services Director has the authority to require a payment bond, a performance bond, or both, for a City contract, in such amount as is reasonably necessary to protect the best interests of the City. If the Administrative Services Director requires such bonding, the form and amount of the bond(s) shall be described in the notice inviting bids, and the form for each bond must be approved as to form by the City Attorney

2.68.330 Contracts for goods and general services greater than $100,000 (competitive bidding).

A. A competitive bidding process is required for City contracts to procure goods and general services ~~of a value~~with compensation amounts greater than $~~50~~100,000 ~~following the formal bid procedure prescribed~~. The competitive solicitation process shall comply with the procedures specified in this ~~section.~~subsection and the administrative regulations as follows:

1. Notice Inviting Bids. The notice inviting bids shall include a ~~general~~ description of the ~~articles~~goods or general services to be purchased, and shall state where bid forms and specifications may be secured, and the final time and place for submitting bids.

a. Published Notice. The notice inviting bids shall be published at least 10 business days before the date of opening of the bids. Notice shall be published at least once in a newspaper of general circulation, printed and published locally. In addition, notice inviting bids may also be published electronically.

b. ~~Bidders'~~ Bidder's List. The Administrative Services Director may require a bidder's list for competitive bidding, which requirements shall be specified in the Administrative Regulations for this Chapter. If a bidder's list is required, then the notice inviting bids shall also solicit sealed bids from

responsible prospective ~~suppliers~~consultants, contractors, or vendors whose names are on the ~~bidders'~~bidder's list.

2. ~~Bidders'~~ Bidder's Security. When deemed necessary, the Administrative Services Director shall require ~~bidders'~~bidder security~~. Bidders~~ as specified in the administrative regulations. The administrative regulations shall provide that bidders are entitled to the return of bid security upon execution of the contract or upon the ~~readvertisement for~~City's republishing of a notice inviting bids~~;~~, provided~~,~~ that a successful bidder forfeits his bid security upon refusal or failure to execute the contract within 10 business days after the notice of award of contract has been mailed, unless the City is responsible for the delay.

3. Bid Opening Procedure. Bidders shall submit sealed bids to the Administrative Services Director~~,~~ and shall identify them as bids on the envelope as specified in the administrative regulations. A tabulation of all bids received shall be open for public inspection during regular business hours for a period of not less than 30 calendar days after the bid opening.

4. Rejection of Bids. ~~In their discretion~~If it is determined to be in the best interest of the City, the City Manager or City Council may reject any and all bids presented~~, and may readvertise for~~. The City Manager or their designee shall have the authority to reject bids or proposals up to $200,000. Bids or proposals exceeding $200,000 shall be rejected by the City Council unless such authority is delegated to the City Manager.

5. No Responsive Bid. If no bid, or no responsive bid, is received after inviting bids under this section, the Administrative Services Director or City Manager may proceed to ~~hire or have~~negotiate a contract for the goods and services ~~performed or purchase the supplies~~ in the open market using the process set forth in LMC 2.68.310.

~~6. Award of Contract. The City Manager shall award a contract for the purchase of supplies, equipment or general services of a value of $100,000 or less. The City Council shall award a contract for the purchase of supplies or equipment or general services of a value greater than $100,000. Under this section, a contract shall be awarded to the bid representing the best value as defined in LMC 2.68.040. The basis upon which the award is made shall be in writing.~~

6. Award of Contract. The person or body with the appropriate approval authority corresponding to the amount of the contract to be awarded pursuant to this subsection shall also be the person or body with the authority to award the contract, provided that the City Council has budgeted funds for the contract. In the absence of a budget appropriation, a supplemental appropriation pursuant to LMC 2.68.210 is required before the contract can be awarded. Under this subsection, a contract may be awarded on either a best value or low bid basis, as determined by the City Manager or their designee prior to issuance of the solicitation. The basis upon which the award will be made shall be included in the solicitation document.

7. Payment and/or Performance Bonds. The Administrative Services Director has the authority to require a payment and/or performance bond before entering a contract, in such amount as is reasonably necessary to protect the best interests of the City. If the Administrative Services Director requires ~~a performance bond~~such bonding, the form and amount of the bond(s) shall be described in the notice inviting bids, and ~~subject~~the bond must be approved as to ~~approval~~form by the City Attorney.

B. ~~Exceptions.~~ The ~~bidding procedure under this section may be dispensed~~person or body with~~:~~

~~1. In an emergency as defined in LMC 2.68.040;~~

~~2. Where it is determined that~~ the ~~supplies~~appropriate approval authority to award and ~~equipment are unique or available only from one source, so that~~ sign the ~~bidding required by this section would be meaningless. The basis upon which this determination is made shall be in writing;~~

~~3. Where supplies and equipment are purchased through a cooperative purchasing arrangement pursuant to LMC 2.68.390;~~

~~4. Where supplies and equipment are purchased through competitive or noncompetitive negotiations pursuant to LMC 2.68.380;~~

~~5. If there is no~~contract for the City may, in their discretion, waive inconsequential bid irregularities that do not give a bidder an unfair competitive advantage ~~to be gained by soliciting bids (for example, where it is determined that the supplies and equipment are unique or available only from one source), the bidding requirement required by this section would be meaningless. The basis upon which this determination is made shall be in writing by a department head and directed to the City Manager~~over any other bidder.

~~C. It is unlawful to split into smaller orders the purchase of supplies, equipment or general services for the purpose of evading the competitive bidding provisions of this section.~~

~~2.68.380 Negotiated purchases.~~

~~A. Applicability. A purchase may be had by negotiations when the purchase is for:~~

~~1. A technology product, as defined in LMC 2.68.040;~~

~~2. An addition to, or repair or maintenance of, existing equipment which can be more efficiently added to, repaired or maintained by a particular company or manufacturer;~~

~~3. Equipment which must be compatible with existing equipment, by reason of the training of the personnel or an inventory of existing replacement parts kept by the City;~~

~~4. Public art (which may or may not also fall within the "sole source" exception);~~

~~The affected department head shall state in writing the basis for a determination that this section applies. Before any purchase is made, that determination and the method of negotiation (competitive or noncompetitive) must first be approved by (1) the City Manager, when the purchase involves $25,000 or more, or (2) the Administrative Services Director, when the purchase involves less than $25,000.~~

~~B. Method of Negotiation. When a negotiated purchase is approved under subsection A of this section, the purchase may be made by either (1) competitive negotiation following a request for proposals or (2) noncompetitive negotiation.~~

~~C. Competitive Negotiation Following a Request for Proposals.~~

~~1.~~ **2.68.340 Contracts for professional services.**

A. Contracts for professional services shall be solicited for award on the basis of demonstrated competence and the qualifications necessary for the satisfactory performance of the services, as determined by a consideration of the following criteria:

1. A compensation amount that is fair, reasonable, and competitive;

2. The quality of the services offered;

3. The consultant's ability, capacity, and skill to provide the services promptly, within the time specified, within budget, and without delay or interference;

4. The credentials and licenses of the person or business, if required;

5. The consultant's character, integrity, reputation, judgment, training, experience, and efficiency;

6. The consultant's knowledge of local conditions;

7. The consultant's previous history of working on related projects or issues for the city, where such previous experience will allow the services to be performed more efficiently and will require less time spent on preparation and background research;

8. The sufficiency of the consultant's financial capacity and other resources; and

9. The consultant's ability to provide such future service as may be needed.

B. Contracts for qualified professional services shall be solicited for award using either the informal solicitation process set forth in LMC 2.68.320 or the competitive bidding process set forth in LMC 2.68.330 based upon the compensation amount in the contract, and as required by applicable state and federal law, best value solicitations for architectural and engineering (A&E) services shall use a qualifications based selection (QBS) process where qualified professional service providers are evaluated and ranked based on demonstrated competence before compensation is considered.

C. The person or body with the appropriate approval authority corresponding to the amount of the contract to be awarded pursuant to this subsection shall also be the person or body with the authority to award the professional services contract or qualified professional services contract, provided that the City Council has budgeted funds for the contract. In the absence of a budget appropriation, a supplemental appropriation pursuant to LMC 2.68.210 is required before the contract can be awarded.

2.68.350 Competitive negotiation following a request for proposals.

A. Competitive negotiation for City purchase contracts may be used in situations where goods and/or services cannot be exactly defined/specified or where solutions are sought such as consulting studies or software systems that require a qualitative evaluation process.

B. The process for competitive negotiation of contracts shall comply with the following as implemented in the administrative regulations:

1. Request for Proposals. Under this method, proposals are requested from a number of sources and the request for proposals is publicized. The request for proposals must identify ~~all~~ the ~~significant evaluation factors~~criteria upon which the offerors' proposals will be evaluated, including price or cost as applicable, and ~~their~~the relative importance of each criterion. Proposals must be solicited from an adequate number of qualified sources to permit reasonable competition.

2. Receipt of Proposals. Sealed proposals must be submitted by offerors by the date and time specified on the prescribed forms and shall be identified by the request-for-proposal number.

3. Evaluation of Proposals. Submitted proposals shall be evaluated in accordance with the evaluation criteria and process identified in the solicitation document, which may include evaluation of the written submittals; interviews, presentations and/or product demonstrations as applicable; reference checks; and other factors as necessary to determine a rank order of proposals.

4. Negotiation. The most qualified and responsive offeror will be selected for contract negotiation. If agreement cannot be reached with the first choice offeror, the second choice offeror (and then the third, and so on) will be contacted, with the first choice offeror (or other offerors, in order) dismissed from further consideration for that particular contract. All elements of the negotiation process shall be documented by the negotiating department and submitted to the Administrative Services Director. Responsible offerors shall be accorded fair and equal treatment with respect to opportunity for discussion and revision of proposals as necessary to meet the City's requirements.

~~4. Award and Notification. An award may be made to the responsible offeror whose proposal will be the best value to the City, as defined in LMC 2.68.040. All offerors participating in the process shall be notified in writing on the terms and conditions of the successful award.~~

~~D. Noncompetitive Negotiations. When there is only one source, purchase can be made through solicitation and negotiation directly with that source. The affected department head shall state in writing the basis for the determination that this subsection applies, and before any purchase is made, that determination must be approved in writing by the City Manager (for $25,000 or more) or the Administrative Services Director (for less than $25,000).~~

~~2.68.390 Purchases of supplies and equipment through cooperate purchasing arrangements.~~

~~The Administrative Services Director may purchase supplies and equipment without complying with the quotation or bidding requirements of this chapter, if such purchases are based on an agreement or cooperative purchasing program entered into by any of the following public agencies, regardless of whether the City is a named party to the agreement or an actual participant in such a program:~~

5. Award of Contract. The person or body with the appropriate approval authority corresponding to the amount of the contract to be awarded pursuant to this subsection shall also be the person or body with the authority to award the contract, provided that the City Council has budgeted funds for the contract. In the absence of a budget appropriation, a supplemental appropriation pursuant to LMC 2.68.210 is required before the contract can be awarded. Under this subsection, a contract may be awarded on either a best value or low bid basis, as determined by the City Manager or their designee prior to issuance of the solicitation. The basis upon which the award will be made shall be included in the solicitation document.

2.68.360 Exceptions to, and exemptions from, solicitation procedures.

A. Certain contracts for goods and services may not be adapted to award by either informal or competitive solicitation, but they may only be excepted or exempted from those processes as prescribed in this subsection.

B. Contracts for the following are exempted from the informal solicitation and competitive purchase processes:

1. Emergency procurements awarded as set forth in LMC 2.68.400 and 2.68.410;

2. Bonds;

3. Insurance;

4. Legal services;

5. Membership dues, conventions, training, and travel arrangements; and,

6. Advertisements in magazines, newspapers, or other media.

C. Contracts for the following are examples of that are eligible for an exception to forego an informal solicitation or competitive purchase processes with the Administrative Services Director's approval as set forth in LMC 2.68.360(D):

1. Sole source procurements that can only be obtained from one consultant, contractor, or vendor due to the proprietary, specialized, or unique character of the required goods or services;

2. Single source procurements that may be available from more than one source, but there is a compelling and justifiable reason such as product standardization to procure the required goods or services from a particular consultant, contractor, or vendor;

3. Contracts awarded in conjunction with cooperative purchasing programs, as set forth in LMC 2.68.370;

4. Equipment that must be compatible with existing equipment

5. Lobbying services;

6. Procurements funded by grants, donations or gifts when associated special conditions require the purchase of particular goods and/or services;

7. Works of art, entertainment, or performance;

8. Surplus personal property owned by another governmental, public, or quasi-public entity; and,

9. Where competitive bids or proposals have been solicited and no bid or proposal has been received. In such a situation the City Manager may proceed to have the services performed or the goods procured without further competitive bidding.

D. Exceptions, but not exemptions, from the informal solicitation or competitive purchase process, are subject to review and approval by the Administrative Services Director as follows:

1. The person initiating the procurement must prepare a written justification to the Administrative Services Director or their designee to request an exception that sets forth the compelling reasons to justify the request and describe the due diligence and research performed that support an exception determination; and,

2. The Administrative Service's Director or their designee may, in their discretion, approve a request for exception upon finding that there is no competitive advantage to be gained from soliciting bids. The Administrative Regulations shall specify the factors that the Administrative Services Director or their designee must consider when exercising the discretion authorized in this section.

E. The person responsible for conducting a procurement for an exempt contract or a contract approved for exception by the Administrative Services Director pursuant to this section shall conduct negotiations, as

appropriate, as to price, delivery and terms and may require the submission of cost or pricing data in connection with the award of a contract which does not require a competitive solicitation.

F. Notwithstanding the exemptions and exceptions in this section, nothing shall preclude informal solicitation or competitive bidding when determined to be in the best interest of the City or when required by law.

2.68.370 Contracts for goods and services procured through cooperative purchasing arrangements.

A. The Administrative Services Director or their designee may initiate City contracts for goods and services without conducting an informal solicitation or competitive bidding, when then procurement is based on the following cooperative purchasing arrangements or programs:

1. The California Multiple Award Schedules (CMAS~~), the California Communities Purchasing Program, the Western States Contracting Alliance ("WSCA"), The Cooperative Purchasing Network ("TCPN"), the National Joint Powers Alliance, the County of Alameda, the County of Contra Costa;~~

~~B. The U.S. Communities Government Purchasing Alliance or the~~) and Federal General Services Administration (GSA ~~Contracts~~) contracts.

~~C.~~ 2. Where a consultant, contractor, or vendor was awarded a contract by another public agency; said agency used solicitation procedures substantially similar to those that the City would have been required to use, the initial awarding public agency agrees to the purchase, and the initial contract was awarded within a reasonable timeframe relative to the City's purchase.

3. Any other public, nonprofit or for profit cooperative purchasing programs or consortiums, provided ~~the City's~~:

a. The Administrative Services Director ~~(~~or ~~his or her~~their designee~~)~~ approves of such participation in writing or if the underlying purchase was made using quotation or bid procedure at least as restrictive as the City's~~.~~;

b. The City is a registered member of the cooperative; and,

c. A membership fee is not required.

B. In all such cases, the ~~supplies and equipment~~goods or services purchased must be the same or substantially similar and be offered at the same price as the supplies and equipment subject to the agreement or program, except that ~~(~~:

1~~) up~~. Up to 10 percent variation is allowed for ~~customizing~~ensuring the ~~order~~required goods or ~~for desirable options, (~~services meet City requirements;

2~~) a~~. A cost of living adjustment (using San Francisco-Oakland-San Jose Consumer Price Index – Urban, All Items) can be ~~added for up to three years, and (3) the City Manager's written approval is required for any extensions of contracts for supplies and equipment obtained through a cooperative purchasing program, provided such extensions do not exceed three years.~~ included for the contract duration if approved by the appropriate contract award authority; and,

3. Any contract extensions beyond the initially-awarded term are approved by the appropriate award authority.

C. The City contract for goods and services solicited through a cooperative purchasing arrangement or program shall:

1. Adhere to the general procedural requirements in LMC 2.68.120 to the greatest extent possible, and shall include language to ensure the City receives the rights and benefits conferred upon the initial awarding agency; and

2. Be awarded and signed by the body or person with the appropriate approval authority.

Article IV. Emergency Contract Approval Authority and Procedures

2.68.400 ~~Equipment leasing~~Emergency procurement authority.

~~A. Leasing of purchasable or nonpurchasable equipment shall be in accordance with LMC 2.68.350, 2.68.360 or 2.68.370, depending upon the cost of an annual lease.~~

~~B. Each contract for the leasing or rental of equipment for the City shall contain a provision permitting the City to terminate the contract at the end of any fiscal year during the term of the contract upon not less than 30 days' written notice to the other party.~~

~~2.68.410 Inspection and testing.~~

A. Authority. The City Manager and Administrative Service Director, and their respective designees, are the contract approval authorities for City contracts for goods, services, and public projects awarded to expeditiously respond to conditions caused by the existence of a local emergency regardless of amount but subject the procedures in LMC 2.68.410.

B. Ratification by City Council. Upon exercise of the emergency procurement authority authorized by this section for a contract for goods and services, or for a public works contracts, with a compensation amount greater than $200,000, the City Manager shall make a full and complete report to the City Council at a noticed meeting as soon as practicable. Upon receipt of the report, the City Council shall ratify the contract upon determining it was awarded in response to a local emergency and shall also act on a public works contract as required by California Public Contract Code section 21068 and 22050, as applicable.

2.68.410 Emergency procurement procedures.

A. City contracts for goods, services, and public projects to expeditiously respond to conditions caused by the existence of a local emergency do not need to comply with the informal solicitation or competitive bidding requirements set forth in this chapter, but shall comply with the following procedures:

1. The scope of the contract is limited to good and services, and public contracts, necessary to respond to the conditions caused by the local emergency;

2. To the extent practical under the circumstances, the contract shall be solicited, negotiated, and awarded:

   a. Consistent with the solicitation procedures for goods and services set forth in Article III of this chapter; and,

   b. Consistent with federal and state procurement standards to preserve the opportunity to obtain disaster reimbursement;

3. The Administrative Services Director, or ~~his or her~~their designee, ~~may inspect supplies, equipment and general services delivered, and determine their conformance with the specifications set forth in the order or~~

~~contract. The~~ shall submit a written report of the emergency procurement to the City Manager, including a description of the local emergency and the basis for selection of the particular contractor; and,

4. For a local emergency proclaimed pursuant to LMC 2.56.060, a copy of all emergency contracts awarded and the Administrative Services ~~Director has the authority to require chemical and physical tests of samples submitted with bids, and samples of deliveries which are necessary to determine their quality and conformance with specifications.~~ Director's emergency procurement report shall also be filed in the emergency operations center and attached to the City Manager's report to the City Council required by LMC 2.68.400.B, and the original shall be properly filed and stored with the contract in accordance with the City's records retention schedule.

~~2.68.0420 Purchases of supplies and equipment through cooperative purchasing arrangements.~~

~~Repealed by Ord. 1637.~~

~~2.68.430 Surplus supplies and equipment.~~

~~Each department shall submit to the Administrative Services Director, at such times and in such forms as the Director prescribes, reports showing all supplies and equipment which are no longer used or which have become obsolete or worn out. The Administrative Services Director has the authority to sell or otherwise dispose of all supplies and equipment which cannot be used by any department or which have become unsuitable for city use, or to exchange the same for or trade the same in on new supplies and equipment.~~

~~The Administrative Services Director, or his or her designee, may surplus the service weapons of employees of the Livermore police department upon an employee's retirement from service with the Livermore police department.~~

~~The Administrative Services Director, or his or her designee, may surplus the badges of employees of the Livermore police department upon an employee's retirement from service with the Livermore police department, upon an employee being promoted to a higher classification within the department, or for employees who resign in good standing with a minimum of 10 years of service with the Livermore police department.~~

~~City Manager approval is needed for disposition of supplies and/or equipment when the total estimated value exceeds $5,000. Disposition may include abandonment, destruction or donation to public bodies, charitable, civic or nonprofit organizations and may include city property which has no commercial value or for which the estimated cost of continued care, handling, maintenance or storage would exceed the estimated proceeds of sale. Sales procedures may include negotiated sales, acceptance of sealed bids or public auction. Services of a paid auctioneer may be used, as appropriate. The Administrative Services Director also has the authority to make transfers between departments of any usable surplus supplies or equipment and which are $5,000 or less in value.~~

B. City contracts for public projects to expeditiously respond to conditions caused by the existence of a local emergency shall also comply with emergency contracting procedures set forth in California Public Contract Code section 21068, 22025, and 22050, as applicable.

Article V.~~Article IV.~~ Public Projects

2.68.500 Public project contracting procedures.

The City shall follow the contracting procedures set forth in Article 3 of the Uniform Public Construction Cost Accounting Act as set forth in California Public Contract Code Section 22030 et seq., referred to as the "Act" for the purposes of this article. The City shall procure public projects by force account, negotiated contract, purchase order, informal bidding or formal bidding as required in accordance with the applicable dollar amount

limitations under Section 22032 of the Act, as it may be amended from time to time. The City Manager shall be authorized to establish and implement administrative regulations, policies, and procedures consistent with the Act and this chapter. At the appropriate time each year, the Administrative Services Director or their designee shall prepare a notice of the contract amounts for the informal bidding and formal bidding requirements set forth in LMC 2.68.530 and LMC 2.68.540, and the contract approval and rejection authorities set forth in LMC 2.68.570 and 2.68.580.

2.~~65~~68.510 Bid splitting prohibited.

It shall be unlawful to split or separate into smaller work orders or projects any project for the purpose of evading the provisions of this article requiring work to be done by contract after competitive bidding.

2.68.520 Contractors list.

A list of contractors shall be developed and maintained in accordance with the provisions of the Act and criteria promulgated from time to time by the California Uniform Construction Cost Accounting Commission, referred to as "the Commission" for the purposes of this article.

2.68.530 Informal bidding – Notice.

A. Where a public project to be performed is subject to the informal bidding provisions of the Act and this chapter, a notice inviting informal bids shall be delivered by mail, fax, or electronic mail to all contractors for the category of work to be bid, as shown on the list developed in accordance with LMC 2.68.520 and/or may be delivered to all construction trade journals as specified by the Commission in accordance with the Act. Delivery of notices to contractors pursuant to this section shall be completed not less than 10 calendar days before bids are due. Additional contractors and/or construction trade journals may be notified at the discretion of the City; provided, however:

1. If there is no list of qualified contractors maintained by the City for the particular category of work to be performed, the notice inviting bids shall be sent to only the construction trade journals specified by the Commission.

2. If the product or service is such that it can be obtained only from a certain contractor or contractors, the notice inviting informal bids may be sent exclusively to such contractor or contractors.

B. The notice inviting informal bids shall describe the project in general terms and how to obtain more detailed information about the project~~,~~ and state the time and place for the submission of bids.

2.68.540 Formal bidding – Notice.

When a public project to be performed requires formal bidding, notice of such project shall be given as follows unless an exception to competitive bidding applies:

a. ~~A.~~ The notice shall state the time and place for the receiving and opening of sealed bids and distinctly describe the project.
b. ~~B.~~ The notice shall be published at least 14 calendar days before the date of opening of the bids in a newspaper of general circulation, printed and published in the City; or if there is no newspaper printed and published within the jurisdiction of the City, in a newspaper of general circulation which is circulated within the City; or if there is no newspaper which is circulated within the jurisdiction of the City, publication shall be by posting the notice in at least three places within the jurisdiction of the City as have been designated by ordinance or regulation of the City for the posting of its notices.
c. ~~C.~~ The notice inviting formal bids shall also be sent electronically, if available, by either facsimile or electronic mail and mailed to all construction trade journals specified by the Commission. The notice shall be sent at least 15 calendar days before the date of opening the bids.

2.68.550 Exceptions.

Bidding required by LMC 2.68.540 may be dispensed with:

a. ~~A.~~ In an emergency as defined by LMC 2.68.~~040~~ 130 pursuant to the procedures contained in the California Public Contract Code;
b. ~~B.~~ Design-build contracts, provided they are consistent with the requirement of the California Public Contract Code; or
c. ~~C.~~ If there is no competitive advantage to be gained by inviting bids (for example, where it is determined that the supplies and equipment are unique or available only from one source, and where the low bid benefits are otherwise satisfied by the Act), so that the bidding requirement required by this section would be meaningless. The basis upon which this determination is made shall be made by the City Council upon recommendation by the city engineer.

2.68.560 ~~Modification of public works contracts.~~

~~Alterations, deviations, additions, or deletions from the original scope of work for public works projects which are determined by the City to be necessary during the progress of work shall be documented by written change orders or amendments.~~

~~A. The Community Development Director, Public Works Director, and city engineer, or their designee, may authorize change orders or amendments up to a cumulative amount not exceeding $25,000.~~

~~B. The City Manager may authorize change orders or amendments up to a cumulative amount not exceeding $50,000 or 10 percent of the overall contract price, whichever is greater.~~

~~C. The cost of each change order or amendment shall be determined by a fair and reasonable valuation, agreed to in writing by the Community Development Director or Public Works Director or designees and an authorized representative of the contractor, and shall be added to or deducted from the contract price.~~

~~2.65.570~~ Contracts for maintenance and other work.

Contracts for maintenance, as defined by California Public Contract Code Section 22002 and LMC 2.68.~~040(F~~130(J)(1), and for any other work which does not fall within that section's definition of public projects, may be bid pursuant to the informal bidding procedures in LMC 2.68.530 and the formal bidding procedures in LMC 2.68.540.

2.68.~~580~~570 Award of public works contracts.

A. The City Manager is authorized to award public works contracts in accordance with the monetary limits for negotiated contracts or purchase orders as set forth in the Act, as now existing or hereafter amended.

B. The City Manager is authorized to award public works contracts in accordance with monetary limits for informal procedures as set forth in the Act, as now existing or hereafter amended, and this chapter to the lowest, responsive, and responsible bidder. If all bids are received in excess of the City Manager's monetary authority, the City Council may, by adoption of a resolution by a four-fifths vote, award the contract, subject to monetary limits set forth in the Act for informal bidding, as now existing or hereafter amended, if the City Council determines the cost estimate of the public agency was reasonable.

C. Contracts subject to formal bidding under the Act shall be awarded, if at all, by the City Council to the lowest, responsive, and responsible bidder.

2.68.590580 Rejection of bids.

The City Manager or the City Council, as the case may be, may in the City Manager's or City Council'stheir discretion, reject allany bids received and proceed as authorized by the Act. The City Manager may reject any bids that do not exceed the threshold for informal bids as specified in Public Contract Code Section 22032(b); bids exceeding this amount shall be rejected by the City Council unless otherwise delegated.

2.68.6002.68.590 Change orders to public works contracts.

A. Change orders to a public works contract that amend the original scope of work as determined to be necessary by the City during the progress of work shall be documented in writing.

B. The City Manager or their designee may authorize change orders up to a cumulative amount not exceeding $200,000 or 10 percent of the overall contract price, whichever is greater. All other change orders must be approved by the City Council.

C. The cost of each change order shall be determined by a fair and reasonable valuation, agreed to in writing by the City Manager, or their designee, and an authorized representative of the contractor, and shall be added to or deducted from the compensation amount in the public works contract.

2.68.595 Approval of plans, specifications, and designs.

In accordance with GovernmentCalifornia Public Contract Code Section 830.6 22039, as it may be amended from time to time, the City Council hereby delegates authority to the city engineerCity Engineer, or their designee, to approve plans, specifications and designs and all amendments and addenda thereto, field changes through the change order process and/or approval of as-built plans for all cityCity public works contracts.

Article VI. Additional Requirements

2.68.600 Leasing of equipment and personal property.

Leasing of purchasable or non-purchasable equipment and personal property shall follow the solicitation, award, and contract signing procedures set forth in this chapter based upon the compensation amount for the contract. Each contract for the leasing of equipment and personal property shall contain a provision permitting the City to terminate the contract at the end of any fiscal year during the contract term of the contract upon not less than 30 days' written notice to the other party. Leases for equipment and personal property that use a vendor's forms shall conform to general requirements in LMC 2.68.120 to the maximum extent possible.

2.68.610 Inspection and testing.

A. The Department Head or their designee shall inspect supplies, equipment, personal property, and general services delivered, and determine their conformance with the specifications set forth in the order or contract.

B. The Department Head or their designee shall inspect all equipment and personal property leased to the City to ensure it is in a fit and satisfactory condition for the City's use and is free from defect so that it may be safely used for its intended purpose.

C. The Department Head has the authority to require chemical and physical tests of samples submitted with bids, and samples of deliveries which are necessary to determine their quality and conformance with specifications.

2.68.620 Surplus supplies and equipment.

A. Each department shall submit to the Administrative Services Director, at such times and in such forms as the Director prescribes, reports showing all supplies and equipment which are no longer used or which have become obsolete or worn out. The Administrative Services Director has the authority to sell or otherwise dispose of all supplies and equipment which cannot be used by any department or which have become unsuitable for city use, or to exchange the same for or trade the same in on new supplies and equipment.

B. The Administrative Services Director or their designee may surplus the service weapons of employees of the Livermore police department upon an employee's retirement from service with the Livermore police department.

C. The Administrative Services Director or their designee may surplus the badges of employees of the Livermore police department upon an employee's retirement from service with the Livermore police department, upon an employee being promoted to a higher classification within the department, or for employees who resign in good standing with a minimum of 10 years of service with the Livermore police department.

D. The Administrative Services Director or their designee may surplus Livermore police department service animals upon an animal's retirement from service with the Livermore police department, to the employee handler or otherwise.

E. City Council approval is needed for disposition of supplies and/or equipment when the total estimated value exceeds $200,000. Disposition may include abandonment, destruction or donation to public bodies, charitable, civic or nonprofit organizations and may include city property which has no commercial value or for which the estimated cost of continued care, handling, maintenance or storage would exceed the estimated proceeds of sale. Sales procedures may include negotiated sales, acceptance of sealed bids or public auction. Services of a paid auctioneer may be used, as appropriate. The Administrative Services Director also has the authority to make transfers between departments of any usable surplus supplies or equipment and which are $5,000 or less in value.

2.68.630 Ethics.

A. City employees shall discharge their duties impartially to assure fair competitive access to City procurement opportunities by responsible consultants, contractors, and vendors. Moreover, City employees shall conduct themselves in such a manner as to foster public confidence in the integrity of City procurement activities.

B. No City employee shall participate directly or indirectly in a City procurement when the employee knows that:

1. The employee or any member of the employee's immediate family has a financial interest pertaining to the procurement; or

2. The employee or any member of the employee's immediate family is negotiating or has an employment arrangement that is contingent upon, or will be affected by, the procurement.

C. Upon discovery of an actual or potential conflict of interest, an employee shall promptly inform the Administrative Services Director and withdraw from further participation in the procurement.

D. No person shall offer, give, or agree to give any City employee any gratuity or offer of employment in connection with a procurement by the City. No City employee shall solicit, demand, accept or agree to accept from any other person a gratuity or an offer of employment in connection with a procurement by the City.

E. No consultant, contractor, or vendors who assisted the City's decision to identify the goods or services to be procured, and no consultant, contractor, or vendor with whom the City has contracted to prepare, or assist in

the preparation of, bid or proposal documents, shall submit a bid, proposal, or quotation for the goods or services to be procured.

F. All potential consultant, contractor, or vendors shall avoid any behavior that might influence any elected or appointed officials to interfere with a solicitation, and they shall limit their communications with the City of Livermore to the person responsible for conducting that solicitation and the Administrative Services Director. Undue influence on a solicitation may result in the consultant, contractor, or vendor being disqualified from participating in a solicitation as set forth in the administrative regulations.

2.68.640 Environmentally preferable purchases.

A. The administrative regulations shall incorporate the City's Environmentally Preferable Purchasing and Practices Policy for environmental considerations including recycled-content and recovered organic waste product use into purchasing practices and procedures.

B. All vendors providing paper products, printing, and writing paper, and organic waste products must comply with relevant state law and city requirements.

IN THE CITY COUNCIL OF THE CITY OF LIVERMORE, CALIFORNIA

AN ORDINANCE AMENDING AND RESTATING CHAPTER 2.68 *CONTRACTS AND PURCHASING* OF THE LIVERMORE MUNICIPAL CODE TO UPDATE THE DELEGATIONS OF AUTHORITY, AS WELL AS THE REQUIREMENTS AND RESPONSIBILITIES FOR SOLICITING AND AWARDING CONTRACTS TO PROCURE GOODS, SERVICES, AND PUBLIC PROJECTS

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

Section 1. *Authority.* This ordinance is adopted pursuant to the City of Livermore's police power authority established in section 7, article XI of the California Constitution, and California Government Code sections 830.6, 4002, 4526, 37103, 53060, 53069.85, 54201-54205, California Labor Code sections 1720-1743, and California Public Contract Code sections 1101, 22200, 20161, 22002.

Section 2. *Purpose.* This ordinance makes several changes to the Livermore Municipal Code Chapter 2.68 *Contracts and Purchasing* to update the delegations of contracting authority by the City Council to specified staff members to approve and execute contracts for goods, services, and public projects on behalf of the City, and to update the City's requirements and responsibilities for the solicitation and award of contracts for goods, services, and public projects.

Section 3. *Amendment – Municipal Code.* The Livermore Municipal Code Chapter 2.68 *Contracts and Purchasing* is hereby amended and restated to read as set forth in Exhibit A, attached hereto.

Section 4. *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 5. *Severability.* If any part of this ordinance is declared invalid by a court, such invalidity shall not affect any of the remaining parts.

Section 6. *Publication.* This ordinance shall be published once in a newspaper of general circulation of the City of Livermore within fifteen days after its adoption.

Section 7. *Effective date.* This ordinance shall take effect 30 days after its adoption.

The foregoing ordinance was introduced at the meeting of the City Council of the City of Livermore held on June 24, 2024, 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:

_____
Deborah L. Elam
Acting City Clerk

APPROVED AS TO FORM:

/s/ Jason R. Alcala
Jason R. Alcala
City Attorney

Chapter 2.68
CONTRACTS AND PURCHASING

Article I. General

2.68.100 Purpose and application.
2.68.110 Purchasing policy and implementing procedures.
2.68.120 General procedural requirements for contracts.
2.68.130 Definitions.
2.68.140 Purchasing oversight.
2.69.150 Purchasing responsibilities of Department Heads.

Article II. Contract Approval Authority

2.68.200 City Council approval required.
2.68.210 Budget appropriation required.
2.68.220 Contract approval authorities.
2.68.230 Contract amendment approval authorities.
2.68.240 Contingency.
2.68.250 Delegation of contract approval authorities.
2.68.260 Discretion to not award a contract.

Article III. Solicitation Procedures

2.68.300 General procedural requirements.
2.68.310 Contracts for goods and services up to $10,000.
2.68.320 Contracts for goods and general services greater than $10,000 and up to $100,000 (informal solicitation).
2.68.330 Contracts for goods and general services greater than $100,000 (competitive bidding).
2.68.340 Contracts for professional services.
2.68.350 Competitive negotiation following a request for proposals.
2.68.360 Exceptions to, and exemptions from, solicitation procedures.
2.68.370 Contracts for goods and services procured through cooperative purchasing arrangements.

Article IV. Emergency Contract Approval Authority and Procedures

2.68.400 Emergency procurement authority.
2.68.410 Emergency procurement procedures.

Article V. Public Projects

2.68.500 Public project contracting procedures.
2.68.510 Bid splitting prohibited.
2.68.520 Contractors list.
2.68.530 Informal bidding – Notice.
2.68.540 Formal bidding – Notice.
2.68.550 Exceptions.
2.68.560 Contracts for maintenance and other work.
2.68.570 Award of public works contracts.
2.68.580 Rejection of bids.
2.68.690 Change orders to public works contracts.
2.68.595 Approval of plans, specifications, and designs.

Article VI. Additional Requirements

2.68.600 Leasing equipment and personal property.

2.68.610 Inspection and testing.
2.68.620 Surplus supplies and equipment.
2.68.630 Ethics.
2.68.640 Environmentally preferable purchases.

Article I. General

2.68.100 Purpose and application.

The purpose of this chapter is to:

a. Clearly define authority for the City's purchasing function and delegate authority to persons to sign City contracts to procure goods and services, and for public projects;
b. Establish efficient procedures to award and sign City contracts to procure goods, general services, and professional services;
c. Establish efficient procedures to award and sign public works contracts for the City;
d. Ensure City contracts for goods, general services, and public projects are awarded at the lowest possible cost commensurate with quality needed;
e. Ensure contracts for qualified professional services are awarded to qualified consultants at the lowest possible cost commensurate with quality needed, and all contracts for professional services are awarded to the consultants best able to provide the needed services at a cost commensurate with the quality needed;
f. Ensure the quality of the goods and services purchased by the City are fit for their intended purpose; and,
g. Exercise positive financial control over City procurement contracts.

Except as otherwise provided herein, this chapter applies to all City contracts goods, services, and public projects, but it does not apply to other City contracts.

2.68.110 Purchasing policy and implementing procedures.

Other relevant provisions of law or regulation notwithstanding, this chapter establishes the City's purchasing policy. For operational efficiency and effectiveness, the City Manager is directed to prepare administrative regulations to implement the provisions of this chapter in coordination with the Administrative Services Director and the City Attorney, or their respective designees. In the event of a conflict between the administrative regulations and the provisions of this chapter, the provisions of this chapter shall govern. In the event of a conflict between this chapter and a state or federal law, the provisions of the state or federal law shall govern.

2.68.120 General procedural requirements for contracts.

A. All City contracts for goods, services, and public projects shall conform with the procedural requirements set forth in this chapter to solicit, award, and sign contracts for the City, except as otherwise specified elsewhere in the LMC, or in state or federal law.

B. The general procedural requirements for all City contracts for goods, services, and public projects are as follows:

1. All City contracts for goods, services, and public projects shall be in writing and shall be awarded as set forth in this chapter and signed in the name of the City by the body or person with the appropriate approval authority. Oral contracts are specifically prohibited and shall not be binding on the City;

2. As applicable, all City contracts for goods, services, and public projects must include appropriate insurance provisions as required by the City's Risk Manager or their designee, and indemnity provisions as required by the City Attorney or their designee;

3. As applicable, all public works contracts must include the appropriate bonds or other security as required by the California Civil Code, the California Public Contracts Code, and other applicable law and regulation for the public work, in the maximum amounts allowed by law, as well as warranty and maintenance bonds specified by the City Manager in the administrative regulations for public projects;

4. All City contracts for goods, services, and public projects must be approved as to form by the City Attorney or their designee, all bonds or security for public projects must be approved as to form by the City Attorney or their designee, and all insurance certificates must be approved as to form by the Risk Manager or their designee;

5. A signed original of each City contract for goods, services, and public works shall be filed with the City Clerk's Office, except for purchase orders that shall be filed in the Administrative Services Department as directed by the Administrative Services Director;

6. For operational efficiency and effectiveness, the City Manager or their designee may, in coordination with the City Attorney and Risk Manager, establish the conditions for the use of purchase orders or other efficient forms or methods of procurement in place of, or in addition to, duly signed written contracts, which conditions shall be reflected in the administrative regulations; and,

7. When a City contract for goods, services, or a public project is funded by money the City receives through assistance, contract funding, grant funding, or other governmental sources provided by a county, regional, state, or federal government, then the procurement shall be conducted in accordance with mandatory applicable county, regional, state, and federal laws and regulations.

2.68.130 Definitions.

For the purposes of this chapter, the following definitions shall apply:

A. "Administrative Services Director" means the Administrative Services Director of the City who is the City's purchasing agent pursuant to LMC 2.28.030.

B. "Amendment" means any change to a contract.

C. "Best value means the best overall value to the City for goods, general services, and qualified professional services contracts based on all factors, including, but not limited to, the following:

1. Total cost;

2. The ability, capacity, and skill of the consultant, contractor, or vendor to provide the desired goods and services;

3. The ability of the consultant, contractor, or vendor to provide the desired goods and services promptly or within the time specified without delay or interference;

4. The character, integrity, reputation, judgment, experience, and efficiency of the consultant, contractor, or vendor;

5. The quality of the consultant, contractor, or vendor's performance on previous purchases or contracts with the City or requested references;

6. The consultant's demonstrated competence for qualified professional services contracts; and,

7. The ability of the consultant, contractor, or vendor to provide future maintenance, repair, parts, and services for the use of the supplies purchased.

D. "Change order" means an amendment to a public works contract that changes the contract's scope of work to be performed, the amount of time to complete the work, the compensation to be paid for materials, labor, or equipment, and other material terms, conditions, and aspects of work.

E. "Consultant" means the party to a contract who is providing professional services to the City.

F. “Contract” for the purpose of this chapter means any formal written agreement between the City and a consultant, contractor, or vendor that creates mutual obligations that are enforceable by law. The basic elements for a contract are mutual assent, a valid offer and acceptance, consideration, capacity, and legality. For the purposes of this chapter, the terms “contract” and “agreement” are synonymous, and the term “contract” includes, but is not limited to, a purchase order, blanket purchase order, contract for general services, contract for professional services, contract for maintenance, leasing agreement for personal property or equipment, letter agreement, memorandum of agreement, and an amendment to any of those documents. The term “contract” does not include memorandums of understanding that do not create mutual obligations that are enforceable by law.

G. “Contractor” means the party to a general services contract who is providing general services to the City, and the party to a public works contract with the City for a public project.

H. “Demonstrated competence” means the ability to apply, and prior experience applying, the knowledge and skills required to perform the critical functions specified in the scope of work for a professional services agreement.

I. “Emergency” means a sudden, unexpected occurrence that poses a clear and imminent danger, requiring immediate action to prevent or mitigate the loss or impairment of life, health, property, or essential public services as defined by California Public Contract Code Section 1102, and the conditions defined as an “emergency” in LMC 2.56.020.

J. “General services” means and includes any work performed or services rendered by an independent contractor, with or without the furnishing of materials, including but not limited to the following, but does not include work on a public project:

1. “Maintenance work” as defined by California Public Contract Code Section 22002, as it may be amended from time to time, which includes all of the following:

    a. Routine, recurring, and usual work for the preservation or protection of any publicly owned or publicly operated facility for its intended purposes.

    b. Minor repainting.

    c. Resurfacing of streets and highways less than one inch.

    d. Landscape maintenance, including mowing, watering, trimming, pruning, planting, replacement of plants, and servicing of irrigation and sprinkler systems.

    e. Work performed to keep, operate, and maintain publicly owned water, power, or waste disposal systems, including, but not limited to, dams, reservoirs, power plants, and electrical transmission lines of 230,000 volts and higher.

2. Repair, modification, and maintenance of City equipment and technology products.

3. Cleaning, analysis, testing, moving, removal or disposal (other than by sale) of City goods;

4. Providing other miscellaneous services to facilitate City operations;

5. Performing repair, demolition, or other work required to abate nuisances;

6. Licensing software;

7. Leasing of equipment and personal property for use by the City as set forth in LMC 2.68.600; and,

8. A maintenance agreement for equipment owned or leased by the City.

K. ”Goods” means and includes all such supplies, materials, equipment, personal property, and other items purchased for the City for its operations, but “goods” does not include items furnished for a public project. The term “goods” also includes equipment and personal property leased by the City as set forth in LMC 2.68.600.

L. “Low bid” means the bid with the lowest compensation amount proposed by a responsive bidder to a contract solicitation.

M. “Lowest responsive and responsible bidder” means the bidder for a public works contract who submits a bid that conforms to the material requirements set forth in the City’s solicitation document and who has also demonstrated the attribute of trustworthiness, as well as quality, fitness, capacity, and experience to satisfactorily perform the work required.

N. “Professional services” means the services of a specially trained and experienced person, firm, or corporation for special services in financial, economic, accounting, engineering legal, and administrative matters within the scope of California Government Code Section 37103 as it may be amended from time to time, as well as similar services and other services such as medical services that require special training, experience, and educational certifications. “Professional services” shall also include contracts with providers of temporary personnel services.

O. “Public project” means a public project as defined by California Public Contract Code Sections 20161 and 22002, as those statutes may be amended from time to time, and includes the following:

1. Construction, reconstruction, erection, alteration, renovation, improvement, demolition, and repair work involving any publicly owned, leased, or operated facility.

2. Painting or repainting of any publicly owned, leased or operated facility.

3. In the case of a publicly owned utility system, “public project” shall include only the construction, erection, improvement, or repair of dams, reservoirs, power plants, and electrical transmission lines of 230,000 volts and higher.

P. “Public works contract” means a City contract for a public project.

Q. “Qualified professional services” means architectural, landscape architectural, engineering, land surveying, and construction management services that are covered by California Government Code Section 4525 *et seq.*, as those statutes may be amended from time to time, and that are required to be procured on the basis of demonstrated competence and professional qualifications.

R. “Responsible bidder” means a bidder for a public works contract who has demonstrated the attribute of trustworthiness, as well as quality, fitness, capacity and experience to satisfactorily perform the work required.

S. “Responsive bidder” means a bidder for a contract for goods, services, or qualified professional services whose submitted bid conforms to the material requirements set forth in the City’s solicitation documents.

T. “Single source” means a consultant, contractor, or vendor of goods or services that are available from more than one source, but there is a compelling and justifiable reason such as product standardization to select a single consultant, contractor, or vendor.

U. “Sole source” means a consultant, contractor, or vendor who, to the best of the City’s knowledge based upon thorough research, is the only one capable of providing the City’s required goods or services solicited for the City’s needs and circumstances.

V. “Technology product” means hardware, software, and communications equipment, as well as related equipment or goods that incorporate any such items.

W. “Vendor” means the party to a contract who is selling goods, or leasing equipment or personal property, to the City.

2.68.140 Purchasing oversight.

The Administrative Services Director shall oversee and facilitate compliance with this chapter and the corresponding administrative regulations, including:

a. Staying informed of current developments in the field of purchasing;
b. Staying informed of the procurement needs in the City’s departments;
c. Prescribing and maintaining such forms as are reasonably necessary to the operation of this chapter and the purchasing policy;
d. Recommending updates to this chapter and making revisions to the administrative regulations, as needed;
e. Evaluating and recommending to the appropriate approval authority organization structures in City departments and divisions that optimize the procurement function; and,
f. Coordinating the purchasing of goods and services that will be used by multiple City departments where feasible and practical.

2.68.150 Purchasing responsibilities of Department Heads.

Each Department Head shall be aware of the procurement needs within their respective departments, and shall ensure that all City contracts for goods, services, and public projects for their respective departments are made in compliance with this chapter. The Community Development Director has the additional responsibility for ensuring the City Engineer complies with this chapter for public works contracts. Each Department Head shall ensure the persons preparing contracts for goods and services within their respective departments comply with the following:

a. Prepare solicitation materials, as needed, for each procurement;
b. Make a good faith estimate of the compensation amount for each procurement to determine the appropriate solicitation procedure;
c. Ensure that the proper solicitation procedure is followed based on the estimated compensation amount for the procurement;
d. Evaluate received bids or proposals in accordance with the selection criteria and process described in this chapter and the administrative regulations;
e. Ensure that each contract for goods and services is awarded consistent with the requirements in this chapter and the administrative regulations;
f. Ensure that sufficient funds are appropriated to pay the compensation amount specified in the contract;
g. Ensure that the consultant, contractor, or vendor selected for the contract award has obtained appropriate insurance certificates with endorsement meeting the contract requirements, as applicable, before the contract is signed for the City, and thereafter maintains appropriate insurance certificates at all times during the term of the agreement;
h. Ensure that the consultant, contractor, or vendor selected for the contract award has obtained an appropriate City business license before the contract is signed for the City, and thereafter maintains an appropriate business license all times during the term of the agreement;
i. Ensure that each contract for goods and services is signed by the consultant, contractor, or vendor before it is signed for the City;

j. Ensure that each contract for goods and services is signed for the City by a person or body with appropriate approval authority based on the contract's compensation amount;
k. Inspect goods, general services, equipment, and personal property delivered to the City to ensure their conformance with the contract specifications;
l. Inspect all equipment and personal property leased to the City to ensure it is in a fit and satisfactory condition for the City's use and is free from defect so that it may be safely used for its intended purpose;
m. Monitor the performance of consultant, contractor, or vendor under approved contracts to ensure compliance with contract requirements;
n. Recommend and prepare contract amendments as needed and ensuring that the amendments are approved and signed by a person or body with appropriate approval authority, and that sufficient funds are appropriated to pay for the compensation specified by the amendment;
o. Ensure that due diligence is performed before preparing a written justification for submission to the Administrative Services Director requesting an exception pursuant to LMC 2.68.360(B) to forego an informal solicitation or a competitive purchase process for a sole source or single source contract in accordance with this chapter and the administrative regulations;
p. Take reasonable steps to avoid conflicts of interest in the purchasing process;
q. Keep sufficient records of all departmental contracts and expenditures and ensuring that such records are properly filed and stored in accordance with the City's records retention schedule; and,
r. Submit reports to the Administrative Services Director showing all departmental supplies and equipment that are no longer used or have become obsolete or worn out so that the City Manager or their designee can transfer surplus or unused goods between departments, or sell, exchange, or trade in such supplies and equipment, if desired,

Article II. Contract Approval Authority

2.68.200 City Council approval required.

City Council approval is required for all City contracts for goods, services, and public projects unless otherwise specified in this chapter, the LMC, or in another provision of federal or state law.

2.68.210 Budget appropriation required.

No City contract for goods, services, or public projects shall be awarded or signed for the City unless there exists an underlying and unencumbered budget appropriation in the fiscal year that the contract is awarded and signed. Contracts awarded in a fiscal year that are anticipated to extend into a subsequent fiscal year or years may be awarded by a person for body with the appropriate approval authority for the total compensation amount specified in the contract, but the contract shall be subject to the appropriation requirements specified in this section for subsequent years. Absent an existing unencumbered budget appropriation at the time of contract award, then a supplemental appropriation by the City Council is required before the City contract can be awarded and signed for the City.

2.68.220 Contract approval authorities.

A. General. All City contracts for goods, services, and public projects shall only be awarded and signed by a person or body with the appropriate approval authority for the City as set forth in this subsection 2.68.220 or as otherwise authorized by City Council resolution. Likewise, all amendments to contracts for goods and services, and all change orders to public works contracts, shall only be signed by a person or body with the appropriate approval authority as set forth herein.

B. Approval Authority. The authority to award, approve, and sign City contracts for goods, services, and public works projects for the City is as follows:

1. City Council. The City Council shall be the contract approval authority to award the following contracts by resolution, and may duly authorize a City officer or employee to sign the contracts for the City after City Council approval:

    a. Contracts for goods and services that have a compensation amount greater than $200,000.

    b. Public works contracts resulting from formal bidding procedures greater than the amount specified in California Public Contract Code Section 22032(c), as set forth in LMC 2.68.540, and change orders to public works contracts consistent with LMC 2.68.590.

2. City Manager. The City Manager shall be the contract approval authority for:

    a. Contracts for goods and services that have a compensation amount up to $200,000, and amendments to contracts for goods and services as set forth in LMC 2.68.230.

    b. Public works contracts for resulting from informal bidding procedures up to the amount specified in California Public Contract Code Section 22032(b), as set forth in LMC 2.68.530, and change orders to public works contracts consistent with LMC 2.68.590.

    c. Goods and services contracts, the cost of which will be fully paid or reimbursed to the City, regardless of the compensation amount.

    d. Contracts with public agencies or public utility companies regarding construction of public improvements or utility facilities, or for community social or recreational services, or for the use of City property or facilities in accordance with established administrative regulations and guidelines, which require no payment of money by the City in excess of $200,000 or which provide for payment of money to the City under each contract.

    e. The City Manager's authority to enter into contracts and other documents for the City to settle litigation, government claims, and administrative proceedings is set forth in LMC Chapter 3.40.

    f. For operational efficiency and effectiveness, the City Manager may:

        1. Delegate the approval authorities specified in this subsection to Department Heads as set forth in LMC 2.68.250, which delegations shall be reflected in writing and incorporated into the City Manager's administrative regulations.

        2. Approve, or delegate the approval, for the assignment of City contracts by a consultant, contractor, or vendor to a respective successor upon determining that the successor has the qualifications to satisfy the contract's requirements and the successor has been assigned and has assumed all responsibilities in the contract owed to the City. Delegations shall be reflected in writing and incorporated into the City Manager's administrative regulations, and all assignment approvals shall be in writing and retained with the contract.

        3. Approve, or delegate the approval, for a consultant, contractor, or vendor's use of subcontractor. Delegations shall be reflected in writing and incorporated into the City Manager's administrative regulations, and all subcontractor approvals shall be in writing and retained with the contract.

3. City Attorney. The City Attorney shall be the contract approval authority for:

    a. Contracts for goods and services related to the activities or functions of the office of the City Attorney that have a compensation amount up to $150,000, and amendments to those contracts consistent with LMC 2.68.230.

b. Contracts to appoint and retain outside legal counsel to prosecute lawsuits for the City or defend the City against lawsuits regardless of the compensation amount but subject to budget appropriation. The City Attorney's authority to enter into contracts and other documents for the City to settle litigation, government claims, worker's compensation claims, and administrative proceedings is set forth in LMC Chapter 3.40.

c. Contracts for the City's membership in public agencies organized and operating under California Government Code Section 6507 and related provisions of law that authorize the creation and operation of governmental joint powers authorities under California Law to self-insure and pool resources for excess losses, regardless of the compensation amount but subject to budget appropriation.

d. Contracts for insurance to protect and cover City facilities and operations, and for trust accounts maintained to satisfy the City's trust fund requirements for its excess liability pools, regardless of the compensation amount but subject to budget appropriation.

4. Administrative Services Director. The Administrative Services Director shall be the contract approval authority for:

a. Contracts for goods and general services that have a compensation amount up to $150,000, and amendments those contracts consistent with LMC 2.68.230.

b. Contracts for professional services that have a compensation amount up to $100,000, and amendments those contracts consistent with LMC 2.68.230.

2.68.230 Contract amendment approval authorities.

A. All contract amendments must be in writing, signed by a person or body with the appropriate approval authority specified in LMC 2.68.220, and properly filed and stored with the original contract in accordance with the City's records retention schedule. Oral contract amendments are specifically prohibited and shall not be binding on the City.

B. All amendments to contracts for goods and services, and change orders to public works contracts, shall be approved by the City Council or an officer or employee with the appropriate approval authority as set forth in either: (i) LMC 2.68.220 based upon the compensation amount in the amended contract, or at set forth; or, (ii) based upon the authority duly authorized by the City Council by resolution.

2.68.240 Contingency.

To account for unforeseen conditions that may impact the scope of work, pricing offered, quantity of goods or terms in a contract for goods and services, the City Manager has authority for an additional contract contingency amount not to exceed $20,000, which is in addition to the approval authority set forth in LMC 2.68.220, that may be used in the City Manager's discretion to approve an amendment to a contract for goods and to ensure successful contract completion..

2.68.250 Delegation of contract approval authorities.

The contract approval authorities set forth in LMC 2.68.220 may be delegated as follows:

a. The City Manager may delegate contract approval and amendment authority in writing to a Department Head or other City employee if such delegation is deemed necessary for effective procurement. Such delegated contract approval authority shall not exceed the City Manager's contract approval authority in LMC 2.68.220.

b. The City Attorney may delegate contract approval and amendment authority in writing to other employees in the City Attorney's Office if such delegation is deemed necessary for effective procurement. Such delegated contract approval authority shall not exceed the City Attorney's contract approval authority in LMC 2.68.220. However, the City Attorney may only delegate the authority to review and approve contracts, bonds, or security as to form to attorneys within the City Attorney's Office or otherwise designated by the City Attorney.
c. The Administrative Services Director may delegate contract approval and amendment authority in writing to other employees in the Administrative Service Department if such delegation is deemed necessary for effective procurement. Such delegated contract approval authority shall not exceed the Administrative Services Director's contract approval authority in LMC 2.68.220.

2.68.260 Discretion to not award a contract.

Nothing in this chapter requires the City to award a contract for goods, services, or public works if the person or body with the appropriate approval authority for the contract determines, in that person or body's discretion, that the award of the contract is not in the best interest of the City, and that person or body rejects all bids.

Article III. Solicitation Procedures

2.68.300 General procedural requirements.

A. Prior to contracting for goods and services, the Department Head or their designee for the initiating department shall:

1. Be responsible for conducting solicitations for needed goods or services, except as otherwise specified by the City Manager or Administrative Services Director or as specified in the administrative regulations;

2. Make a reasonable and good faith estimate of the anticipated compensation amount to be paid for the goods and services, which estimate shall be filed in the department's procurement file;

3. Ensure solicitation is conducted in strict accordance with the procedures established in this Article III Solicitation Procedures and the administrative regulations;

4. Ensure all solicitations are in writing. Oral quotes, bids, or proposals shall not be accepted;

5. Ensure the documents and instructions to be used for soliciting bids, proposals, or price quotations shall be those provided and required by the Administrative Services Director;

6. If submitted bids or proposals exceed the compensation amounts for the solicitation procedures used for the contract, conducting a new solicitation if directed by the City Manager or Administrative Services Director; and,

7. Ensuring procurements are not split or separated into smaller components for the purpose of circumventing the solicitation or contract approval requirements specified in this chapter.

B. No consultant, contractor, or vendor who assisted the City's decision to identify the goods or services to be procured, and no consultant, contractor, or vendor who assisted the City with the preparation of the solicitation, shall submit a bid, proposal, or quotation for the goods or services to be procured.

C. All potential consultant, contractor, or vendors shall avoid any behavior that might influence any elected or appointed officials to interfere with a solicitation, and they shall limit their communications with the City of Livermore to the person responsible for conducting that solicitation and the Administrative Services Director. Undue influence on a solicitation may result in the consultant, contractor, or vendor being disqualified from participating in a solicitation as set forth in the administrative regulations.

D. The solicitation procedures in this Article III shall be followed for contracts for goods and services, and the solicitation procedures in Article V shall be followed for public works contracts for public projects.

2.68.310 Contracts for goods and services up to $10,000.

A solicitation process is not required for City contracts to procure goods and services that have compensation amounts that do not exceed $10,000. These contracts may be negotiated in the open market as specified in the administrative regulations and awarded by the person or body with the appropriate approval authority. However, nothing shall preclude City staff members from conducting price comparisons, utilizing the informal procedures, or the competitive bidding procedures based upon the City's needs and circumstances to ensure the best overall value is obtained.

2.68.320 Contracts for goods and general services greater than $10,000 and up to $100,000 (informal solicitation).

An informal solicitation process is required for City contracts to procure goods and general services that have a compensation amount greater than $10,000 and that do not exceed $100,000. The informal solicitation process shall comply with the procedures specified in this subsection and the administrative regulations as follows:

a. Notice inviting quotations. The department representative shall invite quotations by written request (including facsimile or electronic mail) or telephone to prospective vendors. The administrative regulations may allow for the use of catalogs to obtain price quotes for the purposes of this subsection.

b. Quotations. Written quotations shall be submitted to the department representative, who shall keep a record of all open market quotes for a period of one year after the submission of quotes. This record is open to public inspection. All quotations must be in writing.

c. Minimum number of quotations. The award of contracts using the informal solicitation process shall, whenever possible, be based on the solicitation of at least three written quotations.

d. No responsive quotations. If no quotations, or no responsive quotations, are received after informal solicitation, the Administrative Services Director or City Manager may proceed to negotiate the contract for the goods and services in the open market using the process set forth in LMC 2.68.310.

e. Basis for award. Under this subsection, a contract may be awarded on either a best value or low bid basis, as determined by the Administrative Services Director or their designee prior to soliciting informal bids or proposals. The basis upon which the award is made shall be included in the solicitation document, if one is used, or otherwise communicated in writing to prospective bidders in the same manner as the solicitation.

f. Award of contract and appropriation. The contract shall be awarded by the person or body with the appropriate approval authority to sign the contact for the City as set forth in LMC 2.68.210 based upon the contract's compensation amount, provided that the City Council has budgeted funds for the contract.

g. Payment and Performance Bonds. The Administrative Services Director has the authority to require a payment bond, a performance bond, or both, for a City contract, in such amount as is reasonably necessary to protect the best interests of the City. If the Administrative Services Director requires such bonding, the form and amount of the bond(s) shall be described in the notice inviting bids, and the form for each bond must be approved as to form by the City Attorney

2.68.330 Contracts for goods and general services greater than $100,000 (competitive bidding).

A. A competitive bidding process is required for City contracts to procure goods and general services with compensation amounts greater than $100,000. The competitive solicitation process shall comply with the procedures specified in this subsection and the administrative regulations as follows:

1. Notice Inviting Bids. The notice inviting bids shall include a description of the goods or general services to be purchased, and shall state where bid forms and specifications may be secured, and the final time and place for submitting bids.

    a. Published Notice. The notice inviting bids shall be published at least 10 business days before the date of opening of the bids. Notice shall be published at least once in a newspaper of general circulation, printed and published locally. In addition, notice inviting bids may also be published electronically.

    b. Bidder's List. The Administrative Services Director may require a bidder's list for competitive bidding, which requirements shall be specified in the Administrative Regulations for this Chapter. If a bidder's list is required, then the notice inviting bids shall also solicit sealed bids from responsible prospective consultants, contractors, or vendors whose names are on the bidder's list.

2. Bidder's Security. When deemed necessary, the Administrative Services Director shall require bidder security as specified in the administrative regulations. The administrative regulations shall provide that bidders are entitled to the return of bid security upon execution of the contract or upon the City's republishing of a notice inviting bids, provided that a successful bidder forfeits his bid security upon refusal or failure to execute the contract within 10 business days after the notice of award of contract has been mailed, unless the City is responsible for the delay.

3. Bid Opening Procedure. Bidders shall submit sealed bids to the Administrative Services Director and shall identify them as bids on the envelope as specified in the administrative regulations. A tabulation of all bids received shall be open for public inspection during regular business hours for a period of not less than 30 calendar days after the bid opening.

4. Rejection of Bids. If it is determined to be in the best interest of the City, the City Manager or City Council may reject any and all bids presented. The City Manager or their designee shall have the authority to reject bids or proposals up to $200,000. Bids or proposals exceeding $200,000 shall be rejected by the City Council unless such authority is delegated to the City Manager.

5. No Responsive Bid. If no bid, or no responsive bid, is received after inviting bids under this section, the Administrative Services Director or City Manager may proceed to negotiate a contract for the goods and services in the open market using the process set forth in LMC 2.68.310.

6. Award of Contract. The person or body with the appropriate approval authority corresponding to the amount of the contract to be awarded pursuant to this subsection shall also be the person or body with the authority to award the contract, provided that the City Council has budgeted funds for the contract. In the absence of a budget appropriation, a supplemental appropriation pursuant to LMC 2.68.210 is required before the contract can be awarded. Under this subsection, a contract may be awarded on either a best value or low bid basis, as determined by the City Manager or their designee prior to issuance of the solicitation. The basis upon which the award will be made shall be included in the solicitation document.

7. Payment and/or Performance Bonds. The Administrative Services Director has the authority to require a payment and/or performance bond before entering a contract, in such amount as is reasonably necessary to protect the best interests of the City. If the Administrative Services Director requires such bonding, the form and amount of the bond(s) shall be described in the notice inviting bids, and the bond must be approved as to form by the City Attorney.

B. The person or body with the appropriate approval authority to award and sign the contract for the City may, in their discretion, waive inconsequential bid irregularities that do not give a bidder an unfair competitive advantage over any other bidder.

2.68.340 Contracts for professional services.

A. Contracts for professional services shall be solicited for award on the basis of demonstrated competence and the qualifications necessary for the satisfactory performance of the services, as determined by a consideration of the following criteria:

1. A compensation amount that is fair, reasonable, and competitive;

2. The quality of the services offered;

3. The consultant's ability, capacity, and skill to provide the services promptly, within the time specified, within budget, and without delay or interference;

4. The credentials and licenses of the person or business, if required;

5. The consultant's character, integrity, reputation, judgment, training, experience, and efficiency;

6. The consultant's knowledge of local conditions;

7. The consultant's previous history of working on related projects or issues for the city, where such previous experience will allow the services to be performed more efficiently and will require less time spent on preparation and background research;

8. The sufficiency of the consultant's financial capacity and other resources; and

9. The consultant's ability to provide such future service as may be needed.

B. Contracts for qualified professional services shall be solicited for award using either the informal solicitation process set forth in LMC 2.68.320 or the competitive bidding process set forth in LMC 2.68.330 based upon the compensation amount in the contract, and as required by applicable state and federal law, best value solicitations for architectural and engineering (A&E) services shall use a qualifications based selection (QBS) process where qualified professional service providers are evaluated and ranked based on demonstrated competence before compensation is considered.

C. The person or body with the appropriate approval authority corresponding to the amount of the contract to be awarded pursuant to this subsection shall also be the person or body with the authority to award the professional services contract or qualified professional services contract, provided that the City Council has budgeted funds for the contract. In the absence of a budget appropriation, a supplemental appropriation pursuant to LMC 2.68.210 is required before the contract can be awarded.

2.68.350 Competitive negotiation following a request for proposals.

A. Competitive negotiation for City purchase contracts may be used in situations where goods and/or services cannot be exactly defined/specified or where solutions are sought such as consulting studies or software systems that require a qualitative evaluation process.

B. The process for competitive negotiation of contracts shall comply with the following as implemented in the administrative regulations:

1. Request for Proposals. Under this method, proposals are requested from a number of sources and the request for proposals is publicized. The request for proposals must identify the criteria upon which the

offerors' proposals will be evaluated, including price or cost as applicable, and the relative importance of each criterion. Proposals must be solicited from an adequate number of qualified sources to permit reasonable competition.

2. Receipt of Proposals. Sealed proposals must be submitted by offerors by the date and time specified on the prescribed forms and shall be identified by the request-for-proposal number.

3. Evaluation of Proposals. Submitted proposals shall be evaluated in accordance with the evaluation criteria and process identified in the solicitation document, which may include evaluation of the written submittals; interviews, presentations and/or product demonstrations as applicable; reference checks; and other factors as necessary to determine a rank order of proposals.

4. Negotiation. The most qualified and responsive offeror will be selected for contract negotiation. If agreement cannot be reached with the first choice offeror, the second choice offeror (and then the third, and so on) will be contacted, with the first choice offeror (or other offerors, in order) dismissed from further consideration for that particular contract. All elements of the negotiation process shall be documented by the negotiating department and submitted to the Administrative Services Director. Responsible offerors shall be accorded fair and equal treatment with respect to opportunity for discussion and revision of proposals as necessary to meet the City's requirements.

5. Award of Contract. The person or body with the appropriate approval authority corresponding to the amount of the contract to be awarded pursuant to this subsection shall also be the person or body with the authority to award the contract, provided that the City Council has budgeted funds for the contract. In the absence of a budget appropriation, a supplemental appropriation pursuant to LMC 2.68.210 is required before the contract can be awarded. Under this subsection, a contract may be awarded on either a best value or low bid basis, as determined by the City Manager or their designee prior to issuance of the solicitation. The basis upon which the award will be made shall be included in the solicitation document.

2.68.360 Exceptions to, and exemptions from, solicitation procedures.

A. Certain contracts for goods and services may not be adapted to award by either informal or competitive solicitation, but they may only be excepted or exempted from those processes as prescribed in this subsection.

B. Contracts for the following are exempted from the informal solicitation and competitive purchase processes:

1. Emergency procurements awarded as set forth in LMC 2.68.400 and 2.68.410;

2. Bonds;

3. Insurance;

4. Legal services;

5. Membership dues, conventions, training, and travel arrangements; and,

6. Advertisements in magazines, newspapers, or other media.

C. Contracts for the following are examples of that are eligible for an exception to forego an informal solicitation or competitive purchase processes with the Administrative Services Director's approval as set forth in LMC 2.68.360(D):

1. Sole source procurements that can only be obtained from one consultant, contractor, or vendor due to the proprietary, specialized, or unique character of the required goods or services;

2. Single source procurements that may be available from more than one source, but there is a compelling and justifiable reason such as product standardization to procure the required goods or services from a particular consultant, contractor, or vendor;

3. Contracts awarded in conjunction with cooperative purchasing programs, as set forth in LMC 2.68.370;

4. Equipment that must be compatible with existing equipment

5. Lobbying services;

6. Procurements funded by grants, donations or gifts when associated special conditions require the purchase of particular goods and/or services;

7. Works of art, entertainment, or performance;

8. Surplus personal property owned by another governmental, public, or quasi-public entity; and,

9. Where competitive bids or proposals have been solicited and no bid or proposal has been received. In such a situation the City Manager may proceed to have the services performed or the goods procured without further competitive bidding.

D. Exceptions, but not exemptions, from the informal solicitation or competitive purchase process, are subject to review and approval by the Administrative Services Director as follows:

1. The person initiating the procurement must prepare a written justification to the Administrative Services Director or their designee to request an exception that sets forth the compelling reasons to justify the request and describe the due diligence and research performed that support an exception determination; and,

2. The Administrative Service's Director or their designee may, in their discretion, approve a request for exception upon finding that there is no competitive advantage to be gained from soliciting bids. The Administrative Regulations shall specify the factors that the Administrative Services Director or their designee must consider when exercising the discretion authorized in this section.

E. The person responsible for conducting a procurement for an exempt contract or a contract approved for exception by the Administrative Services Director pursuant to this section shall conduct negotiations, as appropriate, as to price, delivery and terms and may require the submission of cost or pricing data in connection with the award of a contract which does not require a competitive solicitation.

F. Notwithstanding the exemptions and exceptions in this section, nothing shall preclude informal solicitation or competitive bidding when determined to be in the best interest of the City or when required by law.

2.68.370 Contracts for goods and services procured through cooperative purchasing arrangements.

A. The Administrative Services Director or their designee may initiate City contracts for goods and services without conducting an informal solicitation or competitive bidding, when then procurement is based on the following cooperative purchasing arrangements or programs:

1. The California Multiple Award Schedules (CMAS) and Federal General Services Administration (GSA) contracts.

2. Where a consultant, contractor, or vendor was awarded a contract by another public agency; said agency used solicitation procedures substantially similar to those that the City would have been required to use, the initial awarding public agency agrees to the purchase, and the initial contract was awarded within a reasonable timeframe relative to the City's purchase.

3. Any other public, nonprofit or for profit cooperative purchasing programs or consortiums, provided:

   a. The Administrative Services Director or their designee approves of such participation in writing or if the underlying purchase was made using quotation or bid procedure at least as restrictive as the City's;

   b. The City is a registered member of the cooperative; and,

   c. A membership fee is not required.

B. In all such cases, the goods or services purchased must be the same or substantially similar and be offered at the same price as the supplies and equipment subject to the agreement or program, except that:

1. Up to 10 percent variation is allowed for ensuring the required goods or services meet City requirements;

2. A cost of living adjustment (using San Francisco-Oakland-San Jose Consumer Price Index – Urban, All Items) can be included for the contract duration if approved by the appropriate contract award authority; and,

3. Any contract extensions beyond the initially-awarded term are approved by the appropriate award authority.

C. The City contract for goods and services solicited through a cooperative purchasing arrangement or program shall:

1. Adhere to the general procedural requirements in LMC 2.68.120 to the greatest extent possible, and shall include language to ensure the City receives the rights and benefits conferred upon the initial awarding agency; and

2. Be awarded and signed by the body or person with the appropriate approval authority.

Article IV. Emergency Contract Approval Authority and Procedures

2.68.400 Emergency procurement authority.

A. Authority. The City Manager and Administrative Service Director, and their respective designees, are the contract approval authorities for City contracts for goods, services, and public projects awarded to expeditiously respond to conditions caused by the existence of a local emergency regardless of amount but subject the procedures in LMC 2.68.410.

B. Ratification by City Council. Upon exercise of the emergency procurement authority authorized by this section for a contract for goods and services, or for a public works contracts, with a compensation amount greater than $200,000, the City Manager shall make a full and complete report to the City Council at a noticed meeting as soon as practicable. Upon receipt of the report, the City Council shall ratify the contract upon determining it was awarded in response to a local emergency and shall also act on a public works contract as required by California Public Contract Code section 21068 and 22050, as applicable.

2.68.410 Emergency procurement procedures.

A. City contracts for goods, services, and public projects to expeditiously respond to conditions caused by the existence of a local emergency do not need to comply with the informal solicitation or competitive bidding requirements set forth in this chapter, but shall comply with the following procedures:

1. The scope of the contract is limited to good and services, and public contracts, necessary to respond to the conditions caused by the local emergency;

2. To the extent practical under the circumstances, the contract shall be solicited, negotiated, and awarded:

   a. Consistent with the solicitation procedures for goods and services set forth in Article III of this chapter; and,

   b. Consistent with federal and state procurement standards to preserve the opportunity to obtain disaster reimbursement;

3. The Administrative Services Director, or their designee, shall submit a written report of the emergency procurement to the City Manager, including a description of the local emergency and the basis for selection of the particular contractor; and,

4. For a local emergency proclaimed pursuant to LMC 2.56.060, a copy of all emergency contracts awarded and the Administrative Services Director's emergency procurement report shall also be filed in the emergency operations center and attached to the City Manager's report to the City Council required by LMC 2.68.400.B, and the original shall be properly filed and stored with the contract in accordance with the City's records retention schedule.

B. City contracts for public projects to expeditiously respond to conditions caused by the existence of a local emergency shall also comply with emergency contracting procedures set forth in California Public Contract Code section 21068, 22025, and 22050, as applicable.

Article V. Public Projects

2.68.500 Public project contracting procedures.

The City shall follow the contracting procedures set forth in Article 3 of the Uniform Public Construction Cost Accounting Act as set forth in California Public Contract Code Section 22030 et seq., referred to as the "Act" for the purposes of this article. The City shall procure public projects by force account, negotiated contract, purchase order, informal bidding or formal bidding as required in accordance with the applicable dollar amount limitations under Section 22032 of the Act, as it may be amended from time to time. The City Manager shall be authorized to establish and implement administrative regulations, policies, and procedures consistent with the Act and this chapter. At the appropriate time each year, the Administrative Services Director or their designee shall prepare a notice of the contract amounts for the informal bidding and formal bidding requirements set forth in LMC 2.68.530 and LMC 2.68.540, and the contract approval and rejection authorities set forth in LMC 2.68.570 and 2.68.580.

2.68.510 Bid splitting prohibited.

It shall be unlawful to split or separate into smaller work orders or projects any project for the purpose of evading the provisions of this article requiring work to be done by contract after competitive bidding.

2.68.520 Contractors list.

A list of contractors shall be developed and maintained in accordance with the provisions of the Act and criteria promulgated from time to time by the California Uniform Construction Cost Accounting Commission, referred to as “the Commission” for the purposes of this article.

2.68.530 Informal bidding – Notice.

A. Where a public project to be performed is subject to the informal bidding provisions of the Act and this chapter, a notice inviting informal bids shall be delivered by mail, fax, or electronic mail to all contractors for the category of work to be bid, as shown on the list developed in accordance with LMC 2.68.520 and/or may be delivered to all construction trade journals as specified by the Commission in accordance with the Act. Delivery of notices to contractors pursuant to this section shall be completed not less than 10 calendar days before bids are due. Additional contractors and/or construction trade journals may be notified at the discretion of the City; provided, however:

    1. If there is no list of qualified contractors maintained by the City for the particular category of work to be performed, the notice inviting bids shall be sent to only the construction trade journals specified by the Commission.

    2. If the product or service is such that it can be obtained only from a certain contractor or contractors, the notice inviting informal bids may be sent exclusively to such contractor or contractors.

B. The notice inviting informal bids shall describe the project in general terms and how to obtain more detailed information about the project and state the time and place for the submission of bids.

2.68.540 Formal bidding – Notice.

When a public project to be performed requires formal bidding, notice of such project shall be given as follows unless an exception to competitive bidding applies:

a. The notice shall state the time and place for the receiving and opening of sealed bids and distinctly describe the project.
b. The notice shall be published at least 14 calendar days before the date of opening of the bids in a newspaper of general circulation, printed and published in the City; or if there is no newspaper printed and published within the jurisdiction of the City, in a newspaper of general circulation which is circulated within the City; or if there is no newspaper which is circulated within the jurisdiction of the City, publication shall be by posting the notice in at least three places within the jurisdiction of the City as have been designated by ordinance or regulation of the City for the posting of its notices.
c. The notice inviting formal bids shall also be sent electronically, if available, by either facsimile or electronic mail and mailed to all construction trade journals specified by the Commission. The notice shall be sent at least 15 calendar days before the date of opening the bids.

2.68.550 Exceptions.

Bidding required by LMC 2.68.540 may be dispensed with:

a. In an emergency as defined by LMC 2.68.130 pursuant to the procedures contained in the California Public Contract Code;
b. Design-build contracts, provided they are consistent with the requirement of the California Public Contract Code; or
c. If there is no competitive advantage to be gained by inviting bids (for example, where it is determined that the supplies and equipment are unique or available only from one source, and where the low bid benefits are otherwise satisfied by the Act), so that the bidding requirement required by this section would be meaningless. The basis upon which this determination is made shall be made by the City Council upon recommendation by the city engineer.

2.68.560 Contracts for maintenance and other work.

Contracts for maintenance, as defined by California Public Contract Code Section 22002 and LMC 2.68.130(J)(1), and for any other work which does not fall within that section's definition of public projects, may be bid pursuant to the informal bidding procedures in LMC 2.68.530 and the formal bidding procedures in LMC 2.68.540.

2.68.570 Award of public works contracts.

A. The City Manager is authorized to award public works contracts in accordance with the monetary limits for negotiated contracts or purchase orders as set forth in the Act, as now existing or hereafter amended.

B. The City Manager is authorized to award public works contracts in accordance with monetary limits for informal procedures as set forth in the Act, as now existing or hereafter amended, and this chapter to the lowest, responsive, and responsible bidder. If all bids are received in excess of the City Manager's monetary authority, the City Council may, by adoption of a resolution by a four-fifths vote, award the contract, subject to monetary limits set forth in the Act for informal bidding, as now existing or hereafter amended, if the City Council determines the cost estimate of the public agency was reasonable.

C. Contracts subject to formal bidding under the Act shall be awarded, if at all, by the City Council to the lowest responsive and responsible bidder.

2.68.580 Rejection of bids.

The City Manager or the City Council, as the case may be, may in their discretion, reject any bids received and proceed as authorized by the Act. The City Manager may reject any bids that do not exceed the threshold for informal bids as specified in Public Contract Code Section 22032(b); bids exceeding this amount shall be rejected by the City Council unless otherwise delegated.

2.68.590 Change orders to public works contracts.

A. Change orders to a public works contract that amend the original scope of work as determined to be necessary by the City during the progress of work shall be documented in writing.

B. The City Manager or their designee may authorize change orders up to a cumulative amount not exceeding $200,000 or 10 percent of the overall contract price, whichever is greater. All other change orders must be approved by the City Council.

C. The cost of each change order shall be determined by a fair and reasonable valuation, agreed to in writing by the City Manager, or their designee, and an authorized representative of the contractor, and shall be added to or deducted from the compensation amount in the public works contract.

2.68.595 Approval of plans, specifications, and designs.

In accordance with California Public Contract Code Section 22039, as it may be amended from time to time, the City Council hereby delegates authority to the City Engineer, or their designee, to approve plans, specifications and designs and all amendments and addenda thereto, field changes through the change order process and/or approval of as-built plans for all City public works contracts.

Article VI. Additional Requirements

2.68.600 Leasing of equipment and personal property.

Leasing of purchasable or non-purchasable equipment and personal property shall follow the solicitation, award, and contract signing procedures set forth in this chapter based upon the compensation amount for the contract.

Each contract for the leasing of equipment and personal property shall contain a provision permitting the City to terminate the contract at the end of any fiscal year during the contract term of the contract upon not less than 30 days' written notice to the other party. Leases for equipment and personal property that use a vendor's forms shall conform to general requirements in LMC 2.68.120 to the maximum extent possible.

2.68.610 Inspection and testing.

A. The Department Head or their designee shall inspect supplies, equipment, personal property, and general services delivered, and determine their conformance with the specifications set forth in the order or contract.

B. The Department Head or their designee shall inspect all equipment and personal property leased to the City to ensure it is in a fit and satisfactory condition for the City's use and is free from defect so that it may be safely used for its intended purpose.

C. The Department Head has the authority to require chemical and physical tests of samples submitted with bids, and samples of deliveries which are necessary to determine their quality and conformance with specifications.

2.68.620 Surplus supplies and equipment.

A. Each department shall submit to the Administrative Services Director, at such times and in such forms as the Director prescribes, reports showing all supplies and equipment which are no longer used or which have become obsolete or worn out. The Administrative Services Director has the authority to sell or otherwise dispose of all supplies and equipment which cannot be used by any department or which have become unsuitable for city use, or to exchange the same for or trade the same in on new supplies and equipment.

B. The Administrative Services Director or their designee may surplus the service weapons of employees of the Livermore police department upon an employee's retirement from service with the Livermore police department.

C. The Administrative Services Director or their designee may surplus the badges of employees of the Livermore police department upon an employee's retirement from service with the Livermore police department, upon an employee being promoted to a higher classification within the department, or for employees who resign in good standing with a minimum of 10 years of service with the Livermore police department.

D. The Administrative Services Director or their designee may surplus Livermore police department service animals upon an animal's retirement from service with the Livermore police department, to the employee handler or otherwise.

E. City Council approval is needed for disposition of supplies and/or equipment when the total estimated value exceeds $200,000. Disposition may include abandonment, destruction or donation to public bodies, charitable, civic or nonprofit organizations and may include city property which has no commercial value or for which the estimated cost of continued care, handling, maintenance or storage would exceed the estimated proceeds of sale. Sales procedures may include negotiated sales, acceptance of sealed bids or public auction. Services of a paid auctioneer may be used, as appropriate. The Administrative Services Director also has the authority to make transfers between departments of any usable surplus supplies or equipment and which are $5,000 or less in value.

2.68.630 Ethics.

A. City employees shall discharge their duties impartially to assure fair competitive access to City procurement opportunities by responsible consultants, contractors, and vendors. Moreover, City employees shall conduct themselves in such a manner as to foster public confidence in the integrity of City procurement activities.

B. No City employee shall participate directly or indirectly in a City procurement when the employee knows that:

1. The employee or any member of the employee's immediate family has a financial interest pertaining to the procurement; or

2. The employee or any member of the employee's immediate family is negotiating or has an employment arrangement that is contingent upon, or will be affected by, the procurement.

C. Upon discovery of an actual or potential conflict of interest, an employee shall promptly inform the Administrative Services Director and withdraw from further participation in the procurement.

D. No person shall offer, give, or agree to give any City employee any gratuity or offer of employment in connection with a procurement by the City. No City employee shall solicit, demand, accept or agree to accept from any other person a gratuity or an offer of employment in connection with a procurement by the City.

E. No consultant, contractor, or vendors who assisted the City's decision to identify the goods or services to be procured, and no consultant, contractor, or vendor with whom the City has contracted to prepare, or assist in the preparation of, bid or proposal documents, shall submit a bid, proposal, or quotation for the goods or services to be procured.

F. All potential consultant, contractor, or vendors shall avoid any behavior that might influence any elected or appointed officials to interfere with a solicitation, and they shall limit their communications with the City of Livermore to the person responsible for conducting that solicitation and the Administrative Services Director. Undue influence on a solicitation may result in the consultant, contractor, or vendor being disqualified from participating in a solicitation as set forth in the administrative regulations.

2.68.640 Environmentally preferable purchases.

A. The administrative regulations shall incorporate the City's Environmentally Preferable Purchasing and Practices Policy for environmental considerations including recycled-content and recovered organic waste product use into purchasing practices and procedures.

B. All vendors providing paper products, printing, and writing paper, and organic waste products must comply with relevant state law and city requirements.

LIVERMORE
CALIFORNIA

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

DATE: June 24, 2024

TO: Honorable Mayor and City Council

FROM: Brent Smith, Community Development Director

SUBJECT: Resolution authorizing execution of a first amendment to the agreement with Precision Emprise, LLC, dba Precision Concrete Cutting for on-call concrete cutting services increasing the not-to-exceed contract amount from $500,000 to $1,000,000 and extending the term of the agreement to December 30, 2027.

RECOMMENDED ACTION

Staff recommends the City Council adopt a resolution authorizing the City Manager to execute the first amendment to the agreement with Precision Emprise, LLC, dba Precision Concrete Cutting for on-call concrete cutting services increasing the not-to-exceed contract amount from $500,000 to $1,000,000 and extending the term of the agreement to December 30, 2027.

SUMMARY

The City of Livermore (City) needs concrete cutting services to remove tripping hazards from City sidewalks. Staff evaluated various options to repair noncompliant locations adjacent to City-owned or maintained properties and have identified concrete cutting or slicing as a cost-effective solution that can be performed at locations with an elevation difference of up to two inches.

On March 1, 2023, the City entered into an agreement for services with Precision Concrete Cutting to provide on-call concrete cutting services with a term ending on December 30, 2025.

Precision has been providing quality services under the original contract. This first amendment increases the not-to-exceed contract amount from $500,000 to $1,000,000, which will allow the City to address additional sidewalk lifts on City-owned or maintained properties and remove tripping hazards as needed at other critical locations and extends the term of the agreement to December 30, 2027.

DISCUSSION

On March 1, 2023, the City entered into an agreement for services with Precision Concrete Cutting to provide on-call concrete cutting services. To date Precision Concrete Cutting has sliced 600 public sidewalk locations in high traffic areas. Precision Concrete also inspected and marked 70 miles of

sidewalks in high traffic areas which includes approximately 360 public sidewalk locations and 2,000 private sidewalk locations. Of these, approximately 300 public sidewalk locations and 1,700 private sidewalk locations have lifts under two inches and can be sliced.

To date approximately $470,000 of the contract amount has been spent. Increasing the Precision Concrete Cutting contract amount from $500,000 to $1,000,000 will allow the City to continue to concrete slice at City-owned or maintained properties, remove tripping hazards as needed at other critical locations, and provide other support services.

FISCAL AND ADMINISTRATIVE IMPACTS

Funding for services rendered under this agreement will be derived from the various capital improvement projects in the approved FY 2023-28 Capital Improvement Plan. Therefore, no additional appropriation is necessary.

COMMUNITY PILLAR

1: A Safe Community That Thrives

GOAL

10: Work to make a safe and efficient local transportation network and address safety concerns

ATTACHMENTS

1. Resolution
2. Exhibit A - First Amendment

Prepared by: Kristina Mai
Associate Civil 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 AUTHORIZING EXECUTION OF A FIRST AMENDMENT TO THE AGREEMENT WITH PRECISION EMPRISE, LLC, DBA PRECISION CONCRETE CUTTING FOR ON-CALL CONCRETE CUTTING SERVICES INCREASING THE NOT-TO-EXCEED CONTRACT AMOUNT FROM $500,000 TO $1,000,000 AND EXTENDING THE TERM OF THE AGREEMENT TO DECEMBER 30, 2027

(Sidewalk Repair 2023 Project 2023-02)

On March 1, 2023, the City of Livermore ("City") entered into an agreement for services with Precision Emprise, LLC, dba Precision Concrete Cutting for on-call concrete cutting services. This first amendment will provide additional concrete cutting services in the amount of $500,000, increasing the total contract amount from $500,000 to $1,000,000 and extending the term of the agreement to December 30, 2027.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Livermore that it hereby authorizes the City Manager to execute a first amendment to the agreement for services with Precision Emprise, LLC dba Precision Concrete Cutting for on-call concrete cutting services, attached hereto as Exhibit A, increasing the not-to-exceed contract amount from $500,000 to $1,000,000 and extending the term of the agreement to December 30, 2027.

On motion of Council Member _____, seconded by Council Member _____, the foregoing resolution was passed and adopted on June 24, 2024, by the following vote:

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

ATTEST:

_____
Deborah L. Elam
Acting City Clerk

APPROVED AS TO FORM:

/s/ Tara Mazzanti
Tara Mazzanti
Assistant City Attorney

Exhibit A – First Amendment - Precision Concrete Cutting

DocuSign Envelope ID: 2532F434-63E7-420F-AE68-5E5400D0D19C

FIRST AMENDMENT TO AGREEMENT FOR SERVICES

THIS FIRST AMENDMENT is made and entered into this ____ day of _____, 2024, by and between the City of Livermore ("City"), a municipal corporation, and Precision Emprise, LLC, dba Precision Concrete Cutting ("Contractor"), a California Limited Liability Company.

RECITALS

On March 1, 2023, City and Contractor entered into an agreement for Contractor to provide professional concrete cutting services to City ("Original Agreement"). Section 21 of the Original Agreement requires that any modifications to it must be in writing and signed by the parties.

City and Contractor desire to amend the Original Agreement to increase the compensation by $500,000 and to extend the term of the Original Agreement from December 30, 2025 to December 30, 2027. This is the First amendment to the Original Agreement.

AGREEMENT

NOW, THEREFORE, City and Contractor 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 3 of the Original Agreement is amended to read as follows:

   Description of Services. Consultant shall provide planning services as more particularly set forth in Exhibit A to the Original Agreement and Exhibit A-1 to the First Amendment to the Agreement.

   B. Section 5(a) of the Original Agreement is amended to read as follows:

   The total compensation payable by City to Contractor for the Services SHALL NOT EXCEED the sum of $1,000,000 ("not-to-exceed amount").

   1. The compensation payable by the City to Consultant for the services required by Exhibit A to the Original Agreement SHALL NOT EXCEED $500,000 ("not-to-exceed amount").
   2. The compensation payable by the City to Consultant for the services required by Exhibit A-1 to the First Amendment SHALL NOT EXCEED $500,000.

   City shall compensate Contractor for the Services rendered at the hourly rates or task amounts set forth in Exhibit "A" to the Original Agreement and

Exhibit A-1 to the First Amendment up to the not-to-exceed amount. Except as provided in the body of this Agreement, the hourly rates or task amounts are intended to be Contractor's only compensation for the Services and is inclusive of all costs of labor, licensing, permitting, travel expenses, overhead and administrative costs, and any-and-all other costs, expenses, and charges incurred by Contractor, its agents, and employees to provide the Services.

C. Section 6 of the Original Agreement is amended to read as follows:

Term. The term of this Agreement commences on February 13, 2023, and terminates upon the completion of the Services or December 30, 2027, whichever occurs first.

2. These amendments are prospective and only apply to the Services rendered by Contractor after the execution of this Amendment. Unless otherwise stated herein, this Amendment does not relieve the parties of the terms and conditions of the Original Agreement as written and in effect at the time the Services were rendered.

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

EXHIBIT A

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

CONTRACTOR: **Dated:**

DocuSigned by:
Joseph Ortega
6AB73519AF1F458...

5/28/2024 | 11:11 AM PDT

Name: Joseph Ortega
Title: Vice President

CITY OF LIVERMORE: **Dated:**

Name: Marianna Marysheva
Title: City Manager

APPROVED AS TO FORM:

DocuSigned by:
Tara Mazzanti
19DF47CAC3D0451...

Deputy/Assistant/City Attorney

APPROVED AS TO INSURANCE:

DocuSigned by:
Jas Sidhu
A5F7D34BB6A748A...

Risk Manager/Analyst

Exhibit A-1

DocuSign Envelope ID: 2532F434-63E7-420F-AE68-5E5400D0D19C

EXHIBIT A-1

Scope of Services

Concrete Cutting

1. UNDERSTANDING

Existing concrete sidewalk, curb, gutter, driveways, ADA ramps, etc., throughout the City of Livermore encounter displacements due to lifts by tree roots or settlement caused by subgrade failures. The city is in need of concrete cutting services to remove tripping hazards at various locations throughout the city.

The work will be performed on a Task Order basis. The Engineer will provide a list of locations for each Task Order.

The term of the agreement commenced on February 13, 2023. The first amendment will extend the terms of the agreement to December 30, 2027.

2. SCOPE OF SERVICES

The scope of services shall include and not be limited to:

2.1 **Task 1 - Concrete Cutting -** Concrete cutting services shall include all labor, materials, parts and equipment necessary to provide concrete cutting services for lifts from 0.5" to 2". The quantity of Inch-Foot will be calculated by the average of the lift height of the edge to be saw cut, measured in inches, multiplied by the length along the same edge, measured in feet.

2.2 **Task 2 - Database Update** - The vendor shall update the information in a software of their choosing for each location at the completion of each Task Order and be able to export the data to an excel spreadsheet. The vendor will give the City access to the data. The vendor will also include applicable photo(s) to show completed work. The cost per data entry will vary depending on the data that is entered.

2.3 **Task 3 - Condition Assessment/Inspection (Optional Service) –** The vendor shall provide condition assessment/inspection services as requested by the city. Assessment and data collection at the time of the repair is included in the repair cost. The cost for a separate trip to perform condition assessment is at additional cost.

2.4 **Task 4 – Notices to Private Property Owners and Reinspection (Optional Service)** – The vendor shall create and send out notices to private property owners requesting them to repair the sidewalks adjacent to their property. This includes creating a track list that shows dates of when the notices are sent out.

2.5 **Task 5 - Other Tasks as assigned by the Engineer (Allowance)**

3. GENERAL REQUIREMENTS

3.1 The Vendor shall identify the Project Manager who will function as the main point of contact. It is expected that the concrete cutting team proposed under this agreement will remain unchanged throughout the duration of the term of the Agreement, unless requested by the City. Replacement of key staff without consultation with the City will

DocuSign Envelope ID: 2532F434-63E7-420F-AE68-5E5400D0D19C

not be permitted.

3.2 The Vendor shall provide staff with relevant experience with concrete cutting jobs.

3.3 All individuals working on this job must be full-time employees of vendor's company and covered by the company with the necessary Worker's compensation insurance, as required by the Vendor's State License Board and the State of California.

4. License and Registration Requirements

4.1 License – Vendor shall possess a valid California contractor's license for the following classification(s): **Class C 61**

4.2 All vendors and sub vendors must be registered with the State of California Department of Industrial Relations (DIR). The registration form is located on the DIR's website at http://www.dir.ca.gov/Public-Works/PublicWorks.html.

4.3 Vendor shall obtain City of Livermore's business license.

4.4 Performance, Payment, and Warranty Bonds – The vendor will be required to provide performance and payment bonds each in the amount of 100% of the Contract Price and a Warranty Bond in the amount of 15% of the Contract Price.

4.5 Prevailing Wage Requirements - This concrete cutting service is subject to the prevailing wage requirements applicable to the locality in which the Work is to be performed for each craft, classification or type of worker needed to perform the Work, including employer payments for health and welfare, pension, vacation, apprenticeship and similar purposes. The agreement will be subject to compliance monitoring and enforcement by the California Department of Industrial Relations, under Labor Code, Section 1771.4. The prevailing rates are available online at http://www.dir.ca.gov/DLSR. Each Contractor and Subcontractor must pay no less than the specified rates to all workers employed to work on the Project. The schedule of per diem wages is based upon a working day of eight hours. The rate for holiday and overtime work must be at least time and one-half.

5. TASK ORDERS BASIS

5.1 The city does not guarantee any quantity of work and retains the right to use other vendors for the services. The city reserves the right to increase or decrease the quantity of work.

5.2 City will issue Task Orders and provide a list of locations with address. As each Task Order is completed, the city and the vendor will compile additional locations as needed for concrete cutting.

5.3 The Vendor shall complete work within the allowed budget in each Task Order.

5.4 The Vendor shall start work within 5 working days of the issuance of the Task Order and prosecute the work diligently within the number of allocated days in each Task Order.

5.5 A sample concrete cutting list of locations is included as part of this scope of services. The list will be modified by the city as needed to meet its needs and a new list will be issued with each Task Order. The city does not guarantee the number of locations and may increase or decrease the number of locations to meet available budget.

DocuSign Envelope ID: 2532F434-63E7-420F-AE68-5E5400D0D19C

5.6 Vendor shall inspect all identified areas and complete pre-construction survey photos, measurements of the displacement (lifts or settlement), and photo of the repaired concrete cutting areas. The vendor shall identify and document locations that are not suitable for concrete cutting. The vendor shall update the information in the database at the completion of each Task Order.

5.7 Vendor shall create and send out notices via mail to all the private property owners whose sidewalk lift is in need of repair. They shall also create and update a track list that shows dates of when the notices are sent out (optional service).

6. HOURS OF WORK

6.1 Normal working hours are from 9:00 am to 3:00 pm Monday to Friday unless approved otherwise by the Engineer.

6.2 Concrete cutting work shall typically occur during normal working hours. Lane closures are not anticipated for the concrete cutting services. If necessary, the city will review request from the contractor for parking lane temporary closures to perform work.

6.3 All legal holidays are observed as nonworking hours.

6.4 Should the Vendor choose to work on a Saturday, Sunday, City Holidays or on a holiday recognized by the labor unions, the Vendor shall reimburse the City of Livermore the actual cost of engineering, inspection, testing, superintendent, and/or other overhead expenses which are directly chargeable to the contract. Should such work be undertaken at the request of the City, reimbursement will not be required.

7. PROSECUTION OF WORK

7.1 The Vendor will notify the public 3 working days prior to starting the concrete cutting work.

7.2 Vendor shall diligently prosecute work and only shall start work that can be completed that same day.

7.3 Vendor shall maintain the site safe at all times. The Vendor shall erect barricades, warning signs, and any other devices to prevent unauthorized access to work areas by the public.

7.4 Work shall be performed in an orderly manner with minimum disturbance and inconvenience to the public. The Vendor shall confine and limit its personnel to only those areas required in performing the work.

7.5 All traffic control devices required must comply with CAMUTCD 2014, revision 6 requirements and latest amendments.

7.6 Vendor will be responsible for removal and proper disposal of all waste materials and surplus items prior to leaving the site each day.

7.7 Vendor shall obtain a no cost Encroachment Permit from the city. Prior to obtaining the encroachment permit, the vendor must submit the proposed traffic control plans. Work can only start after the Engineer approves the traffic control plans and issues the encroachment permit.

8. COORDINATION OF WORK AND PUBLIC SAFETY

DocuSign Envelope ID: 2532F434-63E7-420F-AE68-5E5400D0D19C

8.1 If Vendor is approached by the public with questions, the Vendor shall turn off concrete cutting equipment and be courteous and polite when speaking with the public.

8.2 Vendor shall always allow for safe passage to all pedestrians within the construction zone area. If a sidewalk, driveway etc., is closed due to construction activity, the Vendor shall place Sidewalk Closed and one-way arrow signs on Type II barricades at the nearest intersection/ crosswalks.

8.3 Vendor shall always keep the work area safe and clean to protect the public. Repair equipment and all other items incidental to the work shall not be left or stored on the sidewalk or on private property while not in use.

8.4 If the Vendor damages any property adjacent to his work the Vendor shall be required to repair all damages to the property owner's expectations at no additional costs to the City.

9. INVOICES

9.1 All monthly invoices shall include a summary of all addresses, a grid map listing the number of saw cuts completed. A separate report including inch feet unit cost, and total cost must be sent with the monthly invoice.

9.2 Vendor is required to provide weekly certified payrolls. One hard copy and one email copy must be sent to the city.

9.3 Monthly invoice will not be processed if the weekly certified payrolls are not submitted to the city.

9.4 Vendor must provide proof that all concrete and debris is disposed or recycled in a proper, environmentally safe manner. Construction demolition Recycling Report within 14 days of project completion and include receipts and/or weight tags at no additional costs to the city.

9.5 The Vendor shall only invoice for work completed in place.

10. AMERICANS WITH DISABILITIES ACT

10.1 Vendor must guarantee specified repair slope (1:10, 1:12 based upon requirements outlined by the Americans with Disabilities Act) is achieved. If defined slope is not achieved, vendor must repair to specification at no additional charge within 24 hours of discovery.

11. BEST MANAGEMENT PRACTICES

11.1 Dust shall be collected using a high-powered vacuum dust control system, eliminating most of the dust from entering into the atmosphere. The system requires multiple heads for the high capacity vacuum, and a controlled filtration system that will eliminate dust from entering the atmosphere. The suction device shall be attached to the hand-held electrically powered cutting equipment to assure that all dust be collected before it’s released into the atmosphere. No water- cooling is allowed, as it creates slurry and contaminates storm drains, possibly causing excessive environmental impact

11.2 Vendor shall implement Best Management Practices and implement Erosion and Sediment Control measures.

DocuSign Envelope ID: 2532F434-63E7-420F-AE68-5E5400D0D19C

11.3 Vendor shall adhere to all clean water regulations and exercise best management practices.

12. SPECIFICATIONS

Services shall include all labor, materials, parts, equipment, etc., necessary to provide concrete cutting for lifts 0.5” to 2”. Any existing locations with more than 2" of concrete thickness shall not be considered for concrete cutting.

12.1 CLEARING AND GRUBBING

12.1.1 Clearing and Grubbing shall conform to Section 16, “Clearing and Grubbing” of the Caltrans Standard Specifications and these Technical Specifications. Clearing and grubbing within the limits of work shall include: Specific non-native vegetation removal, select trimming of tree limbs as needed for equipment access, legal disposal of removed vegetation and debris off-site.

12.1.2 The Vendor shall protect all native trees and all other native vegetation not slated for demolition. All clearing and grubbing costs shall be included under the various unit price items.

12.2 CONCRETE CUTTING

12.2.1 All trip hazards between 0.5" inches and 2" inches in height will be cut eliminating any differential displacement (lifts or settlement) in the existing concrete surface to provide a smooth transition between concrete surfaces. The shaved areas shall be uniform, smooth, contain minimal grooving and be straight at the backline with little or no scarring of the adjacent concrete. The final finish concrete surface shall not be slippery to pedestrians.

12.2.2 The work shall be done with hand-held, electrically powered, equipment capable of cutting at any angle and able to remove the concrete completely to all edges of the trip hazard and around obstacles that may be encountered. The equipment must be capable of lying completely flush to the ground and capable of working at any angle, including absolute flush saw-cutting, and perform trip hazard removal in hard-to-reach areas, around obstacles, on narrow walkways, next to fences and retaining walls or buildings.

12.2.3 All repairs shall be taken to an absolute zero point of differential with the adjacent opposing panel, and to both edges of the sidewalk panel to mitigate the trip hazard in its entirety over the full width of the sidewalk panel as needed. Some panels may not require the full width of the sidewalk panel to be mitigated where the trip hazard recedes to an already zero differential.

12.2.4 Vendor may not leave damaged concrete corners. Patching damaged concrete corners will not be allowed and Vendor will be responsible for replacing the entire concrete slab that has damaged or cracked corners at their costs. Vendor shall saw cut damaged concrete slab at the next nearest joint.

12.2.5 Existing concrete surface that is not listed for repair and other landscape features such as grass, plants, trees, rocks, walls, irrigation, etc., shall be protected. Any damage to existing elements will require the Vendor to repair or remove and replace the damaged elements.

12.2.6 Vendor is not allowed to saw-cut the concrete deeper than the opposing slab. Any

DocuSign Envelope ID: 2532F434-63E7-420F-AE68-5E5400D0D19C

scarring or damaging to the existing adjacent concrete slab which does not have a trip hazard on it or any damage to existing landscaping, walls, irrigation, driveways or otherwise, will require that the vendor to remove and replace the damaged opposing concrete slab matching it in kind and doing all necessary repairs at no additional costs to the City.

12.2.7 All concrete cutting, debris and concrete dust that remain on the sidewalk shall be completely cleaned from the surface as well as the surrounding area, i.e., landscaping, walls, etc. and be hauled off and dumped at an approved site. Vendor must provide proof that all concrete and debris is recycled in a proper, environmentally safe manner.

13. MEASUREMENT AND PAYMENT

Task 1 - Concrete Cutting - Concrete cutting services shall include all labor, materials, parts and equipment necessary to provide concrete cutting services for lifts 0.5" to 2". The quantity of Inch-Foot will be calculated by the average of the lip height of uplifted edge saw cut multiplied by the length measured along the same edge. The Inch-Foot unit cost is for all work completed in place.

Task 2 - Database Update - The unit cost to update the information in database shall not exceed from $5-10 per entry depending on the data that is entered.

Task 3 - Condition Assessment/Inspection (Optional Service) – Assessment and data collection at the time of the repair is included in the concrete cutting cost. The cost for a separate trip to perform condition assessment shall not exceed $300 per sidewalk mile.

Task 4 – **Notices to Private Property Owners and Reinspection (Optional Service)** – The cost for sending out notices shall not exceed $70 per address.

Activity	Cost Per Address
Notice 1	$10
Notice 2	$10
Notice 3 (certified mail)	$15
Property Reinspection	$35
Total Notice Process Cost Per Address	$70

Task 5 - Other Tasks as assigned by the Engineer (Allowance) - $20,000

General items, such as mobilization, traffic control, site safety, compliance with environmental regulations (noise, dust, clean water, etc.,), demolition and disposal, recycling, required noticing to the public, permits, assessment and data collection, and all other incidental cost not specifically listed shall be included in the concrete cutting unit cost.

DocuSign Envelope ID: 2532F434-63E7-420F-AE68-5E5400D0D19C

EXHIBIT B

COMPENSATION

Tasks	Tasks Description	Unit	Unit Price
1	Concrete Cutting	Inch-Foot	$50
2	Database Update	Each entry	Varies from $5-$10
3	Condition Assessment/Inspection (Optional Service)	Per sidewalk mile	$300
4	Notices to Private Property Owners and Reinspection (Optional Service)	Per Address	$70
5	Other Tasks as assigned by the Engineer (Allowance)	--	$20,000

Example: A trip hazard on a 4-foot-wide sidewalk that consists of a 0.5” rise on one side, and tapers down to a zero rise on the other is calculated as follows:

$$\frac{(0.5"+0")}{2} \; X \; 4' = 1 \; inch \; foot$$

The cost of repair is 1 inch-foot X $50 per inch-foot = $50

LIVERMORE
CALIFORNIA

CITY COUNCIL STAFF REPORT **ITEM NO. 5.3**

DATE: June 24, 2024

TO: Honorable Mayor and City Council

FROM: Brent Smith, Community Development Director

SUBJECT: Resolution authorizing execution of a fourth amendment to the agreement with Watry Buehler Collaborative, LLP increasing the not-to-exceed amount from $1,792,800 to $2,091,800 for additional engineering services during construction associated with the Livermore Village Parking Garage Construction Project 586003.

RECOMMENDED ACTION

Staff recommends the City Council adopt a resolution authorizing the City Manager to execute a fourth amendment to the agreement with Watry Buehler Collaborative, LLP increasing the not-to-exceed amount from $1,792,800 to $2,091,800 for additional engineering services during construction associated with the Livermore Village Parking Garage Construction Project 586003.

SUMMARY

Watry Buehler Collaborative is providing engineering services in connection with the Livermore Village (L Street) Parking Garage. The L Street Parking Garage is currently under construction east of L Street, between Veterans Way and First Street as shown in Attachment 1. When completed, the parking garage will be 4 levels and contain 452 parking spaces.

This amendment increases the budget for engineering services during construction. In particular, this amendment budgets additional construction management meetings and construction phase site visits by the design team members. Members of the design team are to provide weekly site visit observations to review the current construction progress and discuss upcoming work with the Garage contractor. The purpose of these site visits and observations is to provide enhanced interaction between the design team, construction management team, and contractor to increase the speed of communication. This fourth amendment in the amount of $299,000 increases the total not-to-exceed amount of the agreement from $1,792,800 to $2,091,800.

DISCUSSION

The Livermore Village (L Street) Garage Construction Project 586003 consists of two phases. Phase 1 has been completed and included reconfiguring the surface parking lot east of the future garage,

constructing a trash enclosure facility, and installing infrastructure for 16 electrical vehicle fast chargers. Phase 2 involves construction of the parking garage and the remaining site improvements. City Council awarded the Phase 2 construction contract on November 28, 2022, and began construction April 17, 2023.

On December 14, 2021, Council approved an engineering services agreement with Watry Buehler Collaborative (Consultant) in an amount of $1,410,000 to design a parking garage and site improvements and provide engineering services during construction in connection with Livermore Village Parking Garage Construction Project 586003. On May 16, 2022, the City of Livermore (City) and Consultant increased the amount of the agreement by $100,000 to add additional design services for the Phase 1 and Phase 2 projects and a constructability review of the Phase 2 documents (first amendment). On June 15, 2023, Council approved the second amendment which increased the amount of the agreement by $114,000 to add additional design services for the Phase 2 bid package. On June 15, 2023, Council approved the third amendment which increased the amount of the agreement by $168,800 to add additional engineering services during construction for Phase 1 and Phase 2.

This fourth amendment will increase the amount of the agreement by $299,000 to add additional engineering services during construction. These services include additional construction management meetings and site visits by the design team. The design team is made up of engineers with different disciplines such as civil, structural, architectural, mechanical, electrical, and landscaping. On a rotating basis they will provide site visits. Observation memorandums will be issued to the City and the Garage contractor at the end of each visit. These extra site visits will enhance interaction and communication between the design team, construction management team, and the contractor and endeavor to guard the City against defects and deficiencies in the permanent work constructed by the contractor.

This fourth amendment will increase the amount of the agreement to a total amount of $2,091,800. The $2,091,800 contract amount is approximately 7% of the $30,090,000 construction contract. This is within the typical range for engineering design and construction support services which can be up to 10% of the construction contract.

FISCAL AND ADMINISTRATIVE IMPACTS

The budget for Livermore Village Parking Garage Construction Project 586003 in the 2023-2028 Capital Improvement Plan covers the cost of this fourth amendment and all other project costs; therefore, no additional appropriations are necessary. Funding is from 2022 COP Debt Construction (Fund 320).

COMMUNITY PILLAR

4: Inclusive & Inviting Spaces & Places

GOAL

3: Continue to implement the Downtown Specific Plan

GUIDING DOCUMENT

Downtown Specific Plan

ATTACHMENTS

1. Site Plan
2. Resolution
3. Exhibit A - Fourth Amendment

Prepared by: Joel Waxdeck
City Engineer

Approved by:

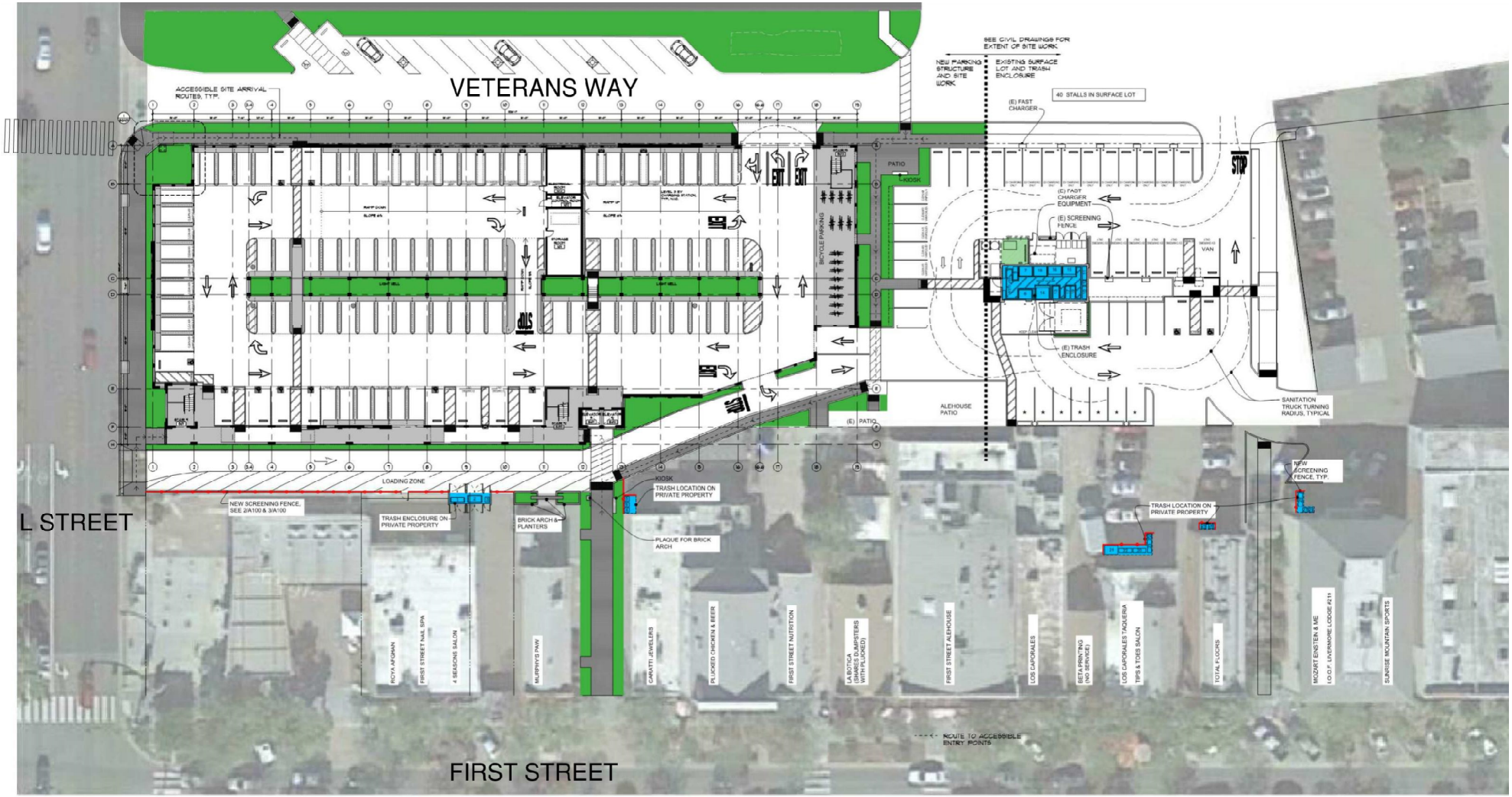
Marianna Marysheva
City Manager

Fiscal Review by:

Tina Olson
Administrative Services Director

Livermore Village Garage

Site Plan



LIVERMORE CALIFORNIA

IN THE CITY COUNCIL OF THE CITY OF LIVERMORE, CALIFORNIA

A RESOLUTION AUTHORIZING EXECUTION OF A FOURTH AMENDMENT TO THE AGREEMENT WITH WATRY BUEHLER COLLABORATIVE, LLP INCREASING THE NOT-TO-EXCEED AMOUNT FROM $1,792,800 TO $2,091,800 FOR ADDITIONAL ENGINEERING SERVICES DURING CONSTRUCTION

(Livermore Village Parking Garage Construction Project 586003)

Watry Buehler Collaborative, LLP is providing engineering services in connection with the Livermore Village (L Street) Parking Garage. The L Street Parking Garage is currently under construction east of L Street, between Veterans Way and First Street. When completed, the parking garage will be 4 levels and contain 452 parking spaces.

On December 14, 2021, City Council approved an engineering services agreement with Watry Buehler Collaborative, LLP in an amount of $1,410,000 to design a parking garage and site improvements and provide engineering services during construction in connection with Livermore Village Parking Garage Construction Project 586003. On May 16, 2022, the City of Livermore ("City") and Watry Buehler Collaborative, LLP increased the amount of the agreement by $100,000 to add additional design services for the Phase 1 and Phase 2 projects and a constructability review of the Phase 2 documents (first amendment). On June 15, 2023, City Council approved the second amendment which increased the amount of the agreement by $114,000 to add additional design services for the Phase 2 bid package. On June 15, 2023, City Council approved the third amendment which increased the amount of the agreement by $168,800 to add additional engineering services during construction for Phase 1 and Phase 2.

This fourth amendment will increase the amount of the agreement by $299,000 to add additional engineering services during construction. These services include additional construction management meetings and site visits by the design team.

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

1. Authorizes the City Manager to execute a Fourth Amendment to the Engineering Services Agreement with Watry Buehler Collaborative, LLP attached hereto as Exhibit A, increasing the not-to-exceed amount from $1,792,800 to $2,091,800 for additional engineering services during construction associated with the Livermore Village (L Street) Parking Garage Construction Project 586003.

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 June 24, 2024, by the following vote:

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

ATTEST:

_____
Deborah L. Elam
Acting City Clerk

APPROVED AS TO FORM:

/s/ Tara Mazzanti
Tara Mazzanti
Assistant City Attorney

Exhibit A – Fourth Amendment - Watry Buehler Collaborative, LLP

DocuSign Envelope ID: F2054E59-F4C4-4CA1-B5B3-112AFB466AB7

FOURTH AMENDMENT TO ENGINEERING SERVICES AGREEMENT

THIS FOURTH AMENDMENT is made and entered into this ____ day of _____, 2024, by and between the City of Livermore, a municipal corporation (“City”), and Watry Buehler Collaborative, LLP, a California Corporation (“Consultant”).

RECITALS

On December 14, 2021, City and Consultant entered into an agreement for Consultant to provide engineering design services to design a parking garage and site improvements and provide engineering services during construction in connection with Livermore Village Parking Garage Construction Project 586003 for City (“Original Agreement”). Section 21 of the Original Agreement requires that any modifications to it must be in writing and signed by the parties.

On May 16, 2022, City and Consultant amended the Original Agreement to add additional design services for the Phase 1 and Phase 2 projects and a constructability review of the Phase 2 50% construction documents. ("First Amendment")

On November 29, 2022, City and Consultant amended the Original Agreement and First Amendment to add additional design services for the Phase 2 bid package. ("Second Amendment")

On June 15, 2023, City and Consultant amended the Original Agreement, First Amendment, and Second Amendment to add additional construction engineering support services for Phase 1 and Phase 2 projects. (“Third Amendment”)

City and Consultant desire to amend the Original Agreement, First Amendment, Second Amendment, and Third Amendment to add additional construction support services for Phase 2 and increase the Consultant’s compensation by $299,000. This is the Fourth Amendment to the Original Agreement.

AGREEMENT

NOW, THEREFORE, City and Consultant 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 3 of the Original Agreement is amended to read as follows:

DocuSign Envelope ID: F2054E59-F4C4-4CA1-B5B3-112AFB466AB7

Description of Services. Consultant shall provide engineering services to design a parking garage and site improvements and provide engineering services during construction in conjunction with Livermore Village Parking Garage Construction Project 586003 ("Project"), as more particularly set forth in exhibit "A" to the Original Agreement, Exhibit "A-1" to the First Amendment, Exhibit "A-2" to the Second Amendment, Exhibit "A-3" to the Third Amendment, and Exhibit "A-4" to this Fourth Amendment (collectively "the Services")

B. Section 6(a) of the Original Agreement is amended to read as follows:

Compensation and Payment. The total compensation payable by City to Consultant for the Services SHALL NOT EXCEED the sum of $2,091,800 ("not-to-exceed amount").

1. The compensation payable by the City to the Consultant for the Services required by Exhibit "A" of the Original Agreement SHALL NOT EXCEED the sum of $1,410,000.

2. The compensation payable by the City to the Consultant for the Services required by Exhibit "A-1" of the First Amendment SHALL NOT EXCEED the sum of $100,000.

3. The compensation payable by the City to the Consultant for the Services required by Exhibit "A-2" of the Second Amendment SHALL NOT EXCEED the sum of $114,000.

4. The compensation payable by the City to the Consultant for the Services required by Exhibit "A-3" of the Third Amendment SHALL NOT EXCEED the sum of $168,800.

5. The compensation payable by the City to the Consultant for the Services required by Exhibit "A-4" of the Fourth Amendment SHALL NOT EXCEED the sum of $299,000.

City shall compensate consultant for the Services rendered at the hourly rates or task amounts set forth in Exhibit "A" to the Original Agreement, Exhibit "A-1" to the First Amendment, Exhibit "A-2" to the second Amendment, Exhibit "A-3" to the Third Amendment, and Exhibit "A-4" to the Fourth Amendment up to the not-to-exceed amount. Except as provided in the body of the agreement, the hourly rates or task amounts are intended to be Consultant's only compensation for the Services and is inclusive of all costs of labor, licensing, permitting, overhead, and administrative costs, and any-and-all other costs, expenses, and charges incurred by Consultant, its agents, and employees to provide the services.

DocuSign Envelope ID: F2054E59-F4C4-4CA1-B5B3-112AFB466AB7

2. These amendments are prospective and only apply to the Services rendered by Consultant after the execution of this Amendment. Unless otherwise stated herein, this Amendment does not relieve the parties of the terms and conditions of the Original Agreement as written and in effect at the time the Services were rendered.

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

[SIGNATURES ON FOLLOWING PAGE]

DocuSign Envelope ID: F2054E59-F4C4-4CA1-B5B3-112AFB466AB7

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

CONSULTANT: **Dated:**

DocuSigned by:
John D. Harvey
6A49DAB3BA28418...

5/24/2024 | 8:13 AM PDT

By: John D Harvey
Title: Principal

CITY OF LIVERMORE: **Dated:**

Marianna Marysheva
City Manager

APPROVED AS TO FORM:

DocuSigned by:
Tara Mazzanti
19DF47CAC5D0451...

Deputy/Assistant/City Attorney

APPROVED AS TO INSURANCE:

DocuSigned by:
Amber Hatfield
12BC7F4D8822...

Risk Manager/Analyst

Attachment:
Exhibit A-4

DocuSign Envelope ID: F2054E59-F4C4-4CA1-B5B3-112AFB466AB7

Exhibit A-4
Scope of Work
Fourth Amendment
Livermore Village Parking Garage Construction Project 586003

The City of Livermore has requested the following additional Scope of Work pertaining to the design of 'L' Street Parking Structure. The additional design team scope of work is summarized below.

Additional Scope of Work Items.

Additional Construction Phase Site Visits (Additional Fee = $299,000.00)
Design Team members to provide additional site visits and attend virtual construction management meetings for the 'L' Street Parking Structure, from March 6, 2024 through November 27, 2024. Members of the Design Team are to provide weekly site visit and observations to review the current construction progress and discuss upcoming work with Zovich Construction (Contractor). The purpose of these site visits and observations is to provide enhanced interaction between the Design Team and Contractor for the purpose of increasing the speed of communication.

The duration of each weekly site visit is anticipated to be 4 hours, and an observations memorandum will be issued to the City and Contractor at the end of each visit. The Design Team will visit the site on a rotating basis. The rotation will be determined by the Design Team and the Contractor will be informed accordingly. To the extent feasible, The Design Team will attempt to maintain a consistent schedule for the duration of the construction phase.

The following is a list of consultants included in the Design Team and the anticipated additional duration of participation for each:

Watry-Buehler (Project Management)	39 weeks
Buehler Engineering (Structural Engineering)	39 weeks
Komorous-Towey Architects	39 weeks
Guttmann & Blaevoet (MEP)	39 weeks
Kier & Wright (Civil)	22 weeks

Based on these on-site observations, the Design Team shall endeavor to guard the City against apparent defects and deficiencies in the permanent work constructed by the Contractor but shall not guarantee the performance of the Contractor.

The compensation for these services will be on an hourly basis at the design team's standard hourly rates. We estimate our compensation for these services to be the following:

Additional Construction Administration Site Visits

Watry-Buehler Collaborative	$55,000.00
Buehler Engineering	$50,000.00
Komorous-Towey Architects	$120,000.00
Guttmann & Blaevoet	$50,000.00
Kier & Wright	$24,000.00
Total Fee	**$299,000.00**

Please note that these additional site visits have been requested in an attempt to facilitate a reduction in currently projected construction duration. The Design Team is not responsible for any construction related activities, liabilities, or performance.

LIVERMORE
CALIFORNIA

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

DATE: June 24, 2024

TO: Honorable Mayor and City Council

FROM: Brent Smith, Community Development Director

SUBJECT: Resolution authorizing the following actions for the Resurfacing and Sidewalk Improvements Project composed of the Street Resurfacing 2022 Project 2022-01, Sidewalk Repair 2023 Project 2023-02, and ADA Access Ramps 2021 Project 2021-07: Reject the Bid Proposal from apparent lowest bidder, Mountain Cascade Inc., finding the bid to be incomplete and non-responsive, authorize supplemental appropriations in FY 2024-25, and award a construction agreement to A. Teichert & Son, Inc., dba Teichert Construction in an amount of $4,178,975.

RECOMMENDED ACTION

Staff recommends the City Council adopt a resolution authorizing the following actions for the Resurfacing and Sidewalk Improvements Project composed of the Street Resurfacing 2022 Project 2022-01, Sidewalk Repair 2023 Project 2023-02, and ADA Access Ramps 2021 Project 2021-07:

1. Reject the Bid Proposal from Mountain Cascade Inc., finding the bid to be incomplete and non-responsive;
2. Authorize a supplemental appropriation of $1,070,000 from Gas Tax - Senate Bill 1 to the FY 2024-25 budget for Street Resurfacing 2022 Project 2022-01;
3. Authorize a supplemental appropriation of $450,000 in Gas Taxes to the FY 2024-25 budget for the ADA Access Ramps 2021 Project 2021-07;
4. Award and authorize execution of a construction agreement with A. Teichert & Son, Inc. dba Teichert Construction in the amount of $4,178,975 for construction of the project pursuant to Livermore Code section 2.68.580 (C); and
5. Reject all other Bid Proposals.

SUMMARY

The Resurfacing and Sidewalk Improvements Project, composed of the Street Resurfacing 2022 Project 2022-01, Sidewalk Repair 2023 Project 2023-02, and ADA Access Ramps 2021 Project 2021-07, will rehabilitate several major and residential roads and complete several safety improvements including sidewalk repairs, construction of Americans with Disabilities Act (ADA) access ramps, pavement

improvements to Holmes Street (between Concannon Boulevard and Wetmore Road), and enhancements to one traffic signalized intersection (installation of new cameras and battery backup system).

On April 30, 2024, five (5) bids were received for this project. A bid protest was received from A. Teichert & Son, Inc., dba Teichert Construction the second lowest bidder, against Mountain Cascade, Inc., the apparent lowest bidder, claiming that Mountain Cascade's bid proposal was non-responsive. After detailed review, by staff in coordination with the City Attorney's Office, City staff ultimately determined that Mountain Cascade's bid proposal is indeed non-responsive. Staff recommends the City Council reject the Mountain Cascade bid and authorize a construction contract with Teichert Construction the most responsive bidder. Section 2.68.580 (C) of the Livermore Municipal Code (LMC) requires that the award of contracts subject to formal bidding be awarded to the lowest, responsive and responsible bidder. The bid submitted by Teichert Construction meets this requirement. Staff also recommends that City Council authorize supplemental appropriations from Gas Taxes (Fund 650) and Gas Tax - SB1 (Fund 651) totaling $1,520,000 in FY 2024-25 to fully fund the project.

DISCUSSION

The Resurfacing and Sidewalk Improvements Project combines the following three projects:

Street Resurfacing 2022 Project 2022-01: This project will rehabilitate seven major segments of roads consisting of three arterial roads and four collector roads totaling approximately 9,293 Linear Feet (LF) of road centerline. The improvements will include base repairs, asphalt concrete (AC) overlay, new pavement striping, and installing a battery backup system and new vehicle detection cameras to the traffic signalized intersection at Las Positas Road and Hilliker Place. The pavement striping will include bike lane and crosswalk improvements per the Bicycle, Pedestrian, and Trails Active Transportation Plan.

The street segments in this project represent priority resurfacing locations based on current street condition, daily traffic, proximity to critical facilities, and type of traffic, in accordance with the City of Livermore (City)'s ongoing pavement condition assessment program. The program rates the streets defects by way of Pavement Condition Index (PCI) values. The PCI values are posted by street segments on the City of Livermore’s website. In addition to the seven segments, Holmes Street, between Concannon Boulevard and Wetmore Road was added to this project for pavement repairs. This segment of Holmes Street has numerous amounts of potholes that require repairs.

Sidewalk Repair 2023 Project 2023-02: The City of Livermore has an annual sidewalk program and budget to manage sidewalk issues. City maintained sidewalk locations are prioritized and programmed for repairs. This project will include repairs to 220 sidewalk locations, totaling approximately 21,537 Square Feet (SF). Part of these locations are at City owned and maintained, high pedestrian traffic areas, such as the Civic Center Public Library, Carnegie Park, schools, and backing lot wall locations with high pedestrian traffic connecting to trails and pathways to parks. These locations were identified by Precision Concrete Cutting as part of their contract with the City to survey sidewalk deficiencies for high pedestrian traffic areas. In addition to these locations, the City has also taken requests from residents and have included several locations for this sidewalk repair project that meet the priority criteria.

ADA Access Ramps 2021 Project 2021-07: The ADA access ramps program is based on the request of the Human Services Commission and the City's ADA Transition Plan. The goal of the City is to identify

potential physical and programmatic barriers of accessibility for persons with disabilities and remove those obstacles. The ADA program evaluates the list of ramps which is updated routinely, prioritizes, plans, and provides ADA compliant ramps throughout the City. The priority is based on various factors including high public areas of safety concerns. This project will include construction of 28 ADA-compliant curb ramps at various locations selected based on the mentioned parameters and requests by residents with mobility issues.

Combined, these projects will extend the life of the street segments and improve public safety by eliminating road hazards, sidewalk lifts, and slope deficiencies in accessible ramps.

On April 30, 2024, bids for this project were received and opened with 5 contractors submitting bids. Mountain Cascade, Inc. was the apparent lowest bidder at the time that the bids were received, however, after detailed review by City staff in coordination with the City Attorney's Office, City staff determined that their bid was not responsive. The lowest responsible and responsive bidder is A. Teichert & Son, Inc. dba Teichert Construction. Pursuant to LMC section 2.68.580 (C), the contract must be awarded to the lowest, responsive and responsible bidder. The City acknowledged a receipt of the timely protest letter from Teichert Construction dated May 1, 2024. Mountain Cascade, Inc. responded to the bid protest with a letter dated May 6, 2024. City staff conducted a detailed review of the individual bid proposals and bid protest letters. As a result of this review, City staff deemed Mountain Cascade's bid proposal to be non-responsive based on the following reasons:

1. The Instruction to Bidders, page 5 of the contract documents, require a bidder to submit a Bidder's Questionnaire with their bid proposal. It also states that a bid that does not fully comply with this requirement may be rejected as non-responsive. Mountain Cascade, Inc. did not submit a complete Bidder's Questionnaire with the bid proposal.
2. Section 16 of the Notice Inviting Bids, page 9 of the contract documents, requires submittal of a complete subcontractor list with their bid proposal. Mountain Cascade, Inc. submitted an incomplete subcontractor list which had the incorrect license number for subcontractor Sposeto, for concrete work, and did not make or submit corrections within 24 hours of bid opening of April 30, 2024, as required by the Public Contract Code.

The City has determined that these errors cannot be waived as inconsequential errors and that Mountain Cascade's bid proposal ultimately is not the most responsive bid compared to Teichert Construction's bid. Staff recommends the City Council reject the Mountain Cascade bid and authorize a construction contract with A. Teichert & Son, dba Teichert Construction the most responsive bidder. Teichert Construction has performed similar work for the City in a satisfactory manner.

The following is a list of the bids received and the Engineer's Estimate for the project:

Resurfacing and Sidewalk Improvements Bids

Contractor	City	Bid Amount
Mountain Cascade, Inc.	Livermore	$3,918,989.20
Teichert Construction	Pleasanton	$4,178,975.00
Radius Earthwork, Inc.	Campbell	$4,297,104.81
DeSilva Gates Construction Group, Inc.	Dublin	$5,232,232.00
California Highway Construction Group, Inc.	Concord	$5,520,923.95

Engineer's Estimate		$4,000,000.00

In accordance with LMC section 2.68.560, change order authorization of 10% of the contract value is allowed.

FISCAL AND ADMINISTRATIVE IMPACTS

The Resurfacing and Sidewalk Improvement Project will be funded by the following 3 projects: Street Resurfacing 2022 Project 2022-01 funded with Gas Taxes - SB1 (Fund 651), Sidewalk Repair 2023 Project 2023-02 funded with Gas Taxes (Fund 650), and the ADA Access Ramps 2021 Project 2021-07 funded with Gas Taxes (Fund 650). Supplemental appropriations totaling $1,520,000 in FY 2024-25 are required to fully fund the cost of these projects. Existing budgets for these projects in the 2023-28 Capital Improvement Plan together with these supplemental appropriations will cover this construction contract, change orders, construction management, materials testing, inspection, and administration.

The construction bids were higher than the costs estimated in late 2022, when the 2023-28 Capital Improvement Plan was being developed, based on the following reasons: prices for asphalt and concrete have increased significantly over the last two years, high priority ADA ramps were added to the project, pothole repairs on Holmes Street between Concannon Boulevard and Wetmore Road were added to the project, the lowest responsive and responsible bidder is higher than the lowest bid which is non-responsive.

The existing and proposed budgets for the individual projects are summarized in the tables below.

Street Resurfacing 2022, Project 2022-01

Fund No.	Fund Name	Budgeted FY 2023-24	Carrying Forward From FY 2023-24 to FY 2024-25	Budgeted FY2024-25	Supplemental Appropriation Requested in FY 2024-25	Proposed FY 2024-25
651	Gas Tax - SB1	$2,500,000	$2,430,000	$0	$1,070,000	$3,500,000
	Total	$2,500,000	$2,430,000	$0	$1,070,000	$3,500,000

Sidewalk Repair 2023 Project 2023-02

Fund No.	Fund Name	Budgeted FY 2023-24	Carrying Forward From FY 2023-24 to FY 2024-25	Budgeted FY2024-25	Supplemental Appropriation Requested in FY 2024-25	Proposed FY 2024-25
650	Gas Tax	$1,700,000	$500,000	$1,200,000	$0	$1,700,000
	Total	$1,700,000	$500,000	$1,200,000	$0	$1,700,000

ADA Access Ramps 2021 Project 2021-07

Fund No.	Fund Name	Budgeted FY 2023-24	Carrying Forward From FY 2023-24 to FY 2024-25	Budgeted FY2024-25	Supplemental Appropriation Requested in FY 2024-25	Proposed FY 2024-25
650	Gas Tax	$50,000	$30,000	$350,000	$450,000	$830,000
	Total	$50,000	$30,000	$350,000	$450,000	$830,000

COMMUNITY PILLAR

1: A Safe Community That Thrives

GOAL

10: Work to maintain a safe and efficient local transportation network and address safety concerns.

ATTACHMENTS

1. Location Map
2. Resolution
3. Exhibit A - Agreement

Prepared by: Roberto Escobar
Associate Civil Engineer

Approved by:

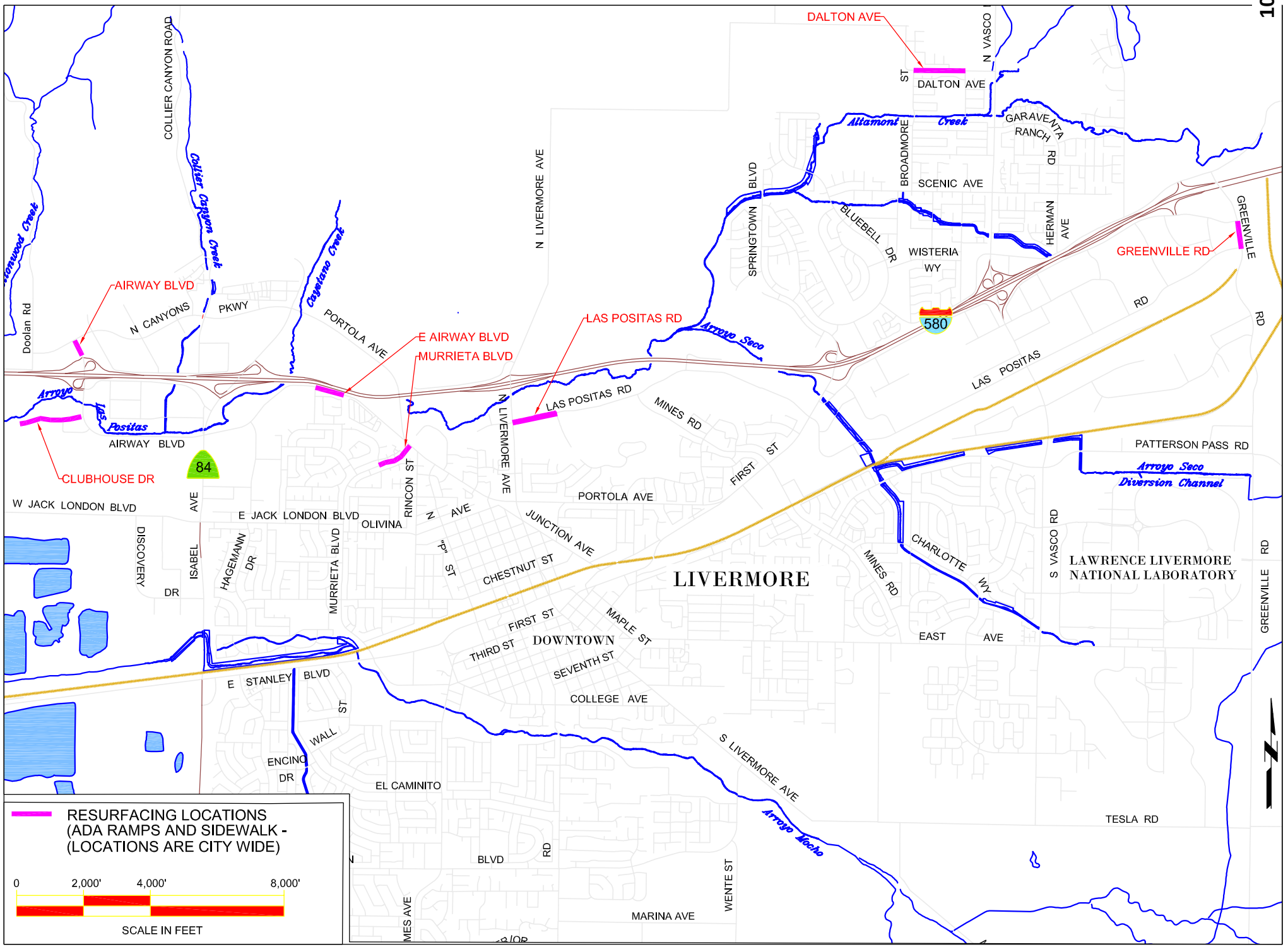
Marianna Marysheva
City Manager

Fiscal Review by:

Tina Olson
Administrative Services Director

LOCATION MAP

ATTACHMENT 1



IN THE CITY COUNCIL OF THE CITY OF LIVERMORE, CALIFORNIA

A RESOLUTION AUTHORIZING THE REJECTION OF THE BID PROPOSAL FROM MOUNTAIN CASCADE, INC., FINDING THE BID TO BE INCOMPLETE AND NON-RESPONSIVE, AUTHORIZING SUPPLEMENTAL APPROPRIATIONS TO FISCAL YEAR 2024-25, AND AWARDING A CONSTRUCTION AGREEMENT TO A. TEICHERT & SON, INC., DBA TEICHERT CONSTRUCTION IN THE AMOUNT OF $4,178,975 FOR THE RESURFACING AND SIDEWALK IMPROVEMENTS PROJECT COMPOSED OF THE STREET RESURFACING 2022 PROJECT 2022-01, SIDEWALK REPAIR 2023 PROJECT 2023-02, AND ADA ACCESS RAMPS 2021 PROJECT 2021-07

The City of Livermore ("City") advertised and received bid proposals for the construction of the Resurfacing and Sidewalk Improvements Project, composed of the Street Resurfacing 2022 Project 2022-01, Sidewalk Repair 2023 Project 2023-02 and ADA Access Ramps 2021 Project 2021-07. The bid proposal from Mountain Cascade, Inc., the apparent lowest bidder, was deemed incomplete and non-responsive.

A. Teichert & Son, Inc., dba Teichert Construction submitted the lowest responsible and responsive Bid Proposal in the amount of $4,178,975 that is acceptable to the City of Livermore.

The Resurfacing and Sidewalk Improvements Project requires additional funding to cover construction, City staff and professional engineering services costs.

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

1. Authorizes the rejection of the bid proposal from Mountain Cascade, Inc., finding the bid to be incomplete and non-responsive;

2. Authorizes a supplemental appropriation of $1,070,000 in Gas Tax – Senate Bill 1 Fund 651 to the FY 2024-25 budget for Street Resurfacing 2022 Project 2022-01;

3. Authorizes a supplemental appropriation of $450,000 in Gas Tax Fund 650 to the FY 2024-25 budget for the ADA Access Ramps 2021 Project 2021-07;

4. Awards and authorizes execution of a construction agreement with A. Teichert & Son, Inc. dba Teichert Construction, attached hereto as Exhibit A, and incorporated by this reference, in the amount of $4,178,975, for construction of the project pursuant to Livermore Municipal Code section 2.68.580 (C);

5. Rejects all other Bid Proposals; and

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

On motion of Council Member _____, seconded by Council Member _____, the foregoing resolution was passed and adopted on June 24, 2024, by the following vote:

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

ATTEST:

_____
Deborah L. Elam
Acting City Clerk

APPROVED AS TO FORM:

/s/ Tara Mazzanti
Tara Mazzanti
Assistant City Attorney

Exhibit A – Agreement with Teichert Construction

CONTRACT

This public works contract ("Contract") is entered into by and between the City of Livermore, a California Municipal Corporation ("City") and A. Teichert & Son, Inc. dba Teichert Construction a California Corporation ("Contractor") for work on the Resurfacing and Sidewalk Improvements, Project ("Project").

The Parties Agree as Follows:

1. Award of Contract.

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

Contract Documents.

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

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

b. General Conditions;

c. Special Conditions;

d. Division One Technical Specifications;

e. Appendix;

f. Index of Defined Terms;

g. Project Drawings and Specifications;

h. Bid Addenda, if any;

i. Change Orders, if any;

j. ALB Notice;

k. Notice to Proceed;

l. City Standard Specifications and Details;

m. And the following: No other documents

Contractor's Obligations.

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

Payment.

As full and complete compensation for Contractor's timely performance and completion of the Work in strict accordance with the terms and conditions of the Contract Documents, City will pay Contractor Four Million One Hundred Seventy-Eight Thousand Nine Hundred Seventy-Five Dollars ($4,178,975.00) (the "**Contract Price**"), in accordance with the payment provisions in the General Conditions.

Time for Completion.

Substantial Completion

Contractor must achieve Substantial Completion, as that term is defined in the General Conditions, of the Project Work within 180 Working Days from the commencement date stated in the Notice to Proceed. ("**Substantial Completion Deadline**."). For this project, the Contractor shall also incorporate 5 number of average anticipated inclement Weather Days into their bid estimate. Contractor shall be solely responsible for the extended overhead and profit for these weather days and shall not be compensated by the City in any way, reference Section 10.3 of the General Conditions and Section 013200-4.3 Contract Schedules for additional weather day information.

Final Completion

Contractor must achieve Final Completion, as that term is defined in the General Conditions, of the Project Work within *30* Working Days after the date of substantial completion. ("**Final Completion Deadline**.")

Early Completion.

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

Liquidated Damages.

If Contractor fails to meet either the Substantial Completion Deadline or the Final Completion Deadline, City may assess liquidated damages according the provisions in

the General Conditions of the Contract Documents in the following amounts for each day of Unexcused Delay, and the Contract Price shall be reduced accordingly.

Substantial Completion Deadline: Five Hundred ($500) per day.

Final Completion Deadline: Five Hundred ($ 500) per day.

Labor Code Compliance.

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

Prevailing Wages.

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

DIR Registration.

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

Workers' Compensation Certification.

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

The successful bidder previous to the entering of the contract to do the said work shall take out and maintain in full force and effect worker's compensation insurance with an insurance carrier authorized to transact business in the State of California, covering the bidder's full liability for compensation to any persons employed who may be injured in the carrying out of said contract or the dependents thereof. Evidence of such worker's compensation insurance shall be furnished to the City of Livermore by certificate and waiver of subrogation in the City's electronic insurance certificate tracking system (PINS) prior to the commencement of the work and said certificate shall contain a provision that the coverage thereunder will not be canceled until at least thirty (30) days prior written notice has been given to the City.

Notice.

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

	City	Contractor
Name	Juan Tenorio	Jason Theriault
Address	1052 South Livermore Avenue	5200 Franklin Dr., Ste. 115
City/state/zip	Livermore, CA 94550	Pleasanton, CA 94588
Phone	925-960-4554	925-621-5700
Fax	925-960-4505	925-621-5799
Attention	City Engineer	Chief Estimator
Email	jtenorio@livermoreca.gov	jtheriault@teichert.com
Copy to	xliu@livermoreca.gov	sfoss@teichert.com

General Provisions.

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

Assignment and Successors.

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

Third Party Beneficiaries.

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

Governing Law and Venue.

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

Amendment.

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

Integration; Severability.

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

Authorization.

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

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

CITY	CONTRACTOR
City of Livermore, a California Municipal Corporation	
s/_____	s/ Scott R. Lewis - VP & Const. Gen. Manager
Marianna Marysheva, City Manager	Name/Title [print]
Date: _____	Date: May 24, 2024
Approved as to form:	s/ Ed Hernberger - Sr VP & President
	Name/Title [print]
_____	Date: May 24, 2024
City of Livermore City Attorney	#8
	Contractor's Calif. License Number(s)
	Seal:
	4/30/25
	Expiration Date(s)

LIVERMORE
CALIFORNIA

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

DATE: June 24, 2024

TO: Honorable Mayor and City Council

FROM: Brent Smith, Community Development Director

SUBJECT: Resolution approving Final Tract Map 8657; authorizing execution of a Subdivision Improvement Agreement for the Triad Drive East Development (Amarone); and accepting on behalf of the public all real property offered for dedication within the Final Tract Map 8657 except for the certain easements which City Council reserves the right to accept at a future date.

RECOMMENDED ACTION

Staff recommends the City Council adopt a resolution:

1. Finding that the requirements of the California Environmental Quality Act have been satisfied;
2. Approving Final Tract Map 8657 for recording;
3. Approving and authorizing execution of the Subdivision Improvement Agreement which includes a 12-month extension (24 months in total) to complete the required improvements; and
4. Accepting, on behalf of the public, all real property offered for dedication within Final Tract Map 8657 in conformance with the terms of the offer except for the following, which the Council rejects at this time reserving the right to accept the offer at a future date: Public Utility Easement (P.U.E.), Sanitary Sewer Easement (S.S.E.), Waterline Easement (W.L.E.), Emergency Vehicle Access Easement (E.V.A.E.) and Public Sidewalk Easement (S.W.E.)

SUMMARY

Civic North Canyon Parkway, LLC (Developer) has completed a Final Tract Map and Subdivision Improvement Agreement in conformance with the conditions of approval for Vesting Tentative Tract Map 8657. Tract 8657 consists of 172 condominium units at the northeast corner of North Canyons Parkway and Triad Drive. The developer has entered into a low-income housing agreement with the City, which includes 34 units affordable to individuals and families with median and moderate-income levels. The proposed Subdivision Improvement Agreement will secure the construction of the public and private improvements. Public improvements include public sewer, water, Class IV bike lane, and sidewalks. Private improvements include private storm drain, streets, open space, bio-retention basins, utilities, and lighting. Final Tract Map 8657 can now be approved. All real property offered for dedication on Final Tract Map 8657 can be accepted at this time except for the following: Public Utility Easement (P.U.E.),

Sanitary Sewer Easement (S.S.E.), Waterline Easement (W.L.E.), Emergency Vehicle Access Easement (E.V.A.E.) and Public Sidewalk Easement (S.W.E.), reserving the right to accept the offers at a future date.

DISCUSSION

On May 22, 2023, the City Council approved Vesting Tentative Tract Map 8657 (SUB 22-005) and the conditions of approval for the Triad Drive East development, consisting of 172 condominium units at the northeast corner of North Canyons Parkway and Triad Drive as shown in the Vicinity Map (Attachment 1). Staff has found the Final Tract Map 8657 and improvement plans to be in substantial conformance with the conditions of approval for Vesting Tentative Tract 8657. The improvement plans have been approved and are on file with the City Engineer. The developer, Civic North Canyons Parkway, LLC, is responsible for funding and constructing public and private improvements required for this development, including public sewer, water, Class IV bike lane, sidewalks, private storm drain, streets, open space, bio-retention basins, utilities, and lighting. The proposed Subdivision Improvement Agreement will secure the construction of the public and private improvements. The developer has provided the required insurance and bonds securing the construction of improvements per the provisions of the Subdivision Improvement Agreement. The bonds are on file in the City Clerk's office. The bonds will be released once the public improvements have been completed and accepted by the City. According to Development Code section 10.05.090, the subdivider must complete the improvements within 12 months from the date of recording of the final map, unless an extension is granted by City Council. The subdivider has requested a 12-month extension to complete the improvements. Staff recommends that a 12-month extension should be granted to the subdivider, for a total of 24 months, to provide time to complete the improvements as required.

There are private infrastructure improvements, including storm drains, streets, landscaping, bio-retention basins, utilities, and lighting which will be privately maintained through the Homeowners Association. Staff has reviewed the Covenants, Conditions and Restrictions (CC&R's) and determined that the maintenance of this private infrastructure has been adequately addressed. Final Tract Map 8657 includes an offer of dedication for public utilities, public sanitary sewer, public water, public emergency vehicle access easement, and public sidewalk easement. Staff recommends the Council reject Public Utility Easement (P.U.E.), the Sanitary Sewer Easement (S.S.E.), Waterline Easement (W.L.E.), the Emergency Vehicle Access Easement (E.V.A.E.), and the Public Sidewalk Easement (S.W.E.), reserving the right to accept the offers at a future date, after these public improvements have been completed.

FISCAL AND ADMINISTRATIVE IMPACTS

The estimated annual cost for maintenance of public infrastructure, including curb, gutter, sidewalk, bike lane, planter strips, paving, sewer and water is $22,000. $3,400 of this cost will be funded by Sewer Connection Fees (Fund 241) and $16,400 of this cost is funded by Water Connection Fees (Fund 251). The remaining $2,200 is funded by the General Fund (Fund 001) and other use taxes, which is partially derived from increased property taxes generated from the new development.

In addition, the Developer has annexed into the Isabel Neighborhood Specific Plan Communities Facilities District (CDF No. 2023-1). As part of the Communities Facilities District, homeowners within this tract will be assessed annually to provide a portion of funds to maintain offsite public amenities within the boundaries of Isabel Neighborhood Specific Plan.

COMMUNITY PILLAR

2: Economy That Prospers

GOAL

4: Implement the Isabel Neighborhood Specific Plan

ATTACHMENTS

1. Vicinity Map
2. Resolution
3. Exhibit A - Final Tract Map 8657
4. Exhibit B - Subdivision Improvement Agreement

Prepared by: Jarrett Rasmussen
Junior Engineer

Approved by:

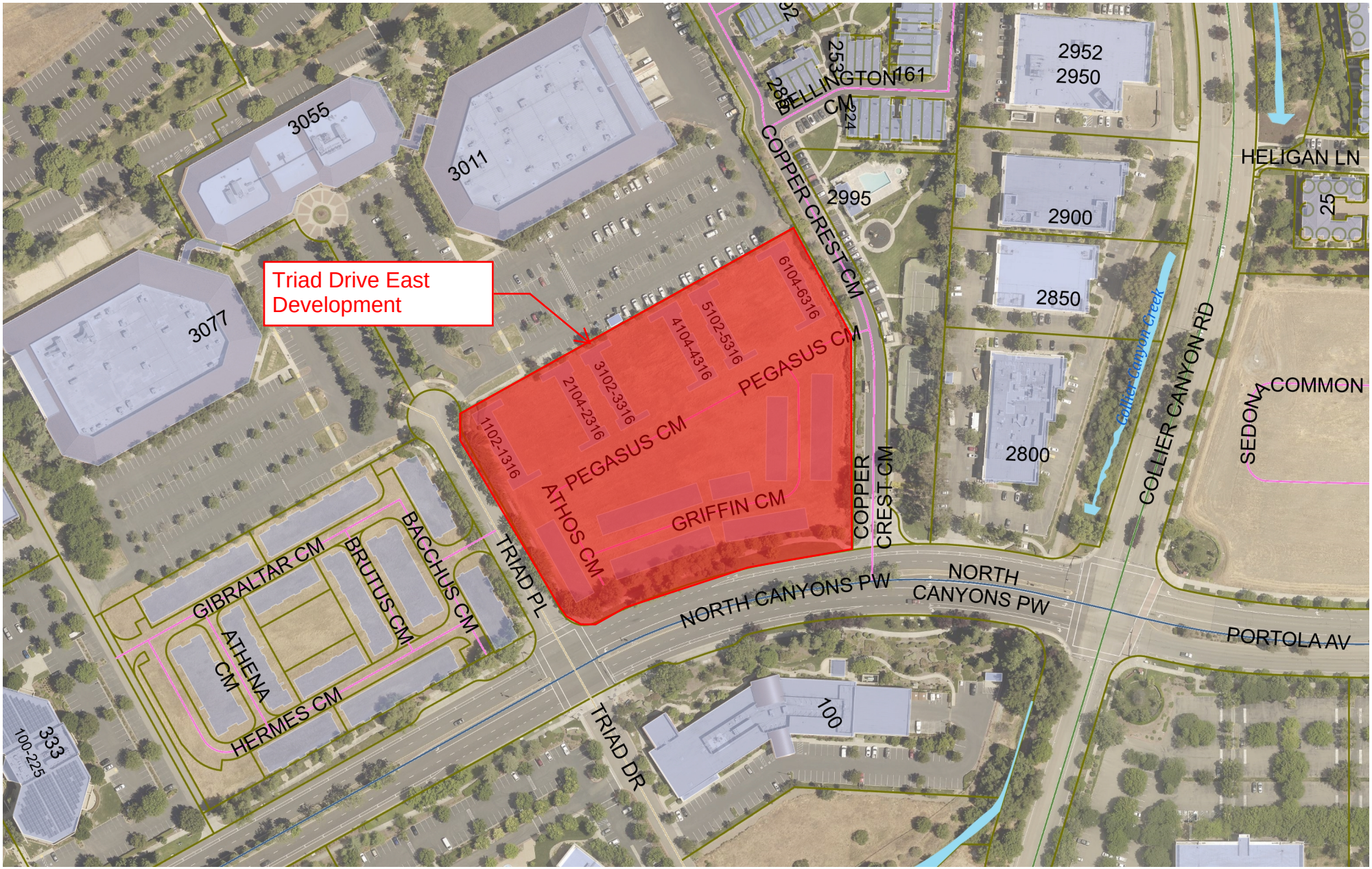
Marianna Marysheva
City Manager

Fiscal Review by:

Tina Olson
Administrative Services Director

LIVERMORE CALIFORNIA

Triad Drive East Vicinity Map



400.0 0 200.00 400.0 Feet

NAD_1983_2011_StatePlane_California_III_FIPS_0403_Ft_US
Livermore IT, GIS Services

1: 2,400

This map is based on City of Livermore GIS Information and reflects the most current information at the time of this printing. The map is intended for reference purposes only and the City and its staff is not responsible for errors or omissions.

Notes

IN THE CITY COUNCIL OF THE CITY OF LIVERMORE, CALIFORNIA

A RESOLUTION APPROVING FINAL TRACT MAP 8657; AUTHORIZING EXECUTION OF A SUBDIVISION IMPROVEMENT AGREEMENT FOR THE TRIAD DRIVE EAST DEVELOPMENT (AMARONE); AND ACCEPTING ON BEHALF OF THE PUBLIC ALL REAL PROPERTY OFFERED FOR DEDICATION WITHIN THE FINAL TRACT MAP 8657 EXCEPT FOR CERTAIN EASEMENTS WHICH CITY COUNCIL RESERVES THE RIGHT TO ACCEPT AT A FUTURE DATE

(FINAL TRACT MAP 8657 – TRIAD DRIVE EAST (AMARONE))

Civic Triad East, LLC ("Developer") has presented proposed Final Tract Map 8657 (SUB22-005) situated in the City of Livermore, County of Alameda, State of California, a copy of which is attached hereto as Exhibit A, in accordance with the provisions of the California Subdivision Map Act ("Act") and the City of Livermore ("City") Development Code. The Developer has presented a Subdivision Improvement Agreement, a copy of which is attached hereto as Exhibit B, providing for the improvements and other terms and agreements required as a condition of approval of Final Tract Map.

The City Engineer reviewed the Final Tract Map and certified it as required by the Act and Development Code. Additionally, the City Engineer reviewed and approved that staff report concerning the Final Tract Map and Subdivision Improvement Agreement which recommends approval of the Final Tract Map and Subdivision Improvement Agreement.

The City Attorney reviewed the surety provided by Civic Triad East, LLC, to secure performance of the Subdivision Improvement Agreement as required by California and City law.

On May 22, 2023, the City Council adopted Resolution No. 2023-088 which, among other things, approved Vesting Tentative Tract Map 8657 Triad Drive East, ("Development") subject to the conditions of approval. The City Council also determined that the Project was exempt from the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Sections 15182 (c), which exempts residential projects that implement a specific plan. Any potential impacts to the environment that may result due to approval of the proposed Tract Map and Subdivision Improvement Agreement were considered part of the environmental review approved by Resolution No. 2023-087.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Livermore that, because any potential impacts to the environment that may be caused by approval of Final Tract Map 8657 and Subdivision Improvement Agreement were considered by the environmental review approved as part of Resolution No. 2023-087, the requirements of the California Environmental Quality Act have been satisfied.

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

1. The Final Tract Map 8657, attached hereto as Exhibit A, is approved and all those parcels of land, easements, and other legal interests in land offered for public use are accepted in conformity with the terms of the offer, except for the following which the City Council rejects at this time, reserving the right to accept the offers at a future date subject to Government Code sections 66477.2 and 7050:

> Public Utility Easement (P.U.E.), Sanitary Sewer Easement (S.S.E.), Water Line Easement (W.L.E.), Emergency Vehicle Access Easement (E.V.A.E.), and Public Sidewalk Easement (S.W.E.).

2. The Subdivision Improvement Agreement, attached hereto as Exhibit B, is approved and the Mayor is authorized to sign the agreement on behalf of the City of Livermore.

3. It grants, pursuant to Section 10.05.090 of the Livermore Development Code, the Developer a 12-month extension, which is reflected in the Subdivision Improvement Agreement, attached hereto as Exhibit B, allowing the Developer a total of 24 months from the date the Subdivision Improvement Agreement is executed to complete the required improvements.

4. The City Clerk is directed to execute the certificate, attached to the Final Tract Map 8657, and affix the Seal of the City and to record the Final Tract Map 8657, and the Subdivision Improvement Agreement with the County Recorder.

On motion of Council Member _____, seconded by Council Member _____, the foregoing resolution was passed and adopted on June 24, 2024, by the following vote:

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

ATTEST:

_____
Deborah L. Elam
Acting City Clerk

APPROVED AS TO FORM:

/s/ Molly O'Toole
Molly O'Toole
Deputy City Attorney

Exhibit A – Final Tract Map 8657
Exhibit B – Subdivision Improvement Agreement

TRACT 8657
TRIAD DRIVE EAST

FOR CONDOMINIUM PURPOSES
CONSISTING OF 9 SHEETS
BEING A SUBDIVISION OF LOT 2, LOT LINE ADJUSTMENT #66-98
CERTIFICATE OF COMPLIANCE RECORDED AS DOCUMENT NUMBER 98242927
CITY OF LIVERMORE, ALAMEDA COUNTY, CALIFORNIA

cbg
CIVIL ENGINEERS ▪ SURVEYORS ▪ PLANNERS
SAN RAMON ▪ (925) 866-0322
ROSEVILLE ▪ (916)788-4456
WWW.CBANDG.COM

APRIL 2024

OWNER'S STATEMENT

THE UNDERSIGNED, CIVIC TRIAD EAST, LLC HEREBY STATES THAT THEY ARE THE OWNERS OF ALL LANDS DELINEATED AND EMBRACED WITHIN THE BOUNDARY LINES UPON THE HEREIN EMBRACED MAP ENTITLED TRACT 8657, CITY OF LIVERMORE, ALAMEDA COUNTY, CALIFORNIA CONSISTING OF 9 SHEETS, THIS STATEMENT BEING ON SHEET ONE THEREOF; THAT IT HAS CAUSED SAID MAP TO BE PREPARED FOR RECORD AND DOES CONSENT TO THE MAKING AND RECORDATION OF SAID MAP; THAT SAID MAP PARTICULARLY SETS FORTH AND DESCRIBES ALL THE LOTS INTENDED FOR SALE BY NUMBERS WITH THEIR PRECISE LENGTH AND WIDTH; THAT SAID PARCELS TO BE OWNED BY THE HOMEOWNERS ASSOCIATION AND MAINTAINED IN ACCORDANCE WITH THE CC&RS GOVERNING THIS PROJECT.

THE REAL PROPERTY DESCRIBED BELOW IS DEDICATED AS AN EASEMENT FOR PUBLIC PURPOSES:

1. THE UNDERSIGNED HEREBY DEDICATES AN EASEMENT TO THE PUBLIC FOREVER THE RIGHT TO CONSTRUCT AND MAINTAIN PUBLIC UTILITIES AND APPURTENANCES THERETO UNDER, ON AND OVER THOSE CERTAIN STRIPS OF LAND SHOWN UPON SAID MAP AS "PUE" (PUBLIC UTILITY EASEMENT) THEREON, ALL AS EMBRACED WITHIN THE BOUNDARY LINES UPON SAID MAP AND THE RIGHT TO ENTER UPON ALL SAID STRIPS OF LAND FOR THE PURPOSE OF CONSTRUCTING, RECONSTRUCTING, MAINTAINING, AND REPAIRING SAID PUBLIC UTILITIES AND APPURTENANCES THERETO.
2. THE UNDERSIGNED HEREBY DEDICATES TO THE PUBLIC FOREVER THE RIGHT TO CONSTRUCT, RECONSTRUCT AND MAINTAIN SANITARY SEWERS AND APPURTENANCES THERETO UNDER, ON AND OVER THOSE CERTAIN STRIPS OF LAND SHOWN UPON SAID MAP AS "SSE," (SANITARY SEWER EASEMENT) THEREON, ALL AS EMBRACED WITHIN THE BOUNDARY LINES UPON SAID MAP AND THE RIGHT TO ENTER UPON SAID STRIPS OF LAND FOR THE PURPOSE OF CONSTRUCTING, RECONSTRUCTING, MAINTAINING, AND REPAIRING SANITARY SEWERS AND APPURTENANCES THERETO.
2. THE UNDERSIGNED HEREBY DEDICATES TO THE PUBLIC FOREVER THE RIGHT TO CONSTRUCT, RECONSTRUCT AND MAINTAIN WATER AND APPURTENANCES THERETO UNDER, ON AND OVER THOSE CERTAIN STRIPS OF LAND SHOWN UPON SAID MAP AS "WLE," (WATERLINE EASEMENT) THEREON, ALL AS EMBRACED WITHIN THE BOUNDARY LINES UPON SAID MAP AND THE RIGHT TO ENTER UPON SAID STRIPS OF LAND FOR THE PURPOSE OF CONSTRUCTING, RECONSTRUCTING, MAINTAINING, AND REPAIRING SANITARY SEWERS AND APPURTENANCES THERETO.
3. THE UNDERSIGNED HEREBY DEDICATES TO THE PUBLIC FOREVER, AN "EVAE" (EMERGENCY VEHICLE ACCESS EASEMENT) ON, OVER AND ACROSS THOSE CERTAIN STRIPS OF LAND DELINEATED HEREON AND DESIGNATED AS AND EMBRACED WITHIN THE BOUNDARY LINES OF HEREIN EMBODIED MAP FOR THE INGRESS AND EGRESS OF EMERGENCY VEHICLES.
4. THE UNDERSIGNED HEREBY DEDICATES TO THE PUBLIC FOREVER THE RIGHT TO CONSTRUCT, RECONSTRUCT AND MAINTAIN SIDEWALKS AND APPURTENANCES, IN, ON, OVER AND UNDER THOSE STRIPS OF LAND SHOWN UPON SAID MAP AND DESIGNATED "SWE" (PUBLIC SIDEWALK EASEMENT) THEREON, AS EMBRACED WITHIN THE BOUNDARY LINES OF THE HEREIN EMBODIED MAP, TOGETHER WITH THE RIGHT TO ENTER UPON SAID STRIPS FOR THE PURPOSES OF PUBLIC ACCESS, CONSTRUCTING, RECONSTRUCTION, MAINTAINING OR REPAIRING SAID SIDEWALKS AND APPURTENANCES THERETO.

THE REAL PROPERTY DESCRIBED BELOW IS RESERVED FOR PRIVATE PURPOSES AND IS NOT DEDICATED TO THE PUBLIC:

1. THE UNDERSIGNED DOES HEREBY RESERVE TO ITSELF, AND TO THE OWNERS, RESIDENTS, AND OTHERS DESIGNATED BY THE HOMEOWNERS ASSOCIATION, THE PARCELS DESIGNATED AS PARCEL A, PARCEL B AND PARCEL C FOR PRIVATE STREET, PRIVATE UTILITY AND PRIVATE ACCESS PURPOSES, AND PARCEL D, PARCEL G AND PARCEL H FOR COMMON OPEN SPACE PURPOSES AND PARCEL E AND PARCEL F FOR BIORETENTION, OR WATER QUALITY MANAGEMENT, SAID PARCELS AND PRIVATE UTILITY PURPOSES TO BE OWNED BY THE HOMEOWNERS ASSOCIATION AND MAINTAINED IN ACCORDANCE WITH THE CC&R'S GOVERNING THIS PROJECT.

THIS MAP SHOWS OR NOTES ALL EASEMENTS, EXISTING OR OF RECORD, WITHIN THE BOUNDARY LINES OF THE HEREIN EMBODIED MAP.

AS OWNER: CIVIC TRIAD EAST, LLC, A DELAWARE LIMITED LIABILITY COMPANY

BY: _____

NAME: Ryan Parlett

TITLE: Authorized Signer

DATE: April 9, 2024

OWNER'S ACKNOWLEDGMENT

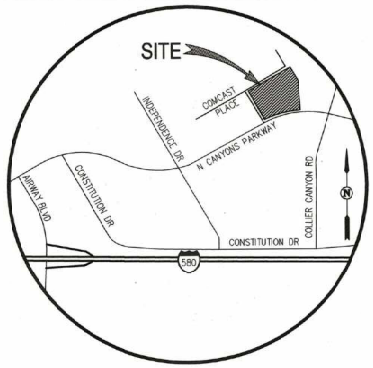
A NOTARY PUBLIC OR OTHER OFFICER COMPLETING THIS CERTIFICATE VERIFIES ONLY THE IDENTITY OF THE INDIVIDUAL WHO SIGNED THE DOCUMENT TO WHICH THIS CERTIFICATE IS ATTACHED, AND NOT THE TRUTHFULNESS, ACCURACY, OR VALIDITY OF THAT DOCUMENT.

STATE OF California } SS.
COUNTY OF Contra Costa }

ON April 9, 2024, BEFORE ME, Laurel Nunez, A NOTARY PUBLIC, PERSONALLY APPEARED Ryan Parlett, 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:
SIGNATURE: Laurel Nunez
NAME (PRINT): Laurel Nunez
PRINCIPAL COUNTY OF BUSINESS: Contra Costa
MY COMMISSION NUMBER: 2425856
MY COMMISSION EXPIRES: Nov. 8, 2026



VICINITY MAP
NOT TO SCALE

CLERK OF THE BOARD OF SUPERVISOR'S STATEMENT

STATE OF CALIFORNIA }
COUNTY OF ALAMEDA } SS

I, ANIKA CAMPBELL-BELTON, CLERK OF THE BOARD OF SUPERVISORS OF THE COUNTY OF ALAMEDA, STATE OF CALIFORNIA, DO HEREBY STATE, AS CHECKED BELOW, THAT:

☐ AN APPROVED BOND HAS BEEN FILED WITH THE SUPERVISORS OF SAID COUNTY AND STATE IN THE AMOUNT OF $_____ CONDITIONED FOR THE PAYMENT OF ALL TAXES AND SPECIAL ASSESSMENTS COLLECTED AS TAXES, WHICH ARE NOW A LIEN AGAINST SAID LAND OR ANY PART THEREOF BUT NOT YET PAYABLE, AND WAS DULY APPROVED BY SAID BOARD IN SAID AMOUNT.

☐ ALL TAXES AND SPECIAL ASSESSMENTS COLLECTED AS TAXES HAVE BEEN PAID AS CERTIFIED BY THE TREASURER-TAX COLLECTOR OF THE COUNTY OF ALAMEDA.

IN WITNESS WHEREOF I HAVE HEREUNTO SET MY HAND THIS _____ DAY OF _____, 20__.

_____
ANIKA CAMPBELL-BELTON
CLERK OF THE BOARD OF SUPERVISORS
COUNTY OF ALAMEDA
STATE OF CALIFORNIA

BY: _____
DEPUTY COUNTY CLERK

COUNTY RECORDER'S STATEMENT

FILED FOR RECORD THIS _____ DAY OF _____, 20__ AT _____ M., IN BOOK _____ OF MAPS AT PAGES _____ AT THE REQUEST OF FIRST AMERICAN TITLE COMPANY.

FEE: $_____ PD, SERIES NO. _____

_____
MELISSA WILK
COUNTY RECORDER IN AND FOR THE COUNTY OF ALAMEDA, STATE OF CALIFORNIA

BY: _____
DEPUTY CLERK

JOB NO. 3394-010

SHEET 1 OF 9

CITY CLERK'S STATEMENT

STATE OF CALIFORNIA }
COUNTY OF ALAMEDA } SS

I, DEBBIE ELAM, ACTING CITY CLERK AND CLERK OF THE CITY COUNCIL OF THE CITY OF LIVERMORE, ALAMEDA COUNTY, STATE OF CALIFORNIA, DO HEREBY STATE THAT THIS MAP ENTITLED "TRACT 8657", CITY OF LIVERMORE, ALAMEDA COUNTY, STATE OF CALIFORNIA WAS PRESENTED TO THE COUNCIL OF THE CITY OF LIVERMORE AT A MEETING THEREOF HELD ON _____, 20___, AND THE COUNCIL DID BY RESOLUTION NO. _____, APPROVE THE MAP AND ACCEPT ON BEHALF OF THE PUBLIC ALL THOSE PARCELS OF LAND, EASEMENTS AND OTHER LEGAL INTERESTS IN LAND OFFERED TO OR FOR PUBLIC USE IN CONFORMITY WITH THE TERMS OF THE OFFER, EXCEPT FOR THE FOLLOWING, WHICH THE COUNCIL DID REJECT AT THIS TIME (RESERVING THE RIGHT TO ACCEPT SAID OFFERS AT A FUTURE DATE, SUBJECT TO GOVERNMENT CODE SECTIONS 66427.2 AND 7050).

PUBLIC UTILITY EASEMENT (PUE)
PUBLIC WATER LINE EASEMENT (WLE)
PUBLIC SIDEWALK EASEMENT (SWE)
EMERGENCY VEHICLE ACCESS EASEMENT (EVAE)
SANITARY SEWER EASEMENT (SSE)

AND DO HEREBY ABANDON AND VACATE ALL THAT PORTION OF THE RELINQUISHED ACCESS AS SHOWN ON PARCEL MAP 3394 RECORDED IN BOOK 157 OF PARCEL MAPS AT PAGE 791, LYING WITHIN THE EMERGENCY ACCESS EASEMENT IN CONFORMANCE WITH CALIFORNIA GOVERNMENT CODE SECTION 66434(g) AND 66499.202 OF THE SUBDIVISION MAP ACT.

IN WITNESS WHEREOF I HAVE HEREUNTO SET MY HAND THIS ___ DAY OF_____, 20___.

_____

DEBBIE ELAM, ACTING CITY CLERK,
CITY OF LIVERMORE, COUNTY OF ALAMEDA, STATE OF CALIFORNIA

SURVEYOR'S STATEMENT

THIS MAP WAS PREPARED BY ME OR UNDER MY DIRECTION, AND IS BASED UPON A FIELD SURVEY IN CONFORMANCE WITH THE REQUIREMENTS OF THE SUBDIVISION MAP ACT AND LOCAL ORDINANCE AT THE REQUEST OF CIVIC TRIAD EAST, LLC, IN MAY 2023.

I HEREBY STATE THAT THIS FINAL MAP SUBSTANTIALLY CONFORMS TO THE APPROVED OR CONDITIONALLY APPROVED "VESTING TENTATIVE MAP" AND IS TRUE AND COMPLETE AS SHOWN, THAT THE MONUMENTS WILL BE OF THE CHARACTER AND OCCUPY THE POSITIONS SHOWN IN ACCORDANCE WITH SATISFACTORY ASSURANCE GIVEN BY THE SUBDIVIDER ON OR BEFORE DECEMBER 2027, AND THAT SAID MONUMENTS WILL BE SUFFICIENT TO ENABLE THE SURVEY TO BE RETRACED.

I FURTHER STATE THAT "TRACT 8657", CITY OF LIVERMORE, ALAMEDA COUNTY, CALIFORNIA IS A SUBDIVISION INTO LOTS AND PARCELS OF LAND CONTAINING 5.27 ACRES MORE OR LESS.

5/16/2024
DATE

LICENSED LAND SURVEYOR
MARK H. WEHBER
7960
STATE OF CALIFORNIA

MARK H. WEHBER, P.L.S.
L.S. NO. 7960

CITY ENGINEER'S STATEMENT

I, JOEL H. WAXDECK, CITY ENGINEER OF THE CITY OF LIVERMORE, ALAMEDA COUNTY, STATE OF CALIFORNIA, HEREBY STATE THAT I HAVE EXAMINED THIS MAP ENTITLED "TRACT 8657", CITY OF LIVERMORE, ALAMEDA COUNTY, STATE OF CALIFORNIA, AND THAT THE SUBDIVISION SHOWN HEREON IS SUBSTANTIALLY THE SAME AS IT APPEARED ON THE APPROVED VESTING TENTATIVE MAP AND ANY APPROVED AND ALTERATIONS THEREOF, AND THAT ALL PROVISIONS OF THE STATE LAWS AND LOCAL ORDINANCES APPLICABLE AT THE TIME OF APPROVAL OF THE VESTING TENTATIVE MAP HAVE BEEN COMPLIED WITH.

Joel Waxdeck
JOEL H. WAXDECK, R.C.E. NO. 51222
CITY ENGINEER, CITY OF LIVERMORE
ALAMEDA COUNTY, CALIFORNIA

5/23/24
DATE

REGISTERED PROFESSIONAL ENGINEER
JOEL H. WAXDECK
51222
STATE OF CALIFORNIA

I, DAVID W ENKE, A LICENSED LAND SURVEYOR FOR THE CITY OF LIVERMORE, ALAMEDA COUNTY, STATE OF CALIFORNIA, DO HEREBY STATE THAT I HAVE EXAMINED THIS MAP ENTITLED "TRACT 8657", CITY OF LIVERMORE, ALAMEDA COUNTY, STATE OF CALIFORNIA AND I AM SATISFIED THAT SAID MAP IS TECHNICALLY CORRECT.

David W. Enke
DAVID W. ENKE
L.S. NO. 4071

5/23/24
DATE

LICENSED LAND SURVEYOR
DAVID W. ENKE
4071
STATE OF CALIFORNIA

TRACT 8657
TRIAD DRIVE EAST

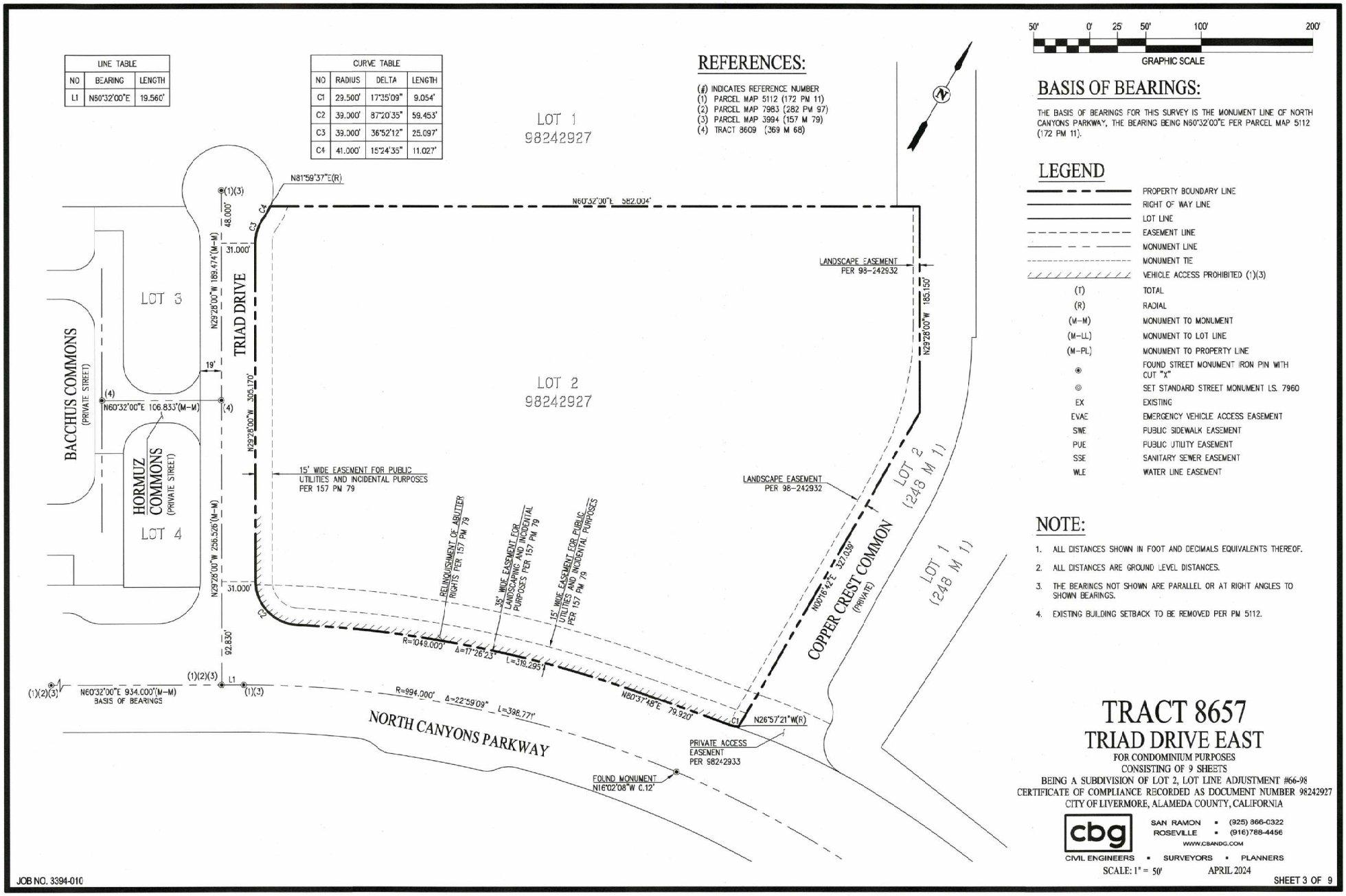
FOR CONDOMINIUM PURPOSES
CONSISTING OF 9 SHEETS
BEING A SUBDIVISION OF LOT 2, LOT LINE ADJUSTMENT #66-98
CERTIFICATE OF COMPLIANCE RECORDED AS DOCUMENT NUMBER 98242927
CITY OF LIVERMORE, ALAMEDA COUNTY, CALIFORNIA

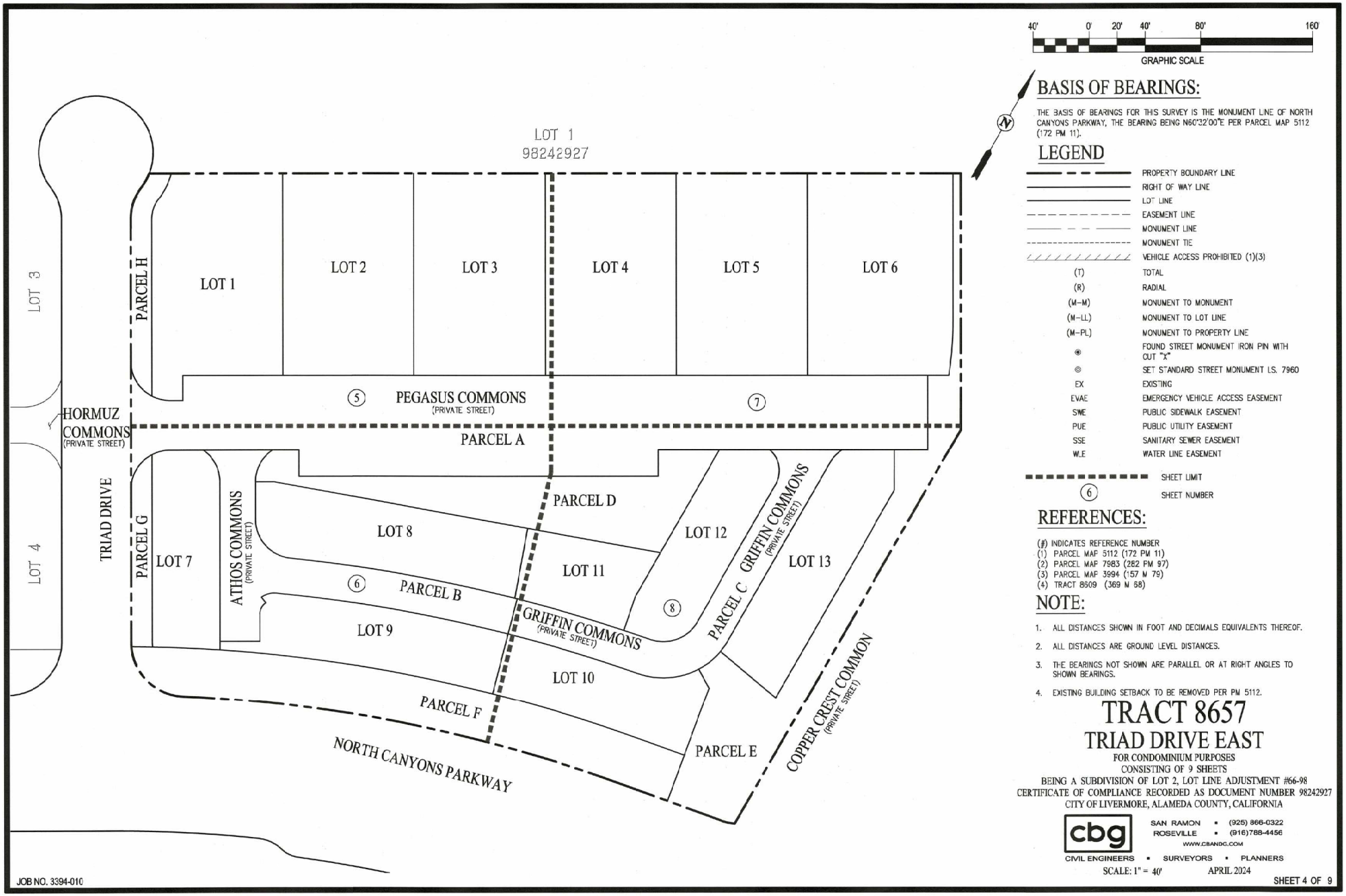
cbg
CIVIL ENGINEERS • SURVEYORS • PLANNERS
SAN RAMON • (925) 866-0322
ROSEVILLE • (916) 788-4456
WWW.CBANDG.COM

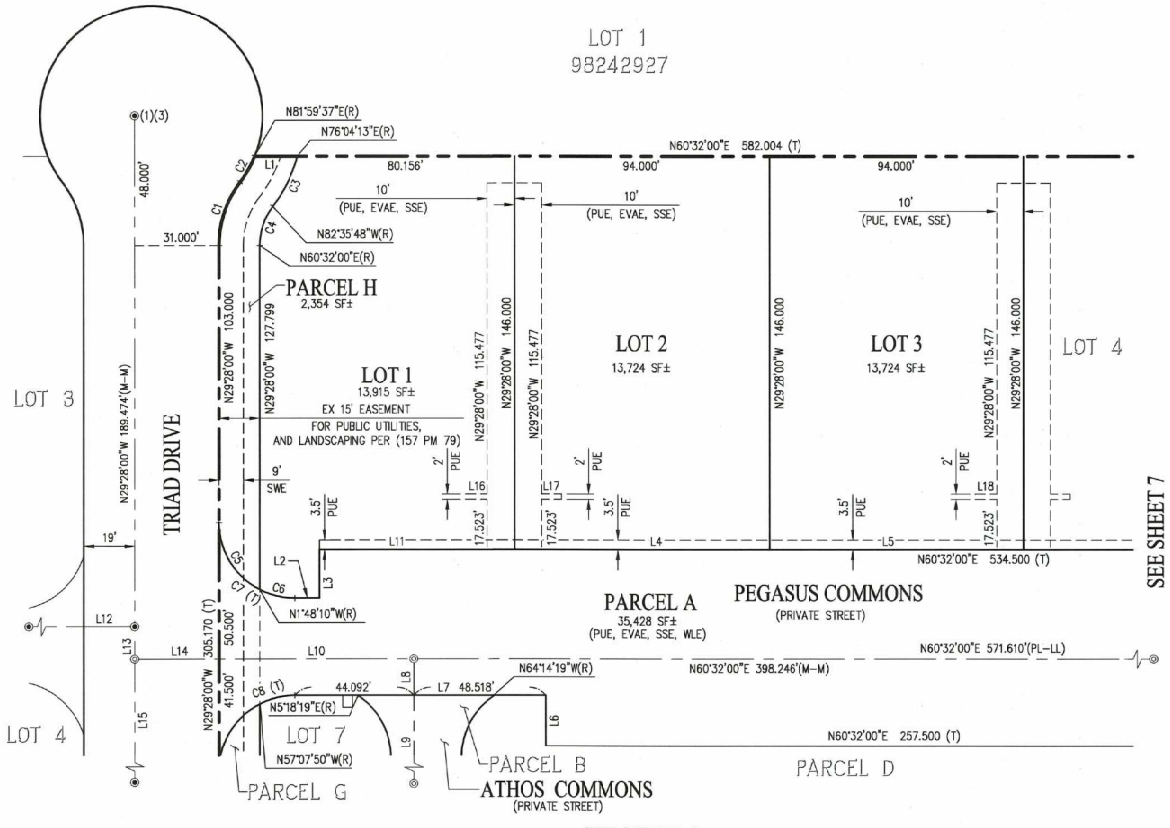
APRIL 2024

JOB NO. 3394-010

SHEET 2 OF 9


LINE TABLE
NO | BEARING | LENGTH
L1 | N60°32'00"E | 19.560'
CURVE TABLE
NO | RADIUS | DELTA | LENGTH
C1 | 29.500' | 17°35'09" | 9.054'
C2 | 39.000' | 87°20'35" | 59.453'
C3 | 39.000' | 36°52'12" | 25.097'
C4 | 41.000' | 15°24'35" | 11.027'
REFERENCES:
(#) INDICATES REFERENCE NUMBER
(1) PARCEL MAP 5112 (172 PM 11)
(2) PARCEL MAP 7983 (282 PM 97)
(3) PARCEL MAP 3994 (157 M 79)
(4) TRACT 8609 (369 M 68)
LOT 1
98242927
LOT 2
98242927
LOT 3
LOT 4
BACCHUS COMMONS
(PRIVATE STREET)
HORMUZ COMMONS
(PRIVATE STREET)
TRIAD DRIVE
COPPER CREST COMMON
(PRIVATE)
LOT 2
(248 M 11)
LOT 1
(248 M 11)
NORTH CANYONS PARKWAY
N81°59'37"E(R)
N60°32'00"E 582.004'
N29°28'00"W 189.474'(M-M)
N29°28'00"W 395.170'
N29°28'00"W 256.526'(M-M)
N29°28'00"W 185.150'
N60°32'00"E 106.833'(M-M)
N60°32'00"E 934.00'(M-M)
BASIS OF BEARINGS
N00°16'42"E 327.039'
N80°37'48"E 79.920'
N26°57'21"W(R)
R=1049.000' Δ=17°26'23" L=319.295'
R=994.000' Δ=22°59'09" L=398.771'
LANDSCAPE EASEMENT
PER 98-242932
15' WIDE EASEMENT FOR PUBLIC
UTILITIES AND INCIDENTAL PURPOSES
PER 157 PM 79
RELINQUISHMENT OF ABUTTER
RIGHTS PER 157 PM 79
35' WIDE EASEMENT FOR
LANDSCAPING AND INCIDENTAL
PURPOSES PER 157 PM 79
15' WIDE EASEMENT FOR PUBLIC
UTILITIES AND INCIDENTAL PURPOSES
PER 157 PM 79
PRIVATE ACCESS
EASEMENT
PER 98242933
FOUND MONUMENT
N16°02'08"W 0.12'
48.000'
31.000'
19'
92.830'
50' 0' 25' 50' 100' 200'
GRAPHIC SCALE
BASIS OF BEARINGS:
THE BASIS OF BEARINGS FOR THIS SURVEY IS THE MONUMENT LINE OF NORTH CANYONS PARKWAY, THE BEARING BEING N60°32'00"E PER PARCEL MAP 5112 (172 PM 11).
LEGEND
PROPERTY BOUNDARY LINE
RIGHT OF WAY LINE
LOT LINE
EASEMENT LINE
MONUMENT LINE
MONUMENT TIE
VEHICLE ACCESS PROHIBITED (1)(3)
(T) TOTAL
(R) RADIAL
(M-M) MONUMENT TO MONUMENT
(M-LL) MONUMENT TO LOT LINE
(M-PL) MONUMENT TO PROPERTY LINE
FOUND STREET MONUMENT IRON PIN WITH CUT "X"
SET STANDARD STREET MONUMENT LS. 7960
EX EXISTING
EVAE EMERGENCY VEHICLE ACCESS EASEMENT
SWE PUBLIC SIDEWALK EASEMENT
PUE PUBLIC UTILITY EASEMENT
SSE SANITARY SEWER EASEMENT
WLE WATER LINE EASEMENT
NOTE:
1. ALL DISTANCES SHOWN IN FOOT AND DECIMALS EQUIVALENTS THEREOF.
2. ALL DISTANCES ARE GROUND LEVEL DISTANCES.
3. THE BEARINGS NOT SHOWN ARE PARALLEL OR AT RIGHT ANGLES TO SHOWN BEARINGS.
4. EXISTING BUILDING SETBACK TO BE REMOVED PER PM 5112.
TRACT 8657
TRIAD DRIVE EAST
FOR CONDOMINIUM PURPOSES
CONSISTING OF 9 SHEETS
BEING A SUBDIVISION OF LOT 2, LOT LINE ADJUSTMENT #66-98
CERTIFICATE OF COMPLIANCE RECORDED AS DOCUMENT NUMBER 98242927
CITY OF LIVERMORE, ALAMEDA COUNTY, CALIFORNIA
cbg
CIVIL ENGINEERS • SURVEYORS • PLANNERS
SAN RAMON • (925) 866-0322
ROSEVILLE • (916)788-4456
WWW.CBANDG.COM
SCALE: 1" = 50'
APRIL 2024
JOB NO. 3394-010
SHEET 3 OF 9


LOT 1
98242927
LOT 1
LOT 2
LOT 3
LOT 4
LOT 5
LOT 6
LOT 3
PARCEL H
PEGASUS COMMONS
(PRIVATE STREET)
HORMUZ
COMMONS
(PRIVATE STREET)
PARCEL A
LOT 4
TRIAD DRIVE
PARCEL G
LOT 7
ATHOS COMMONS
(PRIVATE STREET)
PARCEL D
LOT 8
LOT 12
GRIFFIN COMMONS
(PRIVATE STREET)
LOT 11
LOT 13
PARCEL B
PARCEL C
GRIFFIN COMMONS
(PRIVATE STREET)
LOT 9
LOT 10
PARCEL F
PARCEL E
COPPER CREST COMMON
(PRIVATE STREET)
NORTH CANYONS PARKWAY
40' 0' 20' 40' 80' 160'
GRAPHIC SCALE
BASIS OF BEARINGS:
THE BASIS OF BEARINGS FOR THIS SURVEY IS THE MONUMENT LINE OF NORTH CANYONS PARKWAY, THE BEARING BEING N60°32'00"E PER PARCEL MAP 5112 (172 PM 11).
LEGEND
PROPERTY BOUNDARY LINE
RIGHT OF WAY LINE
LOT LINE
EASEMENT LINE
MONUMENT LINE
MONUMENT TIE
VEHICLE ACCESS PROHIBITED (1)(3)
(T) TOTAL
(R) RADIAL
(M-M) MONUMENT TO MONUMENT
(M-LL) MONUMENT TO LOT LINE
(M-PL) MONUMENT TO PROPERTY LINE
FOUND STREET MONUMENT IRON PIN WITH CUT "X"
SET STANDARD STREET MONUMENT LS. 7960
EX EXISTING
EVAE EMERGENCY VEHICLE ACCESS EASEMENT
SWE PUBLIC SIDEWALK EASEMENT
PUE PUBLIC UTILITY EASEMENT
SSE SANITARY SEWER EASEMENT
WLE WATER LINE EASEMENT
SHEET LIMIT
6 SHEET NUMBER
REFERENCES:
(#) INDICATES REFERENCE NUMBER
(1) PARCEL MAP 5112 (172 PM 11)
(2) PARCEL MAP 7983 (282 PM 97)
(3) PARCEL MAP 3994 ('157 M 79)
(4) TRACT 8609 (369 M 58)
NOTE:
1. ALL DISTANCES SHOWN IN FOOT AND DECIMALS EQUIVALENTS THEREOF.
2. ALL DISTANCES ARE GROUND LEVEL DISTANCES.
3. THE BEARINGS NOT SHOWN ARE PARALLEL OR AT RIGHT ANGLES TO SHOWN BEARINGS.
4. EXISTING BUILDING SETBACK TO BE REMOVED PER PM 5112.
TRACT 8657
TRIAD DRIVE EAST
FOR CONDOMINIUM PURPOSES
CONSISTING OF 9 SHEETS
BEING A SUBDIVISION OF LOT 2, LOT LINE ADJUSTMENT #66-98
CERTIFICATE OF COMPLIANCE RECORDED AS DOCUMENT NUMBER 98242927
CITY OF LIVERMORE, ALAMEDA COUNTY, CALIFORNIA
cbg
CIVIL ENGINEERS • SURVEYORS • PLANNERS
SAN RAMON • (925) 866-0322
ROSEVILLE • (916)788-4456
WWW.CBANDG.COM
SCALE: 1" = 40'
APRIL 2024
JOB NO. 3394-010
SHEET 4 OF 9



LINE TABLE			
NO	BEARING	LENGTH	
L1	N60°32'00"E	15.796	
L2	N60°32'00"E	9.110	
L3	N29°28'00"W	18.000	
L4	N60°32'00"E	94.000	(T)
L5	N60°32'00"E	94.000	(T)
L6	N29°28'00"W	19.000	
L7	N60°32'00"E	92.610	(T)
L8	N29°28'00"W	13.500	(M-LL)
L9	N29°28'00"W	89.107	(M-M)
L10	N60°32'00"E	72.092	(M-PL)
L11	N60°32'00"E	72.000	(T)
L12	N60°32'00"E	106.833	(M-M)
L13	N29°28'00"W	12.026	(M-M)
L14	N60°32'00"E	31.000	(M-PL)
L15	N29°28'00"W	244.500	(M-M)
L16	N60°32'00"E	8.005	
L17	N60°32'00"E	7.315	
L18	N60°32'00"E	8.005	

CURVE TABLE			
NO	RADIUS	DELTA	LENGTH
C1	39.000'	36°52'12"	25.097'
C2	41.000'	15°24'35"	11.027'
C3	56.000'	21°19'59"	20.851'
C4	24.000'	36°52'12"	15.444'
C5	28.000'	62°20'10"	30.463'
C6	28.000'	27°39'50"	13.519'
C7	28.000'	90°00'00"	43.982'
C8	28.000'	90°00'00"	43.982'

30' 0' 15' 30' 60' 120'

GRAPHIC SCALE

BASIS OF BEARINGS:

THE BASIS OF BEARINGS FOR THIS SURVEY IS THE MONUMENT LINE OF NORTH CANYONS PARKWAY, THE BEARING BEING N60°32'00"E PER PARCEL MAP 5112 (172 PM 11).

LEGEND

	PROPERTY BOUNDARY LINE
	RIGHT OF WAY LINE
	LOT LINE
	EASEMENT LINE
	MONUMENT LINE
	MONUMENT TIE
	VEHICLE ACCESS PROHIBITED (1)(3)
(T)	TOTAL
(R)	RADIAL
(M-M)	MONUMENT TO MONUMENT
(M-LL)	MONUMENT TO LOT LINE
(M-PL)	MONUMENT TO PROPERTY LINE
◉	FOUND STREET MONUMENT IRON PIN WITH CUT "X"
◎	SET STANDARD STREET MONUMENT LS. 7960
EX	EXISTING
EVAE	EMERGENCY VEHICLE ACCESS EASEMENT
SWE	PUBLIC SIDEWALK EASEMENT
PUE	PUBLIC UTILITY EASEMENT
SSE	SANITARY SEWER EASEMENT
WLE	WATER LINE EASEMENT

REFERENCES:

(#) INDICATES REFERENCE NUMBER
(1) PARCEL MAP 5112 (172 PM 11)
(2) PARCEL MAP 7983 (282 PM 97)
(3) PARCEL MAP 3994 (157 M 79)
(4) TRACT 8609 (369 M 68)

NOTE:

1. ALL DISTANCES SHOWN IN FOOT AND DECIMALS EQUIVALENTS THEREOF.
2. ALL DISTANCES ARE GROUND LEVEL DISTANCES.
3. THE BEARINGS NOT SHOWN ARE PARALLEL OR AT RIGHT ANGLES TO SHOWN BEARINGS.
4. EXISTING BUILDING SETBACK TO BE REMOVED PER PM 5112.

TRACT 8657
TRIAD DRIVE EAST

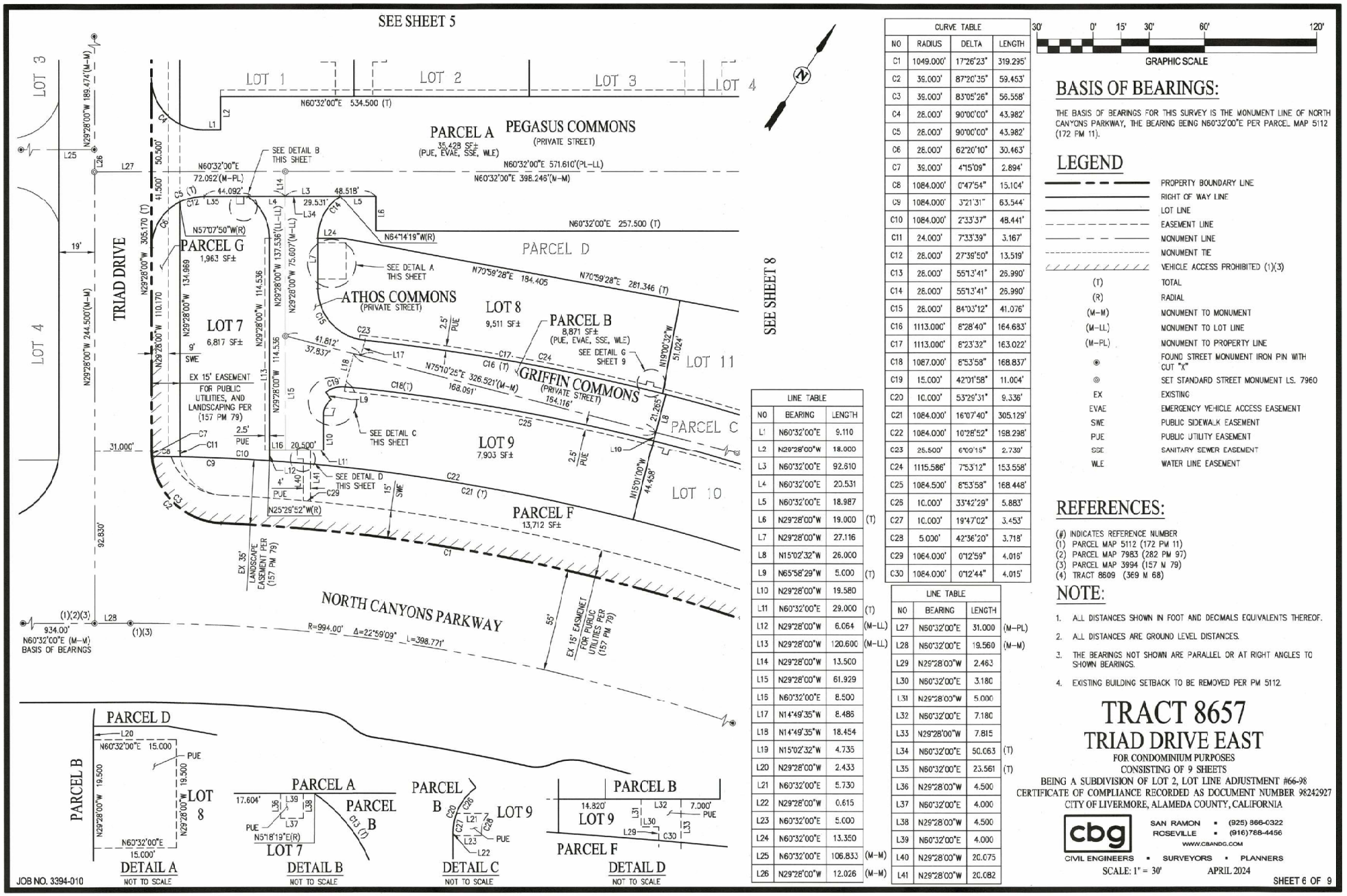
FOR CONDOMINIUM PURPOSES
CONSISTING OF 9 SHEETS
BEING A SUBDIVISION OF LOT 2, LOT LINE ADJUSTMENT #56-98
CERTIFICATE OF COMPLIANCE RECORDED AS DOCUMENT NUMBER 98242927
CITY OF LIVERMORE, ALAMEDA COUNTY, CALIFORNIA

cbg
CIVIL ENGINEERS • SURVEYORS • PLANNERS
SAN RAMON • (925) 866-0322
ROSEVILLE • (916)788-4456
WWW.CBANDG.COM

SCALE: 1" = 30' APRIL 2024

JOB NO. 3394-010

SHEET 5 OF 9



CURVE TABLE			
NO	RADIUS	DELTA	LENGTH
C1	1049.000'	17°26'23"	319.295'
C2	39.000'	87°20'35"	59.453'
C3	39.000'	83°05'26"	56.558'
C4	26.000'	90°00'00"	43.982'
C5	26.000'	90°00'00"	43.982'
C6	26.000'	62°20'10"	30.463'
C7	39.000'	4°15'09"	2.894'
C8	1084.000'	0°47'54"	15.104'
C9	1084.000'	3°21'31"	63.544'
C10	1084.000'	2°33'37"	48.441'
C11	24.000'	7°33'39"	3.167'
C12	26.000'	27°39'50"	13.519'
C13	26.000'	55°13'41"	25.990'
C14	26.000'	55°13'41"	25.990'
C15	26.000'	84°03'12"	41.076'
C16	1113.000'	8°28'40"	164.683'
C17	1113.000'	8°23'32"	163.022'
C18	1087.000'	8°53'58"	168.837'
C19	15.000'	42°01'58"	11.004'
C20	10.000'	53°29'31"	9.336'
C21	1084.000'	16°07'40"	305.129'
C22	1084.000'	10°28'52"	198.298'
C23	25.500'	6°09'15"	2.739'
C24	1115.586'	7°53'12"	153.558'
C25	1084.500'	8°53'58"	168.448'
C26	10.000'	33°42'29"	5.883'
C27	10.000'	19°47'02"	3.453'
C28	5.000'	42°36'20"	3.718'
C29	1064.000'	0°12'59"	4.015'
C30	1064.000'	0°12'44"	4.015'

LINE TABLE			
NO	BEARING	LENGTH	
L1	N60°32'00"E	9.110	
L2	N29°28'00"W	18.000	
L3	N60°32'00"E	92.610	
L4	N60°32'00"E	20.531	
L5	N60°32'00"E	18.987	
L6	N29°28'00"W	19.000	(T)
L7	N29°28'00"W	27.116	
L8	N15°02'32"W	26.000	
L9	N65°58'29"W	5.000	(T)
L10	N29°28'00"W	19.580	
L11	N60°32'00"E	29.000	(T)
L12	N29°28'00"W	6.064	(M-LL)
L13	N29°28'00"W	120.600	(M-LL)
L14	N29°28'00"W	13.500	
L15	N29°28'00"W	61.929	
L16	N60°32'00"E	8.500	
L17	N14°49'35"W	8.486	
L18	N14°49'35"W	18.454	
L19	N15°02'32"W	4.735	
L20	N29°28'00"W	2.433	
L21	N60°32'00"E	5.730	
L22	N29°28'00"W	0.615	
L23	N60°32'00"E	5.000	
L24	N60°32'00"E	13.350	
L25	N60°32'00"E	106.833	(M-M)
L26	N29°28'00"W	12.026	(M-M)

LINE TABLE			
NO	BEARING	LENGTH	
L27	N60°32'00"E	31.000	(M-PL)
L28	N60°32'00"E	19.560	(M-M)
L29	N29°28'00"W	2.463	
L30	N60°32'00"E	3.180	
L31	N29°28'00"W	5.000	
L32	N60°32'00"E	7.180	
L33	N29°28'00"W	7.815	
L34	N60°32'00"E	50.063	(T)
L35	N60°32'00"E	23.561	(T)
L36	N29°28'00"W	4.500	
L37	N60°32'00"E	4.000	
L38	N29°28'00"W	4.500	
L39	N29°28'00"W	4.000	
L40	N29°28'00"W	20.075	
L41	N29°28'00"W	20.082	

30' 0' 15' 30' 60' 120'

GRAPHIC SCALE

BASIS OF BEARINGS:

THE BASIS OF BEARINGS FOR THIS SURVEY IS THE MONUMENT LINE OF NORTH CANYONS PARKWAY, THE BEARING BEING N60°32'00"E PER PARCEL MAP 5112 (172 PM 11).

LEGEND

	PROPERTY BOUNDARY LINE
	RIGHT OF WAY LINE
	LOT LINE
	EASEMENT LINE
	MONUMENT LINE
	MONUMENT TIE
	VEHICLE ACCESS PROHIBITED (1)(3)
(T)	TOTAL
(R)	RADIAL
(M-M)	MONUMENT TO MONUMENT
(M-LL)	MONUMENT TO LOT LINE
(M-PL)	MONUMENT TO PROPERTY LINE
◉	FOUND STREET MONUMENT IRON PIN WITH CUT "X"
◎	SET STANDARD STREET MONUMENT LS. 7960
EX	EXISTING
EVAE	EMERGENCY VEHICLE ACCESS EASEMENT
SWE	PUBLIC SIDEWALK EASEMENT
PUE	PUBLIC UTILITY EASEMENT
SSE	SANITARY SEWER EASEMENT
WLE	WATER LINE EASEMENT

REFERENCES:

(#) INDICATES REFERENCE NUMBER
(1) PARCEL MAP 5112 (172 PM 11)
(2) PARCEL MAP 7983 (282 PM 97)
(3) PARCEL MAP 3994 (157 M 79)
(4) TRACT 8609 (369 M 68)

NOTE:

1. ALL DISTANCES SHOWN IN FOOT AND DECIMALS EQUIVALENTS THEREOF.
2. ALL DISTANCES ARE GROUND LEVEL DISTANCES.
3. THE BEARINGS NOT SHOWN ARE PARALLEL OR AT RIGHT ANGLES TO SHOWN BEARINGS.
4. EXISTING BUILDING SETBACK TO BE REMOVED PER PM 5112.

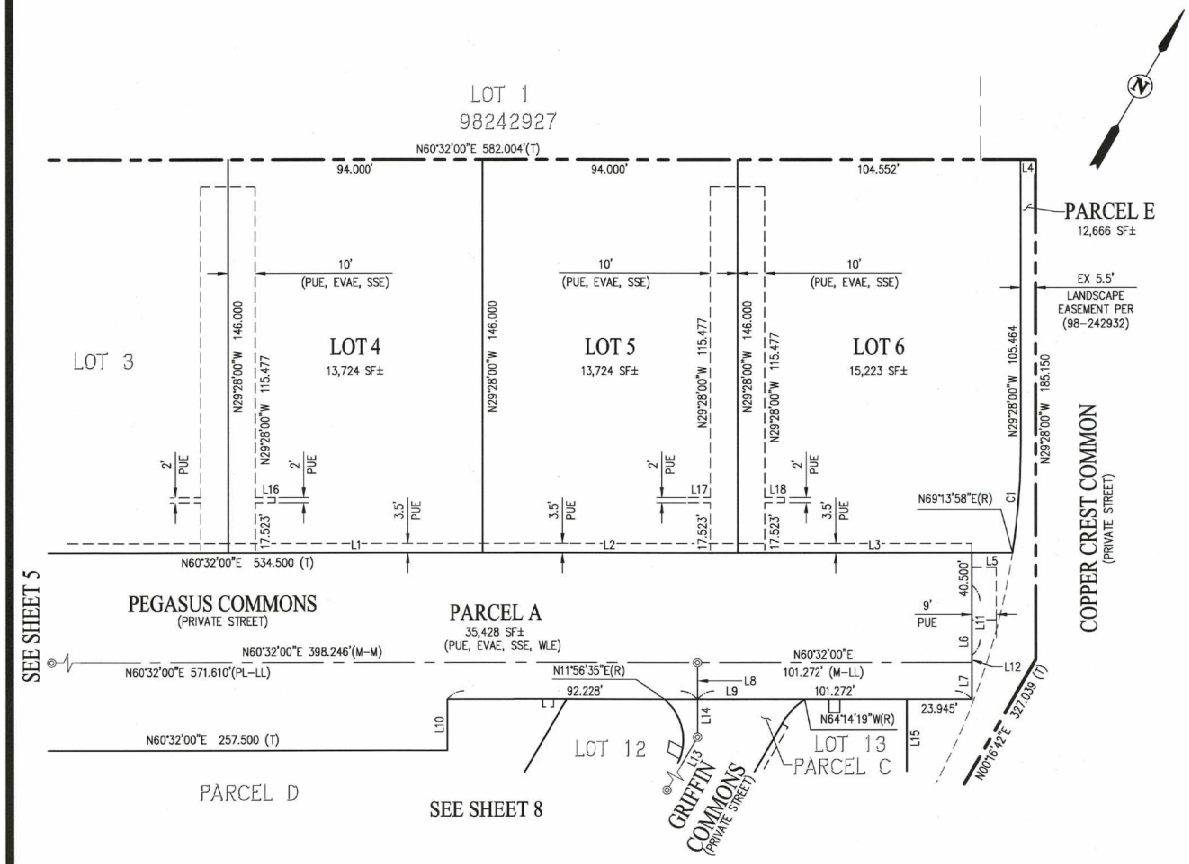
TRACT 8657
TRIAD DRIVE EAST

FOR CONDOMINIUM PURPOSES
CONSISTING OF 9 SHEETS
BEING A SUBDIVISION OF LOT 2, LOT LINE ADJUSTMENT #66-98
CERTIFICATE OF COMPLIANCE RECORDED AS DOCUMENT NUMBER 98242927
CITY OF LIVERMORE, ALAMEDA COUNTY, CALIFORNIA

cbg
CIVIL ENGINEERS ▪ SURVEYORS ▪ PLANNERS
SAN RAMON ▪ (925) 866-0322
ROSEVILLE ▪ (916) 788-4456
WWW.CBANDG.COM

SCALE: 1" = 30' APRIL 2024

SHEET 6 OF 9



LINE TABLE			
NO	BEARING	LENGTH	
L1	N60°32'00"E	94.000	(T)
L2	N60°32'00"E	94.000	(T)
L3	N60°32'00"E	101.468	(T)
L4	N60°32'00"E	5.500	
L5	N60°32'00"E	14.968	
L6	N29°28'00"W	54.000	(T)
L7	N29°28'00"W	13.500	
L8	N29°28'00"W	13.500	(M-LL)
L9	N60°32'00"E	193.500	(T)
L10	N29°28'00"W	19.000	
L11	N29°28'00"W	26.343	
L12	N29°28'00"W	2.413	
L13	N00°16'42"E	165.934	(M-M)
L14	N29°28'00"W	27.564	(M-M)
L15	N29°28'00"W	28.901	(T)
L16	N60°32'00"E	7.315	
L17	N60°32'00"E	8.005	
L18	N60°32'00"E	7.315	

CURVE TABLE			
NO	RADIUS	DELTA	LENGTH
C1	268.000'	8°41'58"	40.692

30' 0' 15' 30' 60' 120'

GRAPHIC SCALE

BASIS OF BEARINGS:

THE BASIS OF BEARINGS FOR THIS SURVEY IS THE MONUMENT LINE OF NORTH CANYONS PARKWAY, THE BEARING BEING N60°32'00"E PER PARCEL MAP 5112 (172 PM 11).

LEGEND

	PROPERTY BOUNDARY LINE
	RIGHT OF WAY LINE
	LOT LINE
	EASEMENT LINE
	MONUMENT LINE
	NONUMENT TIE
	VEHICLE ACCESS PROHIBITED (1)(3)
(T)	TOTAL
(R)	RADIAL
(M-M)	MONUMENT TO MONUMENT
(M-LL)	MONUMENT TO LOT LINE
(M-PL)	MONUMENT TO PROPERTY LINE
◉	FOUND STREET MONUMENT IRON PIN WITH CUT "X"
◎	SET STANDARD STREET MONUMENT LS. 7960
EX	EXISTING
EVAE	EMERGENCY VEHICLE ACCESS EASEMENT
SWE	PUBLIC SIDEWALK EASEMENT
PUE	PUBLIC UTILITY EASEMENT
SSE	SANITARY SEWER EASEMENT
WLE	WATER LINE EASEMENT

REFERENCES:

(#) INDICATES REFERENCE NUMBER
(1) PARCEL MAP 5112 (172 PM 11)
(2) PARCEL MAP 7983 (282 PM 97)
(3) PARCEL MAP 3994 (157 M 79)
(4) TRACT 8609 (369 M 68)

NOTE:

1. ALL DISTANCES SHOWN IN FOOT AND DECIMALS EQUIVALENTS THEREOF.
2. ALL DISTANCES ARE GROUND LEVEL DISTANCES.
3. THE BEARINGS NOT SHOWN ARE PARALLEL OR AT RIGHT ANGLES TO SHOWN BEARINGS.
4. EXISTING BUILDING SETBACK TO BE REMOVED PER PM 5112.

TRACT 8657
TRIAD DRIVE EAST

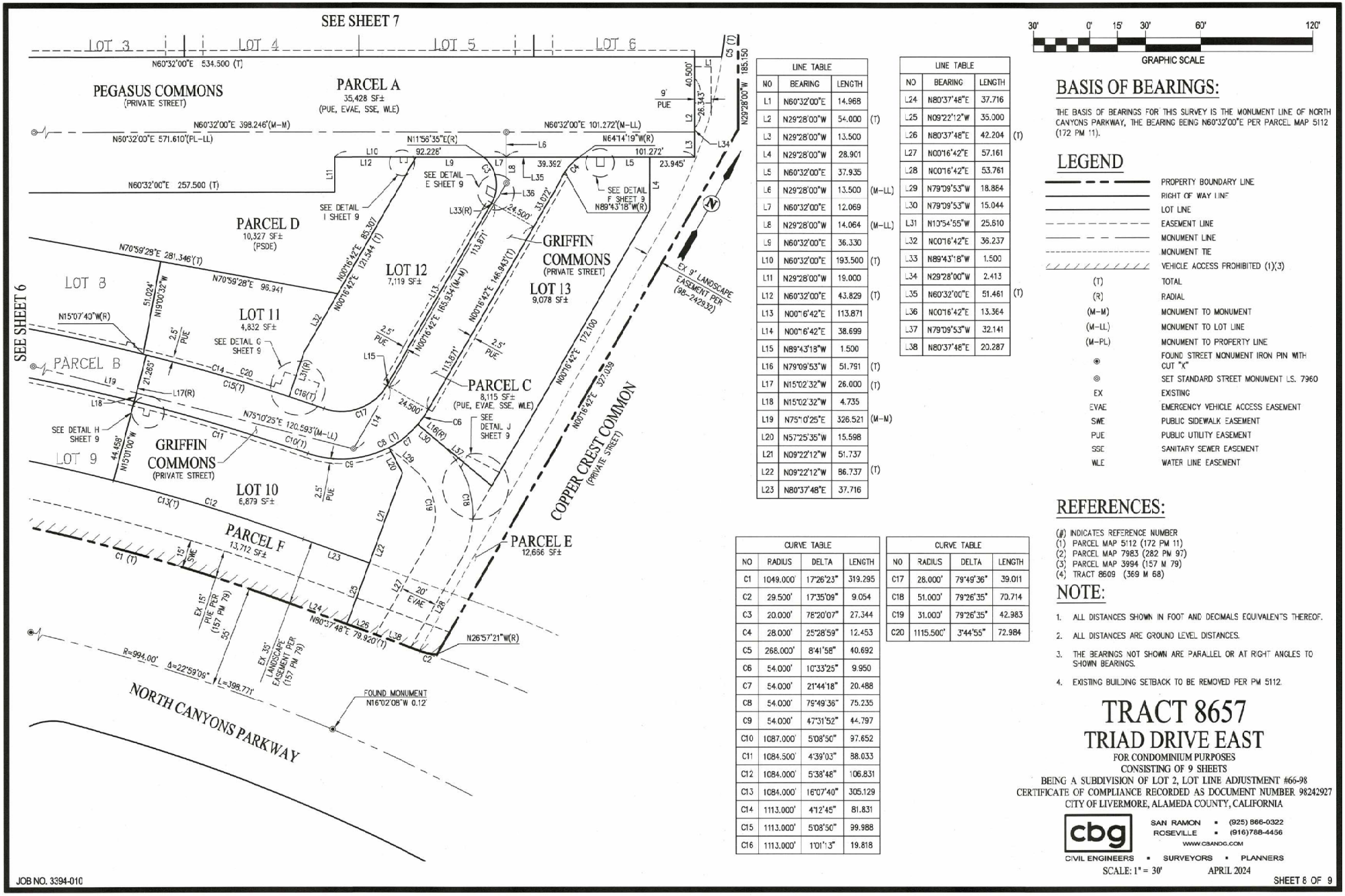
FOR CONDOMINIUM PURPOSES
CONSISTING OF 9 SHEETS
BEING A SUBDIVISION OF LOT 2, LOT LINE ADJUSTMENT #66-98
CERTIFICATE OF COMPLIANCE RECORDED AS DOCUMENT NUMBER 98242927
CITY OF LIVERMORE, ALAMEDA COUNTY, CALIFORNIA

cbg
CIVIL ENGINEERS ▪ SURVEYORS ▪ PLANNERS
SAN RAMON ▪ (925) 866-0322
ROSEVILLE ▪ (916) 788-4456
WWW.CBANDG.COM

SCALE: 1" = 30' APRIL 2024

JOB NO. 3394-010

SHEET 7 OF 9



LINE TABLE			
NO	BEARING	LENGTH	
L1	N60°32'00"E	14.968	
L2	N29°28'00"W	54.000	(T)
L3	N29°28'00"W	13.500	
L4	N29°28'00"W	28.901	
L5	N60°32'00"E	37.935	
L6	N29°28'00"W	13.500	(M-LL)
L7	N60°32'00"E	12.069	
L8	N29°28'00"W	14.064	(M-LL)
L9	N60°32'00"E	36.330	
L10	N60°32'00"E	193.500	(T)
L11	N29°28'00"W	19.000	
L12	N60°32'00"E	43.829	(T)
L13	N00°16'42"E	113.871	
L14	N00°16'42"E	38.699	
L15	N89°43'18"W	1.500	
L16	N79°09'53"W	51.791	(T)
L17	N15°02'32"W	26.000	(T)
L18	N15°02'32"W	4.735	
L19	N75°10'25"E	326.521	(M-M)
L20	N57°25'35"W	15.598	
L21	N09°22'12"W	51.737	
L22	N09°22'12"W	86.737	(T)
L23	N80°37'48"E	37.716	

LINE TABLE			
NO	BEARING	LENGTH	
L24	N80°37'48"E	37.716	
L25	N09°22'12"W	35.000	
L26	N80°37'48"E	42.204	(T)
L27	N00°16'42"E	57.161	
L28	N00°16'42"E	53.761	
L29	N79°09'53"W	18.864	
L30	N79°09'53"W	15.044	
L31	N10°54'55"W	25.610	
L32	N00°16'42"E	36.237	
L33	N89°43'18"W	1.500	
L34	N29°28'00"W	2.413	
L35	N60°32'00"E	51.461	(T)
L36	N00°16'42"E	13.364	
L37	N79°09'53"W	32.141	
L38	N80°37'48"E	20.287	

CURVE TABLE			
NO	RADIUS	DELTA	LENGTH
C1	1049.000'	17°26'23"	319.295
C2	29.500'	17°35'09"	9.054
C3	20.000'	78°20'07"	27.344
C4	28.000'	25°28'59"	12.453
C5	268.000'	8°41'58"	40.692
C6	54.000'	10°33'25"	9.950
C7	54.000'	21°44'18"	20.488
C8	54.000'	79°49'36"	75.235
C9	54.000'	47°31'52"	44.797
C10	1087.000'	5°08'50"	97.652
C11	1084.500'	4°39'03"	88.033
C12	1084.000'	5°38'48"	106.831
C13	1084.000'	16°07'40"	305.129
C14	1113.000'	4°12'45"	81.831
C15	1113.000'	5°08'50"	99.988
C16	1113.000'	1°01'13"	19.818

CURVE TABLE			
NO	RADIUS	DELTA	LENGTH
C17	28.000'	79°49'36"	39.011
C18	51.000'	79°26'35"	70.714
C19	31.000'	79°26'35"	42.983
C20	1115.500'	3°44'55"	72.984

30' 0' 15' 30' 60' 120'

GRAPHIC SCALE

BASIS OF BEARINGS:

THE BASIS OF BEARINGS FOR THIS SURVEY IS THE MONUMENT LINE OF NORTH CANYONS PARKWAY, THE BEARING BEING N60°32'00"E PER PARCEL MAP 5112 (172 PM 11).

LEGEND

	PROPERTY BOUNDARY LINE
	RIGHT OF WAY LINE
	LOT LINE
	EASEMENT LINE
	MONUMENT LINE
	MONUMENT TIE
	VEHICLE ACCESS PROHIBITED (1)(3)
(T)	TOTAL
(R)	RADIAL
(M-M)	MONUMENT TO MONUMENT
(M-LL)	MONUMENT TO LOT LINE
(M-PL)	MONUMENT TO PROPERTY LINE
◉	FOUND STREET MONUMENT IRON PIN WITH CUT "X"
◎	SET STANDARD STREET MONUMENT LS. 7960
EX	EXISTING
EVAE	EMERGENCY VEHICLE ACCESS EASEMENT
SWE	PUBLIC SIDEWALK EASEMENT
PUE	PUBLIC UTILITY EASEMENT
SSE	SANITARY SEWER EASEMENT
WLE	WATER LINE EASEMENT

REFERENCES:

(#) INDICATES REFERENCE NUMBER
(1) PARCEL MAP 5112 (172 PM 11)
(2) PARCEL MAP 7983 (282 PM 97)
(3) PARCEL MAP 3994 (157 M 79)
(4) TRACT 8609 (369 M 68)

NOTE:

1. ALL DISTANCES SHOWN IN FOOT AND DECIMALS EQUIVALENTS THEREOF.
2. ALL DISTANCES ARE GROUND LEVEL DISTANCES.
3. THE BEARINGS NOT SHOWN ARE PARALLEL OR AT RIGHT ANGLES TO SHOWN BEARINGS.
4. EXISTING BUILDING SETBACK TO BE REMOVED PER PM 5112.

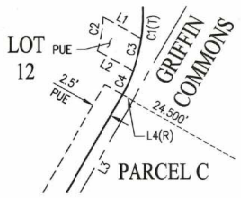
TRACT 8657
TRIAD DRIVE EAST

FOR CONDOMINIUM PURPOSES
CONSISTING OF 9 SHEETS
BEING A SUBDIVISION OF LOT 2, LOT LINE ADJUSTMENT #66-98
CERTIFICATE OF COMPLIANCE RECORDED AS DOCUMENT NUMBER 98242927
CITY OF LIVERMORE, ALAMEDA COUNTY, CALIFORNIA

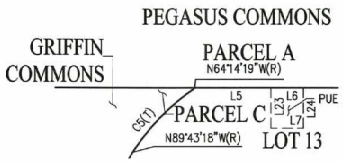
cbg
CIVIL ENGINEERS ▪ SURVEYORS ▪ PLANNERS
SAN RAMON ▪ (925) 866-0322
ROSEVILLE ▪ (916)788-4456
WWW.CBANDG.COM

SCALE: 1" = 30' APRIL 2024

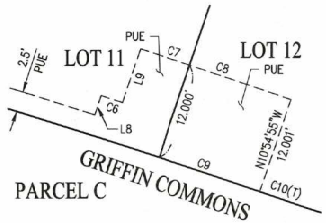
SHEET 8 OF 9



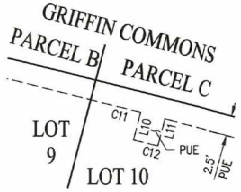
DETAIL E
NOT TO SCALE



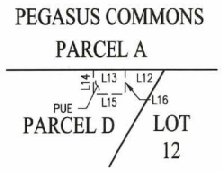
DETAIL F
NOT TO SCALE



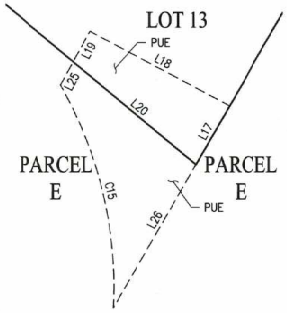
DETAIL G
NOT TO SCALE



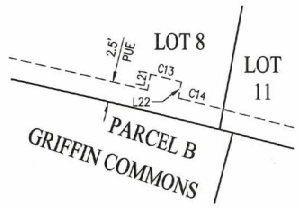
DETAIL H
NOT TO SCALE



DETAIL I
NOT TO SCALE



DETAIL J
NOT TO SCALE



DETAIL K
NOT TO SCALE

CURVE TABLE			
NO	RADIUS	DELTA	LENGTH
C1	20.000'	78°20'07"	27.344
C2	15.000'	16°2'14"	4.281
C3	20.000'	11°53'18"	4.150
C4	20.000'	9°07'01"	3.182
C5	28.000'	25°28'59"	12.453
C6	1118.000'	0°08'31"	2.771
C7	1125.000'	0°19'39"	6.429
C8	1125.000'	0°40'07"	13.128
C9	1113.000'	0°40'15"	13.030
C10	1113.000'	1°01'13"	19.818
C11	1084.500'	0°20'00"	6.307
C12	1081.000'	0°09'49"	3.089
C13	1117.500'	0°12'25"	4.036
C14	1115.500'	0°17'20"	5.625
C15	51.000'	32°07'08"	28.590

LINE TABLE		
NO	BEARING	LENGTH
L1	N89°43'18"W	5.495
L2	N89°43'18"W	5.086
L3	N00°16'42"E	113.871
L4	N89°43'18"W	1.500
L5	N60°32'00"E	9.262
L6	N60°32'00"E	4.000
L7	N60°32'00"E	4.000
L8	N10°54'55"W	2.500
L9	N10°54'55"W	7.000
L10	N15°01'00"W	3.500
L11	N15°01'00"W	3.500
L12	N60°32'00"E	4.782
L13	N60°32'00"E	4.000
L14	N29°28'00"W	3.000
L15	N60°32'00"E	4.000
L16	N29°28'00"W	3.000
L17	N00°16'42"E	8.365
L18	N88°56'12"E	19.423
L19	N01°03'48"W	4.311
L20	N79°05'53"W	19.650
L21	N19°00'32"W	2.003
L22	N19°00'32"W	2.004
L23	N29°28'00"W	5.000
L24	N29°28'00"W	5.000
L25	N01°03'48"W	3.266
L26	N00°16'42"E	20.305

30' 0 15' 30' 60' 120'

GRAPHIC SCALE

BASIS OF BEARINGS:

THE BASIS OF BEARINGS FOR THIS SURVEY IS THE MONUMENT LINE OF NORTH CANYONS PARKWAY, THE BEARING BEING N60°32'00"E PER PARCEL MAP 5112 (172 PM 11).

LEGEND

	PROPERTY BOUNDARY LINE
	RIGHT OF WAY LINE
	LOT LINE
	EASEMENT LINE
	MONUMENT LINE
	MONUMENT TIE
	VEHICLE ACCESS PROHIBITED (1)(3)
(T)	TOTAL
(R)	RADIAL
(M-M)	MONUMENT TO MONUMENT
(M-LL)	MONUMENT TO LOT LINE
(M-PL)	MONUMENT TO PROPERTY LINE
◉	FOUND STREET MONUMENT IRON PIN WITH CUT "X"
©	SET STANDARD STREET MONUMENT LS. 7960
EX	EXISTING
EVAE	EMERGENCY VEHICLE ACCESS EASEMENT
SWE	PUBLIC SIDEWALK EASEMENT
PUE	PUBLIC UTILITY EASEMENT
SSE	SANITARY SEWER EASEMENT
WLE	WATER LINE EASEMENT

REFERENCES:

(#) INDICATES REFERENCE NUMBER
(1) PARCEL MAP 5112 (172 PM 11)
(2) PARCEL MAP 7983 (282 PM 97)
(3) PARCEL MAP 3994 (157 M 79)
(4) TRACT 8609 (369 M 68)

NOTE:

1. ALL DISTANCES SHOWN IN FOOT AND DECIMALS EQUIVALENTS THEREOF.
2. ALL DISTANCES ARE GROUND LEVEL DISTANCES.
3. THE BEARINGS NOT SHOWN ARE PARALLEL OR AT RIGHT ANGLES TO SHOWN BEARINGS.
4. EXISTING BUILDING SETBACK TO BE REMOVED PER PM 5112.

TRACT 8657
TRIAD DRIVE EAST

FOR CONDOMINIUM PURPOSES
CONSISTING OF 9 SHEETS
BEING A SUBDIVISION OF LOT 2, LOT LINE ADJUSTMENT #56-98
CERTIFICATE OF COMPLIANCE RECORDED AS DOCUMENT NUMBER 98242927
CITY OF LIVERMORE, ALAMEDA COUNTY, CALIFORNIA

cbg
CIVIL ENGINEERS • SURVEYORS • PLANNERS
SAN RAMON • (925) 866-0322
ROSEVILLE • (916)788-4456
WWW.CBANDG.COM

APRIL 2024

JOB NO. 3394-010

SHEET 9 OF 9

No fee for recording pursuant to
Government Code Section 27383 and 27388.1

RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:

City Clerk
City of Livermore
1052 So. Livermore Avenue
Livermore, California 94550

SUBDIVISION IMPROVEMENT AGREEMENT

THIS AGREEMENT is entered into by and between Civic Triad East, LLC ("Developer") and the City of Livermore, a municipal corporation ("City").

RECITALS

A. 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, Tract Map No. 8657 Recorded under Series No. , dated , Official Records of Alameda County, California.

B. The City requires, as a condition precedent to the acceptance and approval of the map, the dedication of public ways shown on the map. In addition, the City requires improvement of the streets, and public ways by the construction and installation of grading, paving, landscaping, curbs, gutters, sidewalks, storm drains, sanitary sewers, street name signs, survey monuments, water pipes and mains, fire hydrants, and all appurtenances thereto.

C. The Developer has asked the City to accept the dedication of the public improvements and approve the map. Public improvements have not yet been completed according to the requirements of the map and the City. As consideration for the acceptance of the final map and offer of dedication, the parties desire to establish an agreement binding the Developer to complete the public improvements prior to occupancy of the first residential dwelling unit other than a model home but in any event no later than one year after the date this Agreement is executed, excepting those improvements with a different completion date as outlined in the attached Exhibit A, or Section 3 Special Conditions of this Agreement, if applicable.

AGREEMENT

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

1. Approval of Map - The City approves the subdivision of Tract No. 8657 and agrees to accept the dedication of the related public works improvements for future maintenance.

2. Performance of Improvements - The Developer shall perform all work as specified in the Engineering Considerations at Exhibit "A", attached and incorporated herein by this reference, in strict accordance with all specifications, plans, applicable City standards, and to the satisfaction of the City Engineer. The work shall be performed, and all materials and labor shall be provided,

at the Developer's sole cost and expense. The Developer has 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 May 2024, sheets 1-71), and current City standard specifications and details all of which are on file in the office of the City Engineer.

3. Special Conditions - The Developer shall be required to comply with the special conditions as follows:

A. The Developer shall provide final approved PG&E plans prior to occupancy.

B. Following construction and prior to tract acceptance by the City Council, the Developer shall provide CASp certification for all pedestrian improvements within public right-of-way as outlined in the conditions of approval.

C. The Developer shall submit a Traffic control plan for City review and encroachment permit within 30 days of City Council Final Map approval and prior to the pre-construction meeting for the project.

D. Prior to occupancy, the Developer shall record deed notification provided in the Livermore Executive Airport – Airport Land Use Compatibility Plan, Chapter 3.3.4.6, on the parcels for which this discretionary development permit is issued.

E. In the event a Specific Plan Transportation Management Association (TMA) is formed for the Isabel Neighborhood, Tract Map No. 8657 project shall annex into the association (Specific Plan Policy TRA-22).

F. In the event a programmatic Specific Plan parking management plan is created, Tract Map No. 8657 shall be subject to the parking management plan (Specific Plan Policy TRA-26).

G. In the event a programmatic Specific Plan wayfinding signage plan is created, Tract Map No. 8657 shall be subject to the signage plan (Specific Plan Policy DS-24).

H. On April 18, 2023, Developer submitted a completed preliminary application pursuant to SB 330 and as a result was subject to the City's development standards and fees that were in place as of the submittal date. However, the City may apply fee increases that result from an automatic annual adjustment based on an independently published cost index as referenced in the ordinance or resolution establishing the fee or other monetary exaction.

4. Time for Completion - All required improvements shall be complete and ready for acceptance by City Council as determined by the City Engineer prior to the occupancy of the first residential dwelling unit other than a model home but in any event no later than two years after the of execution of this Agreement, except those improvements for which another completion date is stated in Exhibit "A" or Section 3, Special Conditions, of this Agreement, if applicable.

5. Permits, Licenses, and Compliance with the Law - The Developer shall, at the Developer's expense, obtain and maintain all necessary permits and licenses for the performance of the work specified in this Agreement. The Developer shall also comply with all local, state, and federal laws, whether or not said laws are expressly stated in this Agreement.

6. Acceptance by City - The City shall accept for maintenance the public works improvements required by this Agreement after City has determined the Developer has caused all improvements to have been made in accordance with the requirements of Paragraph 2 above. All public works improvements required by this Agreement shall become the sole property of the City when the City accepts such improvements for permanent maintenance.

7. Continued Maintenance For One Year - The Developer shall maintain all improvements required by this Agreement, as outlined in Section 2 above, for one year following the completion by the Developer, and acceptance of the improvements by City Council. All public works improvements required by this Agreement shall become the sole property of the City when the City accepts such improvements for permanent maintenance.

8. Inspection by City – All work done by the Developer shall be inspected by an inspector employed by the City at the cost and expense of the Developer. The Developer shall pay the City, on demand, the cost of the inspection in accordance with City ordinances. In order to permit the City to inspect the Work, the Developer shall provide to the City proper and safe access to the Project site at all times, and all portions of the Work, and to all shops wherein portions of the Work are in preparation.

9. Payment of Outstanding Fees - Prior to acceptance of the on-tract and off-tract public works improvements for permanent maintenance by the City, the Developer shall pay all outstanding fees that are due in accordance with City Ordinances or this Agreement. In the event the fees are not paid within one year of the date of execution of this Agreement, the Developer shall pay interest at seven percent (7%) per annum from that date until the fees are paid, whether or not any conditions of this Agreement are extended or modified.

10. Reversion to Acreage - If the Developer fails to perform its obligations under this Agreement, Developer consents to the reversion to acreage of the land, which is the subject to this Agreement pursuant to Government Code section 66499.16 and to bear all applicable costs.

11. Property Acquisition - If the Developer is unable to acquire property required for the construction of required improvements, the Developer agrees to execute an agreement drafted by the City enabling the City to provide for acquisition through eminent domain.

12. Bonds Required - The Developer shall provide to the City surety bonds of a form satisfactory to the City Attorney issued by a company authorized to issue surety bonds in the State of California as follows:

(a) At the time of signing this Agreement, the following bonds shall be provided:

i. Faithful Performance – in the amount of 100 percent of the total estimated construction costs, or $7,860,743, to secure faithful performance of this Agreement by the Developer.

ii. Labor and Materials – in the amount of fifty percent of the estimated construction costs, or $3,930,372, to secure payment by the Developer of laborers and material engaged pursuant to this Agreement, and further to secure payment as required by the Unemployment Insurance Act.

(b) At the time of signing this Agreement, or before the City accepts the improvements,

the Developer shall also provide a Warranty Bond for maintenance in the amount of fifteen percent of the cost of the improvements, or $1,179,112, to secure performance of Section 7 above. This bond shall remain in effect for one (1) year after the date of acceptance by the City Council of the improvements required by this Agreement.

13. Alternate Security - In lieu of the bonds required by paragraph 12 above, alternative security in the form outlined by City Ordinance, compliant with the Government Code, and approved by the City Attorney may be provided.

14. Reporting Damages - If any damage (including personal injury, death, or property damage) occurs in connection with the performance of this Agreement, the Developer shall immediately notify the City Risk Manager's office by telephone at (925) 960-4172, and Developer shall promptly submit to the City's Risk Manager a written report, in a form acceptable to the City, with the following information: (a) a detailed description of the damage (including the name and address of the injured or deceased person(s), and a description of the damaged property, if any), (b) the name(s) and address(es) of witnesses, and (c) the name(s) and address(es) of any potential insurance companies.

15. Indemnification - The Developer shall indemnify, defend, and hold the City, its officers, officials, employees, agents, and volunteers harmless against any and all claims, injuries, damages, losses, and suits, including attorney fees and legal costs, arising out of or in connection with the performance of this Agreement, except for injuries and damages caused solely by the negligence of the City.

16. Insurance Required - Developer shall procure and maintain insurance for the duration of the contract in the amounts and under the terms set forth in Exhibit "B" against claims for injuries to persons or damages to property, which may arise from or in connection with the performance of the work hereunder by the Developer, his agents, representatives, employees, or subcontractors.

17. Participation in Benefit Districts - The Developer shall participate in all Benefit Districts formed by the City prior to the execution of this Agreement and shall pay the prorata fee due the City under the terms of Benefit District(s) as applied to the real property covered by this Agreement.

18. Attorney's Fees to Prevailing Party - If any action at law or in equity, including an action for declaratory relief, is brought to challenge, enforce, or interpret the provisions of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees, expert witness fees, and costs, in addition to any other relief to which they may be entitled.

19. Developer Obligations to Pay City Expenses to Defend Agreement - If the City chooses to defend any third party claim or suit challenging any action taken by the City with regard to any procedure or aspect of this agreement, including the environmental review process for the project, the Property Owner agrees to reimburse the City for attorneys' fees, expert witness fees, and other 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. City has the right to choose and retain such legal counsel, as the City deems appropriate. After expenses reach $100,000 and for 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 regarding the allocation of expenses among the parties.

20. Agreement Binds Successors - This Agreement pertains to and runs with the land benefited by the privileges it grants and binds the successors in interest of the parties to this Agreement. This Agreement shall be recorded in the Official Records of Alameda County.

21. Severability - If any term of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, the Agreement shall be construed as not containing that term, and the remainder of this Agreement shall remain in full force and effect; provided, however, this paragraph shall not be applied to the extent that it would result in a frustration of the parties' intent under this Agreement.

22. Modifications - This Agreement may not be modified unless by written instrument signed by both parties.

23. Governing Law - The interpretation, validity and enforcement of this Agreement shall be governed by and interpreted in accordance with the laws of the State of California. Any suit, claim, or legal proceeding of any kind related to this Agreement shall be filed and heard in a court of competent jurisdiction in the County of Alameda.

****

Signatures and Attachment List on the Next Page

DEVELOPER:
CIVIC TRIAD EAST, LLC

Dated:

4/29/2024

By: Ryan Parlett
Title: President

Mailing Address:
1500 Willow Pass Court
Concord, CA, 94520

(ALL SIGNATURES MUST BE NOTARIZED)

CITY OF LIVERMORE,
a municipal corporation

Dated:

MAYOR

ATTEST:

City Clerk

APPROVED AS TO FORM:

Assistant/City Attorney

Attachments:
Exhibit A – Engineering Considerations
Exhibit B – Insurance Requirements

EXHIBIT B

CALIFORNIA ALL-PURPOSE CERTIFICATE OF 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 Contra Costa

On April 29, 2024 before me, Laurel Nunez, Notary Public,
(Here insert name and title of the officer)

personally appeared Ryan Parlett,

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.

Laurel Nunez
Signature of Notary Public

LAUREL NUNEZ
Notary Public - California
Contra Costa County
Commission # 2425856
My Comm. Expires Nov 8, 2026
(Notary Seal)

ADDITIONAL OPTIONAL INFORMATION

DESCRIPTION OF THE ATTACHED DOCUMENT

(Title or description of attached document)

(Title or description of attached document continued)

Number of Pages ____ Document Date____

(Additional information)

CAPACITY CLAIMED BY THE SIGNER

- ☐ Individual (s)
- ☐ Corporate Officer

(Title)

- ☐ Partner(s)
- ☐ Attorney-in-Fact
- ☐ Trustee(s)
- ☐ Other ____

INSTRUCTIONS FOR COMPLETING THIS FORM

Any acknowledgment completed in California must contain verbiage exactly as appears above in the notary section or a separate acknowledgment form must be properly completed and attached to that document. The only exception is if a document is to be recorded outside of California. In such instances, any alternative acknowledgment verbiage as may be printed on such a document so long as the verbiage does not require the notary to do something that is illegal for a notary in California (i.e. certifying the authorized capacity of the signer). Please check the document carefully for proper notarial wording and attach this form if required.

- State and County information must be the State and County where the document signer(s) personally appeared before the notary public for acknowledgment.
- Date of notarization must be the date that the signer(s) personally appeared which must also be the same date the acknowledgment is completed.
- The notary public must print his or her name as it appears within his or her commission followed by a comma and then your title (notary public).
- Print the name(s) of document signer(s) who personally appear at the time of notarization.
- Indicate the correct singular or plural forms by crossing off incorrect forms (i.e. ~~he~~/she/~~they,~~ is /~~are~~) or circling the correct forms. Failure to correctly indicate this information may lead to rejection of document recording.
- The notary seal impression must be clear and photographically reproducible. Impression must not cover text or lines. If seal impression smudges, re-seal if a sufficient area permits, otherwise complete a different acknowledgment form.
- Signature of the notary public must match the signature on file with the office of the county clerk.
  - ❖ Additional information is not required but could help to ensure this acknowledgment is not misused or attached to a different document.
  - ❖ Indicate title or type of attached document, number of pages and date.
  - ❖ Indicate the capacity claimed by the signer. If the claimed capacity is a corporate officer, indicate the title (i.e. CEO, CFO, Secretary).
- Securely attach this document to the signed document

© 2004-2015 ProLink Signing Service, Inc. – All Rights Reserved www.TheProLink.com – Nationwide Notary Service

DATE: March 30, 2023

ENGINEERING CONSIDERATIONS - EXHIBIT "A"
(Subject to revision prior to final approval
by Planning Commission and City Council)

TENTATIVE TRACT: 8657 (SUB22-005)

LOCATION: East Corner of Portola and Triad Place

APPLICANT: Denova Homes

Note: Special conditions are shown in standard type. Standard conditions that apply to this project are shown in italics. In addition, standard conditions of approval for this project are listed in Section II of the Development Plan Check and Procedures Manual.

1. DEFINITIONS

For the purpose of this agreement, the following words shall have the meanings respectively ascribed to them by this section:

Developer :	*Person(s) or Corporation(s) signing final map(s) and subdivision agreement(s)*
Improvement Plans:	*Construction drawings for required public and private improvements*
Services:	*Utility lateral, or any portions of a conduit cable or duct, between a utility distribution line and the site it serves*
Project:	*The work to be performed by Developer*

2. VESTING TENTATIVE MAP

Approval or conditional approval of this vesting tentative map shall not limit the City Engineer's ability to require workable designs on future grading and improvement plans based upon these Engineering Considerations and the City's standard engineering specifications and details.

3. GENERAL

The project shall be in conformance with all City Ordinances, rules, regulations, and policies. The conditions listed below are particularly pertinent to this permit and shall not be construed to permit violation of other laws and policies not so listed.

All required improvements shall be constructed prior to occupancy of the new residential units on this site.

A. IMPROVEMENT PLANS - Exhibit A-1

An engineered improvement plan shall be prepared by the Developer for approval by the City's Departments (including the Community Development, Public Services, Fire, and Police Department), which shall include, but not necessarily be limited to, existing site conditions, dedications, grading plans, street design and grades, curb, gutter, sidewalk and driveway grades, and type, size and location of all public works improvements as herein required. Approval of this tentative map does not constitute approval of the details shown thereon. If there is any conflict between the tentative map and these Engineering Considerations, the Engineering Considerations shall govern.

No specific phased development plan has been submitted with this tentative tract application. Therefore, all required improvements for this tentative map shall be constructed as one phase. A phased map could only be considered if a specific phasing plan is submitted for consideration as a tentative map amendment.

B. STANDARDS FOR IMPROVEMENT PLANS AND MAPS

All improvement plans and maps shall conform to the following City of Livermore documents except as modified by these engineering considerations:

1. *City of Livermore Standard Specifications and Details*
2. *Development Plan Check and Procedures Manual*

Completed final map and improvement plan checklists from the manual entitled "City of Livermore, Development Plan Check and Procedures Manual" shall be submitted with the first plan check submittal for each phase.

Prior to approval of the improvement plans by the City, the Developer shall provide signed and approved plans from outside utilities, including joint trench plans. Outside utilities include but are not limited to PG&E, CalWater, and Comcast.

C. STANDARD CONDITIONS OF APPROVAL IN THE DEVELOPMENT PLAN CHECK AND PROCEDURES MANUAL

All of the standard conditions of approval for subdivisions and major projects as listed in Part II of the City of Livermore Development Plan Check and Procedures Manual apply except for the following: A-2, A-4, A-10, B-7, B-8, B-9, B-10, B-11, B-13, B-14, B-16, K-1, K-2, K-3

D. WORK IN OTHER JURISDICTIONS

The Developer is responsible for obtaining permits and approvals for construction work and property acquisition that are required by agencies other than the City of Livermore. Other agencies may include but are not limited to Alameda County Zone 7, Livermore Area Recreation and Park District, Caltrans, FHWA, FEMA, Army Corps of Engineers, Alameda County Environmental Health. Any work required by other agencies must be shown on the final set of improvement plans and approved by the subject agency prior to approval of the improvement plan set for the project by

EXHIBIT B

the City.

4. STREETS

A. SPECIFIC REQUIREMENTS:

The Developer shall offer easements and dedications for, and shall improve his share of the ultimate street widths for the following named streets in accordance with the City's General Plan:

North Canyons Parkway

North Canyons Parkway is a major street in the General Plan. Along the project frontage North Canyons Parkway is a 4 lane road with a landscaped median to accommodate turning lanes and a Class 2 bike lane in each direction.

The Isabel Neighborhood Specific Plan (INSP) requires that the existing bike lane at the project location be replaced with a new Class 4 separated bike lane with separated buffer along the project frontage. Installation of this Class 4 bike lane shall include a physical raised barrier.

To accommodate the Class 4 bike lane the westbound lanes of North Canyons Parkway along the project frontage shall be reconfigured as follows:

8' bike lane
8' buffer area
11' travel lane
11' travel lane
11' left turn lane at Triad Place

The Class 4 bike lane will be comprised of an 8' bike lane and 8' buffer area. The buffer area shall be designed with a combination of median buffer planters and open segments to provide cyclists with both a travel lane separated from traffic and periodic openings with breakaway bollards to enter and exit the buffered bike lane. The median buffer planters shall be approximately 60' in length and 8' wide and have 6" deep curbs. Each median buffer planter shall be planted with 3 street trees per standard detail L-3G with groundcover and/or hardscape per standard detail L-2B. Median buffer planting shall be reviewed and approved by the Community Development Department. City Engineer may modify the final lane widths shown above as needed to fit within available right-of-way.

Final design of the Class 4 bike lane shall include but is not limited to appropriate transitions to and from the existing Class 2a to the Class 4 bike lane; modifications to signing and striping; traffic signal timing, irrigation of planter area, any surface treatments and/or structures, and any necessary utility services needed for the maintenance of the median buffer planter.

Triad Drive

Triad Drive is a local street and is fully improved along the project frontage. To coordinate with the main entry on Triad Drive for the project, the Developer shall shorten the southbound left turn

lane on Triad Drive to 150 feet at the North Canyons Parkway intersection and modify the detection zones for the southbound left turn lane to accommodate the new turn lane length.

Relinquishment of abutter's rights shall be provided on the final map for the project where none exists today, except where the project entrance is located.

Interior Streets

Interior Streets A, B, C and D are local private streets which shall be 26 feet wide with no on-street parking except where guest parking stalls are located. Interior alleys are local private streets which shall be 20 feet wide with no on street parking. All private interior streets will be designated as Commons to distinguish them from public streets.

CASp Certification for Public Walkways/Sidewalks

The Developer shall have a certified CASp Specialist review and certify that the design for all pedestrian improvements within the public right-of-way or a public easement complies with the following applicable regulations: American with Disabilities Act (ADA) requirements, the Public Rights-of-Way Accessibility Guidelines (PROWAG), and the requirements found in Chapter 11B of the 2019 California Building Code. If an accessibility design cannot meet the above listed applicable standards, the Developer shall propose and the CASp Specialist shall concur with a design exception request for approval by the City Engineer or their designee. In addition, the Developer shall have the certified CASp Specialist inspect and certify that pedestrian improvements are installed per the CASp certified design. Pedestrian improvements include new trails, walkways, sidewalks, accessible ramps, connections between existing and new pedestrian improvements, and modifications to existing pedestrian improvements within or adjacent to the project site, as shown on the approved plans.

Developer shall upgrade or install new pedestrian access ramps at all pedestrian crossings of public streets or driveways within or adjacent to the project.

Emergency Vehicle Access

The proposed emergency vehicle access shall be designed to be an all weather access for emergency vehicles and must be able to withstand a vehicle loading of 75,000 lbs. The Developer shall dedicate and Emergency Vehicle Access Easement on the map and shall enter into an maintenance agreement with the City to ensure the ensure the long term maintenance of the emergency vehicle access. It will not be necessary to require abutters rights at this location because the easement will provide ingress and egress rights for emergency vehicles only.

5. TRAFFIC SIGNALS – N/A

6. TRAFFIC IMPACT FEE CREDITS AND REIMBURSEMENTS: N/A

7. SANITARY SEWERS

Because the Developer has chosen to install the City standard asphalt street section for the private streets with only specialty paving (i.e. pavers, stamped concrete, stamped asphalt, etc.) in a few areas to act as "accents" to the project entry or other areas as approved by the City Engineer, the sanitary sewer may be publicly maintained. However, in order to facilitate the maintenance and repair of the public sanitary sewer lines in the future, the Developer shall install a casing for the pipe or other pipe protective measures as approved by the City Engineer, in all locations where the pipe runs under specialty paving. Additionally, no pipe joints will be allowed in specialty paving areas.

Sewer shall be extended across all frontages of each phase.

Sewer laterals with two-way cleanouts behind the curb shall be installed to each lot or site before the streets are surfaced.

8. STORM WATER DRAINAGE AND TREATMENT REQUIREMENTS

A. General

1. This site is subject to the National Pollutant Discharge Elimination System (NPDES) Program. Prior to the issuance of the initial grading or building permit, the Developer shall provide evidence that the site is covered by the statewide General Permit to Discharge Storm Water associated with construction activity. This requires confirmation that a Notice of Intent (NOI) and the applicable fee was sent to the State Water Resources Control Board. In addition, the grading plans need to state: "All grading shall be in accordance with the Storm Water Pollution Prevention Plan prepared by the Developer per the Notice of Intent on file with the State Water Resources Control Board".

2. Necessary interceptor ditches shall be concrete. Field inlets and storm drainage pipe may be necessary in conjunction with concrete interceptor ditches as secondary drainage releases. All interceptor ditches shall be privately maintained.

B. Storm Drainage Requirements

Per the City's Facilities Planning Guidelines (dated June 2005), the flows must have the following characteristics:

> *For a 10-year design discharge: a hydraulic grade line (HGL) is no higher than 1.25 feet below the top of curb elevation at any manhole or inlet.*
>
> *For a 100-year design discharge: a HGL does not exceed the top of curb elevation. (This is required for item 3 above.)*

For additional detail on these guidelines, the applicant should refer to the following resources: City of Livermore Storm Drain Master Plan & City of Livermore Facilities Planning Guidelines (both available at the Engineering counter at City Hall).

Since the Developer has chosen to build private streets, the storm drain system will be privately owned and maintained by a homeowner's association and maintained to the property line. In order to differentiate the ownership of public and private facilities, the Developer shall provide the additional structures (manholes and or catchbasins) to be installed at the property line.

C. Stormwater Infrastructure Maintenance Funding

The cost to maintain all private storm water infrastructure installed with this project shall be funded by the Developer.

D. Channels N/A

E. Storm Water Treatment, Detention and Low Impact Development Requirements

1. *The Developer shall treat the storm water runoff from this site prior to having the storm water enter the City's storm water distribution system. Stormwater Treatment, Low Impact Development, and Trash Capture is required by the Regional Water Quality Control Board. The Developer shall complete and or update the Stormwater Requirements Checklist. The Developer shall provide a storm water treatment plan with calculations indicating treatment that meets the latest requirements described in Section C.3 of the City's NPDES Permit with the Regional Water Quality Control Board. City approval of this plan and calculations is required prior to the approval of the improvement plans.*

2. *The Developer shall install trash capture devices on catch basins, as needed, to minimize the flow of trash into the City's storm drain system.*

3. *If this project is greater than one acre, the Developer shall provide a Hydrograph Modification Plan (HMP) with calculations in accordance with the Alameda Countywide Cleanwater Program (ACCWP) Bay Area Hydrology Model (BAHM) guidelines. The software for the design of control measures to meet the Flow Duration Control is available to download from www.bayareamodel.org. For additional information you may contact Debbie Salgado in the City's Engineering Department at (925-960-4558)*

4. *Prior to final map approval, the applicant shall enter into a maintenance agreement with the City of Livermore for all storm water treatment devices deemed necessary on this site. If the stormwater treatment devices will be maintained by the individual homeowners a cleanout will be necessary at the property lines to allow the residents to maintain their portion of the private stormdrain underdrain. If the stormwater treatment device will be maintained by a Homeowners Association then the cleanouts at each of the property lines may not be needed. The stormdrain treatment devices shall be shown on the plot plans and included in the Operations and Maintenance Agreement. The Operations and Maintenance Agreement(s) shall be recorded prior to recordation of the Final Map.*

F. Stormwater Treatment Infrastructure Maintenance Funding

The cost to maintain all storm water treatment, detention and low impact development infrastructure installed with this project shall be funded by the Developer.

9. REQUIRED SOURCE CONTROL STORMWATER MEASURES

The Regional Water Quality Control Board adopted Order R2-2015-0049 issuing the Alameda Countywide NPDES municipal storm water permit for the Alameda Countywide Clean Water Program. The 17 member agencies, including Livermore, are subject to this permit and all its requirements including the following:

> *"The Permittees shall, as part of their continuous improvement process, submit enhanced new development and significant redevelopment Performance Standards that summarize source control requirements for such projects to limit pollutant generation, discharge, and runoff, to the maximum extent practicable..."*

In accordance with this requirement, the following source control measures, included as part of these Conditions of Approval, shall be implemented as a part of this project.

A. Structural Control Measures

1. Illegal Dumping to Storm Drain Inlets and Waterways

On-site storm drain inlets, except inlets located in landscaped areas, shall be clearly marked with the words "No Dumping! Flows to Bay" on a plastic marker. The plastic markers are available for purchase from the Water Resources Division. For ordering information, please call 925-960-8100. For projects with newly-developed, privately-maintained streets, agency staff will verify that storm drain inlets have been marked before the final sign-off on the project's building permit or encroachment permit.

2. Interior Floor Drains

Approved interior floor drains shall be plumbed to the sanitary sewer system and shall not be connected to the storm drain system. The applicant shall contact the Water Resources Division for specific connection and discharge requirements.

3. Parking Garages

Interior level parking garage floor drains shall be connected to a sand/oil interceptor or equivalent water treatment device approved by the Water Resources Division prior to discharging to the sanitary sewer system.

4. Pesticide/Fertilizer Application and Irrigation

a. Landscaping shall be designed to minimize irrigation and runoff, promote surface infiltration where possible, minimize the use of fertilizers and pesticides that can contribute to storm water pollution, and incorporate appropriate Bay-Friendly Landscaping principles.

b. If a landscaping plan is required as part of a development project application, the plan shall meet the following conditions related to reduction of pesticide use on the project site:

I. Where feasible, landscaping shall be designed and operated to treat storm water runoff by incorporating elements that collect, detain, and infiltrate runoff. In areas that provide detention of water, plants that are tolerant of saturated soil conditions and prolonged exposure to water shall be specified.

II. Plant materials selected shall be appropriate to site specific characteristics such as soil type, topography, climate, amount and timing of sunlight, prevailing winds, rainfall, air movement, patterns of land use, ecological consistency and plant interactions to ensure successful establishment.

III. Existing native trees, shrubs, and ground cover shall be retained and incorporated into the landscape plan to the maximum extent practicable.

IV. Unless otherwise specified, proper maintenance of landscaping shall be the responsibility of the property owner.

V. Integrated pest management (IPM) principles and techniques shall be encouraged as part of the landscaping design. Some examples of IPM principles and techniques include the following:

i. Select plants that are well adapted to soil conditions at the site.

ii. Select plants that are well adapted to sun and shade conditions at the site. Consider future conditions when plants reach maturity. Consider seasonal changes and time of day.

iii. Provide irrigation appropriate to the water requirements of the selected plants.

iv. Select pest and disease resistant plants.

v. Plant a diversity of species to prevent a potential pest infestation from affecting the entire landscaping plan.

vi. Use "insectary" plants in the landscaping to attract and keep beneficial insects.

VI. Landscaping shall also comply with City of Livermore's "Water Efficient Landscape Ordinance". However, areas of a site used for bio-swales or other

landscaped areas that function as a storm water treatment measure shall be exempt from the Water Efficient Landscaping requirements.

VII. An efficient irrigation system shall be installed in areas requiring irrigation. An example of an efficient irrigation system is one that includes a weather-based (automatic, self-adjusting) irrigation controller with a moisture and/or rain sensor shutoff, and in which sprinkler and spray heads are not permitted in areas less than 8 feet wide.

5. Pool, Spa, and Fountain Discharges

a. New or rebuilt swimming pools, hot tubs, spas and fountains must have a connection to the sanitary sewer to facilitate draining. This connection could be a drain in the pool to the sanitary sewer or a cleanout located close enough to the pool so that a hose can readily direct the pool discharge into the sanitary sewer cleanout.

b.When draining is necessary, a hose or other temporary system shall be directed into a sanitary sewer cleanout, or vegetated areas that are large enough to accommodate the volume without allowing the discharged water to flow to the storm drain system or receiving water body.

6. Food Service Equipment Cleaning

a. Food service facilities (including grocery stores) shall have a sink or other container for cleaning floor mats, equipment, and hood filters, which is connected to a grease interceptor prior to discharging to the sanitary sewer system. The cleaning area shall be large enough to allow for the largest type of equipment that must be cleaned at the facility. The cleaning area shall be indoors or in a roofed area outdoors and must be plumbed to the sanitary sewer. The discharge of wastewater from these washing activities to the storm drain system is prohibited. Outdoor cleaning areas shall be designed to prevent storm water run-on from entering the sanitary sewer and to prevent wastewater runoff to the storm drain from washing activities. Signs shall be posted indicating that all food service equipment washing activities shall be conducted in this area.

b. An oil and grease interceptor with a minimum size of 750 gallons is required for all food service facilities (including restaurants and grocery stores). Facilities that do not have any cooking or any other grease generating processes may request an exemption from this requirement.

7. Refuse Areas

a. New or redevelopment projects shall provide a roofed and enclosed area for dumpsters, recycling containers, compactors, and food waste containers. The area shall be designed to prevent water run-on to the area, to prevent runoff from the refuse area and to properly contain litter and trash. Dumpster leakage from covered trash and food compactor

enclosures shall drain to the sanitary sewer via connection to an approved oil and grease interceptor device.

b. Runoff from trash enclosures, recycling areas, and/or food compactor enclosures or similar facilities shall not discharge to the storm drain system. Trash enclosure areas shall be designed to avoid run-on to the trash enclosure area. In most cases, drains are not permitted within trash enclosure areas. A drain, however, must be provided for compactors. If a drain is required in or beneath dumpsters, compactors, and tallow bin areas, it shall be connected to a grease removal device prior to discharging to the sanitary sewer.

8. Outdoor Process Activities/Equipment[1]

a. Process activities shall be performed either indoors or in roofed outdoor areas. If performed outdoors, the area shall be designed to prevent the "run-on" of storm water drainage, as well, as the runoff from the area with process activities.

b. Process equipment areas shall drain to the sanitary sewer system. The applicant shall contact the Water Resources Division for specific connection and discharge requirements.

9. Outdoor Equipment/Materials Storage

a. All outdoor equipment and materials storage areas shall be covered and/or bermed, or shall be designed with Best Management Practices (BMP) that effectively minimize the potential runoff and contact of storm water to pollutants.

b. Storage areas containing non-hazardous liquids shall be covered by a roof and be contained by berms, dikes, liners, vaults or similar spill containment devices.

c. All on-site hazardous materials and wastes, as defined and/or regulated by the California Public Health Code must be used, managed, and stored in compliance with the applicable Livermore Pleasanton Fire Department's requirements and regulations.

10. Vehicle/Equipment and Commercial/Industrial Cleaning

a. Wastewater from vehicle and equipment washing operations shall not be discharged to the storm drain system. Auto dealerships, however, may rinse off vehicle exterior surfaces for appearance purposes, provided only a minimum volume of water is used without soap or other cleaning agents.

b. Commercial/industrial facilities having vehicle/equipment cleaning needs shall either provide a roofed, bermed area for washing activities or discourage vehicle/equipment washing by removing hose bibs (faucets) and installing signs prohibiting such uses.

---

[1] Examples of businesses that may have outdoor process activities and equipment include machine shops and auto repair shops, and industries that have pretreatment facilities.

Vehicle/equipment washing areas shall be paved, designed to prevent run-on to or runoff from the area, and plumbed to drain to the sanitary sewer via an oil water separator with a minimum size of 750-gallons or an approved equivalent pretreatment device.

c. Commercial car wash facilities shall be designed and operated such that no runoff from the facility is discharged to the storm drain system. Wastewater from the facility shall discharge to the sanitary sewer via an oil water separator with a minimum size of 750-gallons or an approved equivalent pretreatment device.

d. All facilities, which discharge wastewater generated from vehicle or equipment washing, must obtain a wastewater discharge permit from the City of Livermore's Water Resources Division prior to the commencement of the discharge.

11. Vehicle/Equipment Repair and Maintenance

a. Vehicle/equipment repair and maintenance shall be performed in a designated area indoors, or if such services must be performed outdoors, in an area designed to prevent the run-on and runoff of storm water. Oil and other automotive fluid change service must always be performed indoors.

b. Secondary containment shall be provided for exterior work areas where hazardous materials or hazardous wastes are used or stored. Drains shall not be installed within the secondary containment areas.

c. Vehicle service facilities shall not contain floor drains.

d. Tanks, containers, or sinks used for parts cleaning or rinsing shall not be connected to the storm drain system. Tanks, containers, or sinks used for such purposes shall not be directly connected to the sanitary sewer. Discharges to the sanitary sewer from such operations require prior approval from the Water Resources Division. The applicant shall contact the Water Resources Division for specific connection and discharge requirements.

12. Fuel Dispensing Areas

a. Fueling areas[2] shall have impermeable surfaces (i.e., portland cement concrete or equivalent smooth impervious surface) that are: a) graded at the minimum slope necessary to prevent ponding; and b) separated from the rest of the site by a grade break that prevents run-on of storm water to the maximum extent practicable.

b. Fueling areas shall be covered by a canopy or roof that extends a minimum of ten feet in each direction from each pump. Roof downspouts from the canopy or roof shall not drain onto the fueling area.

---

[2] The fueling area shall be defined as the area extending a minimum of 6.5 feet from the corner of each fuel dispenser or the length at which the hose and nozzle assembly may be operated plus a minimum of one foot, whichever is greater.

13. Loading Docks

a. Loading docks shall be graded to minimize run-on to and runoff from the loading area. Roof downspouts shall be positioned to direct storm water away from the loading area. Storm water runoff from loading dock areas shall be connected to a post-construction storm water treatment measure(s) prior to discharge to the storm drain system.

b. Door skirts between the trailers and the building shall be installed to prevent exposure of loading activities to rain, unless one of the following conditions applies: the loading dock is covered, or the applicant demonstrates that rainfall will not result in an exposure of storm water to pollutants.

14. Fire Sprinkler Test Water

Provisions shall be made in the project design and construction to allow for the discharge of fire sprinkler test water to an onsite vegetated area. If this is not feasible, provide for discharge to the sanitary sewer in accordance with current plumbing codes.

15. Miscellaneous Drain or Wash Water

a. Boiler drain lines shall be connected to the sanitary sewer system and may not discharge to the storm drain system.

b. For small air conditioning units, air conditioning condensate shall be directed to landscaped areas as a minimum BMP. For large air conditioning units, in new developments or significant redevelopments, condensation lines shall be connected to the sanitary sewer system, wherever feasible.

c. Roof drains shall discharge and drain away from the building foundation to landscaped areas wherever feasible.

d. Washing and/or steam cleaning activities must be performed at an appropriately equipped facility that drains to the sanitary sewer as specified in Section J. Any outdoor washing or pressure washing must be in compliance with the City's Stormwater Management Program requirements and managed in such a way that there is no discharge of soaps or other pollutants to the storm drain system. The applicant shall contact the Water Resources Division for specific discharge requirements.

16. Architectural Copper Installation

Projects with architectural copper should, if possible, purchase copper materials that have been pre-patinated at the factor. Whether patination is done offsite or onsite, applicant should consider coating the copper materials with an impervious coating that prevents further corrosion and runoff. If patination is done on-site, implement one or both of the following:

a. Collect rinse water in a tank and pump to the sanitary sewer. Contact the City of Livermore Water Resources before discharging to the sanitary sewer.

b. Collect the rinse water in a tank and haul off-site for proper disposal.

B. II. OPERATIONAL BMPS

This section details Best Management Practices (BMP) that private property owners and/or the occupants of private property must implement following the construction of projects. Ultimately, the responsibility for implementation of these BMPs rests with the property owners. The City of Livermore's Source Control Program routinely performs inspections of industrial and commercial sites to verify BMP implementation and effectiveness.

1. Paved Sidewalks and Parking Lots

Sidewalks and parking lots shall be swept regularly to minimize the accumulation of litter and debris. Wash water resulting from the pressure washing of parking lots must be captured, pretreated (if necessary) to meet local discharge limits, and discharged to the sanitary sewer. Wash water resulting from the pressure washing of sidewalks may be allowed to drain to the storm drain system provided that (a) no soap or other cleaning agents are used, and (b) all debris are trapped and collected to prevent entry into the storm drain system. Under no circumstances shall washwater containing any soap or other cleaning agents be discharged to the storm drain system.

2. Private Streets, Utilities and Common Areas

a. The owner of private streets and storm drains shall prepare and implement a plan for street sweeping of paved private roads and cleaning of all storm drain inlets.

b. For residential developments, where other maintenance mechanisms are not applicable or otherwise in place, a Property Owners Association, Landscape& Lighting District, or an equivalent mechanism shall be created and shall be responsible for maintaining all private streets and private utilities and other privately owned common areas and facilities on the site including landscaping. These maintenance responsibilities shall include implementing and maintaining storm water BMPs associated with improvements and landscaping. CC&R's creating the association shall be reviewed and approved by the City prior to the recordation of the Final Map and recorded prior to the sale of the first residential unit. The CC&R's or Landscape & Lighting District shall describe how the storm water BMPs associated with privately owned improvements and landscaping shall be maintained and detail contact information for the entity responsible for such maintenance activities.

3. Vehicle/Equipment Repair and Maintenance

a.No person shall dispose of, or permit the disposal, directly or indirectly, of vehicle fluids, hazardous materials, or rinse water from parts cleaning operations into storm drains.

b.No vehicle fluid removal shall be performed outside a building, or on asphalt or ground surfaces, whether inside or outside a building, except in such a manner as to ensure that any spilled fluid will be in an area of secondary containment. Leaking vehicle fluids shall be contained or drained from the vehicle immediately.

c.No person shall leave unattended drip parts or other open containers containing vehicle fluid, unless such containers are in use or in an area that cannot discharge to the storm drain.

4. Fueling Areas

The property owner shall dry sweep the fueling area and spot clean leaks and drips on a routine basis. Fueling areas shall not be washed down with water unless the wash water is collected and prevented from discharging to the storm drain system. Wash water resulting from the pressure washing of fueling areas must be captured, pretreated (if necessary) to meet local discharge limits, and discharged to the sanitary sewer or hauled offsite for proper disposal through a licensed waste hauler.

5. Loading Docks

The property owner shall ensure that BMPs are implemented to prevent potential storm water pollution. These BMPs shall include, but are not limited to, a regular program of sweeping, litter control, and spill clean-up.

6. On-site Storm Drains

All on-site storm drains must be inspected and, if necessary, cleaned at least once a year immediately prior to the rainy season.

7. Architectural Copper Cleaning, Treating or Washing

When cleaning, treating or washing architectural copper features, implement one or both of the following:

a. Collect rinse water in a tank and pump to the sanitary sewer. Contact the City of Livermore Water Resources before discharging to the sanitary sewer.

b. Collect the rinse water in a tank and haul off-site for proper disposal.

10. WATER SUPPLY (CITY)

Because the Developer has chosen to install the City standard asphalt street section for the majority of the streets with only specialty paving (i.e. pavers, stamped concrete, stamped asphalt, etc.) in a few areas to act as "accents" to the project entry or other areas as approved by the City Engineer, the water lines may be publicly maintained. However, in order to facilitate the maintenance and repair of the water lines in the future, the Developer shall install a casing for the pipe or other pipe protective measures as approved by the City Engineer, in all locations where the pipe runs under specialty paving. Additionally, no pipe joints will be allowed in specialty paving areas.

Water mains shall be extended across all frontages of each phase and all waterline valves must notate "EPDM" on the valve body.

Because the project is located within the City of Livermore Water Zone 1, the developer shall install pressure reduction valves (PRVs), backflow prevention devices and appurtenances on the potable and reclaimed water services as directed by the City Engineer.

The fire service backflow preventer(s) shall be effectively screened from the public right-of-way while at the same time preserving ease of maintenance access to the backflow preventer(s). Screening shall be as specified on City Standard Detail W-10A, B and C. The fire service backflow preventer(s) shall meet the performance standards of the backflow preventer shown in City Standard Detail W-10A, B and C.

Because the project is located within a reclaimed water service area, the irrigation system shall be connected to the reclaimed water system. If the Reclaimed water main is not currently located along the sight frontage of this project, the Developer shall extend the water main as necessary to connect to the main along said project site frontage.

Furthermore the Developer shall Prepare a "Reclaimed Water Engineer's Report" for review and shall obtain City approval and State Department of Health Services approval of the "Reclaimed Water Engineer's Report" prior to the approval of the final map.

11. UNDERGROUNDING OF UTILITIES:

All existing and new electric (with the exception of any 60 KV and higher voltage wires) and communication lines along the project frontage and within the project shall be placed underground. Electric, gas, Comcast and SBC utilities are required and shall be placed in a common trench. All electric transformers shall be placed underground.

12. TRAILWAY/BIKEWAY REQUIREMENTS

Active Transportation Plan

Certain portions of this development are within the City of Livermore Active Transportation Plan established and adopted as part of the General Plan. The Developer will be required to dedicate and develop that certain land within and adjacent to this development for various trail and bike way transportation purposes.

13. MEDIANS AND OTHER LANDSCAPED AREAS

Since the City has a new centralized irrigation system with a computer terminal and modem located at the City's Maintenance Service Center, the Developer shall install a City standard centralized irrigation controller system with communication accessories as approved by the City. The City may exempt this requirement based on the limited size of the landscape area.

The developer shall not cut down or remove on site trees until a demolition permit is approved and issued by the City

14. HORTICULTURIST'S REPORT

A Horticulturist's report will be required if the site is located north of Highway I-580.

15. SPECIAL DISTRICTS

A. Landscaping and Lighting Maintenance and Operation N/A

B. Assessment District

This development shall annex into Community Facilities Maintenance District 2023-1 (Isabel Neighborhood Specific Plan) to provide for maintenance funds for their pro-rata share of public infrastructure and landscaping that is installed with the Isabel Neighborhood Specific Plan.

The Developer shall initiate and bear the costs for the annexation into CFD 2023-1.

Annexation documents shall be filed with the filing of the final map. The necessary documentation shall be submitted for City review with the first improvement plan submittal.

C. Mello Roos District

This development is within the Tri-Valley Technology Park Community Facilities District No. 99-1 and is subject to the charges and requirements thereof.

16. AIRPORT LOCATION

This development is located in the vicinity of the Livermore Municipal Airport. Aircraft operations

in the vicinity of the property may potentially create nuisances, including but not limited to noise, vibration or odors. The owner and or future buyer should be aware that operations and flight numbers at the Livermore Municipal Airport could increase in the future. A report must be filed with the Division of Real Estate relative to this matter.

An aviation easement shall be granted to the City prior to the filing of the final map. The grant shall be made on the City's "Aviation Easement" form.

17. SUBDIVISION AGREEMENT AND SECURITY

Following tentative map approval, the Subdivision Improvement Agreement will not be submitted to the City Council until the Developer has submitted all of the documents indicated in the "Final Approval of Tract Map Checklist" in the Development Plan Check and Procedures Manual (30) days prior to the city council meeting at which the final map will be considered for final approval by the City Council.

18. FEE AMOUNTS

The Developer will be required to pay the applicable development impact fees and project processing fees due in connection with this subdivision. The fee shall be the amount in effect at the time the fee is required to be paid.

19. VEHICLE ACCESS

Prior to or with the submittal for the first plan check of the tract improvement plans and final map, the Developer shall submit for review and approval a traffic control plan for providing safe entry to and exit from the site. The purpose of the plan is to insure that there will be safe entry and exit by construction and other vehicles prior to the installation of the required permanent improvements on North Canyons Parkway and Triad Place.

If this plan requires the construction of improvements on North Canyons Parkway and Triad Place, then these improvements shall be constructed prior to the beginning of any on-site work.

Access to the development by construction equipment, material delivery and other heavy loads shall be limited by the Developer to the following route:

I-580, Airway Blvd, North Canyons Parkway, Triad Place

Such heavy loads will not be allowed on existing residential streets in the vicinity of the development.

The wheel-loading on the above routes shall not exceed State load limits.

20. DEVELOPMENTS WITH PRIVATE ROADWAYS AND UTILITIES (Condominiums, Row Houses, Cluster, etc.)

The private improvements of the private street system are part of the improvements required of this subdivision. For this reason, the Developer shall pay Engineering Division plan check and construction inspection fees and the City Engineering Division will provide these services. The Developer will also provide subdivision security for the required private improvements.

JW:DES

VTTM 8657 (SUB22-005) Triad East Condos Denova Homes 3-30-23 -Final for PC.docx

Project Title: SP18-001; DCA18-001; APZ18-001; GPA18-001; POL18-001; ZMA18-001; PD18-001; PD18-006; PD18-007; and PD18-009
Project Name: Isabel Neighborhood Specific Plan

Isabel Neighborhood Specific Plan Mitigation Monitoring Program

SUMMARY OF IMPACT	SUMMARY OF MITIGATION MEASURE	AGENCY RESPONSIBLE FOR VERIFICATION	TIMING OF VERIFICATION
Traffic and Transportation			
3.3-2 Implementation of the proposed Plan would violate an air quality standard and contribute substantially to an existing or projected air quality violation during construction.	**MM-AQ-1: Require Construction Fleet to Use Renewable Diesel.** All applicants proposing development of projects within the Planning Area shall require their contractors, as a condition of contract, to reduce construction-related exhaust emissions by ensuring that all off-road equipment operating for more than 20 total hours over the entire duration of construction activities shall operate on renewable diesel (such as Diesel high performance renewable). Renewable diesel is currently commercially available in San Francisco Bay Area.	COL	TM, C
	MM-AQ-2: Require Use of Diesel Trucks with 2010-Compliant Model Year Engines. All applicants proposing development of projects within the Planning Area shall require their contractors, as a condition of contract, to use diesel trucks that have 2010 model year or newer engines. In the event that 2010 model year or newer diesel trucks cannot be obtained, the contractor must provide documentation to the City showing that a good faith effort to locate such engines was conducted.	COL	TM, C
	MM- AQ-3: Require Payment of Mitigation Fees to Offset Emissions Exceeding BAAQMD's Daily Pollutant Thresholds. The City shall work with BAAQMD's Office of Community Investment and Infrastructure (OCII) to establish City-specific construction emissions offset guidance that can be implemented to assess, determine, and issue mitigation fees that project applicants would be required to pay BAAQMD on a pro rata basis for all concurrently ongoing	COL, BAAQMD	TM, C

Responsible Agency/Department/Party

COL City of Livermore
Zone 7 Alameda County Flood Control District – Zone 7
LARPD Livermore Area Recreation and Park District
BART Bay Area Rapid Transit District
LAVTA Livermore Amador Valley Transit Agency
CDFW California Department of Fish & Wildlife
USFWS United States Fish and Wildlife Service
LVJUSD Livermore Valley Joint Unified School District
LPC Las Positas College
BAAQMD Bay Area Air Quality Management District

Timing of Verification

TM Prior to approval of tentative tract maps
FM Prior to approval of final tract maps
BP Prior to approval of building and/or grading plans
C During construction
PC Post construction/on-going

SUMMARY OF IMPACT	SUMMARY OF MITIGATION MEASURE	AGENCY RESPONSIBLE FOR VERIFICATION	TIMING OF VERIFICATION
	construction projects in the Planning Area to offset all pollutant emissions exceeding BAAQMD's daily pollutant thresholds. The offset fees may be paid into BAAQMD's Bay Area Clean Air Foundation (Foundation) in an amount to be determined at the time of mitigation. This mitigation (AQ-3) does not apply **if builder/contractor documents they will not exceed BAAQMD's dailey pollutant threshold,** This mitigation includes the following specific requirements: • For all construction projects occurring in the Planning Area, the applicants for each project shall require their construction contractors to estimate annual construction activity monitoring data for the following year. All applicants shall submit their estimated construction-related emissions to the City for review by November 1 of each year for the following construction year. • The City shall review all received construction estimates to ensure they are representative, total the emissions estimates for all construction projects that had activities that would be ongoing during the following construction year, and determine the total mitigation fee that would need to be submitted to BAAQMD to fund offsets for the portion of annual emissions that exceed BAAQMD's average daily thresholds for criteria pollutants. • In light of the total mitigation fee that was determined, and based on the construction emission amounts submitted by each applicant, the City shall appropriate the mitigation fee amount that would need to be submitted by each project applicant on a pro rata basis. The City shall issue the required mitigation fee amounts to each applicable project applicant.		

342

Responsible Agency/Department/Party

COL City of Livermore
Zone 7 Alameda County Flood Control District – Zone 7
LARPD Livermore Area Recreation and Park District
BART Bay Area Rapid Transit District
LAVTA Livermore Amador Valley Transit Agency
CDFW California Department of Fish & Wildlife
USFWS United States Fish and Wildlife Service
LVJUSD Livermore Valley Joint Unified School District
LPC Las Positas College
BAAQMD Bay Area Air Quality Management District

Timing of Verification

TM Prior to approval of tentative tract maps
FM Prior to approval of final tract maps
BP Prior to approval of building and/or grading plans
C During construction
PC Post construction/on-going

EXHIBIT B

SUMMARY OF IMPACT	SUMMARY OF MITIGATION MEASURE	AGENCY RESPONSIBLE FOR VERIFICATION	TIMING OF VERIFICATION
	• Upon receiving the City's assigned mitigation fee amount, the applicants shall enter into a construction mitigation contract with BAAQMD to submit their apportioned mitigation fees.		
3.3-4 Implementation of the proposed Plan would result in a cumulatively considerable net increase of a criteria pollutant for which the project region is a nonattainment area for an applicable federal or state ambient air quality standard (including releasing emissions that exceed quantitative thresholds for ozone precursors).	**MM-AQ-1: Require Construction Fleet to Use Renewable Diesel.** All applicants proposing development of projects within the Planning Area shall require their contractors, as a condition of contract, to reduce construction-related exhaust emissions by ensuring that all off-road equipment operating for more than 20 total hours over the entire duration of construction activities shall operate on renewable diesel (such as Diesel high performance renewable). Renewable diesel is currently commercially available in San Francisco Bay Area.	COL	TM, C
	MM-AQ-2: Require Use of Diesel Trucks with 2010-Compliant Model Year Engines. All applicants proposing development of projects within the Planning Area shall require their contractors, as a condition of contract, to use diesel trucks that have 2010 model year or newer engines. In the event that 2010 model year or newer diesel trucks cannot be obtained, the contractor must provide documentation to the City showing that a good faith effort to locate such engines was conducted.	COL	TM, C
	MM- AQ-3: Require Payment of Mitigation Fees to Offset Emissions Exceeding BAAQMD's Daily Pollutant Thresholds. The City shall work with BAAQMD's Office of Community Investment and Infrastructure (OCII) to establish City-specific construction emissions offset guidance that can be implemented to assess, determine, and issue mitigation fees that project applicants would be required to pay BAAQMD on a pro rata basis for all concurrently ongoing construction projects in the Planning Area to offset all pollutant emissions exceeding BAAQMD's daily pollutant thresholds. The	COL. BAAQMD	TM, C

Responsible Agency/Department/Party

COL City of Livermore
Zone 7 Alameda County Flood Control District – Zone 7
LARPD Livermore Area Recreation and Park District
BART Bay Area Rapid Transit District
LAVTA Livermore Amador Valley Transit Agency
CDFW California Department of Fish & Wildlife
USFWS United States Fish and Wildlife Service
LVJUSD Livermore Valley Joint Unified School District
LPC Las Positas College
BAAQMD Bay Area Air Quality Management District

Timing of Verification

TM Prior to approval of tentative tract maps
FM Prior to approval of final tract maps
BP Prior to approval of building and/or grading plans
C During construction
PC Post construction/on-going

EXHIBIT B

SUMMARY OF IMPACT	SUMMARY OF MITIGATION MEASURE	AGENCY RESPONSIBLE FOR VERIFICATION	TIMING OF VERIFICATION
	offset fees may be paid into BAAQMD's Bay Area Clean Air Foundation (Foundation) in an amount to be determined at the time of mitigation. This mitigation (AQ-3) does not apply **if builder/contractor documents they will not exceed BAAQMD's dailey pollutant threshold,** This mitigation includes the following specific requirements: • For all construction projects occurring in the Planning Area, the applicants for each project shall require their construction contractors to estimate annual construction activity monitoring data for the following year. All applicants shall submit their estimated construction-related emissions to the City for review by November 1 of each year for the following construction year. • The City shall review all received construction estimates to ensure they are representative, total the emissions estimates for all construction projects that had activities that would be ongoing during the following construction year, and determine the total mitigation fee that would need to be submitted to BAAQMD to fund offsets for the portion of annual emissions that exceed BAAQMD's average daily thresholds for criteria pollutants. • In light of the total mitigation fee that was determined, and based on the construction emission amounts submitted by each applicant, the City shall appropriate the mitigation fee amount that would need to be submitted by each project applicant on a pro rata basis. The City shall issue the required mitigation fee amounts to each applicable project applicant.		

Responsible Agency/Department/Party

COL City of Livermore
Zone 7 Alameda County Flood Control District – Zone 7
LARPD Livermore Area Recreation and Park District
BART Bay Area Rapid Transit District
LAVTA Livermore Amador Valley Transit Agency
CDFW California Department of Fish & Wildlife
USFWS United States Fish and Wildlife Service
LVJUSD Livermore Valley Joint Unified School District
LPC Las Positas College
BAAQMD Bay Area Air Quality Management District

Timing of Verification

TM Prior to approval of tentative tract maps
FM Prior to approval of final tract maps
BP Prior to approval of building and/or grading plans
C During construction
PC Post construction/on-going

EXHIBIT B

SUMMARY OF IMPACT	SUMMARY OF MITIGATION MEASURE	AGENCY RESPONSIBLE FOR VERIFICATION	TIMING OF VERIFICATION
	• Upon receiving the City's assigned mitigation fee amount, the applicants shall enter into a construction mitigation contract with BAAQMD to submit their apportioned mitigation fees.		
3.3-5 Implementation of the proposed Plan would expose sensitive receptors to substantial pollutant concentrations from new sources of toxic air containments.	**Mitigation Measure AQ-4: Require Future Projects Located within 1,000 Feet of Receptors Perform a Construction Health Risk Assessment.** All applicants proposing development of projects within 1,000 feet of existing sensitive receptors, as defined by the Bay Area Air Quality Management District (BAAQMD), shall prepare a site-specific construction health risk assessment (HRA) taking into account both project-level and cumulative health risks (including existing TAC sources). If the HRA demonstrates, to the satisfaction of the City, that the health risk exposures for adjacent receptors may be less than BAAQMD project-level and cumulative thresholds (as appropriate), then additional mitigation would be unnecessary. However, if the HRA demonstrates that health risks would exceed BAAQMD project-level and/or cumulative thresholds (as appropriate), additional feasible on- and offsite mitigation shall be analyzed by the applicant to help reduce risks to the greatest extent practicable.	COL, BAAQMD	TM, C, PC

Responsible Agency/Department/Party

COL City of Livermore
Zone 7 Alameda County Flood Control District – Zone 7
LARPD Livermore Area Recreation and Park District
BART Bay Area Rapid Transit District
LAVTA Livermore Amador Valley Transit Agency
CDFW California Department of Fish & Wildlife
USFWS United States Fish and Wildlife Service
LVJUSD Livermore Valley Joint Unified School District
LPC Las Positas College
BAAQMD Bay Area Air Quality Management District

Timing of Verification

TM Prior to approval of tentative tract maps
FM Prior to approval of final tract maps
BP Prior to approval of building and/or grading plans
C During construction
PC Post construction/on-going

EXHIBIT B

SUMMARY OF IMPACT	SUMMARY OF MITIGATION MEASURE	AGENCY RESPONSIBLE FOR VERIFICATION	TIMING OF VERIFICATION
Energy, Greenhouse Gases, and Climate Change			
3.4-2 Implementation of the proposed Plan would generate GHG emissions, either directly or indirectly, that may have a significant impact on the environment.	**MM- GHG-1:** Operational GHG Emissions Reduction Measures. Implement the following GHG emissions reduction strategies to guide future development within the Planning Area: 1. Require that a minimum of 20 percent of housing allowed under the proposed Plan be affordable (below market-rate) housing. 2. Incorporate street and intersection traffic calming measures to a minimum of 25 percent of streets and intersections in the Planning Area. Street traffic calming features may include, but are not limited to, on-street parking, planter strips with street trees, chicanes, horizontal shifts (lane centerline that curves or shifts), bollards, rumble strips, and woonerfs, Intersection traffic calming measures may include, but are not limited to, marked crosswalks, count-down signal timers, curb extensions, channelization islands, speed tables, raised crosswalks, raised intersections, median islands, tight corner radii, and traffic circles or mini-circles. 3. Expand the existing local bus network in the Planning Area by a minimum of 25 percent by adding or modifying bus routes to increase accessibility to the BART station at Isabel Avenue. 4. Require all new development to install indoor water efficient appliances and fixtures to achieve a minimum of 15 percent reduction in water usage and require applicants for new development to submit landscape and irrigation plans capable of achieving a minimum of 10 percent reduction in outdoor water usage. The percent reductions should be achieved over baseline water use conditions in the City at the time of	COL	TM, FM, BP, PC

Responsible Agency/Department/Party

COL City of Livermore
Zone 7 Alameda County Flood Control District – Zone 7
LARPD Livermore Area Recreation and Park District
BART Bay Area Rapid Transit District
LAVTA Livermore Amador Valley Transit Agency
CDFW California Department of Fish & Wildlife
USFWS United States Fish and Wildlife Service
LVJUSD Livermore Valley Joint Unified School District
LPC Las Positas College
BAAQMD Bay Area Air Quality Management District

Timing of Verification

TM Prior to approval of tentative tract maps
FM Prior to approval of final tract maps
BP Prior to approval of building and/or grading plans
C During construction
PC Post construction/on-going

EXHIBIT B

SUMMARY OF IMPACT	SUMMARY OF MITIGATION MEASURE	AGENCY RESPONSIBLE FOR VERIFICATION	TIMING OF VERIFICATION
	development. 5. Require a minimum solid waste diversion rate of 85 percent to be achieved by 2040. 6. Require electric-only appliances and HVAC (e.g. no natural gas heating, cooling, or cooking). 7. Require employers with more than 50 employees to provide a suite of travel demand reduction measures (TDM) capable of reducing single-vehicle trips by at least 20 percent compared to normal trip generation rates.		
3.4-3 Implementation of the proposed Plan would conflict with an applicable plan, policy, or regulation adopted for the purpose of reducing the emissions of GHGs.	**MM- GHG-1**: Operational GHG Emissions Reduction Measures. Implement the following GHG emissions reduction strategies to guide future development within the Planning Area: 1. Require that a minimum of 20 percent of housing allowed under the proposed Plan be affordable (below market-rate) housing. 2. Incorporate street and intersection traffic calming measures to a minimum of 25 percent of streets and intersections in the Planning Area. Street traffic calming features may include, but are not limited to, on-street parking, planter strips with street trees, chicanes, horizontal shifts (lane centerline that curves or shifts), bollards, rumble strips, and woonerfs, Intersection traffic calming measures may include, but are not limited to, marked crosswalks, count-down signal timers, curb extensions, channelization islands, speed tables, raised crosswalks, raised intersections, median islands, tight corner radii, and traffic circles or mini-circles. 3. Expand the existing local bus network in the Planning Area by	COL	TM, FM, BP, PC

Responsible Agency/Department/Party

COL City of Livermore
Zone 7 Alameda County Flood Control District – Zone 7
LARPD Livermore Area Recreation and Park District
BART Bay Area Rapid Transit District
LAVTA Livermore Amador Valley Transit Agency
CDFW California Department of Fish & Wildlife
USFWS United States Fish and Wildlife Service
LVJUSD Livermore Valley Joint Unified School District
LPC Las Positas College
BAAQMD Bay Area Air Quality Management District

Timing of Verification

TM Prior to approval of tentative tract maps
FM Prior to approval of final tract maps
BP Prior to approval of building and/or grading plans
C During construction
PC Post construction/on-going

EXHIBIT B

SUMMARY OF IMPACT	SUMMARY OF MITIGATION MEASURE	AGENCY RESPONSIBLE FOR VERIFICATION	TIMING OF VERIFICATION
	a minimum of 25 percent by adding or modifying bus routes to increase accessibility to the BART station at Isabel Avenue. 4. Require all new development to install indoor water efficient appliances and fixtures to achieve a minimum of 15 percent reduction in water usage and require applicants for new development to submit landscape and irrigation plans capable of achieving a minimum of 10 percent reduction in outdoor water usage. The percent reductions should be achieved over baseline water use conditions in the City at the time of development. 5. Require a minimum solid waste diversion rate of 85 percent to be achieved by 2040. 6. Require electric-only appliances and HVAC (e.g. no natural gas heating, cooling, or cooking). 7. Require employers with more than 50 employees to provide a suite of travel demand reduction measures (TDM) capable of reducing single-vehicle trips by at least 20 percent compared to normal trip generation rates.		
Noise			
3.6-1 Implementation of the proposed Plan could expose persons to or generate noise levels in excess of standards established in a local general plan or noise ordinance or applicable standards of other agencies.	**MM NOI-1.** Implement Traffic Noise Reduction Measures at Existing Sensitive Receptors. *Stationary Equipment Noise* Noise from mechanical equipment in the Planning Area could include HVAC and other mechanical equipment (e.g., larger mechanical equipment, emergency generators, etc.). As discussed under Impact 3.6-1 above, Policy P1 under Objective N-1.5 in the City General Plan states that the City shall require that industrial and commercial uses be designed and operated so as to avoid the generation of noise effects on surrounding sensitive land uses	COL	TM, BP, C, PC

Responsible Agency/Department/Party

COL City of Livermore
Zone 7 Alameda County Flood Control District – Zone 7
LARPD Livermore Area Recreation and Park District
BART Bay Area Rapid Transit District
LAVTA Livermore Amador Valley Transit Agency
CDFW California Department of Fish & Wildlife
USFWS United States Fish and Wildlife Service
LVJUSD Livermore Valley Joint Unified School District
LPC Las Positas College
BAAQMD Bay Area Air Quality Management District

Timing of Verification

TM Prior to approval of tentative tract maps
FM Prior to approval of final tract maps
BP Prior to approval of building and/or grading plans
C During construction
PC Post construction/on-going

EXHIBIT B

SUMMARY OF IMPACT	SUMMARY OF MITIGATION MEASURE	AGENCY RESPONSIBLE FOR VERIFICATION	TIMING OF VERIFICATION
	(e.g., residential, churches, schools, hospitals) from exceeding the following noise levels for exterior environments: (a) 55 dBA L50 (7:00 a.m. to 10:00 p.m.) (b) 45 dBA L50 (10:00 p.m. to 7:00 a.m.). In addition, Policy P-ENV-8 under the proposed Plan, described previously, would ensure that noise from noise-generating land uses, as measured from the property line, would be limited as follows: • In residential areas of the Isabel Neighborhood, exterior noise levels may not exceed 65 dBA from 7:00 a.m. to 12:00 a.m or 60 dBA from 12:00 a.m. to 7:00 a.m. • Along Main Street and in the office, commercial, or business park areas of the Isabel Neighborhood, exterior noise levels may not exceed 75 dBA from 7:00 a.m. to 12:00 a.m or 65 dBA from 12:00 a.m. to 7:00 a.m.		
3.6-3 Implementation of the proposed Plan could result in a substantial permanent increase in ambient noise levels in the project vicinity above levels existing without the project.	**MM NOI-1.** Implement Traffic Noise Reduction Measures at Existing Sensitive Receptors. ***Stationary Equipment Noise*** Noise from mechanical equipment in the Planning Area could include HVAC and other mechanical equipment (e.g., larger mechanical equipment, emergency generators, etc.). As discussed under Impact 3.6-1 above, Policy P1 under Objective N-1.5 in the City General Plan states that the City shall require that industrial and commercial uses be designed and operated so as to avoid the generation of noise effects on surrounding sensitive land uses (e.g., residential, churches, schools, hospitals) from exceeding the following noise levels for exterior environments: (a) 55 dBA L50 (7:00 a.m. to 10:00 p.m.) (b) 45 dBA L50 (10:00 p.m. to 7:00 a.m.). In addition, Policy P-ENV-8 under the proposed Plan, described previously, would ensure that noise from noise-generating land uses, as measured from the property line, would be limited as follows:	COL	TM, BP, PC, C

Responsible Agency/Department/Party

COL City of Livermore
Zone 7 Alameda County Flood Control District – Zone 7
LARPD Livermore Area Recreation and Park District
BART Bay Area Rapid Transit District
LAVTA Livermore Amador Valley Transit Agency
CDFW California Department of Fish & Wildlife
USFWS United States Fish and Wildlife Service
LVJUSD Livermore Valley Joint Unified School District
LPC Las Positas College
BAAQMD Bay Area Air Quality Management District

Timing of Verification

TM Prior to approval of tentative tract maps
FM Prior to approval of final tract maps
BP Prior to approval of building and/or grading plans
C During construction
PC Post construction/on-going

EXHIBIT B

SUMMARY OF IMPACT	SUMMARY OF MITIGATION MEASURE	AGENCY RESPONSIBLE FOR VERIFICATION	TIMING OF VERIFICATION
	• In residential areas of the Isabel Neighborhood, exterior noise levels may not exceed 65 dBA from 7:00 a.m. to 12:00 a.m or 60 dBA from 12:00 a.m. to 7:00 a.m. • Along Main Street and in the office, commercial, or business park areas of the Isabel Neighborhood, exterior noise levels may not exceed 75 dBA from 7:00 a.m. to 12:00 a.m or 65 dBA from 12:00 a.m. to 7:00 a.m.		
Biological Resources			
3.7-1 Implementation of the proposed Plan would have a substantial adverse effect, either directly or through habitat modifications, on special-status species.	**MM-BIO-1**: If impacts to special-status plan species are unavoidable, Prepare and implement a salvage, relocation, or propagation and monitoring plan for special-status plant species. If a protocol-level botanical survey reveals the presence of special-status plant species in the Planning Area, all directly affected areas of special-status plants will be documented by a qualified botanist or ecologist retained by project proponents prior to issuance of grading permits, consistent with Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Natural Communities State of California (CDFW, 2009). Documentation will include density and percent cover; key habitat characteristics, including soil type, associated species, hydrology, and topography; and photographs of preconstruction conditions. Impacts to rare (California Rare Plant Rank 1 and 2) native plant species will be avoided where feasible. If impacts to such species are unavoidable, the project proponent will notify USFWS and/or CDFW and a qualified botanist or restoration ecologist will prepare a salvage, relocation, or propagation and monitoring plan in coordination with USFWS and/or CDFW prior to construction to address affected special-status plant species. The plan will include provisions that address the techniques, location, and procedures required for the successful establishment of the plant populations. The plan will include provisions for performance that address survivability	COL. Zone 7, CDFW, USFW	TM, C, PC

Responsible Agency/Department/Party

COL City of Livermore
Zone 7 Alameda County Flood Control District – Zone 7
LARPD Livermore Area Recreation and Park District
BART Bay Area Rapid Transit District
LAVTA Livermore Amador Valley Transit Agency
CDFW California Department of Fish & Wildlife
USFWS United States Fish and Wildlife Service
LVJUSD Livermore Valley Joint Unified School District
LPC Las Positas College
BAAQMD Bay Area Air Quality Management District

Timing of Verification

TM Prior to approval of tentative tract maps
FM Prior to approval of final tract maps
BP Prior to approval of building and/or grading plans
C During construction
PC Post construction/on-going

EXHIBIT B

SUMMARY OF IMPACT	SUMMARY OF MITIGATION MEASURE	AGENCY RESPONSIBLE FOR VERIFICATION	TIMING OF VERIFICATION
	requirements, maintenance, monitoring, implementation, and the annual reporting requirements. Monitoring and success criteria applicable to special-status plant salvage, relocation, or propagation will require the following. • At least two surveys by a qualified botanist or ecologist per monitoring year. • At least 80 percent of the planted area must support vegetation composition and density consistent with reference population conditions. • At least 80 percent of the planted area must support target species amounts similar to reference feature conditions. • A minimum of five consecutive years of monitoring to ensure success criteria are met. • Remedial actions to restore intended ecological function of planted areas that fail to meet the success criteria for three consecutive years. **MM-BIO-2**: Avoid nesting birds where feasible. Proponents (or their contractors) of specific projects under the proposed Plan shall conduct construction activities outside the bird nesting season (February 1 to August 31) to the extent feasible. If construction initiation is unavoidable during this time, the project proponent or its contractor will retain a qualified wildlife biologist with demonstrated nest-searching experience to conduct preconstruction surveys for nesting birds (including raptors, but excluding burrowing owl) within 300 feet and including the near-term or longer-term improvements environmental footprints. Adjacent lands outside the development footprints will be scanned with binoculars from the limit of ground-disturbance and publicly accessible areas. Preconstruction surveys will occur no more than three days prior to the onset of ground-disturbing activities (including clearing, grubbing, and		

Responsible Agency/Department/Party

COL City of Livermore
Zone 7 Alameda County Flood Control District – Zone 7
LARPD Livermore Area Recreation and Park District
BART Bay Area Rapid Transit District
LAVTA Livermore Amador Valley Transit Agency
CDFW California Department of Fish & Wildlife
USFWS United States Fish and Wildlife Service
LVJUSD Livermore Valley Joint Unified School District
LPC Las Positas College
BAAQMD Bay Area Air Quality Management District

Timing of Verification

TM Prior to approval of tentative tract maps
FM Prior to approval of final tract maps
BP Prior to approval of building and/or grading plans
C During construction
PC Post construction/on-going

EXHIBIT B

SUMMARY OF IMPACT	SUMMARY OF MITIGATION MEASURE	AGENCY RESPONSIBLE FOR VERIFICATION	TIMING OF VERIFICATION
	staging) at each development area. If active nests are found in the development footprints, the biologist will establish a no-disturbance buffer around the nest and mark the buffer perimeter with high-visibility fencing, flagging, or pin flags. The size of the buffer will be based on the species' sensitivity to disturbance and planned work activities in the vicinity; typical buffer sizes are 250 feet for raptors and 50 feet for other birds. The buffer will remain in place until the nest is no longer active, as determined by the biologist. Buffers for any nests found outside but within 300 feet of the development sites will be established based on the biologist's best professional judgment whether the work would result in nest abandonment. If a lapse in construction activities of 15 days or longer at a previously surveyed environmental footprint occurs, another preconstruction survey will be conducted. If structure demolition activities cannot occur outside of the nesting season, the project proponent or its contractor will remove inactive nests from the structure to be demolished and install nest exclusion measures (e.g., fine mesh netting, panels, or metal projectors) outside of the nesting season. All exclusionary devices will be monitored and maintained throughout the breeding season to ensure that they are successful in preventing the birds from accessing the cavities or nest sites. No more than three days prior to structure demolition activities, a qualified biologist will conduct a preconstruction survey of all potential nesting habitat on the structures to be demolished/modified and the surrounding areas for the presence of active nests. If active nests are found on the structures or in the affected area, then demolition/modification activities will not proceed until the biologist verifies that all nests on the structures are inactive. After all surveys and/or nest deterrence activities are completed at each development footprint, the biologist will complete a memorandum detailing		

Responsible Agency/Department/Party

COL City of Livermore
Zone 7 Alameda County Flood Control District – Zone 7
LARPD Livermore Area Recreation and Park District
BART Bay Area Rapid Transit District
LAVTA Livermore Amador Valley Transit Agency
CDFW California Department of Fish & Wildlife
USFWS United States Fish and Wildlife Service
LVJUSD Livermore Valley Joint Unified School District
LPC Las Positas College
BAAQMD Bay Area Air Quality Management District

Timing of Verification

TM Prior to approval of tentative tract maps
FM Prior to approval of final tract maps
BP Prior to approval of building and/or grading plans
C During construction
PC Post construction/on-going

EXHIBIT B

SUMMARY OF IMPACT	SUMMARY OF MITIGATION MEASURE	AGENCY RESPONSIBLE FOR VERIFICATION	TIMING OF VERIFICATION
	the survey effort and results and submit the memorandum to the project proponent within seven days of survey completion. **MM-BIO-3**: Avoid burrowing owl nesting where feasible. Prior to any construction activity planned during the fall and winter non-nesting season (September 1 through January 31) or at any time during the construction process, proponents of projects proposed within the Planning Area will retain a qualified wildlife biologist to conduct a preconstruction survey for burrowing owls. Surveys will be conducted at each area of suitable habitat that will be disturbed no more than seven days prior to ground-disturbing activities and will cover all suitable burrowing owl habitat subject to disturbance pursuant to CDFW's Staff Report on Burrowing Owl Mitigation (California Department of Fish and Game, 2012). If any burrowing owls are found within the disturbance area, the project proponent will notify CDFW and will proceed under CDFW direction. If construction is planned to occur during the nesting season (February 1 through August 31), the project proponent will retain a qualified wildlife biologist to conduct a breeding season burrowing owl survey in the year prior to construction. The survey will be conducted to determine if there is a breeding pair within approximately 500 feet of each development footprint, unless the biologist determines that a smaller survey buffer around the construction footprint is warranted based on preexisting background disturbance and conditions. Survey visits will be timed in accordance with CDFW guidelines (California Department of Fish and Game, 2012). This will provide the project team advance notice of nesting owls in the development area and allow ample time to discuss appropriate avoidance measures with CDFW. In addition, preconstruction surveys will be conducted no more than seven days prior to ground disturbance in all areas of the development footprint supporting burrowing owl habitat. If the biologist identifies the		

Responsible Agency/Department/Party

COL City of Livermore
Zone 7 Alameda County Flood Control District – Zone 7
LARPD Livermore Area Recreation and Park District
BART Bay Area Rapid Transit District
LAVTA Livermore Amador Valley Transit Agency
CDFW California Department of Fish & Wildlife
USFWS United States Fish and Wildlife Service
LVJUSD Livermore Valley Joint Unified School District
LPC Las Positas College
BAAQMD Bay Area Air Quality Management District

Timing of Verification

TM Prior to approval of tentative tract maps
FM Prior to approval of final tract maps
BP Prior to approval of building and/or grading plans
C During construction
PC Post construction/on-going

EXHIBIT B

SUMMARY OF IMPACT	SUMMARY OF MITIGATION MEASURE	AGENCY RESPONSIBLE FOR VERIFICATION	TIMING OF VERIFICATION
	presence of a burrowing owl nest in an area scheduled to be disturbed by construction, a 660-foot no-activity buffer will be established and maintained around the nest while it is active. Surveys and buffer establishment will be performed by qualified wildlife biologists, and buffers will be coordinated with CDFW by contacting the appropriate CDFW personnel, and will be subject to CDFW review and oversight. **MM-BIO-4**: Avoid tricolored blackbird breeding habitat where feasible. If construction activities in or within 300 feet of freshwater emergent wetland habitat occur during the breeding season (February 1 through August 31), the project proponent will retain a qualified biologist to conduct surveys for the presence of a tricolored blackbird nesting colony or nests. If an active nest colony or nest is observed by the qualified biologist, then a no-disturbance buffer of 250 feet will be established until the end of the breeding season or until the nesting colony or nest is determined inactive by the biologist. Nest buffers may be reduced if site-specific conditions reduce the possibility of near-term or longer-term improvements disturbance, as determined by the qualified biologist in coordination with CDFW. **MM-BIO-5**: Avoid western pond turtle where feasible. Prior to the start of construction within western pond turtle habitat (i.e., any undeveloped areas within 400 feet of riverine aquatic habitat, freshwater emergent wetlands, vernal pools, or seasonal wetlands), proponents of proposed projects within the Planning Area shall retain a biologist approved by the CDFW to survey for western pond turtles. Surveys will be conducted at each habitat area no more than seven days prior to the initiation of ground disturbance at that location. If preconstruction surveys identify active nests, the biologist will establish 50-foot no-disturbance buffer zones around each nest using temporary orange construction fencing with a four-inch-tall gap		

Responsible Agency/Department/Party

COL City of Livermore
Zone 7 Alameda County Flood Control District – Zone 7
LARPD Livermore Area Recreation and Park District
BART Bay Area Rapid Transit District
LAVTA Livermore Amador Valley Transit Agency
CDFW California Department of Fish & Wildlife
USFWS United States Fish and Wildlife Service
LVJUSD Livermore Valley Joint Unified School District
LPC Las Positas College
BAAQMD Bay Area Air Quality Management District

Timing of Verification

TM Prior to approval of tentative tract maps
FM Prior to approval of final tract maps
BP Prior to approval of building and/or grading plans
C During construction
PC Post construction/on-going

EXHIBIT B

SUMMARY OF IMPACT	SUMMARY OF MITIGATION MEASURE	AGENCY RESPONSIBLE FOR VERIFICATION	TIMING OF VERIFICATION
	below the fence. The fencing will be permeable to young turtles and allow them to move away from the nest following hatching. The buffer zones and fencing will remain in place until the biologist has confirmed that the young have left the nest. If non-nesting pond turtles are found in the footprint, the biologist will remove and relocate them to suitable habitat outside the environmental footprint. Relocation sites will be subject to CDFW approval. **MM-BIO-6**: Avoid San Joaquin kit fox and American badger where feasible. Within one year but no less than three months prior initiating construction, proponents of specific projects within the Planning Area will retain qualified biologists to identify potential kit fox and badger dens in the development footprint and surrounding 200 feet. The biologist will prepare a report summarizing the survey observations and results, including maps depicting the locations of potential badger dens and, if possible, occupancy. The report will be submitted to the project proponent and CDFW. Prior to construction, the project proponent will retain qualified biologists to implement preconstruction surveys of previously identified potential kit fox and badger dens to determine if they are natal kit fox or American badger dens no less than 14 days and no more than 30 days before the initiation of construction at each development footprint (e.g., one week ahead of the construction crew for linear components). Construction activities will not occur within 100 feet of a potential den during the natal period (February 1 to September 30). If a known den or natal den is present within the permanent construction footprint or within 200 feet of the construction footprint during the natal period (100-foot buffer during the nonnatal period), the kit fox or badger will be excluded outside of the natal period (from November 1 to January 31). A summary report will be prepared by the biologists and submit to the project proponent and CDFW following completion of all kit fox or badger avoidance and exclusion activities.		

Responsible Agency/Department/Party

COL City of Livermore
Zone 7 Alameda County Flood Control District – Zone 7
LARPD Livermore Area Recreation and Park District
BART Bay Area Rapid Transit District
LAVTA Livermore Amador Valley Transit Agency
CDFW California Department of Fish & Wildlife
USFWS United States Fish and Wildlife Service
LVJUSD Livermore Valley Joint Unified School District
LPC Las Positas College
BAAQMD Bay Area Air Quality Management District

Timing of Verification

TM Prior to approval of tentative tract maps
FM Prior to approval of final tract maps
BP Prior to approval of building and/or grading plans
C During construction
PC Post construction/on-going

EXHIBIT B

SUMMARY OF IMPACT	SUMMARY OF MITIGATION MEASURE	AGENCY RESPONSIBLE FOR VERIFICATION	TIMING OF VERIFICATION
	MM-BIO-7: Avoid California tiger salamander and California red-legged frog where feasible. Proponents of specific projects within the Planning Area shall retain a USFWS and/or CDFW-approved biologist (as appropriate) to identify and flag (pin flags or 4-foot lath) all suitable aquatic habitat for California tiger salamander and California red-legged frog outside of but adjacent to development footprints and ground-disturbance areas prior to staging, vegetation clearing, grading, or other construction activities. The project proponent or its contractor will protect habitat areas by installing orange exclusion and erosion control fencing at the maximum practicable distance from the work site or, if feasible, at least 500 feet from the aquatic habitat edge, wet or dry, to make it easily visible by construction crews. A qualified biologist will conduct a preconstruction survey each morning before construction activities begin and continue to monitor ground-disturbing construction activities where suitable habitat occurs during all phases of construction to remove any California tiger salamander and California red-legged frogs found in the development footprint. Individual salamanders and frogs will be moved immediately to a relocation site that is a minimum of 330 feet from the construction boundary. The relocation site will be determined in coordination with USFWS and/or CDFW prior to the commencement of construction activities. Construction activities near drainages and wetland complexes identified as potential movement corridors shall take place between July 1 and October 1, when the California tiger salamander and California red-legged frog are least likely to be present in the development area. To discourage California tiger salamander and California red-legged frogs from entering the improvements areas via ditches, the ditches will be		

Responsible Agency/Department/Party

COL City of Livermore
Zone 7 Alameda County Flood Control District – Zone 7
LARPD Livermore Area Recreation and Park District
BART Bay Area Rapid Transit District
LAVTA Livermore Amador Valley Transit Agency
CDFW California Department of Fish & Wildlife
USFWS United States Fish and Wildlife Service
LVJUSD Livermore Valley Joint Unified School District
LPC Las Positas College
BAAQMD Bay Area Air Quality Management District

Timing of Verification

TM Prior to approval of tentative tract maps
FM Prior to approval of final tract maps
BP Prior to approval of building and/or grading plans
C During construction
PC Post construction/on-going

EXHIBIT B

SUMMARY OF IMPACT	SUMMARY OF MITIGATION MEASURE	AGENCY RESPONSIBLE FOR VERIFICATION	TIMING OF VERIFICATION
	equipped with lightweight, one-way flow gates. These will be designed so that water can easily pass from the construction site to the ditches, but small vertebrates such as the salamander or frog cannot move upstream from ditches to the development area. **MM-BIO-8**: Avoid Callippe silverspot butterfly where feasible. Prior to construction, proponents of specific projects within the Planning Area will retain a qualified botanist or biologist with experience in identifying Viola pedunculata, the host plant for Callippe silverspot butterfly, to identify and flag (with pin flags or 4-foot lath) any Viola pedunculata individuals during its blooming season (February to April) when the species is readily identifiable in and within 50 feet of the near-term and longer-term improvements that will affect California annual grassland. The locations of Viola pedunculata outside of the ground disturbance area of the near-term or longer-term improvements will be included on grading plans and avoided by construction personnel. The biologist will document the number and density of host plants that are unavoidable in development footprints. This information shall be compiled in a report and submit to USFWS prior to initiation of ground disturbance. The project proponent or its contractor will adhere to the following host plant avoidance measures. • No herbicide application will occur within 100 feet of host plant populations. Spot application to cut stumps, frilled stems, or injection into stems is acceptable. No broadcast herbicide applications will be used. • Cut trees that are removed in the vicinity of host plants will be hand carried rather than dragged to disposal areas. • Avoid or minimize the removal of host plant, Viola pedunculata.		

Responsible Agency/Department/Party

COL City of Livermore
Zone 7 Alameda County Flood Control District – Zone 7
LARPD Livermore Area Recreation and Park District
BART Bay Area Rapid Transit District
LAVTA Livermore Amador Valley Transit Agency
CDFW California Department of Fish & Wildlife
USFWS United States Fish and Wildlife Service
LVJUSD Livermore Valley Joint Unified School District
LPC Las Positas College
BAAQMD Bay Area Air Quality Management District

Timing of Verification

TM Prior to approval of tentative tract maps
FM Prior to approval of final tract maps
BP Prior to approval of building and/or grading plans
C During construction
PC Post construction/on-going

EXHIBIT B

SUMMARY OF IMPACT	SUMMARY OF MITIGATION MEASURE	AGENCY RESPONSIBLE FOR VERIFICATION	TIMING OF VERIFICATION
	• Avoid work in suitable habitat during the flight and mating season (mid-May to mid-July) to the extent feasible. **MM-BIO-9**: Avoid roosting bats where feasible. If tree removal and trimming cannot be conducted between September 15 and October 30, proponents of projects implemented under the proposed Plan will retain a qualified biologist to examine trees to be removed or trimmed for suitable bat roosting habitat no more than 2 weeks before removal and trimming. High-quality habitat features (large tree cavities, basal hollows, loose or peeling bark, larger snags, palm trees with intact thatch, etc.) will be identified and the area around these features searched for bats and bat signs (e.g., guano, culled insect parts, urine staining, etc.). Mixed willow riparian scrub and stands of mature broadleaf trees should be considered potential habitat for solitary foliage-roosting bat species. Passive monitoring using full spectrum bat detectors may be needed if identification of bat species is required. Survey methods will be discussed with CDFW prior to the start of surveys. Measures to avoid and minimize impacts on sensitive bats species will be determined in coordination with CDFW and may include the following. • Tree removal will be avoided between April 1 and September 15 (the maternity period) to avoid effects on pregnant females and active maternity roosts (whether colonial or solitary). • All tree removal will be conducted between September 15 and October 30, which corresponds to a time period when bats have not yet entered torpor or would be caring for nonvolant (non-flying) young. • Each tree will be removed in pieces rather than felling the entire tree. • If a maternity roost is located, whether solitary or colonial, that roost will remain undisturbed until September 15 or a qualified biologist		

Responsible Agency/Department/Party

COL City of Livermore
Zone 7 Alameda County Flood Control District – Zone 7
LARPD Livermore Area Recreation and Park District
BART Bay Area Rapid Transit District
LAVTA Livermore Amador Valley Transit Agency
CDFW California Department of Fish & Wildlife
USFWS United States Fish and Wildlife Service
LVJUSD Livermore Valley Joint Unified School District
LPC Las Positas College
BAAQMD Bay Area Air Quality Management District

Timing of Verification

TM Prior to approval of tentative tract maps
FM Prior to approval of final tract maps
BP Prior to approval of building and/or grading plans
C During construction
PC Post construction/on-going

EXHIBIT B

SUMMARY OF IMPACT	SUMMARY OF MITIGATION MEASURE	AGENCY RESPONSIBLE FOR VERIFICATION	TIMING OF VERIFICATION
	has determined the roost is no longer active. • If avoidance of nonmaternity roost trees is not possible, and tree removal or trimming must occur between October 30 and September 15, qualified biologists will monitor tree trimming and removal. If possible, tree trimming and removal should occur in the late afternoon or evening when it is closer to the time that bats would normally arouse. Prior to removal and trimming, each tree will be shaken gently and several minutes should pass before felling trees or limbs to allow bats time to arouse and leave the tree. The biologists will search downed vegetation for dead and injured bats. The presence of dead or injured bats that are species of special concern will be reported to CDFW. The biologist will prepare biological monitoring report, which will be provided to the project proponent and CDFW.		
3.7-2 Implementation of the proposed Plan would not adversely affect riparian habitat and/or other sensitive natural communities in the Planning Area.	**MM-BIO-10:** Avoid and protect riparian habitat during construction. Proponents of specific projects under the proposed Plan will ensure that a qualified resource specialist (i.e., biologist, botanist, or ecologist) will clearly identify riparian habitat to be preserved abutting the development area and outside of the direct construction area with high-visibility construction fencing or markers (e.g., lathe or pin flags) before site preparation. Construction will not encroach upon sensitive natural communities identified by the resource specialist. The resource specialist will use the project's verified wetland delineation, soils data, and land cover data to confirm the location of riparian habitat boundaries based on existing conditions at the time of the avoidance marking. Exclusion fencing or markers will be installed before construction activities are initiated, and the fencing will be maintained throughout the construction period. No construction activity, traffic, equipment, or materials will be permitted in fenced sensitive natural	COL. ZONE 7, USFW, CDFW	TM, C

Responsible Agency/Department/Party

COL City of Livermore
Zone 7 Alameda County Flood Control District – Zone 7
LARPD Livermore Area Recreation and Park District
BART Bay Area Rapid Transit District
LAVTA Livermore Amador Valley Transit Agency
CDFW California Department of Fish & Wildlife
USFWS United States Fish and Wildlife Service
LVJUSD Livermore Valley Joint Unified School District
LPC Las Positas College
BAAQMD Bay Area Air Quality Management District

Timing of Verification

TM Prior to approval of tentative tract maps
FM Prior to approval of final tract maps
BP Prior to approval of building and/or grading plans
C During construction
PC Post construction/on-going

EXHIBIT B

SUMMARY OF IMPACT	SUMMARY OF MITIGATION MEASURE	AGENCY RESPONSIBLE FOR VERIFICATION	TIMING OF VERIFICATION
	community areas. Exclusion fencing and markers will be removed following completion of construction activities. All conditions imposed by State and federal permits for individual improvements will be clearly identified in the construction plans and specifications and monitored during and after construction to ensure compliance. **MM-BIO-11:** Compensate for loss of riparian habitat. • For direct effects on woody riparian trees that cannot be avoided, proponents of specific projects under the proposed Plan will compensate for the loss of riparian habitat to ensure no net loss of habitat functions and values. Compensation ratios will be based on site-specific information and determined through coordination with the appropriate State and federal agencies during the permitting process. At a minimum, the compensation ratio will be 2:1 (e.g., two acres restored/created/enhanced or credits purchased for every 1 acre removed) for permanent impacts and 1:1 for temporary impacts (where riparian habitat will regenerate to pre-activity character within one year). Compensation may be a combination of offsite restoration or mitigation credits. The project proponent or its contractor will develop a restoration and monitoring plan that describes how riparian habitat will be enhanced or recreated and monitored over at least 5 years, or as determined by the appropriate State and federal agencies. • If the project proponent identifies suitable onsite areas (adjacent to the permanent construction footprint) that are outside the development footprint and chooses to compensate onsite or in the project's vicinity, a revegetation plan will be prepared. The revegetation plan will be developed prior to the removal of existing riparian vegetation and will be conducted onsite or in the near-term		

Responsible Agency/Department/Party

COL City of Livermore
Zone 7 Alameda County Flood Control District – Zone 7
LARPD Livermore Area Recreation and Park District
BART Bay Area Rapid Transit District
LAVTA Livermore Amador Valley Transit Agency
CDFW California Department of Fish & Wildlife
USFWS United States Fish and Wildlife Service
LVJUSD Livermore Valley Joint Unified School District
LPC Las Positas College
BAAQMD Bay Area Air Quality Management District

Timing of Verification

TM Prior to approval of tentative tract maps
FM Prior to approval of final tract maps
BP Prior to approval of building and/or grading plans
C During construction
PC Post construction/on-going

SUMMARY OF IMPACT	SUMMARY OF MITIGATION MEASURE	AGENCY RESPONSIBLE FOR VERIFICATION	TIMING OF VERIFICATION
	or longer-term improvements vicinity to the extent feasible; however, mitigation site selection will avoid areas where future development or maintenance are likely. The revegetation plan will be prepared by a qualified botanist or restoration specialist with experience in riparian restoration and reviewed by the appropriate agencies. The revegetation plan will specify the planting stock appropriate for each riparian land cover type and each mitigation site, ensuring the use of genetic stock from the corresponding development area by project. The plan will employ the most successful techniques available at the time of planting. Success criteria will be established as part of the plan and will include a minimum of 70 percent revegetation success after three years, 80 percent revegetation success at the end of five years, and 75 percent vegetative coverage after five years. • The project proponent or its contractor will retain a qualified botanist, restoration ecologist, or biologist with experience in riparian restoration to monitor the plantings as necessary for five years. The project proponent or its contractor will be responsible for maintaining the plantings, including managing invasive plants (as defined by the California Invasive Plant Council) and other weeds, and implementing irrigation and plant protection if necessary. The project proponent or its contractor will submit annual monitoring reports to the regulatory agencies issuing permits related to habitat effects, including CDFW, USACE, and USFWS. Replanting will be necessary if success criteria are not met, and replacement plants subsequently will be monitored and maintained to meet the success criteria. The riparian habitat mitigation will be considered successful when the sapling trees established meet the success criteria, the habitat no longer requires substantial active management, and vegetation is arranged in groups that, when mature, replicate the area, natural structure, stratification, and species composition of similar riparian habitats in the region.		

Responsible Agency/Department/Party

COL City of Livermore
Zone 7 Alameda County Flood Control District – Zone 7
LARPD Livermore Area Recreation and Park District
BART Bay Area Rapid Transit District
LAVTA Livermore Amador Valley Transit Agency
CDFW California Department of Fish & Wildlife
USFWS United States Fish and Wildlife Service
LVJUSD Livermore Valley Joint Unified School District
LPC Las Positas College
BAAQMD Bay Area Air Quality Management District

Timing of Verification

TM Prior to approval of tentative tract maps
FM Prior to approval of final tract maps
BP Prior to approval of building and/or grading plans
C During construction
PC Post construction/on-going

EXHIBIT B

SUMMARY OF IMPACT	SUMMARY OF MITIGATION MEASURE	AGENCY RESPONSIBLE FOR VERIFICATION	TIMING OF VERIFICATION
3.7-3 Implementation of the proposed Plan would not adversely affect federally protected wetlands and other waters regulated under Section 404 of the Clean Water Act.	**MM-BIO-12:** Avoid and protect wetlands during construction. Proponents of specific projects under the proposed Plan will ensure that a qualified resource specialist (i.e., wetland biologist, ecologist, or soil scientist) will clearly identify wetland areas to be preserved abutting the development area and wetland areas outside of the direct construction area with high-visibility construction fencing or markers (e.g., lathe or pin flags) before site preparation. Construction will not encroach upon jurisdictional wetlands identified by the resource specialist. The resource specialist will use the development footprint and verified wetland delineation to confirm the location of wetland boundaries based on existing conditions at the time of the avoidance marking. Exclusion fencing or markers will be installed before construction activities are initiated, and the fencing will be maintained throughout the construction period. No construction activity, traffic, equipment, or materials will be permitted in fenced wetland areas. Exclusion fencing and markers will be removed following the completion of construction activities. All conditions imposed by the projects' State and federal permits will be implemented as part of the construction, with ultimate enforcement oversight by applicable State and federal agencies. The conditions will be clearly identified in the construction plans and specifications and monitored during and after construction to ensure compliance. **MM-BIO-13**: Compensate for impacts on jurisdictional wetlands and non-wetland waters of the United States (aquatic resources) prior to near-term and longer-term improvements impacts during construction. If projects impact jurisdictional wetlands and non-wetland waters, proponents of these specific projects under the proposed Plan will develop an aquatic resource (wetlands and non-wetland waters of the United States) mitigation plan, subject to approval by the USACE, which will ensure no net	COL. ZONE 7, USFW, CDFW	TM, C

Responsible Agency/Department/Party

COL City of Livermore
Zone 7 Alameda County Flood Control District – Zone 7
LARPD Livermore Area Recreation and Park District
BART Bay Area Rapid Transit District
LAVTA Livermore Amador Valley Transit Agency
CDFW California Department of Fish & Wildlife
USFWS United States Fish and Wildlife Service
LVJUSD Livermore Valley Joint Unified School District
LPC Las Positas College
BAAQMD Bay Area Air Quality Management District

Timing of Verification

TM Prior to approval of tentative tract maps
FM Prior to approval of final tract maps
BP Prior to approval of building and/or grading plans
C During construction
PC Post construction/on-going

EXHIBIT B

SUMMARY OF IMPACT	SUMMARY OF MITIGATION MEASURE	AGENCY RESPONSIBLE FOR VERIFICATION	TIMING OF VERIFICATION
	loss of wetlands from development impacts. The plan will detail the amount and type of wetlands (based on the projects' verified wetland delineation) that will be compensated for (through preservation, creation, or restoration) for impacts on existing wetlands and non-wetland waters of the United States (aquatic resources), and outline the monitoring and success criteria for the compensation wetlands and non-wetland waters of the United States. Additional enhancement options include fish barrier removal, riparian restoration, floodplain restoration, and streambank layback to improve overall ecologic function and connectivity of wetland and non-wetland waters. Enhancement sites will be located as near the impact location as possible but, in the event that local enhancement opportunities are not available, such activities will occur within the same stream system or watershed to provide improved ecologic function and connectivity of wetlands and non-wetland waters affected by development activities. Monitoring and success criteria applicable to created or restored wetlands will require the following. • At least two surveys by a qualified wetland biologist, botanist, or ecologist per monitoring year. • At least 80 percent of the created or restored features support vegetation consistent with reference feature conditions. • At least 80 percent of the created or restored features support hydrologic regimes similar to reference feature conditions. • A minimum of five consecutive years of monitoring to ensure success criteria are met. • Remedial actions to restore intended ecological function of created or restored features that fail to meet the success criteria for three consecutive years.		

363

Responsible Agency/Department/Party

COL City of Livermore
Zone 7 Alameda County Flood Control District – Zone 7
LARPD Livermore Area Recreation and Park District
BART Bay Area Rapid Transit District
LAVTA Livermore Amador Valley Transit Agency
CDFW California Department of Fish & Wildlife
USFWS United States Fish and Wildlife Service
LVJUSD Livermore Valley Joint Unified School District
LPC Las Positas College
BAAQMD Bay Area Air Quality Management District

Timing of Verification

TM Prior to approval of tentative tract maps
FM Prior to approval of final tract maps
BP Prior to approval of building and/or grading plans
C During construction
PC Post construction/on-going

EXHIBIT B

SUMMARY OF IMPACT	SUMMARY OF MITIGATION MEASURE	AGENCY RESPONSIBLE FOR VERIFICATION	TIMING OF VERIFICATION
	Once the plan is approved, the project proponent will implement the aquatic resource compensation measures prior to the initiation of development construction. The project proponent will be responsible for funding compensatory mitigation, monitoring of the created or restored features per the mitigation plan, and any remedial actions necessary. All conditions that are attached to the State and federal permits will be implemented as part of the development project, with ultimate enforcement oversight by applicable State and federal agencies. The conditions will be clearly identified in the construction plans and specifications and monitored during and after construction to ensure compliance.		

Responsible Agency/Department/Party

COL City of Livermore
Zone 7 Alameda County Flood Control District – Zone 7
LARPD Livermore Area Recreation and Park District
BART Bay Area Rapid Transit District
LAVTA Livermore Amador Valley Transit Agency
CDFW California Department of Fish & Wildlife
USFWS United States Fish and Wildlife Service
LVJUSD Livermore Valley Joint Unified School District
LPC Las Positas College
BAAQMD Bay Area Air Quality Management District

Timing of Verification

TM Prior to approval of tentative tract maps
FM Prior to approval of final tract maps
BP Prior to approval of building and/or grading plans
C During construction
PC Post construction/on-going

EXHIBIT B

CITY OF LIVERMORE COMMUNITY DEVELOPMENT DEPARTMENT

DEVELOPMENT IMPACT AND CONNECTION FEES

Exhibit C

TYPE OF FEE	CITY CODE AND RESOLUTION	WHEN PAYABLE	AMOUNT OF FEE
City Storm Drainage	Title 13.44.020,050,100 Ord. 1923 Reso. 2010-177	With Building Permit	$0.49/SF Impervious Surface
County Storm Drainage Building Zone 7	ACFC & WCD Co. Ord. 0-2010-001 Reso. R-2001-4	With Building Permit	$1.00/SF Impervious Surface
County Storm Drainage Public Improvements e.g. streets, sidewalks, trails, etc.	ACFC & WCD Co. Ord. 0-2010-001 Reso. R-2001-4	With filing of Final Map or approval of Improvement Plans	$1.00/SF Impervious Surface
County Storm Drainage - Capital Improvements	ACFC & WCD Co. Ord. 0-2010-001 Reso. R-2001-4	With award of contract	$1.00/SF Impervious Surface
Sanitary Sewer Connection	Title 13.28.050 Ord. 1740 Reso. 2010-177	With Building Permit	**See Attached Exhibit "A"**
Park Land Dedication	Title18.32.020 Ord. 1744 Reso. 2004-259	Concurrently with, or before the filing of the first parcel or final map	The City may approve a credit against the Park Facilities Fee for park land dedication made under LMC 18.32.020. The credit may not exceed the value of the dedication requirement. See LMC 12.60.070 for credit details N/A for Non-Residential
Park Facilities Fee	Title 12.60 Ord. 1743 Reso. 2005-152	With Building Permit	**See Attached Exhibit "B"**
City Water Connection (1)	Title 13.20.020 Ord. 1507 Reso. 2010-177	With Building Permit	5/8" $4,839 3/4" $7,259 1" $12,098 1-1/2" $24,196 2" $38,714 Price per User for Meter Size, FOR LARGER METERS, INQUIRE
Alameda County Water Connection Zone 7	Ord. FC 72-1 as amended by FC-96-1792 and updated 10-20-10	With Building Permit **See Zone 7 Attachment**	5/8" $29,440 3/4" $44,160 1" $73,600 Price per User for Meter Size, FOR LARGER METERS, INQUIRE
In-Lieu Low Income Housing Fee (Residential) For Sale & Neighborhood Plan Areas	Title 3.26 Reso. 2020-186 Ord. 1988 and 1989	With Building Permit	$29.23/SF for all residential housing developments 10 units or less. Projects more than 10 units are subject to must-build requirement of ordinance. Rental projects 10 units or less are exempt from In-Lieu. Effective 7/28/21, on-site requirement applies for 11+unit projects.
Low Income Housing Impact Fee (Commercial and Industrial)	Title 3.26 Reso. 99-18 Ord. 1549	With Building Permit	**Commercial** / **Unit** / **KSF Fee per Unit** Retail Commercial / KSF / $1,935 Discount/Service Retail / KSF / $1,457 Office Commercial / KSF / $1,243 Hotels/Motels / Room / $949 **Industrial** Manufacturing / KSF / $597 Warehouse/Storage / KSF / $173 Business/Commercial / KSF / $1,234 Industrial, High Intensity / KSF / $612 Industrial, Low Intensity / KSF / $387

(1) Areas within the California Water Service Area do not pay a City water connection fee. Areas within the Greenville/Vasco Assessment District or within Triad Park do not pay a City water connection fee. The fee for a single family residential unit is the 5/8 inch meter fee.

(2) All projects within the Downtown Specific Plan are subject to both City Wide General Plan & Downtown Specific Plan cost recovery. Any project that paid planning entitlement fees prior to July 27, 2008 is not subject to this fee, regardless of when they pull building permits.

NOTE: Subject to adjustment each year per Construction Cost Index

NOTE: No impact fees can be charged for ADUs less than 750 square feet. Impact fees allowed for ADUs 750 square feet or larger but shall be charged proportionately in relation to square footage of the primary dwelling.

CITY OF LIVERMORE COMMUNITY DEVELOPMENT DEPARTMENT

DEVELOPMENT IMPACT AND CONNECTION FEES

TYPE OF FEE	CITY CODE AND RESOLUTION	WHEN PAYABLE	AMOUNT OF FEE
Traffic Impact Fee NOTE: If special Assessment District exists, special calculations are required	For info regarding the appropriate development categories see Section 12.30 of the City of Livermore Municipal Code Reso 2005-151 Ord. 1742	With Building Permit	See Attached Exhibit "C"
Tri-Valley Transportation Development (TVTD) Fee See Attached Annual Adjustment to TVTD Fee	Title 12.24.050 Ord. 2012 Reso. 2014-184 *Reso 2015-01 **Reso 2019-03	With Building Permit	Residential — Fee Per Unit Single family — $5,057.00 Multi-family — $3,484.00 Affordable Housing* — $0.00 ADU/SDU** — $0.00 Non Residential — Per KSF Retail — $3,740.00 Office — $8,590.00 Industrial — $5,000.00 Average Peak Hour Trip Other — $5,620.00

SCHOOL IMPACT FEES:

The City of Livermore collects School Mitigation Development Fees (school fees) on behalf of the Livermore Valley Joint Unified School District. The fees must be paid for by cash or a check made out to the City of Livermore. Fees are due upon issuance of a qualifying building permit.
See Attached Exhibit "D"

SOCIAL / HUMAN SERVICES FACILITY

Social/Human Services Facility Fee	Title 12.70 Ord. 1851	With Building Permit	See Attached Exhibit "E"

ART IN PUBLIC PLACES

Art in Public Places Fee	Ord. 1836 Title 12.51	0.33% of total project valuation

DOWNTOWN SPECIFIC PLAN DEVELOPMENT FEES

TYPE OF FEE	CITY RESOLUTION	AMOUNT OF FEE
In-Lieu Payment for Public Open Space	Resolution 2005-041	$50 per square foot of required open space
In-Lieu Parking Fee	Resolution 2017-006	$20,745.40
Downtown Revitalization Fee	Title 12.32	Residential — Fee Per Unit Dwelling Unit — $6,334 Non Residential (6) — Per SF Retail/Office — $19.52

SOUTH LIVERMORE VALLEY SPECIFIC PLAN DEVELOPMENT FEES (1)

TYPE OF FEE	CITY CODE AND RESOLUTION	FEE PER RESIDENTIAL UNIT
Plan preparation fee	Resolution 2003-114	$1,559
Recycled water fee	Resolution 98-175	20% of the current Alameda County Water Connection Fee
Major attraction fee	Resolution 2003-114	$1,428
South Livermore Road Improvement fee	Resolution 2003-114	$11,990

City Wide - Transferrable Development Credits (TDC) Program In-Lieu Fee
Ordinance 1979, Development Code Section 4.02.06D

1.5 Credits per single-family detached dwelling, in excess of baseline density within a density range of 1-7 du/acre, 1.25 credits per single family detached dwelling in excess of baseline density within a density range of 8-14 du/acre and 1/2 credit per multi-family attached dwelling - Current In-Lieu credit is $16,352.31. TDC Ordinance does not apply to residential projects in Downtown Specific Plan, affordable units covered by an agreement and residential projects that have received housing units through the City's Housing Implementation Program (HIP).

(1) Areas within the California Water Service Area do not pay a City water connection fee. Areas within the Greenville/Vasco Assessment District or within Triad Park do not pay a City water connection fee. The fee for a single family residential unit is the 5/8 inch meter fee.

(2) All projects within the Downtown Specific Plan are subject to both City Wide General Plan & Downtown Specific Plan cost recovery. Any project that paid planning entitlement fees prior to July 27, 2008 is not subject to this fee, regardless of when they pull building permits.

NOTE: Subject to adjustment each year per Construction Cost Index

NOTE: No impact fees can be charged for ADUs less than 750 square feet. Impact fees allowed for ADUs 750 square feet or larger but shall be charged proportionately in relation to square footage of the primary dwelling.

EXHIBIT A
Wastewater Connection Fee Schedule
(fees Calculated from base year)

User Classification	Avg Daily Wastewater Flow Factor Gallons Per Day/Unit	Unit[1]	Cost Per GPD	Cost Per Unit
Residential (BOD & SS = 285 mg/L)				
Single-family residential	180	House	$40.11	$7,219.83
Multi-family residential				
Studio	95	Residential Unit	$40.11	$3,810.47
One Bedroom	107	Residential Unit	$40.11	$4,291.79
Two Bedroom	138	Residential Unit	$40.11	$5,535.21
Three Bedroom	157	Residential Unit	$40.11	$6,297.30
Four Bedroom	180	Residential Unit	$40.11	$7,219.83
Commercial (BOD & SS = 285 mg/L unless otherwise shown)				
Auto repair shops/Auto dealers	0.11	Square Foot of Bldg	$40.11	$4.41
Assembly Facilities[2]	0.15	Square Foot of Bldg	$40.11	$6.02
Eating drinking facilities w/o cooking	0.35	Square Foot of Bldg	$40.11	$14.04
Gas Stations	0.47	Square Foot of Bldg	$40.11	$18.85
General Use	0.04	Square Foot of Bldg	$40.11	$1.60
Gyms, Health Clubs	0.30	Square Foot of Bldg	$40.11	$12.03
Hotels, Motels (excluding dining facilities)	0.15	Square Foot of Bldg	$40.11	$6.02
Markets	0.19	Square Foot of Bldg	$40.11	$7.62
Mixed Use[3]	0.10	Square Foot of Bldg	$40.11	$4.01
Medical/Dental Office/ Clinic	0.22	Square Foot of Bldg	$40.11	$8.82
Restaurants (1,000 mg/L BOD, 600 mg/L SS)	0.55	Square Foot of Bldg	$59.10	$32.51
Warehouse/Distribution	0.01	Square Foot of Bldg	$40.11	$0.40
Industrial/Other (Other Wastewater Customers Not Listed Above)				
Calculate Case-by-Case Based on Actual Flows/Strengths and Following Rates				
Connection Fee = (F x "Flow") + (B x "BOD") + (S x "SS")				
F = Flow cost $/gpd	$31.06			
B = BOD cost $/lb-day	$2,702.16			
S = SS cost $/lb-day	$1,099.96			
discharge				
flow, in				
"BOD" = The				
"SS" = The				

Governing Municipal Code Section: 13.28.050
Index Used: ENR 20- City Construction Cost Index

Indices:	*Base Year* (A)	*Previous Fee Update* (B)	*Current Fee Update* (C)	*% Change Previous Update to Current Update* (D) =(C/B)-1
Index Date	May-10	May-20	May-21	
Index Value	8,761.47	11,418.16	11,989.91	5.01%

Discussion:

The base year unit fees for Flow, BOD, and SS were determined in the March 2010 Wastewater, Water, Storm Drain Connection Fee Study for Expansion of Sanitary Sewer, Water Reclamation Plant, and Wastewater Disposal Facilities prepared for the City of Livermore by Craig R. Lawson Utility Management Consultant.

Notes:

1. Building square footage means the square footage sum of the floor area at each floor level included with the surrounding principal outside faces of exterior walls of a building or portions thereof, including mezzanines and lobbies. It does not include floor area devoted to vehicle parking, necessary interior driveways and ramps. The gross floor area of a building or portions thereof that doesn't have surrounding exterior walls shall include the usable area under the horizontal projection of the roof or floor above.

2. Theaters can alternately estimate daily flow based on 2 gallons per seat ($80.22 per seat)

3. Mixed Use applies to parcels with Mixed Use zoning and in the Downtown Core District only.

4. This value is based by formula on BOD

6. Adjustments. The city council may, by resolution, adjust the fee schedule, including the flow factors, from time to time. Once the fee is established, it shall automatically be increased annually based upon the Engineering News Record (ENR) 20- City construction Cost Index. In calculating the adjustment, the rate (in each use category, including the flow, BOD and SS costs) for the base year is multiplied by the index for the then-current year, divided by the base year index.

EXHIBIT B Park Facilities Fee Schedule	
LAND USE	**TOTAL FEE**
Residential (per dwelling unit)	
Single Family (& 4 bedroom multi-family)	$21,155
Multi-Family 3 bedrooms	$18,406
Multi-Family 2 bedrooms	$16,221
Multi-Family 1 bedroom	$12,552
Multi-Family Studio	$11,215
Senior Housing	$3,599
Non-Residential (per 1,000 sq ft)	
Commercial	$2,682
Office	$3,835
Industrial	$1,783
Warehouse	$1,339

Source - Park Facilities Fee Study (2004) Table 8; MuniFinancial

EXHIBIT C

Traffic Impact Fees Schedule

Land Uses	Units of Use	Fee Rates
Citywide Except Downtown		
Residential		
Single-Family	d.u.	$10,546
Multi-Family		
Studio	d.u.	$4,915
1 Bedroom	d.u.	$5,502
2 Bedroom	d.u.	$7,110
3 or more Bedroom	d.u.	$8,314
Senior Housing	d.u.	$3,236
Commercial	K s.f.	$28,641
Office	K s.f.	$18,335
Industrial	K s.f.	$11,384
Warehouse	K s.f.	$5,751
Hotel/Motel	per/room	$8,268
Downtown Specific Plan		
Multi-Family		
Studio	d.u.	$3,017
1 Bedroom	d.u.	$3,378
2 Bedroom	d.u.	$4,365
3 or more Bedroom	d.u.	$5,104
Commercial	K s.f.	$12,968
Other	Average Peak Hour Trip	$13,179

Exhibit "D"

LIVERMORE VALLEY JOINT UNIFIED SCHOOL DISTRICT
SUMMARY OF SCHOOL MITIGATION PROGRAM

Livermore Valley Joint Unified School District Resolution: 044 - 19/20 Fee Effective May 18, 2020
(see attached Reso)

INDUSTRIAL/WAREHOUSE/MANUFACTURIN(	$0.66/sq.ft.
OFFICE	$0.66/sq.ft.
RESEARCH & DEVELOPMENT	$0.66/sq.ft.
HOSPITALS	$0.66/sq.ft.
RETAIL & SERVICES	$0.624/sq.ft.
HOTEL/MOTEL:	$0.316/sq.ft.
SELF STORAGE	$0.18/sq.ft.
RESIDENTIAL: (Includes single family home, multi-family home, manufactured home, and mobile home)	$4.08/sq.ft.
SENIOR HOUSING (Includes manufactured home or mobile home located in a mobile home park, subdivision, cooperative or condiminium for mobile homes limited to 55 and older residents.)	$0.66/sq.ft.
RESIDENTIAL ADDITIONS (Residential additions 500 sq.ft. or less and senior housing projects are exempt)	$4.08/sq.st. (501 sq.ft. or more)

* Additions are cumulative over time to a limit of 500 sf before fees are assesed. Once assessed, fees are paid on the entire added square footage.

** The fee owed is based upon the fee amount in effect at the time the fee is paid.

LIVERMORE VALLEY JOINT UNIFIED SCHOOL DISTRICT
685 East Jack London Blvd, Livermore, Ca 94551

FACILITIES PLANNING AND CONSTRUCTION
Jan Shipley, Construction Supervisor (925) 606-3390
Facilities Fax Number (925) 606-3327

EXHIBIT E
Social and Human Service Facility Fee Schedule

Land Uses	Units of Use	Fee Rates
Residential Uses		
Single-Family Detached	d.u.	$1,677
Single-Family Attached	d.u.	$1,415
Multi-Family	d.u.	$1,298
Mobile Home	d.u.	$996
Secondary Unit	d.u.	$996
Non-Residential Uses		
Commercial		
Office	K s.f.	$7
Retail	K s.f.	$5
Service	K s.f.	$5
Industrial		
Manufacturing/R&D	K s.f.	$3
Warehousing	K s.f.	$2
Office	K s.f.	$6
Construction/Repair/Wholesale	K s.f.	$3
Other Non-Residential	K s.f.	$5

ALAMEDA COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT, ZONE 7
100 NORTH CANYONS PARKWAY, LIVERMORE, CA 94551 • PHONE (925) 454-5000 • FAX (925) 454-5727 (FC)

December 28, 2020

Subject: 2021 Update for Development Impact Fee for Flood Protection and Storm Water Drainage

This letter is to inform Zone 7's development community that the Flood Protection and Storm Water Drainage Development Impact Fee (DIF) for 2020 will remain to be $1.00 per square foot of new impervious area, for the time being. Please continue to utilize the existing Development Impact Fee Impervious Surface Calculations worksheet (enclosed), which is also available in Adobe PDF format on Zone 7's website www.zone7water.com, located under the Quick Links column under Permits & Fees.

Developers (or property owners) need to submit to the collecting City/County agencies, prior to approval of any final map and/or issuance of any building (or use) permit, a current Development Impact Fee Impervious Surface Calculations worksheet and associated plot plan for each individual building lot (or Parcel) requiring a building (or use) permit and any Parcel/Tract proposing streets, sidewalks, or other non-building impervious areas in its development. All impervious square-footage of the parcel should be reported whether there is an impact or not. The worksheet is to be filled out in its entirety, for Zone 7 and the Cities'/County's use and record. Zone 7's collecting agents are to fill out the staff section of the worksheet, acknowledging collection of the fees, and are to return the completed worksheets to Zone 7 for their use and record of the fee collection.

Should you have any questions concerning the Development Impact Fee update or collection process please contact me at (925) 454-5075 or email at jtang@zone7water.com, and I will be glad to discuss them with you.

Sincerely,

Digitally signed by Jeff Tang
DN: cn=Jeff Tang, o=Zone 7 Water Agency, ou, email=jtang@zone7water.com, c=US
Date: 2020.12.28 13:38:22 -08'00'

Jeff Tang, P.E.
Associate Civil Engineer
Flood Control Engineering

Enclosure

cc: Jarnail Chahal, Zone 7
Joe Seto, Zone 7

Zone 7 M&I Connection Fee Rate Schedule

Effective Janaury 1, 2021

Meter Size		Recommended Maximum Rate for Continuous Use (gpm)	Connection Fee Amount
5/8" & 1" FS*		10	$29,440
3/4"		15	$44,160
1"		25	$73,600
1 1/2"	(DISPLACEMENT TYPE)	50	$147,200
	Omni C2	160	$471,040
	Omni T2	160	$471,040
2"	OMNI WITH 50GPM RESTRICTION	50	$147,200
	(DISPLACEMENT TYPE)	80	$235,520
	OMNI WITH 80GPM RESTRICTION	80	$235,520
	Mueller MVR **Pleasanton Only**	115	$338,560
	OMNI WITH 120GPM RESTRICTION	120	$353,280
	Omni C2	160	$471,040
	Omni T2	200	$588,800
3" to 10"			**

* When the Fire Department requires fire sprinklers, a 1-inch meter may be obtained at the same rate as a 5/8-inch meter.

** Connection fees for meter sizes 3-inches and above will be determined by using the fee factor for maximum continuous flow rate.

Fees for meters other than those listed above will be determined based upon the maximum continuous flow rating for the brand and type of meter.

These fees are based on the Maximum Continuous Flow Rate through a 5/8" meter as defined by AWWA C700 for Cold-Water Meter -- Displacement Type, Bronze Case.
Any changes to meter capacities will affect the above connection fees.

REV 01/07/2020

Currently, the 2-inch Mueller MVR is only available in Pleasanton.

e:\steven\connfee\admin\connfee2002\connection fee rate schedule 01-01-21 Zone7M&I w-gpm

ALAMEDA COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT, ZONE 7
100 NORTH CANYONS PARKWAY, LIVERMORE, CA 94551 • PHONE (925) 454-5000 • FAX (925) 454-5727

WATER CONNECTION FEE INFORMATION SHEET

Effective January 1, 2021

I. GENERAL BACKGROUND

A. The Water Connection Charge Ordinance No. FC 72-1 as amended for Zone 7 was established January 18, 1972. The ordinance is applicable over the Zone 7 area that includes Livermore, Pleasanton, Dublin, Sunol, and surrounding communities. The Ordinance requires a one-time water connection fee for all new water services from a water system that is directly connected to the Zone 7 water supply system. This fee is used for funding the costs of expanding the Zone 7 water treatment and distribution system to serve new development.

B. The amount charged for a water connection is determined by the size of the meter to be installed. The meter sizes and corresponding water connection fees are listed below.

II. PROCEDURES FOR PAYMENT OF WATER CONNECTION FEES IN LIVERMORE, PLEASANTON, & DUBLIN

The water connection fees are collected by the Building Departments of the Cities of Livermore and Pleasanton, and by the Dublin San Ramon Services District, which are agents for Zone 7. For that area within the Cal Water service area which is located outside of the Livermore city limits, connection fees will be paid at the Zone 7 office in Livermore.

III. WATER CONNECTION FEE SCHEDULE - FEES ARE REVIEWED AND SUBJECT TO PERIODIC MODIFICATION

Meter Size		Fee Factor	Connection Fee
5/8" & 1" FS*		1.0	$29,440
3/4"		1.5	$44,160
1"		2.5	$73,600
1 1/2"	(DISPLACEMENT TYPE)	5.0	$147,200
	Omni C2	16.0	$471,040
	Omni T2	16.0	$471,040
2"	OMNI WITH 50GPM RESTRICTION	5.0	$147,200
	(DISPLACEMENT TYPE)	8.0	$235,520
	OMNI WITH 80GPM RESTRICTION	8.0	$235,520
	Mueller MVR - Pleasanton Only	8.0	$235,520
	OMNI WITH 120GPM RESTRICTION	12.0	$353,280
	Omni C2	16.0	$471,040
	Omni T2	20.0	$588,800

* Connection fees for meters 3-inch and larger and for meters with fee factors other than those listed above, will be determined by Zone 7, using the fee factor for Maximum Rate for Continuous Operation, as defined by AWWA. These fees are based on the Maximum Continuous Flow Rate through a 5/8" meter and are proportional based on flow ratings for the various sized meters. Flow ratings for displacement type meters are defined by AWWA C700 for Cold-Water Meter -- Displacement Type, Bronze Case. Flow ratings for turbine type meters are defined by AWWA C701 for Cold Water Meters -- Turbine Type, For Customer Service. Any changes to meter capacities will affect the above connection fees.

NOTE: This new fee schedule is effective January 1, 2021

IV. EXEMPTIONS

No fee will be collected for SEPARATE private fire service connections. See Section VI of the Ordinance (copy available upon request).

V. PARTIAL EXEMPTIONS

A partial exemption sometimes applies for domestic fire sprinkling systems up to 1" meter size. See Section VI of the Ordinance (copy available upon request).

VI. FOR FURTHER INFORMATION

Call Steven Ellis at (925) 454-5037 or e-mail at sellis@zone7water.com.

RESOLUTION NO. 044-19/20

TO UPDATE STATUTORY DEVELOPER FEES IMPOSED ON NEW RESIDENTIAL AND COMMERCIAL/INDUSTRIAL DEVELOPMENT PROJECTS PURSUANT TO EDUCATION CODE SECTION 17620

WHEREAS, the School Board ("Board") of the Livermore Valley Joint Unified District ("District") provides for the educational needs for TK-12 students within the City of Livermore and a portion of the unincorporated counties of Alameda and Contra Costa (collectively, "Counties"); and

WHEREAS, The State Allocation Board has taken action pursuant to Government Code Section 65995(b)(3), which authorizes Districts to increase Statutory Developer Fees to $4.08 per square foot for assessable space of residential development and $0.66 per square foot of chargeable covered and enclosed space for all categories of commercial/industrial development, as long as such Statutory Developer Fees are properly justified by the District pursuant to law; and

WHEREAS, new residential and commercial/industrial development continues to generate additional students for the District's schools and the District is required to provide school facilities ("School Facilities") to accommodate those students; and

WHEREAS, overcrowded schools within the District would have an impact on the District's ability to provide an adequate quality education and negatively impacts the educational opportunities for the District's students; and

WHEREAS, the District does not have sufficient funds available for the construction or reconstruction of the School Facilities, including acquisition of sites, construction of permanent School Facilities, and acquisition of interim School Facilities, to accommodate students from new residential and commercial/industrial development; and

WHEREAS, the Board of the District has received and considered two studies entitled "Residential Development School Fee Justification Study for Livermore Valley Joint Unified District" and "Commercial/Industrial Development School Fee Justification Study for Livermore Valley Joint Unified District" ("Studies"), which Studies include information, documentation, and analysis of the School Facilities needs of the District, including (a) the purpose of the Statutory Developer Fees; (b) the use to which the Statutory Developer Fees are to be put; (c) the nexus (roughly proportional and reasonable relationship) between the residential and commercial/industrial development; and (1) the use for Statutory Developer Fees; (2) the need for School Facilities; (3) the cost of School Facilities; and the amount of Statutory Developer Fees from new residential and commercial/industrial development; (d) a determination of the impact of the increased number of employees anticipated to result from the commercial/industrial development (by category) upon the cost of providing School Facilities within the District; (e) an evaluation and projection of the number of students that will be generated by new residential development; (f) the new School Facilities that will be required to serve such students; and (g) the cost of such School Facilities; and

WHEREAS, said Studies pertaining to the Statutory Developer Fees and to the capital facilities needs of the District were made available to the public as required by law before the Board considered at a regularly scheduled public meeting the Statutory Developer Fees; and

WHEREAS, all required notices of the proposed Statutory Developer Fees have been given; and

WHEREAS, a Public Hearing was held at a regularly scheduled meeting of the Board of the District relating to the proposed Statutory Developer Fees; and

WHEREAS, Education Code Section 17621 provides that the adoption, increase or imposition of any fee, charge, dedication, or other requirement, pursuant to Education Code Section 17620 shall not be subject to Division 13 (commencing with Section 21000) of the Public Resources Code.

NOW, THEREFORE, THE SCHOOL BOARD OF THE LIVERMORE VALLEY JOINT UNIFIED SCHOOL DISTRICT DOES HEREBY RESOLVE, DETERMINE, AND ORDER AS FOLLOWS:

Section 1. That the Board accepts and adopts the Studies.

Section 2. That the Board finds that the purpose of the Statutory Developer Fees imposed upon new residential development is to fund the additional School Facilities required to serve the students generated by the new residential development upon which the Statutory Developer Fees are imposed.

Section 3. That the Board finds that the Statutory Developer Fees imposed on new residential development will be used only to finance those School Facilities described in the Study and related documents and that these School Facilities are required to serve the students generated by the new residential development within the District; and that the use of the Statutory Developer Fees will include construction or acquisition of additional School Facilities, remodeling existing School Facilities to add additional classrooms, and technology, and acquiring and installing additional portable classrooms and related School Facilities, with the specific location of new schools, remodeling of existing School Facilities, and additional portables to be determined based on the residence of the students being generated by such new residential development, as well as any required central administrative and support facilities, within the District.

Section 4. That the Board finds that there is a roughly proportional, reasonable relationship between the use of the Statutory Developer Fees and the new residential development within the District because the Statutory Developer Fees imposed on new residential development by this Resolution, will be used to fund School Facilities which will be used to serve the students generated by such new residential development.

Section 5. That the Board finds that there is a roughly proportional, reasonable relationship between the new residential development upon which the Statutory Developer Fees are imposed, and the need for additional School Facilities in the District because new students will be generated from new residential development within the District and there is not sufficient capacity in the existing School Facilities to accommodate all additional students.

Section 6. That the Board finds that the amount of the Statutory Developer Fees levied on new residential development as set forth in this Resolution is roughly proportional and reasonably related to, and does not exceed the cost of, providing the School Facilities required to serve the students generated by such new residential development within the District.

Section 7. That the Board finds that the purpose of the Statutory Developer Fees imposed on new commercial/industrial development is to fund the additional School Facilities required to serve the students generated by the new commercial/industrial development upon which the Statutory Developer Fees are imposed.

Section 8. That the Board finds that the Statutory Developer Fees imposed on new commercial/industrial development (by category) will be used only to finance those School Facilities described in the Studies and related documents and that these School Facilities are required to serve the students generated by such new commercial/industrial development; and that the use of the Statutory Developer Fees will include construction or acquisition of additional School Facilities, remodeling existing School Facilities to add additional classrooms and technology, and acquiring and installing additional portable classrooms and related facilities, with the specific location of new schools, remodeling of existing School Facilities, and additional portables to be determined based on the residence of the students being generated by such new commercial/industrial development, as well as any required central administrative and support facilities within the District.

Section 9. That the Board finds that there is a roughly proportional, reasonable relationship between the use of the Statutory Developer Fees and new commercial/industrial development by category within the District because the Statutory Developer Fees imposed on commercial/industrial development by this Resolution will be used to fund School Facilities which will be used to serve the students generated by such new commercial/industrial development.

Section 10. That the Board finds that there is a roughly proportional, reasonable relationship between the new commercial/industrial development by category, upon which the Statutory Developer Fees are imposed, and the need for additional School Facilities in the District because new students will be generated from new commercial/industrial development within the District and the District does not have sufficient student capacity in the existing School Facilities to accommodate these anticipated students.

Section 11. That the Board finds that the amount of the Statutory Developer Fees levied on new commercial/industrial development by category as set forth in this Resolution is roughly proportional and reasonably related to and does not exceed the cost of providing the School Facilities required to serve the students generated by such new commercial/industrial development within the District.

Section 12. That the Board finds that a separate account has been established for the deposit of Statutory Developer Fees imposed on residential and commercial/industrial development and that said account has at all times since been separately maintained, except for temporary investments, from other funds of the District.

Section 13. That the Board finds that the funds of the account, described in Section 12, consisting of the proceeds of Statutory Developer Fees have been imposed for the purposes of constructing and reconstructing those School Facilities necessitated by new residential and commercial/industrial development, and thus, these funds may be expended for those purposes. The Statutory Developer Fees may also be expended by the District for the costs of performing any study or otherwise making the findings and determinations required under subdivisions (a), (b), and (d) of Section 66001 of the Government Code. In addition, the District may also retain, as appropriate, an amount not to exceed in any fiscal year, three percent (3%) of the fees collected in that fiscal year pursuant to Education Code Section 17620 for reimbursement of the administrative costs incurred by the District in collecting the Statutory Developer Fees.

Section 14. That the Board hereby increases the Statutory Developer Fees as a condition of approval of new residential development projects and imposes the Statutory Developer Fees on such development projects in the following amounts:

A. $4.08 per square foot of assessable space for new single family detached residential development and new multifamily attached residential development, including new residential projects, manufactured homes and mobile homes as authorized under Education Code Section 17625, and including residential construction other than new construction where such construction results in an increase of assessable space, as defined in Government Code Section 65995, in excess of 500 square feet. However, these amounts shall not be imposed on any development project used exclusively for housing senior citizens, as described in Civil Code Section 51.3, or as described in Subdivision J of Section 1569.2 of the Health and Safety Code or paragraph 9 of subdivision (d) of Section 15432 of the Government Code or any mobile home or manufactured home that is located within a mobile home park, subdivision, cooperative or condominium for mobile homes limited to older persons as defined by the Federal Fair Housing Amendments of 1988.

B. $0.66 per square foot of assessable space for new residential development used exclusively for the housing of senior citizens, as described in Section 51.3 of the Civil Code or as described in subdivision J of Section 1569 of the Health and Safety Code or paragraph 9 of subdivision (d) of Section 15432 of the Government Code or any mobile home or manufactured home that is located within a mobile home park, subdivision, cooperative or condominium for mobile homes limited to older persons as defined by the Federal Fair Housing Amendments of 1988.

Section 15. That this Board hereby increases the Statutory Developer Fees as a condition of approval of new commercial/industrial development projects and levies the Statutory Developer Fees on such development projects in the following amounts per square foot of chargeable covered and enclosed space for the following categories of commercial/industrial development:

Retail and Services	$0.624
Office	$0.66
Research and Development	$0.66
Industrial/Warehouse/Manufacturing	$0.66
Hospitals	$0.66
Hotel/Motel	$0.316
Self-Storage	$0.018

Section 16. That the proceeds of the Statutory Developer Fees established pursuant to this Resolution shall continue to be deposited into that account identified in Section 12 of this Resolution, the proceeds of which shall be used exclusively for the purpose for which the Statutory Developer Fees are to be collected, including accomplishing any study, findings or determinations required by subdivisions (a), (b) and (d) of Section 66001 of the Government Code or retaining an amount not to exceed in any fiscal year, three percent (3%) of the fees collected in that fiscal year pursuant to Education Code Section 17620 for

reimbursement of the administrative costs incurred by the District in collecting the Statutory Developer Fees or in financing the described Study or in defending the imposition of Statutory Developer Fees.

Section 17. That the Superintendent, or her designee, is directed to cause a copy of this Resolution to be delivered to the building official of the Cities and Counties within the District's boundaries and the Office of Statewide Health Planning and Development ("OSHPD") along with a copy of all the supporting documentation referenced herein and a map of the District clearly indicating the boundaries thereof, advising the Cities, Counties, and OSHPD that new residential and commercial/industrial development is subject to the Statutory Developer Fees readopted pursuant to this Resolution and requesting that no building permit or approval for occupancy be issued by any of these entities for any new residential development project, mobile home, or manufactured home subject to the Statutory Developer Fees absent a certification from this District of compliance of such project with the requirements of the Statutory Developer Fees, nor that any building permit be issued for any non-residential development absent a certification from this District of compliance with the requirements of the applicable Statutory Developer Fees.

Section 18. That the Board hereby establishes a process that permits the party against whom the commercial/industrial Statutory Developer Fees are imposed, the opportunity for a hearing to appeal that imposition of Statutory Developer Fees for commercial/industrial development as required by Education Code Section 17621(e)(2). The appeal process is as follows:

A. Within ten (10) calendar days of being notified, in writing, (by personal delivery or deposit in the U.S. Mail) of the commercial/industrial Statutory Developer Fees to be imposed or paying the commercial/industrial Statutory Developer Fees, pursuant to Education Code Section 17620, a party shall file a written request for a hearing regarding the imposition of commercial/industrial Statutory Developer Fees. The party shall state in the written request the grounds for opposing the imposition of commercial/industrial Statutory Developer Fees and said written request shall be served by personal delivery or certified or registered mail to the Superintendent of the District.

B. The possible grounds for that appeal include, but are not limited to, the inaccuracy of including the project within the category pursuant to which the commercial/industrial Statutory Developer Fees are to be imposed, or that the employee generation or pupil generation factors utilized under the applicable category are inaccurate as applied to the project.

C. Within ten (10) calendar days of receipt of the written request for a hearing regarding the imposition of commercial/industrial Statutory Developer Fees, the Superintendent of the District, or her designee, shall give notice in writing of the date, place and time of the hearing to the party appealing the imposition of commercial/industrial Statutory Developer Fees. The Superintendent, or her designee, shall schedule and conduct said hearing within thirty (30) calendar days of receipt of the written request. The Superintendent, or her designee, shall render a written decision within ten (10) days following the hearing on the party's appeal and serve it by certified or registered mail to the last known address of the party.

D. The party against whom the commercial/industrial Statutory Developer Fees are imposed may appeal the Superintendent's, or her designee's, decision to the Board of the District.

E. The party appealing the Superintendent's, or her designee's decision, shall state in the written appeal the grounds for opposing the imposition of the commercial/industrial Statutory Developer Fees and said written appeal shall be served by personal delivery or certified or registered mail to the Superintendent of the District.

F. The possible grounds for that appeal to the Board of the District include, but are not limited to, the inaccuracy of including the project within the category pursuant to which the commercial/industrial Statutory Developer Fees are to be imposed, or that the employee generation or pupil generation factors utilized under the applicable category are inaccurate as applied to the project.

G. Within ten (10) calendar days of receipt of the written request for a hearing regarding the imposition of commercial/industrial Statutory Developer Fees, the Superintendent of the District, or her designee, shall give notice in writing of the date, place and time of the hearing to the party appealing the imposition of commercial/industrial Statutory Developer Fees. The Board of the District shall schedule and conduct said hearing at the next regular meeting of the Board, provided that the party is given notice at least five (5) working days prior to the regular meeting of the Board. The Board shall render a written decision within ten (10) days following the hearing on the party's appeal and serve the decision by certified or registered mail to the last known address of the party.

H. The party appealing the imposition of the commercial/industrial Statutory Developer Fees shall bear the burden of establishing that the commercial/industrial Statutory Developer Fees are improper.

Section 19. That the Superintendent is authorized to cause a certificate of compliance to be issued for each development project, mobile home and manufactured home for which there is compliance with the requirement for payment of the Statutory Developer Fees in the amount specified by this Resolution. In the event a certificate of compliance is issued for the payment of Statutory Developer Fees for a development project, mobile home or manufactured home and it is later determined that the statement or other representation made by an authorized party concerning the development project as to square footage is untrue, then such certificate shall automatically terminate, and the appropriate City shall be so notified.

Section 20. That no statement or provision set forth in this Resolution, or referred to therein shall be construed to repeal any preexisting fee previously imposed by the District on any residential or nonresidential development.

Section 21. That the District's Statutory Developer Fees will become effective sixty (60) days from the date of this Resolution unless a separate resolution increasing the fees immediately on an urgency basis is adopted by the Board.

APPROVED AND ADOPTED by roll call vote this 17th day of March 2020.

AYES:	Bueno ✓	Prusso ✓	Rogge ✓	Wenzel ✓	White ✓
NOES:	Bueno	Prusso	Rogge	Wenzel	White
ABSTENTIONS:	Bueno	Prusso	Rogge	Wenzel	White
ABSENT:	Bueno	Prusso	Rogge	Wenzel	White

BY: _____

President of the Board of Education Livermore Valley Joint Unified School District of Alameda County and Contra Costa County, State of California

ATTEST: _____

Clerk of the Board of Education Livermore Valley Joint Unified School District of Alameda County and Contra Costa County, State of California

Scott Perkins
TVTC Chair
Vice Mayor
San Ramon
(925) 973-2544

Jean Josey
TVTC Vice-Chair
Councilmember
Dublin
(925) 833-2530

Renee Morgan
Mayor
Town of Danville
(925) 918-3999

David Haubert
Supervisor District 1
Alameda County
(925) 551-6995

Candace Andersen
Supervisor District 2
Contra Costa
(925) 957-8860

Brittni Kiick
Councilmember
City of Livermore
(925) 960-4019

Karla Brown
Mayor
City of Pleasanton
(925) 931-5001

To: Tri-Valley Transportation Council

From: TVTC Finance Committee
By: Technical Advisory Committee (TAC)

Date: April 19, 2021

Subject: ADOPT the Tri-Valley Transportation Development Fee Construction Cost Index Annual Adjustment

---

BACKGROUND

The Joint Exercise of Powers Agreement (JEPA) for the Tri-Valley Transportation Development Fee (TVTDF) specifies that the TVTDF amounts are to be adjusted automatically as of July 1 of each year to reflect changes in regional construction costs. JEPA Section 3(D)(I) requires the TVTC adopt the adjustment by a simple majority.

DISCUSSION

The amount of the adjustment is based on the change in the "Construction Cost Index" (CCI) for the San Francisco Bay Area, as reported annually in the Engineering News Record (ENR). The December 2020 ENR CCI for the San Francisco Bay Area is **+3.2%**.

RECOMMENDATION

The TVTC Finance Committee recommends the TVTC adopt the Tri-Valley Transportation Development Fee Construction Cost Index Annual Adjustment and notify each TVTC member agency to collect the TVTDF rates as listed below starting **July 1, 2021**:

Single Family Residential	$5,057.00/Dwelling Unit (DU)
Multi-Family Residential	$3,484.00/DU
Office	$8.59/sq. ft. Gross Floor Area
Retail	$3.74/sq. ft. Gross Floor Area
Industrial	$5.00/sq. ft. Gross Floor Area
Other	$5,620.00/average am/pm peak hour trip
ADU/SDU	$0
Affordable Housing	$0

TVTDF Historical Fee Rates

	2019	2020	2021
Single Family Residential (per DU)	$4,650.56	$4,901.00	$5,057.00
Multi-Family Residential (per DU)	$3,203.48	$3,376.00	$3,484.00
Office (per SF Gross Floor Area)	$7.90	$8.33	$8.59
Retail (per SF Gross Floor Area)	$3.41	$3.63	$3.74
Industrial (per SF Gross Floor Area)	$4.60	$4.85	$5.00
Other (average am/pm peak hour trip)	$5,167.00	$5,446.00	$5,620.00
Affordable Housing *	$0.00	$0.00	$0.00
ADU/SDU**	$0.00	$0.00	$0.00

*Pursuant to Resolution 2015-01 Adjusting the Tri-Valley Transportation Development Fee Schedule

**Pursuant to Resolution 2019-03 – Resetting the Accessory Dwelling Unit/Secondary Dwelling Unit Fee in the Tri-Valley Transportation Development Fee Program

EXHIBIT B

INSURANCE REQUIREMENTS

Minimum Scope and Limits of Insurance

Developer shall maintain limits no less than:

1. Commercial General Liability, including operations, products, and completed operations, as applicable:
   $5,000,000 per occurrence/**$10,000,000** aggregate for bodily injury, personal injury, and property damage. If Commercial General Liability or other form of insurance with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.
2. Automobile Liability:
   $2,000,000 per accident for bodily injury and property damage.
3. Workers' Compensation and Employer's Liability:
   Statutory limits as required by the State of California including **$1,000,000** Employers' Liability per accident, per employee for bodily injury or disease. A waiver of subrogation is required for Workers' Compensation insurance. If Developer is a sole proprietor, then they must sign "Contractor Release of Liability".
4. Pollution 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 Developer; or automobiles owned, leased, hired or borrowed by the Developer. 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 Developer'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 Developer'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

Completed Operations

Developer shall maintain insurance as required by this contract for a minimum of five years following the completion of this project. In the event the Developer 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 Developer. Completed Operations endorsement or coverage shall be at least as broad as Insurance Services Office CG 20 38. Developer 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 of 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. Developer shall include the following language in their agreements with Subcontractors: "Subcontractor agrees to be bound to Developer and City in the same manner and to the same extent as Developer 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 extend they apply to the scope of the Sub-subcontractor's work. A copy of the City Contract Document Indemnity and Insurance provisions will be furnished to the Subcontractor upon request." Developer shall provide proof of such compliance and verification to the City upon request.

Verification of Coverage

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

LIVERMORE
CALIFORNIA

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

DATE: June 24, 2024

TO: Honorable Mayor and City Council

FROM: Judy Erlandson, Acting Public Works Director

SUBJECT: Resolution authorizing execution of an agreement with Holloway Environmental Solutions, LLC for Biosolids Hauling and Disposal Services in an amount not-to-exceed $2,288,790, a term ending June 30, 2027, and an appropriation increase of $103,430 to the Sewer Fund Operating Budget for FY 2024-25.

RECOMMENDED ACTION

Staff recommends that the City Council adopt a resolution authorizing execution of an agreement with Holloway Environmental Solutions, LLC for Biosolids hauling and disposal services in an amount not-to-exceed $2,288,790, a term ending June 30, 2027, and an appropriation increase of $103,430 to the Sewer Fund operating budget for FY 2024-25.

SUMMARY

Biosolids are a byproduct resulting from normal wastewater treatment at the Water Reclamation Plant (WRP). Contractors are utilized to transport and dispose of the biosolids. Competitive bidding occurred in February 2024 and the best value bid was received from Holloway Environmental Solutions, LLC. The estimated cost for three years of transport and disposal is $2,288,790.

DISCUSSION

The WRP generates biosolids in the course of wastewater treatment that must be disposed of offsite. This material is removed from the incoming wastewater and further treated in anaerobic digesters. Following digestion, the resulting slurry is dewatered using a belt filter press and loaded into trailers for offsite disposal.

Staff completed a competitive bidding process for disposal in March 2024. Three sealed bids were submitted and summarized below:

BIDDER	PRICING
Holloway Environmental Solutions, LLC	$76 per wet ton
Synagro-WWT, Inc.	$96 per wet ton

Ecology Autoparts, Inc.	$104 per wet ton

Holloway Environmental Solutions, LLC represents the best value bid. They are positioned to offer year-round transport and disposal services to their own Class III non-hazardous industrial waste landfill facility.

Staff recommends the City accept the best value bid and initiate a new agreement beginning on July 1, 2024 through June 30, 2027. The not-to-exceed value of the agreement is recommended at $2,288,790 based on the $76.00 per wet ton bid price and an estimated volume of 27,300 tons of biosolids over the three-year period.

FISCAL AND ADMINISTRATIVE IMPACTS

This new agreement represents a 48.9% increase in the price per ton from $53.03 to $79.00, over the term of the agreement. The first year is currently budgeted for FY 2024-25 in the Sewer Enterprise Fund (Fund 230) in the amount of $659,500. The existing appropriation will need to be increased by $103,430. Funding for the subsequent years of the agreement will be included in the next proposed two-year budget cycle. Staff does not anticipate any new administrative or staffing impacts should this agreement be approved.

COMMUNITY PILLAR

1: A Safe Community That Thrives

GOAL

11: Operate and maintain municipal water systems that provide safe, efficient delivery of potable and recycled water, collect and treat wastewater, and comply with all federal, state, and local regulations.

ATTACHMENTS

1. Resolution
2. Exhibit A - Agreement

Prepared by: Laura Mayate-DeAndreis
Management Analyst II

Approved by:

Marianna Marysheva
City Manager

Fiscal Review by:

Tina Olson
Administrative Services Director

IN THE CITY COUNCIL OF THE CITY OF LIVERMORE, CALIFORNIA

A RESOLUTION AUTHORIZING EXECUTION OF AN AGREEMENT WITH HOLLOWAY ENVIRONMENTAL SOLUTIONS, LLC FOR BIOSOLIDS HAULING AND DISPOSAL SERVICES IN AN AMOUNT NOT-TO-EXCEED $2,288,790, AND AN APPROPRIATION INCREASE OF $103,430 TO THE SEWER FUND OPERATING BUDGET FOR FISCAL YEAR 2024-25

The City of Livermore ("City") advertised and received bids for the transport and disposal of biosolids, Request for Proposals and Qualifications No. 4259.

Pursuant to Livermore Municipal Code section 2.68.040, City staff determined Holloway Environmental Solutions, LLC to be the best value bidder, at $76 per wet ton. This bid is based on cost and ability, capacity, and skill of the contractor to provide the services specified.

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

1. Authorizes the execution of an agreement for services with Holloway Environmental Solutions, LLC, attached hereto as Exhibit A, for biosolids hauling and disposal for a three-year term in an amount not-to-exceed $2,288,790.

2. Authorizes a FY 2024-25 appropriation increase to the Sewer Fund (230) operating budget in the amount of $103,430.

BE IT FURTHER RESOLVED that the City Council of the City of Livermore rejects all other bid proposals.

On motion of Council Member _____, seconded by Council Member _____, the foregoing resolution was passed and adopted on June 24, 2024, by the following vote:

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

ATTEST:

_____
Deborah L Elam
Acting City Clerk

APPROVED AS TO FORM:

/s/ Tara Mazzanti
Tara Mazzanti
Assistant City Attorney

Exhibit A – Agreement with Holloway Environmental Solutions, LLC

DocuSign Envelope ID: 841B7FDC-2BBB-41FE-BBC9-A43E4176794E

AGREEMENT FOR SERVICES

THIS AGREEMENT is made and entered into this day of , 2024, by and between the City of Livermore ("City"), a municipal corporation, and Holloway Environmental Solutions, LLC ("Contractor"), a Wyoming limited liability company.

RECITALS

City requires services to transport and provide beneficial reuse and/or disposal of all digested, dewatered biosolid sludge form the City's Water Reclamation Plant (WRP).

Contractor warrants it possesses the distinct skills, qualifications, experience, and resources necessary to timely perform the services described in this Agreement. Contractor acknowledges City has relied upon these warranties to retain Contractor.

AGREEMENT

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

1. Retention as Contractor. City hereby retains Contractor, and Contractor hereby accepts such engagement, to perform the services described in Section 3 below subject to the terms and conditions in this Agreement.

2. Relationship of Parties – Independent Contractors. The relationship of the parties shall be that of independent contractors. Contractor and its employees are not City officers or employees. Contractor is responsible for the supervision and management of its employees, including any workers compensation insurance, withholding taxes, unemployment insurance, and any other employer obligations associated with the delivery of the services contemplated by this Agreement.

3. Description of Services. Contractor shall provide services to transport and provide beneficial reuse and/or disposal of all digested, dewatered biosolid sludge from the City's Water Reclamation Plant as more particularly set forth in Exhibit "A" (collectively "the Services").

4. Contractor's Responsibilities. Contractor shall:

(a) Diligently perform the Services in a manner commensurate with industry, professional, and community standards;

(b) Provide the resources necessary to complete the Services in a timely manner;

(c) Obtain a business license from the City of Livermore, and keep it in effect for the term of this Agreement;

DocuSign Envelope ID: 841B7FDC-2BBB-41FE-BBC9-A43E4176794E

(d) Obtain and keep in effect all necessary licenses, permits, qualifications, insurance, and approvals legally and professionally required for Contractor to practice its profession and to provide the Services;

(e) Comply with all laws in effect that are related to Contractor and the Services;

(f) Coordinate the Services with Jimmie Truesdell, Water Resources Operations Manager ("Project Manager"), or such other person designated as the Project Manager by City;

(g) Be available to the Project Manager, and other parties referred to Contractor by the Project Manager, to answer questions or inquiries related to the Services;

(h) Only invoice City for the Services rendered. Contractor's invoice shall be in writing and describe the Services performed for the payment requested. Contractor shall not submit an invoice to City more frequently than once a calendar month;

(i) Keep and maintain invoices and records related to the Services in an organized manner. At a minimum, the records must be kept for at least 3 years from the date of final payment to Contractor and must include time sheets, work progress reports, and other documentation to adequately explain all the Services invoiced for payment. Contractor shall make the invoices and records immediately available to City upon delivery of a written request to examine, audit, or copy them at City's place of business during normal business hours. Contractor shall give City 30 calendar-days' written notice prior to destroying the invoices and records and allow City an opportunity to take possession. If City wants them, Contractor and City shall coordinate their delivery to City in the most efficient manner possible;

(j) Prepare and submit a written report to the Project Manager, within 3 business-days of the Project Manager's written request, that identifies the Services completed and in progress, the charges incurred to date, and the anticipated cost to complete the remaining Services;

(k) Contractor shall correct, at its own expense, all errors in the Services. Should Contractor fail to make such correction in a timely manner, City may make the correction and charge the cost thereof to Contractor;

(l) If applicable, Contractor shall ensure that all work for compensation is taken in compliance with the requirements of the California Labor Code including but not limited to hours of labor, nondiscrimination, payroll records, apprentices, worker's compensation and prevailing wages. If applicable, Contractor shall comply with all prevailing wage laws, such as sections 1773, 1773.8, 1775, 1776, 1777.5, 1777.6, and 1813 of the California Labor Code and any other applicable wage and hour law. If any violation of prevailing wage law associated with this Agreement is deemed to have occurred by any court or administrative authority, Contractor shall forfeit to the City, as a penalty, the sum of fifty dollars ($50.00) for each calendar day, or portion thereof, for each laborer, worker, or mechanic employed, paid less than the applicable prevailing rates for any work done to accomplish the purposes of this Agreement; and,

DocuSign Envelope ID: 841B7FDC-2BBB-41FE-BBC9-A43E4176794E

(m) Contractor's services provided pursuant to this Agreement shall comply with the Americans with Disabilities Act (ADA) of 1990, and all amendments thereto, as well as applicable regulations and guidelines issued pursuant to the ADA.

5. Compensation and Payment.

(a) The total compensation payable by City to Contractor for the Services **SHALL NOT EXCEED** the sum of $ 2,288,790 ("not-to-exceed amount"). City shall compensate Contractor for the Services rendered at the hourly rates or task amounts set forth in Exhibit "A" up to the not-to-exceed amount. Except as provided in the body of this Agreement, the hourly rates or task amounts are intended to be Contractor's only compensation for the Services and is inclusive of all costs of labor, licensing, permitting, travel expenses, overhead and administrative costs, and any-and-all other costs, expenses, and charges incurred by Contractor, its agents, and employees to provide the Services.

(b) City shall pay Contractor no later than 30 days after City receives a written invoice from Contractor and verifies the Services were performed for the payment requested.

6. Term. The term of this Agreement commences on July 1, 2024, and terminates upon the completion of the Services or June 30, 2027, whichever occurs first.

7. Termination by City. City may terminate any portion or all of the Services by giving Contractor at least 30 calendar-days written notice. Upon receipt of a termination notice, Contractor shall immediately stop all work in progress on the Services except where necessary to preserve the benefit of the work, and assemble the work on the Services for delivery to City on the termination date. All compensation for Services performed prior to the termination date shall be payable to Contractor in accordance with Section 5.

8. Ownership of Documents. All drawings, designs, data, photographs, reports and other items prepared or obtained by Contractor in the performance of the Services are City's property and Contractor shall deliver them to City upon demand.

9. Copyright and Right of Use. All items created by Contractor for City under this Agreement are works made for hire, and Contractor shall give City the copyright and all intellectual property rights to all items developed, prepared, and delivered as part of the Services. Contractor agrees that all aspects of the Services and items created thereby will be original works of creation and will not use, in whole or in part, any work created by any other party, except when expressly disclosed by Contractor to City and Contractor obtains a license to such items for the benefit of City. All licenses must be perpetual, world-wide, non-exclusive, and royalty free sufficient in scope to permit City's full use and enjoyment of its ownership rights in the items created by the Services.

10. Confidentiality. Contractor shall not disclose any confidential or proprietary information received from City to anyone except Contractor's employees who require access to the information to perform the Services. This obligation shall survive

DocuSign Envelope ID: 841B7FDC-2BBB-41FE-BBC9-A43E4176794E

termination and remain in full force and effect until the information, and any copies thereof, are destroyed or returned to City.

11. Defense, Indemnity, and Hold Harmless. To the fullest extent permitted by law, Contractor shall hold harmless, indemnify, and defend with counsel selected by the City or otherwise acceptable to the City, the City and its elected and appointed officials, officers, directors, employees, agents and designated volunteers from and against any and all liability, loss, damage, claims, expenses, and costs (including without limitation, attorney's fees and costs and fees of litigation) (collectively, "Liability") of every nature arising out of or in connection with Contractor's performance of the services contemplated by this Agreement, or in connection with Contractor's failure to comply with any of its obligations contained in this Agreement, except for such Liability caused by the sole active negligence or willful misconduct of City. Contractor's obligations to hold harmless, indemnify, and defend shall not be excused because of Contractor's inability to evaluate Liability or because Contractor evaluates Liability and determines that Contractor is not liable to the claimant. These obligations are independent of, and shall not in any way be limited by, the minimum insurance obligations contained in this Agreement. These obligations shall survive the completion or termination of this Agreement. Contractor must respond within 30 days to the tender of any claim for defense and indemnity by the City.

(a) Modification for Construction Contracts. To the extent this Agreement is a "construction contract" covered by California Civil Code section 2782, then Contractor's duty to indemnify shall not apply in a manner prohibited by California Civil Code section 2782.

(b) Modification for Design Professional Services. To the extent this Agreement is for "design professional services" defined in California Civil Code section 2782.8, then Contractor's duties to defend and indemnify shall only apply to the extent provided for in California Civil Code section 2782.8(a), unless section 2782.8(a) is not applicable for one of the reasons set forth in 2782.8(e).

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

13. Acceptance of Final Payment. Contractor's acceptance of final payment will release City from any and all claims and liabilities for compensation under this Agreement.

14. Acceptance of Work. City's acceptance of, or payment to Contractor for, the Services does not release Contractor from its responsibility for the accuracy, completeness, or competency of the Services, nor do the actions constitute an assumption of Contractor's responsibility or liability by City for any defect or error in the Services.

DocuSign Envelope ID: 841B7FDC-2BBB-41FE-BBC9-A43E4176794E

15. Conflict of Interest. Contractor represents that no City employee or official has a financial interest in Contractor. Contractor shall not offer, encourage, or accept any financial interest in any part of Contractor's business by or from a City employee or official during the term of this Agreement or as a result of being awarded this Agreement. If any of the Services are paid by reimbursement from an agreement between City and a private party, Contractor represents that it has not performed any work for that private party during the 12-month period prior to the execution of this Agreement, and that it shall not negotiate, offer or accept any contract for services from that party during the term of this Agreement.

16. Economic Disclosure. Contractor shall comply with City's local conflict of interest code and the Political Reform Act, and prepare and file an economic disclosure statement if the Services involve making, or participation in making, decisions which may have a material effect on the Contractors' financial interest. While it is Contractor's sole responsibility to evaluate its conflicts of interest, the Contractor nevertheless agrees to prepare and file an economic disclosure statement if requested by City.

17. Non-Exclusive Agreement. This is a non-exclusive agreement. City reserves the right to provide, and to retain other Contractors to provide, services that are the same or similar to the Services described in this Agreement.

18. No Assignment. Contractor shall not assign or subcontract any of the Services without City's prior written consent. For the purposes of this section, a change of fifty percent or more in the ownership or control of Contractor constitutes an assignment.

19. Remedies. All remedies permitted or available under this Agreement, or at law or in equity, are cumulative and alternative, and the invocation of a right or remedy will not be construed to waive or elect a remedy with respect to any other available right or remedy. As a condition precedent to commencing legal action involving a claim or dispute against City arising from this Agreement, the Contractor must present a written claim to City in accordance with Chapter 3.42 of the Livermore Municipal Code.

20. Construction of Language. The terms and conditions in this Agreement have been arrived at through negotiation and each party had a full and fair opportunity to review and revise this Agreement with legal counsel. Any ambiguity in this Agreement will not be resolved against either party as the drafting party. In the event of an inconsistency or conflict between the language in the body of the Agreement and an attachment hereto, the language in the body of the Agreement controls.

21. Entire Agreement; Modification. This Agreement supersedes all other agreements, whether oral or written, between the parties with respect to the Services. Any modification to this Agreement must be in writing and signed by both parties. In the event the original of this Agreement is lost or destroyed, an archival copy maintained by City can be used in place of the original for all purposes with the same effect as if it was the original.

22. Notice. Notices under this Agreement must be delivered to the addresses below by deposit in the United States mail or by overnight delivery service, with postage prepaid and delivery confirmation:

DocuSign Envelope ID: 841B7FDC-2BBB-41FE-BBC9-A43E4176794E

TO CITY: Attention: Water Resources Division Manager
City of Livermore
101 W. Jack London Blvd.
Livermore, California 94551

TO CONTRACTOR: Attention: Daniel Allen
Holloway Environmental Solutions, LLC.
2019 Westwind Drive, Suite B
Bakerfield, CA 93301

23. Waiver. Failure to insist upon the strict performance of any term or conditions in this Agreement, no matter how long the failure continues, is not a waiver of the term or condition and does not bar the right to subsequently demand strict performance. To be effective, a waiver must be in writing and signed by the non-breaching party.

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

25. Survival. The terms, conditions, and obligations in Sections 8, 9, 10, and 11 shall survive the completion or termination of this Agreement.

26. Electronic Signatures. By signing this document, you are agreeing that you have reviewed this disclosure information and consent to transact business using electronic communications, to receive notices and disclosures electronically, and to utilize electronic signatures in lieu of using paper documents. You are not required to receive notices and disclosures or sign documents electronically. If you prefer not to do so, you may request to receive paper copies and withdraw your consent at any time.

27. Counterparts. This Agreement may be executed and delivered in one or more counterparts, each of which will be deemed to be an original copy of this Agreement, and all of which, when taken together, will be deemed to constitute one and the same agreement. The facsimile, email, or other electronically delivered signatures of the Parties shall be deemed to constitute original signatures, and facsimile or electronic copies hereof shall be deemed to constitute duplicate originals and shall be valid and effective for all purposes.

****

Signatures and Attachment List on the Next Page

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

CONTRACTOR:

DocuSigned by:
Daniel Allen
125B67D2D9654D0...
By: Daniel Allen
Title: Chief Operating Office

Dated:

5/8/2024 | 9:36 AM PDT

CITY OF LIVERMORE:

Marianna Marysheva
City Manager

Dated:

APPROVED AS TO FORM:

DocuSigned by:
Tara Mazzanti
19DF47CAC5D0451...
Deputy/Assistant/City Attorney

APPROVED AS TO INSURANCE:

DocuSigned by:
Amber Hatfield
12BC7F4B8824F6...
Risk Manager/Analyst

Attachments:

Exhibit A – Scope of Work
Exhibit B – Insurance Requirements

DocuSign Envelope ID: 841B7FDC-2BBB-41FE-BBC9-A43E4176794E

Exhibit A

Scope of Work

CONTRACTOR RESPONSIBILITIES

1. Provide and maintain all applicable land, permits, facilities, equipment, machinery, labor, materials, utilities, and all appurtenances as required to provide guaranteed Biosolids transporting and beneficial reuse and/or disposal services for up to 150% (13,650 wet tons) of the Biosolids currently generated each year by CITY.
2. Coordinate daily biosolids haul away with Livermore Water Reclamation Plant (LWRP) staff to include:
    a. One to three staged trailers on-site at the City of Livermore Water Reclamation Plant available at all times.
    b. Trailer pick-up and drop off between 6:00 a.m. and 6:00 p.m. at a pre-designated area at LWRP.
    c. Arrival within 24-hours of being notified that a pick-up is ready with an empty trailer to replace a full trailer.
    d. On-site arrival within 24 hours of being notified that a pick-up is ready
    e. LWRP staff will prepare loading the trailers as follows:
        i. Move trailer into loading bay for filling.
        ii. Fill trailer to appropriate trailer weights.
        iii. Park loaded trailer in pre-designated area.
        iv. Notify Contractor with front and rear axle weights and inform Contractor a trailer is ready by phone and email.
        v. Provide Contractor/Hauler a manifest to haul to landfill or beneficial reuse.
3. Coordination of trailer drops and pick up by hauler, GIC or designee of Contractor.
    a. Materials to be delivered to Holloway's Class III landfill located at 14045 Holloway Road, Lost Hills, CA 93249.
4. Invoice monthly based off the tonnages from Contractor's certified scales, and report tag weights and loads with monthly billing.

CITY RESPONSIBILTIES

1. Provide equipment daily 24-hour security on-site.
2. Sampling and lab testing to ensure materials are within Contractor's permit limits.

UNIT COST

The cost per wet ton for hauling and beneficial reuse/disposal is **$76.00.**

DocuSign Envelope ID: 841B7FDC-2BBB-41FE-BBC9-A43E4176794E

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:
   $3,000,000 per occurrence/**$6,000,000** aggregate for bodily injury, personal injury, and property damage. If Commercial General Liability or other form of insurance with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.
2. Automobile Liability:
   $1,000,000 per accident for bodily injury and property damage.
3. Workers' Compensation and Employer's Liability:
   Statutory limits as required by the State of California including **$1,000,000** Employers' Liability per accident, per employee for bodily injury or disease. A waiver of subrogation is required for Workers' Compensation insurance. If Consultant/Contractor is a sole proprietor, then they must sign "Contractor Release of Liability."
4. Pollution 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.

DocuSign Envelope ID: 841B7FDC-2BBB-41FE-BBC9-A43E4176794E

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

Verification of Coverage

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

LIVERMORE
CALIFORNIA

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

DATE: June 24, 2024

TO: Honorable Mayor and City Council

FROM: Judy Erlandson, Acting Public Works Director

SUBJECT: Resolution authorizing the execution of an agreement for services with Kemira Water Solutions, Inc. for the supply and delivery of ferric chloride for use at the Water Reclamation Plant in an amount not-to-exceed $200,000.

RECOMMENDED ACTION

Staff recommends that the City Council adopt a resolution authorizing the execution of an agreement with Kemira Water Solutions, Inc. for the supply and delivery of ferric chloride for use at the Water Reclamation Plant in an amount not-to-exceed $200,000.

SUMMARY

The Water Reclamation Plant (WRP) uses ferric chloride in the primary treatment and solids handling process. Through a cooperative bidding process, Kemira Water Solutions, Inc. was determined to be the lowest bidder at $1,490 per dry ton for FY 2024-25.

DISCUSSION

Staff at the WRP adds ferric chloride in the primary clarifiers to minimize the amount of hydrogen sulfide produced in the anaerobic digesters. This helps minimize corrosion in the solids handling building, as well as improve air quality for staff while operating the belt press.

Earlier this year, the City participated in the annual Bay Area Chemical Consortium's (BACC) competitive bidding process for the supply of ferric chloride. This bidding process meets the requirements of Livermore Municipal Code 2.68.390 Section C for cooperative purchasing arrangements. The BACC is made up of numerous water and wastewater agencies in the Bay Area region that use similar chemicals. By utilizing the aggregate volume of these agencies, the BACC seeks to achieve the lowest market price for its members.

In February 2024, the BACC issued Bid No. 06-2024 for competitive bidding for the supply of ferric chloride. Kemira Water Solutions, Inc. was selected as the lowest responsive bidder at $1,490 per dry ton.

FISCAL AND ADMINISTRATIVE IMPACTS

The $200,000 not-to-exceed amount for the supply and delivery of ferric chloride is included in the FY 2024-25 operating budget in the Wastewater Enterprise Fund (Fund 230). Staff does not anticipate any administrative impacts due to the approval of this agreement.

COMMUNITY PILLAR

1: A Safe Community That Thrives

GOAL

11: Operate and maintain municipal water systems that provide safe, efficient delivery of potable and recycled water, collect and treat wastewater, and comply with all federal, state, and local regulations.

ATTACHMENTS

1. BACC Award Letter
2. Resolution
3. Exhibit A - Agreement

Prepared by: Laura Mayate-DeAndreis
Management Analyst II

Approved by:

Marianna Marysheva
City Manager

Fiscal Review by:

Tina Olson
Administrative Services Director

BACWA
BAY AREA
CLEAN WATER
AGENCIES

March 18, 2024

Kemira Water Solutions, Inc.
Attn: Christina Imbrogno
4321 W. 6th St.
Lawrence, KS, 66049

RE: Award Contract in Response to Bay Area Chemical Consortium (BACC) Bid No. 06-2024 for Supply and Delivery of FERRIC CHLORIDE.

Dear Ms. Imbrogno,

We are pleased to advise you that the bid submitted by Kemira Water Solutions, Inc. for Bid No. 06-2024 was determined to be the lowest responsive bid for the supply and delivery of FERRIC CHLORIDE during the period July 1, 2024 through June 30, 2025.

The participating BACC Agencies should be contacting you shortly to discuss entering into contracts with Kemira Water Solutions, Inc. for their respective facilities.

Bay Area Chemical Consortium sincerely appreciates your efforts and participation in the competitive bid process.

If you have any questions, please free to contact me at jdyment@bacwa.org

Sincerely,

Jennifer Dyment
Assistant Executive Director
BACWA.org
as Coordinating Agency for the Bay Area Chemical Consortium

Bay Area Clean Water Agencies
Bid Results for Project 06-2024 FERRIC CHLORIDE
Bid Due on February 22, 2024 4:00 PM (PDT)
SINGLE BID AWARD

Section	FERRIC CHLORIDE							
Description	**Central Valley**	**East Bay**	**Marin Sonoma Napa**	**North Bay**	**Peninsula**	**Sacramento**	**South Bay**	**Tri Valley**
Unit of Measure	dry ton	dry ton	dry ton	dry ton	dry ton	dry ton	dry ton	dry ton
Kemira Water Solutions, Inc	1,470.0000	1,380.0000	1,573.0000	1,573.0000	1,499.0000	1,499.0000	1,490.0000	1,490.0000

IN THE CITY COUNCIL OF THE CITY OF LIVERMORE, CALIFORNIA

A RESOLUTION AUTHORIZING THE EXECUTION OF AN AGREEMENT WITH KEMIRA WATER SOLUTIONS, INC. FOR THE SUPPLY AND DELIVERY OF FERRIC CHLORIDE FOR USE AT THE WATER RECLAMATION PLANT IN AN AMOUNT NOT-TO-EXCEED $200,000 FOR A ONE-YEAR TERM

The City of Livermore ("City") requires the use of ferric chloride at its Water Reclamation Plant in the treatment and solids handling processes. The City participates in the Bay Area Chemical Consortium ("Consortium"). This bidding process meets the requirements of Livermore Municipal Code section 2.68.390 section C for cooperative purchasing arrangements. This allows the City to receive the best price by leveraging large volumes of chemicals used in common amongst Bay Area wastewater and water service providers.

In February 2024, the Consortium completed a competitive bidding process and selected Kemira Water Solutions, Inc. as the best value to provide ferric chloride. Kemira Water Solutions, Inc. met all bid requirements and provides delivery directly to the Livermore Water Reclamation Plant.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Livermore that it hereby authorizes the execution of an agreement for services, attached hereto as Exhibit A, with Kemira Water Solutions, Inc. in an amount not-to-exceed $200,000 to provide supply and delivery of ferric chloride to the Water Reclamation Plant.

On motion of Council Member _____, seconded by Council Member _____, the foregoing resolution was passed and adopted on June 24, 2024, by the following vote:

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

ATTEST:

_____
Deborah L. Elam
Acting City Clerk

APPROVED AS TO FORM:

/s/ Jason R. Alcala
Jason R. Alcala
City Attorney

Exhibit A – Kemira Water Solutions, Inc. Agreement for Services

DocuSign Envelope ID: FE39F670-3070-4530-8BE8-AB2757B49B13

AGREEMENT FOR SERVICES

THIS AGREEMENT is made and entered into this day of , 2024, by and between the City of Livermore ("City"), a municipal corporation, and Kemira Water Solutions, Inc. ("Contractor"), a Delaware corporation..

RECITALS

City requires services to supply and deliver ferric chloride to the City of Livermore Water Reclamation Plant.

Contractor warrants it possesses the distinct skills, qualifications, experience, and resources necessary to timely perform the services described in this Agreement. Contractor acknowledges City has relied upon these warranties to retain Contractor.

AGREEMENT

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

1. Retention as Contractor. City hereby retains Contractor, and Contractor hereby accepts such engagement, to perform the services described in Section 3 below subject to the terms and conditions in this Agreement.

2. Relationship of Parties – Independent Contractors. The relationship of the parties shall be that of independent contractors. Contractor and its employees are not City officers or employees. Contractor is responsible for the supervision and management of its employees, including any workers compensation insurance, withholding taxes, unemployment insurance, and any other employer obligations associated with the delivery of the services contemplated by this Agreement.

3. Description of Services. Contractor shall provide services to supply and deliver ferric chloride to the City of Livermore Water Reclamation Plant as more particularly set forth in Exhibit "A" (collectively "the Services").

4. Contractor's Responsibilities. Contractor shall:

(a) Diligently perform the Services in a manner commensurate with industry, professional, and community standards;

(b) Provide the resources necessary to complete the Services in a timely manner;

(c) Obtain a business license from the City of Livermore, and keep it in effect for the term of this Agreement;

(d) Obtain and keep in effect all necessary licenses, permits, qualifications, insurance, and approvals legally and professionally required for Contractor to practice its profession and to provide the Services;

DocuSign Envelope ID: FE39F670-3070-4530-8BE8-AB2757B49B13

(e) Comply with all laws in effect that are related to Contractor and the Services;

(f) Coordinate the Services with the Water Resources Operations Manager ("Project Manager"), or such other person designated as the Project Manager by City;

(g) Be available to the Project Manager, and other parties referred to Contractor by the Project Manager, to answer questions or inquiries related to the Services;

(h) Only invoice City for the Services rendered. Contractor's invoice shall be in writing and describe the Services performed for the payment requested. Contractor shall not submit an invoice to City more frequently than once a calendar month;

(i) Keep and maintain invoices and records related to the Services in an organized manner. At a minimum, the records must be kept for at least 3 years from the date of final payment to Contractor and must include time sheets, work progress reports, and other documentation to adequately explain all the Services invoiced for payment. Contractor shall make the invoices and records immediately available to City upon delivery of a written request to examine, audit, or copy them at City's place of business during normal business hours. Contractor shall give City 30 calendar-days' written notice prior to destroying the invoices and records and allow City an opportunity to take possession. If City wants them, Contractor and City shall coordinate their delivery to City in the most efficient manner possible;

(j) Prepare and submit a written report to the Project Manager, within 3 business-days of the Project Manager's written request, that identifies the Services completed and in progress, the charges incurred to date, and the anticipated cost to complete the remaining Services;

(k) Contractor shall correct, at its own expense, all errors in the Services. Should Contractor fail to make such correction in a timely manner, City may make the correction and charge the cost thereof to Contractor;

(l) If applicable, Contractor shall ensure that all work for compensation is taken in compliance with the requirements of the California Labor Code including but not limited to hours of labor, nondiscrimination, payroll records, apprentices, worker's compensation and prevailing wages. If applicable, Contractor shall comply with all prevailing wage laws, such as sections 1773, 1773.8, 1775, 1776, 1777.5, 1777.6, and 1813 of the California Labor Code and any other applicable wage and hour law. If any violation of prevailing wage law associated with this Agreement is deemed to have occurred by any court or administrative authority, Contractor shall forfeit to the City, as a penalty, the sum of fifty dollars ($50.00) for each calendar day, or portion thereof, for each laborer, worker, or mechanic employed, paid less than the applicable prevailing rates for any work done to accomplish the purposes of this Agreement; and,

(m) Contractor's services provided pursuant to this Agreement shall comply with the Americans with Disabilities Act (ADA) of 1990, and all amendments thereto, as well as applicable regulations and guidelines issued pursuant to the ADA.

DocuSign Envelope ID: FE39F670-3070-4530-8BE8-AB2757B49B13

5. Compensation and Payment.

(a) The total compensation payable by City to Contractor for the Services **SHALL NOT EXCEED** the sum of $200,000 ("not-to-exceed amount"). City shall compensate Contractor for the Services rendered at the hourly rates or task amounts set forth in Exhibit "A" up to the not-to-exceed amount. Except as provided in the body of this Agreement, the hourly rates or task amounts are intended to be Contractor's only compensation for the Services and is inclusive of all costs of labor, licensing, permitting, travel expenses, overhead and administrative costs, and any-and-all other costs, expenses, and charges incurred by Contractor, its agents, and employees to provide the Services.

(b) City shall pay Contractor no later than 30 days after City receives a written invoice from Contractor and verifies the Services were performed for the payment requested.

6. Term. The term of this Agreement commences on July 1, 2024, and terminates upon the completion of the Services or June 30, 2025, whichever occurs first.

7. Termination by City. City may terminate any portion or all of the Services by giving Contractor at least 30 calendar-days written notice. Upon receipt of a termination notice, Contractor shall immediately stop all work in progress on the Services except where necessary to preserve the benefit of the work, and assemble the work on the Services for delivery to City on the termination date. All compensation for Services performed prior to the termination date shall be payable to Contractor in accordance with Section 5.

8. Ownership of Documents. All drawings, designs, data, photographs, reports and other items prepared or obtained by Contractor in the performance of the Services are City's property and Contractor shall deliver them to City upon demand.

9. Copyright and Right of Use. All items created by Contractor for City under this Agreement are works made for hire, and Contractor shall give City the copyright and all intellectual property rights to all items developed, prepared, and delivered as part of the Services. Contractor agrees that all aspects of the Services and items created thereby will be original works of creation and will not use, in whole or in part, any work created by any other party, except when expressly disclosed by Contractor to City and Contractor obtains a license to such items for the benefit of City. All licenses must be perpetual, world-wide, non-exclusive, and royalty free sufficient in scope to permit City's full use and enjoyment of its ownership rights in the items created by the Services.

10. Confidentiality. Contractor shall not disclose any confidential or proprietary information received from City to anyone except Contractor's employees who require access to the information to perform the Services. This obligation shall survive termination and remain in full force and effect until the information, and any copies thereof, are destroyed or returned to City.

DocuSign Envelope ID: FE39F670-3070-4530-8BE8-AB2757B49B13

11. Defense, Indemnity, and Hold Harmless. To the fullest extent permitted by law, Contractor shall hold harmless, indemnify, and defend with counsel selected by the City or otherwise acceptable to the City, the City and its elected and appointed officials, officers, directors, employees, agents and designated volunteers from and against any and all liability, loss, damage, claims, expenses, and costs (including without limitation, attorney's fees and costs and fees of litigation) (collectively, "Liability") of every nature arising out of or in connection with Contractor's performance of the services contemplated by this Agreement, or in connection with Contractor's failure to comply with any of its obligations contained in this Agreement, except for such Liability caused by the sole active negligence or willful misconduct of City. Contractor's obligations to hold harmless, indemnify, and defend shall not be excused because of Contractor's inability to evaluate Liability or because Contractor evaluates Liability and determines that Contractor is not liable to the claimant. These obligations are independent of, and shall not in any way be limited by, the minimum insurance obligations contained in this Agreement. These obligations shall survive the completion or termination of this Agreement. Contractor must respond within 30 days to the tender of any claim for defense and indemnity by the City.

(a) Modification for Construction Contracts. To the extent this Agreement is a "construction contract" covered by California Civil Code section 2782, then Contractor's duty to indemnify shall not apply in a manner prohibited by California Civil Code section 2782.

(b) Modification for Design Professional Services. To the extent this Agreement is for "design professional services" defined in California Civil Code section 2782.8, then Contractor's duties to defend and indemnify shall only apply to the extent provided for in California Civil Code section 2782.8(a), unless section 2782.8(a) is not applicable for one of the reasons set forth in 2782.8(e).

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

13. Acceptance of Final Payment. Contractor's acceptance of final payment will release City from any and all claims and liabilities for compensation under this Agreement.

14. Acceptance of Work. City's acceptance of, or payment to Contractor for, the Services does not release Contractor from its responsibility for the accuracy, completeness, or competency of the Services, nor do the actions constitute an assumption of Contractor's responsibility or liability by City for any defect or error in the Services.

15. Conflict of Interest. Contractor represents that no City employee or official has a financial interest in Contractor. Contractor shall not offer, encourage, or accept any financial interest in any part of Contractor's business by or from a City employee or official during the term of this Agreement or as a result of being awarded this Agreement. If any of the Services are paid by reimbursement from an agreement between City and a private

DocuSign Envelope ID: FE39F670-3070-4530-8BE8-AB2757B49B13

party, Contractor represents that it has not performed any work for that private party during the 12-month period prior to the execution of this Agreement, and that it shall not negotiate, offer or accept any contract for services from that party during the term of this Agreement.

16. Economic Disclosure. Contractor shall comply with City's local conflict of interest code and the Political Reform Act, and prepare and file an economic disclosure statement if the Services involve making, or participation in making, decisions which may have a material effect on the Contractors' financial interest. While it is Contractor's sole responsibility to evaluate its conflicts of interest, the Contractor nevertheless agrees to prepare and file an economic disclosure statement if requested by City.

17. Non-Exclusive Agreement. This is a non-exclusive agreement. City reserves the right to provide, and to retain other Contractors to provide, services that are the same or similar to the Services described in this Agreement.

18. No Assignment. Contractor shall not assign or subcontract any of the Services without City's prior written consent. For the purposes of this section, a change of fifty percent or more in the ownership or control of Contractor constitutes an assignment.

19. Remedies. All remedies permitted or available under this Agreement, or at law or in equity, are cumulative and alternative, and the invocation of a right or remedy will not be construed to waive or elect a remedy with respect to any other available right or remedy. As a condition precedent to commencing legal action involving a claim or dispute against City arising from this Agreement, the Contractor must present a written claim to City in accordance with Chapter 3.42 of the Livermore Municipal Code.

20. Construction of Language. The terms and conditions in this Agreement have been arrived at through negotiation and each party had a full and fair opportunity to review and revise this Agreement with legal counsel. Any ambiguity in this Agreement will not be resolved against either party as the drafting party. In the event of an inconsistency or conflict between the language in the body of the Agreement and an attachment hereto, the language in the body of the Agreement controls.

21. Entire Agreement; Modification. This Agreement supersedes all other agreements, whether oral or written, between the parties with respect to the Services. Any modification to this Agreement must be in writing and signed by both parties. In the event the original of this Agreement is lost or destroyed, an archival copy maintained by City can be used in place of the original for all purposes with the same effect as if it was the original.

22. Notice. Notices under this Agreement must be delivered to the addresses below by deposit in the United States mail or by overnight delivery service, with postage prepaid and delivery confirmation:

TO CITY: Attention: Water Resources Division Manager
City of Livermore
101 W. Jack London Blvd.
Livermore, California 94551

DocuSign Envelope ID: FE39F670-3070-4530-8BE8-AB2757B49B13

TO CONTRACTOR: Attention: NOTICES
Kemira Water Solutions, Inc.
4321 W. 6th Street
Lawrence, KS 66049

23. Waiver. Failure to insist upon the strict performance of any term or conditions in this Agreement, no matter how long the failure continues, is not a waiver of the term or condition and does not bar the right to subsequently demand strict performance. To be effective, a waiver must be in writing and signed by the non-breaching party.

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

25. Survival. The terms, conditions, and obligations in Sections 8, 9, 10, and 11 shall survive the completion or termination of this Agreement.

26. Electronic Signatures. By signing this document, you are agreeing that you have reviewed this disclosure information and consent to transact business using electronic communications, to receive notices and disclosures electronically, and to utilize electronic signatures in lieu of using paper documents. You are not required to receive notices and disclosures or sign documents electronically. If you prefer not to do so, you may request to receive paper copies and withdraw your consent at any time.

27. Counterparts. This Agreement may be executed and delivered in one or more counterparts, each of which will be deemed to be an original copy of this Agreement, and all of which, when taken together, will be deemed to constitute one and the same agreement. The facsimile, email, or other electronically delivered signatures of the Parties shall be deemed to constitute original signatures, and facsimile or electronic copies hereof shall be deemed to constitute duplicate originals and shall be valid and effective for all purposes.

****

Signatures and Attachment List on the Next Page

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

CONTRACTOR: **Dated:**

DocuSigned by:
Christina Imbrogno
667B2911F5AF445...

6/18/2024 | 8:45 AM PDT

By: Christina Imbrogno
Title: Commercial Support Manager

CITY OF LIVERMORE: **Dated:**

Marianna Marysheva
City Manager

APPROVED AS TO FORM:

DocuSigned by:
Jason Alcala
6666D2D1A884431...

Deputy/Assistant/City Attorney

APPROVED AS TO INSURANCE:

DocuSigned by:
Amber Hatfield
12BC7F4D88224F6...

Risk Manager/Analyst

Attachments:

Exhibit A – Scope of Work
Exhibit B – Insurance Requirements

DocuSign Envelope ID: FE39F670-3070-4530-8BE8-AB2757B49B13

EXHIBIT A

SCOPE OF WORK

SCOPE

CONTRACTOR shall provide all necessary labor, equipment, vehicles, supplies, and materials to provide all the following service:

1. Supply and deliver Ferric Chloride to the Livermore Water Reclamation Plant (WRP) located at 101 West Jack London Boulevard in Livermore, California.

TERMS AND CONDITIONS

1. CONTRACTOR shall deliver chemical to the WRP within 14 days of order.
2. CONTRACTOR shall provide email confirmation to CITY whenever an order has been received.
3. CONTRACTOR shall provide email confirmation to CITY whenever an order has been received.
4. CONTRACTOR or representative shall connect the delivery truck to the WRP tank and safely discharge chemical into the WRP tank.
5. CONTRACTOR or representative shall clean any spillage of chemical generated during the filling process.
6. CONTRACTOR or representative shall provide a weight tag showing the amount of chemical delivered to CITY for each delivery.

COMPENSATION

1. CITY shall compensate CONTRACTOR at the rate of **$1,490.00 per dry ton.**

DocuSign Envelope ID: FE39F670-3070-4530-8BE8-AB2757B49B13

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:
   $5,000,000 per occurrence/**$10,000,000** aggregate for bodily injury, personal injury, and property damage. If Commercial General Liability or other form of insurance with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.
2. Automobile Liability:
   $2,000,000 per accident for bodily injury and property damage.
3. Workers' Compensation and Employer's Liability:
   Statutory limits as required by the State of California including **$2,000,000** Employers' Liability per accident, per employee for bodily injury or disease. A waiver of subrogation is required for Workers' Compensation insurance. If Consultant/Contractor is a sole proprietor, then they must sign "Contractor Release of Liability".
4. Pollution Liability:
   $2,000,000 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.

DocuSign Envelope ID: FE39F670-3070-4530-8BE8-AB2757B49B13

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

Verification of Coverage

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

LIVERMORE
CALIFORNIA

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

DATE: June 24, 2024

TO: Honorable Mayor and City Council

FROM: Judy Erlandson, Acting Public Works Director

SUBJECT: Resolution authorizing the execution of an agreement with Gigantic Idea Studio, Inc. to assist with recycling and organics diversion outreach campaign services for the term of July 1, 2024 to June 30, 2026 in the amount not-to-exceed $215,000.

RECOMMENDED ACTION

Staff recommends the City Council adopt a resolution authorizing the City Manager to execute an agreement with Gigantic Idea Studio, Inc. to assist with recycling and organics diversion outreach campaign services for the term of July 1, 2024 to June 30, 2026 in the amount not-to-exceed $215,000.

SUMMARY

Since July 2013, the Environmental Services Division of Public Works has annually contracted with Gigantic Idea Studio, Inc. (GIS) to develop and carry out professional outreach campaign services for the City of Livermore's Recycling and Organics Outreach Campaign. Services have included planning and measuring participation through biannual residential lid flips, developing an outreach toolkit, and creating Binny, the organics mascot.

The City of Livermore and GIS now propose to enter into a new professional services agreement from July 1, 2024, to June 30, 2026, in an amount not-to-exceed $215,000, to continue supporting the City's Recycling and Organics Outreach Campaign and Senate Bill 1383 compliance standards.

Staff recommends the City Council adopt a resolution authorizing the City Manager to execute a professional services agreement between the City of Livermore and Gigantic Idea Studio, Inc.

DISCUSSION

The Environmental Services Division has annually contracted with consultants to develop and carry out professional outreach campaign services for the City of Livermore's Recycling and Organics Outreach Campaign. Services have included planning and measuring participation through biannual residential lid flips, developing an outreach toolkit, and related activities. Lid flips refer to the practice of visually surveying curbside container contents. GIS also helps the City meet the requirements of Senate Bill

1383 which requires programs to divert organic materials from the landfill.

Staff recommends the City Council approve a new professional services agreement with GIS from July 1, 2024, to June 30, 2026, in an amount not-to-exceed $215,000, to continue supporting the City's Recycling and Organics Outreach Campaign and SB 1383 requirements. Services will include biannual lid flips, creation and promotion of social media and newsletter content, LivermoreRecycles.org web updates, Binny comic creation and ads, and Binny Mascot appearances at community events.

Staff recommends the City Council adopt a resolution authorizing the City Manager to execute a professional services agreement between the City of Livermore and Gigantic Idea Studio, Inc. to assist with recycling and organics diversion outreach campaign services for the term of July 1, 2024 to June 30, 2026 in the amount not-to-exceed $215,000.

FISCAL AND ADMINISTRATIVE IMPACTS

This contract is not-to-exceed $215,000 and is funded by special ongoing revenue funds from StopWaste (Fund 612) and does not impact the General Fund.

COMMUNITY PILLAR

3: Environmental Stewardship

GOAL

2: Manage the City's Recycling Program

ATTACHMENTS

1. Resolution
2. Exhibit A - Agreement

Prepared by: Anna Zamboanga
Recycling Specialist

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 AN AGREEMENT WITH GIGANTIC IDEA STUDIO, INC. FOR RECYCLING AND ORGANICS DIVERSION OUTREACH CAMPAIGN SERVICES IN AN AMOUNT NOT-TO-EXCEED $215,000 FOR A TWO-YEAR TERM

The Short-Lived Climate Pollutant Reduction Act of 2016 ("SB 1383") established regulatory requirements for jurisdictions, generators, haulers, solid waste facilities, and other entities to achieve organic waste disposal reduction targets. Pursuant to SB 1383, jurisdictions must conduct education and outreach on organics recycling.

The Environmental Services Division of the Public Works Department requires professional services to assist with conducting this required education and outreach as part of the City of Livermore's ("City") Recycling and Organics Outreach Campaign. The City has previously contracted with Gigantic Idea Studio, Inc. ("GIS") to provide these services.

The proposed agreement with GIS provides for outreach campaign services, which includes assisting City staff with conducting biannual spot checks, creating and promoting social media and newsletter content, updating LivermoreRecycles.org, creating Binny comics and ads, and appearing as Binny Mascot at community events. The proposed agreement will be funded entirely by special ongoing revenue funds from StopWaste.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Livermore that it hereby authorizes the City Manager, or her designee, to execute a professional services agreement with Gigantic Idea Studio, Inc., attached hereto as Exhibit A, for recycling and organics diversion outreach campaign services, in an amount not-to-exceed $215,000 for a two-year term.

On motion of Council Member _____, seconded by Council Member _____, the foregoing resolution was passed and adopted on June 24, 2024, by the following vote:

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

ATTEST:

_____
Deborah L. Elam
Acting City Clerk

APPROVED AS TO FORM:

/s/ Molly O'Toole
Molly O'Toole
Deputy City Attorney

Exhibit A – Professional Services Agreement with Gigantic Idea Studio, Inc.

DocuSign Envelope ID: D0FB7E13-E3A1-48D4-922E-B20E62AAD1EC

EXHIBIT A

PROFESSIONAL SERVICES AGREEMENT

THIS AGREEMENT is made and entered into this ___ day of _____, 2024, by and between the City of Livermore ("City"), a municipal corporation, and Gigantic Idea Studio, Inc. ("Consultant"), a California corporation.

RECITALS

City requires professional services to provide outreach campaign services for the City of Livermore's Recycling & Organics Outreach Campaign.

Consultant warrants it possesses the distinct professional skills, qualifications, experience, and resources necessary to timely perform the services described in this Agreement. Consultant acknowledges City has relied upon these warranties to retain Consultant.

AGREEMENT

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

1. Retention as Consultant. City hereby retains Consultant, and Consultant hereby accepts such engagement, to perform the services described in Section 3 below subject to the terms and conditions in this Agreement.

2. Relationship of Parties – Independent Contractors. The relationship of the parties shall be that of independent contractors. Consultant and its employees are not City officers or employees. Consultant is responsible for the supervision and management of its employees, including any workers compensation insurance, withholding taxes, unemployment insurance, and any other employer obligations associated with the delivery of the services contemplated by this Agreement.

3. Description of Services. Consultant shall provide the following professional services as more particularly set forth in Exhibit "A" (collectively "the Services"):

1. Promotion of Binny ads and campaign creatives;
2. Four spot checks;
3. Monthly creation and promotion of social media posts;
4. Regular updates to LivermoreRecycles.org;
5. Quarterly Binny comics, bi-annual Livermore Sanitation postcards and digitial ads;
6. Annual outreach to multi-family units;
7. Monthly invoicing, reporting, and budget tracking; and
8. As needed outreach tasks (e.g. articles in community newsletter, Binny Mascot appearances, etc.).

4. Consultant's Responsibilities. Consultant shall:

(a) Diligently perform the Services in a manner commensurate with industry, professional, and community standards;

DocuSign Envelope ID: D0FB7E13-E3A1-48D4-922E-B20E62AAD1EC

(b) Provide the resources necessary to complete the Services in a timely manner;

(c) Obtain a business license from the City of Livermore, and keep it in effect for the term of this Agreement;

(d) Obtain and keep in effect all necessary licenses, permits, qualifications, insurance, and approvals legally and professionally required for Consultant to practice its profession and to provide the Services;

(e) Comply with all laws in effect that are related to Consultant and the Services;

(f) Coordinate the Services with Judy Erlandson, Interim Public Works Director ("Project Manager"), or such other person designated as the Project Manager by City;

(g) Be available to the Project Manager, and other parties referred to Consultant by the Project Manager, to answer questions or inquiries related to the Services;

(h) Only invoice City for the Services rendered. Consultant's invoice shall be in writing and describe the Services performed for the payment requested. Consultant shall not submit an invoice to City more frequently than once a calendar month;

(i) Keep and maintain invoices and records related to the Services in an organized manner. At a minimum, the records must be kept for at least 3 years from the date of final payment to Consultant and must include time sheets, work progress reports, and other documentation to adequately explain all the Services invoiced for payment. Consultant shall make the invoices and records immediately available to City upon delivery of a written request to examine, audit, or copy them at City's place of business during normal business hours. Consultant shall give City 30 calendar-days' written notice prior to destroying the invoices and records and allow City an opportunity to take possession. If City wants them, Consultant and City shall coordinate their delivery to City in the most efficient manner possible;

(j) Prepare and submit a written report to the Project Manager, within 3 business-days of the Project Manager's written request, that identifies the Services completed and in progress, the charges incurred to date, and the anticipated cost to complete the remaining Services;

(k) Consultant shall correct, at its own expense, all errors in the Services. Should Consultant fail to make such correction in a timely manner, City may make the correction and charge the cost thereof to Consultant;

(l) If applicable, Consultant shall ensure that all work for compensation is provided in compliance with the requirements of the California Labor Code including but not limited to hours of labor, nondiscrimination, payroll records, apprentices, worker's compensation and prevailing wages. If applicable, Consultant shall comply with all

DocuSign Envelope ID: D0FB7E13-E3A1-48D4-922E-B20E62AAD1EC

prevailing wage laws, such as sections 1773, 1773.8, 1775, 1776, 1777.5, 1777.6, and 1813 of the California Labor Code and any other applicable wage and hour law. If any violation of prevailing wage law associated with this Agreement is deemed to have occurred by any court or administrative authority, Consultant shall forfeit to the City, as a penalty, the sum of fifty dollars ($50.00) for each calendar day, or portion thereof, for each laborer, worker, or mechanic employed, paid less than the applicable prevailing rates for any work done to accomplish the purposes of this Agreement; and,

(m) Consultant's services provided pursuant to this Agreement shall comply with the Americans with Disabilities Act (ADA) of 1990, and all amendments thereto, as well as all applicable regulations and guidelines issued pursuant to the ADA.

5. Compensation and Payment.

(a) The total compensation payable by City to Consultant for the Services **SHALL NOT EXCEED** the sum of $215,000 ("not-to-exceed amount"). City shall compensate Consultant for the Services rendered at the hourly rates, task amounts or travel expenses set forth in Exhibit "A" up to the not-to-exceed amount. Except as provided in the body of this Agreement, the hourly rates, task amounts or travel expenses are intended to be Consultant's only compensation for the Services and is inclusive of all costs of labor, licensing, permitting, overhead and administrative costs, and any-and-all other costs, expenses, and charges incurred by Consultant, its agents, and employees to provide the Services.

(b) City shall pay Consultant no later than 30 days after City receives a written invoice from Consultant and verifies the Services were performed for the payment requested.

6. Term. The term of this Agreement commences on July 1, 2024, and terminates upon the completion of the Services or June 30, 2026, whichever occurs first.

7. Termination by City. City may terminate any portion or all of the Services by giving Consultant at least 30 calendar-days written notice. Upon receipt of a termination notice, Consultant shall immediately stop all work in progress on the Services except where necessary to preserve the benefit of the work, and then assemble the work on the Services for delivery to City on the termination date. All compensation for Services performed prior to the termination date shall be payable to Consultant in accordance with Section 5.

8. Ownership of Documents. All drawings, designs, data, photographs, reports and other items prepared or obtained by Consultant in the performance of the Services are City's property and Consultant shall deliver them to City upon demand.

9. Copyright and Right of Use. All items created by Consultant for City under this Agreement are works made for hire, and Consultant shall give City the copyright and all intellectual property rights to all items developed, prepared, and delivered as part of the Services. Consultant agrees that all aspects of the Services and items created thereby will be original works of creation and will not use, in whole or in part, any work created by any other party, except when expressly disclosed by Consultant to City and Consultant

DocuSign Envelope ID: D0FB7E13-E3A1-48D4-922E-B20E62AAD1EC

obtains a license to such items for the benefit of City. All licenses must be perpetual, world-wide, non-exclusive, and royalty free sufficient in scope to permit City's full use and enjoyment of its ownership rights in the items created by the Services.

10. Confidentiality. Consultant shall not disclose any confidential or proprietary information received from City to anyone except Consultant's employees who require access to the information to perform the Services. This obligation shall survive termination and remain in full force and effect until the information, and any copies thereof, are destroyed or returned to City.

11. Defense, Indemnity, and Hold Harmless. To the fullest extent permitted by law, Consultant shall hold harmless, indemnify, and defend with counsel selected by the City or otherwise acceptable to the City, the City and its elected and appointed officials, officers, directors, employees, agents and designated volunteers from and against any and all liability, loss, damage, claims, expenses, and costs (including without limitation, attorney's fees and costs and fees of litigation) (collectively, "Liability") of every nature arising out of or in connection with Consultant's performance of the services contemplated by this Agreement, or in connection with Consultant's failure to comply with any of its obligations contained in this Agreement, except for such Liability caused by the sole active negligence or willful misconduct of City. Consultant's obligations to hold harmless, indemnify, and defend shall not be excused because of Consultant's inability to evaluate Liability or because Consultant evaluates Liability and determines that Consultant is not liable to the claimant. These obligations are independent of, and shall not in any way be limited by, the minimum insurance obligations contained in this Agreement. These obligations shall survive the completion or termination of this Agreement. Consultant must respond within 30 days to the tender of any claim for defense and indemnity by the City.

(a) Modification for Construction Contracts. To the extent this Agreement is a "construction contract" covered by California Civil Code section 2782, then Consultant's duty to indemnify shall not apply in a manner prohibited by California Civil Code section 2782.

(b) Modification for Design Professional Services. To the extent this Agreement is for "design professional services" defined in California Civil Code section 2782.8, then Consultant's duties to defend and indemnify shall only apply to the extent provided for in California Civil Code section 2782.8(a), unless section 2782.8(a) is not applicable for one of the reasons set forth in 2782.8(e).

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

13. Acceptance of Final Payment. Consultant's acceptance of final payment will release City from any and all claims and liabilities for compensation under this Agreement.

DocuSign Envelope ID: D0FB7E13-E3A1-48D4-922E-B20E62AAD1EC

14. Acceptance of Work. City's acceptance of, or payment to Consultant for, the Services does not release Consultant from its responsibility for the accuracy, completeness, or competency of the Services, nor do the actions constitute an assumption of Consultant's responsibility or liability by City for any defect or error in the Services.

15. Conflict of Interest. Consultant represents that no City employee or official has a financial interest in Consultant. Consultant shall not offer, encourage, or accept any financial interest in any part of Consultant's business by or from a City employee or official during the term of this Agreement or as a result of being awarded this Agreement. If any of the Services are paid by reimbursement from an agreement between City and a private party, Consultant represents that it has not performed any work for that private party during the 12-month period prior to the execution of this Agreement, and that it shall not negotiate, offer or accept any contract for services from that party during the term of this Agreement.

16. Economic Disclosure. Consultant shall comply with City's local conflict of interest code and the Political Reform Act, and prepare and file an economic disclosure statement if the Services involve making, or participation in making, decisions which may have a material effect on the Consultants' financial interest. While it is Consultant's sole responsibility to evaluate its conflicts of interest, the Consultant nevertheless agrees to prepare and file an economic disclosure statement if requested by City.

17. Non-Exclusive Agreement. This is a non-exclusive agreement. City reserves the right to provide, and to retain other consultants to provide, services that are the same or similar to the Services described in this Agreement.

18. No Assignment. Consultant shall not assign or subcontract any of the Services without City's prior written consent. For the purposes of this section, a change of fifty-percent or more in the ownership or control of Consultant constitutes an assignment.

19. Remedies. All remedies permitted or available under this Agreement, or at law or in equity, are cumulative and alternative, and the invocation of a right or remedy will not be construed to waive or elect a remedy with respect to any other available right or remedy. As a condition precedent to commencing legal action involving a claim or dispute against City arising from this Agreement, the Consultant must present a written claim to City in accordance with Chapter 3.42 of the Livermore Municipal Code.

20. Construction of Language. The terms and conditions in this Agreement have been arrived at through negotiation and each party had a full and fair opportunity to review and revise this Agreement with legal counsel. Any ambiguity in this Agreement will not be resolved against either party as the drafting party. In the event of an inconsistency or conflict between the language in the body of the Agreement and an attachment hereto, the language in the body of the Agreement controls.

21. Entire Agreement; Modification. This Agreement supersedes all other agreements, whether oral or written, between the parties with respect to the Services. Any modification to this Agreement must be in writing and signed by both parties. In the event the original of this Agreement is lost or destroyed, an archival copy maintained by

DocuSign Envelope ID: D0FB7E13-E3A1-48D4-922E-B20E62AAD1EC

City can be used in place of the original for all purposes with the same effect as if it was the original.

22. Notice. Notices under this Agreement must be delivered to the addresses below by deposit in the United States mail or by overnight delivery service, with postage prepaid and delivery confirmation:

TO CITY: Attention: Judy Erlandson, Interim Public Works Director
City of Livermore
3500 Robertson Park Road
Livermore, California 94550

TO CONSULTANT: Attention: Kas Neteler
Gigantic Idea Studio, Inc.
580 Second Street, Suite 230
Oakland, CA 94607

23. Waiver. Failure to insist upon the strict performance of any term or conditions in this Agreement, no matter how long the failure continues, is not a waiver of the term or condition and does not bar the right to subsequently demand strict performance. To be effective, a waiver must be in writing and signed by the non-breaching party.

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

25. Survival. The terms, conditions, and obligations in Sections 8, 9, 10, and 11 shall survive the completion or termination of this Agreement.

26. Electronic Signatures. By signing this document, you are agreeing that you have reviewed this disclosure information and consent to transact business using electronic communications, to receive notices and disclosures electronically, and to utilize electronic signatures in lieu of using paper documents. You are not required to receive notices and disclosures or sign documents electronically. If you prefer not to do so, you may request to receive paper copies and withdraw your consent at any time.

27. Counterparts. This Agreement may be executed and delivered in one or more counterparts, each of which will be deemed to be an original copy of this Agreement, and all of which, when taken together, will be deemed to constitute one and the same agreement. The facsimile, email, or other electronically delivered signatures of the Parties shall be deemed to constitute original signatures, and facsimile or electronic copies hereof shall be deemed to constitute duplicate originals and shall be valid and effective for all purposes.

****

Signatures and Attachment List on the Next Page

DocuSign Envelope ID: D0FB7E13-E3A1-48D4-922E-B20E62AAD1EC

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

CONSULTANT: **Dated:**

DocuSigned by:
Kerstin Neteler
89D45A5A1CCE46C...

6/13/2024 | 12:07 PM PDT

Kas Neteler
Principal

CITY OF LIVERMORE: **Dated:**

Marianna Marysheva
City Manager

APPROVED AS TO FORM:

DocuSigned by:
Molly O'Toole
A006EFED3B6E4A5...

Deputy/Assistant/City Attorney

APPROVED AS TO INSURANCE:

DocuSigned by:
Amber Hatfield
12BC7F4D88224F6...

Risk Manager/Analyst

Attachments:

Exhibit A – Scope of Work
Exhibit B – Insurance Requirements

DocuSign Envelope ID: D0FB7E13-E3A1-48D4-922E-B20E62AAD1EC

EXHIBIT A

Estimate

City of Livermore
Judy Erlandson
City Hall
1052 S. Livermore Ave
Livermore, Ca 94550

GIGANTIC IDEA STUDIO
OUTREACH with IMPACT

Date:	5/22/2024
Project Name:	Livermore Recycles FY 2024-2026 / City of Livermore
Project Number:	24-LIVERMORE-0009
Estimate Name:	Livermore Recycles FY 2024-2026 / City of Livermore

Estimate Description: This estimate is based on services provided from July 1, 2024 through June 30, 2026 not to exceed $215,000.

We will provide the following:
Task 1: New campaign creative (slated for Fall 2024) and promotion (slated for Spring 2025 and one additional rerun Fall 2025 or Spring 2026); may include 2025 and 2026 annual Vine Cinema renewal for rotating PSA spots.
Task 2:Four spot checks (slated for Fall 2024, Spring 2025, Fall 2025 and Spring 2026); including annual renewal of Zabble subscription (Spring 2025 and 2026).
Task 3: Monthly creation and promotion of social media posts.
Task 4: Regular LivermoreRecycles.org website updates; quarterly web/social media reports and including WP Engine annual subscription renewal (2025 and 2026).
Task 5: Quarterly Binny comics (6 new and 2 reruns). Bi-annual LSI postcards and accompanying digital ads (Fall 2024, Spring 2025, Fall 2025 and Spring 2026).
Task 6: Annual MFD newsletters (slated for late Summer 2024 and late Summer 2025).
Task 7: Monthly invoicing, summary and ongoing budget tracking.
Task 8: Budget set aside for "as-needed" tasks (e.g. articles in community newsletter, Binny Mascot at events etc.)

Task 1 - Promotion of Binny PSA	**$42,000.00**
Task 2 - Spot Checks	**$65,000.00**
Task 3 - Social Media Channels	**$43,000.00**
Task 4 - Regular Web Updates	**$10,500.00**
Task 5 - Comic + Postcards + Ads	**$20,000.00**
Task 6 - MFD	**$19,000.00**
Task 7 - Report	**$11,500.00**
Task 8 - As Needed	**$4,000.00**
Subtotal	**$215,000.00**
Alameda County Sales Tax	**$0.00**
Total	**$215,000.00**

--- Net 30 ---This is an estimate only. Actual hours worked may be higher or lower. Client will be billed only for actual hours worked and actual expenses incurred. Any changes in specifications may change costs.

Approved By _____ _____

DocuSign Envelope ID: D0FB7E13-E3A1-48D4-922E-B20E62AAD1EC

GIGANTIC IDEA STUDIO
OUTREACH with IMPACT

MEMORANDUM

22 May 2024

TO: Judy Erlandson and Anna Zamboanga, City of Livermore

FROM: Kas Neteler and Laura-Lee Love, Gigantic Idea Studio, Inc.

The following reflects Gigantic Idea Studio's labor rates for the FY2024-2026. Rates will remain the same for duration of two-year contract.

Service Rates Table

Service	Rate
Content	$158/hr
Design	$158/hr
Production	$110/hr
Project Management	$158/hr
Travel	$60/hr

# # #

DocuSign Envelope ID: D0FB7E13-E3A1-48D4-922E-B20E62AAD1EC

EXHIBIT B

INSURANCE REQUIREMENTS

Minimum Scope and Limits of Insurance

Consultant/Contractor shall maintain limits no less than:

1. Commercial General Liability, including operations, products, and completed operations, as applicable:
   $1,000,000 per occurrence/**$2,000,000** aggregate for bodily injury, personal injury, and property damage. If Commercial General Liability or other form of insurance with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.
2. Automobile Liability:
   $1,000,000 per accident for bodily injury and property damage.
3. Workers' Compensation and Employer's Liability:
   Statutory limits as required by the State of California including **$1,000,000** Employers' Liability per accident, per employee for bodily injury or disease. A waiver of subrogation is required for Workers' Compensation insurance. If Consultant/Contractor is a sole proprietor, then they must sign "Contractor Release of Liability".
4. Professional Liability/Errors and Omissions:
   $1,000,000 per claim. Consultant/Contractor warrants that any retroactive date under this policy shall precede the effective date of this contract and, either continuous coverage will be maintained, or an extended discovery period will be exercised for a period of two years beginning at the time work under this contract is completed.

Deductibles and Self-Insured Retention

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

Acceptability of Insurers

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

Other Insurance Provisions

The general liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions:

1. The City of Livermore, its officers, officials, employees, and designated

DocuSign Envelope ID: D0FB7E13-E3A1-48D4-922E-B20E62AAD1EC

volunteers are to be covered as additional insureds as respects: liability arising out of activities performed by or on behalf of the Consultant/Contractor; or automobiles owned, leased, hired or borrowed by the Consultant/Contractor. The coverage shall contain no special limitations on the scope of protection afforded to the City of Livermore, its officers, officials, employees, or volunteers.

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

Verification of Coverage

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

LIVERMORE
CALIFORNIA

CITY COUNCIL STAFF REPORT **ITEM NO. 5.9**

DATE: June 24, 2024

TO: Honorable Mayor and City Council

FROM: Anwan Baker, Library Director

SUBJECT: Resolution authorizing a purchase order to Baker & Taylor Books for purchases of library books and related materials in FY 2024-25, in an amount not-to-exceed $240,000.

RECOMMENDED ACTION

Staff recommends the City Council adopt a resolution authorizing issuance of a purchase order to Baker & Taylor Books for FY 2024-25 purchases of library books and related materials, not-to-exceed $240,000.

SUMMARY

Ordering books from Baker & Taylor Books saves significant staff time because their software closely interfaces with the Library's Sierra Integrated Library Software (ILS). Through this interface, staff can place book orders electronically and download the catalog records that are needed to check out these books to library patrons. In addition, Baker & Taylor offers customized pre-processing of books, resulting in items being available for patrons to check out much sooner than they would be otherwise.

DISCUSSION

Baker & Taylor Books specializes in providing books for sale to libraries. This vendor has tailored its order process to make the library workflow as simple as possible. Since Livermore Public Library (Library) purchases thousands of books each year, the order and receiving process must be simple and fast. The Library's Sierra Integrated Library Software (ILS) includes a feature called "One-Click Marc." With "One-Click Marc," the Library can order materials electronically through Baker & Taylor Books and seamlessly download the catalog records needed to check out these items to library patrons. This feature saves many hours of staff time throughout the year during the order and receiving process.

In addition, Baker & Taylor Books offers customized pre-processing. This means that the Library can pay for the most popular books to arrive shelf ready, complete with Livermore Public Library labels, call number labels, and barcodes. This saves significant staff time and results in items being available for patrons to check out much sooner than they would be otherwise.

Per the Livermore Municipal Code (LMC) 2.68.370 noncompetitive negotiations may be used to select a vendor “where it is determined that the supplies and equipment are unique or available only from one source” or “if there is no competitive advantage to be gained by soliciting bids.” While the Library purchases materials from a variety of vendors, it saves staff time and increases patron service to purchase from Baker & Taylor Books when they have the needed items. Furthermore, Baker & Taylor Books offers libraries a significant discount, 40% off list price for most items.

FISCAL AND ADMINISTRATIVE IMPACTS

Funds for the purchase of these books and related materials are included in the FY 2024-25 budget.

COMMUNITY PILLAR

1: A Safe Community that Thrives

GOAL

12: Promote literacy in all its forms to help residents fulfill their life goals and be more active community members

ATTACHMENTS

1. Resolution

Prepared by: Allen McFarland
Management Analyst II

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 PURCHASE ORDER WITH BAKER & TAYLOR BOOKS FOR PURCHASES OF LIBRARY BOOKS AND RELATED MATERIALS IN AN AMOUNT NOT-TO-EXCEED $240,000

Ordering books from Baker & Taylor Books saves significant City of Livermore ("City") staff time because their software closely interfaces with the Livermore Public Library's ("Library") Sierra Integrated Library Software (ILS). Through this interface, City staff can place book orders electronically and download the catalog records that are needed to check out these books to library patrons. In addition, Baker & Taylor Books offers customized pre-processing of books, resulting in items being available for patrons to check out much sooner than they would be able to otherwise.

The Livermore Municipal Code (LMC) 2.68.370(B) states that noncompetitive negotiations may be used to select a vendor "where it is determined that the supplies and equipment are unique or available only from one source" or "if there is no competitive advantage to be gained by soliciting bids."

While the Library purchases materials from a variety of vendors, it saves City staff time and increases patron service to purchase from Baker & Taylor Books when they have the desired items. Furthermore, Baker & Taylor Books offers libraries a 40% discount off the list price for most items.

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

1. Authorizes the City Manager to execute a purchase order between the City of Livermore and Baker & Taylor Books for the purchase of books and related materials for circulation to the public in fiscal year 2024-25, in an amount not-to-exceed $240,000.

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 June 24, 2024, by the following vote:

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

ATTEST:

_____
Deborah L. Elam
Acting City Clerk

APPROVED AS TO FORM:

/s/ Tara Mazzanti
Tara Mazzanti
Assistant City Attorney

RESOLUTION NO. _____

LIVERMORE
CALIFORNIA

CITY COUNCIL STAFF REPORT **ITEM NO. 5.10**

DATE: June 24, 2024

TO: Honorable Mayor and City Council

FROM: Anwan Baker, Library Director

SUBJECT: Resolution authorizing a purchase order to OverDrive for the licensing of e-books, audiobooks, and electronic periodicals, in an amount not-to-exceed $140,000

RECOMMENDED ACTION

Staff recommends the City Council adopt a resolution authorizing issuance of a purchase order to OverDrive for FY 2024-25 licensing of e-Books, audiobooks, and electronic periodicals, in an amount not-to-exceed $140,000.

SUMMARY

The Livermore Public Library licenses e-books, audiobooks, and electronic periodicals from OverDrive. OverDrive has been the Library's primary e-book vendor for nearly a decade. This partnership has allowed the Library to efficiently provide patrons access to the newest and most popular reading materials. As the popularity of electronic resources and materials grows and reading expectations from patrons have evolved towards more e-books, the Library needs to allocate appropriate funds towards the licensing of these items.

DISCUSSION

OverDrive specializes in providing e-books, audiobooks, and electronic periodicals to libraries. This vendor offers a smooth and reliable process for content selection and quickly fulfills Library orders and requests. Because the Library purchases thousands of electronic materials each year, the order and receiving process must be simple and fast. Library patrons are able to access OverDrive's platform through the Library's website and app to select and borrow materials that the Library has licensed. OverDrive provides the Library with book records that are easily integrated into the Library's Sierra Integrated Library System and catalog.

OverDrive offers competitive pricing and services. Per the Livermore Municipal Code (LMC) 2.68.370 noncompetitive negotiations may be used to select a vendor “where it is determined that the supplies and equipment are unique or available only from one source” or “if there is no competitive advantage to be gained by soliciting bids.” The Library continuously assesses other vendors and marketplace offerings

to remain aware of potential alternatives. While the Library purchases materials from a variety of vendors, it saves staff time and increases patron service to purchase e-books and electronic periodicals from OverDrive when they have our desired items.

FISCAL AND ADMINISTRATIVE IMPACTS

Funds for the licensing of these books and related materials are included in the FY 2024-25 budget.

COMMUNITY PILLAR

1: A Safe Community that Thrives

GOAL

12: Promote literacy in all its forms to help residents fulfill their life goals and be more active community members

ATTACHMENTS

1. Resolution

Prepared by: Allen McFarland
Management Analyst II

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 PURCHASE ORDER WITH OVERDRIVE FOR THE LICENSING OF EBOOKS, AUDIOBOOKS, AND ELECTRONIC PERIODICALS IN AN AMOUNT NOT-TO-EXCEED $140,000

The Livermore Public Library ("Library") licenses e-books, audiobooks, and electronic periodicals from OverDrive. OverDrive has been the Library's primary e-book vendor for nearly a decade. This partnership has allowed the Library to efficiently provide patrons access to the newest and most popular reading materials. As the popularity of electronic resources and materials grows and reading expectations from patrons have evolved towards more e-books, the Library needs to allocate the appropriate funds towards the licensing of these items. In fiscal year 2024-25, the Library plans to expend $140,000 for these expenses which requires City Council approval.

The Livermore Municipal Code (LMC) 2.68.370 noncompetitive negotiations may be used to select a vendor "where it is determined that the supplies and equipment are unique or available only from one source" or "if there is no competitive advantage to be gained by soliciting bids."

The Library continuously assesses other vendors and marketplace offerings to remain aware of potential alternatives. While the Library purchases materials from a variety of vendors, it saves staff time and increases patron service to purchase e-books and electronic periodicals from OverDrive when they have the Library's desired items. Library patrons are able to access OverDrive's platform through the Library's website and app to select and borrow materials that the Library has licensed. OverDrive also provides the Library with book records that are easily integrated into the Library's Sierra Integrated Library System and catalog. OverDrive offers competitive pricing and services.

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

1. Authorizes the City Manager to execute a purchase order with OverDrive for the licensing of eBooks and electronic periodicals in fiscal year 2024-25 in an amount not-to-exceed $140,000.

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 June 24, 2024, by the following vote:

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

ATTEST:

_____
Deborah L. Elam
Acting City Clerk

APPROVED AS TO FORM:

/s/ Tara Mazzanti
Tara Mazzanti
Assistant City Attorney

LIVERMORE
CALIFORNIA

CITY COUNCIL STAFF REPORT **ITEM NO. 5.11**

DATE: June 24, 2024

TO: Honorable Mayor and City Council

FROM: Jeramy Young, Police Chief

SUBJECT: Resolution adopting the Police Tow Service Franchise Fee Schedule.

RECOMMENDED ACTION

Staff recommends the City Council adopt a resolution adopting the Towing Franchise Fee Schedule.

SUMMARY

On October 12, 2016, the City of Livermore adopted an ordinance revising LMC section 5.44 creating the opportunity for tow companies to submit qualifications for consideration to be placed and maintained on a rotation tow list with the Livermore Police Department. LMC section 5.44.140 requires a Franchise Fee to be imposed by the City as set forth by a resolution adopted by the City Council.

DISCUSSION

The City has the authority under state and federal law to regulate a tow franchise within its boundaries and to charge a reasonable fee to reimburse the City for the costs of administering such franchise and the regulations adopted pursuant to the franchise agreement. In October 2016, the City adopted revised Ordinance 5.44 Tow Car Services. To comply with section 5.44.140 Franchise Fees, the Police Department analyzed the expenditure of employee time and corresponding costs of administering the Franchise Agreement and incorporated these costs into the attached Towing Franchise Fee Schedule using the fully burdened hourly rates as determined by finance in the citywide fee schedule dated FY 2019-20, plus MOU increases from 2019-20 to 2023-24. The fee schedule includes an annual 5% escalator as determined by the Finance Division.

The fee schedule is comprised of two parts. The Annual Overall Agreement Costs are the costs to administer the agreement as a whole and will be shared equally on an annual basis, by all operators granted a franchise agreement. The Annual Costs Per Operator are the specific costs for inspection and administration per operator and site and will be assessed in addition to their shared portion of the Annual Overall Contract Costs.

FISCAL AND ADMINISTRATIVE IMPACTS

The Towing Franchise Fee is based upon the total cost to the City to operate the rotation tow program. The total amount of the cost to operate the program is shared equally, on an annual basis, by all franchisees that contract with the City to become a tow franchise. The total annual cost recovery amount will depend upon the number of operators granted a franchise agreement.

COMMUNITY PILLAR

5: A City That Works

GOAL

15: Uphold the integrity of Livermore's Municipal Code, Development Code, and regulations

ATTACHMENTS

1. Resolution
2. Exhibit A - Towing Franchise Fee Schedule
3. Exhibit B - Ordinance 5.44 Police Tow Services Franchises

Prepared by: Deirdre Ramsey
Business 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 ADOPTING THE TOWING FRANCHISE FEE SCHEDULE

Vehicle Code Section 12110 authorizes the City of Livermore ("City") to charge a fee in connection with an award of franchise for towing vehicles on behalf of the City to recover its actual and reasonable costs incurred in connection with the towing program.

On October 12, 2016, the City of Livermore adopted Ordinance 2042 revising LMC section 5.44 creating the opportunity for tow companies to submit qualifications for consideration to be placed and maintained on a rotation tow list with the Livermore Police Department.

LMC section 5.44.140 requires a Franchise Fee to be imposed by the City as set forth by a resolution adopted by the City Council.

To comply with section 5.44.140, the Livermore Police Department analyzed the expenditure of employee time and the corresponding fully burdened costs of administering the Franchise Agreement to create the Towing Franchise Fee Schedule, attached hereto as Exhibit A.

California Vehicle Code section 12110 authorizes the City to charge a fee in connection with an award of franchise for towing vehicles on behalf of the City to recover its actual and reasonable costs incurred in connection with the towing program.

The procedures for the imposition of the franchise fees are set forth in the Non-Exclusive Franchise Agreement for Tow Services, in accordance with applicable law.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Livermore that it hereby adopts the Towing Franchise Fee rates as set forth in the Towing Franchise Fee Schedule, attached hereto as Exhibit A.

On motion of Council Member _____, seconded by Council Member _____, the foregoing Resolution was passed and adopted on June 24, 2024.

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

ATTEST:

_____
Deborah L. Elam
Acting City Clerk

APPROVED AS TO FORM:

/s/ Katherine Mirassou
Katherine Mirassou
Deputy City Attorney

Exhibit A - Towing Franchise Fee Schedule
Exhibit B - Ordinance 2042 Police Tow Service Franchises

RESOLUTION NO. _____

Livermore Police Department
Towing Franchise Fee Schedule
(effective July 1, 2024)

Annual Overall Agreement Costs	*Required Hours*	*Hourly Rate*	*Cost Per Position*	*Total Annual Overall Agreement Cost*
Police Captain	5	322.00	1,610.00	
Police Lieutenant	24	307.18	7,372.00	
Police Officer	20	200.74	4,015.00	
Assistant City Attorney	10	207.92	2,079.00	
Police Business Services Manager	10	192.43	1,924.00	$17,000.00

This cost is to be shared equally by all operators granted a franchise agreement.

Annual Costs Per Operator	*Required Hours*	*Hourly Rate*	*Cost Per Position*	*Total Annual Cost Per Operator*
Police Lieutenant	6	307.18	1,843.00	
Police Officer	6	200.74	1,200.00	
Supervising Public Safety Dispatcher	1	169.26	170.00	
Community Service Specialist	2	142.15	280.00	
Account Clerk	0.5	111.09	60.00	$3,553.00

This is a per operator/site cost for inspection and administration to be paid by the operator in addition to the Annual Overall Agreement Cost.

Costs under this fee schedule will increase by 5% annually beginning January 1, 2025.

IN THE CITY COUNCIL OF THE CITY OF LIVERMORE, CALIFORNIA

AN ORDINANCE DELETING AND REPLACING CHAPTER 5.44, *TOW CAR SERVICES*, OF THE LIVERMORE MUNICIPAL CODE, WITH CHAPTER 5.44, *POLICE TOW SERVICE FRANCHISES*

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

Section 1. *Amendment*. Chapter 5.44 "*Tow Car Services*", of the Livermore Municipal Code is hereby deleted and replaced in its entirety with Chapter 5.44 "*Police Tow Service Franchises*", attached hereto as Exhibit A.

Section 2. *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 3. *Severability*. If any part of this ordinance is declared invalid by a court, such invalidity shall not affect any of the remaining parts.

Section 4. *Publication*. This ordinance shall be published once in a newspaper of general circulation of the city of Livermore within fifteen days after its adoption.

Section 5. *Effective Date*. This ordinance shall take effect 30 days after its adoption.

The foregoing ordinance was introduced at the meeting of the City Council of the City of Livermore held on September 26, 2016, by the following vote:

AYES: Council Members Turner, Woerner, Vice Gary, Mayor Marchand
NOES: None
ABSENT: Council Member Spedowfski
ABSTAIN: None

The ordinance was adopted at the regular meeting of the City Council held on October 10, 2016, by the following vote:

AYES: Council Members Spedowfski, Turner, Woerner, Vice Mayor Gary, Mayor Marchand
NOES: None
ABSENT: None
ABSTAIN: None

John Marchand
MAYOR, CITY OF LIVERMORE

ATTEST:

Susan Neer
City Clerk

APPROVED AS TO FORM:

Kevin Young
Assistant City Attorney

Dated: October 12, 2016

EXHIBIT A

Chapter 5.44
POLICE TOW SERVICE FRANCHISES

Sections:

5.44.010 Definitions.
5.44.020 Purpose and declarations.
5.44.030 Franchise required to provide police towing services.
5.44.040 City council authority to grant nonexclusive franchises.
5.44.050 Nonexclusive franchise—terms and conditions.
5.44.060 Request for proposals.
5.44.070 Public hearing.
5.44.080 Grant or denial of franchise.
5.44.090 Franchise tow services agreement.
5.44.100 Indemnification of city.
5.44.110 Liability insurance.
5.44.120 Suspension by Police Chief.
5.44.130 Franchise transfer or assignment.
5.44.140 Franchise fees.
5.44.150 Rotational list.
5.44.160 Reservation of authority to conduct towing operations.

5.44.010 Definitions.

For the purposes of this chapter, certain terms used herein are defined as follows:

"Franchisee" means any entity granted a franchise by the city pursuant to this chapter.

"Franchise Agreement" means an agreement between the city and a franchisee for the purpose of providing towing services as provided in this chapter.

"Police Chief" means the Chief of Police of the Police Department of the City of Livermore or their designee.

"Police Department" means the Police Department of the City of Livermore.

"Nonconsensual police towing services" means the towing and storage of vehicles as ordered and designated by authorized members of the Police Department, and all related services required to transport, secure and maintain such vehicles and their contents, in situations where the vehicle owner is unable or unwilling to consent to having the vehicle towed.

"Tow Truck Operator" means a towing company and the owner(s) and/or managing employee(s) of a towing company.

5.44.020 Purpose and declarations.

The purpose of this chapter is to establish towing regulations to govern the provision of nonconsensual police towing services to the city's Police Department, consistent with state and federal laws, as well as the public health, safety, and welfare. A further purpose is to ensure that the best possible Tow Truck Operators are selected to participate in the city's rotational tow program to assist the Police Department in

conducting efficient police investigations and provide the citizens of Livermore with prompt, safe, and comprehensive towing services.

These regulations are not intended to govern situations where towing has been requested by vehicle owners or private property owners, except as may be permitted by law. Instead, these regulations, along with the terms and conditions of the Franchise Agreement required under this chapter, are intended to provide a fair and objective method of selecting qualified Tow Truck Operators to ensure that towing providers and drivers selected provide the Police Department and the public with prompt, safe, and comprehensive nonconsensual police towing services using the latest in towing technology and vehicle towing and storage safety.

It is recognized that the city is authorized by state law to adopt and implement a mechanism for safe and efficient towing and vehicle impoundment and that the city may impose fees to recover its actual and reasonable costs incurred in connection with the towing program.

5.44.030 Franchise required to provide police towing services.

Except as specified in this chapter, it is unlawful for any person to solicit or perform the business of nonconsensual police towing services in the city unless:

(a) A franchise therefor has been granted pursuant to the provisions of this chapter and such franchise is in full force and effect; and

(b) A written Franchise Agreement therefor has been executed between such person and the city and such agreement is in full force and effect.

This chapter shall not apply to towing, repair, or storage services performed for or made available to members of the public directly, when not in response to Police Department requests.

5.44.040 City council authority to grant nonexclusive franchises.

The City Council may at its discretion, by the adoption of a resolution or ordinance, grant a nonexclusive franchise to a Tow Truck Operator to provide nonconsensual police towing services to the city under and pursuant to the provisions of this chapter as a Franchisee.

5.44.050 Nonexclusive franchise—terms and conditions.

(a) All franchises granted to Franchisees pursuant to this chapter shall be nonexclusive and shall be for a term to be specified in the Franchise Agreement between the city and the Franchisee.

(b) No provisions of this chapter shall be deemed to require restricting the number of franchises to one or any particular number, and no provision of this chapter shall be deemed to require the city council to grant any franchise if the city council determines that the grant of any such franchise is not in the best interest of the city and the public.

(c) All Franchisees shall be subject to the terms and conditions specified in this chapter, as well as any terms or conditions specified in the resolution granting the franchise and the Franchise Agreement.

(d) In granting any tow truck operator franchise, the city council may prescribe such other terms and conditions, not in conflict with this chapter, as are determined by the city council to be in the best interest of the city and the public.

5.44.060 Request for proposals.

The Police Chief shall request for proposals for franchises for nonconsensual police towing services by causing a notice to be published, in a newspaper of general circulation within the city. Any Tow Truck Operator who intends to operate as a Franchisee shall submit a proposal to the city by filing with the Police Chief, upon forms supplied in the request for proposals, a verified proposal containing, at a minimum, the following information:

(a) Name and address of the Tow Truck Operator. If the Tow Truck Operator is a partnership, the name and address of each partner shall be set forth in the proposal. If the Tow Truck Operator is a corporation, the proposal shall state the names and addresses of the corporation's directors, main offices, major stockholders and associates, and the names and addresses of the parent and subsidiary companies;

(b) A list of all vehicles, including license plate numbers and vehicle identification numbers, to be used in connection with the franchise for which the proposal is filed;

(c) A list of all personnel assigned to perform services pursuant to such franchise accompanied by the California driver's license number and license class of each such person;

(d) Proof of insurance in a form acceptable to the city;

(e) Any other information the Police Chief may reasonably require to evaluate and process the proposals.

5.44.070 Public hearing.

(a) Upon receiving the proposal(s) for a franchise under the provisions of this chapter, the Police Chief shall present the proposal(s) to the city council at a regularly scheduled meeting thereof.

(b) The city clerk shall cause notice of the proposal(s) and of the time and place of hearing on the proposal(s) to be published at least once in a newspaper of general circulation in the city at least ten days prior to the date set for the hearing. Additionally, the city clerk shall mail or deliver notice of the public hearing to each Tow Truck Operator that has submitted a proposal at least ten calendar days prior to the hearing.

(c) At the hearing on the proposal(s) for a franchise, the city council shall give all persons desiring to be heard a reasonable opportunity to present evidence or otherwise be heard in favor of, or in opposition to, the granting of a franchise to the Tow Truck Operator(s). At such hearing, the city council may require from the Tow Truck Operator(s) such additional information as the city council may deem relevant and necessary. The hearing may be continued or adjourned to a stated time and place without the giving of further notice.

5.44.080 Grant or denial of franchise.

(a) Upon conclusion of the hearing on the proposals for a franchise, or within a reasonable time thereafter, the city council shall render its decision on the proposal(s). Any grant of a franchise by the city council may be subject to such terms, conditions, rules, regulations, restrictions and limitations as the city council deems necessary to protect the public health, safety, or welfare.

(b) Should a Franchise Agreement not be granted to a Tow Truck Operator, the city clerk shall issue written notice to the Tow Truck Operator that its service will not be utilized for towing vehicles as described in this chapter.

(c) No Franchise Agreement granted pursuant to this chapter shall become effective unless and until all of the following requirements have been satisfied:

i. The Tow Truck Operator and the city have signed, by their duly authorized representatives, a Franchise Agreement;

ii. The Tow Truck Operator has provided evidence to the police Chief of compliance with the all terms and conditions of the franchise agreement.

5.44.090 Franchise tow services agreement.

All Franchisees selected to provide nonconsensual police towing services shall enter into a Franchise Agreement with the city. The Franchise Agreement shall be in a form approved by the city attorney and shall be executed within thirty days after selection as a Franchisee. The Franchise Agreement shall provide that the terms and conditions of this chapter shall be applicable for the entire term of the franchise.

5.44.100 Indemnification of city.

The Franchise Agreement shall provide that the Franchisee shall indemnify, hold harmless, release and defend the city, its city council and each member thereof, and its officers, employees, commission members and representatives, from and against any and all liability, claims, suits, costs, expenses, fines, judgments, settlements, charges or penalties whatever, including reasonable attorneys' fees, regardless of the merit or outcome of the same arising out of, or in any manner connected with, any or all of the operations or services authorized, conducted or permitted under a nonexclusive franchise tow services agreement granted under this chapter.

5.44.110 Liability insurance.

The City's Risk Manager shall establish minimum levels and standards of liability insurance which must be maintained in order to apply for, to receive, and to operate a franchise under this chapter.

5.44.120 Suspension by Police Chief.

The Police Chief may suspend the Franchise Agreement for the reasons, and pursuant to the procedures, set forth in the terms of the Franchise Agreement entered into with a Tow Truck Operator, or for a violation of the terms of this chapter, including, but not limited to, a violation of the Franchise Agreement, a failure to maintain the minimum levels and standards of liability insurance for any period of time, or the failure to comply with any federal, state, or local law.

The Police Chief shall issue a notice of temporary suspension to the Franchisee, which shall include the date and period of suspension and the basis for the suspension. The notice of temporary suspension may be personally delivered or mailed by certified mail to the Franchisee.

A suspension longer than thirty days may be appealed administratively to the city manager, no later than ten days from the date of mailing of the notice of suspension. The notice of appeal of a suspension (greater than thirty days) shall be filed with the city clerk stating the reasons for appeal, containing all

documentary evidence in support of the appeal, the name, address, and telephone number of the appellant. The city manager shall review all the materials in support of the appeal and the reasons for suspension stated by the Police Chief. Based upon all the information provided, the city manager shall affirm, modify, or reverse the suspension. Notification of the decision on the appeal shall be mailed within thirty days of the receipt of all information relating to the appeal. The city manager's decision on a suspension is the final administrative determination of the city on the appeal.

5.44.130 Franchise transfer or assignment.

Any Franchise Agreement granted pursuant to this chapter is a privilege to be held in trust by the original Franchisee. Such franchise shall not be sold, leased, transferred, assigned, or otherwise disposed of, either in whole or in part, whether by forced sale, merger, consolidation, bankruptcy, reorganization under bankruptcy laws or otherwise, without the prior consent of the city council .

5.44.140 Franchise fees.

(a) Each Tow Truck Operator granted a Franchise Agreement pursuant to this chapter shall pay a franchise fee to the city during the term of such franchise. The franchise fee shall be in an amount as set forth in a resolution adopted by the city council and may be adjusted by the city council from time-to-time.

(b) Franchise fees shall be due and payable in accordance with the terms and conditions contained in the Franchise Agreement. Each payment shall be in accordance with the provisions of the resolution adopted by the city council pursuant to subsection (a) of this section.

(c) By resolution, the city council establishes the reasonable estimate of the costs of the Police Department to administer the franchise tow services program. The franchise fees established by resolution may be revised periodically by the city council to reflect changes in the actual and reasonable costs to administer the franchise tow services program.

(d) In the event of the suspension or termination of a Franchise Agreement, the Franchisee shall forfeit any fees paid to the city. Franchisee waives any and all claims or rights to collect back from the city any amounts collected by the city pursuant to this chapter.

(e) The payment to the city by the Franchisee pursuant to this chapter shall be in addition to any license fee or business tax prescribed by the city for the same period.

5.44.150 Rotational list.

The Police Chief shall develop a rotational list of Franchisees selected to provide nonconsensual police towing services to the city. The Franchisee at the top of the list shall be on call to provide towing service to the city in accordance with the rotation system established by the Police Chief. Franchisees selected to provide nonconsensual police towing services shall abide by the rotation system established by the Police Chief.

5.44.160 Reservation of authority to conduct towing operations.

Nothing in this chapter shall be construed to restrict or prohibit the city from conducting its own towing operations or maintaining its own towing storage yard, either in lieu of, or in addition to, any Franchise Agreement that is awarded pursuant to this chapter.

LIVERMORE
CALIFORNIA

CITY COUNCIL STAFF REPORT **ITEM NO. 5.12**

DATE: June 24, 2024

TO: Honorable Mayor and City Council

FROM: Tina Olson, Administrative Services Director

SUBJECT: Resolution authorizing execution of an agreement with NBS Government Finance Group to provide services in administering the City's Assessment Districts, Community Facilities Districts, and Continuing Disclosures in an amount not-to-exceed $350,000 for a five-year term.

RECOMMENDED ACTION

Staff recommends that City Council authorize the execution of an agreement with NBS Government Finance Group (NBS) to provide services in administering the City's Assessment Districts, Community Facilities Districts, and Continuing Disclosures in an amount not-to-exceed $350,000 for fiscal years 2024-29.

SUMMARY

The City of Livermore (the City) has numerous Assessment Districts and Community Facilities Districts throughout the City that require on-going administration including financial management, legal compliance, and levy submittal. NBS specializes in this type of service and has been providing it to the City for many years. Their expertise related to Assessment Districts and Community Facilities Districts administration ensures that the City stays in compliance with the Assessment Districts and Community Facility Districts' requirements. As such, staff recommends entering a 5-year contract with NBS to continue to provide these services.

DISCUSSION

Administration of the City's Assessment Districts and Community Facilities Districts requires special knowledge about financing, legal compliance, and levy submittals. NBS is well versed in the management of such districts and requirements. As part of the scope of services there are six major areas where NBS will provide administration; Community Facilities District Administration, 1915 Act Assessment District Administration, Apportionments, Delinquency Management, Continuing Disclosure required for bonds, and Senate Bill 1029 reporting required by the California Debt and Investment Advisory Commission.

Administration in each of these six services require all or some of the following tasks: (1) data collection from many sources including Assessor's parcel maps, building permits, and County Assessor information determined to be necessary based on the requirements of the Rate and Method of Apportionment; (2) identifying all costs associated with the administration of the Assessment Districts and Community Facilities Districts to recover these costs through the levy process as outlined in §53317€ and §53340 of the California Government Code; (3) determining cash flow requirements, current fund balances to keep the flow of funds and fund balances in compliance with the bond documents; (4) calculating annual special tax requirements that include all the necessary components as outlined in the Rate and Method of Apportionment to submit the levy to the County Auditor-Controller; (5) providing an annual Special Tax Levy Report including a parcel listing with levy amounts and other parcel information; (6) monitoring the list of delinquencies after each installment becomes due; (7) providing prepayment calculations to interested parties; (8) preparing the spread of principal to be called within maturities for all bond calls and coordinating with the Paying Agent/Trustee; (9) preparing documents required to release the liens of parcels that have prepaid the special tax; and (10) completing reporting to the California Debt and Investment Advisory Commission as required by §53359.5(b) and §53359.5(c) of the California Government Code.

NBS specializes in such administration and has been a partner with the City for many years ensuring that the City stays in compliance with all the requirements of these Assessment Districts and Community Facility Districts.

FISCAL AND ADMINISTRATIVE IMPACTS

The total amount of the five-year agreement is not to exceed $350,000, with the base fees of $237,870, disclosure fees of $25,077, D-FAST Online Pro software annual fees of $34,033, SB 1029 Reporting fees of $3,333, and various miscellaneous fees of $8,000. The annual amount of these fees is incorporated into the approved FY 2024-25 budget, so no additional appropriation is required. Amounts necessary for future fiscal years will be incorporated in future budget cycles.

COMMUNITY PILLAR

5: A City that Works

GOAL

17: Ensure effective use of public resources

ATTACHMENTS

1. Resolution
2. Exhibit A - Agreement

Prepared by: Erik Peterson
Finance Manager

Approved by:

Marianna Marysheva
City Manager

Fiscal Review by:

Tina Olson
Administrative Services Director

IN THE CITY COUNCIL OF THE CITY OF LIVERMORE, CALIFORNIA

A RESOLUTION AUTHORIZING THE EXECUTION OF AN AGREEMENT WITH NBS GOVERNMENT FINANCE GROUP FOR ADMINISTRATIVE SERVICES IN ALL ASPECTS INVOLVING ASSESSMENT DISTRICTS, COMMUNITY FACILITIES DISTRICTS, AND CONTINUING DISCLOSURE SERVICES IN AN AMOUNT NOT-TO-EXCEED $350,000 FOR A FIVE-YEAR TERM

The City of Livermore ("City") is interested in entering into a five-year agreement with NBS Government Finance Group ("NBS") for their specialized expertise and knowledge in regard to Assessment Districts, Community Facilities Districts, and Continuing Disclosure Services. The City has numerous Assessment Districts and Community Facilities Districts throughout the City that require on-going administration including financial management, legal compliance, and levy submittal. NBS specializes in this type of service and has been providing it to the City for many years. Their expertise relating to Assessment Districts and Community Facilities Districts administration ensures that the City stays in compliance with the Assessment Districts and Community Facility Districts' requirements. As such, City staff recommends entering a five-year contract with NBS to continue to provide these services.

The total amount of the five-year agreement is not to exceed $350,000, with the base fees of $237,870, disclosure fees of $25,077, D-FAST Online Pro software annual fees of $34,033, SB 1029 Reporting fees of $3,333, and finally various miscellaneous fees of $8,000. The annual amount of these fees is incorporated into the approved FY 2024-25 budget. Amounts necessary for future fiscal years will be incorporated in future budget cycles.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Livermore that it hereby authorizes the City Manager to execute a five-year professional services agreement with NBS Government Finance Group for administrative services in all aspects involving assessment districts, community facilities districts, and continuing disclosure services for fiscal years 2024-25, 2025-26, 2026-27, 2027-28, and 2028-29, attached hereto as Exhibit A, in an amount not-to-exceed $350,000.

On motion of Council Member _____, seconded by Council Member _____, the foregoing resolution was passed and adopted on June 24, 2024, by the following vote:

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

RESOLUTION NO. _____

ATTEST:

_____
Deborah L. Elam
Acting City Clerk

APPROVED AS TO FORM:

/s/ Jason R. Alcala
Jason R. Alcala
City Attorney

Exhibit A – NBS Government Finance Group Agreement

RESOLUTION NO. _____

DocuSign Envelope ID: 07F463B4-11D2-4AB7-8887-9E50306856C9

PROFESSIONAL SERVICES AGREEMENT

THIS AGREEMENT is made and entered into this ___ day of _____, 2024, by and between the City of Livermore ("City"), a municipal corporation, and NBS Government Finance Group ("Consultant"),a California corporation.

RECITALS

City requires professional services to advise the City in all aspects involving administration of Assessment Districts, Community Facilities District Administration Services and Continuing Disclosure Services.

Consultant warrants it possesses the distinct professional skills, qualifications, experience, and resources necessary to timely perform the services described in this Agreement. Consultant acknowledges City has relied upon these warranties to retain Consultant.

AGREEMENT

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

1. Retention as Consultant. City hereby retains Consultant, and Consultant hereby accepts such engagement, to perform the services described in Section 3 below subject to the terms and conditions in this Agreement.

2. Relationship of Parties – Independent Contractors. The relationship of the parties shall be that of independent contractors. Consultant and its employees are not City officers or employees. Consultant is responsible for the supervision and management of its employees, including any workers compensation insurance, withholding taxes, unemployment insurance, and any other employer obligations associated with the delivery of the services contemplated by this Agreement.

3. Description of Services. Consultant shall provide the following professional services as more particularly set forth in Exhibit "A" (collectively "the Services"):

Advise the City in all aspects involving administration of Assessment Districts, Community Facilities District Administration Services and Continuing Disclosure Services.

4. Consultant's Responsibilities. Consultant shall:

(a) Diligently perform the Services in a manner commensurate with industry, professional, and community standards;

(b) Provide the resources necessary to complete the Services in a timely manner;

(c) Obtain a business license from the City of Livermore, and keep it in effect for the term of this Agreement;

DocuSign Envelope ID: 07F463B4-11D2-4AB7-8887-9E50306856C9

(d) Obtain and keep in effect all necessary licenses, permits, qualifications, insurance, and approvals legally and professionally required for Consultant to practice its profession and to provide the Services;

(e) Comply with all laws in effect that are related to Consultant and the Services;

(f) Coordinate the Services with Erik Peterson, Finance Manager ("Project Manager"), or such other person designated as the Project Manager by City;

(g) Be available to the Project Manager, and other parties referred to Consultant by the Project Manager, to answer questions or inquiries related to the Services;

(h) Only invoice City for the Services rendered. Consultant's invoice shall be in writing and describe the Services performed for the payment requested. Consultant shall not submit an invoice to City more frequently than once a calendar month;

(i) Keep and maintain invoices and records related to the Services in an organized manner. At a minimum, the records must be kept for at least 3 years from the date of final payment to Consultant and must include time sheets, work progress reports, and other documentation to adequately explain all the Services invoiced for payment. Consultant shall make the invoices and records immediately available to City upon delivery of a written request to examine, audit, or copy them at City's place of business during normal business hours. Consultant shall give City 30 calendar-days' written notice prior to destroying the invoices and records and allow City an opportunity to take possession. If City wants them, Consultant and City shall coordinate their delivery to City in the most efficient manner possible;

(j) Prepare and submit a written report to the Project Manager, within 3 business-days of the Project Manager's written request, that identifies the Services completed and in progress, the charges incurred to date, and the anticipated cost to complete the remaining Services;

(k) Consultant shall correct, at its own expense, all errors in the Services. Should Consultant fail to make such correction in a timely manner, City may make the correction and charge the cost thereof to Consultant;

(l) If applicable, Consultant shall ensure that all work for compensation is provided in compliance with the requirements of the California Labor Code including but not limited to hours of labor, nondiscrimination, payroll records, apprentices, worker's compensation and prevailing wages. If applicable, Consultant shall comply with all prevailing wage laws, such as sections 1773, 1773.8, 1775, 1776, 1777.5, 1777.6, and 1813 of the California Labor Code and any other applicable wage and hour law. If any violation of prevailing wage law associated with this Agreement is deemed to have occurred by any court or administrative authority, Consultant shall forfeit to the City, as a penalty, the sum of fifty dollars ($50.00) for each calendar day, or portion thereof, for each

DocuSign Envelope ID: 07F463B4-11D2-4AB7-8887-9E50306856C9

laborer, worker, or mechanic employed, paid less than the applicable prevailing rates for any work done to accomplish the purposes of this Agreement; and,

(m) Consultant's services provided pursuant to this Agreement shall comply with the Americans with Disabilities Act (ADA) of 1990, and all amendments thereto, as well as all applicable regulations and guidelines issued pursuant to the ADA.

5. Compensation and Payment.

(a) The total compensation payable by City to Consultant for the Services **SHALL NOT EXCEED** the sum of $350,000 ("not-to-exceed amount"). City shall compensate Consultant for the Services rendered at the hourly rates, task amounts or travel expenses set forth in Exhibit "A" up to the not-to-exceed amount. Except as provided in the body of this Agreement, the hourly rates, task amounts or travel expenses are intended to be Consultant's only compensation for the Services and is inclusive of all costs of labor, licensing, permitting, overhead and administrative costs, and any-and-all other costs, expenses, and charges incurred by Consultant, its agents, and employees to provide the Services.

(b) City shall pay Consultant no later than 30 days after City receives a written invoice from Consultant and verifies the Services were performed for the payment requested.

6. Term. The term of this Agreement commences on July 1, 2024, and terminates upon the completion of the Services or June 30, 2029, whichever occurs first.

7. Termination by City. City may terminate any portion or all of the Services by giving Consultant at least 30 calendar-days written notice. Upon receipt of a termination notice, Consultant shall immediately stop all work in progress on the Services except where necessary to preserve the benefit of the work, and then assemble the work on the Services for delivery to City on the termination date. All compensation for Services performed prior to the termination date shall be payable to Consultant in accordance with Section 5.

8. Ownership of Documents. All drawings, designs, data, photographs, reports and other items prepared or obtained by Consultant in the performance of the Services are City's property and Consultant shall deliver them to City upon demand.

9. Copyright and Right of Use. All items created by Consultant for City under this Agreement are works made for hire, and Consultant shall give City the copyright and all intellectual property rights to all items developed, prepared, and delivered as part of the Services. Consultant agrees that all aspects of the Services and items created thereby will be original works of creation and will not use, in whole or in part, any work created by any other party, except when expressly disclosed by Consultant to City and Consultant obtains a license to such items for the benefit of City. All licenses must be perpetual, world-wide, non-exclusive, and royalty free sufficient in scope to permit City's full use and enjoyment of its ownership rights in the items created by the Services.

DocuSign Envelope ID: 07F463B4-11D2-4AB7-8887-9E50306856C9

10. Confidentiality. Consultant shall not disclose any confidential or proprietary information received from City to anyone except Consultant's employees who require access to the information to perform the Services. This obligation shall survive termination and remain in full force and effect until the information, and any copies thereof, are destroyed or returned to City.

11. Defense, Indemnity, and Hold Harmless. To the fullest extent permitted by law, Consultant shall hold harmless, indemnify, and defend with counsel selected by the City or otherwise acceptable to the City, the City and its elected and appointed officials, officers, directors, employees, agents and designated volunteers from and against any and all liability, loss, damage, claims, expenses, and costs (including without limitation, attorney's fees and costs and fees of litigation) (collectively, "Liability") of every nature arising out of or in connection with Consultant's performance of the services contemplated by this Agreement, or in connection with Consultant's failure to comply with any of its obligations contained in this Agreement, except for such Liability caused by the sole active negligence or willful misconduct of City. Consultant's obligations to hold harmless, indemnify, and defend shall not be excused because of Consultant's inability to evaluate Liability or because Consultant evaluates Liability and determines that Consultant is not liable to the claimant. These obligations are independent of, and shall not in any way be limited by, the minimum insurance obligations contained in this Agreement. These obligations shall survive the completion or termination of this Agreement. Consultant must respond within 30 days to the tender of any claim for defense and indemnity by the City.

(a) Modification for Construction Contracts. To the extent this Agreement is a "construction contract" covered by California Civil Code section 2782, then Consultant's duty to indemnify shall not apply in a manner prohibited by California Civil Code section 2782.

(b) Modification for Design Professional Services. To the extent this Agreement is for "design professional services" defined in California Civil Code section 2782.8, then Consultant's duties to defend and indemnify shall only apply to the extent provided for in California Civil Code section 2782.8(a), unless section 2782.8(a) is not applicable for one of the reasons set forth in 2782.8(e).

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

13. Acceptance of Final Payment. Consultant's acceptance of final payment will release City from any and all claims and liabilities for compensation under this Agreement.

14. Acceptance of Work. City's acceptance of, or payment to Consultant for, the Services does not release Consultant from its responsibility for the accuracy, completeness, or competency of the Services, nor do the actions constitute an

DocuSign Envelope ID: 07F463B4-11D2-4AB7-8887-9E50306856C9

assumption of Consultant's responsibility or liability by City for any defect or error in the Services.

15. Conflict of Interest. Consultant represents that no City employee or official has a financial interest in Consultant. Consultant shall not offer, encourage, or accept any financial interest in any part of Consultant's business by or from a City employee or official during the term of this Agreement or as a result of being awarded this Agreement. If any of the Services are paid by reimbursement from an agreement between City and a private party, Consultant represents that it has not performed any work for that private party during the 12-month period prior to the execution of this Agreement, and that it shall not negotiate, offer or accept any contract for services from that party during the term of this Agreement.

16. Economic Disclosure. Consultant shall comply with City's local conflict of interest code and the Political Reform Act, and prepare and file an economic disclosure statement if the Services involve making, or participation in making, decisions which may have a material effect on the Consultants' financial interest. While it is Consultant's sole responsibility to evaluate its conflicts of interest, the Consultant nevertheless agrees to prepare and file an economic disclosure statement if requested by City.

17. Non-Exclusive Agreement. This is a non-exclusive agreement. City reserves the right to provide, and to retain other consultants to provide, services that are the same or similar to the Services described in this Agreement.

18. No Assignment. Consultant shall not assign or subcontract any of the Services without City's prior written consent. For the purposes of this section, a change of fifty-percent or more in the ownership or control of Consultant constitutes an assignment.

19. Remedies. All remedies permitted or available under this Agreement, or at law or in equity, are cumulative and alternative, and the invocation of a right or remedy will not be construed to waive or elect a remedy with respect to any other available right or remedy. As a condition precedent to commencing legal action involving a claim or dispute against City arising from this Agreement, the Consultant must present a written claim to City in accordance with Chapter 3.42 of the Livermore Municipal Code.

20. Construction of Language. The terms and conditions in this Agreement have been arrived at through negotiation and each party had a full and fair opportunity to review and revise this Agreement with legal counsel. Any ambiguity in this Agreement will not be resolved against either party as the drafting party. In the event of an inconsistency or conflict between the language in the body of the Agreement and an attachment hereto, the language in the body of the Agreement controls.

21. Entire Agreement; Modification. This Agreement supersedes all other agreements, whether oral or written, between the parties with respect to the Services. Any modification to this Agreement must be in writing and signed by both parties. In the event the original of this Agreement is lost or destroyed, an archival copy maintained by City can be used in place of the original for all purposes with the same effect as if it was the original.

DocuSign Envelope ID: 07F463B4-11D2-4AB7-8887-9E50306856C9

22. Notice. Notices under this Agreement must be delivered to the addresses below by deposit in the United States mail or by overnight delivery service, with postage prepaid and delivery confirmation:

TO CITY: Attention: Erik Peterson, Finance Manager
City of Livermore
1052 S Livermore Avenue
Livermore, California 94550

TO CONSULTANT: Attention: Linda Connard
NBS Government Finance Group
32605 Temecula Pkwy, Suite 100
Temecula, CA 92592

23. Waiver. Failure to insist upon the strict performance of any term or conditions in this Agreement, no matter how long the failure continues, is not a waiver of the term or condition and does not bar the right to subsequently demand strict performance. To be effective, a waiver must be in writing and signed by the non-breaching party.

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

25. Survival. The terms, conditions, and obligations in Sections 8, 9, 10, and 11 shall survive the completion or termination of this Agreement.

26. Electronic Signatures. By signing this document, you are agreeing that you have reviewed this disclosure information and consent to transact business using electronic communications, to receive notices and disclosures electronically, and to utilize electronic signatures in lieu of using paper documents. You are not required to receive notices and disclosures or sign documents electronically. If you prefer not to do so, you may request to receive paper copies and withdraw your consent at any time.

27. Counterparts. This Agreement may be executed and delivered in one or more counterparts, each of which will be deemed to be an original copy of this Agreement, and all of which, when taken together, will be deemed to constitute one and the same agreement. The facsimile, email, or other electronically delivered signatures of the Parties shall be deemed to constitute original signatures, and facsimile or electronic copies hereof shall be deemed to constitute duplicate originals and shall be valid and effective for all purposes.

****

Signatures and Attachment List on the Next Page

DocuSign Envelope ID: 07F463B4-11D2-4AB7-8887-9E50306856C9

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

CONSULTANT: **Dated:**

DocuSigned by:
Michael Renter
C1107459CCD7488...
Michael Renter
President & CEO

6/7/2024 | 9:20 AM PDT

CITY OF LIVERMORE: **Dated:**

Marianna Marysheva
City Manager

APPROVED AS TO FORM:

DocuSigned by:
Jason Alcala
6666D2D1A884431...
Deputy/Assistant/City Attorney

APPROVED AS TO INSURANCE:

DocuSigned by:
Amber Hatfield
12BC7F4D88224F6...
Risk Manager/Analyst

Attachments:

Exhibit A – Scope of Work
Exhibit B – Insurance Requirements

DocuSign Envelope ID: 07F463B4-11D2-4AB7-8887-9E50306856C9

EXHIBIT A

32605 Temecula Parkway, Suite 100
Temecula, CA 92592
Toll free: 800.676.7516

www.nbsgov.com

April 3, 2024

Ms. Laurie Ong
Administrative Specialist II
City of Livermore
1052 S. Livermore Avenue
Livermore, CA 94550

Subject: Scope and Fees to Provide Administration Services

Dear Ms. Ong,

NBS would like to thank you for the opportunity to provide Administration services for the City of Livermore ("City") as referenced above. Please use the Scope and Fees noted below in preparation of the Professional Services Agreement. We look forward to continuing our professional relationship.

Scope of Services

Community Facilities District Administration

KICK-OFF MEETING, PROJECT SCHEDULE

NBS will meet with City staff, legal counsel and other interested parties to:

- Establish lines of communication.
- Clarify the specific project goals and criteria that will meet the City's preference.
- Identify and resolve any special circumstances that may be involved in the administration of the districts.
- Develop project schedules to meet legal requirements and provide for effective interaction of all involved parties.
- Establish meeting dates consistent with schedule to achieve project milestones.

DATA COLLECTION

NBS will gather and review data pertinent to the administration of the Community Facilities District ("CFD"). Data will be obtained from various sources such as Assessor's parcel maps, building permits and County Assessor information as determined to be necessary based on the requirements of the Rate and Method of Apportionment. NBS will maintain and periodically update a database of all parcels within the district along with relevant parcel information.

ADMINISTRATIVE COST RECOVERY

NBS will identify all costs associated with the administration of the CFD and recover those costs through the levy process as outlined in §53317€ and §53340 of the Government Code of the State of California. Such costs may include, but are not to be limited to: Bank fees, legal fees, county tax collection fees, and all costs and expenses of the City, and its consultants related to district administration.

DocuSign Envelope ID: 07F463B4-11D2-4AB7-8887-9E50306856C9

EXHIBIT A

CASH FLOW ANALYSIS

NBS will determine the cash flow requirement, acquire current fund balances and make recommendations to keep the flow of funds and fund balances in compliance with the bond documents. Fund transfers might include the transfer of available surplus funds to be used as levy credits or the transfer of reserve funds to the redemption fund upon the prepayment of special taxes. Cash flow analysis will also be performed to determine any levy shortfall or surplus collections.

SPECIAL TAX REQUIREMENT

NBS will calculate the annual Special Tax Requirement that will include all necessary components as outlined in the Rate and Method of Apportionment, such as principal and interest due, administrative expenses, collection for direct financing of services or facilities, and a fund credit or replenishment as determined from analysis of the district funds.

LEVY CALCULATION

NBS will calculate the annual Special Tax Levy for each parcel within the CFD following the guidelines established in the Rate and Method of Apportionment.

MEETING ATTENDANCE

NBS will attend up to two (2) City Council meetings related to district administration, as requested by the City. NBS will attend additional meetings as requested by the City subject to additional expenses for time and travel.

LEVY SUBMITTAL

NBS will submit the levy to the County Auditor-Controller in the required format. Special Taxes rejected by the County Auditor-Controller will be researched and resubmitted for collection on the County Tax Roll. Any parcels that are not submitted by the County for collection will be invoiced with payment to be directed to the City.

MAINTAIN DISTRICT DATA

NBS will annually track all parcel changes to ensure that all changes are documented. Historical parcel change data will be maintained by NBS.

SPECIAL TAX LEVY REPORT

NBS will provide an annual Special Tax Levy Report. This report will include a parcel listing with levy amounts and other parcel information, the details of the annual Special Tax Requirement, current delinquency information, fund analysis, administrative expenses to be recovered, and status of the project and current issues affecting the district.

DELINQUENCY MONITORING

NBS will provide a comprehensive list of delinquencies after each installment becomes due. The delinquency report will provide the district's overall delinquency percentage as well as a detailed list of each delinquent parcel, with the name and address of the delinquent parcel owner, the delinquent amount, and penalties.

DocuSign Envelope ID: 07F463B4-11D2-4AB7-8887-9E50306856C9

EXHIBIT A

PREPAYMENT CALCULATIONS

NBS will provide special tax prepayment calculations to interested parties. The party requesting the calculation shall pay the fee of any prepayment calculation.

BOND CALLS

NBS will prepare the spread of principal to be called within maturities for all bond calls and coordinate the call with the Paying Agent/Trustee.

RELEASE OF LIENS

NBS will prepare all documents required to release the liens of parcels that have prepaid the special tax.

CDIAC REPORTING

NBS will perform all necessary reporting to the California Debt and Investment Advisory Commission as required by §53359.5(b) and §53359.5(c) of the Government Code of the State of California.

ADDITIONAL REPORTING

NBS will be a resource to the City by staying current and identifying any new legislation and reporting requirements as they relate to the CFD.

For each of the following reporting requirements, NBS will review all pertinent documents and obtain the information needed to:

- Prepare the required reporting to the California State Controller's Office California Government Code, Section 12463.2, enacted as part of AB 2109. Provide to City staff for inclusion in the annual financial transaction report.
- Assist in the filing of the SB 165 report to the City Council each year to comply with legislation that enforces additional reporting requirements. California Government Code, Sections 50075.3 or 53411.
- Prepare other reports as required by any State and/or Federal disclosure reporting requirements pertaining to each CFD, as applicable, amended, or newly enacted and required. This may be subject to additional fee.

NOTICE OF SPECIAL TAX DISCLOSURE

NBS will provide Notice of Special Tax Disclosure notices to requesting parties as required by §53340.2 and §53341.5 of the Government Code of the State of California. The fee of any Notice of Special Tax shall be billed to the requesting party.

CONSULTING SUPPORT

NBS will provide a toll-free phone number for use by the City, other interested parties and property owners. Our staff will be available to answer questions regarding the CFD and ongoing collection of the special tax. Bilingual staff is available for Spanish-speaking property owners.

DocuSign Envelope ID: 07F463B4-11D2-4AB7-8887-9E50306856C9

EXHIBIT A

1915 Act Assessment District Administration

KICK-OFF MEETING, PROJECT SCHEDULE

NBS will meet with City staff, legal counsel and other interested parties to:

- Establish lines of communication.
- Clarify the specific project goals and criteria that will meet the City's preference.
- Identify and resolve any special circumstances that may be involved in the administration of the districts.
- Develop project schedules to meet legal requirements and provide for effective interaction of all involved parties.
- Establish meeting dates consistent with schedule to achieve project milestones.

DATA COLLECTION

NBS will gather and review data relevant to the administration of the Assessment District. Data will be obtained from various sources, including City records, Assessor's parcel maps, and County Assessor information. NBS will maintain and periodically update a database of all parcels within the district along with relevant parcel information.

POLICY REVIEW

NBS will review policies and procedures that have been established by the City for compliance with the governing documents and law. These policies will be incorporated into our service to the City.

COST RECOVERY

NBS will identify all costs associated with the administration of the Assessment District and recover those costs through the levy process as outlined in §8682 and §8682.1 of the California Streets and Highways Code. These costs may include, but not be limited to Registrar/Transfer/Paying Agent fees, Arbitrage Rebate calculation fees, bank fees, and expenses of the City and its consultants related to the administration of the district.

FUND ANALYSIS

NBS will determine the balance requirements and acquire the current cash balances for the district. We will make recommendations to ensure that the flow of funds and fund balances are in compliance with bond documents. Cash flow analysis will also be performed to determine any levy shortfall or surplus.

LEVY SUBMITTAL

NBS will submit the levy to the County Auditor-Controller in the required format. Assessments rejected by the County Auditor-Controller will be researched and resubmitted for collection on the County Tax Roll. Any parcels that are not accepted by the County for collection will be invoiced with payment to be directed to the City.

MAINTAIN DISTRICT DATA

NBS will annually track all parcel changes to ensure that all changes are documented. Historical parcel change and assessment apportionment data will be maintained by NBS.

DocuSign Envelope ID: 07F463B4-11D2-4AB7-8887-9E50306856C9

EXHIBIT A

ANNUAL REPORT

NBS will provide a comprehensive Annual Report that will show a detailed listing of the amounts submitted to the County or directly billed for collection, details of delinquent assessments, fund analysis, paid off parcels, all bond call activity, and assessed valuation information.

DELINQUENCY MONITORING

NBS will provide a comprehensive list of delinquencies after each installment becomes due. The delinquency report will provide the district's overall delinquency percentage as well as a detailed list of each delinquent parcel, with the name and address of the delinquent parcel owner, the delinquent amount, and penalties.

PREPAYMENT CALCULATION/AMORTIZATION SCHEDULE

NBS will provide assessment prepayment calculations and amortization schedules to interested parties. The requester will pay the cost of this service; however, there will be no charge to the City or property owners.

BOND CALLS

NBS will prepare the spread of principal to be called within maturities for all bond calls and coordinate the call with the Paying Agent/Trustee.

RELEASE OF LIENS

NBS will prepare all documents required to release the liens of parcels that have prepaid the assessment.

NOTICE OF SPECIAL ASSESSMENT

NBS will provide a "Notice of Special Assessment" disclosure notice to requesting parties as required by §53754 of the Government Code of the State of California. The fee of any Notice of Special Assessment shall be paid by the party requesting the disclosure notice.

CONSULTING SUPPORT

NBS will provide a toll-free phone number for use by the City, other interested parties and all property owners. Our staff will be available to answer questions regarding the formation and ongoing collection of assessments for the district. Bilingual staff is available for Spanish-speaking property owners.

COUNTY ASSESSOR REPORTING

NBS will work with the County Assessor to aid in complying with the requirements of Revenue & Taxation Code 163. This includes providing data such as parcel number, original assessment and current principal balance to the County Assessor.

Apportionments

Parts 10 and 10.5 of the *Streets and Highways Code* detail the methodology and procedure that the City must follow in apportioning the assessment lien on parcels that are reconfigured and/or subdivided. With our experience in district formation and the development of methods of assessment, we are able to ensure that apportionments are properly performed.

Assuming proceeding under the preferred procedure of **Part 10.5**, NBS will perform the following:

DocuSign Envelope ID: 07F463B4-11D2-4AB7-8887-9E50306856C9

EXHIBIT A

APPLICATION FORMS

NBS will provide apportionment application forms and instructions to the City's Engineering representative for inclusion as a condition of approval for subdivision within an assessment district.

SEGREGATION

NBS will apportion the special assessment according to the method of spread as described in the Engineer's Report.

NOTICE OF APPORTIONMENT

NBS will prepare a Notice of Apportionment and send it via certified mail to the issuing underwriter, as required.

ASSESSMENT DIAGRAM

NBS will prepare an Amended Assessment Diagram and notice. The Diagram and Notice will be filed and recorded with the County Recorder.

AMORTIZATION SCHEDULE

NBS will prepare an amortization schedule for each newly created assessment.

APPORTIONMENT REPORT

NBS will prepare and submit to the City an Apportionment Report showing the finalized apportionment and the Amended Assessment Diagram.

In the event proceedings are undertaken under **Part 10**, the following ***additional*** items are required:

RESOLUTIONS

NBS will prepare the required resolutions to order the amended assessment, the Amended Assessment Diagram, notices to the property owner, and fix the amount of costs to perform the apportionment.

PUBLIC MEETINGS

NBS will be available to attend any public meetings required to complete the apportionment.

Delinquency Management

NBS will develop a comprehensive delinquency management program which includes a discussion and interpretation of the issuer's foreclosure covenant together with a review of the existing policies and procedures of the City. This service can be provided as part of overall annual administration or as a stand-alone service. When deemed as the appropriate course of action, NBS will perform the following.

DELINQUENCY REPORTS

NBS will provide the City with an updated list of delinquencies prior to sending any of the below letters. This report will also detail each district's percentage of delinquencies, as well as a detailed list of each delinquent parcel.

DocuSign Envelope ID: 07F463B4-11D2-4AB7-8887-9E50306856C9

EXHIBIT A

REMINDER LETTER

At the City's direction, send a reminder letter to the property owner of each delinquent parcel for the December 10th installment. The purpose of the letter is to inform and educate the property owner of their obligation to pay the delinquent special tax and/or assessment.

DEMAND LETTER

At the City's direction, send a demand letter to the property owner of each delinquent parcel for the April 10th installment. This letter will be mailed to any property owner who remains delinquent for both installments or who is delinquent for April 10th only. The purpose of this letter is to further educate the property owner and advise them of a potential foreclosure.

LIENHOLDER LETTER

At the City's direction, send a demand letter to the lienholders of loan-defaulted parcels where a Notice of Default has been filed, notifying them of the special tax and/or assessment and the loss of their lien position when judicial foreclosure occurs. The purpose of this letter is to educate the lienholders and to spur quick payment of delinquencies in order to protect their interest in the property.

LIENHOLDER RESEARCH

At the City's direction, perform detailed search of public records to identify lienholders on non-loan-defaulted parcels. The purpose of this is to allow further communication from the City to educate the lienholders and to spur quick payment of delinquencies in order to protect their interest in the property.

FORECLOSURE LETTER

This type of letter is typically sent after the installments for a parcel have been removed from the tax roll. The letter delineates what amount must be paid directly to the City to forestall the turnover of collection to foreclosure counsel.

TAX ROLL REMOVAL AND NOTICE

NBS will provide the information required to remove delinquencies from the tax roll and coordinate with the County Auditor Controller to verify the removal. This step is in preparation of turning the delinquencies over to foreclosure counsel. Once removed from the tax roll, each property owner will receive one final foreclosure letter indicating the amount due and payment instructions. NBS will file the Notice of Intent to Remove Delinquent Installments and remove such Notice upon payment of the delinquency.

PAYMENT PLANS

At the City's discretion, NBS will offer payment plans to property owners in lieu of turning delinquencies over to the City's foreclosure counsel.

SUBSEQUENT FORECLOSURE SERVICES

NBS will prepare and deliver all information to the City's foreclosure counsel. We will also continue to supply the City's counsel with additional information throughout the foreclosure process. We will continue to respond to property owner and City staff phone calls regarding the status of all cases, and will coordinate and audit status reports on a bi-monthly basis from the City's foreclosure counsel.

DocuSign Envelope ID: 07F463B4-11D2-4AB7-8887-9E50306856C9

EXHIBIT A

CONSULTING SUPPORT

NBS will provide a toll-free phone number for use by the City, other interested parties and all property owners. Our staff will be available to answer questions regarding the formation and ongoing collection of special tax and assessment for the districts. Bilingual staff is available for Spanish-speaking property owners.

Continuing Disclosure

In accordance with the Continuing Disclosure Certificate of the Bonds, NBS will support with the annual disclosure filing requirements of the SEC Continuing Disclosure Rule 15c2-12. Specifically, NBS will perform the following:

DOCUMENT REVIEW

NBS will review pertinent documents of the Bonds, including the Official Statement and Continuing Disclosure Certificate. We will identify material such as the Comprehensive Annual Financial Report and/or other operating data that the City has agreed to provide in the Continuing Disclosure Certificate.

DATA COLLECTION

NBS will collect the bond issue-specific financial information and operating data that the City has agreed to provide in the Continuing Disclosure Certificate.

REPORT PREPARATION

NBS will prepare the Annual Disclosure Report as required in the Continuing Disclosure Certificate.

ANNUAL DISSEMINATION

NBS will disseminate the Annual Disclosure Report including City Financials to the Electronic Municipal Market Access system ("EMMA"), or to other required parties.

SIGNIFICANT EVENTS

NBS will prepare and disseminate a "Notice of Significant Events", as listed on the Continuing Disclosure Certificate, to EMMA, as required in the certificate. Action will commence upon notification by the City of the occurrence of any of the events.

City's Responsibilities for Disclosure Services:

The City shall:

- Furnish NBS with any pertinent information that is available to the City and applicable to the services.
- Designate a person to act with authority on its behalf in respect to the services.
- Notify NBS of the occurrence of any events listed in the Continuing Disclosure Certificate.
- Promptly respond to NBS' requests for reviews and approvals of its work, and to its requests for decisions related to the services.
- Understand and agree that NBS is entitled to rely on all information, data and documents (collectively, "Information") supplied to NBS by the City or any of its agents, contractors or proxies or obtained by NBS from other usual and customary sources including other government sources

DocuSign Envelope ID: 07F463B4-11D2-4AB7-8887-9E50306856C9

EXHIBIT A

or proxies as being accurate and correct and NBS will have no obligation to confirm that such Information is correct and that NBS will have no liability to City or any third party if such Information is not correct.

Senate Bill 1029 CDIAC Reporting

DATA COLLECTION

NBS will gather from the City, and/or any other source, the data pertinent to the reporting for each debt issue.

CDIAC REPORTING

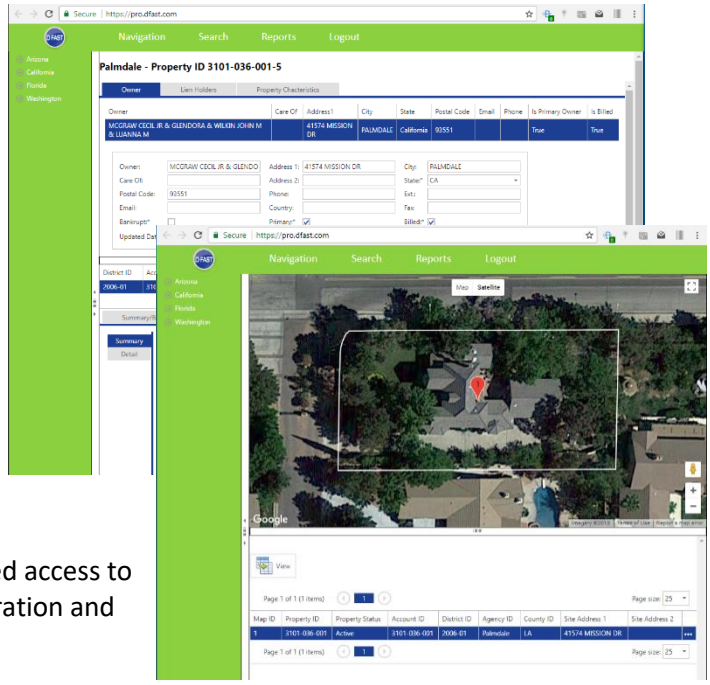
NBS will perform necessary reporting to the California Debt and Investment Advisory Commission as required by California Government Code Section 8855 (k), including filing the report online.

D-FAST Online Software

NBS has developed premium, industry-leading software, called D-FAST® (for District Fees, Assessments, and Special Taxes). We use this powerful administrative tool in-house to administer a wide range of special taxes, special assessments, and other parcel charges for our clients. It is also licensed to public agencies across the United States for their internal use.

Our D-FAST® web portal, called **D-FAST® Online Pro**, is available to our clients and uniquely combines real-time D-FAST data with County parcel boundaries and Google Maps. It provides "real-time" access to districts and underlying parcel data, allowing the City to:

- Gain enhanced insight with integrated Google Map's satellite imagery, street maps, and 360° street view
- View ownership, property information, and boundaries for each parcel
- See detailed billing & payment history for each account
- Understand a particular parcel's background and status
- Confirm if there are overlapping districts on a single parcel



With **D-FAST® Online Pro**, City staff have enhanced access to the data while NBS still provides the full administration and toll-free phone support.

DocuSign Envelope ID: 07F463B4-11D2-4AB7-8887-9E50306856C9

EXHIBIT A

Fees

Administration Services

Fiscal Year 2024/25

District	Type	Count	Per Parcel Fee	Per Zone Fee	Base Fee
Tri-Valley Technology Park CFD No. 99-1	CFD	186	$0.00	0.00	3,535.87
CFD 2016-2 Shea Properties	CFD	14	5.87	0.00	4,984.00
CFD 2009-1 El Charro	CFD	3	0.00	0.00	14,303.53
CFD 2021-1 (Maintenance and Public Services)	CFD	1 or 2	0.00	2,722.13	
CFD 2023-1	CFD				4,925.75
CFD 2023-2	CFD				4,000.00
Pleasant View Assessment District	1915	20	0.00	0.00	3,714.82
Assessment District 2021-1 Trevarno Road	1915	9	0.00	0.00	4,862.49

Fiscal Year 2025/26

District	Type	Count	Per Parcel Fee	Per Zone Fee	Base Fee
Tri-Valley Technology Park CFD No. 99-1	CFD	186	$0.00	0.00	3,712.66
CFD 2016-2 Shea Properties	CFD	14	6.16	0.00	5,233.20
CFD 2009-1 El Charro	CFD	3	0.00	0.00	15,018.71
CFD 2021-1 (Maintenance and Public Services)	CFD	1 or 2	0.00	2,858.24	
CFD 2023-1	CFD				5,172.04
CFD 2023-2	CFD				4,200.00
Pleasant View Assessment District	1915	20	0.00	0.00	3,900.56
Assessment District 2021-1 Trevarno Road	1915	9	0.00	0.00	5,105.61

Fiscal Year 2026/27

District	Type	Count	Per Parcel Fee	Per Zone Fee	Base Fee
Tri-Valley Technology Park CFD No. 99-1	CFD	186	$0.00	0.00	3,898.29
CFD 2016-2 Shea Properties	CFD	14	6.47	0.00	5,494.86
CFD 2009-1 El Charro	CFD	3	0.00	0.00	15,769.65
CFD 2021-1 (Maintenance and Public Services)	CFD	1 or 2	0.00	3,001.15	
CFD 2023-1	CFD				5,430.64
CFD 2023-2	CFD				4,410.00
Pleasant View Assessment District	1915	20	0.00	0.00	4,095.59
Assessment District 2021-1 Trevarno Road	1915	9	0.00	0.00	5,360.89

DocuSign Envelope ID: 07F463B4-11D2-4AB7-8887-9E50306856C9

EXHIBIT A

Fiscal Year 2027/28

District	Type	Count	Per Parcel Fee	Per Zone Fee	Base Fee
Tri-Valley Technology Park CFD No. 99-1	CFD	186	$0.00	0.00	4,093.20
CFD 2016-2 Shea Properties	CFD	14	6.79	0.00	5,769.60
CFD 2009-1 El Charro	CFD	3	0.00	0.00	16,558.13
CFD 2021-1 (Maintenance and Public Services)	CFD	1 or 2	0.00	3,151.21	
CFD 2023-1	CFD				5,702.17
CFD 2023-2	CFD				4,630.50
Pleasant View Assessment District	1915	20	0.00	0.00	4,300.37
Assessment District 2021-1 Trevarno Road	1915	9	0.00	0.00	5,628.93

Fiscal Year 2028/29

District	Type	Count	Per Parcel Fee	Per Zone Fee	Base Fee
Tri-Valley Technology Park CFD No. 99-1	CFD	186	$0.00	0.00	4,297.86
CFD 2016-2 Shea Properties	CFD	14	7.13	0.00	6,058.08
CFD 2009-1 El Charro	CFD	3	0.00	0.00	17,386.04
CFD 2021-1 (Maintenance and Public Services)	CFD	1 or 2	0.00	3,308.77	
CFD 2023-1	CFD				5,987.28
CFD 2023-2	CFD				4,862.03
Pleasant View Assessment District	1915	20	0.00	0.00	4,515.39
Assessment District 2021-1 Trevarno Road	1915	9	0.00	0.00	5,910.38

Fees increased by an estimated 5% but will not exceed the annual percent change in the Consumer Price Index

Annual Administration Expenses.....NTE $250 per District/Zone

1915 Act Apportionments

Part 10.5

Apportionment Fee $1,800
plus $50 per parcel

Recording Fee .....At Cost

Part 10 | In addition to fees shown as Part 10.5 above

Resolutions $500

Meeting Attendance.....Hourly, plus travel costs*

**Reasonable and customary travel costs, as needed*

DocuSign Envelope ID: 07F463B4-11D2-4AB7-8887-9E50306856C9

EXHIBIT A

Delinquency Management

Reminder Letters [1] $15
Demand Letters [1] $30
Lienholder Letters [1, 2] $40
Lienholder Research (Notice of Default Not Filed) ..... Hourly
Foreclosure Letters $50
Payment Plan Administration $300
Tax Roll Removal [3, 4] $75
Removal of the Notice of Intent to Remove Delinquent Installments [4] $25
Subsequent Foreclosure Fees [4] $100

All fees are based on a per-parcel/per-district basis, except as noted below.

1. This fee will be recovered as part of the next levy.
2. Letter is sent to lienholders where public Notice of Default has been filed. Fee reduced to $20 when sent jointly with Foreclosure Letter to same parcel.
3. This fee includes filing of the "Notice of Intent to Remove Delinquent Installments" but does not include County fees for removal from the tax roll.
4. This fee is per parcel/per district/per year from the initiation of the foreclosure.

Continuing Disclosure

Fiscal Year 2024/25 CFD 2016-2 Shea Properties $2,380.54
Fiscal Year 2024/25 CFD 99-1 Tri-Valley Technology Park $2,023.80
Fiscal Year 2024/25 Significant Event Notification ..... hourly or $262.50 per event

Fiscal Year 2025/26 CFD 2016-2 Shea Properties $2,468.62
Fiscal Year 2025/26 CFD 99-1 Tri-Valley Technology Park $2,098.68
Fiscal Year 2025/26 Significant Event Notification ..... hourly or $275.63 per event

Fiscal Year 2026/27 CFD 2016-2 Shea Properties $2,559.96
Fiscal Year 2026/27 CFD 99-1 Tri-Valley Technology Park $2,176.33
Fiscal Year 2026/27 Significant Event Notification ..... hourly or $275.63 per event

Fiscal Year 2027/28 CFD 2016-2 Shea Properties $2,654.68
Fiscal Year 2027/28 CFD 99-1 Tri-Valley Technology Park $2,256.85
Fiscal Year 2027/28 Significant Event Notification ..... hourly or $275.63 per event

Fiscal Year 2028/29 CFD 2016-2 Shea Properties $2,752.90
Fiscal Year 2028/29 CFD 99-1 Tri-Valley Technology Park $2,340.35
Fiscal Year 2028/29 Significant Event Notification ..... hourly or $275.63 per event

Dissemination Services
Report Dissemination (per recipient) $25
Significant Event Dissemination (per recipient) $25

DocuSign Envelope ID: 07F463B4-11D2-4AB7-8887-9E50306856C9

EXHIBIT A

Senate Bill 1029 CDIAC Reporting

Fiscal Year 2024/25 Consulting Fees, per Report $619.15
Fiscal Year 2025/26 Consulting Fees, per Report $642.06
Fiscal Year 2026/27 Consulting Fees, per Report $665.82
Fiscal Year 2027/28 Consulting Fees, per Report $690.46
Fiscal Year 2028/29 Consulting Fees, per Report $716.01

D-FAST Online Administration Software

Fiscal Year 2024/25 Annual Fee $6,321.29
Fiscal Year 2025/26 Annual Fee $6,555.18
Fiscal Year 2026/27 Annual Fee $6,797.72
Fiscal Year 2027/28 Annual Fee $7,049.24
Fiscal Year 2028/29 Annual Fee $7,310.06

ANNUAL FEE INCREASES

Cost of living increases may be applied to the Administration services listed above on October 1 each year, beginning with the invoices issued on October 1, 2025. The COLA would be the actual cost of living increase based on the 12-month change from May to May in the U.S. Department of Labor, Bureau of Labor Statistics, Consumer Price Index for all urban consumers for the applicable region for the City's location.

EXPENSES

Customary out-of-pocket expenses will be billed to the City at actual cost to NBS. These expenses may include, but not be limited to, mailing fulfillment, postage, reproduction, telephone, travel, meals and various third-party charges for data, maps, and recording fees.

ADDITIONAL SERVICES

The following table shows our current hourly rates. Additional services authorized by the City but not included in the scope of services will be billed at this rate or the then applicable hourly rate.

Title	Hourly Rate
Director	$250
Associate Director / Engineer	$225
Senior Consultant / Manager	$200
Consultant	$175
Financial Analyst	$150
Clerical / Support	$110

DocuSign Envelope ID: 07F463B4-11D2-4AB7-8887-9E50306856C9

EXHIBIT A

TERMS

Administration, Disclosure and D-FAST services will be invoiced at the beginning of each quarter. Expenses will be itemized and included in the next regular invoice. Fees for all other services will be invoiced upon completion of the task. If the project is prematurely terminated by either party, NBS shall receive payment for work completed. Payment shall be made within 30 days of submittal of an invoice. If payment is not received within 90 days simple interest will begin to accrue at the rate of 1.5% per month. Either party can cancel administration contracts with 30 days' written notice.

City's Responsibilities

The City shall furnish NBS with any pertinent information that is available to City and applicable to the Services. The City shall designate a person to act with authority on its behalf in respect to the Services. The City shall promptly respond to NBS' requests for reviews and approvals of its work, and to its requests for decisions related to the Services. City understands and agrees that NBS is entitled to rely on all information, data and documents (collectively, "Information") supplied to NBS by City or any of its agents, contractors or proxies or obtained by NBS from other usual and customary sources including other government sources or proxies as being accurate and correct and NBS will have no obligation to confirm that such Information is correct and that NBS will have no liability to City or any third party if such Information is not correct.

DocuSign Envelope ID: 07F463B4-11D2-4AB7-8887-9E50306856C9

EXHIBIT B

INSURANCE REQUIREMENTS

Minimum Scope and Limits of Insurance

Consultant/Contractor shall maintain limits no less than:

1. Commercial General Liability, including operations, products, and completed operations, as applicable:
   $2,000,000 per occurrence/**$4,000,000** aggregate for bodily injury, personal injury, and property damage. If Commercial General Liability or other form of insurance with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.
2. Automobile Liability:
   $1,000,000 per accident for bodily injury and property damage.
3. Workers' Compensation and Employer's Liability:
   Statutory limits as required by the State of California including **$1,000,000** Employers' Liability per accident, per employee for bodily injury or disease. A waiver of subrogation is required for Workers' Compensation insurance. If Consultant/Contractor is a sole proprietor, then they must sign "Contractor Release of Liability."
4. Professional Liability/ Cyber Liability/Errors and Omissions:
   $2,000,000 per claim. Consultant/Contractor warrants that any retroactive date under this policy shall precede the effective date of this contract and, either continuous coverage will be maintained, or an extended discovery period will be exercised for a period of two years beginning at the time work under this contract is completed.

Deductibles and Self-Insured Retention

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

Acceptability of Insurers

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

Other Insurance Provisions

The general liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions:

1. The City of Livermore, its officers, officials, employees, and designated

DocuSign Envelope ID: 07F463B4-11D2-4AB7-8887-9E50306856C9

volunteers are to be covered as additional insureds as respects: liability arising out of activities performed by or on behalf of the Consultant/Contractor; or automobiles owned, leased, hired or borrowed by the Consultant/Contractor. The coverage shall contain no special limitations on the scope of protection afforded to the City of Livermore, its officers, officials, employees, or volunteers.

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

Verification of Coverage

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

LIVERMORE
CALIFORNIA

CITY COUNCIL STAFF REPORT **ITEM NO. 5.13**

DATE: June 24, 2024

TO: Honorable Mayor and City Council

FROM: Tina Olson, Administrative Services Director

SUBJECT: Resolution amending the City of Livermore Salary Plan dated July 2024 to reflect salary increases for the Livermore Management Group, Livermore Police Management Association, Police Chief, Management Confidential, and Confidential Employees in accordance with California Code of Regulations, Title 2, Section 570.5.

RECOMMENDED ACTION

Staff recommends the City Council adopt a resolution amending the City of Livermore Salary Plan dated July 2024 to reflect salary increases for the Livermore Management Group, Livermore Police Management Association, Police Chief, Management Confidential, and Confidential Employees.

SUMMARY

Staff recommends the following changes to the Salary Plan:

1. Amend the Livermore Management Group Salary Plan to incorporate a 2.5% salary increase effective July 1, 2024;
2. Amend the Livermore Police Management Association Salary Plan to incorporate a 2.5% salary increase effective July 1, 2024;
3. Amend the Police Chief Salary Range to incorporate a 2.5% salary increase effective July 1, 2024;
4. Amend the Management Confidential and Confidential Salary Plan to incorporate a 2.5% salary increase effective July 1, 2024.

DISCUSSION

Based on previously approved MOU's. Staff is recommending the following changes be made to the Salary Plan.

1. The Livermore Management Group MOU, approved by the City Council on June 28, 2021, provides for a base salary increase of 2.5% effective July 1, 2024.

2. The Livermore Police Management Association MOU, approved by the City Council on June 14,

2021, provides for a base salary increase of 2.5% effective July 1, 2024.

3. Based on Council Resolution 2023-191, the Police Chief is to receive the same salary increases as the Livermore Police Management Association. Increase the salary range for the Police Chief by 2.5% effective July 1, 2024.

4. Management Confidential and Confidential classifications are unrepresented and mirror the Livermore Management Group in salary increases. Increase the salary schedules for these two groups by 2.5% effective July 1, 2024.

FISCAL AND ADMINISTRATIVE IMPACTS

These MOU adjustments have already been included in the FY 2024-25 adopted budget.

COMMUNITY PILLAR

5: A City that Works

GOAL

8: Attract, develop, engage, and retain a diverse and highly skilled workforce across the organization

ATTACHMENTS

1. Resolution
2. Exhibit A - Salary Plan effective July 1, 2024

Prepared by: Kaylin Larson
HR Analyst II

Approved by:

Marianna Marysheva
City Manager

Fiscal Review by:

Tina Olson
Administrative Services Director

IN THE CITY COUNCIL OF THE CITY OF LIVERMORE, CALIFORNIA

A RESOLUTION AMENDING THE CITY OF LIVERMORE SALARY PLAN DATED JULY 2024, IN ACCORDANCE WITH CALIFORNIA CODE OF REGULATIONS, TITLE 2, SECTION 570.5

The proposed City of Livermore Salary Plan, attached hereto as Exhibit A, is intended to make the following amendments:

- Livermore Management Group Memorandum of Understanding increase of 2.5% effective July 1, 2024;
- Livermore Police Management Association Memorandum of Understanding increase of 2.5% effective July 1, 2024;
- Police Chief salary increase of 2.5% effective July 1, 2024;
- Management Confidential and Confidential salary plans increase of 2.5% effective July 1, 2024.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Livermore that, in accordance with California Code of Regulations, Title 2, Section 570.5, it hereby approves the amended Salary Plan dated July 2024, attached hereto as Exhibit A.

On motion of Council Member _____, seconded by Council Member _____, the foregoing resolution was passed and adopted on June 24, 2024, by the following vote:

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

ATTEST:

_____
Deborah L. Elam
Acting City Clerk

APPROVED AS TO FORM:

/s/ Jason R. Alcala
Jason R. Alcala
City Attorney

Exhibit A – Salary Plan dated July 2024

LIVERMORE
CALIFORNIA

Salary Plan

July 2024

CITY OF LIVERMORE
ASSOCIATION OF LIVERMORE EMPLOYEES
EFFECTIVE 10/09/2023

CLASS CODE	CLASSIFICATION	SALARY RANGE @ ANNUAL, MONTHLY, WEEKLY, HRLY RATES STEP A	STEP B	STEP C	STEP D	STEP E
4001	ACCOUNT CLERK	66,819.84	70,054.84	73,441.56	76,997.62	80,731.49
		5,568.32	5,837.90	6,120.13	6,416.47	6,727.62
		1,285.00	1,347.21	1,412.34	1,480.72	1,552.53
		32.12492	33.68021	35.30844	37.01809	38.81322
4000	ACCOUNT CLERK, JUNIOR	60,576.07	63,488.86	66,547.28	69,758.63	73,130.53
		5,048.01	5,290.74	5,545.61	5,813.22	6,094.21
		1,164.92	1,220.94	1,279.76	1,341.51	1,406.36
		29.12311	30.52349	31.99388	33.53780	35.15891
4002	ACCOUNT CLERK, SENIOR	72,677.86	76,195.73	79,889.49	83,767.95	87,840.33
		6,056.49	6,349.64	6,657.46	6,980.66	7,320.03
		1,397.65	1,465.30	1,536.34	1,610.92	1,689.24
		34.94128	36.63256	38.40841	40.27305	42.23093
4020	ACCOUNTANT, JUNIOR	86,792.41	91,054.48	95,529.67	100,228.61	105,162.51
		7,232.70	7,587.87	7,960.81	8,352.38	8,763.54
		1,669.08	1,751.05	1,837.11	1,927.47	2,022.36
		41.72712	43.77619	45.92773	48.18683	50.55890
4010	ACCOUNTING TECHNICIAN	77,171.53	80,914.10	84,843.78	88,969.95	93,302.44
		6,430.96	6,742.84	7,070.32	7,414.16	7,775.20
		1,484.07	1,556.04	1,631.61	1,710.96	1,794.28
		37.10170	38.90101	40.79028	42.77401	44.85694
4030	ADMINISTRATIVE ASSISTANT	80,842.05	84,768.14	88,890.52	93,219.04	97,763.97
		6,736.84	7,064.01	7,407.54	7,768.25	8,147.00
		1,554.65	1,630.16	1,709.43	1,792.67	1,880.08
		38.86637	40.75391	42.73583	44.81685	47.00191
4052	ADMINISTRATIVE CLERK I	60,576.11	63,488.90	66,547.33	69,758.67	73,130.58
		5,048.01	5,290.74	5,545.61	5,813.22	6,094.22
		1,164.93	1,220.94	1,279.76	1,341.51	1,406.36
		29.12313	30.52351	31.99391	33.53782	35.15893
4051	ADMINISTRATIVE CLERK II	64,925.25	68,055.49	71,342.24	74,793.35	78,416.99
		5,410.44	5,671.29	5,945.19	6,232.78	6,534.75
		1,248.56	1,308.76	1,371.97	1,438.33	1,508.02
		31.21406	32.71899	34.29915	35.95834	37.70048
4040	ADMINISTRATIVE TECHNICIAN	80,842.05	84,768.14	88,890.52	93,219.04	97,763.97
		6,736.84	7,064.01	7,407.54	7,768.25	8,147.00
		1,554.65	1,630.16	1,709.43	1,792.67	1,880.08
		38.86637	40.75391	42.73583	44.81685	47.00191
5000	AIRPORT SERVICE ATTENDANT	70,739.04	74,159.99	77,751.97	81,523.55	85,483.71
		5,894.92	6,180.00	6,479.33	6,793.63	7,123.64
		1,360.37	1,426.15	1,495.23	1,567.76	1,643.92
		34.00915	35.65384	37.38075	39.19401	41.09794
5001	AIRPORT SERVICE ATTENDANT SENIOR	75,875.80	79,553.58	83,415.24	87,469.99	91,727.48
		6,322.98	6,629.47	6,951.27	7,289.17	7,643.96
		1,459.15	1,529.88	1,604.14	1,682.12	1,763.99
		36.47875	38.24691	40.10348	42.05288	44.09975

CITY OF LIVERMORE
ASSOCIATION OF LIVERMORE EMPLOYEES
EFFECTIVE 10/09/2023

CLASS CODE	CLASSIFICATION	SALARY RANGE @ ANNUAL, MONTHLY, WEEKLY, HRLY RATES STEP A	STEP B	STEP C	STEP D	STEP E
4060	ANIMAL CONTROL OFFICER	80,206.76	84,101.09	88,190.12	92,483.60	96,991.75
		6,683.90	7,008.42	7,349.18	7,706.97	8,082.65
		1,542.44	1,617.33	1,695.96	1,778.53	1,865.23
		38.56094	40.43322	42.39910	44.46327	46.63065
5010	ASSET MANAGEMENT SPECIALIST	108,017.74	113,302.62	118,851.73	124,678.30	130,796.19
		9,001.48	9,441.89	9,904.31	10,389.86	10,899.68
		2,077.26	2,178.90	2,285.61	2,397.66	2,515.31
		51.93161	54.47241	57.14025	59.94149	62.88278
4130	BUILDING INSPECTOR I	94,998.40	99,632.31	104,497.90	109,606.78	114,971.10
		7,916.53	8,302.69	8,708.16	9,133.90	9,580.93
		1,826.89	1,916.01	2,009.58	2,107.82	2,210.98
		45.67231	47.90015	50.23938	52.69557	55.27457
4131	BUILDING INSPECTOR II	102,077.46	107,065.32	112,302.57	117,801.68	123,575.74
		8,506.46	8,922.11	9,358.55	9,816.81	10,297.98
		1,963.03	2,058.95	2,159.66	2,265.42	2,376.46
		49.07570	51.47371	53.99162	56.63542	59.41141
4132	BUILDING INSPECTOR III	105,063.34	110,200.49	115,594.49	121,258.19	127,205.08
		8,755.28	9,183.37	9,632.87	10,104.85	10,600.42
		2,020.45	2,119.24	2,222.97	2,331.89	2,446.25
		50.51122	52.98100	55.57427	58.29721	61.15629
4133	BUILDING INSPECTOR, SENIOR	110,200.49	115,594.49	121,258.19	127,205.08	133,449.32
		9,183.37	9,632.87	10,104.85	10,600.42	11,120.78
		2,119.24	2,222.97	2,331.89	2,446.25	2,566.33
		52.98100	55.57427	58.29721	61.15629	64.15833
4093	CIVIL ENGINEER, ASSISTANT	113,280.25	118,828.25	124,653.63	130,770.30	137,192.81
		9,440.02	9,902.35	10,387.80	10,897.53	11,432.73
		2,178.47	2,285.16	2,397.19	2,514.81	2,638.32
		54.46166	57.12897	59.92963	62.87034	65.95808
4100	CIVIL ENGINEER, ASSOCIATE	122,668.21	128,685.61	135,003.88	141,638.06	148,603.95
		10,222.35	10,723.80	11,250.32	11,803.17	12,383.66
		2,359.00	2,474.72	2,596.23	2,723.81	2,857.77
		58.97510	61.86808	64.90571	68.09522	71.44421
4091	CIVIL ENGINEER, JUNIOR	99,649.46	104,515.91	109,625.69	114,990.96	120,624.49
		8,304.12	8,709.66	9,135.47	9,582.58	10,052.04
		1,916.34	2,009.92	2,108.19	2,211.36	2,319.70
		47.90839	50.24803	52.70466	55.28412	57.99254
4140	COMMUNITY SERVICE SPECIALIST	70,824.73	74,249.94	77,846.44	81,622.74	85,587.87
		5,902.06	6,187.50	6,487.20	6,801.90	7,132.32
		1,362.01	1,427.88	1,497.05	1,569.67	1,645.92
		34.05035	35.69709	37.42617	39.24170	41.14801
4141	COMMUNITY SERVICE SPECIALIST II	73,934.02	77,630.72	81,512.26	85,587.87	89,867.26
		6,161.17	6,469.23	6,792.69	7,132.32	7,488.94
		1,421.81	1,492.90	1,567.54	1,645.92	1,728.22
		35.54520	37.32246	39.18859	41.14801	43.20541

CITY OF LIVERMORE
ASSOCIATION OF LIVERMORE EMPLOYEES
EFFECTIVE 10/09/2023

CLASS CODE	CLASSIFICATION	SALARY RANGE @ ANNUAL, MONTHLY, WEEKLY, HRLY RATES STEP A	STEP B	STEP C	STEP D	STEP E
4150	CRIME & INTELLIGENCE ANALYST	92,146.03	96,637.32	101,353.16	106,304.81	111,504.03
		7,678.84	8,053.11	8,446.10	8,858.73	9,292.00
		1,772.04	1,858.41	1,949.10	2,044.32	2,144.31
		44.30098	46.46025	48.72748	51.10808	53.60771
4160	CRIME PREVENTION SPECIALIST	76,419.34	80,124.29	84,014.48	88,099.19	92,388.13
		6,368.28	6,677.02	7,001.21	7,341.60	7,699.01
		1,469.60	1,540.85	1,615.66	1,694.22	1,776.69
		36.74007	38.52129	40.39158	42.35538	44.41737
4170	CRISIS INTERVENTION SPECIALIST	97,854.20	102,708.03	107,804.57	113,155.93	118,774.86
		8,154.52	8,559.00	8,983.71	9,429.66	9,897.91
		1,881.81	1,975.15	2,073.16	2,176.08	2,284.13
		47.04529	49.37886	51.82912	54.40189	57.10330
4050	DIVISION CLERK	68,410.33	71,714.84	75,184.57	78,827.77	82,653.16
		5,700.86	5,976.24	6,265.38	6,568.98	6,887.76
		1,315.58	1,379.13	1,445.86	1,515.92	1,589.48
		32.88958	34.47829	36.14643	37.89797	39.73710
4180	ECONOMIC DEVELOPMENT SPECIALIST	88,694.16	93,012.86	97,547.50	102,308.85	107,308.26
		7,391.18	7,751.07	8,128.96	8,525.74	8,942.36
		1,705.66	1,788.71	1,875.91	1,967.48	2,063.62
		42.64142	44.71772	46.89784	49.18695	51.59051
5090	ELECTRICIAN	95,136.49	99,815.77	104,729.03	109,887.93	115,304.79
		7,928.04	8,317.98	8,727.42	9,157.33	9,608.73
		1,829.55	1,919.53	2,014.02	2,113.23	2,217.40
		45.73870	47.98835	50.35050	52.83074	55.43500
4092	ENGINEER, ASSISTANT	108,017.73	113,302.61	118,851.72	124,678.29	130,796.18
		9,001.48	9,441.88	9,904.31	10,389.86	10,899.68
		2,077.26	2,178.90	2,285.61	2,397.66	2,515.31
		51.93160	54.47241	57.14025	59.94149	62.88278
4090	ENGINEER, JUNIOR	95,014.74	99,649.48	104,515.92	109,625.70	114,990.97
		7,917.90	8,304.12	8,709.66	9,135.48	9,582.58
		1,827.21	1,916.34	2,009.92	2,108.19	2,211.36
		45.68016	47.90840	50.24804	52.70466	55.28412
4080	ENGINEERING SPECIALIST	108,017.73	113,302.61	118,851.72	124,678.29	130,796.18
		9,001.48	9,441.88	9,904.31	10,389.86	10,899.68
		2,077.26	2,178.90	2,285.61	2,397.66	2,515.31
		51.93160	54.47241	57.14025	59.94149	62.88278
4070	ENGINEERING TECHNICIAN, ASSIST	92,947.14	97,478.47	102,236.38	107,232.19	112,477.78
		7,745.60	8,123.21	8,519.70	8,936.02	9,373.15
		1,787.45	1,874.59	1,966.08	2,062.16	2,163.03
		44.68613	46.86465	49.15211	51.55394	54.07586
4071	ENGINEERING TECHNICIAN, ASSOC	99,649.46	104,515.91	109,625.69	114,990.96	120,624.49
		8,304.12	8,709.66	9,135.47	9,582.58	10,052.04
		1,916.34	2,009.92	2,108.19	2,211.36	2,319.70
		47.90839	50.24803	52.70466	55.28412	57.99254

CITY OF LIVERMORE
ASSOCIATION OF LIVERMORE EMPLOYEES
EFFECTIVE 10/09/2023

CLASS CODE	CLASSIFICATION	SALARY RANGE @ ANNUAL, MONTHLY, WEEKLY, HRLY RATES STEP A	STEP B	STEP C	STEP D	STEP E
4072	ENGINEERING	103,509.58	108,569.05	113,881.48	119,459.54	125,316.50
	TECHNICIAN, SENIOR	8,625.80	9,047.42	9,490.12	9,954.96	10,443.04
		1,990.57	2,087.87	2,190.03	2,297.30	2,409.93
		49.76422	52.19666	54.75071	57.43247	60.24832
5030	FACILITIES MAINTENANCE	60,247.85	63,144.22	66,185.42	69,378.67	72,731.59
	TRAINEE	5,020.65	5,262.02	5,515.45	5,781.56	6,060.97
		1,158.61	1,214.31	1,272.80	1,334.21	1,398.68
		28.96531	30.35780	31.81991	33.35513	34.96711
5031	FACILITIES MAINTENANCE	67,430.13	70,685.61	74,103.86	77,693.04	81,461.68
	WORKER I	5,619.18	5,890.47	6,175.32	6,474.42	6,788.47
		1,296.73	1,359.34	1,425.07	1,494.10	1,566.57
		32.41833	33.98347	35.62686	37.35242	39.16427
5032	FACILITIES MAINTENANCE	72,289.11	75,787.55	79,460.91	83,317.95	87,367.82
	WORKER II	6,024.09	6,315.63	6,621.74	6,943.16	7,280.65
		1,390.18	1,457.45	1,528.09	1,602.27	1,680.15
		34.75438	36.43632	38.20236	40.05671	42.00376
5033	FACILITIES MAINTENANCE	75,875.80	79,553.58	83,415.24	87,469.99	91,727.48
	WORKER, SENIOR	6,322.98	6,629.47	6,951.27	7,289.17	7,643.96
		1,459.15	1,529.88	1,604.14	1,682.12	1,763.99
		36.47875	38.24691	40.10348	42.05288	44.09975
5034	FACILITIES MAINTENANCE	85,349.29	89,500.73	93,859.75	98,436.73	103,242.55
	WORKER, SUPERVISING	7,112.44	7,458.39	7,821.65	8,203.06	8,603.55
		1,641.33	1,721.17	1,805.00	1,893.01	1,985.43
		41.03331	43.02920	45.12488	47.32535	49.63584
4190	FAMILY THERAPIST	93,505.05	98,064.29	102,851.49	107,878.04	113,155.93
		7,792.09	8,172.02	8,570.96	8,989.84	9,429.66
		1,798.17	1,885.85	1,977.91	2,074.58	2,176.08
		44.95435	47.14629	49.44783	51.86444	54.40189
5040	FLEET SERVICES WORKER	60,247.89	63,144.27	66,185.47	69,378.72	72,731.64
		5,020.66	5,262.02	5,515.46	5,781.56	6,060.97
		1,158.61	1,214.31	1,272.80	1,334.21	1,398.69
		28.96533	30.35782	31.81994	33.35515	34.96713
4200	GIS SPECIALIST	108,017.73	113,302.59	118,851.71	124,678.28	130,796.17
		9,001.48	9,441.88	9,904.31	10,389.86	10,899.68
		2,077.26	2,178.90	2,285.61	2,397.66	2,515.31
		51.93160	54.47240	57.14025	59.94148	62.88277
5050	GROUNDSKEEPER	60,247.85	63,144.22	66,185.41	69,378.66	72,731.58
	TRAINEE	5,020.65	5,262.02	5,515.45	5,781.56	6,060.97
		1,158.61	1,214.31	1,272.80	1,334.21	1,398.68
		28.96531	30.35780	31.81991	33.35513	34.96711
5051	GROUNDSKEEPER I	67,430.13	70,685.61	74,103.86	77,693.04	81,461.68
		5,619.18	5,890.47	6,175.32	6,474.42	6,788.47
		1,296.73	1,359.34	1,425.07	1,494.10	1,566.57
		32.41833	33.98347	35.62686	37.35242	39.16427

CITY OF LIVERMORE
ASSOCIATION OF LIVERMORE EMPLOYEES
EFFECTIVE 10/09/2023

CLASS CODE	CLASSIFICATION	SALARY RANGE @ ANNUAL, MONTHLY, WEEKLY, HRLY RATES STEP A	STEP B	STEP C	STEP D	STEP E
5052	GROUNDSKEEPER II	72,289.11	75,787.56	79,460.91	83,317.95	87,367.82
		6,024.09	6,315.63	6,621.74	6,943.16	7,280.65
		1,390.18	1,457.45	1,528.09	1,602.27	1,680.15
		34.75438	36.43633	38.20236	40.05671	42.00376
5053	GROUNDSKEEPER III	75,875.80	79,553.58	83,415.24	87,469.99	91,727.48
		6,322.98	6,629.47	6,951.27	7,289.17	7,643.96
		1,459.15	1,529.88	1,604.14	1,682.12	1,763.99
		36.47875	38.24691	40.10348	42.05288	44.09975
5055	GROUNDSKEEPER, SUPERVISING	85,349.29	89,500.73	93,859.75	98,436.73	103,242.55
		7,112.44	7,458.39	7,821.65	8,203.06	8,603.55
		1,641.33	1,721.17	1,805.00	1,893.01	1,985.43
		41.03331	43.02920	45.12488	47.32535	49.63584
4210	INFORMATION TECHNOLOGY TECHNICIAN	80,654.75	84,609.95	88,762.91	93,123.52	97,702.15
		6,721.23	7,050.83	7,396.91	7,760.29	8,141.85
		1,551.05	1,627.11	1,706.98	1,790.84	1,878.89
		38.77632	40.67786	42.67448	44.77092	46.97219
4211	INFORMATION TECHNOLOGY TECHNICIAN, SENIOR	88,499.94	92,847.39	97,412.22	102,205.29	107,238.01
		7,375.00	7,737.28	8,117.69	8,517.11	8,936.50
		1,701.92	1,785.53	1,873.31	1,965.49	2,062.27
		42.54805	44.63817	46.83280	49.13716	51.55674
5054	LANDSCAPE MAINTENANCE SPECIALIST	81,112.97	85,052.59	89,189.20	93,532.64	98,093.25
		6,759.41	7,087.72	7,432.43	7,794.39	8,174.44
		1,559.86	1,635.63	1,715.18	1,798.70	1,886.41
		38.99662	40.89067	42.87942	44.96762	47.16022
4230	LIBRARIAN I	73,089.45	76,627.91	80,343.28	84,244.43	88,340.63
		6,090.79	6,385.66	6,695.27	7,020.37	7,361.72
		1,405.57	1,473.61	1,545.06	1,620.09	1,698.86
		35.13916	36.84034	38.62658	40.50213	42.47146
4231	LIBRARIAN II	80,998.52	84,932.43	89,063.03	93,400.16	97,954.15
		6,749.88	7,077.70	7,421.92	7,783.35	8,162.85
		1,557.66	1,633.32	1,712.75	1,796.16	1,883.73
		38.94160	40.83290	42.81876	44.90392	47.09334
4221	LIBRARY ASSISTANT	68,828.76	72,154.18	75,645.87	79,312.15	83,161.75
		5,735.73	6,012.85	6,303.82	6,609.35	6,930.15
		1,323.63	1,387.58	1,454.73	1,525.23	1,599.26
		33.09075	34.68951	36.36821	38.13084	39.98161
4222	LIBRARY ASSISTANT, SUPERVISING	77,171.53	80,914.10	84,843.78	88,969.95	93,302.44
		6,430.96	6,742.84	7,070.32	7,414.16	7,775.20
		1,484.07	1,556.04	1,631.61	1,710.96	1,794.28
		37.10170	38.90101	40.79028	42.77401	44.85694
4220	LIBRARY CLERK	60,576.11	63,488.90	66,547.33	69,758.67	73,130.58
		5,048.01	5,290.74	5,545.61	5,813.22	6,094.22
		1,164.93	1,220.94	1,279.76	1,341.51	1,406.36
		29.12313	30.52351	31.99391	33.53782	35.15893

CITY OF LIVERMORE
ASSOCIATION OF LIVERMORE EMPLOYEES
EFFECTIVE 10/09/2023

CLASS CODE	CLASSIFICATION	SALARY RANGE @ ANNUAL, MONTHLY, WEEKLY, HRLY RATES STEP A	STEP B	STEP C	STEP D	STEP E
5060	MAINTENANCE TRAINEE	60,247.85	63,144.22	66,185.41	69,378.66	72,731.58
		5,020.65	5,262.02	5,515.45	5,781.56	6,060.97
		1,158.61	1,214.31	1,272.80	1,334.21	1,398.68
		28.96531	30.35780	31.81991	33.35513	34.96711
5061	MAINTENANCE WORKER I	67,430.13	70,685.61	74,103.86	77,693.04	81,461.68
		5,619.18	5,890.47	6,175.32	6,474.42	6,788.47
		1,296.73	1,359.34	1,425.07	1,494.10	1,566.57
		32.41833	33.98347	35.62686	37.35242	39.16427
5062	MAINTENANCE WORKER II	72,289.11	75,787.55	79,460.91	83,317.95	87,367.82
		6,024.09	6,315.63	6,621.74	6,943.16	7,280.65
		1,390.18	1,457.45	1,528.09	1,602.27	1,680.15
		34.75438	36.43632	38.20236	40.05671	42.00376
5063	MAINTENANCE WORKER III	75,875.80	79,553.58	83,415.24	87,469.99	91,727.48
		6,322.98	6,629.47	6,951.27	7,289.17	7,643.96
		1,459.15	1,529.88	1,604.14	1,682.12	1,763.99
		36.47875	38.24691	40.10348	42.05288	44.09975
5070	MECHANIC	83,676.63	87,744.45	92,015.64	96,500.41	101,209.42
		6,973.05	7,312.04	7,667.97	8,041.70	8,434.12
		1,609.17	1,687.39	1,769.53	1,855.78	1,946.34
		40.22915	42.18483	44.23829	46.39443	48.65838
5071	MECHANIC SENIOR	90,843.18	95,269.32	99,916.76	104,796.59	109,920.41
		7,570.27	7,939.11	8,326.40	8,733.05	9,160.03
		1,746.98	1,832.10	1,921.48	2,015.32	2,113.85
		43.67461	45.80256	48.03690	50.38298	52.84635
4240	NEIGHBORHOOD PRESERVATION OFFICER	99,649.46	104,515.91	109,625.69	114,990.96	120,624.49
		8,304.12	8,709.66	9,135.47	9,582.58	10,052.04
		1,916.34	2,009.92	2,108.19	2,211.36	2,319.70
		47.90839	50.24803	52.70466	55.28412	57.99254
5020	PARTS AND INVENTORY CONTROL WORKER	70,559.98	73,971.95	77,554.53	81,316.24	85,266.04
		5,880.00	6,164.33	6,462.88	6,776.35	7,105.50
		1,356.92	1,422.54	1,491.43	1,563.77	1,639.73
		33.92307	35.56344	37.28583	39.09435	40.99329
4250	PERMIT TECHNICIAN	71,853.77	75,330.44	78,980.95	82,813.98	86,838.67
		5,987.81	6,277.54	6,581.75	6,901.17	7,236.56
		1,381.80	1,448.66	1,518.86	1,592.58	1,669.97
		34.54508	36.21656	37.97161	39.81441	41.74936
4251	PERMIT TECHNICIAN II	76,721.09	80,441.12	84,347.17	88,448.50	92,754.90
		6,393.42	6,703.43	7,028.93	7,370.71	7,729.58
		1,475.41	1,546.94	1,622.06	1,700.93	1,783.75
		36.88514	38.67362	40.55152	42.52332	44.59370
4260	PLAN CHECK ENGINEER	122,565.32	128,577.57	134,890.42	141,518.94	148,478.88
		10,213.78	10,714.80	11,240.87	11,793.25	12,373.24
		2,357.03	2,472.65	2,594.05	2,721.52	2,855.36
		58.92563	61.81614	64.85116	68.03795	71.38408

CITY OF LIVERMORE
ASSOCIATION OF LIVERMORE EMPLOYEES
EFFECTIVE 10/09/2023

CLASS CODE	CLASSIFICATION	SALARY RANGE @ ANNUAL, MONTHLY, WEEKLY, HRLY RATES STEP A	STEP B	STEP C	STEP D	STEP E
4120	PLANNER, ASSISTANT	99,348.37	104,199.78	109,293.75	114,642.43	120,258.52
		8,279.03	8,683.32	9,107.81	9,553.54	10,021.54
		1,910.55	2,003.84	2,101.80	2,204.66	2,312.66
		47.76364	50.09605	52.54507	55.11655	57.81660
4121	PLANNER, ASSOCIATE	114,642.43	120,258.52	126,155.43	132,347.19	138,848.53
		9,553.54	10,021.54	10,512.95	11,028.93	11,570.71
		2,204.66	2,312.66	2,426.07	2,545.14	2,670.16
		55.11655	57.81660	60.65165	63.62846	66.75410
4122	PLANNER, SENIOR	120,258.55	126,155.45	132,347.21	138,848.55	145,674.96
		10,021.55	10,512.95	11,028.93	11,570.71	12,139.58
		2,312.66	2,426.07	2,545.14	2,670.16	2,801.44
		57.81661	60.65166	63.62847	66.75411	70.03604
4270	POLICE CLERK	66,569.99	69,782.46	73,155.58	76,697.35	80,416.19
		5,547.50	5,815.21	6,096.30	6,391.45	6,701.35
		1,280.19	1,341.97	1,406.84	1,474.95	1,546.47
		32.00480	33.54926	35.17095	36.87373	38.66163
4271	POLICE CLERK, SENIOR	69,782.54	73,155.65	76,697.42	80,416.26	84,321.07
		5,815.21	6,096.30	6,391.45	6,701.36	7,026.76
		1,341.97	1,406.84	1,474.95	1,546.47	1,621.56
		33.54930	35.17099	36.87376	38.66166	40.53898
4272	POLICE CLERK, SUPERVISING	82,386.88	86,390.21	90,593.70	95,007.38	99,641.73
		6,865.57	7,199.18	7,549.48	7,917.28	8,303.48
		1,584.36	1,661.35	1,742.19	1,827.07	1,916.19
		39.60908	41.53375	43.55466	45.67663	47.90468
4280	POLICE IDENTIFICATION TECHNICIAN	83,941.57	88,022.62	92,307.74	96,807.11	101,531.46
		6,995.13	7,335.22	7,692.31	8,067.26	8,460.96
		1,614.26	1,692.74	1,775.15	1,861.68	1,952.53
		40.35652	42.31857	44.37872	46.54188	48.81320
4290	PROPERTY AND EVIDENCE SPECIALIST	70,824.73	74,249.94	77,846.44	81,622.74	85,587.87
		5,902.06	6,187.50	6,487.20	6,801.90	7,132.32
		1,362.01	1,427.88	1,497.05	1,569.67	1,645.92
		34.05035	35.69709	37.42617	39.24170	41.14801
4291	PROPERTY AND EVIDENCE SPECIALIST, SUPERVISING	80,054.86	83,941.59	88,022.64	92,307.76	96,807.13
		6,671.24	6,995.13	7,335.22	7,692.31	8,067.26
		1,539.52	1,614.26	1,692.74	1,775.15	1,861.68
		38.48791	40.35653	42.31858	44.37873	46.54189
4300	PUBLIC SAFETY DISPATCHER	82,386.88	86,390.21	90,593.70	95,007.38	99,641.73
		6,865.57	7,199.18	7,549.48	7,917.28	8,303.48
		1,584.36	1,661.35	1,742.19	1,827.07	1,916.19
		39.60908	41.53375	43.55466	45.67663	47.90468
4301	PUBLIC SAFETY DISPATCHER, SENIOR	86,390.17	90,593.66	95,007.33	99,641.69	104,507.76
		7,199.18	7,549.47	7,917.28	8,303.47	8,708.98
		1,661.35	1,742.19	1,827.06	1,916.19	2,009.76
		41.53374	43.55464	45.67660	47.90466	50.24412

CITY OF LIVERMORE
ASSOCIATION OF LIVERMORE EMPLOYEES
EFFECTIVE 10/09/2023

CLASS CODE	CLASSIFICATION	SALARY RANGE @ ANNUAL, MONTHLY, WEEKLY, HRLY RATES STEP A	STEP B	STEP C	STEP D	STEP E
4302	PUBLIC SAFETY	95,060.69	99,697.72	104,566.58	109,678.90	115,046.82
	DISPATCHER, SUPERVISING	7,921.72	8,308.14	8,713.88	9,139.91	9,587.24
		1,828.09	1,917.26	2,010.90	2,109.21	2,212.44
		45.70225	47.93160	50.27239	52.73024	55.31097
4310	PURCHASING SPECIALIST,	86,517.46	90,843.33	95,385.50	100,154.77	105,162.51
	SUPERVISING	7,209.79	7,570.28	7,948.79	8,346.23	8,763.54
		1,663.80	1,746.99	1,834.34	1,926.05	2,022.36
		41.59493	43.67468	45.85841	48.15133	50.55890
4320	RECYCLING SPECIALIST	88,694.15	93,012.84	97,547.48	102,308.83	107,308.24
		7,391.18	7,751.07	8,128.96	8,525.74	8,942.35
		1,705.66	1,788.71	1,875.91	1,967.48	2,063.62
		42.64142	44.71771	46.89783	49.18694	51.59050
5081	TRAFFIC SIGNAL	73,126.04	76,666.33	80,383.63	84,286.80	88,385.12
	TECHNICIAN TRAINEE	6,093.84	6,388.86	6,698.64	7,023.90	7,365.43
		1,406.27	1,474.35	1,545.84	1,620.90	1,699.71
		35.15675	36.85881	38.64598	40.52250	42.49285
5080	TRAFFIC SIGNAL	78,082.45	81,870.55	85,848.08	90,024.46	94,409.68
	TECHNICIAN	6,506.87	6,822.55	7,154.01	7,502.04	7,867.47
		1,501.59	1,574.43	1,650.92	1,731.24	1,815.57
		37.53964	39.36084	41.27312	43.28099	45.38927
5082	TRAFFIC SIGNAL	85,349.29	89,500.73	93,859.75	98,436.73	103,242.55
	TECHNICIAN, SENIOR	7,112.44	7,458.39	7,821.65	8,203.06	8,603.55
		1,641.33	1,721.17	1,805.00	1,893.01	1,985.43
		41.03331	43.02920	45.12488	47.32535	49.63584
4110	TRANSPORTATION	122,668.21	128,685.61	135,003.88	141,638.06	148,603.95
	ENGINEER, ASSOCIATE	10,222.35	10,723.80	11,250.32	11,803.17	12,383.66
		2,359.00	2,474.72	2,596.23	2,723.81	2,857.77
		58.97510	61.86808	64.90571	68.09522	71.44421
5150	WASTEWATER COLLECTIONS	60,247.85	63,144.22	66,185.41	69,378.66	72,731.58
	SYSTEMS TRAINEE	5,020.65	5,262.02	5,515.45	5,781.56	6,060.97
		1,158.61	1,214.31	1,272.80	1,334.21	1,398.68
		28.96531	30.35780	31.81991	33.35513	34.96711
5151	WASTEWATER COLLECTIONS	69,594.68	72,996.87	76,569.18	80,320.10	84,258.56
	SYSTEMS WORKER I	5,799.56	6,083.07	6,380.77	6,693.34	7,021.55
		1,338.36	1,403.79	1,472.48	1,544.62	1,620.36
		33.45898	35.09465	36.81211	38.61543	40.50892
5152	WASTEWATER COLLECTIONS	76,388.79	80,130.69	84,059.69	88,185.13	92,516.85
	SYSTEMS WORKER II	6,365.73	6,677.56	7,004.97	7,348.76	7,709.74
		1,469.02	1,540.97	1,616.53	1,695.87	1,779.17
		36.72538	38.52437	40.41331	42.39670	44.47925
5153	WASTEWATER COLLECTIONS	83,900.11	88,017.58	92,340.92	96,880.43	101,646.90
	SYSTEMS WORKER III	6,991.68	7,334.80	7,695.08	8,073.37	8,470.58
		1,613.46	1,692.65	1,775.79	1,863.09	1,954.75
		40.33659	42.31614	44.39467	46.57713	48.86870

CITY OF LIVERMORE
ASSOCIATION OF LIVERMORE EMPLOYEES
EFFECTIVE 10/09/2023

CLASS CODE	CLASSIFICATION	SALARY RANGE @ ANNUAL, MONTHLY, WEEKLY, HRLY RATES STEP A	STEP B	STEP C	STEP D	STEP E
5160	WATER DISTRIBUTION OPERATOR TRAINEE	64,302.75	67,401.88	70,655.96	74,072.74	77,660.37
		5,358.56	5,616.82	5,888.00	6,172.73	6,471.70
		1,236.59	1,296.19	1,358.77	1,424.48	1,493.47
		30.91478	32.40475	33.96921	35.61189	37.33672
5161	WATER DISTRIBUTION OPERATOR I	71,988.60	75,472.00	79,129.58	82,970.05	87,002.53
		5,999.05	6,289.33	6,594.13	6,914.17	7,250.21
		1,384.40	1,451.38	1,521.72	1,595.58	1,673.13
		34.60990	36.28462	38.04307	39.88945	41.82814
5162	WATER DISTRIBUTION OPERATOR II	82,438.82	86,444.75	90,650.97	95,067.50	99,704.85
		6,869.90	7,203.73	7,554.25	7,922.29	8,308.74
		1,585.36	1,662.40	1,743.29	1,828.22	1,917.40
		39.63405	41.55998	43.58220	45.70553	47.93502
5163	WATER DISTRIBUTION OPERATOR III	88,848.28	93,174.67	97,717.40	102,487.26	107,495.59
		7,404.02	7,764.56	8,143.12	8,540.61	8,957.97
		1,708.62	1,791.82	1,879.18	1,970.91	2,067.22
		42.71552	44.79551	46.97952	49.27272	51.68057
5164	WATER DISTRIBUTION SENIOR OPERATOR	93,174.69	97,717.42	102,487.28	107,495.61	112,754.39
		7,764.56	8,143.12	8,540.61	8,957.97	9,396.20
		1,791.82	1,879.18	1,970.91	2,067.22	2,168.35
		44.79552	46.97953	49.27273	51.68058	54.20884
5165	WATER DISTRIBUTION SUPERVISING OPERATOR	102,260.14	107,257.14	112,503.97	118,013.15	123,797.80
		8,521.68	8,938.10	9,375.33	9,834.43	10,316.48
		1,966.54	2,062.64	2,163.54	2,269.48	2,380.73
		49.16353	51.56593	54.08845	56.73709	59.51817
5170	WATER RESOURCES COORDINATOR	96,076.78	100,803.07	105,765.69	110,976.43	116,447.72
		8,006.40	8,400.26	8,813.81	9,248.04	9,703.98
		1,847.63	1,938.52	2,033.96	2,134.16	2,239.38
		46.19076	48.46301	50.84889	53.35405	55.98448
5171	WATER RESOURCES COORDINATOR - ELECTRICAL & INSTRUMENTATION	99,815.77	104,729.03	109,887.93	115,304.79	120,992.50
		8,317.98	8,727.42	9,157.33	9,608.73	10,082.71
		1,919.53	2,014.02	2,113.23	2,217.40	2,326.78
		47.98835	50.35050	52.83074	55.43500	58.16947
5100	WR INSTRUMENT CONTROL TECHNICIAN	90,803.82	95,266.47	99,952.26	104,872.33	110,038.40
		7,566.99	7,938.87	8,329.36	8,739.36	9,169.87
		1,746.23	1,832.05	1,922.16	2,016.78	2,116.12
		43.65568	45.80119	48.05397	50.41939	52.90308
5110	WR LABORATORY TECHNICIAN	86,768.80	91,029.71	95,503.66	100,201.29	105,133.82
		7,230.73	7,585.81	7,958.64	8,350.11	8,761.15
		1,668.63	1,750.57	1,836.61	1,926.95	2,021.80
		41.71577	43.76428	45.91522	48.17370	50.54511
5120	WR MECHANIC I	81,088.31	85,103.86	89,320.19	93,747.33	98,395.83
		6,757.36	7,091.99	7,443.35	7,812.28	8,199.65
		1,559.39	1,636.61	1,717.70	1,802.83	1,892.23
		38.98476	40.91532	42.94240	45.07083	47.30569

CITY OF LIVERMORE
ASSOCIATION OF LIVERMORE EMPLOYEES
EFFECTIVE 10/09/2023

CLASS CODE	CLASSIFICATION	SALARY RANGE @ ANNUAL, MONTHLY, WEEKLY, HRLY RATES STEP A	STEP B	STEP C	STEP D	STEP E
5121	WR MECHANIC II	91,455.39	95,989.29	100,749.89	105,748.52	110,997.08
		7,621.28	7,999.11	8,395.82	8,812.38	9,249.76
		1,758.76	1,845.95	1,937.50	2,033.63	2,134.56
		43.96894	46.14870	48.43745	50.84063	53.36398
5131	WR OPERATOR - GRADE I	81,895.01	85,873.73	90,051.41	94,437.95	99,043.82
		6,824.58	7,156.14	7,504.28	7,869.83	8,253.65
		1,574.90	1,651.42	1,731.76	1,816.11	1,904.69
		39.37260	41.28545	43.29395	45.40286	47.61722
5132	WR OPERATOR - GRADE II	85,863.06	90,040.19	94,426.19	99,031.47	103,867.03
		7,155.26	7,503.35	7,868.85	8,252.62	8,655.59
		1,651.21	1,731.54	1,815.89	1,904.45	1,997.44
		41.28032	43.28855	45.39721	47.61128	49.93607
5133	WR OPERATOR - GRADE III	92,663.41	97,180.57	101,923.58	106,903.74	112,132.90
		7,721.95	8,098.38	8,493.63	8,908.65	9,344.41
		1,781.99	1,868.86	1,960.07	2,055.84	2,156.40
		44.54972	46.72143	49.00172	51.39603	53.91005
5130	WR OPERATOR - TRAINEE	69,215.90	72,560.68	76,072.70	79,760.32	83,632.32
		5,767.99	6,046.72	6,339.39	6,646.69	6,969.36
		1,331.08	1,395.40	1,462.94	1,533.85	1,608.31
		33.27688	34.88494	36.57341	38.34631	40.20785
5134	WR SENIOR OPERATOR	97,194.51	101,938.23	106,919.11	112,149.05	117,640.49
		8,099.54	8,494.85	8,909.93	9,345.75	9,803.37
		1,869.13	1,960.35	2,056.14	2,156.71	2,262.32
		46.72813	49.00876	51.40342	53.91781	56.55793
5141	WR SOURCE CONTROL INSPECTOR	91,164.82	95,645.53	100,350.26	105,290.23	110,477.21
		7,597.07	7,970.46	8,362.52	8,774.19	9,206.43
		1,753.17	1,839.34	1,929.81	2,024.81	2,124.56
		43.82924	45.98343	48.24532	50.62030	53.11404
5140	WR SOURCE CONTROL TECHNICIAN	85,835.21	90,010.96	94,395.49	98,999.24	103,833.18
		7,152.93	7,500.91	7,866.29	8,249.94	8,652.77
		1,650.68	1,730.98	1,815.30	1,903.83	1,996.79
		41.26693	43.27450	45.38245	47.59579	49.91980
5135	WR SUPERVISING OPERATOR	106,674.96	111,892.68	117,371.29	123,123.84	129,164.01
		8,889.58	9,324.39	9,780.94	10,260.32	10,763.67
		2,051.44	2,151.78	2,257.14	2,367.77	2,483.92
		51.28604	53.79456	56.42850	59.19415	62.09808
4330	YOUTH SERVICES CASE COORDINATOR	85,414.84	89,569.56	93,932.04	98,512.62	103,322.24
		7,117.90	7,464.13	7,827.67	8,209.39	8,610.19
		1,642.59	1,722.49	1,806.39	1,894.47	1,986.97
		41.06483	43.06229	45.15963	47.36184	49.67415

CITY OF LIVERMORE
POLICE OFFICER'S ASSOCIATION
EFFECTIVE 05/06/2024

CLASS CODE	CLASSIFICATION	SALARY RANGE @ ANNUAL, MONTHLY, WEEKLY, HRLY RATES STEP A	STEP B	STEP C	STEP D	STEP E
3110	POLICE OFFICER	115,358.76	121,126.70	127,183.04	133,542.19	140,219.30
		9,613.23	10,093.89	10,598.59	11,128.52	11,684.94
		2218.44	2329.36	2445.83	2568.12	2696.53
		55.46094	58.23399	61.14569	64.20298	67.41313
3100	POLICE SERGEANT	143,541.70	150,718.78	158,254.72	166,167.46	174,475.83
		11,961.81	12,559.90	13,187.89	13,847.29	14,539.65
		2760.42	2898.44	3043.36	3195.53	3355.30
		69.01043	72.46095	76.08400	79.88820	83.88261
3120	POLICE TRAINEE (Non-Sworn)	40.40550	-	-	-	-

EXHIBIT A

CITY OF LIVERMORE
MANAGEMENT SALARY SCHEDULE
$7,900 - $18,060/month
Effective July 1, 2024

Class Code	Classification	Monthly Salary Range		
		$14,447.70	-	$18,059.62
2010	Assistant Administrative Services Director			
2015	Assistant City Attorney			
2030	Assistant Community Development Director			
2045	Assistant Public Works Director			
2060	City Engineer			
		$13,440.01	-	$16,800.01
2025	Assistant City Engineer			
2050	Building Official			
2090	Finance Manager			
2125	Maintenance and Golf Operations Manager			
2145	Planning Manager			
2220	Water Resources Division Manager			
		$12,776.71	-	$15,970.89
2005	Airport Manager			
2095	Housing & Human Services Manager			
		$12,643.58	-	$15,804.48
2200	Senior Transportation Engineer			
		$12,132.52	-	$15,165.65
2140	Permit Center Manager			
		$12,108.13	-	$15,135.16
2190	Senior Civil Engineer			
		$11,963.50	-	$14,954.37
2070	IT Operations Manager			
2115	Information Technology Manager			
		$11,615.05	-	$14,518.81
2055	City Clerk			
2100	Housing Programs Manager			
2105	Human Services Programs Manager			
2165	Police Support Services Manager			
2170	Principal Planner			
2240	Youth and Family Services Manager - Clinical			
		$10,966.23	-	$13,707.79
2035	Assistant Finance Manager			
2040	Assistant Library Director			
2085	Economic Development Manager			
2120	Inspection & Neighborhood Preservation Manager			
2225	Water Resources Operations Manager			
2230	Water Resources Technical Programs Manager			
2245	Youth and Family Services Manager - Programs			

CITY OF LIVERMORE
MANAGEMENT SALARY SCHEDULE
$7,900 - $18,060/month
Effective July 1, 2024

Class Code	Classification	Monthly Salary Range		
		$10,424.41	-	$13,030.51
2000	Accounting Supervisor			
2110	Information Technology Coordinator			
2195	Management Analyst, Senior			
2175	Public Works Manager			
2210	Systems Administrator			
2215	Water Distribution Operations Manager			
		$10,313.76	-	$12,892.20
2065	Construction Inspection Manager			
		$10,266.69	-	$12,833.36
2075	Deputy City Attorney			
2150	Police Business Services Manager			
2155	Police Facility & Equipment Manager			
		$9,742.94	-	$12,178.68
2020	Assistant City Clerk			
2135	Management Analyst II			
2160	Police Media & Community Relations Analyst			
2180	Public Works Supervisor			
		$7,923.28	-	$9,904.10
2080	Deputy City Clerk			
2130	Management Analyst I			
2205	Supervising Librarian			
2235	Water Resources Communications Representative			

CITY OF LIVERMORE
MANAGEMENT CONFIDENTIAL SALARY SCHEDULE
$7,730 - $19,000/month

Effective July 1, 2024

Class Code	Classification	Monthly Salary Range		
2440	Assistant City Attorney, Senior (Confidential)	$15,576.62	-	$19,470.78
2400	Assistant to the City Manager (Confidential)	$12,776.71	-	$15,970.89
2420	Human Resources Manager (Confidential)	$13,440.01	-	$16,800.01
2450	Human Resources Analyst, Senior (Conf)	$10,424.41	-	$13,030.51
2411	Human Resources Analyst II (Confidential)	$9,742.94	-	$12,178.68
2410	Human Resources Analyst I (Confidential)	$7,923.28	-	$9,904.10
2460	Management Analyst, Senior (Confidential)	$10,424.41	-	$13,030.51
2431	Management Analyst II (Confidential)	$9,742.94	-	$12,178.68
2430	Management Analyst I (Confidential)	$7,923.28	-	$9,904.10
2465	Risk Manager (Confidential)	$11,767.27	-	$14,709.09

CITY OF LIVERMORE
POLICE MANAGEMENT SALARY SCHEDULE
$14,860 - $23,050/month
Effective July 1, 2024

Class Code	Classification	Salary Range		
3000	Police Captain	$18,433.26	-	$23,041.57
3010	Police Lieutenant	$14,863.78	-	$18,579.73

CITY OF LIVERMORE
CONFIDENTIAL SALARY SCHEDULE
$5,240 - $10,940/month
Effective July 1, 2024

Class Code	Classifications	Monthly Salary Range		
2600	Administrative Receptionist	$5,248.02	-	$6,560.02
2610	Administrative Specialist I	$6,074.42	-	$7,593.03
2611	Administrative Specialist II	$6,831.78	-	$8,539.72
2620	Executive Assistant	$8,745.71	-	$10,932.14
2630	Human Resources Clerk I	$6,074.42	-	$7,593.03
2631	Human Resources Clerk II	$6,682.54	-	$8,353.18
2640	Human Resources Technician	$7,332.50	-	$9,165.63
2650	Law Office Supervisor	$8,745.71	-	$10,932.14
2660	Legal Assistant	$7,262.82	-	$9,078.52

CITY OF LIVERMORE
EXECUTIVE MANAGEMENT SALARY SCHEDULE
$14,095 - $25,416/month
Effective November 20, 2023

Class Code	Classification	Monthly Salary Range		
1215	Administrative Services Director	$16,435.43	-	$20,544.29
1200	Assistant City Manager	$17,729.26	-	$22,161.58
1220	Community Development Director	$16,435.43	-	$20,544.29
1205	Deputy City Manager	$14,095.31	-	$17,619.14
1210	Deputy City Manager/City Clerk	$14,095.31	-	$17,619.14
1225	Innovation & Economic Development Dir	$16,435.43	-	$20,544.29
1230	Library Services Director	$16,435.43	-	$20,544.29
1235	Police Chief*	$20,841.11	-	$26,051.39
1240	Public Works Director	$16,435.43	-	$20,544.29

*2.5% Salary Adjustment effective 07/01/2024

CITY OF LIVERMORE
APPOINTED MANAGEMENT

Class Code	Classification	Annual Salary	Effective
1000	City Manager	$344,796	11/20/2023
1100	City Attorney	$307,580	11/20/2023

CITY OF LIVERMORE
UNCLASSIFIED AND HOURLY SALARY SCHEDULE

Class Code	Classification	Hourly Salary Range	Effective Date
8200	Department Assistant	$16.00 - $26.00	01/01/24
8205	Field/Maintenance Aide	$16.00 - $26.00	01/01/24
8210	Law Clerk	$16.00 - $26.00	01/01/24
8230	Temporary Librarian	$22.00 - $32.00	01/01/24
8235	Temporary Library Assistant	$20.00 - $30.00	01/01/24
8240	Temporary Library Clerk	$18.00 - $28.00	01/01/24
8215	Library Aide	$16.00 - $20.00	01/01/24
8220	Police Cadet	$16.00 - $26.00	01/01/24
8225	Special Projects Coordinator	$20.00 - $100.00	12/20/21

LIVERMORE
CALIFORNIA

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

DATE: June 24, 2024

TO: Honorable Mayor and City Council

FROM: Tina Olson, Administrative Services Director

SUBJECT: Hearing to receive and consider all evidence and reports regarding the adoption of a Master Fee Schedule. The Master Fee Schedule establishes fees for City services. The fee resolution and accompanying justification includes new, increased, and decreased fees into one document.

RECOMMENDED ACTION

Staff recommends the City Council adopt a resolution adopting the City's Master Fee Schedule, incorporating certain fee changes and superseding resolution 2023-128.

SUMMARY

The Master Fee Schedule reflects fees charged by all City departments for certain services provided. The fees are intended to recover the actual cost of providing services, which includes direct labor costs, administration or “overhead” costs, and the cost of materials and supplies.

DISCUSSION

The intent of a Master Fee Schedule is to set forth, in a single document, the fees for all city-related services and activities (i.e., zoning and building permits application fees, inspection fees, fees for services provided by the enterprise fund, utility rates, and so forth) that are approved by City Council and/or regulated by state or federal agencies. It is an industry best practice to review and update the Master Fee Schedule annually, allowing easy access to view fees for services, charges and providing a better understanding to the public of all fees charged by the City of Livermore. This Schedule covers only departmental/divisional fees for services, not property development-related fees (development impact fees or infrastructure fees).

Updating and amending the Master Fee Schedule annually will allow for:

1. A centralized location to guide City staff and the public in quickly locating the appropriate fees for services by department and activities.
2. Fees to be added, revised, or deleted periodically in conjunction with the biennial budget

preparation process or annual budget update.

Staff reviews the comprehensive Master Fee Schedule as part of the biennial budget development process and annual update to determine that the fees listed are current. Effective July 1, 2024, most fees will adjust by the annual change of CPI (February 2024 – 2.4%), unless indicated otherwise. All new or modified fees are based on the City's cost to provide the service or, in the case of the Airport conference room rental rate, based on market rates.

This Master Fee Schedule is a compilation of all fees previously approved by the Council, except for the items noted below.

The tables included in Attachment 1 identify the proposed new fees added to the Master Fee Schedule or fees modified, as requested by a City department.

Community Development - Building

Table 1 – General Administration – Special Event Fees

The new Special Event fees will recover some of the City's administrative costs associated with issuing special event permits by charging a $50 (approximately ¼ hour rate) to non-profit organizations and a $160 (¾ hour rate) to for-profit organizations based on a $213 hourly rate. The proposed Special Event fees reflects the amount of staff time from multiple departments reviewing and processing Special Event permits. In addition, the fee includes printed no-parking signs for many of the events at no extra charge. The proposed new fees are considerably lower than most special event application fees/permits charged by the following neighboring cities:

City of Pleasanton – $75 for non-profit and $250 for for-profit
City of San Ramon – $600
City of Hayward – $221
Union City – actual cost of personnel and other police services
City of Fremont – ranging from $50 (Class 1) to $200 (Class V)

Table 2 – Commercial/Residential Permit Fees – Misc Items

The proposed 433A Recordation fee is new and required by State law. This fee is for recording certain documents related to real estate transactions. Out of the $22 fee, $11 goes to the State, and $11 recovers the City Clerks' recording costs.

The proposed modifications, whether they clarify fee descriptions or quantities, and the new proposed fees will enhance the efficiency of our permit technicians by including more specific descriptions and by consolidating fee categories in one category in one location rather than having to search multiple locations to assign the fees. These changes are also intended to ensure that the amounts charged remain consistent within their respective categories.

Table 3 – Building Permit Fees – Mechanical, Plumbing, and Electrical

Staff proposes modifications and new fees to provide clarity within the permitting system by specifically listing each type of permit on its own. This clarity will enable the City's permit technicians to work more

efficiently. For instance, the rates for whole house wiring, both with and without a subpanel, are now aligned with other fees in this category.

Airport

Table 4 – Airport Fees

The fees in Table 4 are existing fees charged to the Airport's customers but were not in the previous Master Fee Schedule. The Gate Remote fee of $75 is a cost passed on to the tenant. Conference room rental and related fees were established in 2015 and published on the airport meeting room use conditions and application.

Fire

Table 5 – Fire

The proposed new fees will provide cost recovery from the responsible party for HazMat Incidents and standby teams, such as the Rodeo, which require paramedics to standby during their event. The proposed fees are based on the fully burdened rates of personnel and include apparatus costs per California Governor's Office of Emergency Services (Cal OES) apparatus rates.

Fees Removed from the Master Fee Schedule

The following fees are no longer applicable and will therefore be removed from the Master Fee Schedule:

Table 6 – General Administration Fee on Civil Marriage Ceremony

Table 7 – Commercial/Residential Permit Fees on Banner

Table 8 – Land Use and Entitlements and Permits – Zoning Use Permit – Large Family Daycare

Table 9 – Airport Landing fees

FISCAL AND ADMINISTRATIVE IMPACTS

The approval of this Master Fee Schedule will have a minimal fiscal or administrative impact. These fees are either the existing fees or included in the FY 2024-25 budget by the respective departments.

COMMUNITY PILLAR

5: A City that Works

GOAL

17: Ensure effective use of public resources

ATTACHMENTS

1. Tables 1-9
2. Resolution
3. Exhibit A - Master Fee Schedule

Prepared by: Ki Lam
Management Analyst

Approved by:

Marianna Marysheva
City Manager

Fiscal Review by:

Tina Olson
Administrative Services Director

Table 1

General Administration			
Description	**Fee**		**Notes**
Special Event Fee - Non-Profit	$	50.00	New
Special Event Fee - For Profit		160.00	New

Table 2

Commercial/Residential Permit Fees - Misc Items			
Description	**Fee**		**Notes**
Remodel - Residential			
433A Recordation Fee	$	22.00	New
Signs			
Wall Mounted Fixture; unit 1-3		642.00	Modified
Window or Sliding Glass Door			
Residential Replacement - Retrofit (qty. 1-4)		322.00	Modified
Residential Replacement - New Construction (qty. 1-4)		428.00	New
Residential Replacement - Retrofit (qty. 5 or more)		428.00	Modified
Residential Replacement - New Construction (qty. 5 or more)		642.00	New
Additional Services			
Additional Building and Neighbor Preservation Inspection		213.00	Modified
Banner (Building Fee)			
Pole-Banner Permit (each additional banner, minimum 3 banners)		93.00	New

Table 3

Building Permit Fees - Mechanical, Plumbing, and Electrical			
Description	**Fee**		**Notes**
Unit Fees			
Electrical heat pump water heater with electrical	$	322.00	Modified
Electrical heat pump water heater without electrical		213.00	New
Unit Fees			
Whole house wiring without subpanel		428.00	New
Whole house wiring with subpanel		534.00	New

Table 4

Airport Fees			
Description	**Unit**	**Rates**	**Notes**
Air Ships Mooring Fee	Per Liner ft/day	$ 1.00	New
Gate Remote Fee		75.00	New
Conference Room Rental and Related Fees (A)			
Cleaning fee	Per event	50.00	New
Group rental			
City of Livermore, Livermore Airport	Per event	Free	New
Livermore Airport established aviation groups, clubs or organizations	Per event	Free	New
Non-resident, non-aviation groups	Hour	50.00	New
Other Fees			
Damage Deposit: Released following conclusion of event(s)	Hour	300.00	New
Airport Attendant on Duty: After hours, 2-hour minimum	Hour	200.00	New
Each hour beyond 2 hours	Hour	80.00	New
Equipment Usage			
LCD monitor	Per event	25.00	New
Conference Phone	Per event	25.00	New

Table 5

Fire Prevention - Miscellaneous Administrative Fees			
Description	**Unit**	**Rates**	**Notes**
Response to incidence/stand-by			
Truck Company (4-person rig)	Per Hour	$ 523.85	New
Engine Company (3-person rig)	Per Hour	438.64	New
Paramedic Rescue (2-person rig)	Per Hour	313.57	New
Specialized Equipment	Actual	Actual Cost	New
Supplies/Equipment Used	Actual	Actual Cost	New
Battalion Chief	Per Hour	113.97	New
Fire Inspector	Per Hour	121.71	New
HazMat Inspector	Per Hour	123.26	New

Truck Company includes hourly rates of:

Fire Captain	- $106.25
Fire Engineer	- 96.87
Firefighter Paramedic	- 93.56
Firefighter	- 85.21
Apparatus (Type 1)	- 141.96
Total	$523.85

Truck Company includes hourly rates of:

Fire Captain	- $106.25
Fire Engineer	- 96.87
Firefighter Paramedic	- 93.56
Apparatus (Type 1)	- 141.96
Total	$438.64

Paramedic Rescue includes hourly rates of:

Fire Engineer	- $ 96.87
Firefighter Paramedic	- 93.56
Apparatus (Type IV-VII)	- 123.14
Total	$313.57

Table 6

General Administration			
Description	**Fee**		**Notes**
Civil Marriage Ceremony			
Administrative Fee	$	88.95	Remove
Witness Fee		11.87	Remove

Table 7

Commercial/Residential Permit Fees - Misc Items			
Description	**Fee**		**Notes**
Banner (Building Fee)			
Pole-Banner Permit (up to 3 banners where hardware exists)	$	563.00	Remove

Table 8

Land Use Entitlements and Permits			
Description	**Fee**		**Notes**
Zoning Use Permit – Large Family Daycare	$	435.00	Remove

Table 9

Airport Fees			
Description	**Unit**	**Rates**	**Notes**
Landing Fees			
0 - 3,500 pounds	Daily	$ 6.00	Remove
0 - 3,500 pounds	Monthly	14.00	Remove
3,501 - 6,250 pounds	Daily	12.00	Remove
3,501 - 6,250 pounds	Monthly	28.00	Remove
6,251 - 12,500 pounds	Daily	24.00	Remove
6,251 - 12,500 pounds	Monthly	56.00	Remove
12,501 - 25,000 pounds	Daily	48.00	Remove
12,501 - 25,000 pounds	Monthly	96.00	Remove
25,001 - 50,000 pounds	Daily	96.00	Remove
25,001 - 50,000 pounds	Monthly	24.00	Remove
50,001 pounds and above	Daily	192.00	Remove
50,001 pounds and above	Monthly	448.00	Remove

IN THE CITY COUNCIL OF THE CITY OF LIVERMORE, CALIFORNIA

A RESOLUTION ADOPTING THE MASTER FEE SCHEDULE INCORPORATING CERTAIN FEE CHANGES FOR SERVICES PROVIDED AND SUPERSEDING RESOLUTION 2023-128

The Livermore Municipal Code and the California Government Code provide that the City Council may establish fees for various City of Livermore services by resolution. These fees may not exceed the reasonable cost of providing the services.

On June 24, 2024, the City Council held a public hearing at which oral and written presentations were made regarding adopting the master fee schedule and changes to fees for Building, Airport, and Fire. The proposed fee schedule does not exceed the reasonable cost of providing services to the public.

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

1. Adopts the Master Fee Schedule, attached hereto as Exhibit A; and,

2. Authorizes fees adopted in the Master Fee Schedule to supersede fees previously effectuated by Resolution No. 2023-128, effective July 1, 2024.

On motion of Council Member _____, seconded by Council Member _____, the foregoing resolution was passed and adopted on June 24, 2024, by the following vote:

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

ATTEST:

_____
Deborah L. Elam
Acting City Clerk

APPROVED AS TO FORM:

/s/ Jason R. Alcala
Jason R. Alcala
City Attorney

Exhibit A – Master Fee Schedule

LIVERMORE CALIFORNIA

MASTER FEE SCHEDULE

INTRODUCTION

The City Council has the authority to establish and change certain fees or service charges subject to legal requirements within California State law.

The Master Fee Schedule compiles various fees the City charges for its services and products to assist City staff and the public in locating the appropriate fees. The last Master Fee Schedule was adopted in June 2023. Since that time, there were a few resolutions added/modified individual fees for services, which are incorporated in this Schedule.

Although most City fees, service costs such as administrative, licenses, permits, rental, inspection, and utility rates are included in this consolidated master fee schedule. This schedule does not show development impact fees, landscape maintenance district, or fees required by a City contract such as franchise fee.

The intention for the Master Fee Schedule is for it to be updated annually as part of the budget process. At that time, the Council may consider fee increases to bring the fees closer in line with the actual costs of providing a particular service. The increase could be based on a cost-of-living adjustment calculated since the fee was last set (using CPI or another inflationary index). The City applies the annual change in February CPI (2.4 percent), San Francisco area to update the new fees.

The Administrative Services Department is charged with the general maintenance of the Schedule. This responsibility includes reviewing requests to modify the document, periodic review of fees to assure that they are equitable and reflect the cost of services, and preparation of transmittals to the Council for recommended changes to fees.

In addition, all City Departments have a role in fee schedule policies and maintenance. All Departments that levy fees are responsible for:

1. Including all fees that are levied in the Master Fee Schedule;
2. Keeping updated copies of the Schedule available and in clear display;
3. Proposing fees which reflect the cost of services provided by the City; and
4. Providing for the annual revision of fees or proposing changes in fees consistent with the intent of the Master Fee Schedule.

Every effort has been made to ensure the accuracy of data presented in this Schedule. However, if any discrepancies are noted, please call Finance at (925) 960-4300. Fees shown in the Master Fee Schedule are those in effect as of July 1, 2024, unless otherwise noted.

LIVERMORE CALIFORNIA

MASTER FEE SCHEDULE

Table of Contents

Description	Page Number(s)
General Administration	3
Business Fees	4
Animal License Fee	4
New Construction Fees (All Construction Types)	5-8
Commercial/Residential Permit Fees - Misc. Items	9-12
Building Permit Fees - Mechanical, Plumbing, & Electrical	13-16
Land Use Entitlements and Permits	17-19
Encroachment and Miscellaneous Permit Fees	20
Maps and Improvement Plans	21
Housing Services Program Fees	22
Fire Prevention - Construction Services	23-24
Fire Prevention - Annual Fire Code & Unified Program Activity Fees	25-27
Fire Prevention - Miscellaneous Fees	28
Police Department Fees	29
Library Fees	30
Sewer Rates	31-32
Water Rates - July 1 to December 31, 2024	33-35
Water Meter Purchase Prices	36
Water Rates - effective January 1, 2025	37-39
Airport Fees	40-41

LIVERMORE CALIFORNIA

MASTER FEE SCHEDULE

General Administration			
Description	**Unit**	**Fee**	**Source**
The City may bill for special services, such as support for special events, cleanup of hazardous material spills, protection of public property, and public safety due to unusual events.		Based on total actual direct and indirect costs	Resolution 2023-128
Overhead Rate [1]		Based on applicable Overhead Rate	Resolution 2023-128
Vehicle and Equipment Rental		Per latest Caltrans "Labor Surcharge and Equipment Rental Rates" Publication	Resolution 2023-128
Special Event Fee - Non-Profit	Each	$ 50.00	New, see staff report
Special Event Fee - For Profit	Each	160.00	New, see staff report
Returned Check Fee	Each	11.87	Resolution 2023-128
Credit/Debit Card Fee (pass-through) [2]	Per Transaction	Actual Cost	Resolution 2023-128
Technology Fee (per building permit)		2%	Resolution 2023-128
Copying			
Miscellaneous copying (except for copying done pursuant to subpoena dcues tecum.)			
Standard 8-1/2 x14 or less (black/white)	Per Page	0.24	Resolution 2023-128
Standard 8-1/2 x14 or less (color)	Per Page	0.30	Resolution 2023-128
11x17 documents	Per Page	0.59	Resolution 2023-128
Oversized documents		Actual Cost	Resolution 2023-128
Copying pursuant to Subpoena duces tecum (Evidence code §1563)			
Documents 8 1/2 x 14 or less	Per Page	0.10	Resolution 2023-128
Documents on microfilm/laser fiche	Per Page	0.20	Resolution 2023-128
Clerical costs incurred in locating and making records available	Per Hour or Fraction Thereof	18.97	Resolution 2023-128
Copying pursuant to Political Reform Act (Government Code § 81008)			
Copies of reports and filings [3]	Per Page	0.10	Resolution 2023-128
Retrieval fee for reports/statements older > 5 years old [3]	Per Request	5.00	Resolution 2023-128
USB Drive		Actual Cost	Resolution 2023-128
Posting/Mailing			
Mailing Envelope For USB		1.77	Resolution 2023-128
Postage Charges		Actual Cost	Resolution 2023-128
Civil Marriage Ceremony			
Administrative Fee		88.95	To be deleted, see staff report
Witness Fee		11.87	To be deleted, see staff report
Witness Fees			
City employee appearing in litigation in which the City is not a party (Government Code §68096.1)		Actual Cost plus travel and expenses ($275 deposit required per day of attendance)	Resolution 2023-128
Police Officer or firefighter appearing in civil actions (Government code §68097.2, Criminal actions (Government code §68098 & Penal code §1329		Actual Cost plus travel and expenses ($275 deposit required per day of attendance)	Resolution 2023-128
Criminal actions (Government code §68098, Penal code §1329 & §1329.1)	Each Day	$12 plus mileage	Resolution 2023-128

[1] When billing for services not specifically set forth in this fee schedule (e.g. a hazardous material cleanup)

[2] Credit/debit Card processing fee varies, ranging from 2.85% to 3%

[3] No change per Government Code § 81008

LIVERMORE CALIFORNIA

MASTER FEE SCHEDULE

Business Fees			
Description	**Unit**	**Fee**	**Source**
Business License			
Additional branch fee	Each	$ 16.61	Resolution 2023-128
Duplicate license fee	Each	10.67	Resolution 2023-128
Change of location fee	Each	16.61	Resolution 2023-128
Registration fee	Each	30.83	Resolution 2023-128
Tobacco Retailer License			
Initial license registration fee	Each	36.00	Ordinance 2088
License fee	Each	969.00	Ordinance 2088

Animal License Fees			
Description	**Unit**	**Fee**	**Source**
Dog License*			
Dog License for a spayed or neutered dog			
1 Year	Each	$ 17.29	Resolution 2023-128
3 Years	Each	34.57	Resolution 2023-128
Dog license for a non-spayed or non-neutered dog		-	
1 Year	Each	63.39	Resolution 2023-128
3 Years	Each	89.89	Resolution 2023-128
Lost tag replacement	Each	0.50	Ordinance 311
Senior Discount on dog license (62 and up older)	Each	50%	Resolution 2023-128
Other Animals Permit Fees			
Animal Fancier **	Each Per Year	115.25	Resolution 2023-128
Pet Shop	Each Per Year	115.25	Resolution 2023-128
Exotic	Each Per Year	115.25	Resolution 2023-128
Penalty Fee for delinquent payments	Each	17.29	Resolution 2023-128

* Dog licenses are to be renewed quarterly throughout the year for one- or three-year periods depending on owner choice and the effective life of the rabies vaccine. The calendar quarter when the rabies certificate is issued establishes the renewal period as follows:

License Expiration Date	Delinquent Date
July thru Sept.	November 1st
Oct. thru Dec.	February 1st
Jan. thru March	May 1st
April thru June	August 1st

**Other animal permit fees are renewed annually, due 12/31 and delinquent 2/1. Animals that require a permit include: Doves, pigeons, ducks, geese, swans, chickens, honeybees, domestic dogs (4 or more dogs), cat, horses, donkey, burro, cows, sheep, goats, rabbits, pot bellied pigs, and reptiles

LIVERMORE CALIFORNIA

MASTER FEE SCHEDULE

New Construction Fees (All Construction Types)						
		2006/07 Data:	Construction Types I, II, Ill, V- A rated		Construction Types I, II, Ill, IV, V- B rated	
IBC Class	IBC Occupancy Type	Project Size	Base Cost@ Threshold Size ^	each Additional 100 s.f. ^	Base Cost@ Threshold Size ^	each Additional 100 s.f. ^
A-1 Greater Than 50 Occupants	Assembly uses, usually with fixed seating, intended for the production and viewing of the performing arts or motion picutres	5,000	$ 22,093.00	$ 60.74	$ 18,054.00	$ 47.31
		10,000	25,131.00	66.28	20,420.00	53.49
		20,000	31,758.00	53.34	25,769.00	42.62
		30,000	37,091.00	56.79	30,031.00	45.22
		50,000	48,452.00	23.76	39,075.00	19.05
		100,000	60,330.00	60.32	48,596.00	48.60
A-2	Assembly uses intended for food and/or drink consumption	1,000	15,622.00	60.38	13,618.00	49.95
		5,000	18,037.00	96.81	15,618.00	83.16
		10,000	22,878.00	39.91	19,777.00	33.90
		20,000	26,868.00	28.62	23,166.00	24.22
		50,000	35,452.00	17.65	30,429.00	15.05
		100,000	44,279.00	44.28	37,953.00	37.95
A-3, A-4	Assembly uses intended for worship; Assembly uses intended for viewing of outdoor sporting events and activities with spectator seating	1,000	19,693.00	66.38	16,877.00	54.75
		5,000	22,346.00	117.54	19,066.00	99.76
		10,000	28,225.00	47.10	24,054.00	39.66
		20,000	32,934.00	33.39	28,019.00	28.04
		50,000	42,952.00	21.01	36,431.00	17.73
		100,000	53,458.00	53.46	45,296.00	45.29
B	Dental/Medical	500	16,423.00	113.46	14,261.00	94.06
		2,500	18,693.00	197.35	16,141.00	169.33
		5,000	23,626.00	79.47	20,375.00	67.52
		10,000	27,599.00	56.46	23,752.00	47.80
		25,000	36,068.00	35.40	30,923.00	30.17
		50,000	44,919.00	89.84	38,466.00	76.93
B	Buildings or spaces for office professional or service type transactions, including storage of records and accounts; restaurants with less than 50 occupants	1,000	13,469.00	48.24	11,802.00	39.15
		5,000	15,400.00	99.26	13,367.00	87.71
		10,000	20,362.00	27.62	17,752.00	22.49
		20,000	23,123.00	23.38	20,001.00	19.59
		50,000	30,134.00	13.77	25,879.00	11.54
		100,000	37,020.00	37.03	31,650.00	31.65
E	Buildings or rooms used by more than 6 persons for educational purposes up to the 12th grade. Day care for 6 or more children older than 2-1/2 years of age	500	14,055.00	92.03	12,327.00	76.81
		2,500	15,897.00	166.56	13,862.00	144.30
		5,000	20,060.00	66.32	17,471.00	56.88
		10,000	23,377.00	46.93	20,316.00	40.10
		25,000	30,415.00	29.66	26,330.00	25.51
		50,000	37,828.00	75.66	32,707.00	65.41
F	Factory and industrial uses that include the fabrication or manufacturing of Moderate and Low Hazard materials	1,000	16,254.00	69.75	14,052.00	56.91
		5,000	19,044.00	115.79	16,328.00	100.82
		10,000	24,834.00	33.80	21,370.00	27.60
		20,000	28,215.00	33.51	24,130.00	27.51
		50,000	38,265.00	18.87	32,383.00	15.59
		100,000	47,700.00	47.70	40,173.00	40.17

^ = Source: Resolution 2023-128

LIVERMORE CALIFORNIA

MASTER FEE SCHEDULE

New Construction Fees (All Construction Types) - (Con't)						
		2006/07 Data:	Construction Types I, II, Ill, V- A rated		Construction Types I, II, Ill, IV, V- B rated	
IBC Class	IBC Occupancy Type	Project Size	Base Cost@ Threshold Size ^	each Additional 100 s.f. ^	Base Cost@ Threshold Size ^	each Additional 100 s.f. ^
H-1, H-2, H-3, H-4, H-5	High Hazard: Detonation hazard, Deflagration hazard or hazard from accelerated burning; Materials that readily support combustion; Materials that are health hazards	1,000	$ 23,816.00	$ 98.38	$ 19,344.00	$ 75.96
		5,000	27,750.00	150.47	22,382.00	120.40
		10,000	35,275.00	62.92	28,403.00	49.81
		20,000	41,565.00	45.36	33,382.00	35.77
		50,000	55,173.00	27.73	44,112.00	22.01
		100,000	69,035.00	69.03	55,119.00	55.12
1-1	Housing of clients on a 24-hour basis in a supervised residential environment providing personal care services	1,000	13,680.00	46.06	11,609.00	36.53
		5,000	15,522.00	81.63	13,069.00	68.11
		10,000	19,603.00	32.71	16,476.00	26.91
		20,000	22,874.00	23.18	19,167.00	18.97
		50,000	29,829.00	14.58	24,861.00	12.05
		100,000	37,123.00	37.12	30,885.00	30.88
1-2,1-3	Medical, surgical, psychiatric, nursing or custodial care on a 24-hour basis for more than 6 persons; facilities where persons are restrained	1,000	22,693.00	85.26	18,370.00	65.93
		5,000	26,104.00	139.50	21,007.00	111.51
		10,000	33,078.00	57.15	26,583.00	45.24
		20,000	38,794.00	40.90	31,107.00	32.26
		50,000	51,065.00	25.34	40,785.00	20.11
		100,000	63,736.00	63.73	50,844.00	50.84
1-4	Day care operations of more than 6 people of any age where the care is for less than 24-hours a day	1,000	13,050.00	46.35	11,138.00	36.74
		5,000	14,906.00	78.99	12,607.00	66.13
		10,000	18,855.00	31.98	15,914.00	26.38
		20,000	22,053.00	22.78	18,552.00	18.67
		50,000	28,887.00	14.24	24,152.00	11.79
		100,000	36,009.00	36.00	30,048.00	30.05
M	Display and sale of merchandise accessible to the public	1,000	16,621.00	61.85	14,488.00	51.23
		5,000	19,095.00	101.91	16,538.00	87.60
		10,000	24,190.00	41.65	20,917.00	35.42
		20,000	28,356.00	29.80	24,459.00	25.25
		50,000	37,296.00	18.47	32,032.00	15.76
		100,000	46,532.00	46.53	39,912.00	39.92
R-1, R-2	Transient and nontransient lodging including hotels, motels apartments, and boarding houses	5,000	27,360.00	87.91	22,004.00	69.02
		10,000	31,757.00	49.76	25,454.00	39.24
		20,000	36,732.00	24.40	29,380.00	19.21
		50,000	44,055.00	30.50	35,141.00	23.84
		100,000	59,305.00	16.44	47,060.00	12.87
		200,000	75,742.00	37.87	59,928.00	29.97
R-3, R-3.1, R-4	One and two-family homes; Residentially based 24-hour facility for 6 or fewer clients of any age; Residential care/assisted living for more than 6 ambulatory clients	1,000	7,138.00	117.65	5,953.00	94.12
		2,000	8,314.00	128.33	6,894.00	102.67
		3,000	9,598.00	192.51	7,919.00	154.00
		4,000	11,522.00	422.43	9,459.00	337.95
		5,000	15,747.00	89.84	12,839.00	71.86
		10,000	20,239.00	202.38	16,432.00	164.32

^ = Source: Resolution 2023-128

LIVERMORE CALIFORNIA

MASTER FEE SCHEDULE

New Construction Fees (All Construction Types) - (Con't)						
			Construction Types I, II, Ill, V- A rated		Construction Types I, II, Ill, IV, V- B rated	
IBC Class	IBC Occupancy Type	2006/07 Data: Project Size	Base Cost@ Threshold Size ^	Cost for each Additional 100 s.f. ^	Base Cost@ Threshold Size ^	Cost for each Additional 100 s.f. ^
R-3	One and two-family homes	1,000	$ 4,732.00	$ 61.80	$ 3,939.00	$ 51.03
		2,000	5,348.00	73.00	4,449.00	60.40
		3,000	6,079.00	105.12	5,052.00	86.88
		4,000	7,129.00	205.49	5,921.00	169.36
		5,000	9,186.00	44.93	7,614.00	37.06
		10,000	11,433.00	114.32	9,468.00	94.68
S-1	Moderate hazard storage	500	15,053.00	103.40	12,637.00	81.52
		2,500	17,122.00	180.60	14,268.00	149.21
		5,000	21,635.00	72.65	18,000.00	59.25
		10,000	25,267.00	51.59	20,961.00	41.86
		25,000	33,005.00	32.39	27,241.00	26.50
		50,000	41,101.00	82.21	33,869.00	67.74
S-2	Low hazard storage	500	14,883.00	102.90	12,469.00	81.02
		2,500	16,941.00	178.86	14,090.00	147.47
		5,000	21,412.00	72.05	17,777.00	58.64
		10,000	25,015.00	51.18	20,707.00	41.46
		25,000	32,692.00	32.10	26,929.00	26.23
		50,000	40,718.00	81.44	33,486.00	66.97
U	Accessory and miscellaneous structures not specifically classified	1,000	10,599.00	34.29	9,525.00	28.97
		5,000	11,972.00	62.62	10,683.00	55.43
		10,000	15,102.00	24.88	13,455.00	21.75
		20,000	17,590.00	17.57	15,630.00	15.30
		50,000	22,864.00	11.12	20,219.00	9.76
		100,000	28,426.00	28.43	25,099.00	25.10
TENANT IMPROVEMENTS						
A-2	Restaurant, more than 50 occupants	1,000	8,054.00	42.01	6,682.00	33.97
		5,000	9,734.00	54.89	8,041.00	45.13
		10,000	12,478.00	24.17	10,310.00	19.75
		20,000	14,896.00	17.72	12,273.00	14.46
		50,000	20,212.00	10.51	16,609.00	8.60
		100,000	25,467.00	25.46	20,912.00	20.91
B	Office Building	1,000	7,076.00	33.47	5,865.00	27.30
		5,000	8,416.00	43.01	6,959.00	35.37
		10,000	10,566.00	17.73	8,727.00	14.57
		20,000	12,340.00	15.68	10,184.00	12.78
		50,000	17,042.00	9.09	14,021.00	7.45
		100,000	21,592.00	21.60	17,749.00	17.76
B	Medical Office	1,000	7,063.00	29.09	5,889.00	23.62
		5,000	8,225.00	44.57	6,834.00	36.89
		10,000	10,454.00	18.65	8,678.00	15.33
		20,000	12,318.00	13.41	10,212.00	11.02
		50,000	16,343.00	8.20	13,518.00	6.77
		100,000	20,448.00	20.45	16,901.00	16.90

^ = Source: Resolution 2023-128

LIVERMORE CALIFORNIA

MASTER FEE SCHEDULE

New Construction Fees (All Construction Types) - (Con't)						
			Construction Types I, II, Ill, V- A rated		Construction Types I, II, Ill, IV, V- B rated	
IBC Class	IBC Occupancy Type	2006/07 Data: Project Size	Base Cost@ Threshold Size ^	Cost for each Additional 100 s.f. ^	Base Cost@ Threshold Size ^	Cost for each Additional 100 s.f. ^
TENANT IMPROVEMENTS						
B/H	Lab/R&D	2,000	$ 9,919.00	$ 19.66	$ 8,298.00	$ 16.00
		10,000	11,491.00	30.95	9,578.00	25.69
		20,000	14,586.00	12.83	12,148.00	10.63
		40,000	17,150.00	9.21	14,264.00	7.58
		100,000	22,679.00	5.67	18,813.00	4.68
		200,000	28,349.00	14.17	23,501.00	11.75
M	Store	1,000	7,143.00	28.60	5,917.00	23.18
		5,000	8,287.00	44.73	6,843.00	36.81
		10,000	10,524.00	18.57	8,685.00	15.22
		20,000	12,383.00	13.35	10,207.00	10.92
		50,000	16,389.00	8.21	13,483.00	6.74
		100,000	20,491.00	20.49	16,849.00	16.85
SHELL BUILDINGS						
B,M,S	All Shell Buildings	5,000	14,980.00	15.39	12,687.00	11.97
		25,000	18,059.00	20.30	15,079.00	16.71
		50,000	23,135.00	8.92	19,258.00	7.20
		100,000	27,593.00	6.53	22,857.00	5.24
		250,000	37,386.00	3.88	30,715.00	3.14
		500,000	47,070.00	9.42	38,576.00	7.72

^ = Source: Resolution 2023-128

LIVERMORE CALIFORNIA

MASTER FEE SCHEDULE

Commercial/Residential Permit Fees - Misc. Items			
Description	**Unit**	**Fee**	**Source**
Antenna			
Equipment Container	each	$ 428.00	Resolution 2023-128
0-30 ft	each	428.00	Resolution 2023-128
31+ ft	each	534.00	Resolution 2023-128
Cellular/Mobile Phone, free-standing	each	642.00	Resolution 2023-128
Cellular/Mobile Phone, co-location	each	428.00	Resolution 2023-128
Application Meeting - First Hour	each hour	213.00	Resolution 2023-128
Application Meeting - Each Add't Hour	each hour	213.00	Resolution 2023-128
Balcony addition	each	855.00	Resolution 2023-128
Carport MINOR(< or = 200 sq ft.)	each	642.00	Resolution 2023-128
Carport MAJOR(> 200 sq ft.)	each	855.00	Resolution 2023-128
Change of Occupancy	each	855.00	Resolution 2023-128
Close Existing Openings			
Interior wall	each	428.00	Resolution 2023-128
Exterior wall	each	642.00	Resolution 2023-128
Commercial Coach (per unit)	each unit	748.00	Resolution 2023-128
Compliance lnspections/Reinspections	each	748.00	Resolution 2023-128
Deck (wood) - up to 200 sq ft.	each	428.00	Resolution 2023-128
Each additional 100 sq ft.	each 100 sf	106.00	Resolution 2023-128
Deck Railing - up to 200 sq ft.	each	428.00	Resolution 2023-128
Deck (wood) (with calcs) - up to 200 sq ft.	each	642.00	Resolution 2023-128
Deck (wood) (with calcs) - each add;. 100 sq ft	each 100 sf	106.00	Resolution 2023-128
Demolition - Single Family Dwelling	each	642.00	Resolution 2023-128
Demolition - Multi Family/ Commercial	each	642.00	Resolution 2023-128
Door			
New door (residential)	each	213.00	Resolution 2023-128
New door (Structural shear wall/Masonry)	each	855.00	Resolution 2023-128
Fence or Freestanding Wall (non-masonry)			
6 - 8 feet in height, first 100 If	up to 100 If	428.00	Resolution 2023-128
8 - 10 feet in height, first 100 If	up to 100 If	534.00	Resolution 2023-128
Each additional 100 If	each 100 If	213.00	Resolution 2023-128
Over 10 feet in height	up to 100 If	642.00	Resolution 2023-128
Over 10 feet in height (with calcs)	up to 100 If	642.00	Resolution 2023-128
Each additional 100 If	each 100 If	213.00	Resolution 2023-128
Fence or Freestanding Wall (masonry)			
Masonry, (6-8 feet high), pre-engineered	up to 100 If	642.00	Resolution 2023-128
Each additional 100 If	each 100 If	322.00	Resolution 2023-128
Masonry, Special Design (6-10' high)	up to 100 If	855.00	Resolution 2023-128
Each additional 100 If	each 100 If	322.00	Resolution 2023-128
Masonry, Special Design (over 10' high)	up to 100 If	1,070.00	Resolution 2023-128
Each additional 100 If	each 100 If	322.00	
Fireplace			
Masonry	each	482.00	Resolution 2023-128
Masonry (with calcs)	each	534.00	Resolution 2023-128
Pre-Fabricated *I* Metal	each	428.00	Resolution 2023-128
Flag pole (over 30 feet in height)	each	322.00	Resolution 2023-128

LIVERMORE CALIFORNIA

MASTER FEE SCHEDULE

Commercial/Residential Permit Fees - Misc Items (Con't)			
Description	**Unit**	**Fee**	**Source**
Chimney repair	each	$ 213.00	Resolution 2023-128
Garage (detached)			
Wood frame up to 1,000 sf	each	855.00	Resolution 2023-128
Masonry up to 1,000 sf	each	855.00	Resolution 2023-128
Grading (cut and fill)			
0 - 100 C.Y.		428.00	Resolution 2023-128
101 - 1,000 C.Y.		642.00	Resolution 2023-128
1,001 - 10,000 C.Y.		748.00	Resolution 2023-128
10.001 - 100,000 C.Y.		855.00	Resolution 2023-128
100,001 - 200.000 C.Y.		1,177.00	Resolution 2023-128
Each add'l 10,000 C.Y. or portion thereof		160.00	Resolution 2023-128
Greenhouse (non-commercial)	each	642.00	Resolution 2023-128
Greenhouse (non-commercial) (with calcs)	each	642.00	Resolution 2023-128
Lighting Pole	each	428.00	Resolution 2023-128
Each Add'l Pole	each	428.00	Resolution 2023-128
Partition - Commercial, Interior (up to 30 lf)	up to 30 lf	428.00	Resolution 2023-128
Additional partition	up to 30 lf	428.00	Resolution 2023-128
Partition - Residential, Interior (up to 30 lf)	up to 30 lf	428.00	Resolution 2023-128
Additional partition	each 30 lf	428.00	Resolution 2023-128
Patio Cover, Awning, Canopy, Trellis and Arbors			
Wood frame	up to 300 sf	428.00	Resolution 2023-128
Wood frame (with calcs)	up to 300 sf	534.00	Resolution 2023-128
Other frame	up to 300 sf	534.00	Resolution 2023-128
Additional Patio	up to 300 sf	106.00	Resolution 2023-128
Enclosed, all frames	up to 300 sf	642.00	Resolution 2023-128
Photovoltaic System			
Residential	each	428.00	Resolution 2023-128
Commercial, up to 10 kilowatts		428.00	Resolution 2023-128
Commerical, 11 to 20 KW		748.00	Resolution 2023-128
Commerical, 21 to 30 KW		748.00	Resolution 2023-128
Commerical, 31 to 40 KW		963.00	Resolution 2023-128
Commerical, 41 to 52 KW		1,283.00	Resolution 2023-128
Commerical, 51 to 250 KW		7.00	Resolution 2023-128
Commerical, over 250 KW		5.00	Resolution 2023-128
Pile Foundation			
Cast in Place / Drive (steel, pre-stressed concrete)	up to 10	428.00	Resolution 2023-128
Additional piles (increments of 10)	each 10	322.00	Resolution 2023-128
Retaining Wall (concrete or masonry)			
Standard	up to 50 lf	642.00	Resolution 2023-128
Additional retaining wall	each 50 lf	322.00	Resolution 2023-128
Special Design, 3-10' high	up to 50 lf	748.00	Resolution 2023-128
Additional retaining wall	each 50 lf	322.00	Resolution 2023-128
Special Design, over 10' high	up to 50 lf	1,070.00	Resolution 2023-128
Additional retaining wall	each 50 lf	322.00	Resolution 2023-128
Remodel - Residential			
500 s.f. Single Story	up to 500 sf	855.00	Resolution 2023-128
501- 1,000 s.f.	501 to 1,000 sf	1,070.00	Resolution 2023-128
433A Recordation Fee		22.00	New, see staff report

LIVERMORE CALIFORNIA

MASTER FEE SCHEDULE

Commercial/Residential Permit Fees - Misc Items (Con't)			
Description	**Unit**	**Fee**	**Source**
Additional remodel	each 300 sf	$ 138.00	Resolution 2023-128
Bathroom remodel	each	642.00	Resolution 2023-128
Minor bathroom remodel	each	322.00	Resolution 2023-128
Minor kitchen remodel	each	267.00	Resolution 2023-128
Repairs (For Fire, Water, Decay & Pests)	<$10,000	322.00	Resolution 2023-128
Repairs (For Fire, Water, Decay & Pests)	$10,000 - $25,000	534.00	Resolution 2023-128
Repairs (For Fire, Water, Decay & Pests)	$25,001 - $100,000	963.00	Resolution 2023-128
Repairs (For Fire, Water, Decay & Pests)	> $100,000	1,177.00	Resolution 2023-128
Re-roof			
Remove / replace (roof covering only)	up to 200 sf	322.00	Resolution 2023-128
Remove / replace (with existing plywood))	201 to 3,000 sf	322.00	Resolution 2023-128
Minor Repair	up to 200 sf	322.00	Resolution 2023-128
201 - 3,000 sq ft		534.00	Resolution 2023-128
> 3,001 sq ft		748.00	Resolution 2023-128
10,001 + sq ft		855.00	Resolution 2023-128
Residential Additions			
One Story	up to 500 sf	1,177.00	Resolution 2023-128
One Story	501 - 1,000 sf	1,499.00	Resolution 2023-128
One Story	> 1,000 sf	1,817.00	Resolution 2023-128
Multi-Story	up to 500 sf	1,283.00	Resolution 2023-128
Multi-Story	501 - 1,000 sf	1,659.00	Resolution 2023-128
Multi-Story	> 1,000 sf	1,925.00	Resolution 2023-128
Roof structure replacement	up to 100 sf	963.00	Resolution 2023-128
Additional roof structure replacement	each 100 sf	322.00	Resolution 2023-128
Sauna - steam	each	1,070.00	Resolution 2023-128
Shed (up to 200 sf)		642.00	Resolution 2023-128
Each additional 100 sf		160.00	Resolution 2023-128
Siding			
Exterior wall covering, siding, stucco	up to 1000 sf	428.00	Resolution 2023-128
Additional siding	more than 1000 sf	428.00	Resolution 2023-128
Signs			
Monument	each	534.00	Resolution 2023-128
Wall Mounted Fixture	1-3	642.00	Modified, see staff report
Free-standing	each	855.00	Resolution 2023-128
Repairs/ Replacement	each	322.00	Resolution 2023-128
Skylight			
Less than 10 sf	each	322.00	Resolution 2023-128
Greater than 10 sf or structural	each	428.00	Resolution 2023-128
Spa or Hot Tub			
Above Ground	each	428.00	Resolution 2023-128
In-ground Private	each	534.00	Resolution 2023-128
In-ground Public	each	642.00	Resolution 2023-128
Storage Racks			
0-8' high (up to 100 If)	first 100 If	642.00	Resolution 2023-128
each additional 100 If	each 100 If	322.00	Resolution 2023-128
over 8' high (up to 100 If)	first 100 If	748.00	Resolution 2023-128
each additional 100 If	each 100 If	322.00	Resolution 2023-128

LIVERMORE CALIFORNIA

MASTER FEE SCHEDULE

Commercial/Residential Permit Fees - Misc Items (Con't)			
Description	**Unit**	**Fee**	**Source**
Swimming Pool/ Spa			
Private	< 800 sf	$ 1,070.00	Resolution 2023-128
Private	> 800 sf	1,177.00	Resolution 2023-128
Public	< 800 sf	1,177.00	Resolution 2023-128
Public	> 800 sf	1,283.00	Resolution 2023-128
Pool - Solar Panels	each	428.00	Resolution 2023-128
Window or Sliding Glass Door			
Residential Replacement - Retrofit	qty. 1-4	322.00	Modified, see staff report
Residential Replacement - New Construction	qty. 1-4	428.00	New, see staff report
Residential Replacement - Retrofit	qty. 5 or more	428.00	Modified, see staff report
Residential Replacement - New Construction	qty. 5 or more	642.00	New, see staff report
New Window (non structural)	each	428.00	Resolution 2023-128
New / Bay Window (structural shear)	each	428.00	Resolution 2023-128
Additional Services			
Service Required in Excess of Standard	per hour	213.00	Resolution 2023-128
Re-inspection	per hour	213.00	Resolution 2023-128
Additional Plan Review	per hour	213.00	Resolution 2023-128
Research	per hour	213.00	Resolution 2023-128
Additional Building and Neighbor Preservation Inspection	per hour	213.00	Modified, see staff report
Residential Building Reports	each	106.00	Resolution 2023-128
Off-hours inspection (min 3 hours)	each	642.00	Resolution 2023-128
Banner (Building Fee)			
Banner install Fourth Street (First Install)	each	855.00	Resolution 2023-128
Banner Install Fourth Street	each	855.00	Resolution 2023-128
Banner Install N. Livermore Ave (First Install)	each	855.00	Resolution 2023-128
Banner Install N. Livermore Ave	each	855.00	Resolution 2023-128
Pole-Banner Permit (up to 3 banners where hardware exists	each	563.00	To be deleted, see staff report
Pole-Banner Permit (each additional banner, min 3 banners)	each	93.00	New, see staff report

LIVERMORE CALIFORNIA

MASTER FEE SCHEDULE

Building Permit Fees - Mechanical, Plumbing, & Electrical		
Fee Types - Mechanical Permit Fees	**Fee**	**Source**
Stand Alone Mechanical Plan Check (hourly rate)	$ 213.00	Resolution 2023-128
Unit Fees		
Installation or relocation of each forced-air or gravity-type furnace or burner (including ducts and vents) up to and including 100,000	267.00	Resolution 2023-128
Installation or relocatton of each forced-air or gravity-type furnace or burner (including ducts and vents) over 100,000 Btu/h	267.00	Resolution 2023-128
Installation or relocation of each suspended heater, recessed wall heater or floor mounted unit heater	267.00	Resolution 2023-128
Installation or relocation or replacement of each applicance vent installed and not included in an appliance permit	267.00	Resolution 2023-128
Absorption unit, or each heating, cooling, absorption, or each evaporative cooling system, including installation of controls	322.00	Resolution 2023-128
Installation or relocation of each boiler or compressor to and including 3 HP or absorption system up to and including 100,000 Btu/h (each)	322.00	Resolution 2023-128
Installation or relocation of each boiler or compressor, over 3 HP and up to and including 15 HP,or absorption system over 100,000 Btu/h and up to and including 500,000 Btu/h (each)	322.00	Resolution 2023-128
Installation or relocation of each boiler or compressor, over 15 HP and up to and including 30 HP,or absorption system over 500,000 Btu/h and up to and including 1,000,000 Btu/h (each)	322.00	Resolution 2023-128
Installation or relocation of each boiler or compressor, over 30 HP and up to and including 50 HP,or absorption system over 1,000,000 Btu/h and up to and including 1,750,000 Btu/h (each)	374.00	Resolution 2023-128
Installation or relocation of each boiler or compressor, over 50 HP or absorption system over 1,750,000 Btu/h (each)	428.00	Resolution 2023-128
Each air-handling umt, including ducts attached ducts. (Note: The fee shall not apply to an air-handling unit that is a portion of a factory-assembled appliance, cooling unit, evaporative cooler or absorption unit for which a permit is required elsewhere.)	374.00	Resolution 2023-128
Air-handling unit over 10,000 CFM (each)	374.00	Resolution 2023-128
Each evaporative cooler other than portable type	267.00	Resolution 2023-128
Each ventilation fan connected to a single duct	267.00	Resolution 2023-128
Each ventilation system which is not a portion of any heating or air-conditioning system authorized by a permit	374.00	Resolution 2023-128
Installation of each hood which is served by mechanical exhaust, including the ducts for such hood	534.00	Resolution 2023-128
New or relocated Furnace and AC includes Ducts, Elec, and Gas	428.00	Resolution 2023-128
Installation or relocation of each commercial or industrial-type incinerator	322.00	Resolution 2023-128
Each appliance or piece of equipment not classed in other appliance categories, or for which no other fee is listed	213.00	Resolution 2023-128
Process piping - Non-hazardous	322.00	Resolution 2023-128
Process piping - Hazardous	534.00	Resolution 2023-128
Other Fees		
Other Mechanical Inspections (per hour)	213.00	Resolution 2023-128

LIVERMORE CALIFORNIA

MASTER FEE SCHEDULE

Building Permit Fees - Mechanical, Plumbing, and Electrical (Continued)		
Fee Types - Plumbing/Gas Permit Fees	**Fee**	**Source**
Stand Alone Plumbing Plan Check (hourly rate)	$ 213.00	Resolution 2023-128
Unit Fees		
Each plumbing fixture or trap or set of fixtures on trap, including water, drainage piping, and backflow protection therefor)	160.00	Resolution 2023-128
Rainwater systems per drain (inside building)	160.00	Resolution 2023-128
Each private sewage disposal system	160.00	Resolution 2023-128
Water heater and/or vent (each)	88.00	Resolution 2023-128
Electrical heat pump water heater with electrical	322.00	Modified, see staff report
Electrical heat pump water heater without electrical	213.00	New, see staff report
Industrial waste pretreatment interceptor, including its trap and vent, excepting kitchen-type grease interceptors functioning as fixture traps (each)	588.00	Resolution 2023-128
Installation, alteration, or repair of water piping and/or water-treating equipment (each)	267.00	Resolution 2023-128
Repair or alteration of drainage or vent piping (each fixture)	267.00	Resolution 2023-128
Lawn sprinkler system on any one meter, including backflow protection devices therefore (each)	213.00	Resolution 2023-128
Backflow devices not included in other fee services, e.g., building/trailer park sewer (each)	322.00	Resolution 2023-128
Atmospheric-type vacuum breakers not included in other fee servies, e.g., building/trailer park sewer (1-5 units)	322.00	Resolution 2023-128
Atmospheric-type vacuum breakers not included in other fee servies, e.g., building/trailer park sewer (each unit over 5 units)	106.00	Resolution 2023-128
Tankless water heater w/gas and electric	322.00	Resolution 2023-128
Tankless water heater w/o gas and electric	267.00	Resolution 2023-128
Curbside cleanout	267.00	Resolution 2023-128
Gas Piping Residential	213.00	Resolution 2023-128
Gas Piping Commercial	322.00	Resolution 2023-128
Other Fees		
Other Plumbing and Gas Inspections (per hour)	213.00	Resolution 2023-128

LIVERMORE CALIFORNIA

MASTER FEE SCHEDULE

Building Permit Fees - Mechanical, Plumbing, and Electrical (Continued)		
Fee Types - Electrical	**Fee**	**Source**
Stand Alone Electrical Plan Check (hourly rate)	$ 213.00	Resolution 2023-128
System Fees		
Private, Residential, In-ground Swimming Pools (each new)		
Includes a complete system of necessary branch circuit wiring, bonding, grounding, underwater lighting, water pumping, and other similar electrical equipment directly related to the operation of a	428.00	Resolution 2023-128
For all other types of swimming pools, therapeutic whirlpools, spas, and alteratons to existing swimming pools	322.00	Resolution 2023-128
Outdoor Events		
Carnivals, circuses, or other travelling shows or exhibitions utilizing transportable-type rides, booths, displays, and	534.00	Resolution 2023-128
Electric generator and electrically-driven rides (each)	428.00	Resolution 2023-128
Electrical backup generator, natural gas		Resolution 2023-128
Mechanically-driven rides and walk-through attractions or displays having electric lighting (each)	428.00	Resolution 2023-128
System of area and booth lighting (each)	267.00	Resolution 2023-128
For permanently installed rides, booths, displays and	322.00	Resolution 2023-128
Residential Electric Charging station EV	267.00	Resolution 2023-128
Commercial Electric Charging station EV	482.00	Resolution 2023-128
Temporary Power Service		Resolution 2023-128
Temporary service power pole or pedestal, inclduing all pole or pedestal-mounted receptacle outlets and appurtenances	267.00	Resolution 2023-128
Temporary distribution system and temporary lighting and receptacle outlets for constructions sites, decorative light, Christmas tree sales lots, firework stands, etc.	267.00	Resolution 2023-128
Unit Fees		
Whole house wiring without subpanel	428.00	New, see staff report
Whole house wiring with subpanel	534.00	New, see staff report
Receptacle, Switch, and Light Outlets up to 20	213.00	Resolution 2023-128
Each additional 20 outlets	106.00	Resolution 2023-128
Lighting Fixtures up to 10	322.00	Resolution 2023-128
Each additional 10 uutlet	106.00	Resolution 2023-128
Pole or platform-mounted lighting fixtures (each)	160.00	Resolution 2023-128
Theatrical-type lighting fixtures or assemblies (each)	213.00	Resolution 2023-128
Residential Appliances		
Fixed residential appliances or receptacle outlets for same, including wall-mounted electric ovens; counter-mounted cooking tops; electrical ranges, self- contained room, console, or through-wall air conditioners; space heaters; food waste grinders; dishwashers; washing machines; water heaters; clothes dryers or other motor-operated appliances (each) not exceeding 1 horsepower (HP) in rating, each	267.00	Resolution 2023-128
For other types of air conditioners and other motor-driven appliances having large electrical rating, see POWER APPARATUS	534.00	Resolution 2023-128
Non-Residential Appliances		
Residential appliances and selt-contained factory-wired, non-residential appliances including medical and dental devices; food, beverage, and ice cream cabinets; illuminated show cases; drinking fountains; vending machines; laundry machines; or other similar types of equipment, each.	322.00	Resolution 2023-128
Non-residential appliances not exceeding 1 horsepower (HP), kilowatt (KW), or kilovolt-ampere (KVA) in rating, including medical and dental devices; food, beverage, and ice cream cabinets; illuminated show cases; drinking fountains; vending machines; laundry machines; or other similar	534.00	Resolution 2023-128
Appliances having large electrical ratings, see Power Apparatus	534.00	Resolution 2023-128

LIVERMORE CALIFORNIA

MASTER FEE SCHEDULE

Building Permit Fees - Mechanical, Plumbing, and Electrical (Continued)		
Fee Types - Electrical (Con't)	**Fee**	**Source**
Power Apparatus		
Motors, generators, transformers, rectifiers, synchronous converters, capacitors, industrial heating, air conditioners and heat pumps, cooking or baking equipment and other apparatus. Rating in horsepower (HP), kilowatts (KW), kilovolt-amperes (KVA), or kilovolt-amperes-reactive (KVAR):		
Up to and including 1 (each)	$ 322.00	Resolution 2023-128
Over 1 and not over 10 (each)	374.00	Resolution 2023-128
Over 10 and not over 50 (each)	428.00	Resolution 2023-128
Over 50 and not over 100 (each)	534.00	Resolution 2023-128
Over 100 (each)	588.00	Resolution 2023-128
(for equipment or appliances having more than one motor, transformer, heating, etc. the sum of the combined ratings may be used. These fees include all switches, circuit breakers, contactors, thermostats, relays, and other directly related	428.00	Resolution 2023-128
Busways		
Trolley and plug-in-type busways, each 100 feet or fraction thereon.	322.00	Resolution 2023-128
(An additional fee will be required for lighting fixtures, motors and other appliances that are connected to trolley and plug-in-type busways. No fee is required for portable tools.)	106.00	Resolution 2023-128
Signs, Outline Lighting, and Marquees		
Signs, outline lighting systems or marquees supplies from one branch circuit (each)	322.00	Resolution 2023-128
Additional branch circuits within the same sign, outline lighting system, or marquee (each)	106.00	Resolution 2023-128
Electrical Services		
Services of 600 volts or less; up to 200 amperes in rating (each)	322.00	Resolution 2023-128
Services of 600 volts or less; 201 to up 1,000 amperes in rating (each)	374.00	Resolution 2023-128
Services over 600 volts or over 1,000 amperes in rating (each)	588.00	Resolution 2023-128
Miscellaneous		
Electrical apparatus, conduits and conductors for which a permit is required but for which no fee is herein set forth.	374.00	Resolution 2023-128
(This fee is not applicable when a fee is paid for one or more services, outlets, fixtures, appliances, power apparatus, busways, signs or other equipment.)		Resolution 2023-128
Other Fees		
Other Electrical Inspections (per hour)	213.00	Resolution 2023-128
Fee Types - Other Inspections and Fees	**Fee**	**Source**
Inspections outside of normal business hours, 0 - 3 hours (minimum charge)	642.00	Resolution 2023-128
Reinspection Fee (per hour)	213.00	Resolution 2023-128
Inspections for which no fee is specifically indicated - per hour (minimum charge = 1 hour)	213.00	Resolution 2023-128
Additional Plan Review requried by changes, additions, or revisions to approved plans, per hour (minimum charge = 1 hour)	213.00	Resolution 2023-128

LIVERMORE CALIFORNIA

MASTER FEE SCHEDULE

Land Use Entitlements and Permits		
Description	**Fee**	**Source**
Annexation / Pre-Zoning [(b)]	$ 31,303.00	Resolution 2023-128
Appeal	4,266.00	Resolution 2023-128
Downtown Design Review		
Staff Level	-	Resolution 2023-128
Administrative Staff Level	1,639.00	Resolution 2023-128
Small Addition	5,121.00	Resolution 2023-128
Large Addition	8,875.00	Resolution 2023-128
Planning Commission Review	12,382.00	Resolution 2023-128
Amendment - Planning Commission Review	10,782.00	Resolution 2023-128
Site Plan Design Review [(a)(b)]		
Construction of new nonresidential development or residential development containing 5 or more units (Planning Commision Review)	30,511.00	Resolution 2023-128
Construction of a new condominium, duplex, or a multi-family residence containing 2, 3 or 4 units (Staff	17,212.00	Resolution 2023-128
Major additions to non-residential development or additions of 5 or more units to a residential development (Planning Commision Review)	22,479.00	Resolution 2023-128
Minor non-residential additions or additions to a condomium, duplex, or a multi-family residence containing 2, 3, or 4 units (Staff Level Review)	10,838.00	Resolution 2023-128
Major exterior building, landscaping, or parking modifications (Staff Level Review)	2,901.00	Resolution 2023-128
Minor exterior building, landscaping such as new awnings, windows, doors and trim (Staff Level Review)	1,071.00	Resolution 2023-128
New or Amended Master Sign Program (Planning Commission Review)	2,438.00	Resolution 2023-128
New or replacement sign if not subject to a Master Sign Program (Staff Level Review)	605.00	Resolution 2023-128
Master Sign Approval - new sign conforming to an approved Master Sign Program (Staff Level Review)	-	Resolution 2023-128
Temporary Sign Registration	68.00	Resolution 2023-128
Temporary Use Permit [(b)]		
Seasonal & Carnivals	593.00	Resolution 2023-128
Model Home Complex / Construction Trailer	3,736.00	Resolution 2023-128
Non-Profit Temporary Uses	73.00	Resolution 2023-128
Home Occupation Permit	106.00	Resolution 2023-128
Home Occupation Permit Renewal	51.00	Resolution 2023-128
Variance [(b)]		
General	12,831.00	Resolution 2023-128
Minor General	5,514.00	Resolution 2023-128
Developed Residential	1,867.00	Resolution 2023-128
Minor for Developed Residential	963.00	Resolution 2023-128
Conditional Use Permit [(b)]		
Residential / Minor Non-residential	6,144.00	Resolution 2023-128
Conditional Use Permit [(a)]	12,659.00	Resolution 2023-128
Conditional use Permit Modification [(a)]	9,848.00	Resolution 2023-128

[(a)] For new construction or additions, Conditional Use Permit must be combined with applicable site Plan Design Review fee into one application with no fee. Applications involving both Conditional Use Permit and Site Plan Design Review can be reduced by 10%.

[(b)] Applications involving multiple processes can be reduced by 10%

Notes: T&M - Applicant shall be charged on a time and materials basis.

Projects that do not fit any category or are otherwise extraordinary may be charged on a T&M basis at the Director's discretion.

Staff time required ona project, post entitlement, and not part of another formal application (e.g., Final Map, plot plan) will be recovered on a T&M basis at the Director's discretion.

The fees calculated reflect standard processing time. Projects requiring excessive review time will be recovered on a T&M basis.

LIVERMORE CALIFORNIA

MASTER FEE SCHEDULE

Land Use Entitlements and Permits (Continued)		
Description	**Fee**	**Source**
Zoning Use Permit [b]		
Zoning Use Permit	$ 513.00	Resolution 2023-128
Zoning Use Permit – Large Family Daycare	435.00	To be deleted, see staff report
Rezoning – Via Development Code or Map Amendment	11,868.00	Resolution 2023-128
Planning Development [b]		
Planned Development District	13,757.00	Resolution 2023-128
Planned Development District Amendment – Via DCA or Zoning Map Amendment	12,427.00	Resolution 2023-128
Planned Unit Development (South Livermore Valley Only)	13,757.00	Resolution 2023-128
Planned Unit Development Amendment	12,427.00	Resolution 2023-128
General / Specific Plan Fees [b]		
General / Specific Plan Amendment	20,573.00	Resolution 2023-128
Policy Proposal [b]		
Policy Proposal	Actual Cost	Resolution 2023-128
Policy Proposal Amendment	Actual Cost	Resolution 2023-128
Municipal Code Amendment	29,836.00	Resolution 2023-128
Tentative Tract Map		
Base fee [b]	21,595.00	Resolution 2023-128
Plus per unit or per lot fee	113.00	Resolution 2023-128
Tentative Tract Map Amendment – Public Hearing [b]	14,289.00	Resolution 2023-128
Tentative Tract Map Amendment/Extension – Staff Level [b]	7,869.00	Resolution 2023-128
Tentative Parcel Map – Public Hearing [b]	16,525.00	Resolution 2023-128
Tentative Parcel Map Amendment – Public Hearing [b]	13,690.00	Resolution 2023-128
Tentative Parcel Map Amendment/Extension - Staff Level [b]	3,237.00	Resolution 2023-128
Miscellaneous Fees		
Development Agreement - No Policy Change [b]	18,604.00	Resolution 2023-128
Development Agreement - Policy Change (per policy) [b]	24,976.00	Resolution 2023-128
Development Agreement - Minor Staff Level [b]	10,577.00	Resolution 2023-128
Open Space/Agricultural Easements [b]	9,404.00	Resolution 2023-128
Lot Line Adjustment/Certificate of Compliance [b]	3,812.00	Resolution 2023-128
Certificate of Appropriateness – Historic Preservation Commission [b]	593.00	Resolution 2023-128
Certificate of Appropriateness – Staff [b]	119.00	Resolution 2023-128
City Wide General Plan - cost recovery	$0.39/sf	Resolution 2023-128
Downtown Specific Plan - cost recovery	$0.31/sf	Resolution 2023-128
Parcel Map Waiver – Staff Level [b]	5,958.00	Resolution 2023-128
Out of Area Service Agreement [b]	24,984.00	Resolution 2023-128
Consistency Determination – Planning Commission	8,989.00	Resolution 2023-128

[a] Users pay for maintenance costs on an annual basis based on relative waste volume: user's volume of bins divided by total volume of bins in trash enclosure

[b] Applications involving multiple processes can be reduced by 10%

Notes: T&M - Applicant shall be charged on a time and materials basis.

Projects that do not fit any category or are otherwise extraordinary may be charged on a T&M basis at the Director's discretion.

Staff time required ona project, post entitlement, and not part of another formal application (e.g., Final Map, plot plan) will be recovered on a T&M basis at the Director's discretion.

The fees calculated reflect standard processing time. Projects requiring excessive review time will be recovered on a T&M basis.

LIVERMORE CALIFORNIA

MASTER FEE SCHEDULE

Land Use Entitlements and Permits (Continued)		
Description	**Fee**	**Source**
Tree Removal Permit - Commerical [(b)]	870.00	Resolution 2023-128
Resonable Accommodations [(b)]	205.00	Resolution 2023-128
zones) [(b)]	502.00	Resolution 2023-128
Zoning Clearance - New single family residence or significant remodel of existing single family residence in Transect zones [(b)]	780.00	
New Short-Term Rental Permit	225.00	Resolution 2023-128
Short-Term Rental Permit Renewal	164.00	Resolution 2023-128
Environmental Fees		
CEQA Filing Fee – Alameda County Recorder/City Admin	Actual Cost	Resolution 2023-128
CEQA Environmental Impact Report – Set-Up, RFP	9,990.00	Resolution 2023-128
CEQA Environmental Impact Report – Deposit 20% of contract amount to City	Actual Cost	Resolution 2023-128
CEQA Negative Declaration	6,873.00	Resolution 2023-128
CEQA Negative Declaration – Fish & Wildlife Fee *	Actual Cost	Resolution 2023-128
CEQA Environmental Impact Report – Fish & Wildlife Fee *	Actual Cost	Resolution 2023-128
CEQA Notice of Exemption	205.00	Resolution 2023-128
Williamson Act		
Williamson Act Contract Creation	9,217.00	Resolution 2023-128
Williamson Act Contract Cancellation	12,254.00	Resolution 2023-128
Research / Time and Materials (T&M)		
Staff Time Per Hour	205.00	Resolution 2023-128

* This is not a City fee. Fee is charged by California Fish and Wildlife Department.

[(b)] Applications involving multiple processes can be reduced by 10%

Notes: T&M - Applicant shall be charged on a time and materials basis.

Projects that do not fit any category or are otherwise extraordinary may be charged on a T&M basis at the Director's discretion.

Staff time required on a project, post entitlement, and not part of another formal application (e.g., Final Map, plot plan) will be recovered on a T&M basis at the Director's discretion.

The fees calculated reflect standard processing time. Projects requiring excessive review time will be recovered on a T&M basis.

LIVERMORE CALIFORNIA

MASTER FEE SCHEDULE

Encroachment and Miscellaneous Permit Fees		
Description	**Fee**	**Source**
Encroachment Permit		
Simple Plan Check / Processing Fee	$ 186.00	Resolution 2023-128
Simple - Inspection	501.00	Resolution 2023-128
Major - Inspection	770.00	Resolution 2023-128
Telecom Encroachment Permit - Basic Project		
Permit Processing Fee	584.00	Resolution 2023-128
Simple Plan Check Fee	819.00	Resolution 2023-128
Simple Inspection Fee (up to 2 days of work)	186.00	Resolution 2023-128
Encroachment Permit - Major Project [1]		
Plan Check Fee Up to $250,000 Project Valuation	8.35%	Resolution 2023-128
Plan Check Fee $250,000 - $1,000,000 Project Valuation	4.22%	Resolution 2023-128
Plan Check Fee $1,000.001 + Project Valuation	3.34%	Resolution 2023-128
Project Inspection Fee Up to $5,000 Project Valuation	25.42%	Resolution 2023-128
Project Inspection Fee $5,001 - $25,000 Project Valuation	9.11%	Resolution 2023-128
Project Inspection Fee $25,001 + Project Valuation	5.08%	Resolution 2023-128
Inspection Fee per day (beyond 2 days of work) = one hour per day or T&M	400.00	Resolution 2023-128
Grading (Cut and Fill)		
0 - 100 Cubic Yards (Cut and Fill)	279.00	Resolution 2023-128
101 - 1,000 CY	370.00	Resolution 2023-128
1,000 - 10,000 CY	555.00	Resolution 2023-128
10,001 - 100,000 CY	1,203.00	Resolution 2023-128
100,001 - 200,000 CY	1,573.00	Resolution 2023-128
Each Add'l 10,000 CY or portion thereof	92.00	Resolution 2023-128
Transportation (Engineering - Fee set by the State)		
Transportation Permit Single Trip [2]	16.00	Resolution 2023-128
Transportation Permit Annual [2]	90.00	Resolution 2023-128
Transportation Permit Repetitive [2]	90.00	Resolution 2023-128

[1] These fees are cumulative over the various project value ranges.

[2] Transportation Permit fees are set by State of California and are not adjusted annually by City of Livermore

LIVERMORE CALIFORNIA

MASTER FEE SCHEDULE

Maps and Improvement Plans		
Description	**Fee**	**Source**
Maps (Deposits)		
Tract/Parcel Map Check (up to 10 lots)	$ 10,950.00	Resolution 2023-128
Each additional lot over 10	138.00	Resolution 2023-128
Parcel Map Waiver Map Check	6,918.00	Resolution 2023-128
Improvement Plan Check - Project Evaluation [1]		
Improvement Plan Check - Project Val. Up to $250,000	8.35%	Resolution 2023-128
Improvement Plan Check - Project Val. $250,000 - $1,000,000	4.22%	Resolution 2023-128
Improvement Plan Check - Project Val. Over $1,000.001	3.34%	Resolution 2023-128
Private In-Tract & Public Improvements		
Each Add'l Plan Check after 3 reviews (collected prior to 4th and each subsequent review)	929.00	Resolution 2023-128
Subdivision Agreement Amendment / Extention	927.00	Resolution 2023-128
Subdivision Inspection - Project Valuation [1]		
Subdivision Inspection - Project Val. Up to $250,000	9.71%	Resolution 2023-128
Subdivision Inspection - Project Val. $250,000 - $1,000,000	8.95%	Resolution 2023-128
Subdivision Inspection - Project Val. Over $1,000,001	6.57%	Resolution 2023-128
Certificate of Compliance		
Certificate of Compliance (Engineering fee only, see planning appication fee)	819.00	Resolution 2023-128
Miscellaneous Fess		
FEMA LOMR	370.00	Resolution 2023-128
FEMA LOMA	3,704.00	Resolution 2023-128
Lot Line Adjustment	6,308.00	Resolution 2023-128
Abandonment / Vacation	14,785.00	Resolution 2023-128
Floodplan Determination	113.00	Resolution 2023-128
O & M Agreement/Stormwater Plan Check Fee	11,853.00	Resolution 2023-128
Stormwater Inspection Fee	1,906.00	Resolution 2023-128

[1] These fees are cumulative over the various project value ranges.

LIVERMORE CALIFORNIA

MASTER FEE SCHEDULE

Housing Services Program Fees			
Description	**Fee**		**Source**
Affordable Housing Program			
Purchase application processing fee	$	128.00	Resolution 2023-128
Resale administrative fee (paid by seller)		4,582.00	Resolution 2023-128
Loan refinancing administrative fee		666.00	Resolution 2023-128
New Unit Sales administrative fee		1.5% of BMR Sale price	Resolution 2023-128
Document preparation		410.00	Resolution 2023-128
Document recording (per document)		41.00	Resolution 2023-128
Annual Below Market Rate Rental (BMR) Monitoring Fee			
10 to 50 BMR units		1,997.00	Resolution 2023-128
51 to 100 BMR units		2,662.00	Resolution 2023-128
101 + BMR units		3,328.00	Resolution 2023-128
First time follow-up compliance		666.00	Resolution 2023-128
Additional follow-up compliance (billed as time and materials)		Actual Cost	Resolution 2023-128

(*) MFS: Master Fee Schedule

LIVERMORE CALIFORNIA

MASTER FEE SCHEDULE

Fire Prevention - Construction Services		
Description	**Fee**	**Source**
Fire Sprinkler - New Systems:1-20 appl	$ 837.00	Resolution 2023-128
Fire Sprinkler - New Systems:21-100 appl	1,396.00	Resolution 2023-128
Fire Sprinkler - New Systems:101-200 appl	1,954.00	Resolution 2023-128
Fire Sprinkler - New Systems:201-350 appl	2,233.00	Resolution 2023-128
Fire Sprinkler - New Syst: 351-1,000 appl	2,511.00	Resolution 2023-128
Fire Sprinkler - New each add'l 50 appl above 351 up to 999	139.00	Resolution 2023-128
Fire Sprinkler - New Syst: 1,000+ appl	4,465.00	Resolution 2023-128
Fire Sprinkler - New each add'l 100 appl above 1000	280.00	Resolution 2023-128
Fire Sprinkler - Tl: 1-4 appl	560.00	Resolution 2023-128
Fire Sprinkler - Tl: 5-20 appl	837.00	Resolution 2023-128
Fire Sprinkler - Tl: 21-100 appl	1,115.00	Resolution 2023-128
Fire Sprinkler - Tl: 101-200 appl	1,534.00	Resolution 2023-128
Fire Sprinkler - Tl: 201-350 appl	1,814.00	Resolution 2023-128
Fire Sprinkler - Tl: 351-1,000 appl	1,954.00	Resolution 2023-128
Fire Sprinkler - Tl: each add'I 25 appl above 351 up to 999	139.00	Resolution 2023-128
Fire Sprinkler - Tl: 1,000+ appl	3,350.00	Resolution 2023-128
Fire Sprinkler - Tl: each add'l 100 appl above 1000	280.00	Resolution 2023-128
Fire Sprinkler - R3 up to 3,600 sq ft	1,674.00	Resolution 2023-128
Fire Sprinkler - R3 each add'l 1,800 sq ft	837.00	Resolution 2023-128
Fire Sprinkler - Antifreeze Syst. - in addition to fire sprinkler system cost	697.00	Resolution 2023-128
Fire Sprinkler - Dry Pipe Valve - in addition to fire sprinkler system cost	488.00	Resolution 2023-128
Fire Sprinkler - Deluge/ Preaction - in addition to fire sprinkler system cost	978.00	Resolution 2023-128
Pre-engineered Fire Protection System (kitchen suppression, etc)	697.00	Resolution 2023-128
Fire Sprinkler - Clean Agent Gas Syst.	1,256.00	Resolution 2023-128
Fire Sprinkler - Dry Chem Syst.	1,256.00	Resolution 2023-128
Fire Sprinkler - Foam Syst. - in addition to fire sprinkler system cost	1,115.00	Resolution 2023-128
Underground Syst: 1-3 devices	1,325.00	Resolution 2023-128
Underground Syst: each add'l device [a]	280.00	Resolution 2023-128
Fire Pump, Each	4,465.00	Resolution 2023-128
Fire Pump: Haz Mat Review (fuel)	1,115.00	Resolution 2023-128
Water Storage Tank - Gravity	1,115.00	Resolution 2023-128
Water Storage Tank - Pressure	1,158.00	Resolution 2023-128
Other Pre-Engineered Suppr System (building, full room system)	1,396.00	Resolution 2023-128
Fire Standpipe System	1,396.00	Resolution 2023-128
Fire Alarm Syst: 1-15 Initiation devices	1,115.00	Resolution 2023-128
Fire Alarm Syst: 16-50 initiation devices	1,674.00	Resolution 2023-128
Fire Alarm Syst: 51-100 initiation devices	2,093.00	Resolution 2023-128
Fire Alarm Syst: 101-1000 initiation devices	2,373.00	Resolution 2023-128
Fire Alarm Syst: each add'l group of 50 devices over 1,000	139.00	Resolution 2023-128
Spray Paint Booth (up to 2)	1,534.00	Resolution 2023-128
Spray Paint Booth: each add'l over 2	139.00	Resolution 2023-128
Propane Tank (LPG)	1,115.00	Resolution 2023-128
Above Ground Tank Removal (over 400 gal): First two tanks	1,396.00	Resolution 2023-128
Above Ground Tank Removal (over 400 gal): each additional tank	280.00	Resolution 2023-128

[a] Fire hydrants, standpipe inlets/outlets, backflow preventors, fire department connections, etc.

LIVERMORE CALIFORNIA

MASTER FEE SCHEDULE

Fire Prevention - Construction Services (Con't)		
Description	**Fee**	**Source**
Compressed Gas System High Hazard - installation, modification, closure (hourly)	$ 280.00	Resolution 2023-128
Compressed Gas Syst - non high haz (hourly)	837.00	Resolution 2023-128
Medical Gas - Level 1(lg)	2,596.00	Resolution 2023-128
Medical Gas - Level 3	1,115.00	Resolution 2023-128
Cryogenic Tank	1,115.00	Resolution 2023-128
Emergency Generator w/ Fuel Tank	1,396.00	Resolution 2023-128
Propane Exchange Rack	560.00	Resolution 2023-128
Vehicle Access Gate, not part of a building permit	465.00	Resolution 2023-128
Refrigerant System	1,115.00	Resolution 2023-128
High piled storage of combustibles - Class I-IV 2,500 sq ft - 12,000 sq. ft.	837.00	Resolution 2023-128
High piled storage of combustibles - Class I-IV 12,001 sq ft - 500,000 sq ft	1,115.00	Resolution 2023-128
High piled storage of combustibles - High Hazard	1,674.00	Resolution 2023-128
Smoke Control System	2,373.00	Resolution 2023-128
SPAs, CUP, PUD	210.00	Resolution 2023-128
Each site inspection after twice failed inspection (hourly)	280.00	Resolution 2023-128
UST - Removal (hourly)	280.00	Resolution 2023-128
UST tank top, monitoring system etc. (hourly)	280.00	Resolution 2023-128
High-Rise (hourly)	280.00	Resolution 2023-128
Fire Alarm Monitoring Equipment change/replacement - Other [b] (hourly)	280.00	Resolution 2023-128
Fire Alarm communication modifications (hourly)	280.00	Resolution 2023-128
Underground storage tank installation (UST) - includes 2 tanks	6,698.00	Resolution 2023-128
Underground storage tank installation - each additional tank	560.00	Resolution 2023-128

[b] Like-for-like replacement of panels, initiating devices and/or notification appliances, etc

LIVERMORE CALIFORNIA

MASTER FEE SCHEDULE

Fire Prevention - Annual Fire Code & Unified Program Activity Fees		
Description	**Fee**	**Source**
Program Base Fees		
Base Permit - Level 1	$ 1,674.00	Resolution 2023-128
Base Permit - Level 2	978.00	Resolution 2023-128
Base Permit - Level 3	697.00	Resolution 2023-128
Base Permit - Level 4	642.00	Resolution 2023-128
Hot Work Operations		
<551 cu ft	139.00	Resolution 2023-128
551 - 2,250 cu ft	210.00	Resolution 2023-128
2,251 - 10k cu ft	419.00	Resolution 2023-128
10k - 100k cu ft	560.00	Resolution 2023-128
100k - 200k cu ft	697.00	Resolution 2023-128
200k + cu ft	837.00	Resolution 2023-128
Liq Petroleum Gas: <226 gal	70.00	Resolution 2023-128
Liq Petroleum Gas: 226 - 500 gal	139.00	Resolution 2023-128
Liq Petroleum Gas: 501 - 2k gal	210.00	Resolution 2023-128
Liq Petroleum Gas: 2k - 4k gal	280.00	Resolution 2023-128
Liq Petroleum Gas: 4 - 6k gal	349.00	Resolution 2023-128
Liq Petroleum Gas: 6 + k gal	419.00	Resolution 2023-128
Liq/Gas Vehicles in Assembly	349.00	Resolution 2023-128
Lumber Yard or Woodworking Plant	280.00	Resolution 2023-128
Magnesium	280.00	Resolution 2023-128
Mall, Covered	2,511.00	Resolution 2023-128
Motor Vehicle Fuel Disp Station - no bulk	139.00	Resolution 2023-128
Ovens, Industrial	139.00	Resolution 2023-128
POA: A-2	56.00	Resolution 2023-128
POA: A-1	84.00	Resolution 2023-128
POA: A-3	113.00	Resolution 2023-128
POA: A-4	139.00	Resolution 2023-128
POA: A-5	197.00	Resolution 2023-128
Pyrotech SpclEffects Material	560.00	Resolution 2023-128
Refrigeration Equipment	139.00	Resolution 2023-128
Repair Garages	560.00	Resolution 2023-128
Rooftop Heliport	181.00	Resolution 2023-128
Spraying or Dipping	139.00	Resolution 2023-128
Tires - Rebuilding Plant	181.00	Resolution 2023-128
Tire - Storage of Scrap	181.00	Resolution 2023-128
UST - 1 tank	2,233.00	Resolution 2023-128
UST - 2 tanks	3,350.00	Resolution 2023-128
UST - 3 tanks	4,116.00	Resolution 2023-128
UST - 4 tanks	4,942.00	Resolution 2023-128
UST - 5 tanks	5,758.00	Resolution 2023-128
UST - 6 tanks	6,280.00	Resolution 2023-128
Waste Handling	139.00	Resolution 2023-128
Wood Products	139.00	Resolution 2023-128
Fire Pump	280.00	Resolution 2023-128
Hotel, Motel, Apartment - Level 4	139.00	Resolution 2023-128
Hotel, Motel, Apartment - Level 3	629.00	Resolution 2023-128

LIVERMORE CALIFORNIA

MASTER FEE SCHEDULE

Fire Prevention - Annual Fire Code & Unified Program Activity Fees (Con't)		
Description	**Fee**	**Source**
School - Private	$ 1,215.00	Resolution 2023-128
Highrise	1,605.00	Resolution 2023-128
Care Facility - Non Family Daycare	139.00	Resolution 2023-128
Aerosol Products: < 55 gal	139.00	Resolution 2023-128
Aerosol Products: 55 - 225 gal	161.00	Resolution 2023-128
Aerosol Products: 225 - 1,000 gal	210.00	Resolution 2023-128
Aerosol Products: 1k - 10k gal	280.00	Resolution 2023-128
Aerosol Products: 10k - 20k gal	349.00	Resolution 2023-128
Aerosol Products: 20k + gal	419.00	Resolution 2023-128
Amusement Building	1,325.00	Resolution 2023-128
Aviation Facilities	419.00	Resolution 2023-128
Energy Storage System	139.00	Resolution 2023-128
Candles in a Public Assembly	56.00	Resolution 2023-128
Cellulose Nitrate Film	210.00	Resolution 2023-128
Cellulose Nitrate Storage	210.00	Resolution 2023-128
Combustible Fibers	210.00	Resolution 2023-128
Combustible Dust-Producing Ops	280.00	Resolution 2023-128
Combustible Material Storage - Misc	280.00	Resolution 2023-128
Compressed Gas: High Haz < 200 cu ft	529.00	Resolution 2023-128
Compressed Gas: High Haz 200 - 500 cu ft	629.00	Resolution 2023-128
Compressed Gas: High Haz 501 - 1k cu ft	787.00	Resolution 2023-128
Compressed Gas: High Haz 1k - 2k cu ft	1,049.00	Resolution 2023-128
Compressed Gas: High Haz 2k - 3k cu ft	1,325.00	Resolution 2023-128
Compressed Gas: High Haz 3+ cu ft	1,605.00	Resolution 2023-128
Compressed Gas: Low Haz < 501 cu ft	139.00	Resolution 2023-128
Compressed Gas: Low Haz 501 - 2250 cu ft	181.00	Resolution 2023-128
Compressed Gas: Low Haz 2,250 - 10k cu ft	222.00	Resolution 2023-128
Compressed Gas: Low Haz 10k - 100k cu ft	280.00	Resolution 2023-128
Compressed Gas: Low Haz 100k - 200k cu ft	390.00	Resolution 2023-128
Compressed Gas: Low Haz 200k + cu ft	465.00	Resolution 2023-128
Cryogenics: High Haz <200 cu ft	768.00	Resolution 2023-128
Cryogenics: High Haz 201 - 500 cu ft	931.00	Resolution 2023-128
Cryogenics: High Haz 501 - 1k cu ft	1,162.00	Resolution 2023-128
Cryogenics: High Haz 1k - 2k cu ft	1,551.00	Resolution 2023-128
Cryogenics: High Haz 2k - 3k cu ft	1,954.00	Resolution 2023-128
Cryogenics: High Haz 3k+ cu ft	2,303.00	Resolution 2023-128
Cryogenics: Low Haz < 55 gal	139.00	Resolution 2023-128
Cryogenics: Low Haz 55 - 225 gal	175.00	Resolution 2023-128
Cryogenics: Low Haz 225 -1k gal	210.00	Resolution 2023-128
Cryogenics: Low Haz 1k - 10k gal	280.00	Resolution 2023-128
Cryogenics: Low Haz 10k - 20k gal	364.00	Resolution 2023-128
Cryogenics: Low Haz 20k + gal	446.00	Resolution 2023-128
Dry Cleaning Plant	139.00	Resolution 2023-128

LIVERMORE CALIFORNIA

MASTER FEE SCHEDULE

Fire Prevention - Annual Fire Code & Unified Program Activity Fees (Con't)		
Description	**Fee**	**Source**
Explosives: 550 lbs	$ 752.00	Resolution 2023-128
Explosives: 551 - 2,250 lbs	908.00	Resolution 2023-128
Explosives: 2,251 - 10k lbs	1,132.00	Resolution 2023-128
Explosives: 10k - 100k lbs	1,507.00	Resolution 2023-128
Explosives: 100k - 200k lbs	1,884.00	Resolution 2023-128
Explosives: 200k + lbs	2,260.00	Resolution 2023-128
Flam/Comb Liq: Above Ground < 55 gal	139.00	Resolution 2023-128
Flam/Comb Liq: Above Ground 55 - 225 gal	210.00	Resolution 2023-128
Flam/Comb Liq: Above Ground 225 - 1k gal	280.00	Resolution 2023-128
Flam/Comb Liq: Above Ground 1k - 10k gal	364.00	Resolution 2023-128
Flam/Comb Liq: Above Ground 10k - 20k gal	435.00	Resolution 2023-128
Flam/Comb Liq: Above Ground 20k + gal	582.00	Resolution 2023-128
Fruit Ripening	167.00	Resolution 2023-128
HazMat Above Ground: < 55 gal	139.00	Resolution 2023-128
HazMat Above Ground: 55 - 225 gal	175.00	Resolution 2023-128
HazMat Above Ground: 225 -1k gal	280.00	Resolution 2023-128
HazMat Above Ground: 1k -10k gal	364.00	Resolution 2023-128
HazMat Above Ground: 10k - 20k gal	446.00	Resolution 2023-128
HazMat Above Ground: 20k + gal	475.00	Resolution 2023-128
Haz Waste Generator: CESQG	197.00	Resolution 2023-128
Haz Waste Generator: Lrg Quantity*	410.00	Resolution 2023-128
Haz Waste Generator: SQG	364.00	Resolution 2023-128
Haz Waste Treatment: CE only*	216.00	Resolution 2023-128
Haz Waste Treatment: CA, PBR*	431.00	Resolution 2023-128
Universal Waste Collection Site	1,115.00	Resolution 2023-128
High-Piled Combust Storage	503.00	Resolution 2023-128

* Fee determined by the department for the reasonable cost and not adjusted per annual CPI of 5.3% in February 2023.

LIVERMORE CALIFORNIA

MASTER FEE SCHEDULE

Fire Prevention - Miscellaneous Fees			
Description	**Unit**	**Fee**	**Source**
Candles and Open Flame in Assembly	Per Event	$ 139.00	Resolution 2023-128
Carnivals and Fairs	Per Event	560.00	Resolution 2023-128
Exhibits and Trade Shows	Per Event	781.00	Resolution 2023-128
Pyrotechnical Special Effects show	Per Show	1,674.00	Resolution 2023-128
Temporary Membrane Structures	Per Event	349.00	Resolution 2023-128
Seasonal Lots (Xmas, Pumpkin, etc.)	Each Lot	349.00	Resolution 2023-128
Open Burning	Per Application	139.00	Resolution 2023-128
Alternate Method Application - Hourly, not part of regular permit	Per Hour	280.00	Resolution 2023-128
Hydrant Flow Test, per area tested	Per Area	560.00	Resolution 2023-128
Licensed Care Facilities - Fire Clearance (other than Single Family Home Residential Care)	Each	642.00	Resolution 2023-128
Dump Houses	Per Hour	280.00	Resolution 2023-128
Excessive False Alarms[a]	Each Occurrence	837.00	Resolution 2023-128
Other Plan Checks and Inspections (such as but not limited to emergency repair/modification to fire protection system)	Per Hour	280.00	Resolution 2023-128
Off hours inspections (2 hour minimum charge) Hourly @ time and a half	Per Hour	280.00	Resolution 2023-128
Asbestos abatement	Per Hour	280.00	Resolution 2023-128
Fire code assessment/approval change of occupancy/use/equipment/access	Per Hour	280.00	Resolution 2023-128
Service Required in Excess of Standard (due to size, occupancy uses or other than local regulations)	Per Hour	280.00	Resolution 2023-128

[a] Excessive False Alarm is defined as three or more false alarms within a 90-day period.

Fire Prevention - Miscellaneous Administrative Fees			
Description	**Unit**	**Fee**	**Source**
Response to incidence/stand-by			
Truck Company (4-person rig) [(1) (2)]	Per Hour	$ 523.85	New, see staff report
Engine Company (3-person rig) [(1) (3)]	Per Hour	438.64	New, see staff report
Paramedic Rescue (2-person rig) [(1) (4)]	Per Hour	313.57	New, see staff report
Specialized Equipment	Actual	Actual Cost	New, see staff report
Supplies/Equipment Used	Actual	Actual Cost	New, see staff report
Battalion Chief	Per Hour	113.97	New, see staff report
Fire Inspector	Per Hour	121.71	New, see staff report
HazMat Inspector	Per Hour	123.26	New, see staff report

[(1)] Per CalOES Rate Letter and current fully burden rate:
Hourly Rates: (as of 7/1/2024)
Fire Captain - $106.25
Fire Engineer - $96.87
Firefighter Paramedic - $93.56
Firefighter - $85.21
Apparatus (Type I) - $141.96
Apparatus (Type IV-VII) - $123.14

[(2)] Hourly rate includes fire captain, fire engineer, firefighter paramedic, firefighter and apparatus (Type I)

[(3)] Hourly rate includes fire engineer, firefighter paramedic, firefighter and apparatus (Type I)

[(4)] Hourly rate includes fire engineer, firefighter paramedic, and apparatus (Type I-II)

LIVERMORE CALIFORNIA

MASTER FEE SCHEDULE

Police Department Fees		
Description	**Fee**	**Source**
Police Permit		
Bingo	$ 355.00	Resolution 2023-128
Card Room - License	311.00	Resolution 2023-128
Card Room - Renewal	243.00	Resolution 2023-128
Card Room - Employee Work Permit	243.00	Resolution 2023-128
Card Room - Employee Wk Permit Renewal	243.00	Resolution 2023-128
Dance Application	297.00	Resolution 2023-128
Food Vehicle Permit	243.00	Resolution 2023-128
Food Vehicle Renewal	243.00	Resolution 2023-128
Massage Establishment Permit	593.00	Resolution 2023-128
Massage Establishment Permit Renewal	243.00	Resolution 2023-128
Masseuse Permit	355.00	Resolution 2023-128
Masseuse Renewal	209.00	Resolution 2023-128
Taxicab Driver Permit	243.00	Resolution 2023-128
Renewal Taxicab Driver Permit	243.00	Resolution 2023-128
Taxicab Company Permit	593.00	Resolution 2023-128
Renewal Taxicab Company Permit	279.00	Resolution 2023-128
Vendor/Solicitor Permit	297.00	Resolution 2023-128
Vendor/Solicitor Permit Renewal	243.00	Resolution 2023-128
Property & Evidence Fees (Subpoena required)		
Property Storage (per item)	90.00	Resolution 2023-128
Evidence Recording (CD)	38.00	Resolution 2023-128
Duplication of Video Tapes (including digital video)	73.00	Resolution 2023-128
Digital Photos per Sheet	13.00	Resolution 2023-128
CD-ROM Copy	24.00	Resolution 2023-128
Prints From Video	152.00	Resolution 2023-128
Multiple Photos (plus developing)	12.00	Resolution 2023-128
Gun Safekeeping/Stoarage (per weapon)	94.00	Resolution 2023-128
Sale of Police Reports		
Police Report***	12.00 per report / 0.30 per page	Resolution 2023-128
Evidence Recording (per incident)	38.00	Resolution 2023-128
Background Check (SCIA)	35.00	Resolution 2023-128
Clearance Letter	84.00	Resolution 2023-128
ABC Clearance Letter	68.00	Resolution 2023-128
ABC One Day Permits	206.00	Resolution 2023-128
Animal Control Fees		
Deceased Pet Pick Up	138.00	Resolution 2023-128
Vehicle Fees		
Stored Vehicle Release *	289.00	Resolution 2023-128
Impounded Vehicle *	289.00	Resolution 2023-128
Repossessed Vehicle Fee (Receipt) **	15.00	Resolution 2023-128
Special Event Staff Charges		
Per hour with overhead	Actual costs + overhead	Resolution 2023-128

* Not subject to the annual CPI increase as it is more than other area agencies' charges

** Not subject to the annual CPI increase as the amount is set per Government Code 41612

*** $0.30 per page is not subject to the annual CPI increase as the amount is the direct cost of duplication

LIVERMORE CALIFORNIA

MASTER FEE SCHEDULE

Library Fees			
Description	**Unit**	**Fee****	**Source**
Room Rental Fee varies by the group			
Group - Livermore Public Library, Friends of the Livermore Public Library, City of Livermore, Livermore Area Recreation and Park District (LARPD), Livermore Valley Joint Unified School District (LVJUSD), Las Positas College			
Hourly fees	Per hour per room	None	Resolution 2023-128
Daily fees	Per day per room	None	Resolution 2023-128
Group - All others			
Hourly Fees	Per hour per room	$ 21.00	Resolution 2023-128
Daily fees	Per day per room	105.00	Resolution 2023-128
Equipment Usage			
Digital Projector	Per day	27.00	Resolution 2023-128
Conference Phone	Per day	27.00	Resolution 2023-128
Flip Chart/Dry Erase board with paper and pens	Per day	16.00	Resolution 2023-128
Microphones	Per day	11.00	Resolution 2023-128
Printing from computers / microfilm machine			
Black & white	Per page	0.10	Resolution 2023-128
Color	Per page	0.25	Resolution 2023-128
Photocopying	Per page	0.15	Resolution 2023-128
Library Material Replacement Fees			
Magazines and Paperback Books	per item	5.00	Resolution 2023-128
Music CDs	per item	21.00	Resolution 2023-128
Children's Books	per item	21.00	Resolution 2023-128
Educational Games	per item	21.00	Resolution 2023-128
DVDs	per item	31.00	Resolution 2023-128
Media Kits	per kit	31.00	Resolution 2023-128
Adult / Teen Books	per item	31.00	Resolution 2023-128
Educational Toys	per item	31.00	Resolution 2023-128
Talking Books	per item	52.00	Resolution 2023-128
Console Games / Technology Items	per item	52.00	Resolution 2023-128
Higher Value Library Items	per item	103.00 - 309.00	Resolution 2023-128
Materials Recovery Service Fee	per referral	10.00	Resolution 2023-128
Easy Access Keycard	per card	5.00	Resolution 2023-128
Link + Materials *	per item	up to $115	Resolution 2023-128

* A Link+ system-wide fee payable to the library that owns the borrowed item. The cost is set by the owning library.

** Fees are the same as prior year as the amounts are sufficient to cover the cost.

LIVERMORE CALIFORNIA

MASTER FEE SCHEDULE

Sewer Rates			
Description	**Billing Unit**	**Rates**	**Source**
Residential			
Single Family	Per Dwelling Unit Per Month	$ 71.65	Ordinance 2095
Multi-family	Per Dwelling Unit Per Month	58.63	Ordinance 2095
Commercial			
All Non-Residential/Institutional	Per Account Per Month	32.42	Ordinance 2095
Bakeries	Per 100 cubic feet	12.20	Ordinance 2095
Commercial Laundries	Per 100 cubic feet	7.60	Ordinance 2095
Markets w/ disposals	Per 100 cubic feet	12.23	Ordinance 2095
Mortuaries	Per 100 cubic feet	12.23	Ordinance 2095
Restaurants	Per 100 cubic feet	12.20	Ordinance 2095
All Other	Per 100 cubic feet	5.42	Ordinance 2095
Institutional			
Institutional	Per account Per Month	32.42	Ordinance 2095
Schools	Per 100 cubic feet	5.28	Ordinance 2095
All Other	Per 100 cubic feet	5.28	Ordinance 2095

Industrial and Miscellaneous Customers - Unit Charges			
Description	**Billing Unit**	**Rates**	**Source**
Annual Loading Charges [a]			
Volume	Million Gallons	$ 1,065.59	Ordinance 2095
BOD [1]	1000 lbs	276.38	Ordinance 2095
SS [2]	1000 lbs	224.64	Ordinance 2095
Peak Month Loading Charges [b]			
Volume	Million Gallons/day	219,934.31	Ordinance 2095
BOD [1]	lbs/day	14.40	Ordinance 2095
SS [2]	lbs/day	7.92	Ordinance 2095
Connection	each	3.16	Ordinance 2095

[a] Annual Loading Charges - These annual charges are billed monthly.

[b] Peak Month Loading Charges - These charges are based on the peak month's characteristics for the previous fiscal year.

[1] Biochemical Oxygen Demand (BOD)

[2] Suspended Solids (SS)

LIVERMORE CALIFORNIA

MASTER FEE SCHEDULE

Source Control Annual User Charges			
Description		**Rates**	**Source**
Weekly (4 per month)		$ 14,304.98	Ordinance 2095
Monthly		3,576.24	Ordinance 2095
Quarterly		1,192.08	Ordinance 2095
Semi-annually		596.03	Ordinance 2095
Annually		298.02	Ordinance 2095

Monitoring Fees			
Description		**Rates**	**Source**
Sampling (BOD, COD, SS, pH, oil grease)*			
Composite Sample		$ 902.26	Ordinance 2095
Grab Sample		360.91	Ordinance 2095
Violation Follow-up			
Composite Sample		1,804.53	Ordinance 2095
Grab Sample		721.82	Ordinance 2095

** Biochemical Demand (BOD), Chemical Oxygen Demand (COD), Suspended Solids (SS)

Permit Review, Issuance and Other Special Tasks			
Description		**Rates**	**Source**
New Permits:			
Review Application and Inspection			
Significant User		$ 2,379.89	Ordinance 2095
Intermediate User		1,189.92	Ordinance 2095
Permit Issuance			
Significant User		446.23	Ordinance 2095
Intermediate User		223.12	Ordinance 2095
Renewal of Permits:			
Review Application and Inspection			
Significant User		1,189.92	Ordinance 2095
Intermediate User		594.96	Ordinance 2095
Renewal Permit Issuance			
Significant User		297.49	Ordinance 2095
Intermediate User		148.76	Ordinance 2095
Routine or Compliance Inspection			
Significant User		446.23	Ordinance 2095
Intermediate User		297.49	Ordinance 2095
Permit Amendment			
Significant User		148.76	Ordinance 2095
Intermediate User		74.37	Ordinance 2095
Hearings			
Show Cause Hearing		824.36	Ordinance 2095
Enforcement Hearing		1,099.15	Ordinance 2095

LIVERMORE CALIFORNIA

MASTER FEE SCHEDULE

Water Rates - July 1 to December 31, 2024			
Description	**Unit**	**Rates**	**Source**
Meter Service Charges:			
5/8" Meter - D	Monthly	$ 23.40	Resolution 2022-052
3/4" Meter - D	Monthly	30.89	Resolution 2022-052
1 " Meter w/Fire Line	Monthly	23.40	Resolution 2022-052
1" Meter - D	Monthly	45.87	Resolution 2022-052
1-1/2" Meter - D	Monthly	83.32	Resolution 2022-052
1-1/2" Meter - T	Monthly	98.30	Resolution 2022-052
2" Meter - D	Monthly	128.26	Resolution 2022-052
2" Meter - T	Monthly	150.73	Resolution 2022-052
3" Meter - T	Monthly	334.24	Resolution 2022-052
4" Meter - T	Monthly	570.17	Resolution 2022-052
6" Meter - T	Monthly	1,206.82	Resolution 2022-052
8" Meter - T	Monthly	2,105.62	Resolution 2022-052
10" Meter - T	Monthly	3,154.22	Resolution 2022-052
12" Meter - T	Monthly	3,978.12	Resolution 2022-052
5/8" Fire-line Meter	Monthly	1.29	Resolution 2022-052
3/4" Fire-line Meter	Monthly	1.54	Resolution 2022-052
1" Fire-Line Meter	Monthly	2.05	Resolution 2022-052
1-1/2" Fire-Line Meter	Monthly	3.07	Resolution 2022-052
2" Fire-Line Meter	Monthly	4.09	Resolution 2022-052
3" Fire-Line Meter	Monthly	6.13	Resolution 2022-052
4" Fire-Line Meter	Monthly	8.17	Resolution 2022-052
6" Fire-Line Meter	Monthly	12.25	Resolution 2022-052
8" Fire-Line Meter	Monthly	16.33	Resolution 2022-052
10" Fire-Line Meter	Monthly	20.41	Resolution 2022-052
12" Fire-Line Meter	Monthly	24.49	Resolution 2022-052
Hydrant Meter Program Fee			
1" or smaller	Monthly	14.17	Resolution 2022-052
3"	Monthly	20.36	Resolution 2022-052
Lost Hydrant Wrench Fee	Per Wrench	54.00	Resolution 2022-052
Deposits			
Residential			
5/8" Meter	Per Meter	100.00	Resolution 2022-052
1" Meter	Per Meter	100.00	Resolution 2022-052
Other than residential			
5/8" or 3/4" Meter	Per Meter	100.00	Resolution 2022-052
1" or 1-1/2" Meter	Per Meter	100.00	Resolution 2022-052
2" or 3" Meter	Per Meter	200.00	Resolution 2022-052
4" or larger Meter	Per Meter	400.00	Resolution 2022-052
Construction Meter Deposit			
5/8", 3/4", and 1" Meter	Per Meter	300.00	Resolution 2022-052
Meter Testing Fees			
Meters up to 2" in size		100.00	Resolution 2022-052
Reconnection Fee **			
First time restoration		60.00	Resolution 2022-052
Subsequent restoration in a 12-month period		80.00	Resolution 2022-052
Reconnection if the water meter is removed		100.00	Resolution 2022-052
Reconnection between hours of 5:00 p.m. and 8:00 a.m.		250.00	Resolution 2022-052
Master Lock Replacement	Per Lock	15.00	Resolution 2022-052
Best Lock Replacement	Per Lock	50.00	Resolution 2022-052

** The City is in compliance with SB-998 Discontinuation of residential water service. If your household income is below 200%

LIVERMORE CALIFORNIA

MASTER FEE SCHEDULE

Water Rates - July 1 to December 31, 2024 (Continued)			
Description	**Unit**	**Rates [b]**	**Source**
Water Rates [a]			
Recycled [1]			
Recycled Water	Per CCF	$ 2.77	Resolution 2022-052
Normal Supply Voluntary Conservation			
Single Family Residential			
Tier I 0 - 7 CCF	Per CCF [1]	1.39	Resolution 2022-052
Tier II over 7 CCF	Per CCF	2.00	Resolution 2022-052
Multi-Family Residential			
Uniform	Per CCF	1.62	Resolution 2022-052
Commercial, Institutional & Public Agency			
Uniform	Per CCF	1.59	Resolution 2022-052
Irrigation			
Uniform	Per CCF	1.80	Resolution 2022-052
Stage I - Voluntary 10% Water Conservation			
Single Family Residential			
Tier I 0 - 7 CCF	Per CCF	1.58	Resolution 2022-052
Tier II over 7 CCF	Per CCF	2.19	Resolution 2022-052
Multi-Family Residential			
Uniform	Per CCF	1.81	Resolution 2022-052
Commercial, Institutional & Public Agency			
Uniform	Per CCF	1.78	Resolution 2022-052
Irrigation			
Uniform	Per CCF	1.99	Resolution 2022-052
Stage II - Voluntary/Mandatory 20% Water Conservation			
Single Family Residential			
Tier I 0 - 7 CCF	Per CCF	1.81	Resolution 2022-052
Tier II over 7 CCF	Per CCF	2.42	Resolution 2022-052
Multi-Family Residential			
Uniform	Per CCF	2.04	Resolution 2022-052
Commercial, Institutional & Public Agency			
Uniform	Per CCF	2.01	Resolution 2022-052
Irrigation			
Uniform	Per CCF	2.22	Resolution 2022-052

[a] Water rates will be charged based upon the water conservation level in effect.

[b] The rates shown here are the City charges only. Non-recycled ratepayers must pay the City service charge, the City variable charges, as well as the Zone 7 fixed and variable charges.

[1] 1 CCF = 100 Cubic Feet of water or 1 "unit" of water

[2] Recycled - "Normal" recycled water rates remain in effect in all stages of conservation

LIVERMORE CALIFORNIA

MASTER FEE SCHEDULE

Water Rates - July 1 to December 31, 2024 (Continued)			
Description	**Unit**	**Rates [b]**	**Source**
Water Rates [a]			
Stage III Shortage			
Single Family Residential			
Tier I 0 - 7 CCF	Per CCF [1]	$ 2.11	Resolution 2022-052
Tier II over 7 CCF	Per CCF	2.72	Resolution 2022-052
Multi-Family Residential			
Uniform	Per CCF	2.34	Resolution 2022-052
Commercial, Institutional & Public Agency			
Uniform	Per CCF	2.31	Resolution 2022-052
Irrigation			
Uniform	Per CCF	2.52	Resolution 2022-052
Stage IV - Mandatory 50% Water Conservation			
Single Family Residential			
Tier I 0 - 7 CCF	Per CCF	2.51	Resolution 2022-052
Tier II over 7 CCF	Per CCF	3.12	Resolution 2022-052
Multi-Family Residential			
Uniform	Per CCF	2.74	Resolution 2022-052
Commercial, Institutional & Public Agency			
Uniform	Per CCF	2.71	Resolution 2022-052
Irrigation			
Uniform	Per CCF	2.92	Resolution 2022-052
Stage V Shortage			
Single Family Residential			
Tier I 0 - 7 CCF	Per CCF	3.07	Resolution 2022-052
Tier II over 7 CCF	Per CCF	3.68	Resolution 2022-052
Multi-Family Residential			
Uniform	Per CCF	3.30	Resolution 2022-052
Non-residential			
Uniform	Per CCF	3.27	Resolution 2022-052
Irrigation			Resolution 2022-052
Uniform	Per CCF	3.48	Resolution 2022-052
Stage VI Shortage			
Single Family Residential			
Tier I 0 - 7 CCF	Per CCF	3.86	Resolution 2022-052
Tier II over 7 CCF	Per CCF	4.47	Resolution 2022-052
Multi-Family Residential			Resolution 2022-052
Uniform	Per CCF	4.09	Resolution 2022-052
Non-residential			Resolution 2022-052
Uniform	Per CCF	4.06	Resolution 2022-052
Irrigation			Resolution 2022-052
Uniform	Per CCF	4.27	Resolution 2022-052

[a] Water rates will be charged based upon the water conservation level in effect.

[b] The rates shown here are the City charges only. Non-recycled ratepayers must pay the City service charge, the City variable charges, as well as the Zone 7 fixed and variable charges.

[1] 1 CCF = 100 Cubic Feet of water or 1 "unit" of water

LIVERMORE CALIFORNIA

MASTER FEE SCHEDULE

Water Meter Purchase Prices *			
Description	**Billing Unit**	**Total Price**	**Source**
Piston SR II Meters	Each	Actual Cost	Resolution 2023-128
Ultrasonic Meters	Each	Actual Cost	Resolution 2023-128
Omni C2 Meters	Each	Actual Cost	Resolution 2023-128
Omni F2 Meters	Each	Actual Cost	Resolution 2023-128
Omni R2 Meters	Each	Actual Cost	Resolution 2023-128
Omni T2 Meters	Each	Actual Cost	Resolution 2023-128
Registers	Each	Actual Cost	Resolution 2023-128
Endpoints	Each	Actual Cost	Resolution 2023-128
Misc Parts			
Meter Adaptor (A47)	Each	Actual Cost	Resolution 2023-128
Meter Adaptor (A34)	Each	Actual Cost	Resolution 2023-128
Tail Piece 5/8, 3/4	Each	Actual Cost	Resolution 2023-128
Tail Piece 1"	Each	Actual Cost	Resolution 2023-128
1.5" flange	Each	Actual Cost	Resolution 2023-128
2" Flange	Each	Actual Cost	Resolution 2023-128
Brass Bolts	Each	Actual Cost	Resolution 2023-128
Brass Nut	Each	Actual Cost	Resolution 2023-128

* = Price is the direct cost per the 3rd party plus applicable sales tax, final rate will be based on the current price from the 3rd party and subject to change

LIVERMORE CALIFORNIA

MASTER FEE SCHEDULE

Water Rates - effective January 1, 2025			
Description	**Unit**	**Rates**	**Source**
Meter Service Charges:			
5/8" Meter - D	Monthly	$ 23.88	Resolution 2022-052
3/4" Meter - D	Monthly	31.57	Resolution 2022-052
1 " Meter w/Fire Line	Monthly	23.88	Resolution 2022-052
1" Meter - D	Monthly	46.94	Resolution 2022-052
1-1/2" Meter - D	Monthly	85.38	Resolution 2022-052
1-1/2" Meter - T	Monthly	100.75	Resolution 2022-052
2" Meter - D	Monthly	131.50	Resolution 2022-052
2" Meter - T	Monthly	154.56	Resolution 2022-052
3" Meter - T	Monthly	342.90	Resolution 2022-052
4" Meter - T	Monthly	585.03	Resolution 2022-052
6" Meter - T	Monthly	1,238.42	Resolution 2022-052
8" Meter - T	Monthly	2,160.86	Resolution 2022-052
10" Meter - T	Monthly	3,237.03	Resolution 2022-052
12" Meter - T	Monthly	4,082.59	Resolution 2022-052
5/8" Fire-line Meter	Monthly	1.31	Resolution 2022-052
3/4" Fire-line Meter	Monthly	1.56	Resolution 2022-052
1" Fire-Line Meter	Monthly	2.08	Resolution 2022-052
1-1/2" Fire-Line Meter	Monthly	3.11	Resolution 2022-052
2" Fire-Line Meter	Monthly	4.14	Resolution 2022-052
3" Fire-Line Meter	Monthly	6.20	Resolution 2022-052
4" Fire-Line Meter	Monthly	8.26	Resolution 2022-052
6" Fire-Line Meter	Monthly	12.38	Resolution 2022-052
8" Fire-Line Meter	Monthly	16.50	Resolution 2022-052
10" Fire-Line Meter	Monthly	20.62	Resolution 2022-052
12" Fire-Line Meter	Monthly	24.74	Resolution 2022-052
Hydrant Meter Program Fee			
1" or smaller	Monthly	14.51	Resolution 2022-052
3"	Monthly	20.85	Resolution 2022-052
Lost Hydrant Wrench Fee	Per Wrench	54.00	Resolution 2022-052
Deposits			
Residential			
5/8" Meter	Per Meter	100.00	Resolution 2022-052
1" Meter	Per Meter	100.00	Resolution 2022-052
Other than residential			
5/8" or 3/4" Meter	Per Meter	100.00	Resolution 2022-052
1" or 1-1/2" Meter	Per Meter	100.00	Resolution 2022-052
2" or 3" Meter	Per Meter	200.00	Resolution 2022-052
4" or larger Meter	Per Meter	400.00	Resolution 2022-052
Construction Meter Deposit			
5/8", 3/4", and 1" Meter	Per Meter	300.00	Resolution 2022-052
Meter Testing Fees			
Meters up to 2" in size		100.00	Resolution 2022-052
Reconnection Fee **			
First time restoration		60.00	Resolution 2022-052
Subsequent restoration in a 12-month period		80.00	Resolution 2022-052
Reconnection if the water meter is removed		100.00	Resolution 2022-052
Reconnection between hours of 5:00 p.m. and 8:00 a.m.		250.00	Resolution 2022-052
Master Lock Replacement	Per Lock	15.00	Resolution 2022-052
Best Lock Replacement	Per Lock	50.00	Resolution 2022-052

** The City is in compliance with SB-998 Discontinuation of residential water service. If your household income is below 200%

LIVERMORE CALIFORNIA

MASTER FEE SCHEDULE

Water Rates - effective January 1, 2025 (Continued)			
Description	**Unit**	**Rates [b]**	**Source**
Water Rates [a]			
Recycled [1]			
Recycled Water	Per CCF	$ 2.80	Resolution 2022-052
Normal Supply Voluntary Conservation			
Single Family Residential			
Tier I 0 - 7 CCF	Per CCF [1]	1.43	Resolution 2022-052
Tier II over 7 CCF	Per CCF	2.05	Resolution 2022-052
Multi-Family Residential			
Uniform	Per CCF	1.66	Resolution 2022-052
Commercial, Institutional & Public Agency			
Uniform	Per CCF	1.63	Resolution 2022-052
Irrigation			
Uniform	Per CCF	1.84	Resolution 2022-052
Stage I - Voluntary 10% Water Conservation			
Single Family Residential			
Tier I 0 - 7 CCF	Per CCF	1.63	Resolution 2022-052
Tier II over 7 CCF	Per CCF	2.25	Resolution 2022-052
Multi-Family Residential			
Uniform	Per CCF	1.86	Resolution 2022-052
Commercial, Institutional & Public Agency			
Uniform	Per CCF	1.83	Resolution 2022-052
Irrigation			
Uniform	Per CCF	2.04	Resolution 2022-052
Stage II - Voluntary/Mandatory 20% Water Conservation			
Single Family Residential			
Tier I 0 - 7 CCF	Per CCF	1.87	Resolution 2022-052
Tier II over 7 CCF	Per CCF	2.49	Resolution 2022-052
Multi-Family Residential			
Uniform	Per CCF	2.10	Resolution 2022-052
Commercial, Institutional & Public Agency			
Uniform	Per CCF	2.07	Resolution 2022-052
Irrigation			
Uniform	Per CCF	2.28	Resolution 2022-052

[a] Water rates will be charged based upon the water conservation level in effect.

[b] The rates shown here are the City charges only. Non-recycled ratepayers must pay the City service charge, the City variable charges, as well as the Zone 7 fixed and variable charges.

[1] 1 CCF = 100 Cubic Feet of water or 1 "unit" of water

[2] Recycled - "Normal" recycled water rates remain in effect in all stages of conservation

LIVERMORE CALIFORNIA

MASTER FEE SCHEDULE

Water Rates - effective January 1, 2025 (Continued)			
Description	**Unit**	**Rates [b]**	**Source**
Water Rates [a]			
Stage III Shortage			
Single Family Residential			
Tier I 0 - 7 CCF	Per CCF [1]	$ 2.17	Resolution 2022-052
Tier II over 7 CCF	Per CCF	2.79	Resolution 2022-052
Multi-Family Residential			
Uniform	Per CCF	2.40	Resolution 2022-052
Commercial, Institutional & Public Agency			
Uniform	Per CCF	2.37	Resolution 2022-052
Irrigation			
Uniform	Per CCF	2.58	Resolution 2022-052
Stage IV - Mandatory 50% Water Conservation			
Single Family Residential			
Tier I 0 - 7 CCF	Per CCF	2.58	Resolution 2022-052
Tier II over 7 CCF	Per CCF	3.20	Resolution 2022-052
Multi-Family Residential			
Uniform	Per CCF	2.81	Resolution 2022-052
Commercial, Institutional & Public Agency			
Uniform	Per CCF	2.78	Resolution 2022-052
Irrigation			
Uniform	Per CCF	2.99	Resolution 2022-052
Stage V Shortage			
Single Family Residential			
Tier I 0 - 7 CCF	Per CCF	3.16	Resolution 2022-052
Tier II over 7 CCF	Per CCF	3.78	Resolution 2022-052
Multi-Family Residential			
Uniform	Per CCF	3.39	Resolution 2022-052
Non-residential			
Uniform	Per CCF	3.36	Resolution 2022-052
Irrigation			Resolution 2022-052
Uniform	Per CCF	3.57	Resolution 2022-052
Stage VI Shortage			
Single Family Residential			
Tier I 0 - 7 CCF	Per CCF	3.96	Resolution 2022-052
Tier II over 7 CCF	Per CCF	4.58	Resolution 2022-052
Multi-Family Residential			
Uniform	Per CCF	4.19	Resolution 2022-052
Non-residential			
Uniform	Per CCF	4.16	Resolution 2022-052
Irrigation			Resolution 2022-052
Uniform	Per CCF	4.37	Resolution 2022-052

[a] Water rates will be charged based upon the water conservation level in effect.

[b] The rates shown here are the City charges only. Non-recycled ratepayers must pay the City service charge, the City variable charges, as well as the Zone 7 fixed and variable charges.

[1] 1 CCF = 100 Cubic Feet of water or 1 "unit" of water

LIVERMORE CALIFORNIA

MASTER FEE SCHEDULE

Airport Fees			
Description	**Unit**	**Fee**	**Source**
Facility			
Paved, Open Aircraft Tie-Down [1]			
0 - 3,500 pounds (Certified max. gross take-off weight)	Monthly	$ 76.00	Resolution 2023-128
3,501 - 6,250 pounds	Monthly	87.00	Resolution 2023-128
6,215 - 12,500 pounds	Monthly	105.00	Resolution 2023-128
12,501 - 25,000 pounds	Monthly	126.00	Resolution 2023-128
25,001 - 50,000 pounds	Monthly	157.00	Resolution 2023-128
50,001 pounds and above	Monthly	205.00	Resolution 2023-128
Small T-Hangar Rental	Monthly	440.00	Resolution 2023-128
Medium T- Hangar Rental	Monthly	475.00	Resolution 2023-128
Large T-Hangar Rental	Monthly	585.00	Resolution 2023-128
Hangar No. 272* Rental	Monthly	524.00	Resolution 2023-128
Hangar No. 191* Rental	Monthly	786.00	Resolution 2023-128
Rectangular Hangar (45' door) Rental [a]	Monthly	773.00	Resolution 2023-128
Rectangular Hangar (48' door) Rental [a]	Monthly	830.00	Resolution 2023-128
Executive Hangar, Small Hangar Rental** [a]	Monthly	1,880.00	Resolution 2023-128
Executive Hangar, Large Hangar Rental ** [a]	Monthly	2,046.00	Resolution 2023-128
Shelter Rental	Monthly	263.00	Resolution 2023-128
T-Combo, North (Small)	Monthly	702.00	Resolution 2023-128
T-Combo, North (Medium)	Monthly	748.00	Resolution 2023-128
T-Combo, South (Small)	Monthly	713.00	Resolution 2023-128
T-Combo, South (Medium)	Monthly	748.00	Resolution 2023-128
T-Combo, South (Large)	Monthly	887.00	Resolution 2023-128
Landing Fees: Commercial Aircraft Operations (shall include landings of all non-based general aviation aircraft that conduct air taxi, charter, or cargo operations under FAR Part 121 or Part 135) based on maximum certificated gross landing weight: [2]			
0 - 3,500 pounds	Per Landing	3.00	Resolution 2023-128
	Daily	6.00	To be deleted, see staff report
	Monthly	14.00	To be deleted, see staff report
3,501 - 6,250 pounds	Per Landing	6.00	Resolution 2023-128
	Daily	12.00	To be deleted, see staff report
	Monthly	28.00	To be deleted, see staff report
6,251 - 12,500 pounds	Per Landing	12.00	Resolution 2023-128
	Daily	24.00	To be deleted, see staff report
	Monthly	56.00	To be deleted, see staff report
12,501 - 25,000 pounds	Per Landing	24.00	Resolution 2023-128
	Daily	48.00	To be deleted, see staff report
	Monthly	112.00	To be deleted, see staff report
25,001 - 50,000 pounds	Per Landing	48.00	Resolution 2023-128
	Daily	96.00	To be deleted, see staff report
	Monthly	224.00	To be deleted, see staff report
50,001 pounds and above	Per Landing	96.00	Resolution 2023-128
	Daily	192.00	To be deleted, see staff report
	Monthly	448.00	To be deleted, see staff report

* These Hangars are odd-sized and contain additional space.

** The City may separately invoice Executive Hangar tenants with a month-to-month lease for any amount over $100 in monthly electrical charges.

(a) Except those on Med-Term with cap of 5%.

(1) Rates are reasonable and the occupancy rate is only at 11% capacity. No change from last year.

(2) Rates are reasonable; airport staff compared with rates charged by other airports. No change from last year.

LIVERMORE CALIFORNIA

MASTER FEE SCHEDULE

Airport Fees			
Description	**Unit**	**Fee**	**Source**
Transient Aircraft Parking Fees (8 to 24 hours, and any 24-hour period			
0 - 3,500 pounds (Gross Weight) (A)		$ 6.00	Resolution 2023-128
3,501 - 6,250 pounds (A)		8.00	Resolution 2023-128
6,215 - 12,500 pounds (A)		16.00	Resolution 2023-128
12,501 - 25,000 pounds (A)		21.00	Resolution 2023-128
25,001 - 50,000 pounds (A)		32.00	Resolution 2023-128
50,001 pounds and above (designated apron only) (A)		43.00	Resolution 2023-128
Long-Term Vehicle Parking (A)	Monthly	50.00	Resolution 2023-128
Annual Commercial Aviation Permit Fee (A)	Yearly	150.00	Resolution 2023-128
Air Ships Mooring Fee (A)	Per liner ft/day	1.00	New, see staff report
Gate Card Replacement Fee (A)		20.00	Resolution 2023-128
Gate Remote Fee (A)		75.00	New, see staff report
Hangar Key Purchase - additional key (A)	Per key	5.00	Resolution 2023-128
Hangar Re-core (A)		87.00	Resolution 2023-128
Hangar Wait List Deposit for T-Hangars (A)		204.00	Resolution 2023-128
Hangar Wait List Deposit for Box Hangars (A)		365.00	Resolution 2023-128
Fuel Flowage Fees - per gallon delivered		0.11 up to 750k; 0.13 up to 900k; 0.15 above 900k	Resolution 2023-128
Commercial Filming Fees (up to 8 hours, plus $500 per hour thereafter. Staff assistance charges are separate)			
On Airport operations area (A)		2,500.00	Resolution 2023-128
On Landside public area (A)		1,000.00	Resolution 2023-128
Beyond eight (8) hours (A)	Hour	500.00	Resolution 2023-128
Filming assistance			
Airport safety staff (A)	Hour	125.00	Resolution 2023-128
Airport management staff (A)	Hour	163.00	Resolution 2023-128
Hangar Administration Fee (A)		50.00	Resolution 2023-128
Late Charges and Interest***			
Late Charges if monthly rent not paid by the 10th day of each month		5% of Monthly	Resolution 2023-128
Interest on late payments	Monthly	0.5%	Resolution 2023-128
Conference Room Rental and Related Fees (A)			
Cleaning fee	Per event	50.00	New, see staff report
Group rental			
City of Livermore, Livermore Airport	Per event	Free	New, see staff report
Livermore Airport established aviation groups, clubs or organizations	Per event	Free	New, see staff report
Non-resident, non-aviation groups	Hour	50.00	New, see staff report
Other Fees			
Damage Deposit: Released following conclusion of event(s)	Hour	300.00	New, see staff report
Airport Attendant on Duty: After hours, 2-hour minimum	Hour	200.00	New, see staff report
Each hour beyond 2 hours	Hour	80.00	New, see staff report
Equipment Usage			
LCD monitor	Per event	25.00	New, see staff report
Conference Phone	Per event	25.00	New, see staff report

*** If all charges are not paid within 30 days from the due date, the City may terminate the lease.

(A) = Rate is fixed, not subject to annual CPI change.

LIVERMORE
CALIFORNIA

CITY COUNCIL STAFF REPORT **ITEM NO. 6.2**

DATE: June 24, 2024

TO: Honorable Mayor and City Council

FROM: Jeramy Young, Police Chief

SUBJECT: Hearing on Police Department Tow Franchise Proposals for RFP & Q No. 4262 to grant a non-exclusive tow franchise agreement, for a five-year term, from July 1, 2024 - June 30, 2029

RECOMMENDED ACTION

Staff recommends the City Council authorize the City Manager to grant a non-exclusive tow franchise agreement, for a five-year term, commencing July 1, 2024, and ending June 30, 2029, in substantial conformance to Exhibit A to the resolution to the following companies:

1. Action Road Solutions DBA Jack James Tow Service,
2. Central Towing & Transport, LLC,
3. ITN Holdings, LLC DBA First Street Tow,
4. Golden State Fleet Services, and
5. Norm's Tow Service

SUMMARY

On October 12, 2016, the City of Livermore adopted revised Ordinance 5.44 creating the opportunity for tow companies to submit qualifications for consideration to be placed and maintained on a rotation tow list with the Livermore Police Department. A Request for Proposal & Qualifications (RFP & Q) No. 4262 was published on March 26, 2024 to identify tow truck operators intending to operate as franchisees for the City of Livermore. Five tow truck operators submitted proposals to provide towing services as provided in Chapter 5.44.

DISCUSSION

On March 26, 2024, the City of Livermore published an RFP & Q No. 4262 for nonconsensual police towing service for the Livermore Police Department (LPD). To ensure a fair and objective RFP & Q, the process was conducted by the City of Livermore Purchasing Department. The RFP & Q was sent to interested operators, published in the Valley Times, and posted on www.PublicPurchase.com. RFP & Q No. 4262 was published with the following schedule:

- RFP/Q published - March 26, 2024
- Mandatory pre-bid conference meeting - April 8, 2024
- Proposals due - April 18, 2024
- Approval of tow franchise agreement - May 23, 2024

The City has the authority under state and federal law to regulate a tow franchise within its boundaries and to charge a reasonable fee to reimburse the City for the costs of administering such franchise. The following tow operators have submitted proposals to provide nonconsensual police towing services for the LPD as part of the franchise agreement: Action Road Solutions DBA Jack James Tow Service; Central Towing and Transport, LLC; ITN Holdings, LLC DBA First Street Tow; Golden State Fleet Services; and Norm's Tow Service. Three of the proposed franchisees, Central Towing & Transport, LLC, ITN Holdings, LLC DBA First Street Tow, and Norm's Tow Service, are currently providing non-consensual police towing services for the City of Livermore under the current franchise agreement due to expire on June 30, 2024. All the aforementioned potential franchisees met the RFP & Q requirements.

As part of the proposal, all potential franchisees submitted hourly rate fee schedules and storage rates that would be included in the franchise agreement. They based their proposed rates on their bids to the California Highway Patrol (CHP). CHP conducts a fee acceptance process related to tow franchise rates charged throughout the state to keep the fees schedules reasonable and competitive. All proposed rates for the City of Livermore fell between $280-300/hour for Class-A tows and $100-150/day for storage (dependent on indoor vs. outdoor). These rates are contained in Attachment 1, Checklist and Tabulation, and are in compliance with acceptable CHP rate standards.

Since the 2018 implementation of the current tow franchise agreement, the LPD has experienced an increased need in tow services for recreation vehicles (RVs) and boats longer than 15-feet. Under the 2018 agreement, only three of the five franchisees possessed the necessary equipment to tow these items when the LPD requested services. Therefore, the RFP & Q No. 4262 requirements were updated in two areas compared to the 2018 agreement. Under RFP & Q No. 4262, the franchisees are required to have one medium-duty tow truck (class B), and one heavy-duty tow truck (either a Class C or Class D). This requirement gives the LPD the same level of service from each franchisee, equality amongst each franchisee when summoned for a non-consensual tow from LPD, and the ability to tow the RVs and boats. To offset the franchisees' costs of properly disposing of RVs and boats longer than 15-feet, the RFP & Q No. 4262 included the ability for the LPD to reimburse a franchisee up to $2,500 for the disposal and dismantling of an RV or boat. Franchisees' costs to dispose and dismantle an RV and boat are significant for properly dismantling, and disposal of hazardous waste/materials such as fuels, engine fluids, and human waste. The franchisee reimbursement up to $2,500 is an incentive to tow the requested item rather than refuse towing it.

The criteria used in evaluating the proposals received were a method of approach; qualifications and experience; and the proposed equipment and facilities. All proposals have been reviewed by staff and all submitted proposals meet the requirements of the RFP & Q. Historically, the number of franchisees for nonconsensual police towing service agreements ranged between one and five. This RFP & Q did not require multiple franchisees.

All the potential franchisees are currently on rotation with the CHP and have passed CHP inspections.

FISCAL AND ADMINISTRATIVE IMPACTS

Costs related to the administration of the tow franchise program are expected to be recovered under the tow franchise fee schedule, which all granted franchisees would be required to pay on an equally shared basis. The annual shared cost among participating franchisees will be $17,000 on the first year, with a 5% escalator built into the fee schedule.

Additionally, as part of the proposal, the LPD will reimburse a franchisee up to $2,500 for towing a recreational vehicle (RV) and/or boat longer that 15-feet. This is to help offset the franchisees' costs to properly dismantle, dispose of hazardous waste/material to include fuels, engine fluids, and human waste.

COMMUNITY PILLAR

1: A Safe Community that Thrives

GOAL

2: Public Safety

ATTACHMENTS

1. RFP & Q No. 4262 Checklist & Tabluation
2. Resolution
3. Exhibit A - Substantial Conformance Agreement

Prepared by: John Reynolds
Police Captain

Approved by:

Marianna Marysheva
City Manager

Fiscal Review by:

Tina Olson
Administrative Services Director

LIVERMORE CALIFORNIA

RFP/Q OPENING CHECKLIST & TABULATION

RFB: 4262 ROTATIONAL TOW SERVICE FOR POLICE DEPARTMENT

Closing date: 04/18 at 3PM

All proposals submitted are reflected on this spreadsheet. However, the listing of any proposal should not be construed as any indication that the *City of Livermore* accepts any/such submission as complete or responsive. **VENDOR NAME**	Received on time (Y/N)	References Supplied (Y/N)	Medium to Super Heavy Duty Rig Affidavit Signed (Y/N)	Acknowledgement Form Signed (Y/N)	Attachment "C" Filled Out (Y/N)	Copy of CHP Inspection Report Included (Y/N)	The primary business, storage facility, and records within the City (Y/N)	Rates	Additional Rates
CENTRAL TOWING & TRANSPORT, LLC	**Y**	**Y**	**Y**	**Y**	**Y**	**Y**	**Y**	Class A=$300 p/h/$105 inside/$100 outside Class B=$395 p/h/$150 outside Class C=$500 p/h/$150 outside Class D= $600 p/h/ $150 outside	10% weekends and holiday $395.00Tractor & Landoll Trailer $350 3 Axle Tractor 25% Rental/Skilled Labor Markup
ITN Holdings, LLC DBA First Street Tow	**Y**	**Y**	**Y**	**Y**	**Y**	**Y**	**Y**	Class A=$300 p/h/$125 inside &outside Class B=$375 p/h/$135 inside & outside Class C=$575 p/h/$150 inside & outside Class D= $665 p/h/ $150 inside & outside	$125 Labor (non skilled)
Golden State Fleet Service	**Y**	**Y**	**Y**	**Y**	**Y**	**Y**	**Y**	Class A=$300 p/h/$110 inside &outside Class B=$400 p/h/$250 inside & outside Class C=$525 p/h/$250 inside & outside Class D= $650 p/h/ $250 inside & outside	$100ph Extra person $300ph Recovery/Windching $175ph Service Calls
Action Road Solutions DBA Jack James Tow Service	**Y**	**Y**	**Y**	**Y**	**Y**	**Y**	**Y**	Class A=$280 p/h $106 inside/ 105 outside Class B=$370 p/h $155 inside/$130 outside Class C=$500 p/h $175 inside/$130 outside Class D= $625 p/h $225 inside/$130 outside	20% Rental/Skilled Labor Markup $500 435B Landol Trailer $275 6k Forklift
Norm's Tow Service LLC	**Y**	**Y**	**Y**	**Y**	**Y**	**Y**	**Y**	Class A=$300 p/h/$100 inside &outside Class B=$400 p/h $125 outside Class C=$500 p/h/$150 outside Class D =$650 p/h/ $150 outside	15% Rental/Skilled Labor Markup $100 Skilled Labor $100 Extra Man for Recovery, riger, lumper

IN THE CITY COUNCIL OF THE CITY OF LIVERMORE, CALIFORNIA

A RESOLUTION GRANTING NON-EXCLUSIVE TOW FRANCHISES

On October 12, 2016, the City of Livermore ("City") amended Livermore Municipal Code Chapter 5.44 and created the opportunity for tow companies to submit qualifications for consideration to be placed and maintained on a rotation tow list with the Livermore Police Department to provide non-consensual towing services.

On March 26, 2024, a Request for Proposal and Qualifications (RFP/Q) for towing services was published with a response date of April 18, 2024.

The following tow operators submitted proposals to provide non-consensual tow services to the Police Department: Action Road Solutions DBA Jack James Tow Service; Central Towing & Transport, LLC; ITN Holdings, LLC DBA First Street Tow; Golden State Fleet Services; and Norm's Tow Service. Except for Action Road Solutions DBA Jack James Tow Service and Golden State Fleet Services, all the proposed franchisees are currently providing tow services for the City of Livermore.

City staff reviewed the proposals, and all the tow companies met the RFP/Q requirements and specifications.

Within 30 days of granting the franchises, the City will enter into a Non-Exclusive Franchise Agreement for Tow Services with the tow companies, as required by Livermore Municipal Code section 5.44.090.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Livermore that it hereby grants a non-exclusive tow franchise to the following companies:

a. Action Road Solutions DBA Jack James Tow Service
b. Central Towing & Transport, LLC
c. ITN Holdings, LLC DBA First Street Tow
d. Golden State Fleet Services
e. Norm's Tow Service

BE IT FURTHER RESOLVED that the City Council of the City of Livermore hereby authorizes the City Manager to execute Non-Exclusive Franchise Agreements for Tow Services on behalf of the City of Livermore with the approved tow companies, in substantial conformance with the agreement, attached hereto as Exhibit A.

On motion of Council Member _____, seconded by Council Member _____, the foregoing resolution was passed and adopted on June 24, 2024, by the following vote:

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

ATTEST:

_____
Deborah L. Elam
Acting City Clerk

APPROVED AS TO FORM:

/s/ Katherine Mirassou
Katherine Mirassou
Deputy City Attorney

NON-EXCLUSIVE FRANCHISE AGREEMENT FOR TOW SERVICES BETWEEN CITY OF LIVERMORE AND _____

This Non-Exclusive Franchise Agreement for Tow Services, hereinafter referred to as "Agreement", is entered into this _____day of _____, 2024 ("Effective Date"), at Livermore, California, between the City of Livermore, a municipal corporation ("City") and _____("Franchisee")(collectively, the "Parties").

RECITALS

1. Pursuant to California Vehicle Code section 22660 and section 5.44.030 of the Livermore Municipal Code, the City has the authority to grant a non-exclusive franchise to a tow service franchisee to provide towing services for the abatement and removal of abandoned, wrecked, dismantled, or inoperative vehicles or parts thereof from private or public property, and to impound and provide storage of such vehicles as ordered and designated by authorized members of the Livermore Police Department.

2. The City, for the purpose of ensuring the continued protection and preservation of the public health, welfare and convenience of the citizens of Livermore, desires to award a non-exclusive towing franchise to Franchisee for towing services within the City.

3. Franchisee desires to provide such towing services upon the terms and conditions set forth herein.

AGREEMENT

Now, therefore, the Parties enter into this Agreement on the following terms and conditions:

This Agreement contains rules and regulations that Franchisee, including the company, its owner(s), and its manager(s) who have authority to enter into this Agreement with the City for towing services and to conduct business in accordance with the terms of this Agreement, and its employees, agrees to comply with in order to receive a rotation tow listing with the City of Livermore Police Department ("LPD"). Franchisee shall, pursuant to this Agreement, provide towing and storage services for public safety response calls regardless of the value of the vehicle or vehicles to be towed and stored, and regardless of the nature of the public safety response call (including collisions, DUI, abandoned vehicle abatement, and all other calls for service by LPD) ("Rotation Tow Program"). Participation in the City's Rotation Tow Program is voluntary. A Franchisee, by agreeing to participate in the Rotation Tow Program, is not acting as an agent for the LPD or the City when performing services under this Agreement. Compliance with all terms and conditions of this Agreement is mandatory for tow companies participating in the City's Rotation Tow Program.

Section 1. TOWING

A. The City of Livermore Police Chief ("Chief") shall establish towing procedures for the distribution of calls that meet the needs of the LPD with regards to response time and capability of tow services within the city. The Chief shall also determine the maximum response time, enrollment period, reasonable rates, and minimum number of trucks.

B. The Chief shall designate an employee as the Tow Coordinator who shall be the individual responsible for the administration of this Agreement on behalf of the City, including acting as the contact person for any questions pertaining to the interpretation and implementation of the terms and conditions of the Agreement. The Tow Coordinator shall also operate as the day to day operations manager of the Rotation Tow Program. The name and contact information of the Tow Coordinator shall be provided to all Franchisees.

Section 2. ROTATION TOW LISTS

A. LPD shall maintain a rotation tow list in efforts to provide an equitable distribution of calls. A call to a Franchisee shall constitute one turn on the list after which the Franchisee shall be moved to the bottom of the list. When Franchisee refuses or fails to respond, provide service, or arrives to the location of the tow more than thirty (30) minutes after being called by LPD, Franchisee may be removed from the rotation tow list for one rotation, thereby forfeiting any right to its next tow. It is the responsibility of the Franchisee to coordinate with LPD dispatch to ascertain the location of the officer and tow site. If it is determined by LPD that Franchisee is no longer needed or the tow request is canceled by LPD, up to and including upon arrival at the scene, there shall be no charges and Franchisee will be placed back at the top of the rotation list.

B. If two or more tow truck drivers are called to the same incident, distribution of the vehicles shall be at the discretion of the LPD officer in charge of the scene.

C. LPD may direct Franchisee to move vehicles to help clear a roadway or for lifesaving operations. Franchisee shall provide the assistance as directed and will not be entitled to additional compensation for this assistance. The assistance provided shall not change Franchisee's place in the rotation.

D. LPD may conduct special operations throughout the year that requires tow companies at the location of the special operation. Franchisees on the rotation tow list that are in good standing with LPD may be invited to participate in these operations on the condition that they are willing to remain with the special operation until its conclusion. "Good standing" shall mean that the Franchisee has not been held to have violated, or is not in violation, of the terms of this Agreement.

E. Tow driver(s) will not be permitted to drive a vehicle from an LPD rotation call or special operation. In circumstances where an officer has safety concerns, he/she

may direct that a vehicle be driven to a location where it may be properly towed.

Section 3. NON DISCRIMINATION

In the performance of this Agreement, Franchisee agrees that it will comply with the requirements of the California Fair Employment and Housing Act, California Government Code sections 12900, *et seq*. that Franchisee will not engage in discrimination in employment of persons because of the race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status of such persons. Franchisee acknowledges that a violation of this provision shall subject the franchisee to sanctions, fines, and penalties outlined in the California Fair Employment and Housing Act.

Section 4. TERM

The initial term of this Agreement shall be for a total period of five (5) years commencing on the effective date of this Agreement. City shall have the right, at its sole discretion, to extend the Agreement to any or all of the Franchisees for one additional three (3) year period. If the City exercises its option to extend, City shall notify Franchisee sixty (60) days prior to the expiration of the Agreement. In the event that City extends the Agreement, the Parties shall enter into a written amendment. None of the terms of this Agreement or any subsequent documents shall be construed directly or by implication as guaranteeing any Franchisee that this Agreement shall be extended, collectively or individually.

Section 5. TOW TRUCK REQUIREMENTS

A. Required Tow Trucks. The operator must have and maintain a minimum of five tow trucks in service at all times that comply with the specifications and requirements of this agreement.

1. The five tow trucks must include at a minimum:

a) one Class A-light duty,

b) one Class B-medium duty, and

c) one Class C or D – heavy duty.

All tow trucks must be owned or leased by the operator.

B. **Tow Truck Specifications**. The operator must equip and maintain all tow trucks owned, or leased in accordance with the provisions set forth in the California Vehicle Code, Title 13 of the California Code of Regulations, the specifications contained in this Agreement, and consistent with industry standards and practices. Each class of tow truck required or proposed to satisfy this agreement must meet the following requirements.

1. Class A - Light Duty. All Class A – light duty tow trucks must have a

manufacturer's GVWR of at least 14,000 pounds.

2. Class B – Medium Duty. All Class B – medium duty tow trucks must have a manufacturer's GVWR of at least 33,000 pounds. The truck must be equipped with air brakes and a tractor protection valve or device, be capable of providing and maintaining continuous air to the towed vehicle.

3. Class C - Heavy Duty. All Class C tow trucks must have at least three-axles and a GVWR of at least 52,000 pounds. The truck shall be equipped with air - brakes and must be capable of providing and maintaining continuous air to the towed vehicle.

4. Class D – Super Heavy Duty. All Class D tow trucks must have at least three-axles and a GVWR of at least 54,000 pounds. The truck shall be equipped with air - brakes and must be capable of providing and maintaining continuous air to the towed vehicle.

Section 6. TOW TRUCK DRIVERS

A. Franchisee shall ensure that the tow truck drivers are trained and proficient in the use of the tow truck and all related equipment, including, but not limited to, the procedures necessary for the safe towing and recovery of the various types of vehicles serviced through LPD. Tow truck drivers shall be at least 18 years of age and shall possess the proper class license(s) and certificate(s). All training documentation shall be submitted to LPD for each tow truck driver. Any driver whose training documentation is over five (5) years old shall resubmit current proof of training documentation from a California Highway Patrol (“CHP”) approved program.

B. Franchisee shall provide a current list of tow truck drivers and employees to the LPD upon execution of this Agreement. Franchisee shall immediately notify LPD upon any changes in driver or employee(s) status, including the addition of any new driver(s) and/or employee(s), or the deletion of any driver(s) or employee(s). Before any drivers or employees participate in the Rotation Tow Program, the driver or employee must first pass a criminal background and driving record check performed by the LPD. Additionally, all drivers must be enrolled in the Pull Notice Program as required by the California Vehicle Code. Franchisee will be notified in writing upon LPD’s approval of any driver. Thereafter, the driver or employee will be qualified to work for or perform tows on behalf of Franchisee. No driver can participate in the Rotation Tow Program unless they have been approved by LPD.

C. Franchisee shall, at a minimum, maintain the following information for each employee:

1. Full legal name
2. Date of birth
3. California driver’s license number
4. Copy of valid medical certificate (if required)

5. Job title/description
6. Current home address
7. Current home phone number
8. Type(s) of truck(s) the driver(s) has/have been trained to operate
9. Current Pull Notice as required by California Vehicle Code section 1808.1.

D. All tow vehicle drivers and Franchisee shall be enrolled in the Pull Notice Program as defined in the California Vehicle Code section 1808.1 *et seq*. Upon hiring of new driver(s), Franchisee will be granted a maximum of (30) thirty calendar days to enroll the driver(s) in the Pull Notice Program. Pull Notices shall be kept on file, signed, and dated by the Franchisee. The Tow Coordinator may require the Franchisee to provide copies of the Pull Notice Reports.

E. If Franchisee, tow truck driver, or employee of Franchisee has been removed, suspended, disciplined by any other public agency, including but not limited to CHP, Franchisee must notify the Tow Coordinator in writing not later than twenty-four (24) hours of receiving notice of the action by the other public agency. Nothing herein shall be deemed to prohibit LPD from immediately suspending any Franchisee or employee whose conduct, in the sole discretion of the Chief, is deemed to threaten the health, safety or welfare of the public or who has engaged in conduct in violation of this Agreement.

F. For services that Franchisee provides to City under this Agreement, Franchisee shall not use or dispatch personnel who:

1. Are required to register as a sex offender under California Penal Code section 290;

2. Have been convicted of any one or more of the following offenses within the last ten (10) years:

   a. California Health & Safety Code sections 11350 to 11391.5 (Possession, use, and sale of controlled substances); and

   b. California Vehicle Code sections 10851 to 10855 (Theft or unlawful taking of vehicle or vehicle parts).

3. Have been convicted of any one or more of the following offenses within the last seven (7) years:

   a. California Vehicle Code sections:

      i. 14601.3 (Habitual traffic offender);

ii. 14601.4 (Causing bodily injury to another while driving with license suspended or revoked);

iii. 14601.5 (Driving with knowledge of suspension, revocation, or restriction of driving privilege);

iv. 20001 (Duty to stop at scene of injury accident);

v. 20003 (Duty of driver upon injury or death);

vi. 20004 (Duty of driver to report accident upon death);

vii. 23104 (Reckless driving, bodily injury, prior conviction); and/or

viii. 23153 (Driving under the influence);

b. California Penal Code sections:

i. 118 (Perjury);

ii. 192 (Voluntary, involuntary, and vehicular manslaughter);

iii. 241 to 245.5 (Assault and battery);

iv. 529.5 (Deceptive appearance of government-issued identification cards and drivers' licenses);

v. 529.7 (Falsely obtaining or assisting others in obtaining official documents issued by the DMV);

vi. 530.5 (Unauthorized use of personal identifying information to obtain credit, goods, services, or medical information in another person's name);

vii. 530.6 (Unlawful use of personal identifying information by another); and/or

c. A felony listed in California's Penal Code, including any felony charged as a misdemeanor under Penal Code section 17(b)(4);

4. Have been convicted of any one or more of the following offenses within the last three (3) years:

a. California Penal Code section 537e (Removal or alteration of

manufacturer's serial or identification mark); or

b. California Vehicle Code sections:

i. 31 (False information to peace officer);

ii. 10501 (False report of theft);

iii. 10750 (Altering or changing vehicle numbers);

iv. 10751 (Unlawful use or possession of manufacturer serial or identification numbers);

v. 10752 (Possession or sale of manufacturer's or governmental serial numbers);

vi. 10801 (Ownership or operation of chop shop);

vii. 10802 (Alteration, destruction, forgery, or removal of vehicle identification numbers);

viii. 10803 (Possession, purchase, sale, or transfer of motor vehicle or parts that have been altered or defaced);

ix. 12500 (Unlawful to drive without valid license);

x. 14601 (Driving when privileges suspended or revoked for certain offenses);

xi. 14601.1 (Driving when privileges suspended or revoked for other reasons);

xii. 14601.2 (Driving when privileges suspended or revoked for driving under the influence);

xiii. 20002 (Duty of driver after accident when property is damaged);

xiv. 23103 (Reckless driving);

xv. 23104 (Reckless driving, bodily injury, prior conviction);

xvi. 23109 (Speed contests);

xvii. 23152 (Driving under the influence); or

5. Have been convicted of one or more criminal offenses that, in City's determination, may:

a. Disqualify the person from operating a vehicle under California or federal law;

b. Impede, hinder, frustrate, delay, or affect this Agreement's performance; or

c. Increase City's liability, risk, or exposure.

G. Before beginning the next work shift for Franchisee, Franchisee's tow vehicle drivers and operators shall report to Franchisee an arrest or criminal conviction for an offense specified in California Vehicle Code section 13377(a) [tow truck driver certificates], subparagraphs (1), (2), or (3). Upon receipt of this information, Franchisee shall not use or dispatch these personnel for the services that Franchisee provides to City under this Agreement.

H. Any tow vehicle drivers that obtain four or more violation point counts in a twelve (12) month period, six (6) or more violation point counts in a twenty-four (24) month period, or eight (8) or more violation point counts in a thirty-six (36) month period, as referred to in California Vehicle Code section 12810.5, shall not be allowed to participate in any tows as part of the Rotational Tow Program.

Section 7. RATES

A. Fees charged for response to non-consensual tows originating from the LPD shall be reasonable, valid and not in excess of those rates charged for similar services provided in response to requests initiated by a public agency or private person.

1. Reasonableness shall be determined as compared to other similar service rates.

2. Validity shall be based upon the following: telephone quotes, invoices, posted rates, charges to retail customers, etc.

B. Rate requirements represent the maximum Franchisee may charge on a LPD dispatched call. In an effort to remain competitive in the open market, Franchisee may lower retail rates at any time by notifying the LPD. If Franchisee lowers the retail rate, that retail rate becomes Franchisee's new approved rate. Retail rates refers to the usual customary rate charged by the Franchisee to individual retail customers. This is the competitive rate a company has posted in the office and quotes over the telephone.

C. If Franchisee charges rates above the submitted rates for a LPD call without

approval by the Tow Coordinator as provided in subsection G below, Franchisee shall be subject to disciplinary action.

D. A valid bank credit card or cash payment shall be accepted for payment of towing and/or storage pursuant to California Vehicle Code sections 22651.1 and 22651.07(c)(4). A surcharge shall not be imposed upon a cardholder who elects to use a credit card for payment pursuant to California Civil Code section 1748.1 and California Vehicle Code section 22651.07(c)(4).

E. The approved schedule of rates charged by Franchisee shall be available in the tow truck, and shall be presented upon demand to the vehicle owner/agent for whom the tow service was provided or any LPD officer at the scene where tow service is being provided.

F. There shall be no additional charge for moving (i.e., driving, towing, pushing, utilizing a forklift, etc.) a stored/impounded vehicle from inside Franchisee's storage yard to the front of the business establishment.

G. Tow Rates

1. The rate for towing should be computed from portal to portal (as defined in Exhibit A) when a vehicle is towed to Franchisee's storage yard.

2. The time expended for towing a vehicle back to Franchisee's storage yard should be charged at a rate not to exceed the hourly rate.

a. Time expended in excess of the hourly rate shall be calculated in no more than one-minute increments.

b. There shall be no additional charges for mileage, etc.

3. A clear, itemized, and detailed explanation of any additional service that caused the time to exceed one hour shall be documented on the invoice pursuant to California Vehicle Code section 22651.07(e)(7).

4. Franchisee may submit two retail hourly tow rates to the Tow Coordinator: one rate for calls originating during normal business hours; and one rate for calls originating during non-business hours.

5. Franchisee shall base charges for the class of vehicle being towed or serviced regardless of the class of tow truck used, except when vehicle recovery operations require a larger class tow truck.

H. Service Calls

1. Franchisee may charge up to a thirty (30)-minute minimum per call

for any service which is performed when the vehicle operator or agent is present and the vehicle is not stored at the direction of an officer or returned to the Franchisee's storage yard.

2. Rates for a service call (out-of-gas, lockouts, tire changes, etc.) should be from portal to end of service.

3. Charges in excess of a thirty (30)-minute service call may be charged in no more than one-minute increments.

4. A clear, itemized and detailed explanation of any additional service that caused the time to exceed one hour shall be documented on the invoice pursuant to California Vehicle Code section 22651.07(e)(7).

5. Fuel charges for gasoline dispensed on out-of-gas service calls shall be at the prevailing market rate.

I. Fees for Special Operations

1. Fees shall be reasonable and consistent with industry standards for similar operations in the East Bay, California area.

2. If Franchisee is involved in two (2) tow truck salvage and recovery operations, Franchisee may charge a minimum two-hour rate.

   a. Time expended in excess of the two-hour minimum shall be at the hourly rate in no more than one-minute increments.

   b. If a second hour is charged, the second hour shall meet the invoicing requirements pursuant to California Vehicle Code section 22651.07(e)(7).

   c. If it is determined that only one truck is required, the second truck may claim portal to portal and time expended on scene until determination was made that it was not required.

3. Hourly rates shall be established and submitted annually to the Tow Coordinator for auxiliary and contracted equipment (e.g., airbags, converter gear/dolly, additional trailers, forklift, front loaders, etc.).

4. Franchisee shall submit annually, a mark-up rate for rental equipment and labor not otherwise listed on the Non-Exclusive Franchise Agreement for Tow Services.

5. If Franchisee performs a service for which a required rate was not submitted and approved by the Tow Coordinator, Franchisee shall only be

entitled to charge for the actual cost of that service plus a markup rate not to exceed ten (10) percent.

6. Any tows where the charge was above the approved hourly rate must be sent in writing to the Tow Coordinator via facsimile or personal delivery within twenty-four (24) hours. In the event that notice is not properly given, the increased rate will be void and the approved hourly rate will apply. A gate fee of no more than one-half the hourly rate may be charged for the release of a vehicle after 5 p.m. on weekdays, or any time on weekends or holidays if Franchisee is not normally open for business on weekends or holidays. There shall be no additional charge for using dollies. Franchisee shall notify Tow Coordinator of any additional fees for specialized equipment, and provide a copy of listed rates for specialized equipment.

7. Recreational Vehicle (RV) and Boats longer than 15 feet: Livermore Police Department will reimburse an operator for the cost of properly disposing a recreational vehicle up to $2,500.00 per vehicle. The operator shall provide documentation of the disposal prior to any reimbursement. Documentation shall include cost to dismantle, and disposal of hazardous waste/material including fuel, engine fluids and human waste.

J. Lien Fees

1. If a vehicle has been determined to have a value exceeding four thousand dollars ($4,000), pursuant to California Vehicle Code section 22670, the lien shall be satisfied pursuant to California Civil Code section 3071 (California Civil Code section 3074).

2. The lienholder may charge a fee for lien sale preparations not to exceed seventy dollars ($70), for a vehicle valued at four thousand dollars ($4,000) or less and not to exceed one hundred dollars ($100) for a vehicle valued at greater than four thousand dollars ($4,000) (California Civil Code section 3074).

a. These charges may commence when the lienholder requests the names and addresses of all persons who have an interest in the vehicle from the Department of Motor Vehicles (California Civil Code section 3074).

b. Not more than fifty percent (50%) of the allowable fee may be charged until the lien sale notifications are mailed to all interested parties and the lienholder or registration service agent has possession of the required lien processing documents (California Civil Code section 3074).

c. This charge shall not be made in the case of any vehicle redeemed prior to seventy-two (72) hours from the initial storage (California Civil Code section 3074).

K. If Franchisee charges rates in excess of the approved rates for a LPD rotation call, Franchisee shall be in violation of this Agreement and subject to suspension and/or removal from the rotation tow list.

L. Franchisee shall display in plain view at all cashier stations, a sign as described in California Civil Code section 3070, disclosing all storage fees and charges in force and effect, including the maximum daily storage rate.

M. Franchisee must submit to the Tow Coordinator a copy of posted business days and hours. Should Franchisee's business days and hours change, a written copy shall be submitted to Tow Coordinator within twenty-four (24) hours of the date the change goes into effect. Franchisee shall post in a clearly visible and conspicuous location its hours of operation and an after-hours telephone number.

N. Franchisee shall be able to properly conduct a lien sale as outlined in California Vehicle Code Division 11, Chapter 10, Article 2, beginning with section 22851. Franchisee must get approval from the Chief or the Chief's designee prior to placing a lien on any vehicle held for evidence purposes. No lien shall be placed upon any vehicle until the vehicle has been stored for over seventy-two (72) hours. Failure to comply with this Section 7 will result in action in the form of a suspension and/or removal from the rotation tow list.

O. Persons operating or in charge of any storage facility where vehicles are stored shall accept a valid bank credit card or cash for payment of towing and storage by the registered owner, legal owner, or the owner's agent claiming the vehicle pursuant to California Vehicle Code section 22651.1. Appropriate credit card equipment must be located on the premises and available for immediate processing from each tow truck. If Franchisee refuses to accept a valid bank credit card in the field or at the storage yard, Franchisee shall be liable to the registered owner of the vehicle for three (3) times the amount of the towing and storage charges, but not to exceed five hundred dollars ($500). In addition, a person operating or in charge of the storage facility shall have sufficient funds on the premises to accommodate and make change for a reasonable monetary transaction. Credit charges for towing and storage services shall comply with California Civil Code section 1748.1. If the vendor pays the surcharge within thirty (30) days of the date of the charge, the Tow Coordinator may waive the penalty.

P. A copy of the schedule of rates charged by Franchisee shall be available in each of the tow trucks, and shall be presented upon demand to the person(s), or his/her agent, for whom the tow services were provided, or to any LPD officer at the scene.

Q. Franchisee will possess a working fax machine, or electronic equipment that can meet the following specifications: Plain paper fax reception, 600 dpi copy quality, a minimum of 25 pages of memory, and a 150 sheet paper tray. Franchisee must also have a dedicated phone line for the fax machine on their premises. Fax machines shall be available to receive faxes twenty-four (24) hours a day, seven (7) days a week, and three hundred sixty-five (365) days a year.

Section 8. RESPONSE TO CALLS

A. Franchisee, pursuant to this Agreement, shall be available on a twenty-four (24) hour, seven (7) days a week basis. A reasonable response time is defined as thirty (30) minutes or less. Franchisee shall be available to release stored vehicles on a twenty-four (24) hour, seven (7) days a week basis. Response time to the office or storage facility where the stored vehicle is located shall be no more than thirty (30) minutes.

B. In the event Franchisee is unable to respond or will be delayed in responding, the requesting individual from LPD dispatch shall be notified immediately. City and Franchisee agree that in the event services are delayed or not provided, City will suffer damages and incur other costs and expenses which are difficult to determine. The Parties agree that by a way of fixing the amount of damages, costs and expenses, and not by way of penalty, Franchisee shall pay to City the sum of $125.00 per incident when Franchisee is either (1) delayed more than thirty (30) minutes; (2) is unable to respond; (3) fails to notify the requesting individual from LPD dispatch of any delay or non-response.

C. Failure to respond to perform the required towing or service and/or failure to meet the requirements for Franchisee shall constitute failure to comply with the terms and conditions this Agreement and may result in action including but not limited to suspension or revocation of the franchise, in addition to the liquidated damages set forth in Section 8.B. above.

D. When Franchisee will be temporarily unavailable to provide services due to a preplanned or scheduled activity, Franchisee shall notify the Tow Coordinator, in writing, at least twenty-four (24) hours prior to the date that Franchisee will be unavailable; noting the times and dates of unavailability.

Section 9. SCENE CLEANUP

As required under California law, tow truck drivers are to remove from the street all debris resulting from said collisions and to clean the immediate area of such street, this includes the removal or cleaning from the scene of the collision any non-hazardous liquid, glass, or debris from the scene excluding flammable substances. Failure to do so will result in a request for the tow truck driver to return to the scene to complete the clean-up. These duties are inherent in the job and are to be included in the price of the basic

tow charge. Failure to comply with this Section 9 will result in action in the form of a suspension and/or removal from the rotation tow list.

Section 10. STORAGE FACILITIES

A. Provisions shall be made for adequate security of vehicles and property at Franchisee's place of storage. Franchisee's place of storage must have at a minimum a six-foot fence or enclosed area for outside storage and a storage space inside a locked indoor building for at least two (2) vehicles. Storage lot size shall be: a minimum of 5000 square feet; provide room for 20 vehicles; be kept well maintained and clean; and must be located within the limits of the city of Livermore. The primary storage facility shall be at the same location as the business address. If not at the same location, there shall be no charge for any additional distance traveled to and from a secondary location. The vehicle and/or personal property shall be released at the primary storage facility or place of business (when the primary storage facility and the place of business are not at the same location) upon request of the owner or a person having a legal entitlement to the vehicle and/or property. The Franchisee's primary business, storage facility, and records must be within the city of Livermore.

B. Storage Fees

1. Franchisee may charge storage fees in accordance with California Civil Code section 3068.1 *et seq*. Inside storage may only be charged when one of the following circumstances exists:

a. LPD authorized the vehicle to be stored inside as evidence;

b. LPD authorizes the storage;

c. When requested by the registered owner, legal owner, or insurance company.

2. If Franchisee chooses to store the vehicle inside for safekeeping, they may only charge the outside rate, unless approved by Tow Coordinator prior to release.

a. Franchisee shall release personal property from an impounded vehicle at the request of the vehicle owner or his/her agent. There shall be no charge for the release of personal property during normal business hours. Franchisee may charge an "after hours" release fee for property released after normal business hours. The fees charged shall be consistent with the "after hours" vehicle release provisions, and shall not charge more than one-half the hourly rate, as provided in California Vehicle Code section 22851(b).

Franchisee shall not charge City for any “after hours” access to any vehicle impounded or stored.

b. Personal property is considered to be items located within the stored vehicle that are not affixed to the vehicle, including but not limited to, papers, transportable cellular telephones, pull-out radios, portable radios and/or portable stereo equipment, clothes, luggage, tools, etc.

C. Franchisee shall provide a receipt, with a copy placed in the stored vehicle and a copy to LPD, whenever any item is removed from a stored vehicle and taken to another place of storage.

D. Prior to the utilization of new storage facilities not listed on the Franchisee’s proposal for rotation tow listing (attached hereto as Exhibit B), Franchisee shall furnish the address of the new storage facility and obtain the Tow Coordinator’s approval.

Section 11. INSURANCE

A. During the term of this Agreement, Franchisee shall obtain, pay for, and maintain in full force and effect, all policies of insurance required hereunder with an insurance company admitted to do business in the State of California; domiciled within and organized under the laws of, a state of the United States; and carry an A.M. Best rating of no less than "A:VII", unless otherwise deemed acceptable by City’s Risk Manager. Each policy listed below in subsection C must add the City of Livermore, and its officers, officials, employees, and designated volunteers as additional insureds.

B. 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.

C. Franchisee shall maintain the following limits of insurance during this Agreement’s term:

1. COMMERCIAL GENERAL LIABILITY INSURANCE which shall include coverage for bodily injury, property damage, and personal and advertising injury with coverage for premises and operations (including the use of owned and non-owned equipment), products and completed operations, and contractual liability (including, without limitation, indemnity obligations under the Agreement) with limits of not less than the following:

a. $1,000,000 per occurrence for bodily injury and property

damage;

b. $1,000,000 per occurrence for personal and advertising injury; and

c. $2,000,000 general aggregate limit.

With City's approval, Franchisee may obtain "Garage Coverage Form" liability insurance, with a "Broadened Coverage – Garages" endorsement, as a substitute for a Commercial General Liability policy.

2. COMMERCIAL AUTOMOBILE LIABILITY INSURANCE which shall include coverage for all owned, hired, and non-owned automobiles or other licensed vehicles with limits of not less than the following:

a. $1,000,000 per occurrence for bodily injury; and

b. $1,000,000 per occurrence for property damage; or

c. $1,000,000 combined single limit.

3. GARAGEKEEPERS LEGAL LIABILITY INSURANCE in an amount not less than $250,000 for each location from which Franchisee furnishes services under this Agreement.

4. ON-HOOK INSURANCE in an amount not less than:

Tow Truck or Flatbed Carrier:		Minimum Limit Per Vehicle:
a.	Class A	$100,000
b.	Class B	$100,000
c.	Class C	$250,000
d.	Class D	$250,000

5. CARGO INSURANCE is an amount not less than $100,000 per vehicle.

6. UNINSURED MOTORIST – BODILY INJURY INSURANCE is an amount not less than $60,000 each accident

7. WORKERS' COMPENSATION/EMPLOYER'S LIABILITY as required by the State of California. A waiver of subrogation is required for workers' compensation insurance.

D. The Commercial General Liability and Automobile Liability insurance policies shall be endorsed so that Franchisee's insurance shall be primary and no contribution shall be required of City.

E. If Franchisee hires, employs, or uses a subcontractor to perform the services described herein, Franchisee shall ensure that the subcontractor meets, and fully complies with, all of the insurance requirements in this Section 11.

F. Upon reasonable written notice, Contractor shall comply with any changes in the amounts and terms of insurance as may be required from time-to-time by City's Risk Manager.

G. Franchisee shall be responsible for payment of any deductibles contained in any insurance policies required hereunder and Franchisee shall also be responsible for payment of any self-insured retentions. All self-insured retentions (SIR) must be disclosed to City's Risk Manager 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 City.

H. Twenty-one (21) days before the insurance policy's expiration, cancellation, termination, or nonrenewal, Franchisee shall deliver to City evidence of liability coverage as proof that Franchisee's insurance has been renewed or replaced with another insurance policy which, during this Agreement's term, meets all of the insurance requirements described herein. At any time, upon City's request, Franchisee shall furnish City with a complete copy of Franchisee's insurance policy or policies for City's review and approval. Failure to provide to the City a valid certificate (15) fifteen calendar days prior to the expiration of the policy shall result in Franchisee being removed from the rotation tow list until they provide the documentation required under this Agreement. Once the documentation is provided to City, Franchisee shall be reinstated to the bottom of the list. Upon issuance by the insurer, broker, or agent of a notice of cancellation, change or reduction in coverage, Franchisee shall provide City with a new certificate and all applicable endorsements for such policy(ies).

I. Franchisee shall have furnished City with the certificate(s) and applicable endorsements for ALL required insurance prior to City's execution of the Agreement. Franchisee shall furnish City with copies of the actual policies upon the request of City's Risk Manager at any time during the life of the Agreement or any extension, and this requirement shall survive termination or expiration of this Agreement.

J. If at any time during the life of the Agreement or any extension, Franchisee fails to maintain the required insurance in full force and effect, all work under this Agreement shall be discontinued immediately, and all payments due or that become due to Franchisee shall be withheld until notice is received by City that the required insurance has been restored to full force and effect and that the premiums therefore have been paid for a period satisfactory to City. Any failure to maintain the required insurance shall be sufficient cause for City to terminate this Agreement.

Section 12. INSPECTIONS

In lieu of an inspection requirement, Franchisee shall provide to the City of Livermore annual certification of compliance with the facilities and equipment requirements outlined in this Agreement. Franchisee shall comply with this requirement by providing to City a copy of State of California Department of California Highway Patrol Forms 234 A Rotation Tow Listing Application and 234 B Tow Truck Inspection Guide. Copies of these forms demonstrating compliance and approval by the CHP shall act as evidence that Franchisee meets the minimum requirements for facilities and equipment as outlined in this Agreement. No further documentation shall be required; however, failure to provide the required documentation shall constitute default under this Agreement and may result in a suspension or termination of this Agreement.

Section 13. FINANCIAL INTEREST

A. No Franchisee or applicant shall be directly involved in the towing-related business of any other franchisee participating in the City's Rotation Tow Program. "directly involved" shall mean anything in common between Franchisees with regard to any of the following:

1. Business licenses;

2. Insurance;

3. Tow truck equipment use, rental, or ownership;

4. Employees;

5. Premises; or

6. Performance of this agreement.

B. Storage facilities owned by Franchisee, insured by another Franchisee, shall only be approved if:

1. The Franchisee who owns the storage facility charges for the space exclusively on a flat monthly rate rather than a vehicle-by-vehicle basis, or combination thereof; and

2. Storage facility shared by Franchisees shall be physically separated and secured from each other.

C. Storage facilities leased or rented by Franchisee shall only be approved under the following conditions:

1. The rental fee for the facilities paid as a flat monthly fee, rather than a per vehicle rate or combination thereof; and

2. Franchisee must be solely responsible for maintaining and operating the storage facility. The responsibility shall not be delegated to any third party by Franchisee.

D. No Franchisee shall refer calls to another Franchisee in contravention of the rotation tow list.

E. The sale or transfer of control of interest in a company shall immediately terminate this Agreement. The new owner(s) may apply to participate in the Rotation Tow Program at any time during the remainder of the current Agreement term, regardless of the City's enrollment.

Section 14. DEMEANOR AND CONDUCT

A. While involved in LPD rotation tow operations or related business, Franchisee and its employee(s) shall refrain from any act(s) of misconduct, including but not limited to any of the following:

1. Rude or discourteous behavior directed towards LPD personnel or citizens for whom service is provided;

2. Lack of service, selective service, or refusal to provide service that the Franchisee should be capable of performing;

3. Any act of harassment and/or discrimination;

4. Unsafe driving practices;

5. Exhibiting any objective symptoms of alcohol and/or drug use; and/or

6. Appearing at the scene of the LPD rotation tow call with the odor of an alcoholic beverage emitting from his/her breath.

B. The tow truck driver shall submit to a preliminary alcohol screening test upon demand of LPD.

C. All tow service complaints received by LPD against Franchisee or its employee(s) will be accepted and investigated in a fair and impartial manner. Franchisee shall fully cooperate with any such investigation. Failure of Franchisee to fully cooperate may subject Franchisee to disciplinary action including termination from the Rotation Tow Program. As a result of the investigation, LPD may initiate disciplinary action as deemed appropriate. Franchisee shall be notified of the finding of any investigation.

D. Should the filing of criminal charges be a possibility, LPD shall conduct the investigation to conclusion or assist in the lead investigation agency and, if warranted, request prosecution.

E. Any violation of this Agreement or any of the terms of Livermore Municipal Code Chapter 5.44 *et seq.* is cause for suspension or removal, if deemed appropriate by the Chief.

Section 15. COMPLIANCE WITH LAW

A. Franchisee and its employee(s) shall, at all times, comply with federal, state, and local laws and ordinances, which include, but are not limited to, those laws which are applicable to Franchisee under the terms and conditions of this Agreement. Franchisee shall comply with all Federal Department of Transportation drug and alcohol testing requirements for employees and commercial drivers. Records of compliance with such testing requirements shall be available for inspection during normal business hours. Failure to comply with such federal, state and local laws may subject the total operated to disciplinary action.

B. The Franchisee shall have a current, valid City of Livermore business license at the time of the award of this Agreement and at all times during the term of this Agreement. All fees, including current or delinquent, must be paid in full

C. The provisions contained in this Section 15, Compliance with Law, do not preclude LPD from taking appropriate enforcement or administrative action for any violations of the law.

D. Any conviction of Franchisee involving a stolen or embezzled vehicle, fraud related to the towing business, stolen or embezzled property, a crime of violence, a drug-related offense, felony driving while under the influence of alcohol and/or drugs, misdemeanor driving while under the influence of alcohol and/or drugs while involved in the LPD rotation call, or moral turpitude shall be cause for denial of application or termination of the Agreement.

E. Franchisee and/or their employees shall not offer any direct or indirect commission, gift, or any compensation whatsoever to any employee of LPD in consideration of arranging or requesting tow service in accordance with California Vehicle Code section 12110(a).

F. Franchisee and/or their employees shall not accept any gratuities from a repair shop for the delivery of a vehicle not owned by the repair shop or tow company, for the purpose of storage or repair in accordance with California Vehicle Code section 12110 (C).

G. A Franchisee shall satisfy a court order in mandating reimbursement to the vehicle or property owner for the damages or loss which occurred while the vehicle was in the operator's custody.

Section 16. COMPLIANCE WITH THE AGREEMENT

A. The Franchisee agrees, as a condition of the inclusion in the Rotation Tow Program, to comply with the terms and conditions of this Agreement. Furthermore, the Franchisee or Franchisee's agent agrees that failure to comply with this Agreement shall be cause for disciplinary action (i.e., written reprimand, suspension, termination, or denial of an application).

B. A violation of the equipment requirements related to safety, such as those outlined in Section 5 of this Agreement, shall be cause for immediate suspension. The suspension shall remain in effect until the suspension period is completed and LPD inspects the equipment and concludes the Franchisee is in compliance.

C. A violation of the GVWR and/or safe loading requirement of a tow truck may be cause for disciplinary action. This includes exceeding the tow trucks GVWR, front axle weight rating, rear axle weight rating, maximum tire weight ratings, or not maintaining 50% of the tow trucks laden front axle weight on the front axle when in tow.

D. Charging rates in excess of those submitted in compliance with Section 7 of this Agreement shall be cause for suspension. The suspension shall remain in effect until the suspension period is completed and evidence is provided to LPD that reimbursement was made to the aggrieved customer.

E. A Franchisee providing a response to an LPD call (i.e. those drivers dispatched by the Franchisee's business) who has not been approved by the LPD, shall be subject to disciplinary action.

F. Franchisee should not record (i.e. videotape or photograph) a scene unless the on-scene investigating LPD officer provides authority to do so for business-related reasons. In the event Franchisee, their driver, or any employee or agent of Franchisee is determined to be in violation of this provision, they will immediately surrender any such recording device and all copies of the event to LPD.

Section 17. DISCIPLINARY ACTION

A. The Chief may take disciplinary action against Franchisee and/or its employees, agents, or drivers for violations investigated and confirmed or sustained. The Chief or his/her designee shall retain discretion regarding the length of any suspension imposed pursuant to the terms and conditions of this Agreement.

B. Records of violations shall be retained by the LPD for at least thirty-six (36) months and may be released pursuant to the California Public Records Act.

C. LPD personnel shall not be offered gratuities and requests for gratuities shall not be honored by Franchisee, and/or its employees, associates, or agents. A

violation of this Section 17.C. shall be cause for suspension or termination.

D. Failure of Franchisee and/or its employee(s) to comply with Sections 14, 15 or 16 of this Agreement, may be cause for suspension or termination of this Agreement.

E. Failure of Franchisee to comply with the inspection requirements of this Agreement will result in a suspension. The suspension will remain in effect until this period of suspension is completed and Franchisee has complied with the inspection requirement.

F. Failure of Franchisee to send tow truck drivers on LPD calls who are qualified and competent employees shall be cause for suspension. The suspension will remain in effect until the period of suspension is completed and Franchisee has presented proof to the LPD that the driver is qualified and competent.

G. Failure of the Franchisee to maintain the minimum insurance requirements set forth in this Agreement shall be cause for immediate suspension of the Franchisee and/or termination of this Agreement. The Franchisee shall also be subject to additional suspension for failure to notify the LPD in advance of the insurance policy expiration and/or cancellation.

H. Failure of Franchisee to satisfy a court order (including administrative orders issued by an administrative hearing officer for the City or orders by the City Council) mandating reimbursement to the vehicle or property owner for the damage or loss that occurred while the vehicle was in his or her custody will result in a suspension and/or removal from the Rotation Tow Program. The period of the suspension shall be determined by the Chief or his/her designee. The suspension will remain in effect until the period of suspension is completed and Franchisee has presented proof of reimbursement to the vehicle or property owner.

I. If Franchisee is serving a suspension, or has been removed from consideration as a Franchisee under the Rotation Tow Program, he/she shall be required to execute and comply with all terms and conditions of the Agreement in effect at the time of the reinstatement. There should be no approval of equipment that is not in compliance with the equipment specifications contained in the Agreement in effect at the time of reinstatement. Sections of this Agreement which are commonly referred to as “grandfather clauses" shall not apply to such a franchisee who is suspended or has been removed from consideration for any period of time.

J. If terminated or suspended, Franchisee and the total business he/she owned at the time of the suspension or termination (as defined in Exhibit A) shall not be eligible for the Rotation Tow Program for the duration of the suspension or termination. This provision applies to the Franchisee working in any capacity within any tow business or operating any tow business, and to the total business, even if operated under new ownership.

K. Nothing herein shall be deemed to prohibit LPD from immediately suspending any Franchisee whose conduct, or that of its employee(s), in the discretion of the Chief, is deemed to be a danger to the health or safety of others or one who has engaged in conduct constituting a violation of this agreement.

Section 18. APPEALS

A. An appeal hearing shall be granted, upon Franchisee's request, within ten (10) calendar days from the date of mailing of the notice of the suspension under the provisions Livermore Municipal Code section 5.44.120.

B. LPD shall provide written notification to the Franchisee requesting a hearing acknowledging receipt of the hearing request and assigning a hearing date.

C. The hearing shall be conducted by the City Manager and Franchisee shall be entitled to present all relevant facts and circumstances in support of the Franchisee's position.

D. The Franchisee shall be entitled to present witnesses and be represented by the person of their choice during the hearing.

E. The Franchisee shall be notified in writing of the City Manager's decision(s) within ten (10) business days of the date of completion of the hearing.

F. The City Manager's decision shall be final and therefore not subject to any further administrative appeal.

G. Disciplinary action shall not take effect until the hearing and appeal process has been exhausted, with the exception of a Franchisee whose conduct is deemed to be a danger to the motoring public or whose behavior continues to violate the terms and conditions of this Agreement.

H. If a Franchisee fails to request a hearing or appeal within the specified time, or fails to appear at a scheduled hearing, or appeal the action taken by the City Manager, the action shall be deemed final and the disciplinary action shall take effect upon written notification to Franchisee by the City Manager.

Section 19. NOTICES

Any notice required or intended to be given to either party under the terms of this Agreement shall be in writing and shall be deemed to be duly given if delivered personally or deposited into the United States mail, with postage prepaid. It is Franchisee's responsibility to inform the Tow Coordinator of any changes of address or contact information. Notice to the employee and/or agent shall be deemed properly delivered

when sent to the address on record with the Tow Coordinator.

Notices to City shall be sent to:

City of Livermore Police Department
Attention: Tow Coordinator
1110 S. Livermore Avenue
Livermore, CA 94550
925-371-4900

Notices to Franchisee shall be sent to:

Section 20. WAIVER

Failure to insist upon the strict performance of any term or conditions in this Agreement, no matter how long the failure continues, is not a waiver of the term or condition and does not bar the right to subsequently demand strict performance. To be effective, a waiver must be in writing and signed by the non-breaching party.

Section 21. GOVERNING LAW AND VENUE

This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of California. Venue for purposes of the filing of any action regarding the enforcement or interpretation of this Agreement and any rights and duties hereunder shall be Alameda County, California.

Section 22. SEVERABILITY

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

Section 23. EXHIBITS

Each exhibit referenced in this Agreement is, by the reference, incorporated into and made a part of this Agreement.

Section 24. EXTENT OF AGREEMENT

Each party acknowledges that he/she has read and fully understands the contents of this Agreement. This Agreement represents the entire and integrated agreement between the parties with respect to the subject matter hereof and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be modified only by written instrument duly authorized and executed by both the City and Franchisee.

Section 25. MAINTENANCE OF RECORDS

A. The Franchisee shall maintain and make available for review all records relating to tow services performed pursuant to this Agreement, during the term of the Agreement as well as two years after the Agreement is no longer in effect. The records will be maintained at Franchisee's place of business. Invoices shall at a minimum include a description of each vehicle, nature of service, start time, end time, location of call, itemized costs of towing and storage, the tow truck driver's name, and truck used.

B. The Franchisee shall also maintain business records relating to personnel, insurance, personnel taxes, payroll, applicable operating authorities, local operating authorities, lien sale actions, Federal Communication Commission licensing, and non-LPD tows.

C. LPD may inspect all Franchisee tow service records without notice during normal business hours. Franchisee shall permit LPD to make copies of business records at their place of business, or to remove business records for the purpose of reproduction. LPD shall provide a receipt for any original records removed from the place of business.

Section 26. INDEPENDENT CONTRACTOR

A. In the furnishing of services provided for herein, Franchisee and its employee(s) are acting as independent contractors. Neither Franchisee, nor any of its officers, associates, agents, or employees shall be deemed an employee of the City of Livermore, including the LPD, for any purpose.

Section 27. ASSIGNMENT

A. This Agreement is personal to Franchisee and there shall be no assignment by Franchisee of its rights or obligations under this Agreement without the prior written consent of the City. Any attempted assignment by Franchisee, its successors or assigns, shall be null and void unless approved in writing by the City, and shall be cause for termination of this Agreement.

Section 28. HEADINGS

A. The section headings in this Agreement are for convenience and reference only and shall not be construed or held in any way to explain, modify, or add to the interpretation or meaning of the provision of this Agreement.

Section 29. INDEMNITY

A. Franchisee shall indemnify, hold harmless, and defend City and each of its officers, officials, employees, agents, and volunteers from any and all loss, liability, fines,

penalties, forfeitures, costs, and damages (whether in contract, tort, or strict liability, including but not limited to personal injury, death at any time, and property damage) incurred by City, Franchisee, or any other person, and from any and all claims, demands, and actions in law or equity (including attorney's fees and litigation expenses), arising or alleged to have arisen directly or indirectly out of performance of this Agreement. Franchisee's obligations under the preceding sentence shall apply regardless of whether City or any of its officers, officials, employees, agents, or volunteers are actively or passively negligent, but shall not apply to any loss, liability, fines, penalties, forfeitures, costs, or damages caused solely by the active negligence or by the willful misconduct of City or any of its officers, officials, employees, agents, or volunteers.

B. This Section 29 shall survive termination or expiration of this Agreement.

Section 30. ADVERTISING

A. The Franchisee shall not display any sign or engage in any advertisement indicating its official or unofficial affiliation with LPD. Examples include, "Official Livermore Police Department Tow", "Approved by Livermore Police Department," "Livermore Police Department Rotation Tow," etc.

B. This shall not preclude the Chief from implementing a system to mark and identify particular tow trucks as having passed LPD inspection.

Section 31. FRANCHISE FEES

A. During the term of this Agreement, as consideration for the non-exclusive franchise right to participate in the Rotation Tow Program, Franchisee shall pay to the City a franchise fee in the amount as set forth by resolution of the City Council, as may be amended ("Franchise Fee").

B. The initial Franchise Fee shall be due and payable in full at the time of Franchisee's approval to participate in the Rotation Tow Program.

C. Subsequent to the initial Franchise Fee referenced in Section 31.B. above, annual Franchise Fees shall be due and payable on April 1st of each year. Payments not received by April 30th shall be delinquent. Delinquent and/or non-payment of the Franchise Fee shall be grounds for suspension or termination of this Agreement.

D. Any Franchise Fee which remains unpaid after April 30th shall be delinquent and shall result in an immediate penalty equal to 10% of the unpaid amount. The unpaid amount should thereafter accrue interest at 10% per annum until paid.

E. In the event of a suspension or termination of a Franchisee, Franchisee shall forfeit any fees paid to the City. Franchisee waives any and all claims or rights to collect back from the City any amounts collected by the City pursuant to this program.

F. A payment to the City by the Franchisee pursuant to this Section 31 shall be in addition to any license fee or business tax prescribed by the City for the same period.

G. By accepting this Agreement, the Franchisee irrevocably waives the defense of the statutes of limitations, laches, waiver, or other equitable doctrine of similar import or effect any action brought by the City to recover any franchise fee, interest, or penalties due under this Agreement.

H. By accepting this Agreement, Franchisee agrees that if it challenges the right of the City to collect a Franchise Fee provided by this Agreement, any relief requested by Franchisee and awarded to it by virtue of such challenge shall be prospective only from and after the date of the filing of the initial pleading seeking such relief in a court of competent jurisdiction. Franchisee hereby waives any and all claims or rights to collect back from the City, or obtain credit against future payment obligations, any amounts collected by the City prior to the filing of the initial pleading seeking such relief. In the event Franchisee's challenge to any Franchise Fee payment should result in an initial judgment in its favor, Franchisee shall continue to make all Franchise Fee payments in accord with this Agreement pending an appeal by the City. If the court of appeal, or trial court determines the City is not entitled to collect any or all of the Franchise Fees, the City shall refund to Franchisee those portions of the Franchise Fee which the court deemed the City was not entitled to collect, which are made subsequent to the filing of the initial action by Franchisee, exclusive of interest on such amount.

I. The City shall retain the right to impose alternative forms of fees in the event that Franchise Fees provided for in this Agreement did not adequately cover the actual and reasonable costs of the Rotation Tow Program and/or are no longer accessible due to subsequent changes in federal, state, or local law.

Section 32. CANCELLATION

A. Either party may terminate this Agreement at any time before the normal expiration of the term by giving thirty (30) days prior written notice to the other party. Upon termination of the Agreement by Franchisee under this Section 32, City shall remove Franchisee from the Rotation Tow Program. Franchisee shall not be entitled to reimbursement of any portion of the annual Franchise Fee previously paid to City.

****

Signatures and Attachment List on the Next Page

I certify that I have read and understand this Non-Exclusive Franchise Agreement for Tow Services and agree to abide by all the provisions. The Franchisee, and the agents and employees of the Franchisee, in the performance of this Agreement, shall act in an independent capacity and not as officers or employees or agents of the City.

FRANCHISEE: **Dated:**

_____ _____

By:
Title:

CITY OF LIVERMORE: **Dated:**

_____ _____

Marianna Marysheva
City Manager

APPROVED AS TO FORM:

_____
Assistant/City Attorney

Attachments:
Exhibit A – Definitions

EXHIBIT A

Section 1. DEFINITIONS

1.1 "Portal to Portal" means service shall start at the time of departure from the place of business or point of dispatch, whichever is closer to the location of the call, and shall in at the estimated time or return to the place of business or the completion of the call, if another call is pending, whichever is shorter. Return to place of business includes a reasonable and verifiable amount of time required to place the tow truck back into service when unusual circumstances require additional time that are not part of the normal operating procedures. (Examples: 1. Recovery of a 4x4 vehicle in the mud: reasonable to charge for cleaning mud from truck and equipment, 2. Burned car on car carrier's: reasonable to charge for cleaning burn debris from carrier bed: not reasonable to charge the cleaning of carrier bed.)

1.2 "Possession" is deemed to arise when the vehicle is removed pursuant to section 3068 of the California Civil Code.

1.3 "Termination" means the permanent removal of Franchisee from the rotation tow list for the remainder of the term of the Non-Exclusive Franchise Agreement for Tow Services and disqualification from any further participation in LPD's Rotation Tow Program. Termination may be with or without cause.

1.4 "Tow Truck" means a tow truck as defined in section 615 of the California Vehicle Code. Also included are slide back carriers and wheel lift vehicles.

1.5 "Written Reprimand" – A written notice to a Franchisee which specifies any violation(s) of the Non-Exclusive Franchise Agreement for Tow Services, orders corrective action, and warns of further action(s) to be taken if corrective action is not taken.

LIVERMORE
CALIFORNIA

CITY COUNCIL STAFF REPORT **ITEM NO. 7.1**

DATE: June 24, 2024

TO: Honorable Mayor and City Council

FROM: Marianna Marysheva, City Manager

SUBJECT: Appointment of Council Members to the City Council Subcommittee on Advisory Bodies for the period of July 1, 2024 - December 31, 2024.

RECOMMENDED ACTION

Staff recommends the Mayor appoint two Council Members to serve on the City Council Subcommittee on Advisory Bodies for the period of July 1, 2024 - December 31, 2024, with the City Council's approval.

SUMMARY

Applicants for vacancies on Livermore's advisory bodies are interviewed by a two-member subcommittee of the City Council before being recommended for appointment by the full City Council. Two Council Members are needed to serve on the interview subcommittee for the period of July 1, 2024 - December 31, 2024.

DISCUSSION

The City Council has established nine standing advisory bodies comprised of more than seventy volunteers. To serve on an advisory body, community members apply for vacancies and are interviewed by a subcommittee of the City Council. The City Council Subcommittee on Advisory Bodies ("Subcommittee") is a two-member subcommittee of the City Council appointed by the Mayor with the City Council's approval, and which is tasked with interviewing applicants for Livermore's advisory boards, commissions, and committees. Membership on this standing City Council subcommittee rotates among Council Members who are appointed for staggered terms, if possible, to ensure that at least one member has prior experience on the subcommittee. Recruitment for advisory body vacancies is managed by the City Clerk's Office and interview nights are scheduled as needed to fill vacancies throughout the year.

Serving in six-month increments, the Subcommittee conducts interviews and recommends appointments for confirmation by the full City Council. The exception to this policy are applicants for the Planning Commission who are interviewed by the full City Council.

Two Council Members are needed to serve on the Subcommittee for the period of July 1, 2024 -

December 31, 2024. Previous appointments are listed below:

Year	January 1 - June 30	July 1 - December 31
2024	CM Barrientos	
	CM Kiick	
2023	CM Carling	CM Barrientos
	CM Branning	CM Carling
2022	CM Kiick	Mayor Woerner
	VM Bonanno	VM Bonanno
2021	CM Carling	VM Munro
	VM Munro	CM Kiick
2020	CM Munro	Mayor Marchand
	CM Coomber	CM Carling
2019	Mayor Marchand	CM Woerner
	CM Woerner	CM Munro
2018	CM Carling	CM Coomber
	CM Coomber	CM Spedowfski

Upon appointment by the Mayor, the City Clerk's Office will coordinate with the Subcommittee members to reserve several evenings to facilitate upcoming interview sessions.

FISCAL AND ADMINISTRATIVE IMPACTS

None.

COMMUNITY PILLAR

5: A City That Works.

GOAL

2: Engage effectively with the City's Advisory Bodies

ATTACHMENTS

Prepared by: Debbie Elam
Acting City Clerk

Approved by:

Marianna Marysheva
City Manager

Fiscal Review by:

Tina Olson
Administrative Services Director

LIVERMORE
CALIFORNIA

CITY COUNCIL STAFF REPORT **ITEM NO. 7.2**

DATE: June 24, 2024

TO: Honorable Mayor and City Council

FROM: Marianna Marysheva, City Manager, Jason Alcala, City Attorney, and Brent Smith, Community Development Director

SUBJECT: Certification of referendum petition against Resolution No. 2022-085, action to either repeal the resolution, or call for an election for the voters to approve or set aside the legislative acts in the resolution for the construction of and improvements to Veterans Park, and consideration of a companion resolution ratifying the Amended and Restated Disposition, Development and Loan Agreement with Eden Housing, Inc.

RECOMMENDED ACTION

Staff recommends the City Council:

1. Adopt a resolution accepting the Alameda County Registrar of Voter's certification of sufficiency of the signatures on the referendum petition against Resolution No. 2022-085; and,
2. Take one of the following actions as provided by the Elections Code:

Option 1: Adopt a resolution repealing Resolution No. 2022-085; or,

Option 2: Adopt a resolution calling for an election to place Resolution No. 2022-085 on the ballot for the voters to approve or set aside the legislative acts in the resolution for the construction of and improvements to Veterans Park; requesting that the Alameda County Registrar of Voters conduct the election; and establishing dates for ballot measure arguments.

3. Staff further recommends the City Council adopt a companion resolution to ratify, reaffirm, and readopt the terms and conditions in the Amended and Restated Disposition, Development and Loan Agreement with Eden Housing, Inc., other than for construction of and improvements to Veterans Park, and to acknowledge that the agreement remains in effect as of the date it was signed.

SUMMARY

On May 24, 2022, the City Council adopted Resolution No. 2022-085 authorizing the execution of an *Amended and Restated Disposition, Development and Loan Agreement* with Eden Housing, Inc. for the development of the downtown multi-family housing site. That agreement amended the then existing agreement with Eden Housing for the affordable housing project that was first approved by the City Council on November 26, 2018, and that was later amended by the City Council on May 25, 2021.

Resolution No. 2022-085 also approved the language in the agreement for the construction of and improvements to Veterans Park.

On July 9, 2022, Move Eden Housing (MEH) presented a petition against Resolution 2022-085 to the City Clerk for processing as a referendum.

On March 6, 2024, the Appellate Court issued an opinion that MEH's petition should be processed as a referendum because the resolution approved the construction of and improvements to Veterans Park, which the Appellate Court determined to be a legislative act subject to referendum. The Appellate Court also rejected all of MEH's other objections against the resolution and agreement. The Appellate Court also determined that the primary substantive decisions relating to the housing aspects of the agreement were not subject to referendum because they were made years before the 2022 resolution was adopted.

On June 4, 2024, the Alameda County Registrar of Voters certified that the referendum contains sufficient valid signatures to qualify.

As a result, the City Council must now decide whether to:

Option 1: Repeal Resolution No. 2022-085; or,

Option 2: Call for an election to place Resolution No. 2022-085 on the ballot for the voters to approve or set aside the legislative acts in the resolution for the construction of and improvements to Veterans Park.

Consistent with the Appellate Court Opinion, staff recommends the City Council also adopt a companion resolution to ratify, reaffirm, and readopt the terms and conditions in the *Amended and Restated Disposition, Development and Loan Agreement* with Eden Housing, Inc. for the housing project, other than construction of and improvements to Veterans Park, and acknowledge they remain in effect as of the date the agreement was signed.

DISCUSSION

It is important to begin with basic facts about the scope and legal effect of the referendum petition circulated in Livermore.

The referendum is not about whether a park should be built instead of affordable workforce housing. Rather, the referendum is about Veterans Park and whether it should be built as part of the City's agreement with Eden Housing.

The Appellate Court determined that Resolution No. 2022-085 is only subject to referendum because it was a legislative act to approve language in the agreement for the construction of and improvements to Veterans Park. The Appellate Court rejected all other protests against the resolution and the agreement. The Appellate Court also found that the primary substantive decisions relating to the housing aspects of the agreement were not subject to referendum because they were made years before the 2022 resolution was adopted.

Agreement for an Affordable Housing Project - Not Subject to Referendum

On January 29, 2018, the City Council approved the 2018 Downtown Plan for the development of portions of the Livermore Village Site to include:

- Stockmen's Park
- Up to 130 units of workforce housing
- A science center
- A black box theater
- Retail space
- A linear public park (that would come to be known as Veterans Park).

The 2018 Downtown Plan was the culmination of a comprehensive public engagement program that began on February 15, 2017, when the City Council identified the downtown as a priority. That engagement program included the formation of a steering committee, numerous workshops, neighborhood meetings, pop-up events and presentations to obtain community input that was assembled into a series of reports and land use concepts that were presented for the City Council's consideration, direction, and action. Some of the most significant City Council decisions leading to the 2018 Downtown Plan occurred on August 7, 2017, and then on November 27 and 29, 2017. At these dates, the City Council accepted the Downtown Public Engagement Final Report, and provided direction regarding design of the 2018 Downtown Plan, including with respect to housing, public finance, cultural facilities, hotel, retail, roadways, and open space and park space.

On November 27, 2018, the City Council approved an agreement to sell a portion of the Livermore Village Site to Eden Housing to develop a multi-family affordable rental housing project with up to 130 units of workforce housing.

On May 25, 2021, the City Council approved an amended agreement with Eden Housing to clarify certain terms and conditions, including the property being transferred. The amendment also reflected that the Veterans Park parcel would remain the City's. The amendment provided that Eden Housing would coordinate with the City to make way and allow for the development of a City-owned, green/publicly accessible community park space that would be open and available to the general public and named "Veterans Park." Veterans Park was in addition to Stockmen's Park that occupies a different portion of the Livermore Village Site. The agreement also provided an option for the City to negotiate a future construction and reimbursement agreement with Eden Housing to coordinate the construction of the Veterans Park improvements.

On May 24, 2022, the City Council approved an amended and restated agreement with Eden Housing to make targeted changes in following the needless delay caused by Save Livermore Downtown's (SLD) failed lawsuit challenging the entitlements for Eden Housing's affordable housing project. The adoption of Resolution No. 2022-085 also approved language set forth in Attachment 1 for the construction of and improvements to Veterans Park by Eden Housing.

The *Amended and Restated Disposition, Development and Loan Agreement* contains a clause that removes any terms that are invalid, void, or unenforceable, and confirms that the remaining provisions remain in full force and effect.

On March 6, 2024, the Appellate Court found that the primary substantive decisions relating to the housing aspects of the agreement were not subject to referendum because they were made years before the 2022 resolution was adopted.

Approval of Construction of and Improvements to Veterans Park - Subject to Referendum

The City Council provided direction, made decisions, and took numerous actions to implement the 2018 Downtown Plan, including for the construction of and improvements to Veterans Park as a City park, prior to the adoption of Resolution No. 2022-085.

As stated above, on January 29, 2018, the City Council approved the 2018 Downtown Plan that included a linear public park that would be situated between the two buildings for the 130 units of workforce housing. The 2018 Downtown Plan identified the construction of a "park-like green space connection through the housing from South L to South Livermore."

On September 24, 2018, the City Council approved the Downtown Core Plan Landscape Design Guidelines for the future development and design of Downtown Core Parks, including the linear park.

On February 19, 2019, the City Council held a special meeting workshop wherein it selected the implementation of the 2018 Downtown Plan as a priority goal. The priority goal included, among other things, finalizing plans for the linear park to ensure that the community needs are met.

On July 22, 2019, the City Council directed staff to consider the proposal by Don Staysa from the Livermore Stockmen's Rodeo Association to name the linear park "Veterans Park" to compliment the veteran theme in the adjacent Stockmen's Park.

On May 11, 2020, the City Council approved amendments to the Downtown Specific Plan that codified the 2018 Downtown Plan, including the location and use of Veterans Park.

On March 1, 2021, the City Council held a special meeting workshop wherein it selected the implementation of the 2018 Downtown Plan as a priority goal. That priority goal included, among other things, the preparation of plans for the construction of and improvements to Veterans Park.

On June 14, 2021, the City Council approved the City's Capital Improvement Program for Fiscal Years 2021-23 as part of the City's two-year financial plan and budget approval. That approval provides for the construction of Veterans Park as project No. 202121 described as a "public park between work force housing buildings at the northwest corner of Livermore Village" and consisting of "approximately 30,000 to 40,000 square feet of landscaping and hardscape." The project justification for the City's construction of Veterans Park as a capital improvement project states that Veterans Park is intended to provide complimentary open space to Stockmen's Park and provide a continuous strip of public open space between South Livermore Avenue and L Street. The approval also identified Park Fees as the funding source to construct the public park improvements as a public project, and allocated funding as follows:

FY 2020-21	$40,000
FY 2021-22	$450,000
FY 2022-23	$3,800,000

On July 12, 2021, the City Council approved an agreement with RRM Design Group in the amount of $499,801 to: design Veterans Park; conduct public outreach; develop schematic landscape plans; prepare a preferred park design including renderings and shade studies; prepare a planning entitlement package; and, to prepare a final design that includes construction drawings to bid the project's

construction. The scope of services also includes construction administration and other support for the construction of Veterans Park.

Public outreach in 2021 culminated in three conceptual designs for Veterans Park based upon community feedback and stakeholder input.

On June 13, 2022, the City Council approved an update to the City's Capital Improvement Program for Fiscal Years 2021-23. That approval continued to include the construction of Veterans Park as project No. 202121 with funding from Park Fees.

On June 12, 2023, the City Council approved the City's Capital Improvement Program for Fiscal Years 2023-25 as part of the City's two-year financial plan and budget approval. That approval continued to include the construction of Veterans Park as project No. 202121 with funding from Park Fees, and allocated funding as follows:

FY 2022-23	$20,000
FY 2023-24	$185,000
FY 2024-25	$185,000
FY 2025-26	$5,000,000

These prior actions by the City Council for the construction of Veterans Park were not included in the administrative record before the Appellate Court because it was believed that MEH, like SLD, was challenging the affordable workforce housing project approved by Resolution No. 2022-085. However, the Appellate Court disagreed and determined that MEH's referendum was limited to those portions of Resolution No. 2022-085 that approved the construction of and improvements to Veterans Park.

If the administrative record before the Appellate Court contained the City Council's prior legislative acts, that would have provided the information the Appellate Court needed to determine that it was the City Council's earlier acts, and not the adoption of Resolution No. 2022-085, that fixed the City's policy to construct Veterans Park as a public project. Nevertheless, the Appellate Court's opinion still controls.

The attached memorandum regarding the history of Veterans Park (Attachment 2) provides more information about the City Council's prior actions fixing the City's policy to construct Veterans Park as a public project.

Overview of Referendum Petition Process

California Elections Code Sections 9235 through 9247 set forth the requirements to process referendum petitions by general law cities.

A referendum is the power of the voters to approve or set aside an original legislative act taken by the City Council. California courts have determined that an act is legislative when it adopts a new policy or plan, declares a public purpose, and provides ways and means of its accomplishment.

As a result, a referendum is only available to set aside City Council acts that are legislative in nature. Executive, administrative, and ministerial acts are not subject to referendum. Also, the power of referendum cannot be invoked to annul or delay the implementation of previously approved legislative policy since that would impair essential governmental functions. California Courts have reasoned that if

administrative decisions were subject to referendum, then a small group of electors, through repeated referendums, could interfere with essential governmental functions making it impossible to carry on the public business.

Likewise, the power of referendum is expressly prohibited for certain legislative acts such as the adoption of urgency ordinances, ordinances calling for elections, as well as tax levies and other fiscal appropriations.

The attached memorandum analyzing the referendum process (Attachment 3) provides a more comprehensive analysis of the applicable laws.

To qualify, Elections Code section 9215 states a referendum petition must contain signatures of at least 10% of registered Livermore voters based on the county election official's last official Report of Registration to the Secretary of State.

Upon timely submission of a referendum petition, the City Clerk performs a technical review to determine whether the form of the referendum complies with the requirements of the Elections Code. Following the technical review, the City Clerk then performs a prima facie review to determine whether the number of signatures affixed to the petition equals or exceeds the 10% threshold (i.e. the "raw count"). If the number of signatures in the raw count does not equal the 10% threshold, the petition is not accepted for filing and is returned to the petitioner.

Once the petition is accepted for filing, the elections official has 30 days, excluding weekends and holidays, to examine the signatures for validity (i.e. the "signature verification process"). The elections official can perform a full examination of signatures, or may use a random sampling method established by the Elections Code. Because Livermore coordinates with Alameda County to conduct elections, the signature verification process is performed by the Alameda County Registrar of Voters.

If the Alameda County Registrar of Voters certifies the referendum is signed by at least 10% of the registered voters in the City, the results of the examination are then certified to the City Council. During the pendency of the signature verification process and following certification of the referendum petition, legislative act protested by the referendum is suspended and the City Council, at its sole discretion, must either repeal the protested legislative act, or call an election for the voters to approve or set aside the protested legislative act.

Timeline for Referendum Petition Protesting Resolution No. 2022-085

On July 9, 2022, MEH's petition against Resolution 2022-085 was presented to the City Clerk for processing as a referendum. The Report of Registration at the time of filing the petition identified 57,028 registered Livermore voters, establishing the 10% threshold at 5,702 signatures.

The City Clerk's technical review determined the referendum petition appeared on its face to comply with all format requirements. The City Clerk then completed a prima facie review of signatures and identified 9,737 unverified signatures affixed to the petition, which exceeds the required number of signatures to qualify the petition for further examination. Although numerous signatures were scratched out, the City Clerk nevertheless counted the signature as part or her prima facie review if she could see the signature along with a printed name, address, and city for the signer.

On July 13, 2022, the City Clerk advised MEH, based upon legal advice, that she would not process the petition as a referendum because it only contains administrative acts and did not contain any new legislative acts by the City Council. As the City Clerk explained, since the referendum petition does not challenge a legislative act, it was therefore not eligible for processing as a referendum.

Litigation ensued, and MEH identified and asserted it protested the following aspects of Ordinance No. 2022-085 that it asserted were legislative acts:

- Policy decision to construct and improve Veterans Park;
- Policy decision to loan Eden Housing money to buy the property; and,
- Policy decision to limit the City's indemnity owed to Eden Housing for the remediation of environmental contamination on the property.

On January 25, 2023, the Trial Court entered judgment in the City's favor after finding "the Court confirms that the referendum at issue here was improper under California Law because it is directed at an administrative act and not a legislative one."

On March 6, 2024, the Appellate Court reversed the Trial Court's decision and issued an opinion finding that Resolution No. 2022-085 is subject to referendum because it approved "the construction of and improvements to a new public park," which is Veterans Park, in the agreement. The Appellate Court determined that the prior agreement merely contained an option for that work, and that the 2022 agreement for the first time authorized that work. The Appellate Court's opinion also determined that MEH's other protested aspects were administrative acts, not legislative, and therefore not subject to referendum. The Appellate Court specifically held that "the approval of the loan terms in the 2022 agreement is not a legislative act" and "plaintiffs have not shown approval of the indemnification provision in the 2022 agreement was a legislative act."

The attached memorandum analyzing the Appellate Court decision (Attachment 3) provides a more comprehensive analysis of the case.

The Appellate Court having determined the portions of Resolution No. 2022-085 approving the construction of and improvements to Veterans Park is subject to referendum, the City Clerk resumed processing the petition as a referendum and delivered the petition to the Alameda County Registrar of Voters and requested full examination of the signatures.

On June 4, 2024, the Alameda County Registrar of Voters determined the number of unverified legible signatures (in contrast to the City Clerk's prima facie review which includes both legible and illegible signatures) was 8,019. The Registrar then performed an examination of the signatures and issued a certificate of sufficiency after determining the petition contained 6,043 valid signatures.

Reconsideration of Resolution No. 2022-085

The City Council must now decide whether to:

Option 1 Repeal Resolution No. 2022-085; or,

Option 2 Call for an election to place Resolution No. 2022-085 on the ballot for the voters to approve

or set aside the legislative acts in the resolution for the construction of and improvements to Veterans Park.

MEH, like SLD, is litigious and is likely to file a lawsuit challenging either decision made by the City Council, but that lawsuit is unlikely to prevail. It would also provide both the Trial Court and the Appellate Court with the opportunity to reconsider whether the portions of Resolution No. 2022-085 that approved the construction of and improvements to Veterans Park are subject to referendum based upon the City Council's earlier legislative acts that fixed the policy to construct Veterans Park as a public project well in advance of its adoption of Resolution No. 2022-085.

Recommendations

Staff recommends the City Council adopt the resolution accepting the Alameda County Registrar of Voter's certification of sufficiency of the signatures on the referendum petition protesting the Veterans Park portion of Resolution No. 2022-085; and select one of the following options:

Option 1: Repeal Resolution No. 2022-085.

The attached resolution for Option 1 will repeal Resolution No. 2022-085.

The practical effect is:

1. The will of the voters is respected and the legislative act approving the construction of and improvements to Veterans Park in the agreement with Eden Housing is set aside.
2. The City Council will be precluded from taking action to include the construction of and improvements to Veterans Park in an agreement with Eden Housing for a period of one year from the date of the repeal;
3. It is unclear whether during that year the City must also cease working on the construction of and improvement to Veterans Park that were separately approved by the City Council prior to the adoption of Resolution No. 2022-085. However, in an abundance of caution, staff intends to pause all work on Veterans Park, and will return to the City Council when the one-year period expires.

Option 2: Call for an election to place Resolution No. 2022-085 on the ballot for the voters to approve or set aside the legislative acts in the resolution for the construction of and improvements to Veterans Park.

The attached resolution for option 2 calls for an election and places Resolution No. 2022-085 on the ballot for the voters to approve or set aside the legislative acts in the resolution for the construction of and improvements to Veterans Park at the General Municipal Election on November 5, 2024.

The practical effect is:

1. An election is called for the voters to approve or set aside the legislative acts in Resolution 2022-085 for the construction of an improvement to Veterans Park.
2. If the voters approve the legislative acts in Resolution No. 2022-085 that approved the construction of and improvements to Veterans Park, then the City Council and Eden Housing can proceed with the development of Veterans Park.
3. If the voters set aside the legislative acts in Resolution No. 2022-085 that approved the

construction of and improvements to Veterans Park, then the City Council cannot proceed with the development of Veterans Park for a period of one year from the date of that election.

4. It is unclear whether during that year the City must also cease working on the construction of and improvement to Veterans Park that were separately approved by the City Council prior to the adoption of Resolution No. 2022-085. However, if this option is selected and the voters set aside the legislative acts for the construction of and improvements to Veterans Park, then in an abundance of caution, staff intends to pause all work on Veterans Park, and will return to the City Council when the one-year period expires.

Companion Resolution.

Staff recommends the City Council adopt companion resolution ratifying, reaffirming, and readopting the terms and conditions in the *Amended and Restated Disposition, Development and Loan Agreement* with Eden Housing, Inc., except for the terms and conditions for the construction of and improvements to Veterans Park. That administrative act respects the Appellate Court's determination and the voters protest against the construction of and improvements to Veterans Park, and also respects the Appellate Court's determination that the housing aspects of the agreement are administrative and not subject to referendum. The resolution also acknowledges the terms and conditions in the agreement remain in effect as of the date the agreement was signed.

Pursuant to the legal authority In re: *Stratham, (1920) 45 Cal.App. 436 and Reagan v. Sausalito, (1962) 210 Cal.App.2d 618*, the City Council may deal further with the subject matter of the *Amended and Restated Disposition, Development and Loan Agreement* that was not subject to referendum.

The proposed resolution upholds the Appellate Court’s determination that the primary substantive decisions relating to the housing aspects in the *Amended and Restated Disposition, Development and Loan Agreement* were made prior to 2022, and are administrative not legislative. It also administratively exercises the clause to remove the legislative acts related to the construction of and improvements to Veterans Park from the *Amended and Restated Disposition, Development and Loan Agreement* with Eden Housing, Inc.

The ratification, reaffirmation and readoption of the non-legislative elements of the *Amended and Restated Disposition, Development and Loan Agreement* is within the scope of the Specific Plan EIR, dated February 9, 2004 (SCH No.: 2003032038), the Specific Plan Subsequent EIR, dated March 30, 2009 (SCH No.: 2008092085), and the Specific Plan Subsequent EIR Addenda 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. The *Amended and Restated Disposition, Development and Loan Agreement* is also exempt from the provisions of CEQA pursuant to CEQA Guidelines Sections 15182 (c), 15332, 15304 (a)(b) and 15308 and none of the exceptions to the categorical exemptions in CEQA Guidelines Section 15300.2 apply, as described in the Eden Housing Project resolution, dated May 26, 2021 (Resolution 2021-071).

The practical effect is that:

1. The City and Eden Housing may continue to implement the *Amended and Restated Disposition, Development and Loan Agreement* except for the construction of and improvements to Veterans Park.
2. The language in the agreement for the construction of and improvements to Veterans Park is severed by operation of law, and is invalid, void, and unenforceable for a period of one year.

FISCAL AND ADMINISTRATIVE IMPACTS

Should the City Council choose to submit the protested portions of the resolution to the voters, Alameda County will bill the City for the actual costs of the election, estimated to be $4-$6 per registered voter for a regular consolidated election.

At the time of publishing this staff report, there are 56,792 registered voters in Livermore, projecting the cost of a consolidated regular election to range between $227,168 and $340,752. This estimate does not include sample ballot printing or Spanish, Chinese, Tagalog, and Vietnamese translation costs, which are further estimated to be an additional $27,000 to $35,000.

The referendum petition signature verification provided by the Alameda County Registrar of Voters is billed separately from election costs. Staff estimates the cost for this service will range between $15,000 and $20,000.

COMMUNITY PILLAR

4: Inclusive and Inviting Spaces and Places

GOAL

3: Continue to Implement the Downtown Specific Plan

ATTACHMENTS

1. Veterans Park Language
2. Memorandum, History of Veterans Park
3. Memorandum, Referenda and Case Analysis
4. Resolution - Accepting Certification
5. Exhibit A - Registrar of Voters Certification
6. Resolution - Repealing Resolution No. 2022-085
7. Resolution - Calling for and Giving Notice of Election
8. Exhibit A - Resolution No. 2022-085
9. Exhibit B - Veterans Park Language
10. Exhibit C - Referendum Measure
11. Resolution - Companion Resolution
12. Exhibit A - Resolution No. 2022-085
13. Exhibit B - Veterans Park Language

Prepared by: Marie Weber
Deputy City Manager

Approved by:

Marianna Marysheva
City Manager

Fiscal Review by:

Tina Olson
Administrative Services Director

LANGUAGE FROM AGREEMENT FOR THE CONSTRUCTION OF AND IMPROVEMENTS TO VETERANS PARK

Resolution No. 2022-085 approved the following language in the *Amended and Restated Disposition, Development and Loan Agreement* for the construction of and improvements to Veterans Park

Section 2.1 Definitions

(hhh) “Veterans Park Improvements” is defined as the constructed improvements within the Veterans Park Parcel which shall be entitled and designed at the sole discretion of the City.

Section 3.5 Construction and Financing for Veterans Park Improvements.

The Parties agree that the Developer will manage the construction of the Veterans Park Improvements but that the City will pay for the costs of the Veterans Park Improvements at its sole expense. City and Developer will negotiate a future construction management and reimbursement agreement to coordinate the construction of the Veterans Park Improvements. The Agreement shall authorize reimbursement for the construction of the park, per the designs and specifications issued by the City, and shall not exceed Five Million Five Hundred Thousand Dollars ($ 5,500,000) (not including any grants obtained by Developer to help fund the construction costs), without additional approval of the City Council. The Agreement and the procurement of the contractor who will build the park shall comply with all applicable local, state, and federal procurement laws to the extent such laws apply. These improvements would be exclusive of any development loan provided by the City for development of the Project.

Similarly, Resolution No. 2022-085 approved minor language in two other sections in the *Amended and Restated Disposition, Development and Loan Agreement* that contain language related to the construction of and improvements to Veterans Park (underlined):

Section 7.3 City Review.

Except for the activities to be performed by or on behalf of the City as otherwise contemplated herein, the Developer shall be solely responsible for all aspects of the Developer's conduct in connection with the Project, including, but not limited to, the quality and suitability of the Project Documents, the supervision of construction work for the Project and the Veterans Park Improvements, and the qualifications, financial condition,

and performance of all architects, engineers, contractors, subcontractors, suppliers, consultants, and property managers. Except for the activities to be performed by or on behalf of the City as otherwise contemplated herein, 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 8.2 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, subject to Force Majeure requirements in Section 13.4 of this Agreement. As between the City and the Developer, except for, Veterans Park Improvements, and work contemplated by the Cooperation and Indemnity Agreement referenced in section 6.2, above, the Developer shall be solely responsible for the construction of the Improvements, including all costs of construction (except for the EVA Improvement Reimbursables referenced in Section 3.4).

LIVERMORE
CALIFORNIA

INTEROFFICE MEMORANDUM

Date: June 17, 2024

To: Jason R. Alcala, City Attorney

From: Jake Potter, Senior Planner

Subject: History of Veterans Park

This memorandum provides a description of Veterans Park and how it came to be. It also provides a history of the City Council's actions and decisions that fixed its policy for the construction of and improvements to Veterans Park as a City park.

Veterans Park – Description and Status

Veterans Park is the linear park conceived by the 2018 Downtown Plan approved by the City Council. It is an approximately 0.7 acre public park comprised of open green spaces, a children's play area, a veterans memorial, and ample landscaping. It is located between South L Street and South Livermore Avenue, and between the residential areas for an affordable housing project. Veterans Park will connect with Stockmen's Park and adjacent public and commercial areas. The approved 2018 Downtown Plan is attached as Exhibit A.

In 2021, the City hired a consultant to provide landscape and architectural services to resulting in the preparation of bid documents for the City's construction of Veterans Park. Public outreach by the consultant in 2021 resulted in conceptual designs for Veterans Park based on community feedback and stakeholder input.

As it stands now, City staff is currently refining the park layout and selecting a final design for review by the Planning Commission and City Council this year. Once that input is received, staff will then work with the consultant to prepare the final design and construction drawings and bid the contract to construct Veterans Park as a public project.

Veterans Park - History of City Council Actions and Decisions

On January 29, 2018, the City Council approved the 2018 Downtown Plan for the development of portions of the Livermore Village Site to include:

- Stockmen's Park
- Up to 130 units of workforce housing
- A science center
- A black box theater
- Retail space

- A linear park (that would come to be known as Veterans Park).

The 2018 Downtown Plan was the culmination of a comprehensive public engagement program that began on February 15, 2017, when the City Council identified the downtown as a priority. That engagement program included the formation of a steering committee, numerous workshops, neighborhood meetings, pop-up events and presentations to obtain community input that was assembled into a series of reports and land use concepts that were presented for the City Council's consideration, direction, and action. Some of the most significant City Council decisions leading to the 2018 Downtown Plan occurred on August 7, 2017, and then on November 27 and 29, 2017. At these dates, the City Council accepted the Downtown Public Engagement Final Report and provided direction regarding design of the 2018 Downtown Plan, including with respect to housing, public finance, cultural facilities, hotel, retail, roadways, and open space and park space.

On March 26, 2018, the City Council approved the publication of a synopsis and FAQs about the 2018 Downtown Plan, which identified the linear park as a "park-like green space connection through the housing from South L to South Livermore." Those approved materials are reflected in the April 2018 newsletter attached as Exhibit A.

Thereafter, the City Council provided direction, made decisions, and took numerous actions to implement the 2018 Downtown Plan, including for the construction of and improvements to Veterans Park as a City park.

On September 24, 2018, the City Council adopted Resolution No. 2018-166 (Exhibit B) approving the Downtown Core Plan Landscape Design Guidelines for the future development and design of Downtown Core Parks, including the linear park.

On February 19, 2019, the City Council selected the implementation of the 2018 Downtown Plan as a priority goal. The priority goal (Exhibit C) included, among other things, finalizing plans for the linear park to ensure that the community needs are met.

On July 22, 2019, the City Council directed staff to consider the proposal by Don Staysa from the Livermore Stockmen's Rodeo Association to name the linear park "Veterans Park" to compliment the veteran theme in the adjacent Stockmen's Park.

On May 11, 2020, the City Council adopted Resolution No. 2020-062 (Exhibit D) approving amendments to the Downtown Specific Plan that codified the 2018 Downtown Plan, including the location and use of Veterans Park.

On March 1, 2021, the City Council selected the implementation of the 2018 Downtown Plan as a priority goal. That priority goal (Exhibit E) included, among other things, the preparation of plans for the construction of and improvements to Veterans Park.

On June 14, 2021, the City Council adopted Resolution No. 2021-088 approving the City's Capital Improvement Program for Fiscal Years 2021-23 as part of the City's two-year financial plan and budget approval (Exhibits F1 and F2). That approval provides for

the construction of Veterans Park[1] as project No. 202121 described as a "public park between work force housing buildings at the northwest corner of Livermore Village" and consisting of "approximately 30,000 to 40,000 square feet of landscaping and hardscape." The project justification for the City's construction of Veterans Park as a capital improvement project states that Veterans Park is intended to provide complimentary open space to Stockmen's Park and provide a continuous strip of public open space between South Livermore Avenue and L Street. The approval also identified Park Fees (Fund 337)[2] as the funding source to construct the public park improvements as a public project, and allocated funding as follows:

FY 2020-21	$40,000
FY 2021-22	$450,000
FY 2022-23	$3,800,000.

On July 12, 2021, the City Council adopted Resolution No. 2021-118 (Exhibit G) approving an agreement with RRM Design Group in the amount of $499,801 to: design Veterans Park; conduct public outreach; develop schematic landscape plans; prepare a preferred park design including renderings and shade studies; prepare a planning entitlement package; and, to prepare a final design that includes construction drawings to bid the project's construction. The scope of services also includes construction administration and other support for the construction of Veterans Park.

Public outreach in 2021 culminated in three conceptual designs (Exhibit H) for Veterans Park based upon community feedback and stakeholder input.

On June 13, 2022, the City Council adopted Resolution No. 2022-098 (Exhibit I) approving an update to the City's Capital Improvement Program for Fiscal Years 2021-23. That approval continued to include the construction of Veterans Park as project No. 202121 with funding from Park Fees (Fund 337).

On June 12, 2023, the City Council adopted Resolution No. 2023-104 (Exhibit J) approving the City's Capital Improvement Program for Fiscal Years 2023-25 as part of the City's two-year financial plan and budget approval. That approval continued to include the construction of Veterans Park as project No. 202121 with funding from Park Fees (Fund 337), and allocated funding as follows:

FY 2022-23	$20,000
FY 2023-24	$185,000
FY 2024-25	$185,000
FY 2025-26	$5,000,000.

[1] The Capital Improvement Budget prepared by the Engineering Division refers to Veterans Park as "Veteran's Park," but they are the same project.
[2] Fund 337 is the City's deposit fund holding the development impact fees collected by the City pursuant to California Government Code section 66000 for the implementation of trail and park facilities. Once sufficient fees are collected from various developments, they are then expended on public park and trail improvements.

There are numerous other actions taken by the City Council regarding the construction of and improvements to Veterans Park, but this history identifies the most significant ones.

Comments in Response to City Attorney Memorandum

The documents related to the history of Veterans Park were not included in the administrative record before the Court of Appeals because it was believed that the measure was challenging the affordable workforce housing project approved by Resolution No. 2022-085, not the park. Based upon the City Attorney's memorandum dated June 14, 2024, it is understood that the City's construction of and improvements to Veterans Park has been protested, not the affordable housing project, and that the City's work on Veterans Park may once again be delayed.

The Planning Division of the Community Development Department requests guidance to better understand how this may impact the entitlement review of Veterans Park and, subsequently, the preparation of the development and construction package to bid the construction of Veterans Park as a public project.

cc: Marianna Marysheva, City Manager
Paul Spence, Assistant City Manager
Brent Smith, Community Development Director

Exhibit A	2018 Downtown Plan (April 2018 Newsletter)
Exhibit B	Resolution No. 2018-166
Exhibit C	City Council Goals & Priorities – Downtown
Exhibit D	Resolution No. 2020-062
Exhibit E	City Council Goals & Priorities – Downtown Implementation
Exhibit F1	Resolution No. 2021-088 (relevant portions)
Exhibit F2	Capital Improvement Plan FY 2021-23 (relevant portions)
Exhibit G	Resolution No. 2021-118
Exhibit H	Three Conceptual Designs for Veterans Park
Exhibit I	Resolution No. 2022-098 (relevant portions)
Exhibit J	Resolution No. 2023-104 (relevant portions)

LIVERMORE
CALIFORNIA

April 2018

Approved Downtown Plan

On March 26, 2018, the Livermore City Council unanimously approved the following synopsis and frequently asked questions regarding the approved Downtown Plan. The synopsis describes key elements of the plan. The frequently asked questions provide answers to common questions about parking and traffic circulation, open space, hotel, housing, retail, and cultural facilities. For more information, visit the City's website at www.cityoflivermore.net/downtown or call (925) 960-4400.

Downtown Synopsis

In January 2018, at the conclusion of a year-long public outreach process, Council approved a plan for the eight acres in the heart of the Downtown. There was broad community consensus to:

- limit building heights adjacent to Blacksmith Square;
- build a parking garage in the southwest area;
- construct a new east/west street with diagonal parking; and,
- locate Stockmen's Park near Blacksmith Square and South Livermore Avenue.

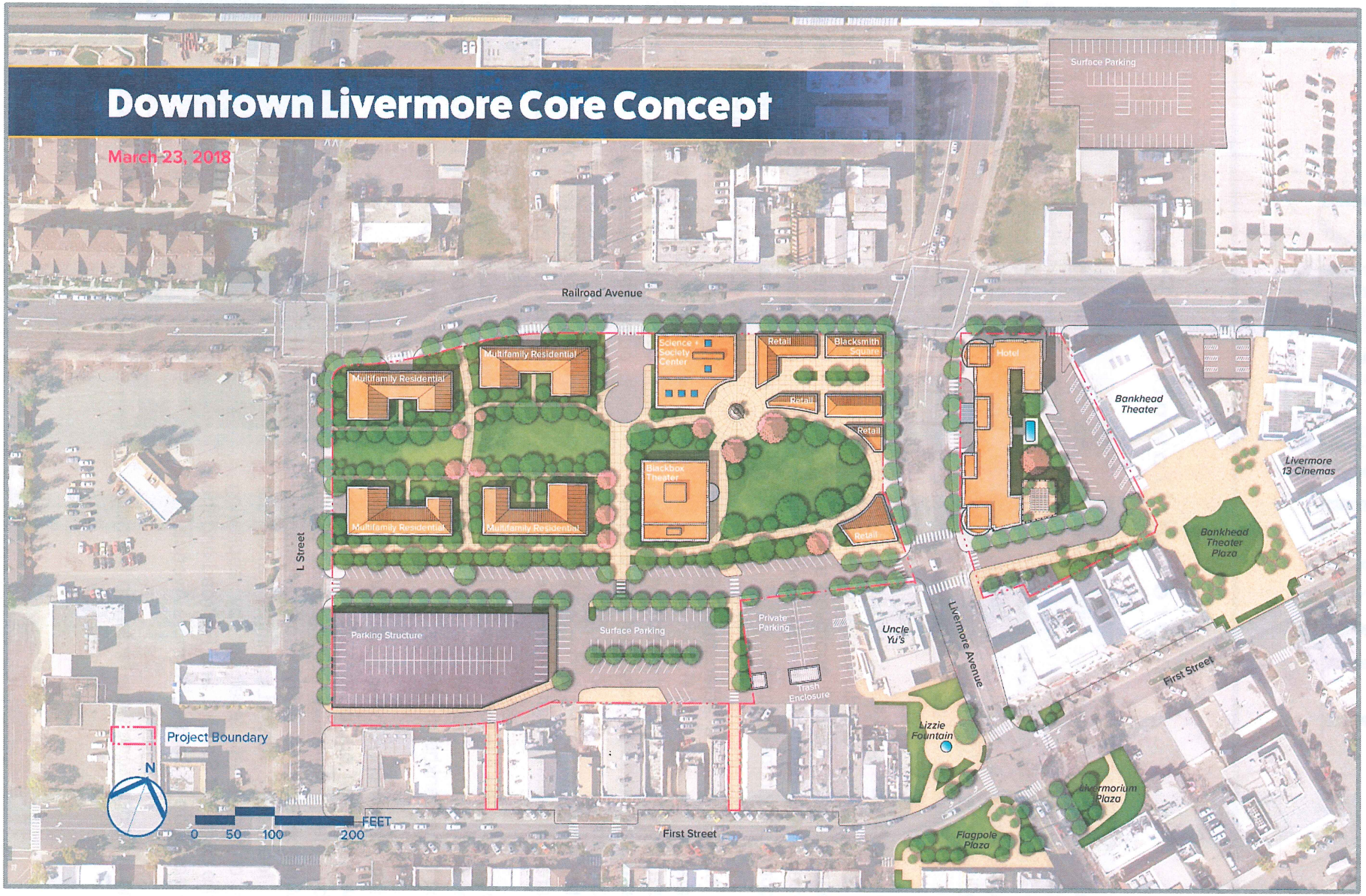
This left two areas of the site for housing and the hotel: the corner of South L Street and Railroad Avenue and the area next to the Bankhead Theater.

In considering placement of the hotel and housing (ranked seven and ten out of the top ten priorities identified by the community during the public engagement process, respectively), Council balanced community feedback, Key Learnings, and the preferences of the hotel developer by approving housing at the corner of South L and Railroad and the hotel on the east side of South Livermore Avenue.

The following considerations were factors in Council's decision:

- The east side site provides the best opportunity for synergy between the hotel, surrounding restaurants, and the Bankhead Theater.
- The hotel builder identified the east side of South Livermore Avenue as the preferred location.
- South L and Railroad was the location most commonly identified for housing during the outreach process.

Council directed staff to implement the final approved plan. Staff is in the process of approving contracts and issuing Requests for Proposals (RFPs) to interested partners to build the plan. Groundbreaking for the Stockmen's Park is on May 19, 2018, and construction on the parking improvements will begin early this summer.


Downtown Livermore Core Concept
March 23, 2018
Railroad Avenue
Surface Parking
Multifamily Residential
Multifamily Residential
Multifamily Residential
Multifamily Residential
Science + Society Center
Retail
Blacksmith Square
Retail
Retail
Retail
Blackbox Theater
Hotel
Bankhead Theater
Livermore 13 Cinemas
Bankhead Theater Plaza
L Street
Parking Structure
Surface Parking
Private Parking
Trash Enclosure
Uncle Yu's
Livermore Avenue
First Street
Lizzie Fountain
Livermorium Plaza
Flagpole Plaza
First Street
Project Boundary
N
0 50 100 200 FEET

Downtown Frequently Asked Questions

Parking and Traffic Circulation

Does the approved Downtown Plan provide adequate parking?

Yes. The approved plan provides 1358-1448* total public parking spaces (not including parking for the residential units, which is provided underground), including:

- Replacement of run-down asphalt and gravel parking areas with surface parking and a parking garage;
- Public parking spaces distributed in a new garage at South L Street, a ground level expansion of the existing garage at I Street, and underground parking for the hotel;
- Two new drop-off areas, on the east and west sides of the Bankhead Theater;
- Significant expansion of accessible parking (ADA), from 3 spaces to 16-18 spaces, adjacent to the Bankhead Theater and the two new drop-off areas; and
- Diagonal parking spaces provided along the length of the new east/west street, slowing vehicle traffic, providing an inviting pedestrian experience, and giving visitors and residents convenient access to the park and nearby retail businesses.

How will the existing 63 space parking lot next to the Bankhead Theater be replaced?

- A new street will wrap around the hotel and provide a drop-off area for the Bankhead Theater and adjacent businesses with 24 parking spaces, 10 of which will be accessible (ADA).
- A new parking area with 6-8 accessible (ADA) parking spaces will be provided on the east side of the Theater.
- A surface lot with 57 parking spaces will be provided adjacent to the existing parking structure (referred to as the I Street parking expansion) on land currently owned by the City.
- The hotel will provide 100 underground spaces, open to the public on a fee basis.

* Revised 11/1/2018 by the Community Development Department, City of Livermore.

What is the overall traffic circulation plan like?

- A new east/west street with diagonal parking allows efficient vehicle circulation through the site, while providing convenient access to nearby businesses, housing, and Stockmen's Park.
- Delivery and service access is provided behind existing First Street businesses.
- Delivery, service access, and a drop-off area is provided wrapping around the hotel for adjacent businesses and the Bankhead Theater.
- Delivery, service access, and a drop-off for the cultural facilities, new retail, and Stockmen's Park is provided via a north/south extension of K Street.

Open Space

How much open space does the plan provide?

The approved plan provides 3.5 acres of publicly accessible open space, which is 44% of the site. Included in the open space is Stockmen's Park, which is approximately 1.5 acres (roughly the same size as the 1.65 acre Carnegie Park).

Will all of the plan's open space areas be integrated in a comprehensive design?

Yes. A Request for Proposals (RFP) has been issued for a landscape architect to design all of the open space areas, which includes the overall design of Stockmen's Park, the tree-lined path that stretches from South L to South Livermore, and the park-like green space connection through the housing from South L to South Livermore.

Can Stockmen's Park be modified?

No. The City Council has entered into a contract with the Stockmen's Association, which cannot be unilaterally modified by the Council. Also, the Stockmen's Association has noted they are satisfied with the current park size, location, and design elements.

Hotel

Why was the east side chosen for the hotel location?

There was considerable discussion regarding the best location for a downtown hotel. The Council decision accomplished the competing interests of the protection of Blacksmith Square and the wide support for a hotel presence on South Livermore Avenue. Ultimately, based on feedback from hotel experts and community comments, the Council chose the parcel next to the Bankhead Theater, on the east side of South Livermore Avenue. This site provides the best opportunity for synergy between the hotel, surrounding restaurants, and the Bankhead Theater. The Council concluded that it is important to have a hotel at this very visible site, rather than housing or a parking garage.

How was the size of the meeting space in the hotel determined?

Experts studied our market and found that the market will support a 125-135 room hotel. Studies show that 1,000-1,500 square feet of meeting space would best match a 125 room hotel. The terms sheet between the hotel builder and the City, approved by Council in February 2018, includes a meeting space of 1,500-2,000 square feet within the hotel.

Housing

What is the origin of the affordable housing obligation on the site?

The affordable housing obligations for the site originate from the funding sources used to purchase various parcels on the site, as well as the state's determination that the site is a housing asset.

The Downtown Specific Plan (DSP) developed in 2004 included housing on this site as part of the overall revitalization strategy. Beginning in 2005, the City's former Redevelopment Agency used a total $14.5 Million of affordable housing funds from both City and State sources to acquire the site.

During the process to dissolve the former Redevelopment Agency of the City of Livermore, both the California Department of Finance and the California Secretary of State allowed most of the parcels to be transferred to the City as housing assets.

A portion of the housing obligation originating with the City's Inclusionary Housing Fund will be satisfied by the affordable housing opportunity on the Civic Center campus that was made possible by the Livermore Stockmen's Rodeo Association.

The State loan programs used for a part of the total funding requires that affordable housing be placed on the site. Those obligations were reinforced by the State's determination during the RDA dissolution process that the parcels are housing assets.

Does the approved plan meet the affordable housing obligations?

Yes, both the number of affordable housing units and the financial obligations originating from the funding sources used to purchase the site are fully satisfied by the combination of 130 affordable workforce housing units on the downtown site and at least 75 units of affordable senior and veterans housing on the Civic Center site enabled by the Stockmen's deal.

How does the total of 130 approved housing units on the downtown site compare with prior expectations?

In 2005, plans for the site included over 400 housing units. In 2016, the City issued a Request for Proposals (RFP) for up to 260 units.

How was the housing unit size and mix determined?

The approved plan provides a net average unit size of 650 square feet. This average size allows for a variety of unit types, including studios, one and two bedroom units. This mix will implement Council direction that the units be affordable workforce rental units (as opposed to senior units, which would be a mix of studios and one bedroom units).

Housing *(continued from page 4)*

How does the housing fit into the overall approved plan for the downtown site?

Overall, housing comprises less than 9% of the site (open space is the most dominant use, at 44% of the site area). The housing is located at the northwest corner of the site, at South L Street and Railroad Avenue. Housing in this location will allow for a transition from the four story residential units planned on the west side of South L Street, on the former Groth site, with four stories at South L Street and then three stories adjacent to Stockmen's Park.

Housing is distributed among four buildings with appropriate setbacks from the sidewalk and a wide community green space connection through the middle, from South L Street to Stockmen's Park and ultimately out to South Livermore Avenue.

Retail

Where would new retail be most successful?

Studies show that retail is most successful when located next to busy streets and next to other businesses. The approved plan provides new single-story retail uses connected to retail uses in Blacksmith Square and Stockmen's Park.

Cultural Facilities

What happens if there is no funding for the cultural facilities shown on the approved plan?

If no private funding is secured, the area planned for the Science and Society Center would be a surface parking lot, and the area planned for the Black Box Theater would be incorporated into Stockmen's Park as green space.

IN THE CITY COUNCIL OF THE CITY OF LIVERMORE, CALIFORNIA

A RESOLUTION APPROVING POLICY PROPOSAL IMPLEMENTATION 18-002

On January 29, 2018, at the conclusion of an extensive public engagement process, the City Council approved the Downtown Core Plan including parameters for the location and intensity of land uses on the sites.

The City initiated an application for Policy Proposal Implementation (POLI) 18-002 to prepare Landscape Design Guidelines to establish a framework for the publicly accessible open spaces in the Downtown Concept Plan area (the "Project").

The Planning Commission reviewed the Project and determined it is consistent with the Livermore General Plan and related policies. The Planning Commission, by its Resolution No. 31-18, attached hereto as Exhibit A, recommended approval of the Project, following the project review hearing on August 21, 2018.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Livermore hereby finds, on the basis of the whole record before it evaluating the environmental impacts of the Project, that the Project is consistent with the Addendum to the Downtown Specific Plan 2009 Subsequent Environmental Impact Report, approved by the City Council on September 10, 2018.

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

1. The City Council is satisfied with the decision and record of the Planning Commission and adopts as its own the findings contained in Planning Commission Resolution 31-18 and approves the Downtown Core Plan Landscape Design Guidelines, attached hereto as Exhibit B.

2. The proposed Downtown Core Plan Landscape Design Guidelines are found to be consistent with the General Plan and are approved.

3. City staff is directed to prepare and file a Notice of Determination with the Alameda County Clerk within five working days of the adoption of this resolution.

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, in Livermore California.

On motion of Vice Mayor Woerner, seconded by Mayor Marchand, the foregoing Resolution was passed and adopted on the September 24, 2018, by the following vote:

AYES:	Council Members Coomber, Spedowfski, Vice Mayor Woerner, Mayor Marchand
NOES:	None
ABSENT:	Council Member Carling
ABSTAIN:	None

ATTEST:

Sarah Bunting
City Clerk

APPROVED AS TO FORM:

Jason Alcala
City Attorney

Date: September 26, 2018

Exhibit A – Planning Commission Resolution No. 31-18
Exhibit B – Downtown Core Plan Landscape Design Guidelines

IN THE PLANNING COMMISSION OF THE CITY OF LIVERMORE STATE OF CALIFORNIA

A RESOLUTION RECOMMENDING APPROVAL OF

Policy Proposal Implementation (POLI) 18-002

Consideration of a Downtown Concept Plan Landscape Design Guidelines for streetscapes, pedestrian connections, parks, plazas and other public spaces identified within the approximately 8.2 acres Downtown Core Plan area.

Location: Area generally bounded by North L Street, First Street, Bankhead Theater Plaza, and Railroad Avenue

On January 29, 2018, at the conclusion of an extensive public engagement process, the City Council approved the Downtown Concept Plan including parameters for the location and intensity of land uses on the sites.

The City initiated an application for Policy Proposal Implementation (POLI) 18-002 to prepare Landscape Design Guidelines to establish a framework for the publicly accessible open spaces in the Downtown Concept Plan area.

The Planning Commission held a meeting on August 21, 2018, 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 Policy Proposal Implementation (POLI) 18-002 were analyzed by and are consistent with the 2018 Addendum to the Downtown Specific Plan 2009 Supplemental Environmental Impact Report.

BE IT FURTHER RESOLVED that the Planning Commission finds the following based upon the information presented for Policy Proposal Implementation (POLI) 18-002:

The project is in conformance with the 2003-2025 Livermore General Plan Goals, Policies, Objectives and Actions; or project-specific mitigation measures or conditions of approval have been incorporated into the project to ensure it is in conformance.

Finding: Based on review of the Design Guidelines, as documented in the Planning Commission staff report, the proposed Design Guidelines conforms to the applicable goals policies, objectives and actions set forth in General Plan to

maintain high quality of urban design in the City with emphasis in Downtown. The landscape design guidance including pedestrian connections, treatments, furnishings, and plant palette reflect the intent of the General Plan to provide quality design throughout Livermore and specifically create an active, vibrant pedestrian-oriented environment with interconnected and variety of open spaces in Downtown Livermore.

The project is in conformance with the Specific Plan's standards and guidelines; or project-specific mitigation measures or conditions of approval have been incorporated into the project to ensure it is in conformance.

Finding: Based on review of the Design Guidelines, as documented in the Planning Commission staff report, the proposed Design Guidelines conforms to the applicable policies, standards and guidelines for streetscapes and public spaces in the Downtown Specific Plan (DSP). The landscape design guidance including pedestrian connections, treatments, furnishings, and plant palette reflect the intent of the DSP to create an active, vibrant pedestrian-oriented environment with interconnected and variety of open spaces in Downtown Livermore.

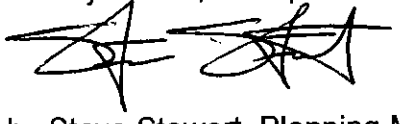
BE IT FURTHER RESOLVED by the Planning Commission of the City of Livermore that, based on the above finding, Policy Proposal Implementation (POLI) 18-002 is recommended to the City Council for approval.

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 Vice Chairperson Pann, seconded by Planning Commissioner Kaskey, the foregoing Resolution was adopted at the Planning Commission meeting of August 21, 2018, by the following vote:

AYES: BJORKLUND, KASKEY, AND PANN.
NOES: NONE.
ABSENT: BONANNO AND FAGUNDES.

Erik Bjorklund, Chairperson



by Steve Stewart, Planning Manager
Secretary to the Planning Commission

DOWNTOWN LIVERMORE CONCEPT PLAN
LANDSCAPE DESIGN GUIDELINES

DRAFT

September 12, 2018

EXHIBIT B

1. INTRODUCTION

A. Purpose and Objectives 1-1

B. Relationship to Other City Documents 1-2

C. How to Use This Document 1-4

2. AREA-WIDE LANDSCAPE DESIGN GUIDELINES

A. Downtown Character 2-2

B. Pedestrian Circulation 2-5

C. Landscaping 2-6

D. Paving 2-13

E. Public Art 2-15

F. Lighting 2-16

G. Parking Lots & Structures 2-17

H. Utilities 2-19

3. STREETSCAPE LANDSCAPE DESIGN GUIDELINES

A. Streetscape Urban Edge 3-2

B. Streetscape Parkway Edge 3-7

C. Streetscape Elements 3-12

D. Wayfinding 3-16

E. Corner Treatments 3-18

F. Pedestrian Crossings 3-19

4. PASEO, PLAZA & PARK LANDSCAPE DESIGN GUIDELINES

A. Paseos and Plazas 4-1

B. Linear Park 4-7

C. Paseo, Plaza & Park Elements 4-11

TABLE OF CONTENTS

5. PRIVATE LANDSCAPE DESIGN GUIDELINES

A. RESIDENTIAL SITE PLANNING 5-1
B. COMMERCIAL SITE PLANNING 5-2
C. FRONTAGE ZONES 5-3
D. PRIVATE GATHERING AREAS 5-5
E. FENCES AND WALLS 5-6

APPENDICES

A. MASTER PLANT LIST A-1

LIST OF FIGURES

1. Downtown Livermore Concept Plan 1-1

2. Downtown Livermore Concept Plan Area Improvement Plan 2-1

3. Examples of Area-Wide Paving Materials 2-14

4. Streetscape Locations in the Downtown Concept Plan 3-1

5. Streetscape Urban Edge Locations in the Downtown Concept Plan 3-2

6. Conceptual Plant Palette for the Streetscape Urban Edge 3-6

7. Streetscape Parkway Edge Locations in the Downtown Concept Plan 3-7

8. Conceptual Plant Palette for the Streetscape Parkway Edge 3-11

9. Streetscape Elements for the Downtown Concept Plan 3-13

10. Corner Treatments and Pedestrian Crossings in the Downtown Concept Plan 3-19

11. Paseo, Plaza and Park Locations in the Downtown Concept Plan 4-1

12 Conceptual Plant Palette for Paseos and Plazas 4-6

13 Conceptual Plant Palette for Parks 4-10

14. Paseo, Plaza and Park Elements for the Downtown Concept Plan 4-12

CHAPTER 1: INTRODUCTION

A. Purpose and Objectives

The Downtown Livermore Concept Plan Landscape Design Guidelines are designed to establish a vision and implement an action plan to direct the revitalization and beautification of Downtown Livermore's Concept Plan area. This document provides a framework for landscape requirements in the private and public realms. These guidelines ensure that development is aesthetically pleasing and compatible with surrounding development by encouraging the provision of adequate landscaping in connection with new development, renovations of existing developments, and changes in land uses.

The City has adopted a Downtown Livermore Concept Plan for the area between Railroad Avenue to the north, First Street to the south, South L Street to the west and the Bankhead Theater Plaza and Paseo to the east. Blacksmith Square will remain and provide historic context to the Downtown, and new improvements will link with First Street. This Downtown Plan went through extensive public outreach and was adopted by City Council.

Figure 1. Downtown Livermore Concept Plan

The Downtown Livermore Concept Plan has been designed to make historic Downtown Livermore the City's preeminent shopping, dining, entertainment and cultural district. New residential housing and a hotel will add life into the downtown and establish an active urban living experience and facilitate a pedestrian-oriented environment.

Livermore is home to two renowned science and technology centers, and the Downtown Livermore Concept Plan proposes to integrate science into the heart of the City. A science center and performing arts center are planned in the Downtown Concept Plan area. Public parks and paseos will link the Downtown into one cohesive whole.

1. Purpose

The purpose of the Landscape Design Guidelines is to ensure the community's character is enhanced through the provision of clearly stated guidelines that result in high-quality design. The guidelines are provided to assist applicants in creating a cohesive design for the Downtown Concept Plan area and develop it into a center of activity and cultural landmark for the community that exemplifies Livermore's unique character, ranching heritage, and historic appeal.

The intent of the Downtown Livermore Concept Plan Landscape Design Guidelines is to create a cohesive and unified atmosphere for Downtown Livermore. These design guidelines apply to all public and private developments within the Downtown Concept Plan area. As other locations in Downtown Livermore are developed, these guidelines should be utilized to further denote the heart of Downtown Livermore.

2. Objectives

The objectives of these landscape design guidelines are to:

a) Reinforce the established Downtown Concept Plan character that celebrates Livermore's history and culture

b) Create a lively and safe Downtown that serves the needs of the community

c) Prioritize pedestrian improvements and slow vehicular traffic to provide a safe and walkable Downtown for all ages and abilities

d) Implement unified and cohesive streetscapes around the Downtown Concept Plan area that contain high-quality landscaping and ample durable pedestrian amenities

B. Relationship to Other City Documents

The Downtown Concept Plan Landscape Design Guidelines reflect the principles, vision, and policies set forth in the City of Livermore General Plan and supplement the landscape development standards in the City of Livermore Municipal and Development Codes.

These guidelines elaborate on adopted policies and plans with more specific guidance to inform the shape of development in the Downtown Concept Plan area. They reinforce the collective values of the City of Livermore to ensure that development in the Downtown Concept Plan area contributes to a vibrant and livable environment in a manner that welcomes and delights visitors and residents.

Applicants should review and apply relevant development standards found within other applicable documents to ensure compliance, and then apply the design guidelines found herein. The design guidelines contained in this document supplement development standards by providing direction on the more qualitative aspects of a development project.

Projects will be evaluated on a case-by-case basis and a project may not be required to meet all guidelines; however, projects will be evaluated by the degree to which the project demonstrates substantial compliance with the intent of the design guidelines. In addition, alternative measures may be considered if the project meets or exceeds the intent of these landscape design guidelines.

1. Approved Downtown Plan

The Downtown Plan was adopted by the City Council on January 29, 2018. The plan responds to the community's priorities for enhancing the City of Livermore's Downtown Concept Plan (see Figure 1)

2. City of Livermore Downtown Specific Plan

The Downtown Specific Plan (DSP) was adopted in 2004 and the vision has set the stage for the Downtown's transformation. The Specific Plan provides land use policies and development standards to implement the community's vision for Downtown revitalization.

The DSP includes design standards and guidelines for the entire downtown area as a whole, whereas these Design Guidelines are intended to provide more specific guidance for a focused area of the downtown.

A DSP amendment to implement the approved Downtown Plan was adopted by the City Council on September 10, 2018.

3. City of Livermore Design Standards and Guidelines

The Design Standards and Guidelines were adopted in 2004 to provide design guidance for varying private and public development projects throughout the City of Livermore. The document promotes the quality of the Livermore community as a whole.

4. Bicycle, Pedestrian, & Trails Active Transportation Plan

The Active Transportation Plan provides policies, programs, and guidelines to provide a safe and comfortable pedestrian and bicycle environment throughout the City of Livermore.

5. Livermore General Plan

The General Plan is a fundamental land use and development policy document which describes how the City of Livermore will develop and grow, and it dictates how to conserve the City's resources.

6. Livermore Municipal Code and Development Code

The Municipal and Development Codes describe the regulations and policies for development within the City of Livermore. The Municipal Code and Development Code were adopted to preserve, protect, and promote the public health, safety, peace, comfort, convenience, prosperity and general welfare of residents and business in the City.

7. Livermore Standard Specifications and Details

The City of Livermore has developed standard specifications and details to guide the installation of construction projects throughout the City.

D. How to Use This Document

These Landscape Design Guidelines reinforce most of the City of Livermore and State adopted landscape requirements into one easy-to-use document to assist the applicant/landscape architect when submitting for Planning Entitlement, Building Permit, or Improvement Plan approval. This document is a tool to assist designers and decision makers with appropriate material selection and cohesive placement of design elements to develop the Downtown Concept Plan area with a consistent City character and sense of place. The Community Development Director may make minor amendments to this document as necessary. It is highly recommended that interested property/business owners, developers, and investors contact the City to discuss project proposals prior to developing plans.

STEP 1

Review Chapter 2, Area-Wide Landscape Design Guidelines. This chapter provides an understanding of the Downtown character and the key existing elements and design factors to include in future improvements. This chapter presents guidelines for placement and selection of landscaping, paving, public art, utilities, and parking that is typically to be applied to all projects.

STEP 2

Determine if the ownership of the project area is public or private. Review Chapters 3 or 4 for Public Landscape Design Guidelines or Chapter 5 for Private Landscape Design Guidelines to be utilized when designing a project. These guidelines build upon the Area-Wide guidelines in Chapter 2 and should be used in conjunction where applicable.

PUBLIC PROJECTS

STREETSCAPE PROJECTS: Refer to Chapter 3, contains specific guidance for the design, paving, wayfinding, and landscaping of public streetscapes.

PASEO, PLAZA OR PARK PROJECTS: Refer to Chapter 4, contains specific guidance for the design, paving and landscaping of public paseos, plazas, and the linear park.

PRIVATE PROJECTS

Chapter 5, Private Landscape Design Guidelines contain specific guidance for commercial and residential site planning, frontage and gathering areas, and design and placement of fencing and walls for private residential and commercial sites within Downtown.

CHAPTER 2. AREA-WIDE LANDSCAPE DESIGN GUIDELINES

This chapter should be utilized for all projects within the Downtown Concept Plan area. The character and guidelines for placement and selection of public art and landscaping is typically applied to all projects.

The elements listed in this chapter should be placed within all applicable Downtown Concept Plan streetscapes, paseos, plazas, and parks.

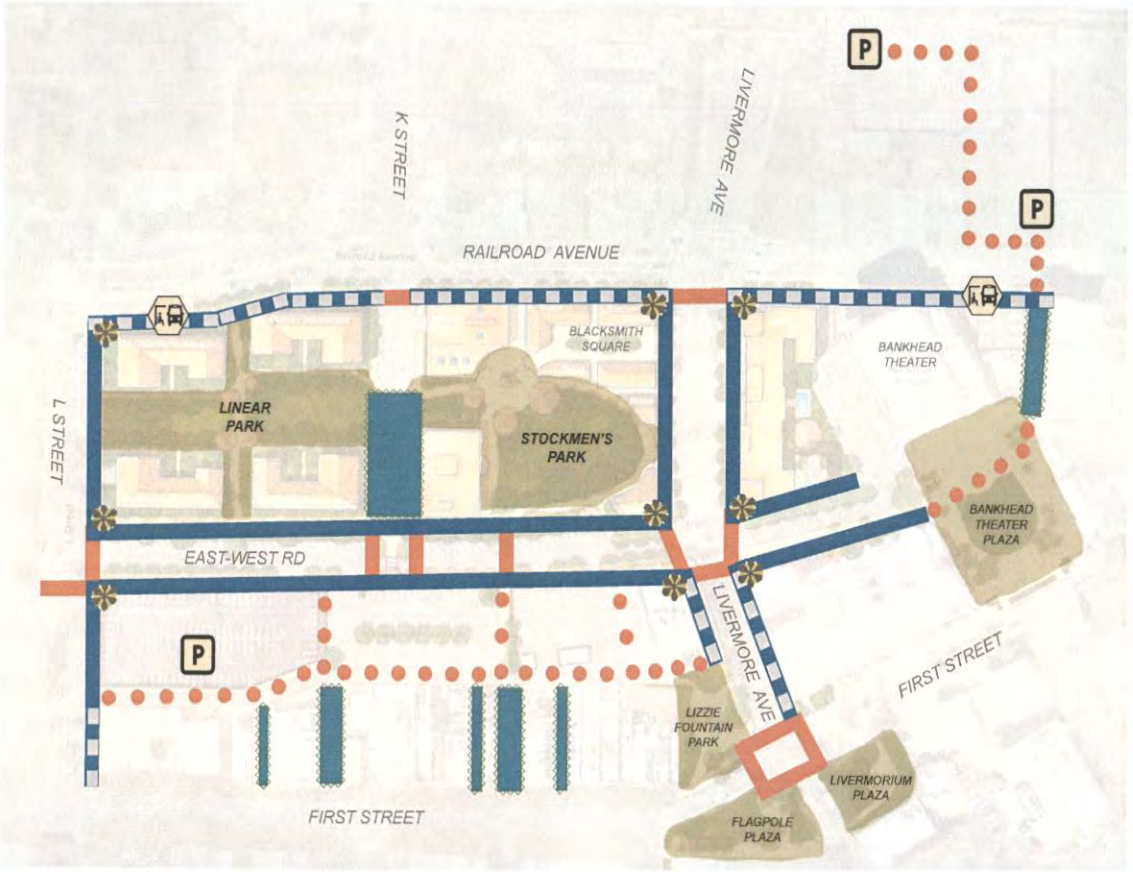


Figure 2. Downtown Livermore Concept Plan Area Improvement Plan

A. Downtown Character

Founded in 1869, Livermore is California's oldest wine region and is surrounded by wineries, farm lands and ranches that mirror the valley's western heritage. Livermore's arts, culture, western heritage and vibrant wine industry provide a unique blend to this special community.

The founding fathers of Livermore established the Downtown to serve a primarily agricultural community. The town was laid out with Livermore Avenue to the east, Q Street to the west, Railroad Avenue to the north, and Fifth Street to the south. The Downtown Concept Plan boundaries are within this historic founding area.

As new improvements are implemented in the Downtown Concept Plan area, they should integrate key elements from First Street and Blacksmith Square to foster a cohesive and attractive atmosphere throughout the Downtown Concept Plan area. Specific elements may vary from what exists on First Street and Blacksmith Square, but the character should be replicated to the extent feasible.

Existing view of First Street

1. First Street

Several years ago streetscape improvements were installed on First Street from Maple Street to South L Street. These improvements have been well received by the community and have created a pedestrian friendly and walkable atmosphere along First Street within the heart of the Downtown Concept Plan. The improved area on First Street establishes the primary focus area of the Downtown Concept Plan with the most amenities.

The following existing key elements from First Street should be replicated within the Downtown Concept Plan area:

a. Trellises at corners and pedestrian crossings
b. In-street tree grates and guards at parking areas
c. Benches and trash receptacles
d. Informational kiosks
e. Bollards
f. Potted plants

a

b

c

d

e

f

2. Blacksmith Square

The historic Blacksmith Square is located on the corner of South Livermore Avenue and Railroad Avenue. It was established in 1890 as a blacksmith shop and was renovated in 2004 to contain retail uses, outdoor dining and entertainment.

Blacksmith Square is proposed to remain and the black ironwork and bricks used in the historic building should serve as a model when selecting materials.

The following existing key elements from Blacksmith Square should be replicated within the Downtown Concept Plan area:

a. Black iron work and arched entryway signage

b. Bricks and natural wood materials

c. Decorative fountain and bollard centered on visual axis and potted plants on columns

a

b

c

B. Pedestrian Circulation

Clear, identifiable, and ample pedestrian pathways should be provided to connect to public sidewalks, parking areas, building entrances, trails, and other site features.

a) On-site pedestrian circulation systems should connect to primary building entrances, as well as off-site public sidewalks, transit stops, and neighboring properties.

b) Pedestrian connections should be integrated to create an open network of walkways, sidewalks and trails.

c) Pedestrian pathways should access the project at visually pleasing locations rather than service areas.

d) Entrances to primary walkways should incorporate decorative paving and vertical elements such as trellises, large ornamental flower pots, low walls and pilasters, and/or accent planting.

e) Site furnishing such as benches and trash receptacles should be placed along primary walkways.

f) Incorporate wayfinding techniques to guide pedestrians such as signage, accent landscaping, and prominent trellises and building entrances.

g) Locations where vehicular driveways cross pedestrian sidewalks should be enhanced with decorative crosswalks.

Site furnishing such as benches and trash receptacles should be placed along primary walkways.

C. LANDSCAPING

In general, landscaping is strongly encouraged on all sides of a building along streets, walkways, driveways, parking lots and outdoor spaces. Landscaping may consist of above grade planters or pots, and/or in the ground planting.

a) Areas not occupied by buildings, parking or pedestrian activities should be permanently landscaped with live plant materials.

b) Landscaping and irrigation materials selected should be durable and require minimal maintenance.

c) Landscaping features that are designed to retain and filter storm water runoff are encouraged. These features include (but are not limited to) bioswales, rain gardens, underground cisterns, flow-through planters and roof gardens.

d) Trees are to be planted in engineered soil which is nutrient rich and has good drainage to allow trees to grow to their full potential and withstand urban conditions.

1. WATER USE AND IRRIGATION

a) Planting should be low-water-use to comply with the State of California's drought tolerance laws and to reduce water use. The landscape palette should target a majority (80% or more) of low-water use plant material.

b) Group plants with similar water requirements to allow for more efficient irrigation use, reduce water use and avoid over watering.

c) Potted plants should be irrigated or utilize self-watering containers.

d) An efficient, low-volume drip irrigation system that provides water directly to plant roots and minimizes the loss of water to evaporation is encouraged.

e) Low flow, efficient irrigation heads should be used to apply water to plants and lawns for water conservation only where needed.

f) Irrigation heads should be adjustable to minimize over spray and runoff.

Landscaping may consist of a mix of above grade planters or pots, and in ground planting areas

Landscaping should be durable and require minimal maintenance, and plants with similar water requirements should be grouped together

2. Plant Placement

a) Trees and shrubs should be carefully located to maintain pedestrian and vehicular site lines and not create places for people to hide.

- Shrubs and groundcovers over 36-inches in height and low branching trees shall not be located where they will obstruct in pedestrian and vehicular site lines.
- Hedges along sidewalks and walkways should not exceed a height of 40 inches.

b) A combination of trees, shrubs and groundcovers should be used within landscaped areas to create a unified, yet diverse and aesthetically pleasing corridor. Plant palettes including five or less shrub or groundcover species are discouraged.

c) Vines and potted plants should be used to provide wall, column and post texture and color, as well as for accentuating key areas such as entryways, courtyards and sidewalks.

d) Planting areas along streets should include a one-foot wide maintenance band along the curb edge to separate the planting areas from the street.

e) When planting space is limited, consider the following elements within the overall landscape design:

- Window boxes
- Potted plants
- Climbing vines

f) Landscaping should be developed to contain a combination of low, medium, and tall plant materials as appropriate.

- Low growing vegetation should be placed along walkways, with medium growing species as background and foundation planting.
- Tall evergreen shrubs should be utilized to screen views and step-down heights where applicable.

g) Where blank walls within a project cannot be avoided, the planting area adjacent to blank walls should be continuous and the plantings chosen should be evergreen and grow quickly to an appropriate height to minimize the visibility of blank wall space. Consider the following landscape elements to soften blank wall surfaces:

- Raised planters
- Potted plants
- Climbing vines

Potted plants should be used to provide texture and color and to accentuate key areas

h) Trees and shrubs should be located to allow for long-term growth. Landscape design concepts should reflect adequate spacing of plants that allows for mature growth and complete coverage of planting areas in a reasonable amount of time. Plant symbols on Planting Plans shall reflect the average ultimate width the vegetation will grow.

3. Existing Vegetation

a) Landscape designs should incorporate existing adjacent primary tree and shrub species and transition to existing patterns to the proposed species for the Downtown Concept Plan area.

b) Preserve or relocate mature and healthy trees and vegetation, with special consideration given to the protection of groups of trees and specimen trees.

c) When replacing dead or dying existing trees, the size of the replacement tree should closely match the size of the tree adjacent up to a maximum of 48-inch box.

d) Refer to Chapter 12.20 of the Livermore Municipal Code for additional information regarding preservation and removal of existing street trees.

4. Plant Maintenance

a) All common area landscaping will be designed for minimal care and maintained to keep vegetation in thriving and visually attractive condition.

b) Weed control fabric should be used in all planted areas (except turf) with a three-inch thick mulch layer in shrub beds to reduce weeds and conserve moisture.

c) Mulch should be used as a tool to retain moisture and lessen the need for additional water, but also should be aesthetically pleasing and cohesive throughout the Downtown Concept Plan. The following mulch types are encouraged within landscaped areas:

- Cobble and/or decorative rock in varying sizes
- Decomposed granite
- Bark mulch (natural color)

d) Plants should be maintained in their natural form. The pruning of plants into geometric shapes is discouraged unless hedges and topiaries are intended in the landscape design.

e) Dead and diseased plants should be replaced as soon as possible to preserve the appearance of the property.

f) Mulch should be replenished as needed to reduce weeds and conserve moisture.

Examples of decorative rock mulch

5. Plant Selection

A Master Plant List is provided in Appendix A and should be utilized for selection of *trees, shrubs and groundcover* within the Downtown Concept Plan area.

a) Trees and understory planting should be selected based on leaf and flower color, and it is recommended to be highly selective with color and limit planting to either warm or cool colors. Avoid sharp contrasts in color except where desired for accent planting, and provide transitions between warm and cool colors with neutral greens, whites and greys.

b) Consider the texture of leaves and bark in the selection of plants and maximize contrasting textures where feasible for increased visual interest.

c) Trees and understory planting in Parks and Paseos may utilize Street Trees and Streetscape Shrubs and Groundcovers, but Streetscape planting should be limited to those in the Master List for a consistent palette.

d) Refer to Chapters 3 and 4 for additional planting information.

Plants within the Downtown Concept Plan area should meet the following minimum size requirements at time of planting:

- Large Evergreen Trees: 24-inch box or larger typical, with 30% or more in 36-inch box
- Large Accent Deciduous and Specimen Trees: 24-inch box or larger typical, with 40% or more in 36-inch box and 10% or more 48-inch box
- Small Accent Deciduous Trees: 15-gallon containers or larger
- Vines and Espaliers: 15-gallon containers or larger
- Large Shrubs (greater than five feet in diameter): 5-gallon containers or larger
- Small Shrubs - excluding groundcovers and bioswale grasses (less than five feet in diameter): 1-gallon containers or larger

Select vegetation based on leaf and flower color, and choose warm or cool colors

Consider the texture of plants and maximize contrasting textures for increased visual interest

6. Tree Selection

a) Pathways and sidewalks should be lined with trees to the extent possible. Spacing of trees should be based on the ultimate width the tree will grow.

b) Trees should be selected based on the size of the planter to minimize root intrusion, and the height of the adjacent structures to soften views.

- Trees adjacent to buildings should have mature sizes in scale with the massing and height of the structure
- Trees with lower heights and low root damage potential are recommended for small planter areas and accent planting areas
- Trees within five feet of hardscaping, walls and foundations should have low root damage potential and be installed with root barriers to prevent roots from encroaching and the buckling of pavements and structures
- Trees should be located so the canopy will not conflict with light poles and roots will not impact underground utility lines

c) Trees along walkways and parking areas should be carefully selected with the objective of providing shade and minimizing maintenance and litter.

- Trees with thorns or spiky leaves and a high amount of litter and leaf drop should not be used in parking areas or along pedestrian walkways
- Trees with wet fruit or large seed pods may be utilized but should be setback away from any paved areas including sidewalks, streets and parking lot paving
- Refer to Parking Lots & Structures in this Chapter for additional requirements

d) Trees should be designed to contain a mix of deciduous and evergreen species for seasonal interest and year-long shade.

- In general, place deciduous accent trees at entries, intersections and driveways and locate evergreen trees along extent of the corridor
- Deciduous trees with open branching are suggested at retail areas
- Shade trees with dense evergreen canopies should be used in front of residential uses
- Deciduous trees that provide summer shade and allow for winter solar gain should be utilized whenever possible adjacent to buildings
- Evergreen trees with a high, broad branching structure are encouraged along walkways and parking areas to cool walking surfaces and parking spaces

7. Shrub and Groundcover Selection

a) Planting Plans should specify a minimum container size and spacing for shrubs and groundcovers conducive to filling in a design area within two years.

b) Perennial and deciduous species and seasonal grasses should not make up the mass of planting areas, and longer-lived evergreen shrubs should be intermixed throughout to provide year-round interest and longevity.

c) Plants with thorns, spines, or sharp leaves should not be used along pedestrian areas.

d) Plants that attract bees or are poisonous should not be used at pedestrian seating areas.

e) Hold plant material back one-foot from the back of curbs to prevent plants from growing into pavement and provide room for maintenance.

f) Flowering accent trees and shrubs should be used in areas that deserve visual emphasis such as:

- Intersection corners
- Project entries
- Focal points

g) Potted plants should typically contain a tall central accent shrub, combined with vertical growing accent perennials on the sides, and a trailing groundcover in front of the container.

- Potted plants should utilize species with the same water use and microclimate preferences.

Flowering accent shrubs should be used at intersection corners

Example of a potted plant with tall central accent shrub, vertical perennials, and trailing groundcover

8. Shrub and Groundcover for Screening

a) Plantings should be used to soften and screen blank walls and fencing, parking areas, utilities and service areas.

- Screening shrubs should grow to effectively block at least 75% of the item to screen by the second year following establishment
- Dense and fast-growing evergreen species should be selected for screening
- Deciduous and grass-like plant species should not be used for screening purposes

b) Provide larger container sizes for plant material which is known to grow slowly.

c) Utilize tall narrow species in small planting spaces such as vines and espaliers.

9. Plant Selection for Storm Water Treatment Areas

a) Bioswales and retention areas should be planted with plants suitable for sustaining water ponding and also performing well in dry conditions.

b) Additional plants listed within Alameda County Clean Water Program, Appendix B, may be permitted for storm water planters if they meet the planting requirements and measures listed in the Appendix B.

c) Storm water plants should remain in their natural form and be mown only in the fall prior to the onset of the rain season.

d) Storm water planters should be permanently irrigated with rain shutoff mechanisms. Subsurface or spray irrigation is suggested for storm water areas.

e) Plants in storm water treatment areas should be selected to provide year-round interest, and a mix of shrubs and perennials provided.

f) Cobble, boulders, and/or rock mulch is suggested within storm water treatment areas.

Storm water planting areas should provide year-round interest and thrive in wet and dry conditions.

D. PAVING

Durable and timeless paving materials that are ADA accessible should be used within the Downtown Concept Plan area. Special attention should be made to the selection of cohesive paving materials to create the Downtown Concept Plan area as a pedestrian friendly and special place. Refer to Chapters 3 and 4 for more information regarding paving selection.

a) Standard sidewalk and walkway paving should consist of an attractive and durable concrete paving, such as:

- Textured concrete such as salt or broom finish
- Colored concrete
- Stamped concrete paving

b) Consider incorporating decorative paving materials in bands across standard sidewalk paving in a consistent pattern, such as 10-feet on center.

- Banding materials should be consistent with adjacent decorative paving but should be a slightly different color, texture or pattern

c) Decorative paving materials that are unique and recognizable should be utilized at streetscape furnishing and edge zones, key pathway nodes and corners, and seating areas, such as:

- Colored concrete with decorative scoring patterns
- Stamped concrete paving

d) Decorative paving areas should incorporate infill doors for utilities to match the surrounding paving materials and colors.

e) Decorative insets are recommended within standard and decorative paving throughout the Downtown Concept Plan area to highlight the local culture and history, such as:

- Mosaics and tiles inset in paving with historic images
- Cast elements or imprints in paving such as footprints of local wildlife, local cattle brands and horse shoes
- Bricks cast to resemble the historic Livermore Fire Brick Company
- Concrete etching or plaques commemorating Livermore history and culture

Unique and recognizable paving materials should be utilized at streetscape furnishing and edge zones

Decorative paving areas should incorporate infill doors for utilities

Example of paving bands across sidewalk paving

Decorative insets are recommended to highlight the local culture and history

Paving Materials

STANDARD PAVING

Salt Finish Concrete

Stamped Concrete Paving (Bomanite, Coquina)

Broom Finish Concrete

Stamped Concrete Paving (Bomanite, Heavy Slate)

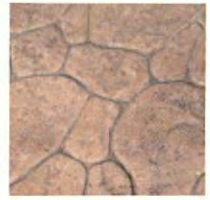
Colored Concrete with Decorative Scoring

DECORATIVE PAVING

Stamped Concrete Paving (Bomanite, Rustic Slate)

Stamped Concrete Paving (Bomanite, Used Brick)

Stamped Concrete Paving (Bomanite, English Sidewalk Slate)



Stamped Concrete Paving (Bomanite, Creekstone)

Board Form Concrete

Acid Finish Concrete

Figure 3. Examples of Area-Wide Paving Materials

E. Public Art

The use of public art within the Downtown Concept Plan area is an effective way of expressing the unique personality and character of the area. Public art should serve as an aesthetic improvement to enhance the pedestrian environment and should focus on the region's local culture and history.

a) Public art should be in conjunction with other site features such as a plaza or architectural feature, and be an integral part of site development rather than a stand-alone, separate object. The selection and placement of public art should be part of the overall site design process, rather than an afterthought to a project.

b) Public art is suggested in the following locations:

- Key intersections and entries
- Accent focal points in paseos, plazas and the Linear Park

c) Public art should be placed to avoid locations where it may obstruct a pedestrian pathway, create a traffic hazard, or compete with another piece of art within the area.

d) Public art should be highlighted with decorative paving and lighting where appropriate.

e) Art and focal points placed within the Downtown Concept Plan area should showcase the culture and history of Livermore, such as:

- Local history
- Livermore veterans
- Livermore Rodeo history
- Livermore Stockmen's Rodeo Association contributions
- Cattle ranching
- Hay and grain production
- Viticulture
- Science and technology

f) Public art is encouraged that invites participation. Interactive interpretive exhibits and displays are recommended.

g) Public art is encouraged that represents the community by revealing its culture and history, and/or captures or reinforces the unique character of place. Public art in the Downtown Concept Plan area could be provided in many different formats, such as:

- Building murals
- Sculpture
- Decorative insets in paving and walls
- Painted utility enclosures

Focal points should highlight the culture and history of Livermore

Decorative insets should be used to reinforce the Downtown sense of place

Public art is encouraged that represents the community

F. LIGHTING

Pedestrian lights should be located along pathways and sidewalks to provide human scale and a smaller, more focused illuminated area. Pedestrian lights should be placed evenly along sidewalks where lighting is needed.

a) Street lights should be the City Standard Downtown Pole. Street lights are encouraged to incorporate decorative banners and/or hanging plants where feasible.

- Refer to Chapter 4 for lighting in Paseos, Plazas and Parks

b) String lighting should be provided within key pedestrian areas to enhance the nighttime environment.

- Paseos and Plazas
- Pedestrian Gathering Areas

c) Accent uplighting on trees and focal points is encouraged at key locations where a high level of nighttime pedestrian activity or views are anticipated.

d) Light fixtures on the top deck of parking structures and roof decks should be screened from view and not visible from the ground.

e) Energy-efficient lighting (lighting from renewable sources and energy-saving devices, such as light sensors) is required.

- Where feasible, use warm white lighting source types

f) Over lighting of sites should be prevented to avoid ruining desired nighttime ambience.

- The quality of light, level of light and type of bulb or source should be carefully selected so that lighting levels do not draw attention to the glow or glare of the project site
- Timers and sensors should be incorporated to avoid unnecessary lighting
- Light fixtures should use reflector/ refractor systems and cut off shields to reduce glare and spotlighting onto adjacent properties and rights-of-way
- Pedestrian walkways in paseos, plazas, and parks should provide bollard lights in combination with 10 to 15-foot high pole mounted lights

Accent uplighting on trees and focal points is encouraged at key locations

Lights should incorporate decorative banners and/or hanging plants

G. Parking Lots & Structures

Provide convenient but not visually dominating parking that incorporates extensive landscaping. Landscaping should be used to provide shade, promote wayfinding and visually soften views of parking areas from the street and surrounding properties.

1. Landscaping

a) Planters within parking lots should be of sufficient width, including the curb areas, to support the long-term growth and stability of trees and landscaping proposed.

b) Landscape buffers should be provided along sidewalks to screen surface parking areas and tall blank parking structure walls from the street, where practical. These landscaped buffers may include:

- Dense and fast growing evergreen planting (Refer to Landscaping for additional information)
- Planted berms and mounds
- Low decorative fences and planter walls

c) Fast growing evergreen vegetation should be utilized for screening that grows quickly to a height that will effectively buffer views of parking.

d) Consider the orientation of parking to locate planter areas and trees to provide the maximum amount of shade and buffer.

e) Parking lot trees may be selected from the Master Plant List in either the Street Tree or Paseo & Park Tree Lists.

f) Tree selection for parking areas should be carefully considered. In addition to the tree performance items to consider above, parking area trees should meet the following:

- Use of accent trees located at parking lot and parking structure entries and at the end of parking aisles is encouraged
- High branching evergreen trees should be used in surface parking lots which ensure shading at maturity meeting or exceeding fifty percent (50%) of paved parking stall areas
- Pedestrian walkways in parking areas should be planted with trees to provide shade and comfort for pedestrians

Fast growing evergreen vegetation should be utilized to buffer views of parking areas.

Provide dense and fast growing evergreen planting to screen parking structure walls from the street

g) Parking lot screening vegetation should include trees, shrubs, and groundcovers designed to soften views of parked vehicles from pedestrians walking along the sidewalk and vehicles on the roadways. Buffers should be attractive and provide ample texture and color at pedestrian level for increased visual interest.

h) Accent or unique trees and planting are suggested in parking lots for visual wayfinding at drive aisles and along key pedestrian linkages.

i) Parking lots adjacent to existing or proposed buildings should locate tree to soften views of adjacent structures.

j) The pedestrian path of travel from vehicular parking stalls should be anticipated and planned for.

- Plant material should be spaced to allow for pedestrians crossing through landscape islands and held back to allow for car door openings
- Consider the need for stepping stones or decomposed granite paths in anticipated areas with high pedestrian activity

2. Circulation and Paving

a) A direct, safe and easily recognizable pedestrian connection should be provided through parking areas that connects to adjacent building entrances and sidewalks.

- Features such as decorative paving, benches, potted plants and fencing are encouraged along key pedestrian connections
- Where feasible, pedestrian walkways should be parallel to parking drive aisles, minimizing the need for pedestrians to cross parking drive aisles
- Wayfinding signage should be provided at key locations to orient pedestrians

b) Entry drives should be located away from street intersections and adjacent property lines to the extent feasible.

c) The number of curb cuts should be minimized to reduce conflicts with pedestrian sidewalks.

d) Parking structures should include entry plazas and seating areas at the ground floor level to encourage pedestrian activity.

An easily recognizable pedestrian connection should be provided through parking areas

Features such as decorative paving and fencing are encouraged along key pedestrian connections.

H. Utilities

Minimize the visual impacts of service/ loading areas, storage areas, trash enclosures, and ground mounted mechanical equipment.

1. Utility Placement

a) The following items should be located where they can be screened from public views from sidewalks and outdoor spaces to the extent possible:

- Loading, service areas and storage areas
- Trash enclosures
- Above ground utilities (including irrigation equipment, controllers and backflow devices)
- Electric and water utility meters
- Power transformers and sectors
- Mechanical equipment (such as heating, ventilation and cooling equipment)
- Satellite dishes (wider than 18 inches in diameter) and antennas
- Rooftop mechanical equipment
- Other mechanical equipment

b) When feasible, these elements should be located behind or at the sides of buildings and screened from views through a combination of walls, fencing and/or landscaping.

c) Minimize the visual impacts of roof mounted mechanical equipment. When feasible, such elements should be consolidated and housed in architecturally articulated enclosures.

d) Utility facilities should be placed underground, where feasible. All backflow prevention devices should be screened from public view.

e) Large vent stacks and similar features should be avoided. If essential, they should be screened from view or painted to be non-reflective and compatible with building colors.

f) Loading areas and associated loading activities should be located to the rear of buildings and screened from view from public streets, gathering areas, and residential uses.

g) Service facilities should be located and designed for easy access by service vehicles and tenants, but should be sited where they will not create a nuisance for adjacent uses.

h) Trash collection areas should not intrude into major lines of sight when viewed from the public roadways and sidewalks, residential units, or pedestrian gathering areas.

i) Irrigation valves and utility boxes should be set in planting areas where feasible and located where they can be accessed and be screened from views by vegetation. Boxes should be placed in groups not exceeding five in number to reduce their visibility.

2. Utility Area Screening

Utility areas, trash enclosure, above ground utilities and other site structures and features that are visually unattractive should be screened.

a) Appropriate screening methods include, but are not limited to:

- Fencing and walls
- Fast growing evergreen landscaping (refer to Landscaping for additional information)
- Roof parapets
- Equipment enclosures
- Berms and mounds

b) Green walls and trellises covered with vines and/or espaliers and tall vertical species should be utilized in small and narrow planting areas.

- Vine supports should be provided to promote fast upward growth.

c) Screening devices shall complement with the building's design, materials, and color and be compatible with the overall landscape design and project character.

Utility areas should be screened using landscaping and/or walls and fencing

Select fast growing evergreen species and/or provide larger container sizes for screening

CHAPTER 3. STREETSCAPE LANDSCAPE DESIGN GUIDELINES

This chapter contains specific guidance for the design, paving and landscaping of public streetscapes. These guidelines build upon the Area-Wide Landscape Design Guidelines in Chapter 2 and should be used in conjunction where applicable.

a) The streets within the Downtown Concept Plan area have been categorized into two types:

S1 **Streetscape Urban Edge** – Streets primarily adjacent to commercial land uses with high volumes of pedestrian and vehicular traffic. These streets typically have tree grates and monolithic sidewalks.

S2 **Streetscape Parkway Edge** - Streets primarily adjacent to residential and public land uses with lower volumes of pedestrian and vehicular traffic. These streets typically have parkway planters and separated sidewalks.

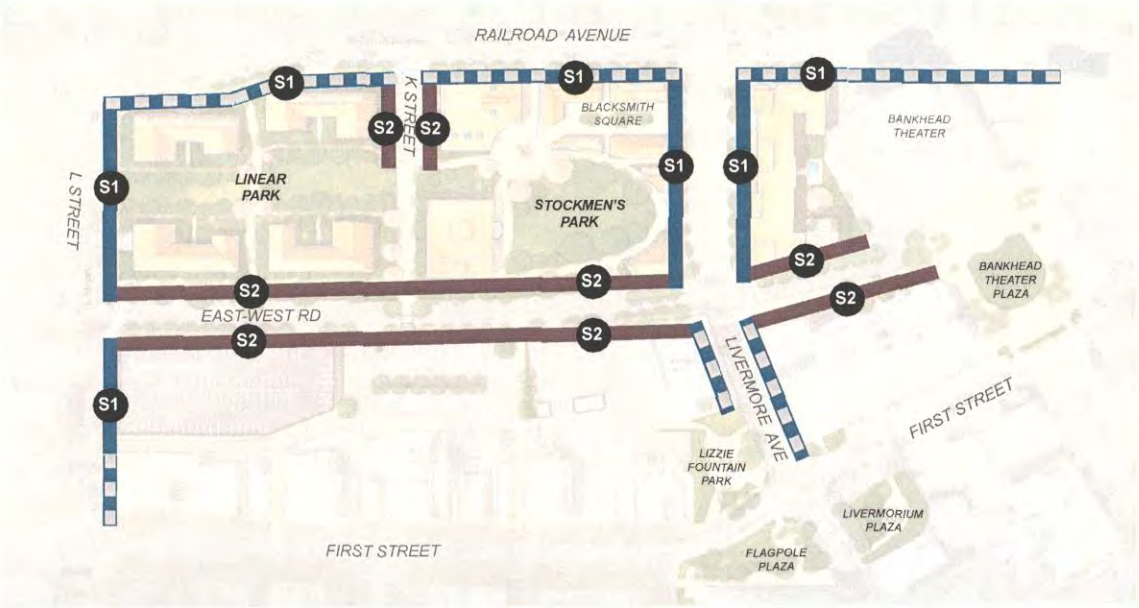


Figure 4. Streetscape Locations in the Downtown Concept Plan

A. Streetscape Urban Edge

The improvements discussed in this chapter generally apply to the following streets in the Downtown Concept Plan area:

a) South Livermore Avenue

b) South L Street

As the Downtown Plan is implemented, it is recommended that these streetscape elements be installed in the following locations where feasible:

a) South Livermore Avenue, from the East-West Road to First Street

b) South L Street, from the southern side of the new parking structure on East-West Road to First Street

c) Railroad Avenue, from South L Street to the existing Bankhead Theater Paseo

1. Character

The commercial Streetscape Urban Edge character should be a lively and interactive environment that is pedestrian oriented and contains ample amenities and human scale elements.

The wide shaded sidewalks should contain seating areas with interesting public art, historical elements, and wayfinding signage dispersed along the streetscape.

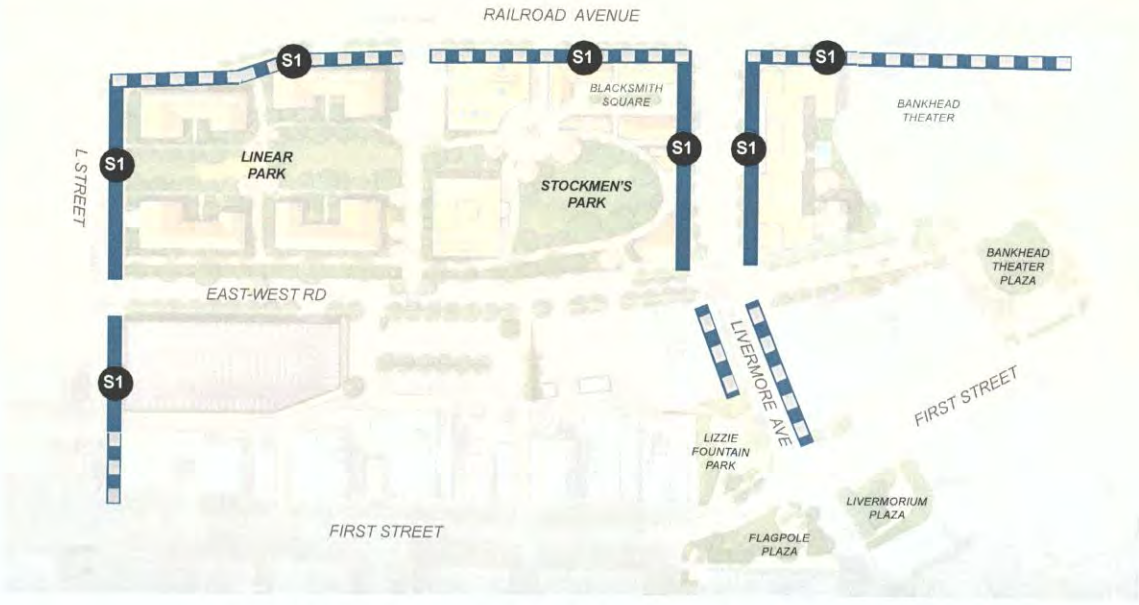


Figure 5. Streetscape Urban Edge Locations in the Downtown Concept Plan

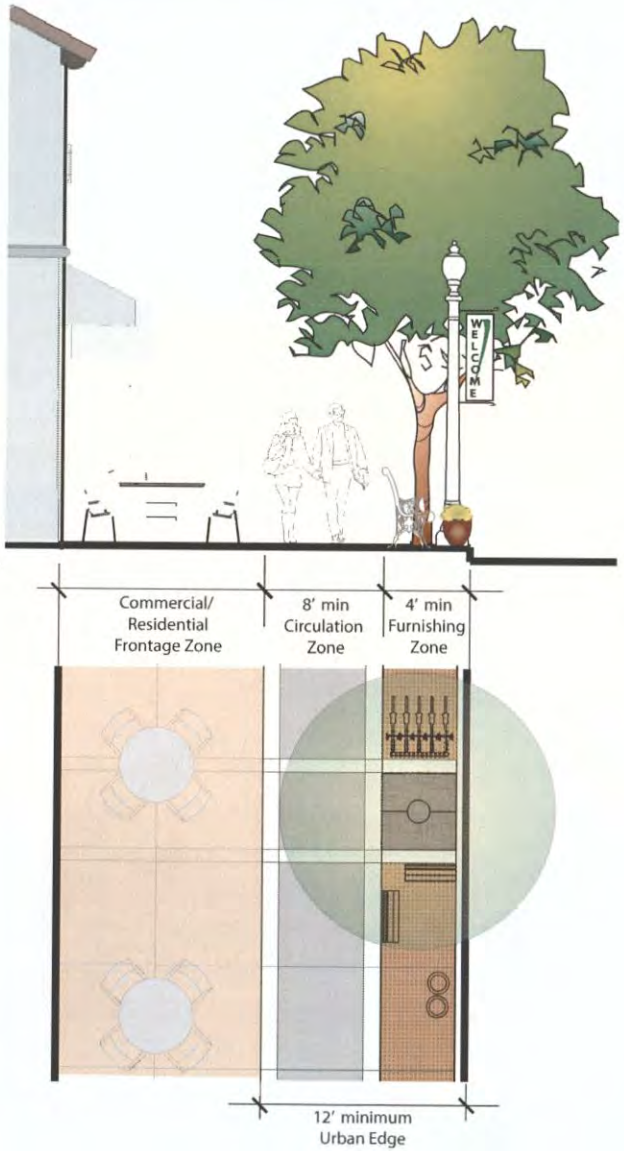
a) The typical cross section of the Urban Edge will contain the following:

- 4' wide minimum furnishing zone with decorative accent paving along the roadway, trees in grates, lighting with banners, pedestrian furnishings and potted plants
- 8' wide minimum circulation zone with standard paving and a clear path of travel
- An adjacent frontage zone with outdoor uses such as dining, seating, and patios

b) Two bus stops are existing along Railroad Avenue, and they should be improved with new shelters, benches, decorative paving, bike racks and trash receptacles.

c) Two medians exist along Urban Edge streets: one on Railroad Avenue between South L Street and South Livermore Avenue, and another on South Livermore Avenue between Railroad Avenue and East West Street.

- Medians should utilize the Urban Edge planting palette, but trees should be small accent species and planting may not obstruct pedestrian or vehicular views.
- The 1-foot wide maintenance strip should reflect the paving in the Urban Edge Furnishing Zone.



Typical Streetscape Urban Edge section

2. PAVING TREATMENTS

a) Furnishing Zone should be designated by decorative paving, such as:

- Colored concrete paving with stamped brick pattern (Bomanite Used Brick or approved equal, staggered running bond pattern)

b) Circulation Zone should be designated by standard paving, such as:

- Concrete paving with stamped brick banding (Bomanite Used Brick Edging or approved equal). Color and finish of concrete walk and banding to be selected to match Furnishing Zone paving
- Banding should be located on both sides of the Circulation Zone to create a clear path of travel, and banding placed perpendicular to the sidewalk at all tree grates and light pole areas
- Banding should be a color that varies from the Furnishing Zone, and banding along the edge of the Circulation Zone should be placed perpendicular to the Furnishing Zone pattern

Example of paving with brick edging and bands

Example of Furnishing Zone Decorative Paving: *Stamped Concrete Paving (Bomanite, Used Brick)*

Example of Circulation Zone Standard Paving: *Colored concrete with a stamped brick edging and banding*

3. Landscape Palette

a) Landscaping along the Urban Edge is suggested to be primarily warm colors with red and yellow accents.

b) Street trees of the same species along a street should be uniformly the same size and form, and meet the following minimum size requirements at time of planting:

- Primary deciduous species: Pistacia chinensis, Zelkova serrata, or Pyrus calleryana 'New Bradford'. One or two trees should be located along the street adjacent to corners, in front of retail uses, and next to driveways and project entries. Container size should be 24-inch box size or larger.
- Primary evergreen species: Podocarpus macrophyllus. Evergreen trees should be located between the primary deciduous species to make up the bulk of the streetscape tree planting. Container size should be 24-inch box size or larger.
- Corner accent species and angled on-street parking trees: Lagerstroemia indica (standard form). The variety and color of Lagerstroemias should vary at corners and parking areas to define uses. Place three or four trees at intersections in conjunction with primary deciduous species to develop a welcoming visual atmosphere. Container size should be 15-gallon size or larger and trees should be placed where they will not impact vehicular or pedestrian lines of sight.

c) Landscape accents should be used along the Urban Edge where planting is not otherwise feasible:

- Tree grates
- Pots and urns
- Raised planters

Example of deciduous trees along a street corridor

Example of evergreen trees along a street corridor

d) Primary shrubs species along the Urban Edge should consist of a mix of hardy evergreen plants, such as:

- Agave attenuata
- Correa 'Dusky Bells'
- Myrtus communis ' Compacta'
- Anigozanthos flavidus

e) Accent species along the Urban Edge should consist of a mix of plants that will provide year-round interest, such as:

- Hemerocallis species
- Muhlenbergia capillaris
- Erigeron karvinskianus
- Achillea millefolium

f) Groundcovers along the Urban Edge should consist of fast-growing understory plants, such as:

- Dymondia margaretae
- Myoporum species
- Fragaria species
- Thymus species

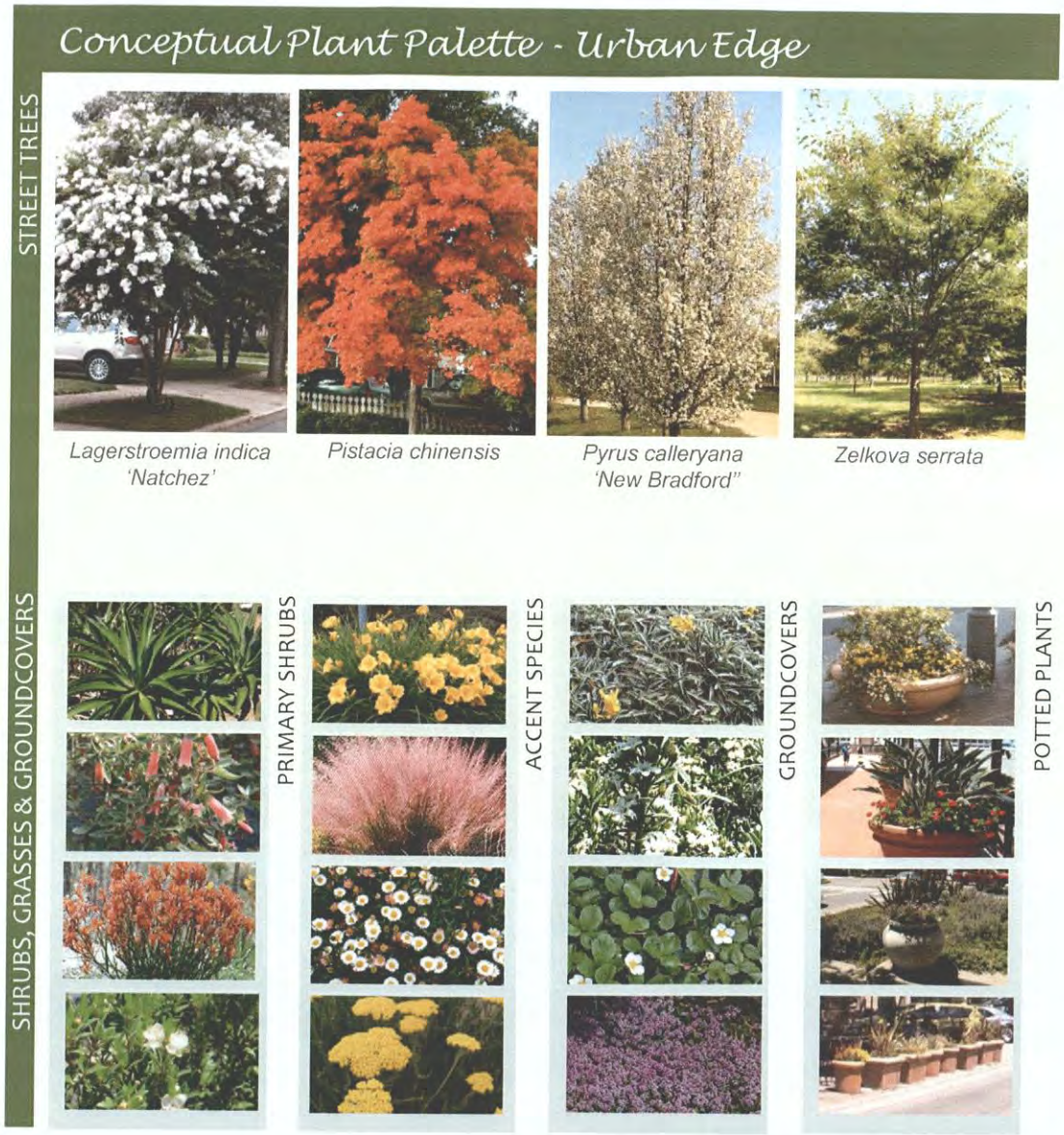


Figure 6. Conceptual Plant Palette for the Streetscape Urban Edge

B. Streetscape Parkway Edge

The improvements discussed in this chapter generally apply to the following streets in the Downtown Concept Plan area:

a) East-West Road

b) South K Street

c) Alley south of the proposed Hotel

1. Character

The streetscape will have a residential character with large separated parkway planters containing lush vegetation and shade trees.

Pedestrian amenities will be strategically located to allow for informal gathering areas, and public art and historical elements will be interwoven into the streetscape

a) Special event street closures may occur on some Parkway Edge streets. They should be designed to accommodate temporary bollards or other methods to restrict vehicles but still allow for large groups of pedestrians to easily access events.

b) South K Street will be utilized as a pedestrian drop-off area, and special decorative paving, benches and trash receptacles should be provided.

c) The southern portion of South K Street will be designed as an emergency access road and utilized as a pedestrian paseo. Refer to the Paseos section of these Design Guidelines for additional information.

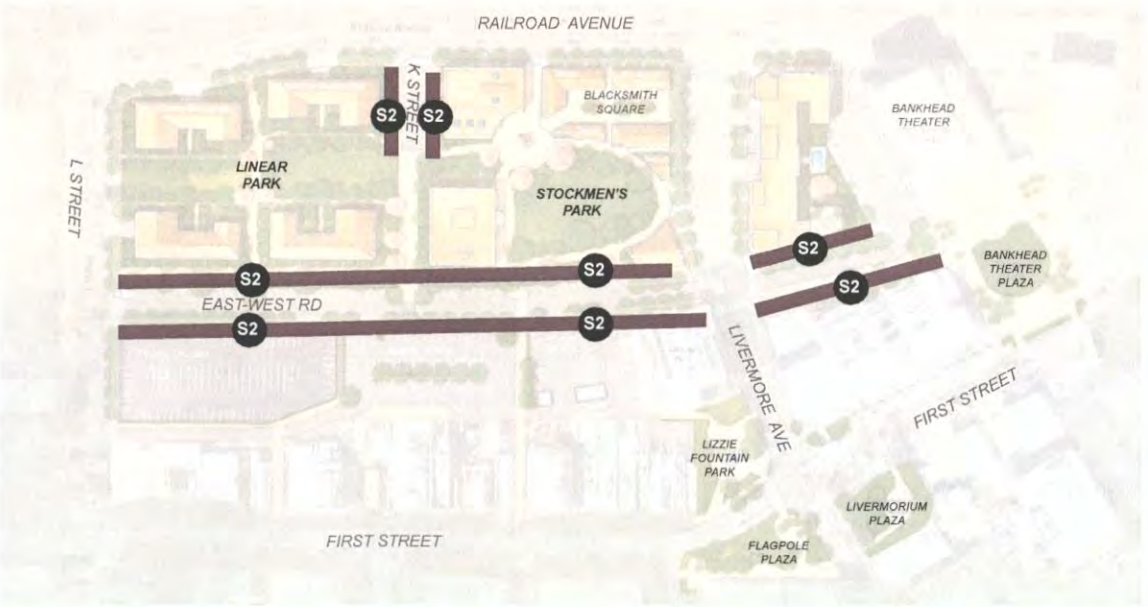


Figure 7. Streetscape Parkway Edge Locations in the Downtown Concept Plan

d) The typical cross section of the Parkway Edge will contain the following:

- 7' wide minimum Edge Zone with large planters, lighting, and paved areas between planters that extend through to the street. Planters with storm water treatment vegetation, such as along the north side of the East-West Road will be wider. The paved areas between planters will connect pedestrians to the street where needed (such as on-street parking areas) or accommodate pedestrian amenities such as seating, bike racks or public art.
- 6' wide minimum Circulation Zone with a clear path of travel.
- Adjacent frontage zone with outdoor uses such as landscaping, seating areas, and patios.

Typical Streetscape Parkway Edge section

2. PAVING TREATMENTS

a) Edge Zone designated by decorative paving, such as:

- Decorative paved areas between planters to denote seating areas and access to the roadway: Colored concrete paving with a stamped brick pattern (Bomanite Used Brick or approved equal, in a staggered running bond pattern).
- Decorative paving should be the same pattern as the Urban Edge to provide a consistent theme for the Downtown Concept Plan area, but may vary in color and texture to match standard paving.
- Decorative paving areas should be conveniently located between planters for ease of pedestrian access to the roadway, and should continue across the standard sidewalk paving to visually show where to access the roadway.

b) Circulation Zone designated by standard paving, such as:

- Salt finish colored concrete. Utilize a warm integral color to match paving in the edge zone.
- Decorative paving is suggested in the Circulation Zone on East-West Road along the sidewalks between the mid-block crossings. This decorative paving should be a colored and scored concrete in a similar color and pattern as the adjacent paseo paving to clearly indicate the primary pedestrian path of travel. Refer to Chapter 4 for additional information.

c) When decorative paving is used between parking spaces it should be similar to the adjacent decorative paving and be vehicular rated and set flush with adjacent asphalt.

Example of Circulation Zone Standard Paving: *Salt Finished Color Concrete*

Example of Edge Zone Decorative Paving: *Stamped Concrete Paving (Bomanite, Used Brick)*

3. Landscape Palette

a) Landscaping along the Parkway Edge is suggested to be primarily cool colors with blue and purple accents.

b) Street trees of the same species along a street should be uniformly the same size and form, and meet the following minimum size requirements at time of planting:

- Primary deciduous species: Chitalpa tashkentensis and Pyrus calleryana 'New Bradford'. One or two trees should be located along the street adjacent to corners, driveways and project entries. Container size should be 24-inch box size or larger.
- Primary evergreen species: Ulmus parvifolia 'Drake'. Located between the primary deciduous species to make up the bulk of the streetscape tree planting. Container size should be 24-inch box size or larger.
- Corner accent species: Lagerstroemia indica 'Catawba' (standard form). Three or four trees should be located at intersections in conjunction with the primary deciduous species and be placed to develop a welcoming visual atmosphere. Container size should be 15-gallon size or larger and trees should be placed where they will not impact vehicular or pedestrian lines of sight.

c) Bioswale area along the north side of East-West Road should utilize storm water species.

d) Landscape accents should be used along the Parkway Edge to protect and highlight vegetation.

- Tree grates and guards
- Up lighting on trees is recommended in key locations

Example of a corner accent tree

e) Primary shrubs species along the Parkway Edge should consist of a mix of hardy evergreen plants, such as:

- Myrtus communis ' Compacta'
- Dietes grandiflora
- Cistus species
- Lavandula species

f) Accent species along the Parkway Edge should consist of a mix of plants that will provide year-round interest, such as:

- Achillea millefolium
- Penstemon species
- Rosa species
- Nepeta species

g) Groundcovers along the Parkway Edge should consist of fast-growing understory plants, such as:

- Stachys byzantina
- Myoporum parvifolium
- Lomandra longifolia 'Breeze'
- Rosmarinus species

h) Storm water planting along the Parkway Edge should typically contain taller central species, combined with vertical accents such as Iris and grasses. A mix of textures and seasonal dormancy should be provided.

Figure 8. Conceptual Plant Palette for the Streetscape Parkway Edge

C. Streetscape Elements

Street element such as benches, trash and recycling receptacles, bike racks, and bus shelters can create a sense of character and unify a place. The furnishings described in this chapter are intended for public areas, but their use (or similar) within private areas is recommended for a cohesive Downtown Concept Plan area.

a) A cohesive selection of durable and classic streetscape furnishings should be consistently used in the Downtown Concept Plan area.

b) Furnishings in the Downtown Concept Plan area should be clustered together to create gathering nodes for members of the community to enjoy.

c) Site furnishings should be placed to maintain vehicular and pedestrian site lines.

d) Seating areas should be designed to promote safety and deter undesirable loitering.

e) Site furniture should be made of high-quality materials and enamels that have long life spans and are able to withstand constant use and exposure to the elements. Higher grade materials (metal and wood) and/or recycled content materials are required to reduce long-term maintenance and replacement costs.

f) Seating areas should be placed in key locations to encourage use and be located to allow for legroom and ease of maneuvering.

- Where feasible, it is preferable to design seating areas with benches and/or chairs located in an L-shape to allow for social interaction
- Where single benches are used they should be oriented to the street or primary walkway

g) The furnishings in this section are not intended to be a fixed and limiting list. It is understood that over time the furnishings listed may become unavailable. Furnishings with similar characteristics and materials may be adopted per City approval.

- Final selections may vary based on unforeseen situations such as budget limitations, technological advancements, and manufacturing availability. Final site furnishing chosen at the time of construction should consist of amenities that are equal to the selections shown in this section, and meet the design intent of these design guidelines in regards to scale and aesthetic look and feel of materials.

Furnishings in the Downtown Concept Plan area should be clustered together to create gathering nodes

Design seating areas with benches and/or chairs located in an L-shape to allow for social interaction

Streetscape Elements

BENCHES & TRASH CANS

MANUFACTURER:
Park Catalog
MODEL:
Cast Iron

MANUFACTURER:
Maglin
MODEL:
MRC 202

TREE GRATES & GUARDS

MANUFACTURER:
Urban Accessories
MODEL:
Kiva (Round or Square)

MANUFACTURER:
Urban Accessories
MODEL:
Windsor (Black)

BIKE RACKS & BOLLARDS

MANUFACTURER:
Belson
MODEL:
2 Bike U Rack
(Black)

MANUFACTURER:
Visco Lighting
MODEL:
BO-14 (Black)

MANUFACTURER:
Visco Lighting
MODEL:
BO-14L (Black)

Figure 9. Streetscape Elements for the Downtown Concept Plan

1. Benches

Benches should be placed to improve the pedestrian experience.

a) Benches should be placed under tree canopies for shade where feasible.

b) Benches should be designed to deter homeless activity, whether using a center armrest, installing a shorter bench, and/or locating benches in well-lit areas.

2. Trash/ Recycling Receptacles

Trash and recycling receptacles should be placed to provide convenient waste disposal in key locations such as entries, seating areas, bus stops, and along walkways throughout the Downtown Concept Plan area.

a) Receptacles should be used in conjunction with other furnishings.

b) Receptacles should be placed away and/or located downwind from seating areas where feasible.

3. Bike Racks

Bike racks encourage bike ridership and prevent bikes from being locked to sign posts or trees.

a) Attractive and convenient bicycle parking should be located near transit stops, street intersections, commercial areas, parking lots, and at entries to paseos, parks and key pedestrian gathering areas throughout the Downtown Concept Plan area.

b) Bike racks should accommodate a minimum of two bicycles and their capacity should be determined by the location and the number of bicyclists who frequent the destination.

c) Bike racks should be located to not block pedestrian circulation when bikes are on the racks, or when maneuvering bikes to and from racks.

d) Where feasible, bike racks should incorporate a vertical stagger to eliminate handlebar tangles.

Benches should be placed under tree canopies for shade where feasible

Attractive and convenient bicycle parking should be located where it will not block pedestrian circulation

4. Tree Grates and Guards

Tree grates and tree guards should be utilized where pedestrian or vehicular activity warrants the need.

a) Attractive tree grates and guards should be used throughout the Downtown Concept Plan area:

- Grates should be placed along the Streetscape Urban Edge within the Furnishing Zone
- Grates and guards used along the Streetscape Parkway Edge within the angled parking areas

b) Tree grates are encouraged to provide cut outs for up-lighting on trees in key locations such as corners and entries.

5. Bollards

Bollards should be located where needed to prohibit vehicular access into pedestrian use areas.

a) Removable bollards shall be utilized where emergency access is required and shall be installed per City Standard ST-23.

b) Lighted bollards should be used where high pedestrian activity is anticipated.

6. Pots and Raised Planters

Potted plants and raised planters should be used along the streetscape to add color and visual interest, and be located at entries and corners as accent elements.

a) Potted plants should be used where at grade planters are not feasible and where vertical elements are desired.

b) Raised planters should be designed to accommodate comfortable seating where feasible.

c) Raised planters should incorporate decorative insets and elements such as tiles.

d) Raised planters should include skateboard deterrents.

e) Graffiti resistant coatings are recommended on concrete planters.

f) Raised planters and pots that are agricultural or historical in style or form are recommended such as wine barrels, troughs, and fruit tree boxes.

g) Recommended materials for raised planters include:

- Board form concrete
- Stone
- Wood
- Brick

Attractive tree grates and guards should be used within angled parking areas.

Examples of raised planters made of stone and board form concrete

7. Bus Shelters

Bus shelters should be utilized at all current and future bus stop locations within the Downtown Concept Plan area.

a) Bus shelters should be combined with decorative paving, benches, bike racks, newspaper racks, trash receptacles, and wayfinding and bus schedule signage.

b) Bus shelters should be made of durable and graffiti-resistant materials.

c) Consider locating public art at bus stops for interest and highlighting public transportation.

8. Newspaper Racks

Newspaper racks should be placed throughout the Downtown Concept Plan streetscape in key locations such as adjacent to seating and gathering areas, and at bus shelters.

a) Existing newspaper racks should be consolidated and replaced with a cohesive newspaper rack design.

b) Newspaper racks shall be installed and located per Chapter 12.40 of the Livermore Municipal Code.

D. Wayfinding

A wayfinding signage program for both vehicles and pedestrians should be established for the Downtown Concept Plan area. A cohesive wayfinding program provides consistent and user-friendly information about distances and routes to and from major destinations, making these places easier to connect to and encouraging people to make short trips on foot.

a) Vehicular directional signs will establish an identity for the Downtown Concept Plan area as a special district within the City of Livermore. Consider vehicular wayfinding on:

- Pole mounted signs
- Banners on light poles

b) Pedestrian wayfinding signs (directional and directories) should follow the design aesthetic established by the vehicular signs, only on a much smaller scale. Consider pedestrian wayfinding on:

- Pole mounted signs
- Paving insets in sidewalks and/or crosswalks
- Kiosks

Develop a cohesive wayfinding program for the Downtown Concept Plan area

Consider wayfinding signage that integrates interpretive exhibit panels to highlight Livermore's history and culture

Examples of paving insets in sidewalks and/or crosswalks to aid in pedestrian wayfinding

c) Explore methods of incorporating historical elements into wayfinding signage and provide directions to historical landmarks and points of interest within the downtown.

d) Where space allows, consider incorporating interpretive exhibit panels in conjunction with pedestrian wayfinding signage at key locations to discuss Livermore's history and culture.

e) Wayfinding signage should utilize common, easy to understand symbols and fonts to identify and guide travelers to Downtown Concept Plan destinations, parking and seasonal attractions.

f) Wayfinding signage should incorporate distinctive forms and colors inspired by the Downtown Concept Plan.

g) Durability, legibility, and maintenance shall be carefully considered in the development and design of the wayfinding signage.

h) Wayfinding signage should be well lit at night.

Wayfinding should be used in both vehicular and pedestrian scale signs

E. Corner Treatments

Corner treatments should be used at major intersections within the Downtown Concept Plan area to welcome residents and visitors with distinctive signage, accent landscaping, decorative paving, and interesting focal points.

a) Corners should be designed to accommodate pedestrians and should be clear of obstructions.
   - Furnishing and planting at corners should not be located where they obstruct pedestrian or vehicular lines of sight.

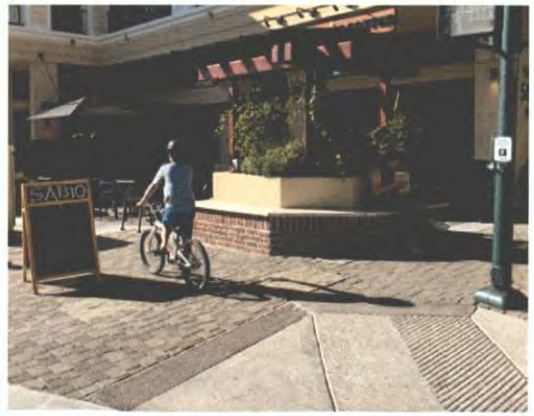
b) Where feasible, corners should incorporate bulbouts to provide the most usable space and the shortest crossing distances for pedestrians. Refer to Pedestrian Crossings in this chapter for more information.

c) Corners should include wayfinding signage to orient pedestrian and vehicles and to highlight Livermore's Downtown Concept Plan identity.

d) Incorporate dramatic and imaginative landscaping with accent trees and flowering planting to denote a sense of arrival at corners.

e) Where feasible, pedestrian amenities should be provided at corners such as:
   - Benches
   - Bike racks
   - Bollards
   - Decorative paving
   - Trash and recycling receptacles

f) Focal points and public art that exemplify agricultural or historical style or forms should be located at corners such as:
   - Trellises
   - Clock towers
   - Fountains
   - Potted plants



Corner treatments should include pedestrian amenities, low growing accent landscaping, decorative paving, and interesting focal points.

F. Pedestrian Crossings

Pedestrian crossings should have unique, detailed, and well-articulated paving design that is used throughout the Downtown Concept Plan area.

a) A high visibility stamped asphalt crosswalk paving treatment should be consistently applied within the Downtown Concept Plan area.

b) All crosswalks and curb ramps shall meet the requirements of the Americans with Disabilities Act Accessibility Guidelines (ADAAG) and the State of California Code of Regulations Title 24.

c) A standard 12-inch wide white stripe or concrete band should be provided on either side of all crosswalks to designate the crossing within the roadway.

d) Accessible and non-slip surfaces shall be used on all crosswalks.

e) All crosswalks shall include ADA accessible curb ramps with truncated domes to safely and easily access pedestrian crossings. Curb ramps should align in the direction of the crosswalk.

f) An advance stop bars, advance yield warning markings, and/or pedestrian crossing signage should be used to alert drivers of crosswalks.

g) Pedestrian refuge islands should be located on all roadways with medians.

h) On-street parking should be restricted around crosswalks to improve the visibility for pedestrians.

i) Site distance at crosswalk should be maintained to ensure safe visibility. Shrubs and groundcover plantings should not exceed three 3-feet in height, and trees should be set back from intersections to promote visibility.

j) Wayfinding signage is recommended at key pedestrian crossings.

Example of a crosswalk with stamped asphalt paving in a ashlar slate pattern

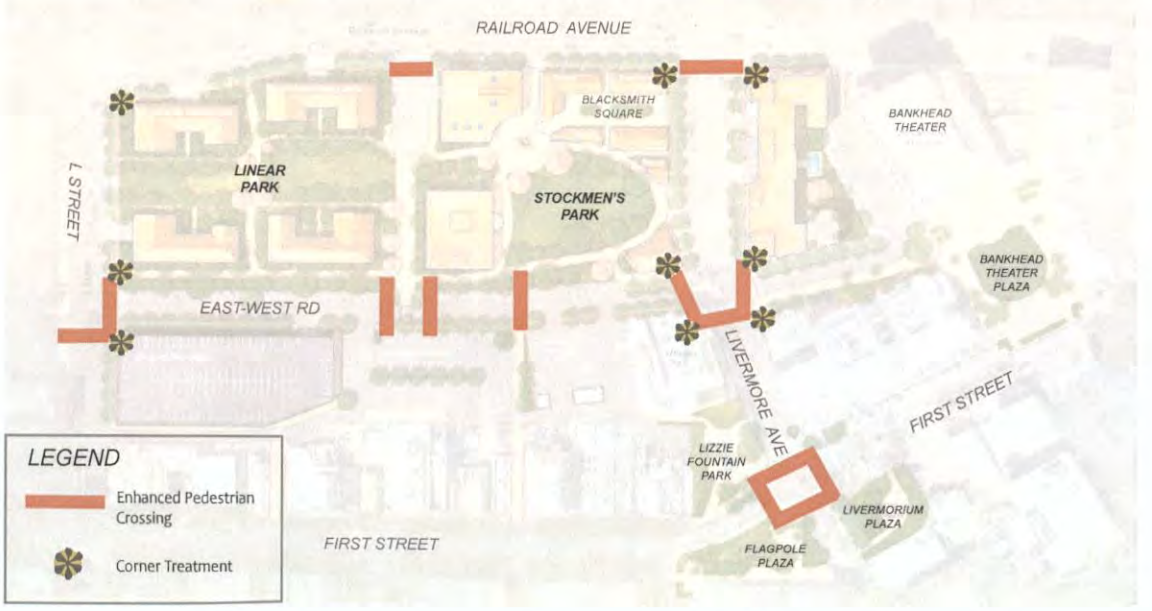


Figure 10. Corner Treatments and Pedestrian Crossings in the Downtown Concept Plan

1. Crosswalks at Intersections

Special paving treatments should be incorporated at intersection crosswalks to define the Downtown Concept Plan area and increase pedestrian crossing visibility.

a) The following intersection crosswalks should be enhanced for increased safety and crossing visibility:

- South Livermore Avenue at Railroad Avenue (one southern crosswalk)
- South Livermore Avenue at East-West Road (all three crosswalks)
- South Livermore Avenue at First Street (all four crosswalks)
- East-West Road at South L Street (one eastern crosswalk)

b) As new development occurs in the Downtown Concept Plan it is recommended that adjacent crosswalks be improved to meet this guideline, especially where the entire intersection is not updated:

- Railroad Avenue at South Livermore Avenue
- Railroad Avenue at South L Street
- South L Street at East-West Road and First Street

c) Pavement stencils with street names or a city logo are recommended at intersection crosswalks for wayfinding.

d) Consider decorative bollards at primary intersections to visually designate crossing areas.

e) Where an entire intersection is enhanced with new crosswalks, consider including decorative paving within the center of the intersection.

Pavement stencils are recommended at intersection crosswalks for wayfinding

Consider including decorative paving within the center of the intersection

Decorative bollards are recommended at primary intersections to visually designate crossing areas

2. Midblock Crosswalks

High visibility crosswalks should be utilized for mid-block and/or uncontrolled crossings, and they should be designed with pedestrian safety and increased visibility in mind.

a) Two uncontrolled midblock crossings are proposed in the Downtown Concept Plan area:

- Two at the center of the new East-West Road

b) Existing mid-block crosswalks should incorporate applicable midblock crossing enhancements where possible, such as:

- Signalized crossing at Railroad Avenue between the existing parking structure and the Bankhead Theater Paseo

c) Midblock crossings should incorporate the following elements to enhance awareness and safety of mid-block pedestrian crossings:

- An advance warning sign with a pedestrian crossing signage and/ or pedestrian activated flashing beacons
- Where the line of site permits, vertical elements such as the trellises on First Street should be used to highlight pedestrian crossing areas
- Bulbouts are recommended at intersection crosswalks where feasible to reduce pedestrian crossing distance
- Pavement stencils to alert pedestrians of unsignalized crossings

Example of pedestrian crossing signage being used to alert vehicles of the crosswalk.

Trellises used to highlight pedestrian crossing areas

Use of pavement stencils for unsignalized crossings

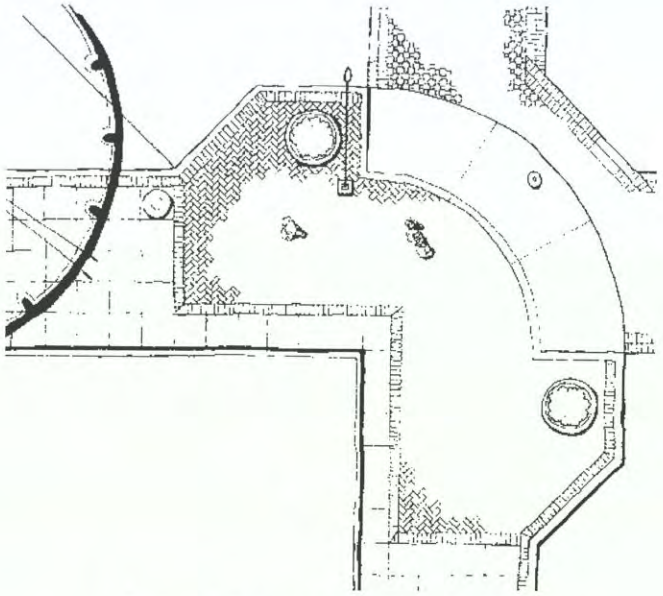
3. Bulbouts/ Curb Extensions

Where feasible, bulbouts/ curb extensions are recommended at all crossing areas to increase driver awareness of pedestrians, reduce crossing distances and help slow traffic.

a) Generally, bulbouts should utilize the smallest radii possible and space for pedestrian amenities should be maximized.

b) Where the line of site permits, bulbouts should include ornamental elements such as:

- Low growing accent landscaping
- Decorative paving
- Pedestrian furnishings
- Bollards



Example of a typical bulbout/ curb extension

Bulbouts/ curb extensions are recommended at all crossing areas for pedestrian amenities to reduce crossing distances, slow traffic, and allow for driver awareness of pedestrians.

CHAPTER 4. PASEO, PLAZA & PARK LANDSCAPE DESIGN GUIDELINES

This chapter contains specific guidance for the design, paving and landscaping of public paseos, plazas and parks These guidelines build upon the Area-Wide guidelines in Chapter 2 and should be used in conjunction where applicable.

A. Paseos and Plazas

Paseos and plazas should be distinguishable from the roadway and contain interesting public art and historical elements, with a variety of comfortable seating areas and wayfinding signage. Paseos and plazas should be safe and inviting for all ages and abilities, and link to key areas throughout the Downtown.

Existing paseos and plazas in the Downtown Concept Plan area are encouraged to incorporate design elements from this chapter where applicable.

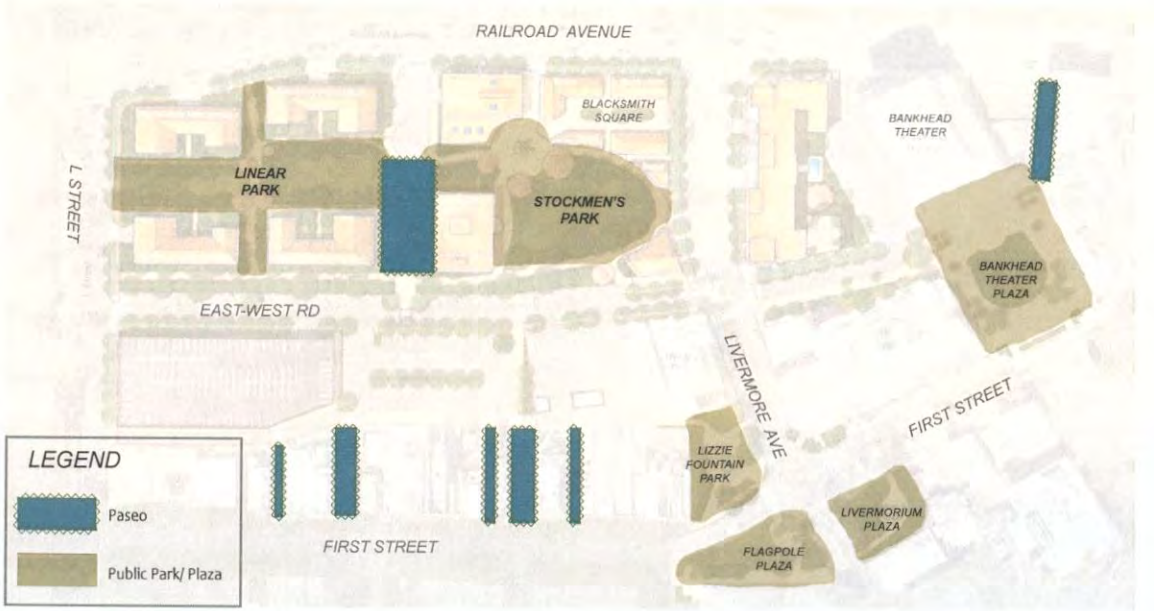


Figure 11. Paseo, Plaza and Park Locations in the Downtown Concept Plan

1. PASEOS

a) The pedestrian entry to paseos should be highly visible from the public right-of-way. Consider the consistent use of vertical elements within the streetscape as wayfinding devices at paseo entries such as trellises and/or large potted plants.

b) Consider placing banners and hanging plants on light poles where feasible.

c) Public art and focal points should be located at visual axis points to draw pedestrians into the paseos.

d) Pedestrian scale decorative lighting should be used in paseos to create usable spaces that are visually appealing at all hours.

e) An intensive wayfinding program should be used in paseos to direct and orient pedestrians.

f) A significant amount of the paseo area should be dedicated to landscaping. Provide large planters with seat walls, and/or potted plants.

g) Pedestrian drop off areas with seating are recommended at key paseo locations.

h) Seating areas should be located away from busy roadways or incorporate elements to block road noise such as fountains that utilize recycled water.

Decorative lighting should be used in paseos and plazas to create spaces that are visually appealing at all hours.

Focal points should be placed at visual axis points to draw people into paseos and plazas

Consider banners and hanging plants on light poles where feasible.

2. Plazas

Public outdoor plazas are encouraged at key intersections, or in projects that are adjacent to public facilities. Public plazas can help create a sense of place and provide a destination within the development. Public plazas should be designed to encourage people to gather, both formally and informally, and should be available for use by the general public.

a) Plazas are encouraged to utilize the following elements:

- Decorative and permeable paving materials
- Trash and recycle receptacles
- Potted plants and raised planters with seat walls
- Focal points such as water features and public art
- Informational kiosks (such as advertising local cultural events)
- Drinking fountains
- Shade structures
- Benches, tables and chairs

b) Shade from trees, shade sails, trellises, overhangs and awnings are recommended for comfortable seating areas.

c) Gathering areas should be located out of the direction of prevailing winds when feasible.

d) Planters used along sidewalks and within outdoor spaces are encouraged to also function as seat walls.

Plazas can help create a sense of place and provide a destination within the Downtown

Plazas are encouraged at key intersections to encourage people to gather

3. PAVING TREATMENT

Public paseos and plazas should utilize a consistent paving materials and colors throughout the Downtown Concept Plan area.

a) Provide decorative paving at entries, drop off areas, and seating areas such as:

- Stamped concrete (Bomanite Brick or Boardform pattern, or approved equal). Integral color should be similar to standard paving.

b) Provide standard paving for paseo and plaza walkways, such as:

- Colored concrete with decorative scoring, and/or stamped concrete (Bomanite Coquina pattern or approved equal).
- Consider a dark colored decorative banding around tree wells, seating areas, and between decorative and standard paving.
- Decorative paving insets are suggested in key locations.

c) Paseos will accommodate emergency vehicle access where required. South K Street will be an emergency vehicle access road (EVA) and decorative paving should be used along with removable bollards to accommodate fire trucks and other emergency vehicles. EVA paving must be able support a gross vehicle weight of at least 70,000 pounds. Consider the combination of paving in an undulating form to reduce the appearance of the overall width of the access road and create a more pedestrian friendly walkway, such as:

- Vehicular rated pavers similar to decorative paving
- Grass paver blocks
- Tufftrack cells

EXAMPLES OF DECORATIVE PAVING

Stamped Concrete (Bomanite: Board Form)

Stamped Concrete Paving (Bomanite, Creekstone)

EXAMPLES OF STANDARD PAVING

Colored Concrete with Decorative Scoring

Stamped Concrete Paving (Bomanite, Coquina)

EXAMPLES OF EVA PAVING

Grass paver blocks

Vehicular Rated Interlocking Pavers (Belgard, Cambridge Cobble)

4 Landscape Palette

a) Small accent trees in combination with narrow columnar trees and trellises with vines and/or espaliers are suggested to step down and soften the height of the surrounding buildings.

b) Paseos and plazas will typically be located between buildings and generally be more shaded than the adjacent streetscape and plants should be selected based on solar orientation.

c) Potted plants and raised planters should be used to provide color and interest (refer to Shrub and Groundcover Selection within the Landscaping section of the Area-Wide Guidelines for additional information about selection for potted plants)

Small accent trees with vines and/or espaliers should be used to step down and soften surrounding buildings.

d) Primary shrubs species in paseos and plazas should consist of a mix of hardy evergreen plants, such as:

- Asparagus densiflorus 'Meyers'
- Dietes species
- Sarcococca species
- Pittosporum species

e) Accent species in paseos and plazas should consist of a mix of plants that will provide year-round interest, such as:

- Correa species
- Rhaphiolepis indica 'Clara'
- Clivia miniata
- Acanthus mollis

f) Groundcovers in paseos and plazas should consist of fast-growing understory plants, such as:

- Pachysandra terminalis
- Euonymus japonicus 'Microphyllus'
- Stachys byzantina
- Liriope muscari

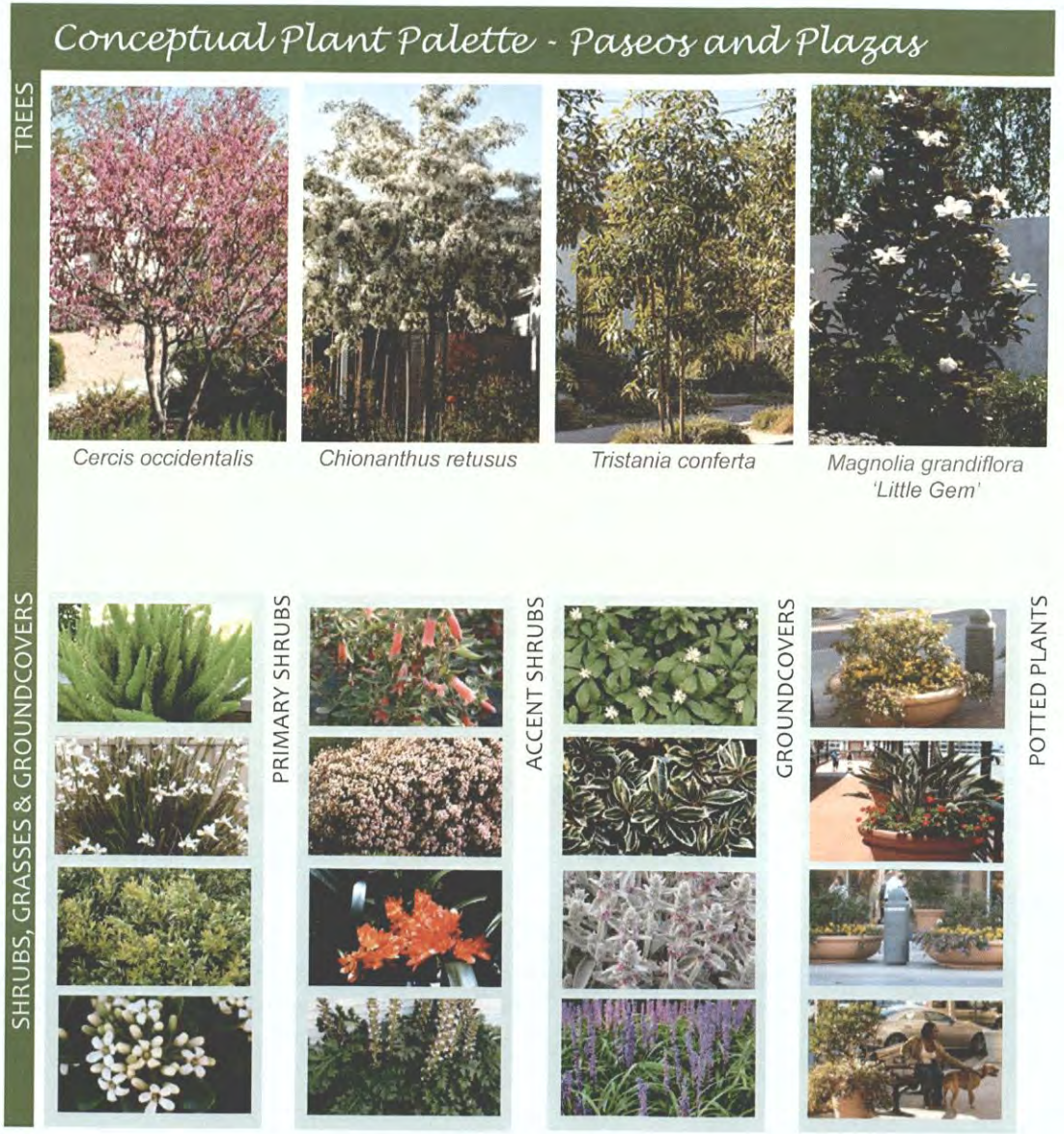


Figure 12. Conceptual Plant Palette for Paseos and Plazas

B. Linear Park

Linear Park is proposed between South L Street and South Livermore Avenue, between the residential areas, and will connect with Stockmen's Park and adjacent public and commercial areas.

1. Character

The Linear Park should create a sense of place for the Downtown Concept Plan area. The Linear Park should be visible and welcoming from the street and adjacent residential areas, but still provide privacy for residents and park users.

a) Landscape structures, paving and site furnishings should be designed as integral parts of the overall Downtown Concept Plan, and implement elements described in the Area-Wide Landscape Guidelines.

b) Property boundaries of the adjacent residential areas should be defined by low walls and open fences and/or buffer landscaping to provide a barrier with a sense of security derived from visibility.

c) Lighting and seating areas should be carefully located to not impact the adjacent residences.

d) Parks should have noise-generating activities and playgrounds located away from adjacent residential areas.

e) Incorporate focal points within the Linear Park to enhance the pedestrian and visual experience. These focal points should be located at visual axial points and placed in a sequence along the primary walkway to draw people into the park. Consider strategic placement of the following elements:

- Public art
- Vertical features such as trellises and shade structures
- Accent landscaping

f) A primary entry should be designed on South L Street, with secondary entries at Railroad Avenue and East-West Road. Pedestrian entries into the Linear Park should denote it as welcoming and clearly recognizable as accessible and usable by the public.

- All entries should include signage designating it as a public park
- All entries should provide decorative paving, accent planting, dog bags and trash receptacles

The Linear Park should be visible and welcoming from the street and adjacent residential areas, but still provide privacy for residents and park users.

Incorporate focal points in a sequence along the primary walkway to draw people into the park

g) Primary entries should provide trellises and other vertical element to highlight the entrance, and provide additional pedestrian amenities such as benches and bike racks.

h) Parks should provide seating in varying sizes and configurations to allow for individual quiet reflection and larger group discussions.

i) Parks should include secondary informal seating options such as mounds of grass, steps, or walls to increase overall seating capacity.

j) Outdoor gathering spaces and playgrounds should include seating, trash cans, bicycle racks, and/or other pedestrian amenities.

k) Interpretive exhibits should be provided at key gathering and seating areas to educate park users about the region's history and culture.

2. Play Areas

a) Playgrounds should be fun and safe for children of all abilities and mobility, and provide a variety of spaces and play equipment for a range of age groups.

b) Play equipment should allow for ADA accessibility, use natural colors, and be durable and low maintenance.

c) A small informal play area is recommended for children with boulders and incorporating natural and historical elements.

d) Playgrounds should be set well back from the roadways, and incorporate fencing and/or landscape barriers to establish boundaries and enclose the playground area.

e) Where feasible, playgrounds should include an assortment of landforms and grades such as mounds, ditches, tunnels, ramps, decks and bridges.

f) Playground areas should include a variety of different surfaces, such as pavement for ball games or hopscotch and natural materials like sand and gravel.

g) Incorporate areas for play for all ages such as bocce ball, horse shoes, large chess boards and checker tables.

Example of a small informal play area with natural elements

Provide areas for play for all ages and abilities

Play areas should incorporate natural elements such as boulders.

3. Paving Treatments

a) Durable and slip resistant standard paving materials should be used for pedestrian walkways in parks, such as:

- Broom finished concrete and/or concrete paving with a stamped pattern (Bomanite Heavy Slate or approved equal). Integral color should match adjacent decorative paving materials.

b) Decorative paving materials should be utilized at park entries, key pathway nodes, and seating areas, such as:

- Concrete paving with a stamped pattern (Bomanite Rustic Slate and/or English Sidewalk Slate or approved equal).
- Consider including acid finish concrete paving in key focal point areas.

c) It is recommended to incorporate decorative insets or etching in paving to highlight the history and culture of Livermore.

4. Landscape Palette

a) Parks should incorporate fast-growing shade trees for tree lined walkways and seating and picnic areas.

b) Accent and specimen trees should be provided at entries and pathway connections.

- Specimen trees should be 36-inch box size
- Accent trees should be 24-inch box minimum size

c) A central lawn area is suggested for active and passive recreation for activities such as sports, games, relaxation, and group events.

- The lawn areas should be sized and shaped to reduce irrigation runoff and over spray, and to drain to planting beds to capture irrigation runoff
- Avoid turf shapes with tapered strips with acute angles

d) Parks should use natural materials such as boulders, river rock, and cobblestones in organic groupings.

Parks should incorporate fast-growing shade trees

EXAMPLES OF STANDARD PAVING

Stamped Concrete Paving (Bomanite, Heavy Slate)

Broom Finish Concrete

EXAMPLES OF DECORATIVE PAVING

Stamped Concrete Paving (Bomanite, Rustic Slate)

Stamped Concrete Paving (Bomanite, English Sidewalk Slate)

e) Primary shrubs species in parks should consist of a mix of hardy evergreen plants, such as:

- Rhaphiolepis species
- Arctostaphylos species
- Salvia species
- Pittosporum species

f) Accent species in parks should consist of a mix of plants that will provide year-round interest, such as:

- Kniphofia uvaria
- Phormium species
- Strelitzia reginae
- Anigozanthos flavidus

g) Groundcovers in parks should consist of fast-growing understory plants, such as:

- Lomandra longifolia 'Breeze'
- Euonymus japonicus 'Microphyllus'
- Gazania species
- Thymus species

h) Buffer planting in parks should be provided between residential units and the park, adjacent to playgrounds, and where screening is needed.

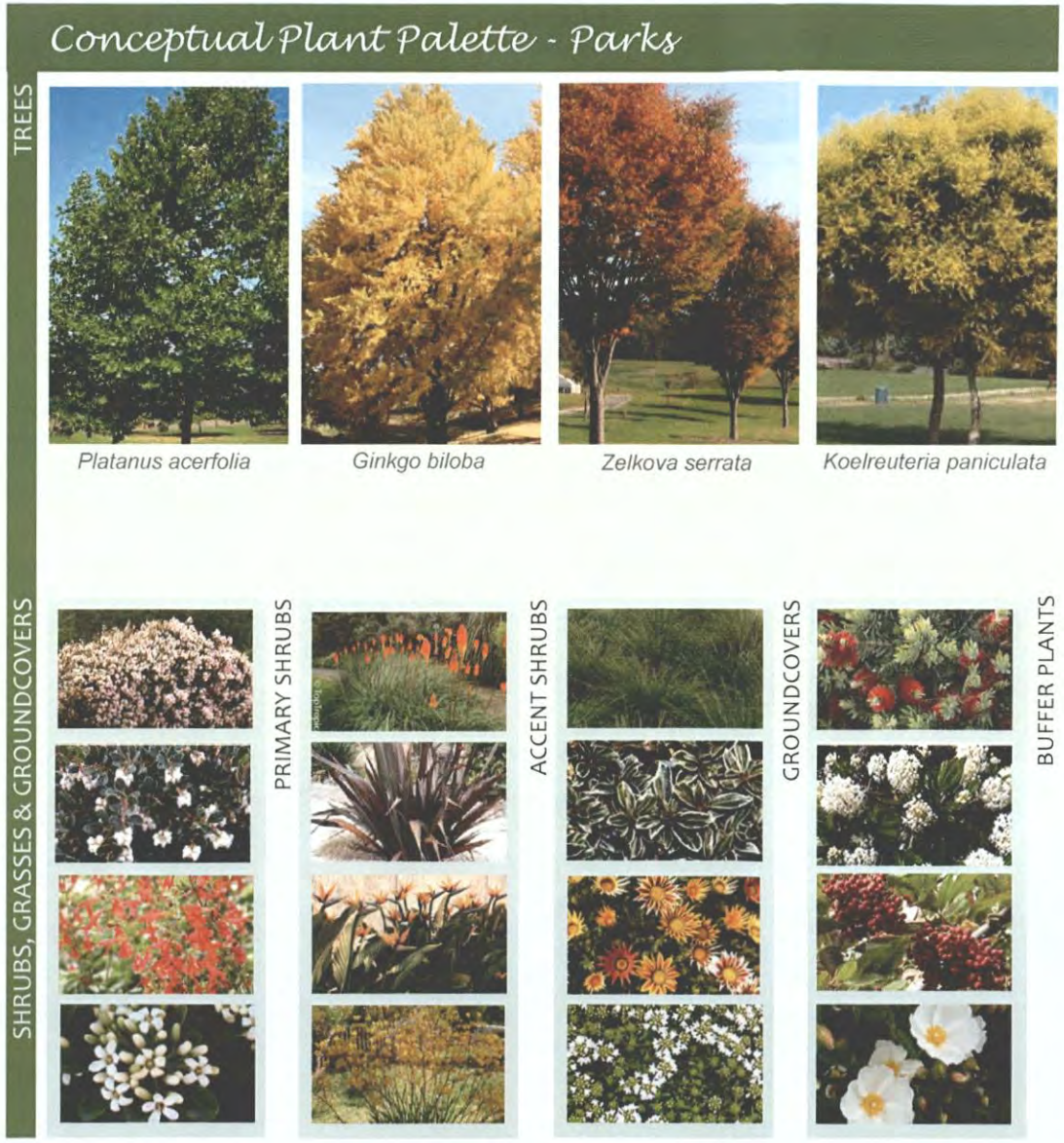


Figure 13. Conceptual Plant Palette for Parks

C. Paseo, Plaza & Park Elements

Public paseo, plaza and park elements should be consistently located throughout the Downtown Concept Plan area.

a) Paseo, plaza and park elements should be cohesive but visibly different from streetscapes furnishings to develop a unique streetscape frontage and aid in wayfinding.

- Refer to Streetscape Elements in Chapter 3 and Lighting in Chapter 2 for elements to be used in Paseos, Plazas and Parks.

b) The selections depicted in this section are examples of amenities that meet the Downtown Concept Plan design aesthetic, but final selections may vary based on unforeseen situations such as budget limitations, technological advancements, and manufacturing availability.

- Final site furnishing chosen at the time of construction should consist of amenities that are equal to the selections shown in this section, and meet the design intent of these design guidelines in regards to scale and aesthetic look and feel of materials.

1. Tables & Chairs

a) Tables in paseos, plazas and parks should be placed where they will be well utilized.

b) Consider placing outdoor heaters adjacent to tables and chairs in key paseo and plaza seating areas.

c) ADA picnic tables should be provided in parks per code and be surrounded by paving for accessibility.

2. Lighting

a) Lighting in Paseos, Plazas and Parks should be visibly different from streetscapes, but be visually interesting and historically accurate.

b) Light poles should incorporate wood poles, arms with decorative metal brackets and/or bases made of stone or brick to reflect the historical character.

3. Shade Structures

a) Historically accurate shade structures, gazebos, and trellises should be used in parks to provide shade.

b) Shade structures should utilize decorative column materials and aesthetically pleasing eave heights and roof pitches.

c) Shade structures should utilize natural colors and materials, such as wood and stone.

Light poles should incorporate elements to reflect the historical character of Livermore

Shade structures should be provided in parks

Paseo, Plaza & Park Elements

BENCHES & TABLES

PARKS

MANUFACTURER:
Belson
MODEL:
Regency

MANUFACTURER:
Landscape Forms
MODEL:
Gretchen

PASEOS

MANUFACTURER:
Landscape Forms
MODEL:
Charlie

TREE GRATES, TREE GUARDS & TRASH CANS

MANUFACTURER:
Iron Age
MODEL:
Rain

MANUFACTURER:
Iron Age
MODEL:
Oblio

MANUFACTURER:
Global Industries
MODEL:
Oakly

BIKE RACKS, LIGHTING & BOLLARDS

MANUFACTURER:
Belson
MODEL:
2 Bike U Rack
(Stainless Steel)

MANUFACTURER:
Sternberg
MODEL:
Tinley 1220

MANUFACTURER:
Iron Smith
MODEL:
Aegean

MANUFACTURER:
Bel-Lighting
MODEL:
Strida

Figure 14. Paseo, Plaza and Park Elements for the Downtown Concept Plan

CHAPTER 5: PRIVATE LANDSCAPE DESIGN GUIDELINES

A. Residential Site Planning

Create a pedestrian-scaled environment through appropriate walkway widths and placement of patios and gathering spaces.

a) Orient buildings entries to the street.

b) A clearly visible and well-designed project entry should be created using low walls, decorative paving and lighting, accent landscaping, and signage to visually link the project site entry to the building(s).

c) Residential patios and gathering areas should be oriented towards the public street and placed along the back of sidewalk to define the street frontage.

d) Decks and balconies should be located and designed to minimize potential privacy-sensitive issues on adjacent parcels.

e) Special attention to maintaining the privacy of residents while providing safety to Linear Park users. Elements placed at the perimeter of these two uses should be below 40-inches in height and allow for views but provide a barrier between the areas.

- Low walls and hedges
- Open fencing and gates

f) Site layout and building placement should ensure pedestrian connectivity and encourage activity and/or informal interactions within public spaces.

g) Residents should have safe, efficient, and convenient access to the adjacent Linear Park for recreation and social activities. Open space should focus on areas that are usable to the residents and not merely remainder parcels with marginal utility.

h) Landscape planting, paving, and site furnishings and fixtures should be designed as integral parts of the overall Downtown Concept Plan area, and be consistent or compatible with the neighborhood architectural style, scale, material, and finishes.

- Landscaping in residential areas should utilize the Master Plant List, and reflect the palette in the area adjacent to the project.

Pay special attention to maintaining the privacy of residents while providing safety to Linear Park users

A clearly visible and well-designed project entry should be created

B. Commercial Site Planning

Create a pedestrian-scaled environment using human scale elements and the placement of frontage elements and outdoor gathering spaces.

a) Orient buildings entries to the street. Corner sites should locate primary entries at the intersection and incorporate detailed pedestrian scale elements and accent landscaping into the entry design.

b) A clearly visible and well-designed project entry should be created using decorative paving, furnishings, accent landscaping, and signage to visually link the project site entry to the building(s). Recessed entries are recommended along streetscape frontages.

c) Frontage elements and gathering areas should be oriented towards the public street and placed at the back of sidewalk to define the street frontage.

d) Site layout and building placement should ensure pedestrian connectivity and encourage activity and/or informal interactions adjacent uses.

e) Landscape planting and features, paving, and site furnishings and fixtures should be designed as integral parts of the overall Downtown Concept Plan area, and be consistent or compatible with the neighborhood architectural style, scale, material, and finishes.

- Landscaping in commercial areas should utilize the Master Plant List, and reflect the palette in the area adjacent to the project.

f) Private pool areas should be located out of view of streetscape areas to the extent possible.

g) Vegetation around private pools should be evergreen with minimal litter, and not contain species that attract bees.

h) Service and delivery areas should be carefully located out of view of public use areas and/or provided with adequate space for landscape screening.

i) Commercial buildings adjacent to Stockmen's Park should be designed to allow for outdoor seating areas and/or displays on the side of the building that faces the park.

Landscape features, paving, and site furnishings should be designed as integral parts of the overall Downtown Concept Plan

Corner sites should locate primary entries at the intersection, and incorporate detailed pedestrian scale elements into the entry design

C. Frontage Zones

The street setback area within private property should include a welcoming Frontage Zone to the public that ties in visually with the streetscape improvements.

a) Incorporate pedestrian amenities and elements that invite residents and visitors to relax and enjoy the streetscape ambiance.

b) Patio and outdoor seating areas are encouraged within the Frontage Zone on private property and should be staggered where feasible with the public seating locations.

1. Residential Frontage Zones

a) Balconies and patios are suggested along the residential frontage zone to encourage interaction and a strong relationship to the adjacent public space.

b) Paving in residential frontages is recommended to be visually distinct from adjacent sidewalk paving to distinguish the private and public areas.

c) Comfortable pedestrian amenities that encourage outdoor use should be utilized in residential frontage areas.

Example of low walls at patio along a residential frontage which facilitate social interaction

Example of balconies and patios creating a relationship with the public space

Example of a welcoming seating area that encourages outdoor use in the residential frontage

2. Commercial Frontage Zones

a) The Commercial Frontage Zone should provide paving that blends or mimics the adjacent sidewalk paving by incorporating the same scoring pattern or similar materials to create the illusion of a wider sidewalk.

b) Consider alternatives to fencing at commercial frontage areas such as a bar with stools along the seating area, or landscape planters.

c) In addition to the pedestrian elements suggested in Chapter 4 for Paseo and Plaza areas, consider utilizing furnishings that reflect the local wineries, history and/or agriculture uses.

d) Comfortable seating options and umbrellas that help create a relaxed atmosphere and invite visitors to sit and enjoy the streetscape are encouraged along the commercial frontage.

Examples of bar and stools placed along the edge of the commercial frontage zone

Examples of furnishings that help create the historic atmosphere of the Downtown Concept Plan

Examples of outdoor dining areas within the commercial frontage zone

D. Private Gathering Areas

Private gathering areas are encouraged and should include pedestrian and amenities such as seating and trash receptacles. These gathering areas should be comfortable and welcoming for pedestrians to encourage outdoor use.

a) Where appropriate, incorporate pedestrian amenities listed in Paseos and Plazas in Chapter 4.

b) The back of buildings or blank walls should not define a private outdoor space. The edges of private outdoor spaces should be defined by:

- Common walkways and building frontages with active uses
- Fences, walls, landscaping, and other similar features

c) Consider the use of decorative lighting and outdoor fireplaces or fire pits for evening gatherings.

d) Durable and slip resistant paving should be used in gathering areas.

e) Gathering areas should have direct access to adjacent building entrances and shall not block a building entrance or path leading to a building entrance.

f) Private outdoor gathering spaces on adjacent sites or buildings are encouraged to include connections or be combined to create larger and more meaningful outdoor spaces.

Consider the use of outdoor fireplaces or fire pits for evening gatherings

Pedestrian gathering area entrances should be highlighted with vertical elements such as trellises and tall planters.

Gathering areas adjacent to roadways should use elements to block noise such as fountains

E. Fences and Walls

Fences and walls are a key element in creating the visual character of the Downtown Concept Plan area and should be carefully designed and located. Fencing, walls and gates should be designed to complement the adjacent architecture and not detract from the neighborhood character.

a) Materials and design elements for fences, walls and gates are suggested to draw from the black iron work and bricks used in the historic Blacksmith Square.

b) Fence, wall, and gate heights should not exceed a height of 40 inches.

c) Both sides of all perimeter walls or fences should be architecturally treated. Fences and walls with alternating panels or a decorative material on both sides is preferred.

d) Fences and walls shall have an articulated design, which can be created by having regularly spaced posts, varying the height, and by using different materials.

e) Long expanses of fence or wall surfaces should be offset and architecturally designed to prevent monotony. Landscape pockets should be provided in these offset areas.

f) Consider incorporating custom decorative elements into the fence, wall, and gate design that highlight the culture and history of Livermore.

g) Decorative caps and ornamental gates are suggested to enhance the character and design of the walls and fencing.

h) The use of decorative pilasters in key locations along fencing and walls is encouraged, especially at shifts in direction and at gates and points of entry. Pilasters should match the adjacent architecture and consist of materials such as:

- Plaster and stucco
- Concrete masonry
- Natural stone or brick
- Tile insets
- Light fixtures

Long expanses of fence or wall surfaces should be off set and architecturally designed to prevent monotony.

Consider incorporating custom decorative elements into the fence, wall, and gate designs that highlight the culture and history of Livermore

1. FENCING

Fencing should have an open character and be designed with a low level of opacity to maintain an open feeling while providing some level of privacy.

a) Fences and gates should be made of one or more of the following materials:

- Metal and wrought iron
- Concrete formed wood
- Wood
- Other materials of similar quality, durability, and character to the above

b) Metal fencing used in conjunction with low walls is suggested.

c) Solid fencing should be used only where needed for privacy and screening.

- Where privacy is needed, consider partial screening with an open upper section
- Agricultural styles are suggested for wood gates and fencing, such as "x" crossing rails
- Consider the use of heavy timbers, reclaimed wood, and varying the width of railings

d) Chain link, barbed wire, and razor wire fencing is not recommended.

Examples of metal and wrought iron fencing

Example of an agricultural style wood gate and fencing

Example of concrete formed wood fence with pilasters

Example of solid fencing with a varying rail width

2. WALLS

Walls pertain to site walls, raised planters, seat walls, and retaining walls.

a) Walls should be treated with an anti-graffiti coating and utilize skate deterrents where needed.

b) White and light colors are suggested for walls.

c) Walls should be made of one or more of the following materials:

- Textured block
- Concrete with reveals
- Stone
- Brick
- Stucco

d) Decorative elements such as a base treatment is recommended. Consider the use of natural materials such as

- Imprints and insets of historical elements
- Natural materials such as rock, brick, and terra cotta
- Tile insets

White and light colors are suggested for walls

Example of split-face textured block

Walls should utilize natural materials such as brick

Stucco or concrete walls with reveals are encouraged

Decorative insets such as tile are recommended

APPENDIX A
MASTER PLANT LIST

The Master Plant List is a recommendation of trees, shrubs and groundcover for the Downtown Concept Plan area. Many of the species listed are existing species currently present within the Downtown and included in the City's Planting Guide in Landscape Standard Details L-18A to L-22.

The Master Plant List is not intended to be a fixed list. Due to the ever-changing nursery trade, some plants on the Master Plant List will become unavailable and new species and hybrids will be introduced. The landscape architect shall provide guidance material affirming compliance when selecting plants not on the list.

a) Vegetation in the Downtown Concept Plan area should be selected from the Master Plant List. Additional plants may be approved for use if they meet the criteria noted below:

- Drought tolerance
- Appropriateness of size and form for the use area
- Overall attractiveness
- Compatibility with other plants from the Master Plant List
- Non-invasive species as listed by the California Invasive Plant Council

Master Plant List - Trees

Street Trees		DESCRIPTION				HEIGHT			SPACING		
Botanical Name	Common Name	Evergreen	Shade Tolerant	Low Water Use	Accent Species	20' to 30'	30' to 40'	40' to 60'	20' to 30' OC	30' to 40' OC	40' to 50' OC
Acer buergerianum	Trident Maple					x			x		
Celtis sinensis	Chinese Hackberry			x				x		x	
Chitalpa tashkentensis	Chitalpa			x	x		x			x	
Elaeocarpus decipiens	Japanese Blueberry Tree	x	x				x		x		
Geijera parviflora	Australian Willow	x				x			x		
Handroanthus heptaphyllus	Pink Trumpet Tree				x		x			x	
Koelreuteria paniculata	Golden Rain Tree						x			x	
Lagerstroemia species	Crape Myrtle			x	x	x			x		
Laurus nobilis 'Saratoga'	Bay Laurel	x				x			x		
Pistacia chinensis	Chinese Pistache			x			x			x	
Podocarpus macrophyllus	Southern Yew	x						x	x		
Prunus caroliniana 'Bright N Tight'	Carolina Laurel	x	x	x			x		x		
Pyrus calleryana 'New Bradford'	Callery Pear				x			x			x
Ulmus parvifolia	Drake's Chinese Elm	x		x			x				x
Zelkova serrata	Sawleaf Zelkova							x			x

Master Plant List - Trees

Park & Paseo Trees		DESCRIPTION				HEIGHT			SPACING		
Botanical Name	Common Name	Evergreen	Shade Tolerant	Low Water Use	Accent Species	10' to 30'	30' to 40'	40' to 60'	10' to 30' OC	30' to 40' OC	40' to 50' OC
Acer rubrum 'Armstrong'	Columnar Red Maple		x		x			x	x		
Albizia julibrissin	Silk Tree			x	x	x			x		
Arbutus 'Marina'	Madrone	x		x				x		x	
Arbutus menziesii	Pacific Madrone	x		x				x			x
Arbutus unedo	Strawberry Tree	x		x		x			x		
Cercis canadensis	Eastern Redbud			x	x		x			x	
Cercis occidentalis	Western Redbud			x	x	x			x		
Chionanthus retusus	Chinese Fringetree					x			x		
Chitalpa tashkentensis	Chitalpa			x	x		x			x	
Cinnamomum camphora	Camphor Tree	x						x			x
Cornus kousa	Kousa Dogwood				x	x			x		
Cornus sericea	Red Twig Dogwood				x	x			x		
Cotinus coggygria 'Purpureus'	Smoke Tree			x	x	x			x		
Ginkgo biloba	Maidenhair Tree							x		x	
Koelreuteria paniculata	Goldenrain Tree						x			x	
Lagerstroemia species	Crape Myrtle			x	x	x			x		
Liquidambar styraciflua 'Festival'	Festival Sweet Gum							x		x	
Magnolia grandiflora 'Little Gem'	Dwarf Southern Magnolia	x				x			x		
Pistacia chinensis	Chinese Pistache			x			x			x	
Platanus acerifolia 'Columbia'	London Plane Tree				x			x		x	
Prunus species	Flowering Cherry				x	x			x		
Quercus agrifolia	Coast Live Oak	x		x				x			
Robinia × ambigua 'Idahoensis'	Idaho Locust			x	x			x		x	
Tristania conferta	Brisbane Box	x					x		x		
Zelkova serrata	Sawleaf Zelkova							x			x

Master Plant List - Shrubs

SHRUBS & GROUNDCOVER		DESCRIPTION				HEIGHT			SPACING			PLANTER		
Botanical Name	Common Name	Perennial	Shade Tolerant	Low Water Use	Accent Species	Less than 3'	3' to 5'	5' or more	Less than 3'	3' to 5'	5' or more	Streetscape	Storm Water	Screening
Acanthus mollis	Bear's Breech		x				x			x				
Agave attenuata	Fox Tail Agave			x				x			x	x		
Agave desmettiana	Smooth Agave			x			x			x				
Ajuga reptans	Carpet Bugle		x			x			x			x		
Anigozanthos flavidus	Kangaroo Paw	x		x			x			x		x		
Asparagus densiflorus 'Meyers'	Foxtail Fern	x	x			x				x		x		
Clivia miniata	Clivia	x	x			x			x			x		
Correa species	Australian Fuchsia		x	x			Varies			Varies		x		
Dietes grandiflora	Fortnight Lily	x	x	x			x		x			x		
Dymondia margaretae	Silver Carpet			x		x			x			x		
Euonymus japonicus 'Microphyllus'	Evergreen Euonymus		x	x		x			x			x		
Fatsia japonica	Japanese Aralia		x					x			x			
Fragaria species	Ornamental Strawberry	x				x			x			x		
Hebe 'Variegata'	Variegated Hebe					x			x			x		
Lomandra longifolia 'Breeze'	Dwarf Mat Rush	x	x	x		x				x		x		
Myoporum parvifolium 'Putah Creek'	Myoporum			x		x					x			
Myrtus communis ' Compacta'	Dwarf Myrtle			x		x			x			x		
Nephrolepis cordifolia	Southern Sword Fern	x	x			x			x			x		
Ophiopogon japonicus	Mondo Grass	x	x			x			x			x		
Pachysandra terminalis	Japanese Spurge		x			x			x			x		
Phormium hybrids	New Zealand Flax	x		x			Varies			Varies		x		
Polystichum munitum	Western Sword Fern	x	x				x			x		x		
Rhaphiolepis indica 'Ballerina'	Ballerina Indian Hawthorn		x	x		x				x		x		
Sarcococca species	Sweetbox		x	x			x			x		x		
Senecio mandraliscae	Kleinia			x		x			x			x		
Teucrium cossonii	Germander	x		x	x	x			x			x		
Thymus species	Thyme	x		x		x			x			x		
Westringia fruicosa	Dwarf Coast Rosemary			x		x			x			x		

Master Plant List - Shrubs

ACCENT SHRUBS & GROUNDCOVER		DESCRIPTION				HEIGHT			SPACING			PLANTER		
Botanical Name	Common Name	Perennial	Shade Tolerant	Low Water Use	Accent Species	Less than 3'	3' to 5'	5' or more	Less than 3'	3' to 5'	5' or more	Streetscape	Storm Water	Screening
Achillea millefolium	Common Yarrow	x		x	x	x			x			x		
Armeria maritima 'Alba'	Sea Thrift	x			x	x			x			x		
Calamagrostis 'Karl Foerster'	Reed Grass				x		x		x			x		
Coprosma kirkii 'Variegata'	Creeping Coprosma			x	x	x					x	x		
Erigeron karvinskianus	Mexican Daisy	x		x	x	x			x			x		
Euphorbia charcias 'Bruces Dwarf'	Bruce's Dwarf Euphorbia	x		x	x	x			x			x		
Gazania species	Gazania				x	x			x			x		
Helictotrichon sempervirens	Blue Oat Grass			x		x			x			x		
Hemerocallis species	Daylily	x			x	x			x			x		
Hesperaloe parviflora	Red Yucca			x	x		x			x		x		
Heuchera species	Coral Bells	x	x		x	x			x			x		
Kniphofia uvaria	Red-hot Poker	x		x	x		x		x			x		
Lavandula species	Spanish Lavender	x		x	x	x			x			x		
Lessingia filaginifolia 'Silver Carpet'	California Aster	x		x	x	x					x			
Liriope muscari	Big Blue Lily Turf	x	x		x	x			x			x		
Muhlenbergia capillaris	Pink Muhly			x	x	x			x			x		
Nepeta species	Catmint	x		x	x	x			x			x		
Pennisetum alopecuroides 'Little Bunny'	Fountain Grass			x	x	x			x			x		
Penstemon species	Bearded tongue	x		x	x	x			x			x		
Perovskia atriplicifolia	Russian Sage	x		x	x		x			x		x		
Rosa species	Rose				x		Varies			Varies		x		
Salvia species	Sage	x		x	x		Varies			Varies		x		
Scaevola 'Mauve Clusters'	Fairy Fan Flower	x		x	x	x				x		x		
Stachys byzantina	Lambs ear	x	x	x	x	x				x		x		
Strelitzia reginae	Bird of Paradise				x		x			x		x		
Teucrium chamaedrys	Germander	x		x	x	x			x			x		
Zauschneria californica	California Fuchsia	x			x		x			x		x		

Master Plant List - Shrubs

SCREENING SHRUBS, VINES & ESPALIERS		DESCRIPTION				HEIGHT			SPACING			PLANTER		
Botanical Name	Common Name	Perennial	Shade Tolerant	Low Water Use	Accent Species	Less than 3'	3' to 5'	5' or more	Less than 3'	3' to 5'	5' or more	Streetscape	Storm Water	Screening
Arctostaphylos species	Manzanita			x			Varies			Varies		x		x
Berberis species	Barberry						Varies			Varies				x
Bougainvillea species	Bougainvillea			x	x		Varies			Varies				x
Callistemon 'Little John'	Dwarf Bottlebrush			x			x			x		x		x
Camellia species	Camellia		x		x		Varies			Varies				x
Ceanothus species	California Wild Lilac			x	x		Varies			Varies		x		x
Cistus species	Rockrose			x	x		Varies			Varies		x		x
Distictis 'Rivers'	Royal Trumpet Vine				x		Varies			Varies				x
Dodonaea viscosa	Hop Bush			x				x			x			x
Escallonia species	Escallonia						Varies			Varies				x
Ficus pumila	Creeping Fig						Varies			Varies				x
Heteromeles arbutifolia	Toyon			x				x			x			x
Juniperus species	Juniper			x			Varies			Varies				x
Leptospermum species	Tea Tree			x				x			x			x
Leucadendron species	Leucadendron			x			Varies			Varies				x
Myrtus communis	Myrtle			x				x			x			x
Pittosporum crassifolium	Karo							x			x			x
Pittosporum tobira 'Variegata'	Tobira			x			x			x		x		x
Podocarpus macrophyllus 'Maki'	Yew Pine							x		x				x
Rhamnus species	Rhamnus			x			Varies			Varies				x
Rhaphiolepis indica 'Clara'	Indian Hawthorn		x	x			x			x		x		x
Rhaphiolepis umbellata 'Minor'	Dwarf Yedda Hawthorn			x				x	x					x
Rhus ovata	Sumac			x				x			x			x
Rosmarinus species	Rosemary			x			Varies			Varies		x		x
Westringia fruicosa	Coast Rosemary			x				x			x			x

Master Plant List- Shrubs

STORM WATER SHRUBS & GROUNDCOVER		DESCRIPTION				HEIGHT			SPACING			PLANTER		
Botanical Name	Common Name	Perennial	Shade Tolerant	Low Water Use	Accent Species	Less than 3'	3' to 5'	5' or more	Less than 3'	3' to 5'	5' or more	Streetscape	Storm Water	Screening
Carex divulsa	Grey Sedge	x		x		x			x			x	x	
Carex tumulicola	Berkeley Sedge	x		x		x			x			x	x	
Chondropetalum elephantinum	Large Cape Rush			x			x			x		x	x	
Chondropetalum tectorum	Small Cape Rush			x		x			x			x	x	
Deschampsia cespitosa	Tufted Hair Grass		x	x		x			x			x	x	
Eriogonum fasciculatum	Flattop Buckwheat			x		x			x			x	x	
Festuca species	Festuca			x		x			x			x	x	
Iris douglasiana	Douglas Iris	x		x	x	x			x			x	x	
Juncus patens	California Gray Rush	x		x		x			x			x	x	
Leymus condensatus 'Canyon Prince'	Giant Rye Grass			x		x				x		x	x	
Mahonia repens	Creeping Mahonia		x	x		x				x		x	x	
Mimulus aurantiacus	Common Monkeyflower	x		x	x		x			x		x	x	
Mimulus cardinalis	Scarlet monkeyflower	x	x	x	x	x			x			x	x	
Muhlenbergia rigens	Deer Grass			x			x			x		x	x	

LIVERMORE
CALIFORNIA

CITY COUNCIL GOALS & PRIORITIES WORKSHOP
WHITE PAPER 3C

DATE: February 11, 2019

TO: Honorable Mayor and City Council

SUBJECT: Downtown

EXECUTIVE SUMMARY

On January 29, 2018, at the conclusion of a yearlong public engagement process, the City Council approved the development concept for the Core Downtown Plan (Downtown Plan). Key projects in the Downtown Plan include Stockmen's Park, a boutique hotel on the southeast corner of Railroad Avenue and South Livermore Avenue, an expansion of the commercial uses around Blacksmith Square, a new L Street parking structure and additional parking facilities at I-Street, a black-box theater, a science and society center, and 130 workforce-housing units.

If Downtown continues as a City Council goal, then staff would continue to prioritize implementation of the Council's vision for the Downtown Plan. The near term objective will be to coordinate project phasing with the provision of parking during construction. The ultimate intent will be to continue developing the public and private improvements that will further enhance the downtown and meet the needs of the community, within the City's financial capacity to develop and maintain publicly funded improvements over time.

BACKGROUND

The Downtown Specific Plan, adopted in 2004, has transformed the downtown into a vibrant community and regional destination. Over the last 15 years, clear market-based land use policies, streamlined project review processes, infrastructure improvements along First Street, and downtown parking improvements have led to the creation of an active downtown district.

At the City Council's Goals and Priorities Workshop on February 15, 2017, the City Council identified the Downtown as a Council Priority. In April 2017, the Council appointed a Downtown Steering Committee made up of community stakeholders to develop a public engagement plan to help the City Council determine a final plan for the City-owned downtown catalyst sites.

An extensive engagement effort gathered community feedback on comment cards, workbooks, YourLivermore.org, online engagement tools, and the Priority Ranking Worksheets. The Priority Ranking Worksheets identified parking, community character, and open space as the highest priorities. Based upon the community feedback and Key Learnings adopted by the Downtown Steering Committee, the City Council approved the Downtown Plan.

The Council's approval of the Downtown Plan set the stage for approving the following entitlements:

- Downtown Specific Plan Amendments to designate distinct subareas for the uses in the Downtown Plan and allow a four-story hotel where the existing Specific Plan allows a three-story hotel (Resolution 2018-154).

- Design Review and Disposition and Development Agreement for the boutique hotel (Resolutions 2018-155 and 2018-156).

- Design Review for the L Street Parking Structure, surface parking, and the east/west street (Veteran's Way) (Resolution 2018-157).

- Design Review for Stockmen's Park and Landscape Design Guidelines for the Downtown Plan (Resolution 2015-167).

- Disposition and Development Agreement for the new commercial uses around Blacksmith Square and Stockmen's Park (Resolution 2018-185).

- Exclusive Negotiating Rights Agreements were also approved with the Livermore Shakespeare Festival and the Science and Society Center for new cultural facilities around Stockmen's Park.

- Disposition and Development Agreement for new workforce housing on the northwest corner of the downtown site.

On November 26, 2018, the City Council adopted Resolution 2018-200 accepting certification by the City Clerk as to the sufficiency of signatures on a referendum petition protesting portions of the Downtown Specific Plan Amendments for Chapter 5 (Development Standards - Core), Chapter 7 (Circulation and Transportation), and Chapter 8 (Parking Standards).

The Council's subsequent adoption of Resolution 2018-201 repealed the Specific Plan Amendments listed in the referendum petition, and confirmed that the remaining amendments to the Downtown Specific Plan approved by Resolution No. 2018-154 remain in effect. The primary result of adopting the referendum is that the approval for the downtown hotel will need to be modified to reduce the height from four stories to three.

POLICY CONSIDERATIONS

If the Downtown were selected as a goal by the City Council, staff would prioritize work on the following Downtown Plan projects:

- Specific Plan Amendments to the Downtown Specific Plan for items outside the intent of the referendum, including removal of references to BART and a regional performing arts theater, and other clean-up revisions to make the document internally consistent
- Disposition and Development Agreement Amendment and Design Review Amendment for a three-story hotel
- Design Review and construction of the I-Street Parking Structure
- Acquisition, design, and construction of additional downtown parking opportunity sites
- Design Review for the new commercial buildings around Blacksmith Square and Stockmen's Park
- Disposition and Development Agreements for the Black Box Theater and Science and Society Center
- Design Review and construction of the Livermore Valley Center Compactor Facility
- Finish construction of Veterans Way
- Remediation, Design Review, and construction of Livermorium Plaza
- Construction of Stockmen's Park
- Continue to engage with property and business owners regarding interest in adding flexible use areas to the backs of businesses on the north side of First Street
- Continue assessing existing lighting levels in the Downtown area and implement new lighting standards within and around the outside edges of the Downtown Core

Issue Areas

The following are issue areas associated with implementation of the Downtown goal.

Parking:

- Monitor the occupancy of temporary and permanent parking facilities to gauge demand
- Ensure adequate temporary parking facilities during construction of the Downtown Plan components
- Design and construct permanent parking facilities to meet the parking demand of existing and planned uses, including parking structures at L Street and I Street, and other parking improvements
- Provide and disperse accessible parking spaces throughout the Downtown Plan area and near existing uses along First Street

Circulation:

- Evaluate existing and future traffic circulation conditions and coordinate improvements to promote pedestrian connectivity in the downtown core and efficient movement of vehicular traffic through major streets
- Design and construct improvements to the Railroad Avenue parking structure to increase the efficiency of the pedestrian crossing from the structure across Railroad Avenue

Public Open Space:

- Finalize plans and develop construction drawings for future facilities (Stockmen's Park, Livermorium Plaza, linear green) to ensure that community needs are met through these new public use areas
- Carefully consider the size and design of open space and surrounding uses to ensure open space areas are used appropriately, are safe during the day and at night, and do not attract unwanted activity

Lighting Improvements:

- Continue work on lighting improvements to Second, Third, J, K, McLeod, and other downtown streets, including the evaluation of both street light improvements and decorative lights

Financing & Public/Private Partnerships:

- Identify the combination of public and private resources necessary to construct, operate and maintain the Downtown Plan
- Ensure City resources are utilized appropriately and that the construction, operation, and long term maintenance costs of any public facilities are within the City's financial capacity

Timing:

- Develop and maintain a construction phasing schedule in order to inform the community, provide adequate parking, and ensure fiscal viability

COSTS

This project requires a variety of staff resources from Administrative Services, City Attorney's Office, Community Development, Public Works and others. There is a range of staff members that spend varying portions of their time on this project on a daily and weekly basis. In addition, community engagement activities often require mobilization of significant staff resources. Time spent by regular full time staff on this project is partially backfilled by contract staff to ensure other daily project demands are met. Total average time spent is between six and eight existing FTE's.

Costs for the entire downtown improvement project are expected to exceed $60 million, with the majority of these costs going to public parking improvements. Staff will be working on design efficiencies and evaluating construction timing to reduce costs to the extent feasible and to ensure that each phase of construction is within the City's financial capacity at that time. Annual operational costs for new public facilities are expected to be in the range of $350,000 to $400,000.

CONCLUSION

The Downtown Specific Plan is a guide to revitalization, and its implementation has achieved remarkable success in returning vibrant activity and community pride to the downtown. To continue revitalization efforts and to further enhance Livermore's unique character and quality of life, as represented by downtown district, the Council may choose to consider continuing the goal of implementing the Downtown Specific Plan. If it is not picked as a goal, implementation will proceed at a slower rate.

IN THE CITY COUNCIL OF THE CITY OF LIVERMORE, CALIFORNIA

A RESOLUTION APPROVING SPECIFIC PLAN AMENDMENT 19-001

The City initiated an application for Specific Plan Amendment (SPPA) 19-001 to consider Downtown Specific Plan Amendments to implement the Downtown Plan approved by City Council on January 28, 2018.

On February 18, 2020, the Planning Commission held a public hearing, reviewed the proposed applications, and made the applicable findings. The Planning Commission, by its Resolution No. 08-20 (Exhibit A), recommended approval of the applications.

The City Council held a public hearing on May 11, 2020, and considered the pertinent documents and testimony received.

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

1. The proposed amendments to the Downtown Specific Plan (SPPA19-001) are consistent with the Addendum to the Downtown Specific Plan 2009 Subsequent Environmental Impact Report that was adopted on May 13, 2019 by Resolution No. 2019-064, and directs staff to file a Notice of Determination consistent with the provisions of the California Environmental Quality Act.

2. The City Council accepts the recommendations by staff and the Planning Commission to approve Specific Plan Amendment (SPPA) 19-001, and is satisfied with the findings of the Planning Commission contained in its Resolution No. 08-20, attached hereto as Exhibit A, which findings are hereby adopted by the City Council as its own.

3. The proposed amendments to the Downtown Specific Plan (SPPA19-001), attached hereto as Exhibit B, are consistent with the General Plan.

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, in Livermore, California.

On motion of Vice Mayor Woerner, seconded by Council Member Munro, the foregoing resolution was passed and adopted on May 11, 2020, by the following vote:

AYES:	Council Members Carling, Coomber, Munro, Vice Mayor Woerner, Mayor Marchand
NOES:	None
ABSENT:	None
ABSTAIN:	None

ATTEST:

Marie Weber
City Clerk

APPROVED AS TO FORM:

Jason Alcala
City Attorney

Date: May 14, 2020

Exhibit A – Planning Commission Resolution 08-20
Exhibit B – Downtown Specific Plan Amendments

RESOLUTION NO. 2020-062

IN THE PLANNING COMMISSION OF THE CITY OF LIVERMORE STATE OF CALIFORNIA

A RESOLUTION RECOMMENDING APPROVAL OF

Specific Plan Amendment (SPPA) 19-001

The City initiated an application for Specific Plan Amendment 19-001 to consider Downtown Specific Plan Amendments ("the Amendments") to enable the implementation of the Downtown Core redevelopment plan approve by City Council on January 29, 2018.

A Public Hearing Notice was published in a newspaper of local circulation.

The Planning Commission held a meeting on February 18, 2020, 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 the Amendments were analyzed by and are consistent with the Addendum to the Downtown Specific Plan 2009 Supplemental Environmental Impact Report that was adopted by City Council on May 13, 2019 by Resolution 2019-064.

BE IT FURTHER RESOLVED by the Planning Commission of the City of Livermore that the Amendments, the text of which is shown in the attached Exhibit A, is consistent with the Livermore General Plan and hereby 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 Anderson, seconded by Planning Commissioner Bonanno, the foregoing Resolution was adopted at the Planning Commission meeting of February 18, 2020, by the following vote:

AYES: ANDERSON, BJORKLUND, BONANNO, STEIN.
NOES: NONE.
ABSENT: NONE.
RECUSED: FAGUNDES.

Exhibit A – Downtown Specific Plan Amendments

Bryan Fagundes, Chairperson

by Steve Stewart, Planning Manager
Secretary to the Planning Commission

Exhibit A

Chapter 5 – Development Standards - Core

Proposed Changes

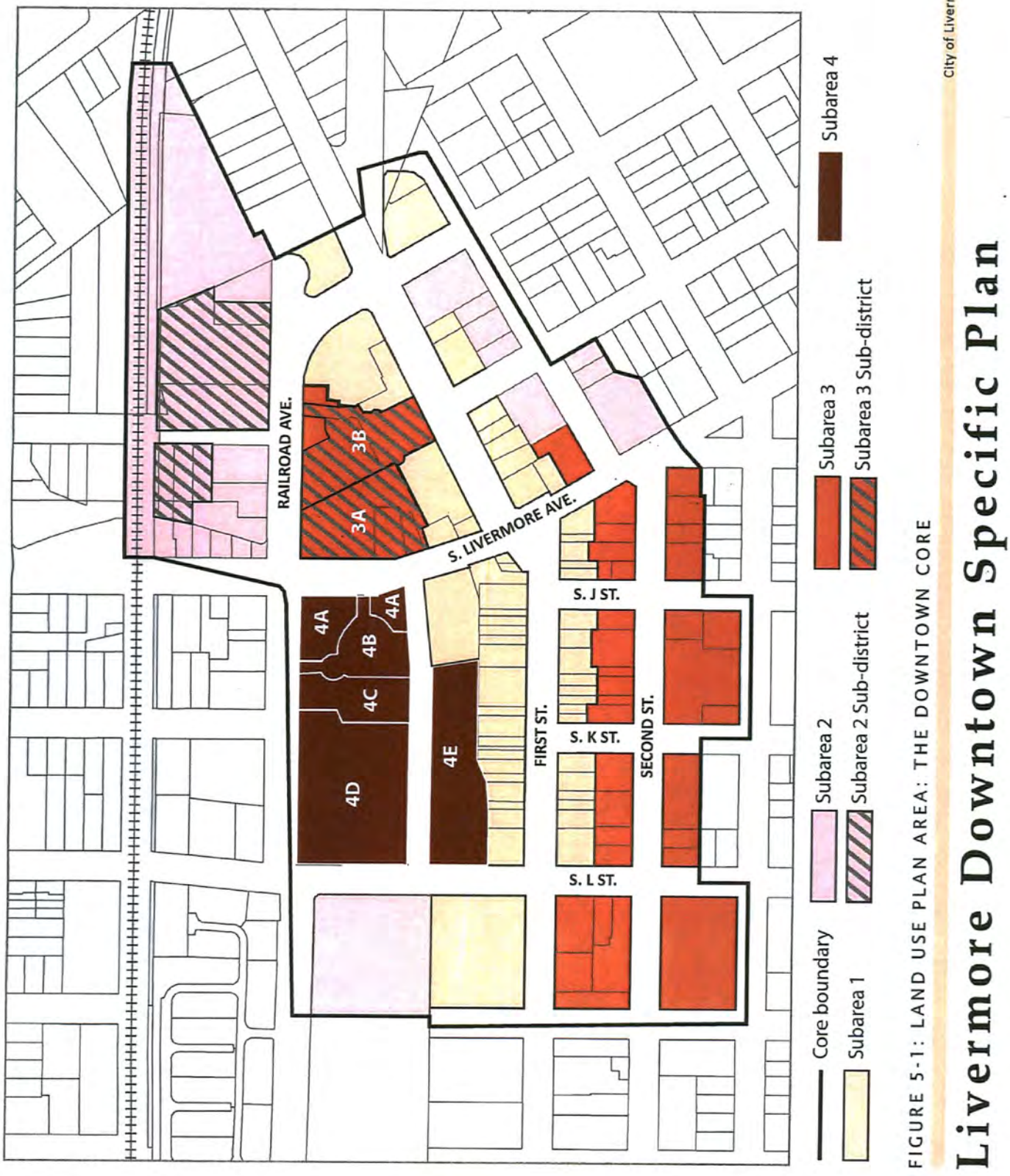


FIGURE 5-1: LAND USE PLAN AREA: THE DOWNTOWN CORE

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

~~**2.2.4 Subarea 2 – Special Condition Sub-district** (South L Street)~~
~~(Two parcels east of South L Street including 50, 62, 74 and 90 South L Street)~~

~~Following uses are permitted on ground and upper levels:~~
~~A. Performing arts, civic, cultural, and public recreation facilities.~~
~~B. Publicly accessible parking facilities including structured parking~~
~~a. May be wrapped with commercial or residential uses along existing street frontages to a depth of 40 feet.~~
~~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.~~

~~Following uses are permitted on ground and upper levels upon granting of a Conditional Use Permit:~~
~~A. Public halls, community recreation centers, and meeting facilities~~
~~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 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;

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.

2.4 Subarea 4

2.4.1 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; 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. 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.

2.4.2 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.

2.4.3 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

2.4.4 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.

2.4.5 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) 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.

~~A.~~B. Outside Subarea 4 – Special Condition Sub-district – A, and subject to the exceptions established in section 4.1.D, b~~B~~uildings 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.

~~B.~~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.

~~C.~~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.

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 does not extend for more than 60% of the site frontage along L Street, Railroad Avenue and South Livermore Avenue.
   ~~d)~~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 of forty-five (45) feet. Towers and architectural features may have a maximum height of sixty-five (65) feet. The maximum height standard shall not apply to rooftop finials on the parking structure.
   ~~e)~~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.
   ~~f)~~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.

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.
   ~~1.~~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.

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.

EXHIBIT D
ATTACHMENT 2

Chapter 7 – Circulation and Transportation

Proposed Changes

EXHIBIT D

ATTACHMENT 2

- New Streets in the Lucky's Megablock- To create better connections to the Downtown Core, redevelopment of the former Lucky's site at First Street, L Street, Railroad Avenue and Livermore Avenue will be required to provide ~~new north-south and~~an east-west ~~connections~~ street through the site connecting South L Street and South Livermore Avenue. ~~This will include the extension of K Street into the site from the north, and a new east-west street bisecting the site.~~ A service road will be required behind the existing buildings on First Street, with access from South L Street.

- I Street Connection through the LVC Block- A new pedestrian or vehicular connection aligning with I Street should be provided through the site bounded by First Street, Livermore Avenue, Railroad Avenue and Maple Street (proposed for the Livermore Valley Center). This new connection will link new development on this site and throughout the Core to parking and transit connections along Railroad Avenue at I Street

- ~~Realigned Connection along Second Street at Livermore Avenue.~~

Additionally, new development will be required to provide streets that align with and connect to existing streets, to contribute to the fine-grained street network envisioned for Downtown. Developments will be required to match the typical block size of three-hundred feet in width by two-hundred feet in depth, or no larger than four-hundred feet in width by three-hundred feet in depth, where feasible. Recommendations for new streets to serve this new development are shown on Figure 7-4, Proposed Street Network, on page 8.

Major Planned and Programmed Roadway Improvements and Modifications

A key element of the Specific Plan for Downtown Livermore includes the narrowing of First Street from its current four-lane configuration to a two-lane configuration from P Street to Railroad/Maple Street with left-turn lanes at major intersections. Within the Downtown Core, between M Street and Livermore Avenue, this configuration will include one lane in each direction for moving traffic, left turn lanes at selected intersections and diagonal parking/flex zones adjacent to the traffic lane in the new two-lane section. This will significantly reduce the roadway capacity of that portion of First Street and will result in the redistribution of traffic volume to other parallel and connecting roadways. Some of the traffic that currently uses First Street will use Railroad, Second, Third and Fourth Streets, while some is expected to reroute entirely outside of Downtown to other facilities such as Isabel Avenue or even the 1-580 freeway.

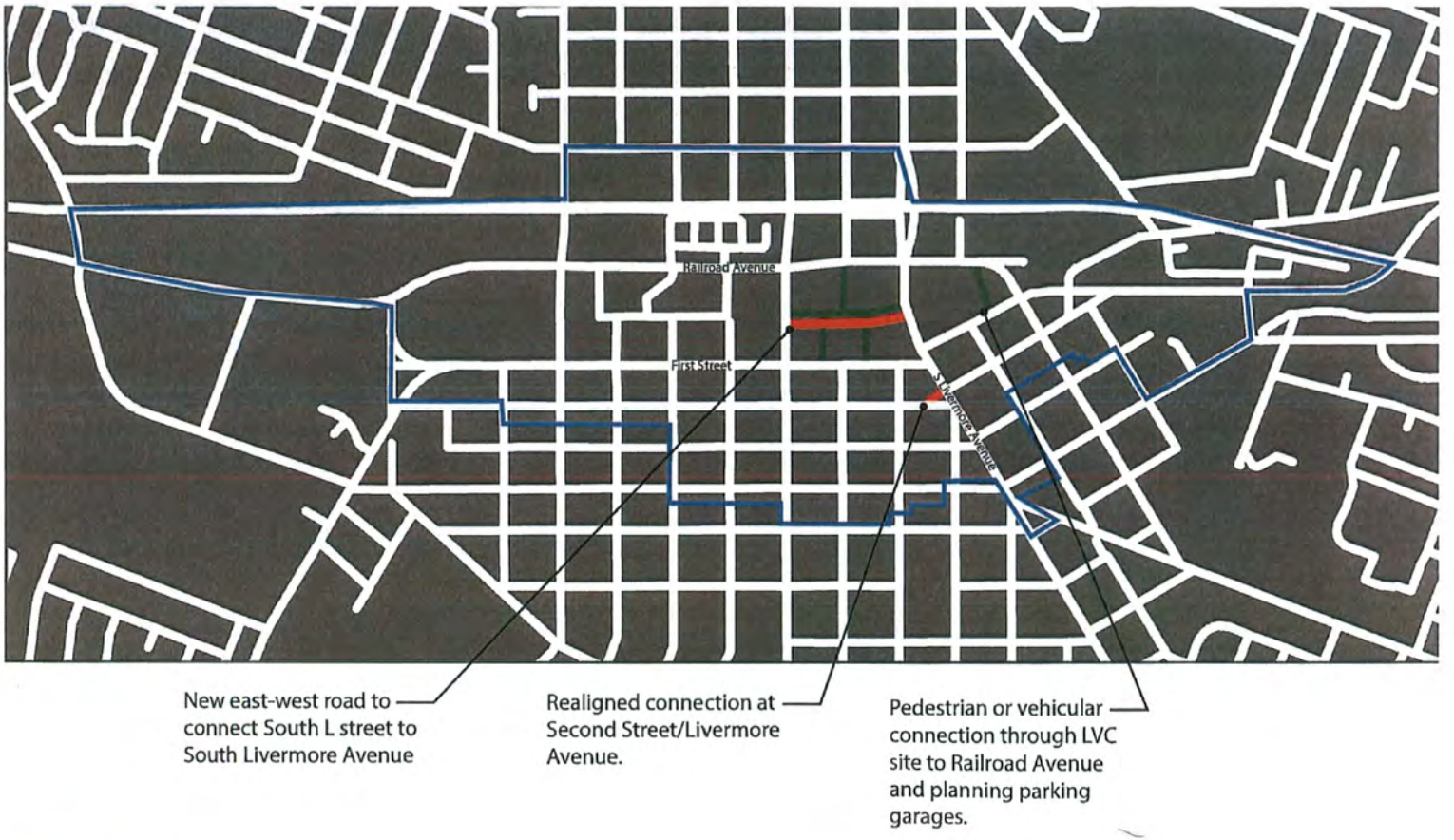


FIGURE 7-3: MINIMUM NEW STREET NETWORK

Livermore Downtown Specific Plan
City of Livermore
FIGURE 7-4: PROPOSED TYPICAL STREET NETWORK
Railroad Avenue realignment to facilitate traffic circulation in the Downtown.
New streets should align and connect with the existing City network to improve access and provide frequent connections throughout the Downtown.
New streets accomodating vehicular or pedestrian access to provide connections to the proposed multi-use trail and other open spaces.
New blocks should match the typical city block size of 300' x 200'. In no case should blocks be greater than 400' x 300'.
New Streets
New Pedestrian Paths
Railroad Avenue
First Street
Livermore Avenue

- Rights-of-Way- Right-of-way widths shall be twenty-six (26) feet for one-way streets, and thirty-four (34) feet for two-way streets. This assumes no parking either side.

- Curb-to-Curb- Curb-to-curb widths shall be sixteen (16) feet for one-way streets, and twenty-four (24) feet for two-way streets. This assumes no parking either side.

- Travel Lanes- One twelve (12) foot travel lane must be provided in each direction.

- Corner Curb Return Radius- Twenty (20) feet minimum, to be determined based on street geometry and Fire Department requirements.

- Street Trees -The edge of the alley must be planted or landscaped with groundcover and low shrubs where possible. Adjacent to residential properties, trees are encouraged.

- Parking -Allowed with an additional eight (8) feet of right-of-way and paved width per side.

- Street Lights- Street lights comparable with those required on public rights-of-way must be provided, at a minimum of every one hundred (100) feet on center. Lighting fixtures may be freestanding, or may be attached to garage structures.
- The east-west street through the Lucky's site should have one approximately eleven (11) foot travel lane in each direction with diagonal parking on the north side of the street. Trees shall be planted between the diagonal parking stalls at a minimum frequency of one tree every four stalls.

Pedestrian Connections/Open Space

The Downtown Core is intended to be a center for the community, a kind of "living room" for Livermore. It should be accessible to the whole community, from all modes of transportation, including pedestrian movement, cycling, public transit and private automobile.

The pedestrian realm is a critical element of this accessibility. The sidewalks and streets of Downtown make up the public domain of Downtown, welcoming pedestrians to the center of their City. Downtown should offer a pedestrian-friendly environment with streets that are safe, welcoming, and pleasant to walk along. People should be able to

Chapter 8 – Parking Standards

Proposed Changes

6. Redevelopment of the Livermore Village site on the existing parking lot will remove surface parking.

Based on key findings from the parking occupancy and turnover study, public outreach efforts, and a downtown parking survey, the plan proposed a set of recommendations designed to improve parking availability in downtown Livermore, and address future changes in parking supply and demand, including the planned redevelopment of the Livermore Village site. The recommendations from this plan seek to proactively address existing and future parking challenges in a way that supports the continued success of downtown Livermore as a destination and place to live. As development of downtown Livermore continues, the City will refer to the 2014 Parking Study in conjunction with subsequent studies to maintain acceptable parking supply in downtown Livermore.

The 2018 Downtown Plan will implement several key parking strategies identified in the 2014 Parking Study. Additional strategies will be implemented over time as development occurs.

Strategy #2. Improve parking garage/lot design and safety. New surface and structured parking in the downtown core will include lighting and site design to make the spaces inviting and safe.

Strategy #4. Improve on-and off-street bicycle parking. New development in the Downtown Core will include long-term and short-term bicycle parking, in the form of lockers and racks, respectively.

Strategy #9. Provide additional parking adjacent to the I Street public parking garage. The Downtown Core redevelopment project is anticipated to construct new parking facilities (surface and/or structured parking), west of the existing parking structure.

Strategy #13. Build a public parking garage at the Livermore Village Site. The Downtown Core redevelopment includes a new five-level parking garage with approximately 500 parking spaces.

2017 Steering Committee and 2018 Downtown Plan

In April 2017, the City Council appointed a Downtown Steering Committee. The Council directed the Steering Committee to develop a public engagement program for redevelopment of City-owned sites in the Downtown Core. The Committee held a series of public meetings, considered information from experts on a variety of topics relevant to the improvement of the

City's downtown sites, and developed four land use alternatives to facilitate public dialogue and highlight the range of possibilities. The Committee also reviewed and agreed upon a public engagement plan that employed the alternatives and the Steering Committee's key learnings. The outreach process went from August through November 2017. Community participation was very strong across the various events and through the online engagement tools.

A key feature of the adopted plan is development phasing that maintains the number of existing parking within the Downtown Core during implementation of the adopted redevelopment plan. Each component of the redevelopment plan will ensure existing parking counts are maintained while also providing new parking to satisfy project-generated parking demand.

Parking Strategy for the Downtown

~~The current supply of parking is sufficient to meet daytime and evening parking demands.~~ The Downtown Core Plan anticipates the development of additional parking as the Plan builds out. There are specific parking strategies that can be implemented in the downtown to maximize parking space utilization and meet the expected future demands. Within these strategies, there are 3 objectives that should be considered:

- Ensure that the parking facilities are reasonably dispersed so drivers have options depending on their ultimate destination.
- Locate the parking facilities to intercept drivers as they enter downtown.
- Size the parking structures to be about 500 spaces to minimize the number and size of the facility entry/exit points.

The following strategies are designed to meet the estimated buildout parking demand:

1. Monitor parking supply and demand over time and provide the following or equivalent parking facilities to meet identified demands:
    - Construct a 500 space parking garage rather than 350 spaces at the Livermore Village site, adding about 150 more spaces.

- Increase on-street parking within the Livermore Village site, adding about 40 parking spaces.
- Implement angled parking on First Street between South L Street and South P Street. Optimize the parking· by limiting parcel access to and from First Street, adding about 50 parking spaces.
- Implement angled parking on Maple Street between First Street and Railroad Avenue, after realignment, adding about 10 spaces.
- Implement phase II of the Livermore Valley Center garage, adding up to 300 spaces.
- Implement additional parking facilities south of the Downtown Core area by purchasing property or partnering with private development to provide additional parking.

2. Pursue partnerships with businesses to ensure that the parking supply is open to the public after daytime business hours. A substantial number of off-street parking spaces are privately owned and operated. As the demand for these spaces increase, property owners should be encouraged to share their off-street spaces.

3. Promote valet parking operations in downtown. ~~The large number of~~Downtown restaurants, the boutique hotel, and the performing arts theater are excellent candidates for valet parking. As parking supplies become more utilized, valet parking will become a more attractive option. Valet operators can enter into agreements with businesses to use
their privately owned parking and can accommodate approximately 10% more vehicles (depending on the size of the facility) than a self-parked facility.

4. Consider utilizing time-limited and pay-parking strategies to manage employee parking behavior, increasing available parking for customers. Employees tend to use the most convenient on-street parking spaces, which forces customers to park further from their destinations. Time limited parking and pay parking strategies can become a more effective tool to manage employee parking behavior by shifting employee parking away from the downtown core, which will have a net effect of increasing parking supply 15% to 20%.

5. Provide accessible on-street parking spaces in the downtown. While there is no requirement for number and location of on-street accessible parking spaces, the city currently provides on-street accessible parking spaces at the corners of blocks. The City should continue to look for opportunities to provide accessible parking

Exhibit B

Chapter 5 – Development Standards - Core

Proposed Changes

FIGURE 5-1: LAND USE PLAN AREA: THE DOWNTOWN CORE

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

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;

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.

2.4 Subarea 4

2.4.1 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; 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. 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.

2.4.2 Subarea 4 – Special Condition Sub-district – B (Public Park)

EXHIBIT D
ATTACHMENT 2
530

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.

2.4.3 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

2.4.4 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.

2.4.5 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.

EXHIBIT D
ATTACHMENT 2

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) 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.

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 does not 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 of forty-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.

5. Setbacks

EXHIBIT D
ATTACHMENT 2

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.

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.

Chapter 7 – Circulation and Transportation

Proposed Changes

- New Streets in the Lucky's Megablock- To create better connections to the Downtown Core, redevelopment of the former Lucky's site at First Street, L Street, Railroad Avenue and Livermore Avenue will be required to provide new north-south and an east-west connections street through the site connecting South L Street and South Livermore Avenue. This will include the extension of K Street into the site from the north, and a new east-west street bisecting the site. A service road will be required behind the existing buildings on First Street, with access from South L Street.

- I Street Connection through the LVC Block- A new pedestrian or vehicular connection aligning with I Street should be provided through the site bounded by First Street, Livermore Avenue, Railroad Avenue and Maple Street (proposed for the Livermore Valley Center). This new connection will link new development on this site and throughout the Core to parking and transit connections along Railroad Avenue at I Street

- Realigned Connection along Second Street at Livermore Avenue .

Additionally , new development will be required to provide streets that align with and connect to existing streets , to contribute to the fine-grained street network envisioned for Downtown. Developments will be required to match the typical block size of three-hundred feet in width by two-hundred feet in depth, or no larger than four-hundred feet in width by three-hundred feet in depth, where feasible . Recommendations for new streets to serve this new development are shown on Figure 7-4, Proposed Street Network, on page 8.

Major Planned and Programmed Roadway Improvements and Modifications

A key element of the Specific Plan for Downtown Livermore includes the narrowing of First Street from its current four-lane configuration to a two-lane configuration from P Street to Railroad/Maple Street with left-turn lanes at major intersections . Within the Downtown Core, between M Street and Livermore Avenue , this configuration will include one lane in each direction for moving traffic , left turn lanes at selected intersections and diagonal parking/flex zones adjacent to the traffic lane in the new two-lane section. This will significantly reduce the roadway capacity of that portion of First Street and will result in the redistribution of traffic volume to other parallel and connecting roadways . Some of the traffic that currently uses First Street will use Railroad , Second , Third and Fourth Streets, while some is expected to reroute entirely outside of Downtown to other facilities such as Isabel Avenue or even the 1-580 freeway .

FIGURE 7-3: MINIMUM NEW STREET NETWORK

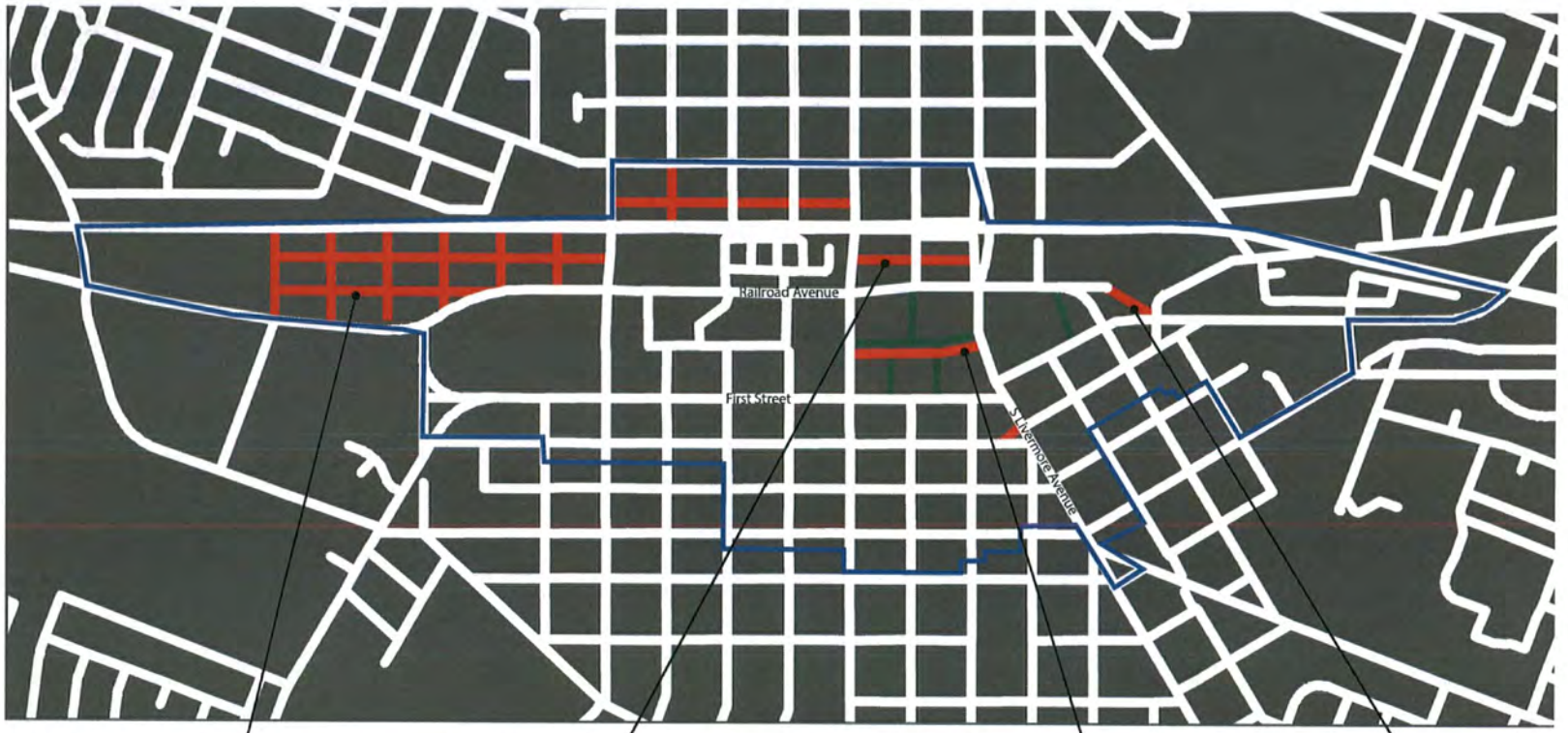


FIGURE 7-4: PROPOSED TYPICAL STREET NETWORK

- Rights-of-Way- Right-of-way widths shall be twenty-six (26) feet for one-way streets, and thirty-four (34) feet for two-way streets. This assumes no parking either side.

- Curb-to-Curb- Curb-to-curb widths shall be sixteen (16) feet for one-way streets, and twenty-four (24) feet for two-way streets. This assumes no parking either side.

- Travel Lanes- One twelve (12) foot travel lane must be provided in each direction.

- Corner Curb Return Radius- Twenty (20) feet minimum, to be determined based on street geometry and Fire Department requirements.

- Street Trees -The edge of the alley must be planted or landscaped with groundcover and low shrubs where possible. Adjacent to residential properties, trees are encouraged.

- Parking -Allowed with an additional eight (8) feet of right-of-way and paved width per side.

- Street Lights- Street lights comparable with those required on public rights-of-way must be provided, at a minimum of every one hundred (100) feet on center. Lighting fixtures may be freestanding, or may be attached to garage structures.

- The east-west street through the Lucky's site should have one approximately eleven (11) foot travel lane in each direction with diagonal parking on the north side of the street. Trees shall be planted between the diagonal parking stalls at a minimum frequency of one tree every four stalls.

Pedestrian Connections/Open Space

The Downtown Core is intended to be a center for the community , a kind of "living room" for Livermore . It should be accessible to the whole community , from all modes of transportation , including pedestrian movement , cycling, public transit and private automobile .

The pedestrian realm is a critical element of this accessibility . The sidewalks and streets of Downtown make up the public domain of Downtown, welcoming pedestrians to the center of their City. Downtown should offer a pedestrian-friendly environment with streets that are safe, welcoming , and pleasant to walk along. People should be able to

Chapter 8 – Parking Standards

Proposed Changes

6. Redevelopment of the Livermore Village site on the existing parking lot will remove surface parking.

Based on key findings from the parking occupancy and turnover study, public outreach efforts, and a downtown parking survey, the plan proposed a set of recommendations designed to improve parking availability in downtown Livermore, and address future changes in parking supply and demand, including the planned redevelopment of the Livermore Village site. The recommendations from this plan seek to proactively address existing and future parking challenges in a way that supports the continued success of downtown Livermore as a destination and place to live. As development of downtown Livermore continues, the City will refer to the 2014 Parking Study in conjunction with subsequent studies to maintain acceptable parking supply in downtown Livermore.

The 2018 Downtown Plan will implement several key parking strategies identified in the 2014 Parking Study. Additional strategies will be implemented over time as development occurs.

Strategy #2. Improve parking garage/lot design and safety. New surface and structured parking in the downtown core will include lighting and site design to make the spaces inviting and safe.

Strategy #4. Improve on-and off-street bicycle parking. New development in the Downtown Core will include long-term and short-term bicycle parking, in the form of lockers and racks, respectively.

Strategy #9. Provide additional parking adjacent to the I Street public parking garage. The Downtown Core redevelopment project is anticipated to construct new parking facilities (surface and/or structured parking), west of the existing parking structure.

Strategy #13. Build a public parking garage at the Livermore Village Site. The Downtown Core redevelopment includes a new five-level parking garage with approximately 500 parking spaces.

2017 Steering Committee and 2018 Downtown Plan

In April 2017, the City Council appointed a Downtown Steering Committee. The Council directed the Steering Committee to develop a public engagement program for redevelopment of City-owned sites in the Downtown Core. The Committee held a series of public meetings, considered information from experts on a variety of topics relevant to the improvement of the

City's downtown sites, and developed four land use alternatives to facilitate public dialogue and highlight the range of possibilities. The Committee also reviewed and agreed upon a public engagement plan that employed the alternatives and the Steering Committee's key learnings. The outreach process went from August through November 2017. Community participation was very strong across the various events and through the online engagement tools.

A key feature of the adopted plan is development phasing that maintains the number of existing parking within the Downtown Core during implementation of the adopted redevelopment plan. Each component of the redevelopment plan will ensure existing parking counts are maintained while also providing new parking to satisfy project-generated parking demand.

Parking Strategy for the Downtown

The current supply of parking is sufficient to meet daytime and evening parking demands. The Downtown Core Plan anticipates the development of additional parking as the Plan builds out. There are specific parking strategies that can be implemented in the downtown to maximize parking space utilization and meet the expected future demands. Within these strategies, there are 3 objectives that should be considered:

- Ensure that the parking facilities are reasonably dispersed so drivers have options depending on their ultimate destination.
- Locate the parking facilities to intercept drivers as they enter downtown.
- Size the parking structures to be about 500 spaces to minimize the number and size of the facility entry/exit points.

The following strategies are designed to meet the estimated buildout parking demand:

1. Monitor parking supply and demand over time and provide the following or equivalent parking facilities to meet identified demands:
    - Construct a 500 space parking garage rather than 350 spaces at the Livermore Village site, adding about 150 more spaces.

- Increase on-street parking within the Livermore Village site, adding about 40 parking spaces.
- Implement angled parking on First Street between South L Street and South P Street. Optimize the parking by limiting parcel access to and from First Street, adding about 50 parking spaces.
- Implement angled parking on Maple Street between First Street and Railroad Avenue, after realignment, adding about 10 spaces.
- Implement phase II of the Livermore Valley Center garage, adding up to 300 spaces.
- Implement additional parking facilities south of the Downtown Core area by purchasing property or partnering with private development to provide additional parking.

2. Pursue partnerships with businesses to ensure that the parking supply is open to the public after daytime business hours. A substantial number of off-street parking spaces are privately owned and operated. As the demand for these spaces increase, property owners should be encouraged to share their off-street spaces.

3. Promote valet parking operations in downtown. Downtown restaurants, the boutique hotel, and the performing arts theater are excellent candidates for valet parking. As parking supplies become more utilized, valet parking will become a more attractive option. Valet operators can enter into agreements with businesses to use their privately owned parking and can accommodate approximately 10% more vehicles (depending on the size of the facility) than a self-parked facility.

4. Consider utilizing time-limited and pay-parking strategies to manage employee parking behavior, increasing available parking for customers. Employees tend to use the most convenient on-street parking spaces, which forces customers to park further from their destinations. Time limited parking and pay parking strategies can become a more effective tool to manage employee parking behavior by shifting employee parking away from the downtown core, which will have a net effect of increasing parking supply 15% to 20%.

5. Provide accessible on-street parking spaces in the downtown. While there is no requirement for number and location of on-street accessible parking spaces, the city currently provides on-street accessible parking spaces at the corners of blocks. The City should continue to look for opportunities to provide accessible parking

DATE: March 1, 2021

TO: Honorable Mayor and City Council

SUBJECT: Downtown Implementation

EXECUTIVE SUMMARY

On January 29, 2018, at the conclusion of a yearlong public engagement process, the City Council approved the development concept for the Core Downtown Plan (Downtown Plan). Stockmen's Park and Veterans Way are complete. However, several key projects remain including the I Street and L Street parking structures, the Eden Housing project, Veterans Park, new commercial uses, a science center and black box theater surrounding Stockmen's Park, and a boutique hotel on the east side of Livermore Avenue.

If Downtown Implementation continues as a City Council goal, staff will continue to prioritize implementation of the Council's vision for the Downtown Plan. Near term objectives include finalizing approval of and securing financing for the Eden Housing project, completing a revised Development Agreement for the boutique hotel, beginning construction of the I Street parking structure and preparing construction plans for the L Street parking structure. The long-term goal is to complete construction of all identified public and private improvements to further enhance the downtown and meet the needs of the community, within the City's financial capacity to develop and maintain publicly funded improvements over time.

BACKGROUND

The Downtown Specific Plan, adopted in 2004, has transformed the downtown into a vibrant community and regional destination. Over the last 15 years, clear market-based land use policies, streamlined project review processes, infrastructure improvements along First Street, and downtown parking improvements have led to the creation of an active downtown district.

At the City Council's Goals and Priorities Workshop in February 2017, the City Council identified the Downtown as a Council Priority. In April 2017, the Council appointed a Downtown Steering Committee made up of community stakeholders to develop a public

engagement plan to help the City Council determine a final plan for the City-owned downtown catalyst sites.

An extensive engagement effort gathered community feedback on comment cards, workbooks, YourLivermore.org, online engagement tools, and the Priority Ranking Worksheets. The Priority Ranking Worksheets identified parking, community character, and open space as the highest priorities. Based upon the community feedback and Key Learnings adopted by the Downtown Steering Committee, the City Council approved a Downtown Plan in January 2018.

The Council's approval of the Downtown Plan set the stage for approval of Downtown Specific Plan amendments and development agreements for the housing, commercial, and hotel uses, exclusive negotiating rights agreements for the Science Center and Black Box Theater, and design review approval for the L Street Parking Structure, surface parking improvements, Veterans Way and Stockmen's Park. In 2019 the Council identified the Downtown as a continuing priority and kept it on their list of Council goals with a focus on implementation of the plan.

During this time, a resident group calling themselves the "Community Group" worked to undo the implementation of the approved Downtown Plan and to replace it with an alternative plan. They gathered signatures for a referendum on the Downtown Specific Plan Amendments, a referendum on the hotel Development Agreement and an initiative re-writing the Downtown Plan to reflect the group's desires for Downtown. The Council adopted the referendum on the Downtown Specific Plan Amendments. The referendum on the hotel development agreement (Measure P) went to the ballot on March 3, 2020, with 66.3 percent of voters supporting the City's Development Agreement for a wine country hotel adjacent to the Bankhead Theater. In summer 2020, the initiative was ultimately removed from the ballot at the request of the Community Group.

These Community Group actions in 2019 and 2020 slowed the implementation of the Downtown plan, consumed significant staff resources, and created considerable uncertainty for private investment in the Downtown plan. However, public projects continued to move forward, including demolition of several buildings, public parking improvements, completion of Veterans Way and Stockmen's Park.

Unfortunately, by March 2020, significant City staff resources were refocused on response to the COVID-19 crisis, including coordination with businesses on an evolving set of County health requirements. Despite the COVID-19 crisis, staff continued work with Livermore Shakespeare's Associates on a Development Agreement, worked with Eden Housing on plans for their 130-unit affordable housing project, and prepared the I Street garage to go out to bid, with an expected construction start date in spring 2021.

POLICY CONSIDERATIONS

If Downtown Implementation is selected as a continuing goal by the City Council, staff would prioritize work on the following Downtown Plan projects:

- Construction of the I Street Parking Structure, which is planned to begin in March of 2021 and will take about a year to complete.

- Preparation of construction plans for the L Street Parking Structure, starting construction in the summer 2022 and completion fall 2023.

- Complete design of the Eden Housing project with review and approval by the Planning Commission and City Council by mid-2021. The goal for this project is to start construction in 2022 and complete construction in 2023.

- Prepare plans for and construct Veterans Park. The City would hire a landscape architect, invite public feedback on the design and amenities for the park and then return to Planning Commission and Council for project approval in 2021. The park would be constructed concurrently with the Eden Housing project and would be open and available for public use in 2023.

- Complete Site Plan and Design Review approval for the Madden commercial project and start construction in 2022. This project has been delayed due to COVID-19 and economic uncertainty. Revisions to the Development Agreement will be required to extend the term of the agreement.

- Finalize the Development Agreement for the Black Box Theater. Staff has been working with Livermore Shakespeare's Associates on this agreement and expects to be able to bring it to Council in the first half of 2021.

- Complete Design Review and Site Plan approval for the Boutique Hotel and revise the Development Agreement to reflect an extended timeline for this project. This project has been delayed due to economic uncertainty and COVID-19.

- Work with the Black Box Theater and Quest science center on Site Plan and Design Review approval for the two cultural uses.

- Construct improvements to Livermorium Plaza. This project should begin construction in early 2021 with soil remediation and then transition to plaza construction and be complete by the end of the year.

- Monitor parking demand throughout downtown and ensure that adequate parking is available throughout construction of the downtown improvements.

- Continue to engage with property and business owners regarding interest in adding flexible use areas to the backs of businesses on the north side of First Street.

- Continue assessing existing lighting levels in the Downtown area and phased implementation of new lighting standards within and around the outside edges of the Downtown Core.

Issue Areas

The following are issue areas associated with implementation of the Downtown goal.

Parking:

- Monitor the occupancy of temporary and permanent parking facilities to gauge demand.
- Ensure adequate temporary parking facilities during construction of the Downtown Plan components.
- Design and construct permanent parking facilities to meet the parking demand of existing and planned uses, including parking structures at L Street and I Street, and other parking improvements.
- Provide and disperse accessible parking spaces throughout the Downtown Plan area and near existing uses along First Street.
- Explore partnerships with ride share companies to create a pilot program to determine if ride share incentives can cost effectively reduce parking demand at peak use times.

Circulation:

- Continue to evaluate existing and future traffic circulation conditions and coordinate improvements to promote pedestrian and bicycle connectivity in the downtown core and efficient movement of vehicular traffic through major streets.
- Construct improvements to the Railroad Avenue parking structure to increase the efficiency of pedestrian circulation.

Public Open Space:

- Develop draft plans, conduct public outreach, and finalize design plans for Veterans park to ensure that community needs are met through new public use areas.
- Carefully consider the design of open space and surrounding uses to ensure open space areas are used appropriately, are safe during the day and at night, and do not attract unwanted activity.
- When it is safe to resume public gatherings, work with community partners on programming to bring events and activities to Stockmen’s Park.

Lighting Improvements:

- Continue work on lighting improvements to Second, Third, J, K, McLeod, and other downtown streets, including the evaluation of both streetlight improvements and decorative lights.

Financing & Public/Private Partnerships:

- Identify the combination of public and private resources necessary to construct, operate, and maintain the Downtown Plan.
- Ensure City resources are utilized appropriately and that the construction, operation, and long-term maintenance costs of any public facilities are within the City's financial capacity.

Timing:

- Develop and maintain a construction phasing schedule in order to inform the community, provide adequate parking, and ensure fiscal viability.

COSTS

This project requires a variety of staff resources from Administrative Services, City Attorney's Office, Community Development, Public Works, and others. There are a range of staff members that spend varying portions of their time on this project on a daily and weekly basis. In addition, community engagement activities often require mobilization of significant staff resources. Time spent by regular full-time staff on this project is partially backfilled by contract staff to ensure other daily project demands are met. Total average time spent is between six and eight existing Full Time Equivalents (FTE).

Costs for development of the downtown improvement projects are expected to exceed $50 million, with most of these costs going to public parking improvements. Staff will be working on design efficiencies and evaluating construction and financing timing to reduce costs to the extent feasible and to ensure that each phase of construction is within the City's financial capacity at that time. Annual operational costs for new public facilities are expected to be in the range of $350,000 to $400,000.

CONCLUSION

The Downtown Specific Plan is a guide to revitalization, and its implementation has achieved remarkable success in returning vibrant activity and community pride to the downtown. To continue revitalization efforts and to further enhance Livermore's unique character and quality of life the Council may choose the goal of continuing implementation of the Council's approved Downtown Plan. If Downtown is not picked as a goal, implementation will proceed with fewer staff resources and at a slower rate.

DocuSign Envelope ID: 1FB594E6-3B3F-4860-A231-127E3F771246

IN THE CITY COUNCIL OF THE CITY OF LIVERMORE, CALIFORNIA

A RESOLUTION APPROVING THE TWO-YEAR FINANCIAL PLAN FOR FY 2021-22 AND FY 2022-23 AND ADJUSTING APPROPRIATIONS FOR FY 2020-21

The City Manager prepared and submitted to the City Council for its review the Two-Year Financial Plan for FY 2021-22 and FY 2022-23.

The City Council provided for public comment on the Two-Year Financial Plan.

The City Council wishes to adopt the Two-Year Financial Plan and order a copy of it be filed with the City Clerk and the Administrative Services Director of the City of Livermore.

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

1. The Two-Year Financial Plan for Fiscal Years 2021-22 and 2022-23 attached hereto as Exhibit A is approved;

2. Funds in the amount of $614,750,136 are appropriated for the Two-Year Financial Plan for FY 2021-22 and FY 2022-23, including $152,456,155 for the Capital Improvement Program;

3. Fiscal Year 2020-21 appropriations are adjusted to reflect a total of $268,116,183, including $28,880,807 for the Capital Improvement Program; and,

4. Any unspent General Fund operating appropriation plus any General Fund revenue in excess of projections, up to a maximum of $2,000,000, will be contributed into the Infrastructure Repair and Replacement Reserve at the end of FY 2020-21.

On motion of Council Member Bonanno, seconded by Council Member Kiick, the foregoing resolution was passed and adopted on June 14, 2021, by the following vote:

AYES: Council Members Bonanno, Carling, Kiick, Vice Mayor Munro, and Mayor Woerner
NOES: None
ABSENT: None
ABSTAIN: None

ATTEST:
DocuSigned by:
Marie Weber
80379482BBC44BB...
Marie Weber
City Clerk

APPROVED AS TO FORM:
Jason Alcala
City Attorney

Date: June 14, 2021
Exhibit A – Two-Year Financial Plan for fiscal years 2021-22 and 2022-23

DocuSign Envelope ID: 1FB594E6-3B3F-4860-A231-127E3F771246

CITY OF LIVERMORE CALIFORNIA

Proposed Financial Plan

Fiscal Years 2021-2022 & 2022-2023

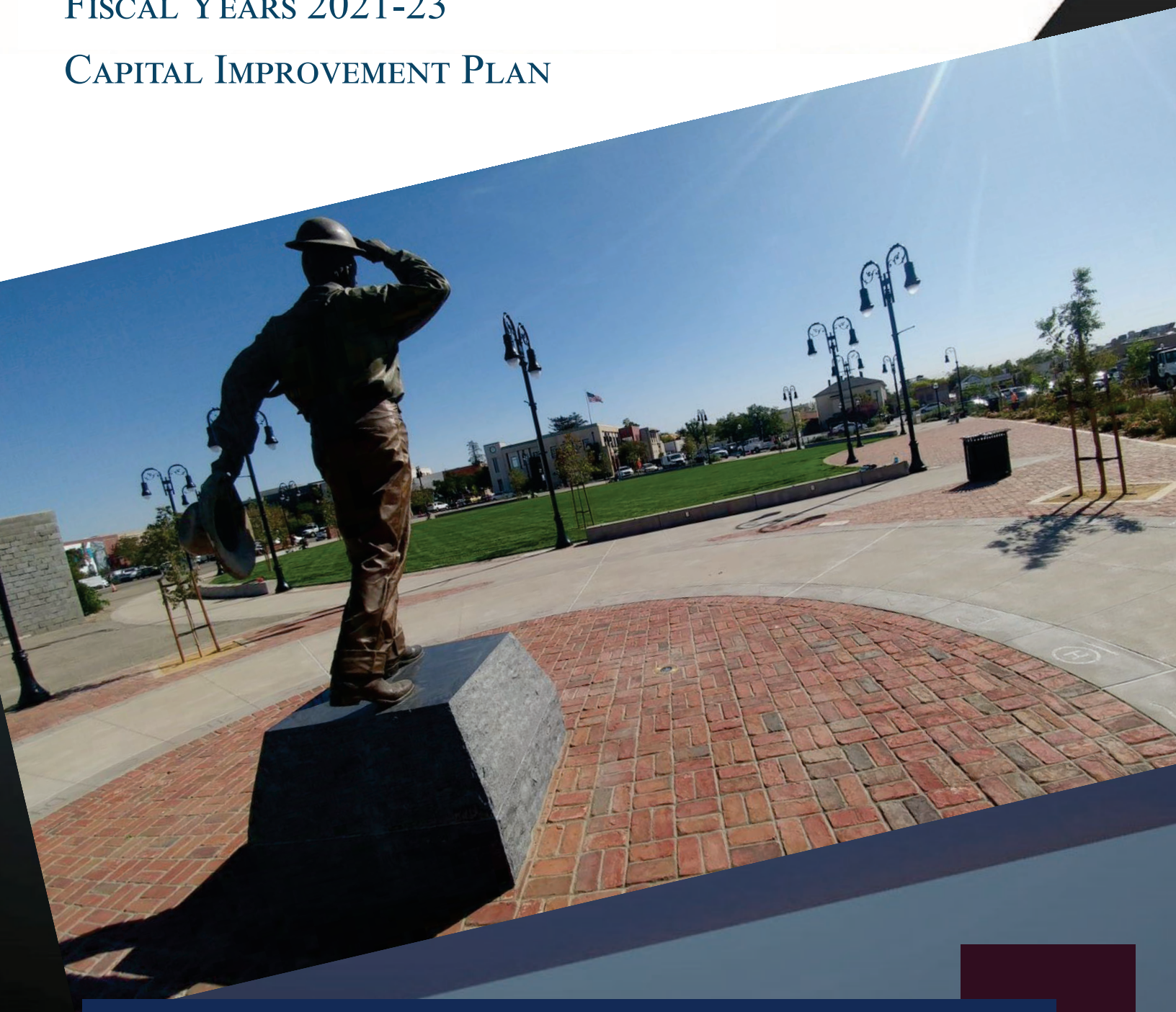
DocuSign Envelope ID: 1FB594E6-3B3F-4860-A231-127E3F771246

City of Livermore
20-Year Capital Improvement Plan
Project Listing By Fund

Fund	Project Name	FY 2020-21	FY 2021-22	FY 2022-23
337	200429 - Doolan Park Landscape Rehabilitation Project	-	-	240,000
337	200646 - Park Facilities Fee Reimbursements	900,000	2,600,000	1,400,000
337	201436 - Livermorium Plaza at Mills Square Park	550,000	4,195,000	-
337	201857 - Stockmen's Park	675,000	-	-
337	201945 - Las Colinas Trail (T-6, Segment E1)	-	220,000	1,880,000
337	201955 - Arroyo Rd. Trail (T-13, Segment B)	-	20,000	-
337	202118 - Livermore Village Remediation	-	120,000	170,000
337	202119 - Livermore Village Joint Trench	-	300,000	-
337	202121 - Veteran's Park	40,000	450,000	3,800,000
337	583018 - Livermore Village Infrastructure	-	-	-
	TOTAL PARK FEE - AB 1600	**2,165,000**	**7,905,000**	**7,490,000**
340	200720 - El Charro Specific Plan Infrastructure	492,106	21,468	15,000
	TOTAL EL CHARRO INFRASTRUCTURE	**492,106**	**21,468**	**15,000**
344	202001 - Street Resurfacing 2020	256,000	-	-
344	202004 - Slurry Seal 2020	350,000	-	-
344	202101 - Street Resurfacing 2021	350,000	500,000	3,000,000
344	202104 - Slurry Seal 2021	92,000	200,000	-
344	202204 - Slurry Seal 2022	-	50,000	100,000
344	202301- Street Resurfacing 2023	-	-	50,000
344	202304- Slurry Seal 2023	-	-	25,000
	TOTAL SW&R IMPACT FEE	**1,048,000**	**750,000**	**3,175,000**
347	200720 - El Charro Specific Plan Infrastructure	3,354	-	-
	TOTAL OTHER CAPITAL PROJECTS	**3,354**	-	-
603	201722 - Automated License Plate Readers	110,000	-	-
603	201958 - Real Time Awareness Center	40,000	345,000	-
	TOTAL LPD - COPS AHEAD AB 3229	**150,000**	**345,000**	-
607	201955 - Arroyo Rd. Trail (T-13, Segment B)	-	400,000	-
	TOTAL STATE GRANT	-	**400,000**	-
608	201857 - Stockmen's Park	41,666	-	-
608	202122 - Citywide Sculptures	-	125,000	125,000
	TOTAL PUBLIC ART FEE	**41,666**	**125,000**	**125,000**
611	202118 - Livermore Village Remediation	20,000	205,000	300,000
611	583018 - Livermore Village Infrastructure	-	65,000	460,000
	TOTAL LOW INCOME HOUSING FUND	**20,000**	**270,000**	**760,000**
613	202032 - Multi-Service Center Improvements	42,385	-	-
	TOTAL HHS-HCD CDBG	**42,385**	-	-
619	200028 - Police Facility Expansion	20,000	140,000	-
619	201722 - Automated License Plate Readers	108,245	55,000	-
619	201958 - Real Time Awareness Center	35,000	425,000	-
	TOTAL LPD - ASST SZR - ADJDCTD	**163,245**	**620,000**	-
624	202117 - Downtown Bike Parking	91,000	-	-
	TOTAL LOCAL & OTHER GRANTS	**91,000**	-	-

LIVERMORE
CALIFORNIA

Fiscal Years 2021-23
Capital Improvement Plan



20 YEAR CAPITAL IMPROVEMENT PLAN
WITH APPROPRIATIONS FOR FY 2021-22 AND 2022-23

How To Use The Capital Improvement Plan

OVERVIEW

The Capital Improvement Program (CIP) is a both a fiscal and planning tool which identifies capital improvement projects, provides a schedule for the projects, and identifies funding sources and financing options. Typical capital improvement projects include construction, maintenance, and improvements to public facilities, including infrastructure; acquisition of land; and major equipment.

The CIP Budget document is one of two volumes of the City's Budget. The CIP Budget presents a schedule of major public facility improvements which will be implemented over the next 20 years. Specific appropriations are made for the current two-year budget cycle, with information on intermediate range plans over a 2-year period and long range plans in "out-years" included for reference.

A number of considerations are applied when identifying the projects of the current CIP Budget, including;

- Consistency with the General Plan
- Consistency with City Council adopted master plans
- Consistency with other formal long-range plans adopted by Council
- Recommendations of the Council and Commissions
- Input from residents and business owners
- State, Federal, or other legal mandates
- Potential impact to the operating budget
- Benefit to the community
- The need to mitigate health or safety issues

CONTENTS OF CIP BUDGET

SECTION 1 - Table of Contents

SECTION 2 - How to Use this Document

SECTION 3 Executive Summary
Provides information on resources and expenditures for projects funded in the current two-year budget cycle as well as information on intermediate range plans over a 2-year period and long range plans in "out -years" included for reference. Contains Text, tables and graphics to display resources, project costs and other information.

SECTION 4-15- Project Category Sections
Provides CIP Budget detail and project description pages for each capital improvement project. Includes a summary chart showing category expenditures for each of the twelve project categories.

SECTIONS 16–18- Project Revenue/Project Expenditures/ Fund Balances
Provides a description of major revenue sources with projected and past revenues (Section 16). Provides a summary of all projects listed by fund source and department program (Section 17). Includes a chart listing of all fund names and fund balance summaries (Section 18).

SECTION 19 - Appendix
Presents the CIP projects listed first alphabetically by name, and then by project number. Includes a reference to the project's summary information sheet page number. Includes a Glossary of Terms, the Planning Commission's resolution for Determination of Consistency with the General Plan, and Council resolution approving the capital budget and the accompanying staff report.

How To Use The Capital Improvement Plan

PROJECT CATEGORY ORGANIZATION

Each of the project category sections are organized in a consistent way and have the following content and order of presentation:

1. Introductory Comments—Summarizes comments about the project program

2. Programmed Project List—Lists CIP Project numbers, project names, and expenditures for all capital projects within the project category.

3. Project Description Pages– Provides detailed project information including the budget and schedule for each project in the category (see next page)

PROJECT DESCRIPTION PAGES

A project description page has been created for each project in the CIP Budget. Each page includes a table showing the project cost estimate and funding sources, as well as project information. The following is a brief description of the items included on the project description pages:

CIP Name The name of the project being described

CIP Number The number assigned to the project

Project Location The general location of the project. In some cases the project is City-Wide

Project Description Describes the major physical features included in the project design

Project Justification Provides an explanation of why the project is important to the community and should be programmed and/or funded. Explains the benefit to the community the project will have when completed. Additionally explains why the projects funded in the current budget cycle were prioritized for immediate funding rather than being programmed in future years as lower priority projects

Project Funding Provides information relating to how the project is to be funded including special funding sources if any, and grant deadlines (if applicable)

O&M Cost Assumptions Operation and Maintenance costs are shown for those projects classified as "Capital Asset."

Project Funding Provides the estimated costs of the project and funding accounts broken down by budget years.

How To Use The Capital Improvement Plan

PROJECT DESCRIPTION PAGE EXAMPLE

Project Category

LIVERMORE CALIFORNIA

FY 2021-23 Capital Improvement Plan

Downtown Revitalization
Project #200827
Downtown Streetscape Phase II

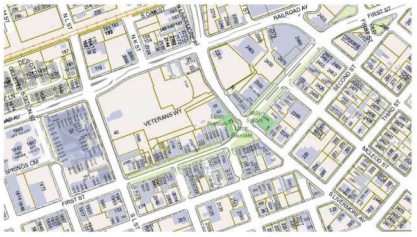
Location: Downtown Livermore, CA 94550

Description of the Project

Project Description
Street improvement projects in the Downtown in accordance with the Downtown Specific Plan (DSP). Multiple projects are included under one title for future breakout. This project includes Phase 2 improvements to First Street, Railroad Avenue from Old First St to Maple, South Livermore Ave from Railroad to 3rd St., 3rd Street from M St to Livermore Ave, and 2nd St realignment. Improvements will include such items as landscape bulbs for diagonal parking, street furniture, street lights, etc.

Why Project is Necessary

Project Justification
This project will implement the Downtown Specific Plan Improvements. The timing of improvements will be dependent on the overall development of the residential projects within the plan area.



Location Map

Funding Sources and Grant Deadlines

Project Funding
Expenditures shown in FY 20/21 are development fee credits/reimbursements to Legacy for the improvements on the north and south side of First Street between L and M Street. Out years expenditures are to complete the First Street streetscape from L Street to S Street.

O&M Cost Assumptions
$500.000.

Estimated Costs of Operating & Maintenance

Funding Source and Budgeted Expenditures - Project #200827 - Downtown Streetscape II

	Prior Years	FY 2020-21	FY 2021-22	FY 2022-23	FY 2023-24	FY 2024-25	FY 2026-41 Out Years
(678) MEASURE B-LOCAL ST & RD	$ 725,000	$ 50,000	$ 1,700,000	$ 0	$ 0	$ 0	$ 5,275,000
(687) MEASURE BB-BIKE/PED	375,000	0	0	0	0	0	5,275,000
Total	$ 1,100,000	$ 50,000	$ 1,700,000	$ 0	$ 0	$ 0	$ 10,550,000

The Accounts Project will be Funded from

Projected Costs and Funding by Fund and Fiscal Year

DISCUSSION

Appropriations for the updated FY 2021-23 Capital Improvement Plan projects total $152,456,155. The revised amount for Fiscal Year 2020-21 is $28,880,887 and represents a decrease of about $25 million from the June 2020 update to the Fiscal Year 2020-21 budget estimate. A number of factors led to several large projects being delayed. The CIP was affected by Covid-19 Shelter in Place Orders during FY 2020-21, which created economic uncertainty resulting in a delay to the I-Street Garage, Downtown Streetscape Phase 2, and other capital projects. In addition, the 2020 Street Resurfacing project has been delayed until the City can obtain an encroachment permit from Caltrans. The Livermorium Plaza project was delayed due to a non-responsive contractor.

The 2021-2023 CIP is divided into 14 Programs as follows:

Airport

The City operates a general aviation airport located southwest of State Route 84, Airway Boulevard, and I-580. The airport is operated as an independent enterprise fund. Airport projects in the 2021-23 Capital Improvement Program include a variety of projects to comply with environmental regulations, to enhance Airport safety and operations and to rehabilitate existing facilities. These projects include demolition of the old Airport Terminal Building and removal of the Airport's underground fuel tanks, installation of Terminal Building back-up generator, construction of the airfield improvements outlined in the Airfield Geometry Study, painting and re-roofing the north and south hangars, airport pavement maintenance, preparing a Pavement Maintenance and Management Program, and flood proofing the FBO Building.

Airport Project expenditures are approximately 7% of the total proposed CIP budget with $10.7 million in Fiscal Year 2021-22 and 2022-23. Major projects include the Airport Geometry Study Improvements.

Airport projects are derived from the 2014 Airport Layout Plan. Funding for airport projects is provided from airport operating revenues and Federal Aviation Administration construction grants. The City will be taking advantage of additional grant funding being provided as part of the federal stimulus package through the CARE program.

Projects listed herein comply with the current Airport Layout Plan, and the City's General Plan.

Downtown Revitalization Projects

The purpose of Downtown Revitalization Projects is to enhance the downtown economically and aesthetically through land acquisition, design and construction of public infrastructures including those which support the Downtown Core Plan approved by City Council in January 2017.

Downtown Revitalization projects are the largest source of expenditures with approximately 42% of the total proposed CIP budget or $64.8 million over Fiscal Years 2021-22 and 2022-23. Some of the major expenditures include the I Street Parking Garage; Veterans Park, Livermorium Plaza

at Mills Square Park; Livermore Village Parking Garage, Livermore Village Infrastructure, and Downtown Eastside Public Improvements.

Projects included in this programmatic area are consistent with the City's General Plan and Downtown Specific Plan. Projects are funded primarily through General Fund, park fees, federal grants, affordable housing funds, and public/private partnerships.

Golf Course

The City owns the Las Positas Golf Course north of the airport and recently reprogrammed the Springtown Golf Course on Bluebell Drive as open space. The City operates Las Positas Golf Course through private contracts for services. According to the lease agreement signed February 1, 2019, the City is not responsible for capital improvements, except certain ADA requirements, at the Las Positas Golf Course during the term of lease.

Other than repairs associated with the 2017 Flood Damage shown in the Storm Water category, there are no expenditures included in this 2021-23 Capital Improvement Plan for the Las Positas Golf Course.

Parks and Beautification

The objective of the Parks and Beautification programmatic areas is to improve, renovate, and enhance existing City owned or maintained park areas, public spaces, roadways, walls, and medians. Although the Livermore Area Recreation and Park District (LARPD) is the responsible agency for maintaining the park system in Livermore, there are several City owned properties as well as streetscapes that are constructed and maintained by the City. Projects that are funded in the 2021-23 Capital Improvement Program include citywide decorative wall replacement.

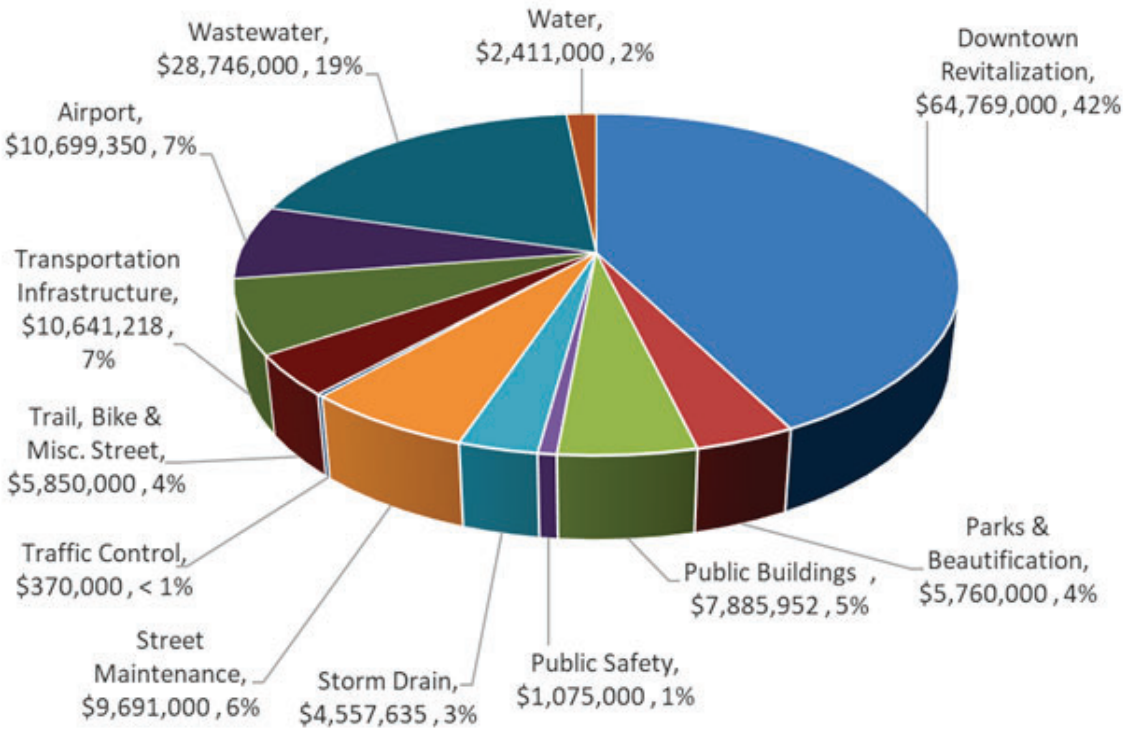
Parks and Beautification Projects account for approximately 4% of the total proposed CIP expenditures or $5.8 million in Fiscal Years 2021-22 and 2022-23. Expenditures include Park Facilities Reimbursements to LARPD, Doolan Park Landscape Rehabilitation, Citywide Sculptures, and Decorative Wall Replacement Citywide, which includes the Holmes Street Wall Phase 3 Project. Livermorium Plaza and Veterans Park are listed in the Downtown Revitalization category.

Projects in future years of the 20-year Capital Improvement Plan include the upgrade of irrigation systems, landscape rehabilitation, median rehabilitation, fountain renovation, and improvements to the City owned parcel along the Arroyo Mocho near Holmes Street. The Beautification Committee, the Planning Commission, the City Council, LARPD, neighborhood groups, and City staff suggest projects. The primary funding source for Parks and Beautification projects is Park in Lieu fees, and General Fund with augmentation by grant programs.

Projects listed herein comply with the goals and policies of the City's General Plan and Downtown Specific Plan and the Park Facilities Fee Study.

Program type for Fiscal Years 2021-22 and 2022-23. The largest areas of expenditures for the 2021-23 CIP are Downtown Revitalization and Wastewater projects. Together these two areas account for approximately 61% of the two-year budget total.

FIGURE 1: CAPITAL SPENDING BY PROGRAM TYPE



The CIP projects can also identify by the following functional categories as shown on Figure 2:

- Expansion
- Replacement/Rehabilitation
- Safety
- Operational
- Amenity

Approximately 47% of the funding allocated in the 2021-23 CIP is for expanding the City's infrastructure, including the I Street and Livermore Village parking garages. One third of the funding is allocated to replacement and rehabilitation projects, including the City Hall HVAC and Chiller Replacement and projects at the Water Resources Plant. Safety projects make up 9% of the CIP budget and include improvements to the taxiways at the Airport, Granada Channel Culvert Repair, and improvements to the Iron Horse Trail crossing at the Stanley/Isabel intersection. Amenities make up 7% of the CIP budget and include Downtown Streetscape Phase 2, Veterans Park, and Doolan Park Landscape improvements. Four percent of the funding are allocated to operational improvement projects, including Stream Maintenance projects by contractors.

Council Priorities in the Capital Improvement Program

The Council priorities are the Downtown, Asset Management and Stormwater, General Plan Update, Homelessness and Affordable Housing, and Modernization, Training and Workplace Enhancements. Several of these priorities are being addressed in the 2021-23 Capital Improvement Plan.

Some of the major expenditures shown to address the Council's priority in the Downtown include the land acquisition, design and initiation of construction of the I Street Parking Garage, Livermore Village Parking Garage, Livermorium Plaza, and Veterans Park. The Council's priority for Asset Management is included in various projects including annual street resurfacing/slurry seal projects, traffic signal modifications, wastewater and water rehabilitation projects like the WRP Primary and Secondary Treatment Improvements Phase 1 as well as replacement of HVAC and Primary Chiller that serves City Hall. Homelessness and Affordable Housing is being supported by providing the infrastructure needed to support the downtown affordable housing site.

Project Ranking and Selection

In the development of the 2021-23 CIP Plan, 219 projects were submitted for consideration. Projects were grouped into the following 5 Priority Groups:

- Priority Group 1, Construction / Closeout - Projects in this category are under construction or post-construction close out activities. The City has made contractual commitments to complete the projects in this category.

- Priority Group 2, Downtown Implementation – On March 1, 2021, the City Council adopted goals and priorities. At that time, the City Council directed staff to continue to implement the Downtown Revitalization Program as a priority.

- Priority Group 3, Grants / Funding Agreements – Projects in this group have had funding agreements with other agencies or grant agreements approved by the City Council.

- Priority Group 4, Design – Projects in the group have been funded in the CIP and design work has advanced to a significant level. Many projects in this category have executed consultant agreements.

- Priority Group 5 - New projects that are recommended for funding in the 2021-2023 CIP. These projects were selected after being ranked and prioritized from the over 200 projects submitted.

Priority Groups 1 through 4 are considered committed projects, because the City has made significant effort to advance these projects through allocation of resources and/or approved agreements. Priority Group 5 represents new projects which generally have not had a prior funding allocation or other commitment to implement.

Downtown Revitalization

Summary of Downtown Revitalization Projects:

Project Name	Prior Years	FY 2020-21
200827 - Downtown Streetscape Phase II	$ 349	$ 50,000
201434 - Acquisition of Downtown Paseo	-	-
201436 - Livermorium Plaza at Mills Square Park	498,078	550,000
201715 - I Street Garage	1,677,181	3,200,000
201841 - Downtown Street Lighting Enhancement	150,495	500,000
201856 - Downtown Eastside Public Improvements	356,337	8,000
201857 - Stockmen's Park	3,278,143	716,666
201959 - Downtown Sidewalk and Misc. ADA Impv 2019-21	3,624	176,000
202116 - Railroad Ave Street Improvements	-	-
202117 - Downtown Bike Parking	-	150,000
202118 - Livermore Village Remediation	-	20,000
202119 - Livermore Village Joint Trench	-	-
202120 - Downtown Surface Parking	-	10,000
202121 - Veteran's Park	-	40,000
583018 - Livermore Village Infrastructure	5,008,067	42,000
586003 - Livermore Village Parking Garage Construction	3,231,563	230,000
Total Downtown Revitalization Funding	**$ 14,203,837**	**$ 5,692,666**

LIVERMORE
CALIFORNIA

FY 2021-23 Capital Improvement Plan

Project Description
Public park between work force housing buildings at northwest corner of Livermore Village. Approximately 30,000 to 40,000 square feet of landscaping and hardscape.

Project Justification
During public outreach for Downtown Core Development open space and parks was one of the top priorities. Veteran's Park will provide complimentary open space to Stockmen's Park and provide a continuous strip of public open space between North Livermore Ave and L Street

Project Funding
Park Fees (Fund 337) will pay for these public park improvements.

O&M Cost Assumptions
O&M costs are estimated at $60,000 per year beginning FY 23-24.

Funding Source and Budgeted Expenditures - Project #202121 - Veteran's Park

	Prior Years	FY 2020-21	FY 2021-22	FY 2022-23	FY 2023-24	FY 2024-25	FY 2025-41 Out Years
(337) PARK FEE - AB 1600	0	40,000	450,000	3,800,000	0	0	0
Total	0	40,000	450,000	3,800,000	0	0	0

Project Funding Sources By Fund (Continued)

Fund	Project Name	FY 2020-21
	TOTAL TVTC 20% FEE	**-**
333	202032 - Multi-Service Center Improvements	245,000
	TOTAL HHS - HS FACILITIES FEE	**245,000**
335	201715 - I Street Garage	-
335	202120 - Downtown Surface Parking	-
	TOTAL PARKING IN LIEU FEE	**-**
337	200429 - Doolan Park Landscape Rehabilitation Project	-
337	200646 - Park Facilities Fee Reimbursements	900,000
337	201436 - Livermorium Plaza at Mills Square Park	550,000
337	201857 - Stockmen's Park	675,000
337	201945 - Las Colinas Trail (T-6, Segment E1)	-
337	201955 - Arroyo Rd. Trail (T-13, Segment B)	-
337	202118 - Livermore Village Remediation	-
337	202119 - Livermore Village Joint Trench	-
337	202121 - Veteran's Park	40,000
337	583018 - Livermore Village Infrastructure	-
	TOTAL PARK FEE - AB 1600	**2,165,000**
340	200720 - El Charro Specific Plan Infrastructure	24,780
	TOTAL EL CHARRO INFRASTRUCTURE	**24,780**
341	200720 - El Charro Specific Plan Infrastructure	467,326
	TOTAL LCPFA 2011 COPS CF	**467,326**
344	202001 - Street Resurfacing 2020	256,000
344	202004 - Slurry Seal 2020	350,000
344	202101 - Street Resurfacing 2021	350,000
344	202104 - Slurry Seal 2021	92,000
344	202204 - Slurry Seal 2022	-
344	202301- Street Resurfacing 2023	-
344	202304- Slurry Seal 2023	-
	TOTAL SW&R IMPACT FEE	**1,048,000**
347	200720 - El Charro Specific Plan Infrastructure	3,354
	TOTAL OTHER CAPITAL PROJECTS	**3,354**
603	201722 - Automated License Plate Readers	110,000
603	201958 - Real Time Awareness Center	40,000
	TOTAL LPD - COPS AHEAD AB 3229	**150,000**
607	201955 - Arroyo Rd. Trail (T-13, Segment B)	-
	TOTAL STATE GRANT	**-**
608	201857 - Stockmen's Park	41,666
608	202122 - Citywide Sculptures	-

Project Expenditures By Fund (Continued)

Fund	Project Name	FY 2020-21
320	202118 - Livermore Village Remediation	-
320	202119 - Livermore Village Joint Trench	-
320	586003 - Livermore Village Parking Garage Construction	-
	TOTAL 2022 COP CONSTRUCTION FUND	**-**
321	199238 - Isabel Ave. / I-580 Interchange, Phase 1	-
321	199352 - Vasco Rd. / I-580 Interchange	-
	TOTAL TVTC 20% FEE	**-**
333	202032 - Multi-Service Center Improvements	245,000
	TOTAL HHS - HS FACILITIES FEE	**245,000**
335	201715 - I Street Garage	-
335	202120 - Downtown Surface Parking	-
	TOTAL PARKING IN LIEU FEE	**-**
337	200429 - Doolan Park Landscape Rehabilitation Project	-
337	200646 - Park Facilities Fee Reimbursements	900,000
337	201436 - Livermorium Plaza at Mills Square Park	550,000
337	201857 - Stockmen's Park	675,000
337	201945 - Las Colinas Trail (T-6, Segment E1)	-
337	201955 - Arroyo Rd. Trail (T-13, Segment B)	-
337	202118 - Livermore Village Remediation	-
337	202119 - Livermore Village Joint Trench	-
337	202121 - Veteran's Park	40,000
337	583018 - Livermore Village Infrastructure	-
	TOTAL PARK FEE - AB 1600	**2,165,000**
340	200720 - El Charro Specific Plan Infrastructure	492,106
	TOTAL EL CHARRO INFRASTRUCTURE	**492,106**
344	202001 - Street Resurfacing 2020	256,000
344	202004 - Slurry Seal 2020	350,000
344	202101 - Street Resurfacing 2021	350,000
344	202104 - Slurry Seal 2021	92,000
344	202204 - Slurry Seal 2022	-
344	202301- Street Resurfacing 2023	-
344	202304- Slurry Seal 2023	-
	TOTAL SW&R IMPACT FEE	**1,048,000**
347	200720 - El Charro Specific Plan Infrastructure	3,354
	TOTAL OTHER CAPITAL PROJECTS	**3,354**
603	201722 - Automated License Plate Readers	110,000
603	201958 - Real Time Awareness Center	40,000
	TOTAL LPD - COPS AHEAD AB 3229	**150,000**

Project Expenditures By Program (Continued)

Fund	Project Name	FY 2020-21
337	202121 - Veteran's Park	40,000
001	583018 - Livermore Village Infrastructure	42,000
337	583018 - Livermore Village Infrastructure	-
611	583018 - Livermore Village Infrastructure	-
650	583018 - Livermore Village Infrastructure	-
001	586003 - Livermore Village Parking Garage Construction	230,000
320	586003 - Livermore Village Parking Garage Construction	-
	TOTAL DOWNTOWN REVITALIZATION	**5,692,666**
337	200429 - Doolan Park Landscape Rehabilitation Project	-
337	200646 - Park Facilities Fee Reimbursements	900,000
001	200654 - Decorative Wall Replacement - Citywide	1,150,000
608	202122 - Citywide Sculptures	-
	TOTAL PARK & BEAUTIFICATION	**2,050,000**
001	200439 - Livermore Civic Center Meeting Hall	400,000
665	200439 - Livermore Civic Center Meeting Hall	-
740	200911 - Fleet Shop Floor Renovation	-
740	201518 - Carpet Replacement for City Buildings	90,000
740	201830 - City Hall HVAC & Central Plant Chiller Replacement	180,000
740	201930 - Fleet Services Fuel Dispenser	2,000
333	202032 - Multi-Service Center Improvements	245,000
613	202032 - Multi-Service Center Improvements	42,385
740	202032 - Multi-Service Center Improvements	-
210	202036 - COVID Hardening of City Buildings	-
740	202036 - COVID Hardening of City Buildings	350,000
740	202136 - City Hall Roof Repairs	-
	TOTAL PUBLIC BUILDINGS	**1,309,385**
619	200028 - Police Facility Expansion	20,000
603	201722 - Automated License Plate Readers	110,000
619	201722 - Automated License Plate Readers	108,245
740	201833 - Generator Replacement at Fire Station No. 6	25,000
740	201845 - Police Facility Evidence Storage Freezer	7,000
001	201957 - Community Street Camera Program	50,000
688	201957 - Community Street Camera Program	25,000
603	201958 - Real Time Awareness Center	40,000
619	201958 - Real Time Awareness Center	35,000
	TOTAL PUBLIC SAFETY	**420,245**

Summary of Expenditures by Project Number (Continued)

Project Name	Prior Years	FY 2020-21
201944 - Montage Trail Connection to Collier Canyon Rd.	-	-
201945 - Las Colinas Trail (T-6, Segment E1)	-	-
201955 - Arroyo Rd. Trail (T-13, Segment B)	50,000	25,000
201957 - Community Street Camera Program	77,953	75,000
201958 - Real Time Awareness Center	-	75,000
201959 - Downtown Sidewalk and Misc. ADA Improvements 2019-21	3,624	176,000
201960 - Trevarno Rd. Sewer and Water Improvements	33,413	80,000
202001 - Street Resurfacing 2020	117,314	256,000
202002 - Sidewalk Repair Program 2020-21	-	32,000
202003 - Annual Sewer Replacement 2020	91,861	236,000
202004 - Slurry Seal 2020	126,952	850,000
202015 - Arroyo Las Positas Desilting through LPGC	-	100,000
202017 - Airport Geometry Study Improvements	140,042	170,000
202019 - Airport Rescue and Firefighting Facility	2,718	30,000
202022 - W. Jack London Blvd. Recycle Waterline	5,261	464,739
202028 - 2020 ATP Bike Lane Improvements	13,583	565,000
202029 - Airport Hangar Roof Repairs	-	20,000
202032 - Multi-Service Center Improvements	-	287,385
202035 - Granada Channel Pipe Replacement at UPRR	61,110	120,000
202036 - COVID Hardening of City Buildings	-	350,000
202101 - Street Resurfacing 2021	-	350,000
202104 - Slurry Seal 2021	-	92,000
202107 - ADA Access Ramps 2021	-	38,000
202111 - Airport Perimeter Fence Improvements	-	10,000
202116 - Railroad Ave Street Improvements	-	-
202117 - Downtown Bike Parking	-	150,000
202118 - Livermore Village Remediation	-	20,000
202119 - Livermore Village Joint Trench	-	-
202120 - Downtown Surface Parking	-	10,000
202121 - Veteran's Park	-	40,000
202122 - Citywide Sculptures	-	-
202123 - 2021 Stream Maintenance by Contractors	-	-
202128 - WRP UV Treatment System Replacement	-	-
202129 - WRP SCADA Server & Network Upgrade	-	-
202130 - Airway Lift Station Improvements	-	-
202131 - Miscellaneous Traffic Signing/Striping 2021-2023	-	-
202132 - Golf Course Damage Repairs	-	-
202133 - Stanley Blvd at Isabel Ave Connector Ramp Crossing Improven	-	10,000
202136 - City Hall Roof Repairs	-	-
202201 - Street Resurfacing 2022	-	-
202204 - Slurry Seal 2022	-	-
202206 - Crosswalk Safety Improvements 2022	-	-
202218 - WRP SCADA PLC Controls Upgrade	-	-
202222 - East Avenue Corridor ATP Implementation	-	-
202223 - 2022 Stream Maintenance by Contractors	-	-
202301- Street Resurfacing 2023	-	-
202304- Slurry Seal 2023	-	-
583018 - Livermore Village Infrastructure	5,008,067	42,000
586003 - Livermore Village Parking Garage Construction	3,231,563	230,000
TOTAL SUMMARY OF EXPENDITURES BY PROJECT NUMBER	**$ 192,093,874**	**$ 28,880,807**

Project Expenditures By Project Number (Continued)

Fund	Project Name	Prior Years	FY 2020-21
001	202120 - Downtown Surface Parking	-	10,000
335	202120 - Downtown Surface Parking	-	-
	TOTAL	**-**	**10,000**
337	202121 - Veteran's Park	-	40,000
	TOTAL	**-**	**40,000**
608	202122 - Citywide Sculptures	-	-
	TOTAL	**-**	**-**
698	202123 - 2021 Stream Maintenance by Contractors	-	-
	TOTAL	**-**	**-**
239	202128 - WRP UV Treatment System Replacement	-	-
241	202128 - WRP UV Treatment System Replacement	-	-
	TOTAL	**-**	**-**
239	202129 - WRP SCADA Server & Network Upgrade	-	-
241	202129 - WRP SCADA Server & Network Upgrade	-	-
	TOTAL	**-**	**-**
259	202130 - Airway Pump Station Improvements	-	-
	TOTAL	**-**	**-**
650	202131 - Miscellaneous Traffic Signing/Striping 2021-2023	-	-
	TOTAL	**-**	**-**
220	202132 - Golf Course Damage Repairs	-	-
222	202132 - Golf Course Damage Repairs	-	-
	TOTAL	**-**	**-**
688	202133 - Stanley Blvd at Isabel Ave Connector Ramp Cross	-	10,000
	TOTAL	**-**	**10,000**
740	202136 - City Hall Roof Repairs	-	-
	TOTAL	**-**	**-**
651	202201 - Street Resurfacing 2022	-	-
	TOTAL	**-**	**-**
344	202204 - Slurry Seal 2022	-	-
650	202204 - Slurry Seal 2022	-	-
651	202204 - Slurry Seal 2022	-	-
	TOTAL	**-**	**-**
681	202206 - Crosswalk Safety Improvements 2022	-	-
	TOTAL	**-**	**-**

Summary of Expansion & Enhancement (EE), Renewal & Replacement (RR), and Other Cost (Continued)

Project Name	FY 2021-22	FY 2022-23
202017 - Airport Geometry Study Improvements	760,000	9,080,350
202019 - Airport Rescue and Firefighting Facility	-	155,000
202028 - 2020 ATP Bike Lane Improvements	50,000	-
202032 - Multi-Service Center Improvements	482,615	-
202035 - Granada Channel Pipe Replacement at UPRR	580,000	-
202036 - COVID Hardening of City Buildings	60,000	-
202101 - Street Resurfacing 2021	500,000	3,000,000
202104 - Slurry Seal 2021	350,000	810,000
202107 - ADA Access Ramps 2021	342,000	-
202116 - Railroad Ave Street Improvements	875,000	-
202118 - Livermore Village Remediation	590,000	860,000
202119 - Livermore Village Joint Trench	800,000	-
202120 - Downtown Surface Parking	360,000	120,000
202121 - Veteran's Park	450,000	3,800,000
202122 - Citywide Sculptures	125,000	125,000
202123 - 2021 Stream Maintenance by Contractors	320,000	-
202128 - WRP UV Treatment System Replacement	235,000	1,728,000
202129 - WRP SCADA Server & Network Upgrade	206,000	1,861,000
202130 - Airway Pump Station Improvements	290,000	2,121,000
202131 - Miscellaneous Traffic Signing/Striping 2021-2023	100,000	-
202132 - Golf Course Damage Repairs	90,000	100,000
202133 - Stanley Blvd at Isabel Ave Connector Ramp Crossing Imvp	70,000	-
202136 - City Hall Roof Repairs	80,000	-
202201 - Street Resurfacing 2022	50,000	500,000
202204 - Slurry Seal 2022	50,000	300,000
202206 - Crosswalk Safety Improvements 2022	-	150,000
202218 - WRP SCADA PLC Controls Upgrade	-	263,000
202222 - East Avenue Corridor ATP Implementation	50,000	500,000
202223 - 2022 Stream Maintenance by Contractors	-	360,000
202301- Street Resurfacing 2023	-	50,000
202304- Slurry Seal 2023	-	50,000
583018 - Livermore Village Infrastructure	135,000	920,000
586003 - Livermore Village Parking Garage Construction	820,000	34,500,000
Total	**$ 53,580,055**	**$ 98,876,100**

2010. The projects are consistent with the following 2003 General Plan goals, objectives, and policies of the Circulation and Public Safety elements:

- *Goal CIR 9.0 – Support and protect safe and efficient aviation operations at the Municipal Airport.*
- *Objective CIR-9.1 – Ensure that aviation operations, uses, and development are protected from incompatible adjacent land uses, as well as meet the needs of the local and regional economy.*
- *Policy CIR-9.1.P1 – Future development and operations at the Municipal Airport shall be in conformance with an approved Airport zoning district and the Livermore Airport Land Use Compatibility Plan ("ALUCP"), dated August 2012. The overall scale of operations at the Municipal Airport shall not exceed the thresholds listed in the General Plan.*
- *Goal PS-5 – Minimize risks associated with aircraft operations at the Municipal Airport.*

Downtown Revitalization Projects

The purpose of Downtown Revitalization Projects is to enhance the downtown economically and aesthetically. Most of the projects involve implementing the Downtown Core Plan, adopted by City Council in January 2018. Downtown Revitalization Projects include environmental clean-up, parking lots, parking structures, parks and pathways, downtown streetscape improvements, and upgrading streets and utilities. Downtown Revitalization includes the following projects for the CIP FY 2021-2023:

- Downtown Streetscape Phase II
- Livermorium Plaza at Mills Square Park
- I Street Garage
- Downtown Eastside Public Improvements
- Downtown Sidewalk and Miscellaneous ADA Improvements
- Railroad Ave Street Improvements
- Downtown Surface and Bike Parking Improvements
- Veteran's Park
- Livermore Village Remediation and Infrastructure
- Livermore Village Parking Garage Construction

Projects requested total: $24,519,000 for FY 2021-2022, and $ 40,250,000 for FY 2022-2023.

General Plan Consistency Finding: Downtown Revitalization Projects are consistent with General Plan goals and the Downtown Specific Plan strategies for the revitalization of the Downtown Area. The above-listed projects are consistent with and implement the following 2003 General Plan goals, objectives, policies, and actions found in the Land Use, Community Character, Circulation, and Open Space and Conservation Elements of the Plan.

- *Objective LU-1.4 - Encourage commercial development that will support and enhance a vibrant downtown and serve existing neighborhoods.*
- *Objective CC-2.3 – Maintain High Quality Design of Public Facilities.*

DocuSign Envelope ID: 42027E80-78D4-464D-A8E4-A7F69D7AF0C3

IN THE CITY COUNCIL OF THE CITY OF LIVERMORE, CALIFORNIA

A RESOLUTION AUTHORIZING EXECUTION OF AN AGREEMENT WITH RRM DESIGN GROUP IN AN AMOUNT NOT TO EXCEED $499,801 TO DESIGN VETERANS PARK AND CONDUCT PUBLIC OUTREACH

In January 2018, the City Council adopted a redevelopment plan for the Downtown Core site (former Lucky's Site), which included public park space.

The Community Development Department requires a consultant to design Veterans Park, in support of the Council's adopted plan.

On March 19, 2021, City staff selected RRM Design Group to design Veterans Park after a competitive interview process.

The proposed agreement with RRM Design Group allows for services to commence July 12, 2021, and terminate upon completion of services or December 31, 2023, whichever comes first.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Livermore, that the City Manager is authorized to execute the professional services agreement with RRM Design Group, attached hereto as Exhibit A, in an amount not to exceed $499,801 to design Veterans Park and conduct public outreach.

On motion of Council Member Kiick, seconded by Vice Mayor Munro, the foregoing resolution was passed and adopted on July 12, 2021, by the following vote:

AYES:	Council Members Bonanno, Carling, Kiick, Vice Mayor Munro, and Mayor Woerner
NOES:	None
ABSENT:	None
ABSTAIN:	None

ATTEST:

DocuSigned by:
Marie Weber
803704826BC44BB...
Marie Weber
City Clerk

APPROVED AS TO FORM:

Kimberly Cilley
Senior Assistant City Attorney

Date: July 13, 2021

Exhibit A – Agreement with RRM Design Group

DocuSign Envelope ID: 42027E80-78D4-464D-A8E4-A7F69D7AF0C3

PROFESSIONAL SERVICES AGREEMENT

THIS AGREEMENT is made and entered into this day of 2021, by and between the City of Livermore ("City"), a municipal corporation, and RRM Design Group ("Consultant"), a California corporation.

RECITALS

City requires professional services to prepare landscape design plans, specifications and estimates for Veterans Park, CIP #2021-21.

Consultant warrants it possesses the distinct professional skills, qualifications, experience, and resources necessary to timely perform the services described in this Agreement. Consultant acknowledges City has relied upon these warranties to retain Consultant.

AGREEMENT

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

1. **Retention as Consultant.** City hereby retains Consultant, and Consultant hereby accepts such engagement, to perform the services described in Section 3 below subject to the terms and conditions in this Agreement.

2. **Relationship of Parties – Independent Contractors.** The relationship of the parties shall be that of independent contractors. Consultant and its employees are not City officers or employees. Consultant is responsible for the supervision and management of its employees, including any workers compensation insurance, withholding taxes, unemployment insurance, and any other employer obligations associated with the delivery of the services contemplated by this Agreement.

3. **Description of Services.** Consultant shall provide the following professional services as more particularly set forth in Exhibit "A" (collectively "the Services"):

to prepare conceptual and final landscape design plans, specifications and estimates for Veterans Park.

4. **Consultant's Responsibilities.** Consultant shall:

(a) Diligently perform the Services in a manner commensurate with industry, professional, and community standards;

(b) Provide the resources necessary to complete the Services in a timely manner;

(c) Obtain a business license from the City of Livermore, and keep it in effect for the term of this Agreement;

DocuSign Envelope ID: 42027E80-78D4-464D-A8E4-A7F69D7AF0C3

(d) Obtain and keep in effect all necessary licenses, permits, qualifications, insurance, and approvals legally and professionally required for Consultant to practice its profession and to provide the Services;

(e) Comply with all laws in effect that are related to Consultant and the Services;

(f) Coordinate the Services with Bob Vinn or Rosy Ehlert ("Project Manager"), or such other person designated as the Project Manager by City;

(g) Be available to the Project Manager, and other parties referred to Consultant by the Project Manager, to answer questions or inquiries related to the Services;

(h) Only invoice City for the Services rendered. Consultant's invoice shall be in writing and describe the Services performed for the payment requested. Consultant shall not submit an invoice to City more frequently than once a calendar month;

(i) Keep and maintain invoices and records related to the Services in an organized manner. At a minimum, the records must be kept for at least 3 years from the date of final payment to Consultant and must include time sheets, work progress reports, and other documentation to adequately explain all the Services invoiced for payment. Consultant shall make the invoices and records immediately available to City upon delivery of a written request to examine, audit, or copy them at City's place of business during normal business hours. Consultant shall give City 30 calendar-days' written notice prior to destroying the invoices and records, and allow City an opportunity to take possession. If City wants them, Consultant and City shall coordinate their delivery to City in the most efficient manner possible;

(j) Prepare and submit a written report to the Project Manager, within 3 business-days of the Project Manager's written request, that identifies the Services completed and in progress, the charges incurred to date, and the anticipated cost to complete the remaining Services; and,

(k) Consultant shall correct, at its own expense, all errors in the Services. Should Consultant fail to make such correction in a timely manner, City may make the correction and charge the cost thereof to Consultant.

(l) If applicable, Consultant shall ensure that all work for compensation is provided in compliance with the requirements of the California Labor Code including but not limited to hours of labor, nondiscrimination, payroll records, apprentices, worker's compensation and prevailing wages. If applicable, Consultant shall comply with all prevailing wage laws, such as sections 1773, 1773.8, 1775, 1776, 1777.5, 1777.6, and 1813 of the California Labor Code and any other applicable wage and hour law. If any violation of prevailing wage law associated with this Agreement is deemed to have occurred by any court or administrative authority, Consultant shall forfeit to the City, as a penalty, the sum of fifty dollars ($50.00) for each calendar day, or portion thereof, for each laborer, worker, or mechanic employed, paid less than the applicable prevailing rates for any work done to accomplish the purposes of this Agreement.

DocuSign Envelope ID: 42027E80-78D4-464D-A8E4-A7F69D7AF0C3

(m) Consultant's services provided pursuant to this Agreement shall comply with the Americans with Disabilities Act (ADA) of 1990, and all amendments thereto, as well as all applicable regulations and guidelines issued pursuant to the ADA.

5. Compensation and Payment.

(a) The total compensation payable by City to Consultant for the Services **SHALL NOT EXCEED** the sum of $499,801 ("not-to-exceed amount"). City shall compensate Consultant for the Services rendered at the hourly rates, task amounts or travel expenses set forth in Exhibit "A" up to the not-to-exceed amount. Except as provided in the body of this Agreement, the hourly rates, task amounts or travel expenses are intended to be Consultant's only compensation for the Services and is inclusive of all costs of labor, licensing, permitting, overhead and administrative costs, and any-and-all other costs, expenses, and charges incurred by Consultant, its agents, and employees to provide the Services.

(b) City shall pay Consultant no later than 30 days after City receives a written invoice from Consultant and verifies the Services were performed for the payment requested.

6. Term. The term of this Agreement commences on July 12, 2021, and terminates upon the completion of the Services or December 31, 2023, whichever occurs first.

7. Termination by City. City may terminate any portion or all of the Services by giving Consultant at least 30 calendar-days written notice. Upon receipt of a termination notice, Consultant shall immediately stop all work in progress on the Services except where necessary to preserve the benefit of the work, and assemble the work on the Services for delivery to City on the termination date. All compensation for Services performed prior to the termination date shall be payable to Consultant in accordance with Section 5.

8. Ownership of Documents. All drawings, designs, data, photographs, reports and other items prepared or obtained by Consultant in the performance of the Services are City's property and Consultant shall deliver them to City upon demand.

9. Copyright and Right of Use. All items created by Consultant for City under this Agreement are works made for hire, and Consultant shall give City the copyright and all intellectual property rights to all items developed, prepared, and delivered as part of the Services. Consultant agrees that all aspects of the Services and items created thereby will be original works of creation and will not use, in whole or in part, any work created by any other party, except when expressly disclosed by Consultant to City and Consultant obtains a license to such items for the benefit of City. All licenses must be perpetual, world-wide, non-exclusive, and royalty free sufficient in scope to permit City's full use and enjoyment of its ownership rights in the items created by the Services.

10. Confidentiality. Consultant shall not disclose any confidential or proprietary information received from City to anyone except Consultant's employees who require access to the information to perform the Services. This obligation shall survive

DocuSign Envelope ID: 42027E80-78D4-464D-A8E4-A7F69D7AF0C3

termination and remain in full force and effect until the information, and any copies thereof, are destroyed or returned to City.

11. Indemnity and Defense.

(a) Definitions. When used in this "Indemnity and Defense" section, these terms have the following meaning:

(1) "City," means the City, its elected officials, officers, directors, employees, agents, or designated volunteers.

(2) "Design Professional," means licensed architects, licensed landscape architects, registered professional engineers, professional land surveyors and the business entities which offer such services in accordance with the provisions of the California Business and Professions Code listed at California Civil Code, section 2782.8, upon which Consultant relies to meet the obligations of, or perform work pursuant to, this Agreement.

(3) "Non-Design Professional," means any person or entity upon which Consultant relies to meet the obligations of, or perform work pursuant to, this Agreement who or which is not a Design Professional.

(4) "Loss," or "Losses," mean all claim for or actual loss, liability, damage, cost, and expense including but not limited to reasonable attorney, consultant and expert fees, and court costs arising out of or in connection with Consultant's obligation or work to perform this Agreement including the City's active or passive negligence, except for such Loss arising from the sole negligence or willful misconduct of the City.

(b) Non-Design Professional Services. Consultant shall defend, indemnify, and hold harmless the City from and against any alleged Loss arising out of, pertaining to, or relating to, the services of any Non-Design Professional.

(c) Design Professional Services. For an alleged Loss that solely arises out of, pertains to, or relates to, the services of a Design Professional, Consultant shall defend and indemnify the City solely for such Losses due to the negligence, recklessness, or willful misconduct of the Design Professional(s) as allowed by application of California law, including California Civil Code, section 2782.8, as written on the effective date of this Agreement and according to applicable judicial interpretations.

(d) Mixed Services. If an alleged Loss arises out of, pertains to, or relates to both the services of a Design Professional and a Non-Design Professional, Consultant shall defend City against the claimed Loss and shall indemnify and hold harmless City from all Losses alleged against the Non-Design Professional combined with any Losses allegedly due to the negligence, recklessness, or willful misconduct of any Design Professional.

12. Insurance. Consultant shall procure and maintain insurance during the term of this Agreement in the amounts and under the terms set forth in Exhibit "B" against claims that may arise from or in connection with this Agreement and performance of the Services.

DocuSign Envelope ID: 42027E80-78D4-464D-A8E4-A7F69D7AF0C3

Upon reasonable written notice, Consultant shall comply with any changes in the amounts and terms of insurance as may be required from time-to-time by City's Risk Manager.

13. Acceptance of Final Payment. Consultant's acceptance of final payment will release City from any and all claims and liabilities for compensation under this Agreement.

14. Acceptance of Work. City's acceptance of, or payment to Consultant for, the Services does not release Consultant from its responsibility for the accuracy, completeness, or competency of the Services, nor do the actions constitute an assumption of Consultant's responsibility or liability by City for any defect or error in the Services.

15. Conflict of Interest. Consultant represents that no City employee or official has a financial interest in Consultant. Consultant shall not offer, encourage, or accept any financial interest in any part of Consultant's business by or from a City employee or official during the term of this Agreement or as a result of being awarded this Agreement. If any of the Services are paid by reimbursement from an agreement between City and a private party, Consultant represents that it has not performed any work for that private party during the 12-month period prior to the execution of this Agreement, and that it shall not negotiate, offer or accept any contract for services from that party during the term of this Agreement.

16. Economic Disclosure. Consultant shall comply with City's local conflict of interest code and the Political Reform Act, and prepare and file an economic disclosure statement if the Services involve making, or participation in making, decisions which may have a material effect on the Consultants' financial interest. While it is Consultant's sole responsibility to evaluate its conflicts of interest, the Consultant nevertheless agrees to prepare and file an economic disclosure statement if requested by City.

17. Non-Exclusive Agreement. This is a non-exclusive agreement. City reserves the right to provide, and to retain other consultants to provide, services that are the same or similar to the Services described in this Agreement.

18. No Assignment. Consultant shall not assign or subcontract any of the Services without City's prior written consent. For the purposes of this section, a change of fifty-percent or more in the ownership or control of Consultant constitutes an assignment.

19. Remedies. All remedies permitted or available under this Agreement, or at law or in equity, are cumulative and alternative, and the invocation of a right or remedy will not be construed to waive or elect a remedy with respect to any other available right or remedy. As a condition precedent to commencing legal action involving a claim or dispute against City arising from this Agreement, the Consultant must present a written claim to City in accordance with Chapter 3.42 of the Livermore Municipal Code.

20. Construction of Language. The terms and conditions in this Agreement have been arrived at through negotiation and each party had a full and fair opportunity to review and revise this Agreement with legal counsel. Any ambiguity in this Agreement will not be resolved against either party as the drafting party. In the event of an inconsistency or

DocuSign Envelope ID: 42027E80-78D4-464D-A8E4-A7F69D7AF0C3

conflict between the language in the body of the Agreement and an attachment hereto, the language in the body of the Agreement controls.

21. Entire Agreement; Modification. This Agreement supersedes all other agreements, whether oral or written, between the parties with respect to the Services. Any modification to this Agreement must be in writing and signed by both parties. In the event the original of this Agreement is lost or destroyed, an archival copy maintained by City can be used in place of the original for all purposes with the same effect as if it was the original.

22. Notice. Notices under this Agreement must be delivered to the addresses below by deposit in the United States mail or by overnight delivery service, with postage prepaid and delivery confirmation:

TO CITY: Attention: City Engineer
City of Livermore
1052 S Livermore Avenue
Livermore, California 94550

TO CONSULTANT: Attention: Gina Chavez
RRM Design Group
321 Davis Street
San Leandro, CA 94577

23. Waiver. Failure to insist upon the strict performance of any term or conditions in this Agreement, no matter how long the failure continues, is not a waiver of the term or condition and does not bar the right to subsequently demand strict performance. To be effective, a waiver must be in writing and signed by the non-breaching party.

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

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

****

Signatures and Attachment List on the Next Page

DocuSign Envelope ID: 42027E80-78D4-464D-A8E4-A7F69D7AF0C3

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

CONSULTANT: **Dated:** 5.13.21

By: Lief McKay
Title: Principal, RRM Design Group

CITY OF LIVERMORE: **Dated:**

Marc Roberts
City Manager

APPROVED AS TO FORM:

Assistant/City Attorney

Attachments:
Exhibit A – Scope of Work
Exhibit B – Insurance Requirements

DocuSign Envelope ID: 42027E80-78D4-464D-A8E4-A7F69D7AF0C3

Exhibit A Scope of Services

Veterans Park will be a public park in the northwest position of the Livermore Village Site. It will be located between future workforce housing buildings and will occupy approximately .7acres. The park will consist of a mix of hardscape, landscape, and turf areas. It will also include site furnishings, park accessories, site lighting, security cameras, a children's play area, and potentially informational and art displays. The project design and construction will involve coordination with the workforce housing team, coordination to provide temporary parking, and coordination with the environmental team for site remediation.

Phase A: Project Initiation

Task A.1: Kickoff Meeting

RRM's project manager and key team members will attend a kickoff meeting with staff. The purpose of the kickoff meeting is to provide an opportunity to specifically discuss the City's project expectations, goals, key issues, design considerations, project schedule, and budget. They will also discuss the outreach strategy and collect background data and documents from the City.

Deliverables:

- *Prepare for and attend one (1) kickoff meeting.*

Task A.2: Data Gathering and Background Document Review

RRM's team will review relevant background information and data provided to them by the City that might be useful for the project, including but not limited to public hearing meeting minutes, plans of surrounding developments such as the L Street project, technical studies, planning documents, and existing utility as-built plans. They will also utilize the extensive background information accumulated during their time working on the Downtown Core Landscape Concept project, the Downtown Core Design Standards and Guidelines, and Stockmen's Park design and construction as it relates to community outreach, the design process, and technical data.

Deliverables:

- *Collect and review existing information (provided by City)*

Phase B: Community Outreach

Task B.1: Stakeholder Meetings

RRM's project manager will prepare for and attend up to nine (9) meetings with community members and groups identified by the City as key stakeholders to provide project updates and gather feedback. Some meeting groups may be combined with multiple individuals and/or groups as directed by City staff. RRM will rely on City staff for the coordination and scheduling of stakeholder meetings. A preliminary list of stakeholders includes the following:

- Livermore Veterans of Foreign Wars Post 7265
- Livermore Downtown Inc.
- Livermore Valley Chamber of Commerce
- Livermore Heritage Guild
- Black Box Theater
- Science and Society Center
- Stockmen's Association
- City of Livermore Maintenance Division

DocuSign Envelope ID: 42027E80-78D4-464D-A8E4-A7F69D7AF0C3

- Livermore Fire Department
- Planning Commissioners/City Council Members

Deliverables:

- *Prepare for and attend up to nine (9) stakeholder meetings.*

Task B.2: Public Outreach Workshop #1

RRM will prepare for and facilitate a workshop to obtain feedback on the three park design alternatives created in the Schematic Landscape Plans task (Task C.1). It is their assumption and hope that the workshops will be in-person. However, if County and City COVID-related guidelines prohibit in-person meetings at the time the meetings are held, they will prepare for and facilitate virtual meetings using Zoom as the platform. With either format, materials will include the Schematic Landscape Plans as well as imagery of pathways, landscape, placemaking elements, interpretive signage, public art, site furnishings, and play features. During the workshop activities such as townhall style discussions, exercises for participants to express their preferences, and break out groups may be utilized to collect feedback. Following the workshop, RRM will provide a summary of community input.

Deliverables:

- *Facilitate one (1) workshop, includes all graphic materials for the task and a summary of feedback.*

Task B.3: Public Outreach Workshop #2

RRM will prepare for and facilitate a workshop to obtain feedback on the Preferred Park Design Plan and renderings created in the Preferred Park Design task (Task C.2). It is their assumption and hope that the workshops will be in-person. However, if County and City COVID-related guidelines prohibit in-person meetings at the time the meetings are held, they will prepare for and facilitate virtual meetings using Zoom as the platform. In addition to the graphic materials created in Task C.2, RRM will prepare all materials necessary to conduct the workshop and gather feedback from participants. Following the workshop, RRM will provide a summary of community input.

Deliverables:

- *Facilitate one (1) workshop, includes all graphic materials for the task and a summary of feedback.*

Task B.4: Digital Engagement

RRM will provide materials created in other tasks such as the public workshops and design tasks in a format that the City can post on their website and social media sites. In addition, they will prepare one survey prior to Public Workshop #1 and one survey following Public Workshop #1 to maximize public participation opportunities. The first survey will be used to obtain feedback on community priorities related to materials and character of the park design. The second survey will include content and questions like those presented at Public Workshop #1 to obtain feedback on the three concepts. It is their assumption that the City will manage the City website and social media sites. RRM will manage and summarize results from the two surveys.

Deliverables:

- *Provide materials to post on City website and social media sites.*
- *Create and manage one (1) survey prior to Workshop #1 and one (1) survey following Workshop #1.*

Task B.5: Preliminary Public Hearings

RRM's Principal and Project Manager will prepare for and attend up to two preliminary public hearings. They will prepare digital presentations that include summaries of the outreach and design process as

DocuSign Envelope ID: 42027E80-78D4-464D-A8E4-A7F69D7AF0C3

well as the graphics prepared in the outreach and design tasks to solicit feedback to incorporate into the preferred plan. Following these hearings, RRM will meet with staff to determine the direction of the next step in the design process.

Deliverables:

- *Prepare for and present at two (2) preliminary public hearings.*

Task B.6: Public Hearings

RRM's Principal and Project Manager will prepare for and attend two public hearings to present the Planning Entitlement Package to the Planning Commission and City Council. Following these hearings, RRM will meet with staff to determine the direction of the next step in the design process.

Deliverables:

- *Prepare for and present at one (1) Planning Commission hearing*
- *Prepare for and present at one (1) City Council hearing*

Task B.7: City Events

RRM will attend and support staff in presenting at up to two city-run events, such as Farmer's Market booths. Support materials for these events will be prepared from the deliverables in other tasks, such as Tasks B.2 and B.3 Public Meetings, Task C.1 Schematic Landscape Plans, and Task C.2 Preferred Park Design including renderings and shade studies.

Deliverables:

- *RRM to attend up to two (2) City-run public events.*

Phase C: Conceptual Design

Task C.1: Schematic Landscape Plans

Based on site reconnaissance, background information, coordination with the housing project, and staff and community feedback, RRM will create three concept designs for the park which will include green spaces, sidewalks/pathways, a children's play area, passive recreation areas, placemaking elements, interpretive signage, lighting, security cameras, and site furnishings. The plans will conform to the Downtown Specific Plan and Downtown Core Design Standards and Guidelines. Drafts of the schematic plans will be provided to staff for review prior to rendering. Exhibits will include three scaled, colored plan views, supporting character imagery, and a contextual graphic to show the plan in the overall Livermore Village Site Plan

Deliverables:

- *Three (3) color schematic landscape plan alternatives, supporting character imagery, and contextual graphic locating the plan in the Livermore Village Site Plan.*

Task C.2: Preferred Park Design including Renderings and Shade Studies

Based on public feedback from the community outreach activities and direction from staff, RRM will prepare a single preferred plan. This plan will likely pull elements from all three design alternatives to reflect the consensus of the most preferred plan elements. A draft of the plan will be provided to staff for review prior to rendering. The plan will be illustrative in nature and include three-character sketches/perspective renderings to depict key areas or vantage points within the park including views from L Street, the residential units, and the eastern park entrance. RRM will also prepare six shade studies at different times of the day during the summer and winter which will include the proposed buildings on this site as well as the development across L Street.

DocuSign Envelope ID: 42027E80-78D4-464D-A8E4-A7F69D7AF0C3

Deliverables:

- *One (1) color preferred plan shown within the context of the overall Livermore Village Site Plan*
- *Three (3) character sketches/renderings*
- *Six (6) shade studies at different times of the day during the summer and winter*

Task C.3: Planning Entitlement Package

RRM will prepare a complete planning entitlement package including a plant palette identifying trees, shrubs, groundcovers, and vines by species, size, and water use in conformance with the Water Efficient Landscape Ordinance; and a colors and materials sheet identifying all proposed hardscapes, fixtures, and furnishings including the Emergency Vehicle Access. They will also coordinate with the City survey consultant on the parcel map to be included in this package.

Deliverables:

- *One (1) planning entitlement package*
- *Coordination of parcel map with City survey consultant*
- *Materials palette including the Emergency Vehicle Access*

Phase D: Final Design

RRM's team will prepare Final Plans, Specifications, and Estimates (PS&E) for the City-approved Preferred Park Design. All construction drawings will be prepared using the City's most current version of AutoCAD. All submittals shall be provided as PDFs with bookmarks for each section. As part of the development of the construction documentation package, they will coordinate with the City and environmental consultant to design soil and planting details and incorporate the Site Management Plan into the documentation package. The contents of the PS&E package will be as follows:

- *Demolition plan*
- *Construction keynote plan*
- *Horizontal control plan*
- *Grading and drainage plan*
- *Stormwater control plan*
- *Erosion control plan*
- *Utility plan*
- *Electrical plans and details including security camera design (by our Electrical Engineering sub consultant). The cameras shall be designed to transmit to an antenna on Railroad Garage and video shall be recorded to video system in the electrical room of the Railroad Garage.*
- *Construction details*
- *Irrigation plans and details*
- *Water calculations per City's water efficient landscape ordinance*
- *Planting plans and details*
- *Soil management plan (by City environmental consultant)*
- *Technical specifications (City standard boilerplate and general/technical CSI format)*
- *Measurement and Payment specification*
- *Construction cost opinion including estimated operations and maintenance costs and estimated renewal and replacement costs.*

Task D.1: 35% PS&E

RRM will submit 35% construction documents, for internal City review.

Deliverables:

DocuSign Envelope ID: 42027E80-78D4-464D-A8E4-A7F69D7AF0C3

- *35% Construction drawings*
- *One (1) opinion of probable cost*

Task D.2: 65% PS&E

RRM will submit 65% construction documents, for internal City review. RRM will estimate the cost impact of incorporating the City's 35% comments and will get approval from the City to proceed with incorporating these comments.

Deliverables:

- *65% Construction drawings*
- *Outline specifications*
- *One (1) opinion of probable cost*

Task D.3: 100% PS&E

RRM will submit a 100% construction documents, for internal City review. RRM will estimate the cost impact of incorporating the City's 65% comments and get approval from the City to proceed with incorporating these comments.

Deliverables:

- *100% PS&E package*
- *One (1) Opinion of probable cost*
- *Estimate of O&M costs and renewal and replacement costs.*
- *Provide list of submittals. Identify any long lead items taking more than 1 month to deliver to site after submittal is approved. Provide the additional information: any contractor/subcontracor qualifications or certifications listed in specifications; warranties beyond standard one-year warranty, spare parts, items that require O&M manuals, any required training, any required special inspections.*

Task D.4: Bidding Assistance

RRM will provide up to eighteen hours of support to the City during the bidding process by responding to bidder questions and pre-bid substitution requests forwarded to them by the City and issue addenda as deemed necessary and reasonable by the City to clarify design related issues. RRM will attend the Pre-Bid Meeting. RRM will provide conformed drawings and specifications to the City that incorporate any modifications during the bid period. The conformed documents shall be in PDF format with bookmarks for each section.

Deliverables:

- *Up to eighteen (18) hours to attend the pre-bid meeting, respond to bidder questions, pre-bid substitution request review, and addenda*

Task D.5: Drainage and Stormwater Study

RRM will perform drainage analyses (hydrology and hydraulics) for the project drainage and stormwater design. The findings and recommendations will be provided in a comprehensive Drainage and Stormwater Study. A draft submittal will occur at the 65% design level and a final submittal will occur at the 100% design level.

DocuSign Envelope ID: 42027E80-78D4-464D-A8E4-A7F69D7AF0C3

Analysis will occur for on-site conditions only and assume that all off-site runoff and utilities are compliant with current NPDES and County Flood Control District standards and have capacity to accommodate this project. RRM will identify 10-year design hydrology and hydraulics to design the proposed storm drain system in accordance with County Flood Control District standards for secondary facilities. Hydraulic design will assume gravity pipe flow (i.e. no pumps).

Stormwater design for NPDES compliance will be dependent on the amount of new and replaced impervious surface per the C.3 Stormwater Technical Guidance. This project is assumed to not require hydromodification management (i.e., project creates and/or replaces less than one acre of impervious surface). RRM will document compliance with C3 stormwater treatment requirements.

Deliverables:

- *One (1) draft drainage and stormwater study*
- *One (1) final drainage and stormwater study*

Task D.6: Stormwater Pollution Prevention Plan (SWPPP)

If the total area of construction disturbance including laydown area is greater than one acre, RRM will prepare plans for temporary erosion control facilities. Temporary facilities will be proposed for the protection of graded areas and drainage devices. Details and appropriate notes for construction best management practices and guidelines for implementation are proposed to be in conformance with the State of California Water Resources Board requirements and the approved staff report, including sediment control recommendations.

The temporary erosion control plans will be incorporated into the project improvement plans as well as into the project SWPPP. RRM will conduct a risk determination based on the project's topography, soil, schedule, location, and receiving water then prepare the SWPPP based on the project-specific risk level. This task includes preparing Permit Registration Documents using the SMARTS database for certification by the Client and submittal to the Water Boards. The SWPPP will be based on the bid-set deliverables. This task does not include construction monitoring or SWPPP updates during construction.

Deliverables:

- *One (1) erosion control plan*
- *One (1) completed "Notice of Intent" application for stormwater discharge.*
- *One (1) stormwater pollution prevention report for upload to the SMARTS system*

Phase E: Client and Consultant Meetings

Task E.1: Client and Consultant Meetings

RRM's project manager and key team members will attend up to eight meetings with staff including Building, Engineering, Planning, Housing, and Public Works, as well as other consultants such as the environmental consultant and housing design team throughout the course of the project. These meetings will be scheduled on an as-needed basis to generally discuss the project status, and issues that may arise.

Deliverables:

- *Up to eight (8) meetings*

DocuSign Envelope ID: 42027E80-78D4-464D-A8E4-A7F69D7AF0C3

Task E.2: Project Management and Coordination

RRM will remain in communication with the City's project manager consistently throughout the project. This task includes regular phone calls, email, and other written communication. This task also includes project coordination with other consultants including the workforce housing consultants to ensure that residential private space is integrated with public open space and landscaping. We will also coordinate with the City's Environmental consultant for the on-site soil remediation process and methodology. The City's Environmental consultant will prepare a Site Management Plan for the project. RRM's design shall comply with the requirements in the Site Management Plan. This may involve working out unique soil and planting details to accommodate the soil conditions. A vapor extraction system with underground piping and vapor extraction wells is being designed for the site as part of a separate project. RRM's design will need to be coordinated with the installation and operation of the vapor extraction system.

Deliverables:

- *Ongoing project management and coordination with City, housing consultants, environmental consultant, and others, as necessary.*

Phase F: Construction

RRM will support the City during the construction of Veteran's Park. RRM's support will consist of the following.

Task F.1: CASp Certification

RRM's subconsultant, a CASp-certified ADA professional, will perform a plan and field review to verify ADA compliance of the park. The certified professional will provide a certified approval letter for the final park design. The certified professional will also inspect construction as necessary and provide a certified approval letter for the final completed improvements.

Deliverables:

- *CASp certification of design*
- *CASp certification of completed construction.*

Task F.2: Pre-Construction Meeting

Following the award of the general construction contract, RRM will attend the pre-construction meeting with staff and the general contractor.

Deliverables:

- *Prepare for and attend one (1) pre-construction meeting.*

Task F.3: Construction Administration

RRM will provide 200 hours of construction administration support to the City during the construction phase of the project on a time and materials basis. Support will include reviewing and responding to Requests for Information (RFIs), Change Orders (COs), product submittals, updating the SWPPP if necessary, and contractor supplied Shop Drawings. Under this task they will also issue Supplemental Instructions to provide clarifications to the bid drawings, as necessary.

Deliverables:

- *RFI, CO, and submittal review*
- *Supplemental instructions*

DocuSign Envelope ID: 42027E80-78D4-464D-A8E4-A7F69D7AF0C3

Task F.4: Construction Meetings and Observation

RRM will attend up to ten meetings to address construction related topics with the project team and observe construction progress. It is their assumption the facilitation of these meetings will be conducted by the City and/or their designated construction manager.

Deliverables:

- *Ten (10) construction observation meetings*

Task F.5: Project Close-Out

RRM will attend a preliminary punch walk and a final punch walk to verify that all construction has been satisfactorily completed to the intent of the design. They will not perform this task until all the work is substantially complete; multiple site visits to sign off on specific areas of work (such as concrete, or planting) are not included.

Deliverables:

- *Two (2) punch walks (preliminary and final)*

Task F.6: Record Drawings

Upon completion of construction work, RRM will compile and deliver to the City a reproducible set of Record Drawings per City standards based upon the marked-up record drawings, addenda, CO, and other data furnished by the contractor. These record drawings will show significant changes made during construction. Because these record drawings are based on unverified information provided by the other parties, which RRM shall assume will be reliable, RRM cannot and does not warrant their accuracy.

Deliverables:

- *Record drawings (digital format – AutoCAD and PDF with bookmarks for each section)*

Phase G: Additional Services

Task G.1: Additional Outreach Services

Upon request by the City, RRM will provide additional community outreach.

Deliverables:

- *Stakeholder meetings other than those outlined above.*
- *Public meetings other than those outlined above.*
- *Digital surveys other than those outlined above.*
- *Social media outreach*

Task G.2: Additional Design Services

Upon written request by the City, RRM will provide additional design services.

Deliverables:

- *Studies of the plaza between the future theatre and Science and Society buildings*
- *Develop preliminary and/or temporary access plans from Stockmen's Park to Veterans Park*
- *Extending temporary landscape along pedestrian path connecting Stockmen's Park and Veterans Park, as well as along Emergency Vehicle Access*
- *3D renderings other than those outlined above.*

DocuSign Envelope ID: 42027E80-78D4-464D-A8E4-A7F69D7AF0C3

- *Concept alternatives other than those outlined above.*

Task G.3: Additional Meetings and Coordination

Upon request by the City, RRM will provide additional coordination and attend meetings.

Deliverables:

- *Client meetings other than those outlined above.*
- *Consultant meetings other than those outlined above.*
- *Construction meetings other than those outlined above.*
- *Coordination for the soil remediation other than the coordination outlined above.*
- *Coordination with the Eden Housing design team other than the coordination outlined above.*

Schedule:

RRM will start rendering services upon execution of contract. See Exhibit A-2 for project schedule.

Billing:

RRM will invoice on a time and materials not to exceed basis, per hourly rates attached as Exhibit A-1 and Task and Fee Summary. A contract expense log will be provided with each invoice showing all invoices billed to the contract and the amount remaining on the contract.

Reimbursable Expenses

Incidental expenses incurred by RRM Design Group or any subconsultant it may hire to perform services for this project are reimbursed by the Client at actual cost plus 10% to cover its overhead and/or administrative expenses. Reimbursable expenses include, but are not limited to, reproduction costs, postage, shipping and handling of drawings and documents, long-distance communications, fees paid to authorities having jurisdiction over the project, the expense of any additional insurance requested by Client more than that normally carried by RRM Design Group or its subconsultants, travel expenses (transportation/automobile/lodging/meals), and renderings and models. Reimbursable automobile travel mileage will be billed at the current IRS business standard mileage rate.

DocuSign Envelope ID: 42027E80-78D4-464D-A8E4-A7F69D7AF0C3

Phase and Fee Summary

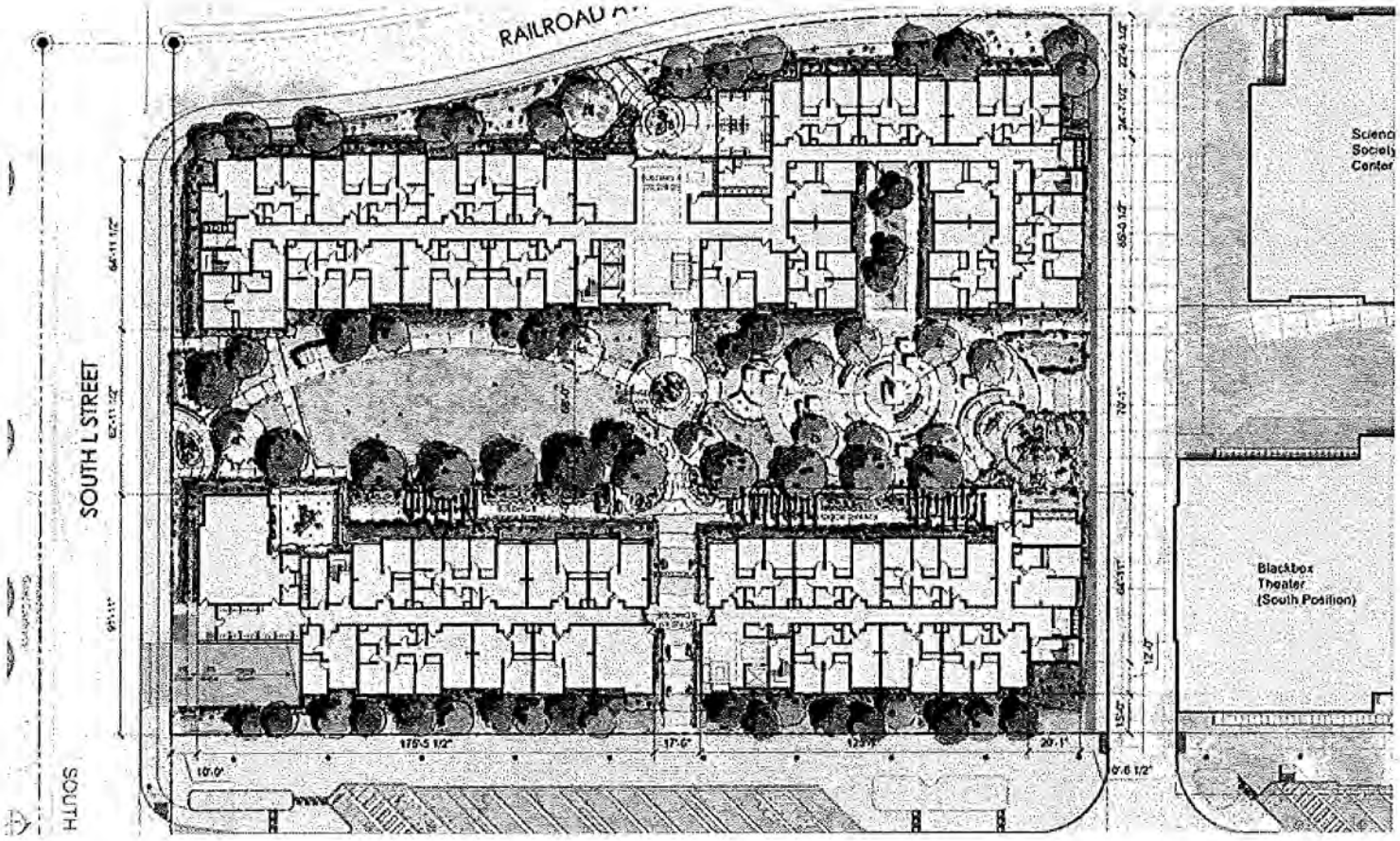
PHASE	DESCRIPTION	T&M NTE (see footnote)
A.1	Kickoff Meeting	$ 3,280
A.2	Data Gathering and Background Document Review	$ 2,260
	Phase A Subtotal:	**$ 5,540**
B.1	Stakeholder Meetings	$ 4,980
B.2	Public Outreach Workshop #1	$ 6,052
B.3	Public Outreach Workshop #2	$ 6,052
B.4	Digital Engagement	$ 5,616
B.5	Preliminary Public Hearings	$ 3,944
B.6	Public Hearings	$ 3,944
B.7	City Events	$ 1,400
	Phase B Subtotal:	**$ 31,988**
C.1	Schematic Landscape Plans	$ 25,310
C.2	Preferred Park Design including Renderings/Shade Studies	$ 35,850
C.3	Planning Entitlement Package	$ 15,720
	Phase C Subtotal:	**$ 76,880**
D.1	35% PS&E	$ 54,879
D.2	65% PS&E	$ 100,756
D.3	100% PS&E	$ 57,199
D.4	Bidding Assistance	$ 5,564
D.5	Drainage and Stormwater Study	$ 7,800
D.6	Stormwater Pollution Prevention Plan (SWPPP)	$ 4,680
	Phase D Subtotal:	**$ 230,878**
E.1	Client and Consultant Meetings	$ 12,320
E.2	Project Management and Coordination	$ 15,050
	Phase E Subtotal:	**$ 27,370**
F.1	CASp Certification	$ 4,620
F.2	Pre-Construction Meeting	$ 1,480
F.3	Construction Administration	$ 50,066
F.4	Construction Meetings/Observation	$ 15,300
F.5	Project Close-Out	$ 6,464
F.6	Record Drawings	$ 8,890
	Phase F Subtotal:	**$ 86,820**
G.1	Additional Outreach Services	$ 12,775
G.2	Additional Design Services	$ 12,775
G.3	Additional Meetings and Coordination	$ 12,775
	Task G Subtotal:	**$ 38,325**
	Reimbursable Expenses:	**$ 2,000**
	ESTIMATED PROJECT TOTAL:	**$ 499,801**

DocuSign Envelope ID: 42027E80-78D4-464D-A8E4-A7F69D7AF0C3

EXHIBIT 3

Conceptual Veterans Park Design

Final design to be determined



DocuSign Envelope ID: 42027E80-78D4-464D-A8E4-A7F69D7AF0C3

EXHIBIT A-1 RATES

Bill Rate Ranges

Subject to change effective March 1st each year

ARCHITECTURE		
Architect	$ 95 - $	155
Assistant Manager of Architecture	$ 130 - $	195
Design Director	$ 145 - $	240
Designer I	$ 70 - $	100
Designer II	$ 80 - $	125
Designer III	$ 90 - $	150
Intern	$ 45 - $	80
Job Captain	$ 90 - $	150
Manager of Architecture	$ 145 - $	255
Principal	$ 180 - $	350
Project Architect	$ 110 - $	185
Project Designer	$ 110 - $	180
Project Manager	$ 110 - $	185
Senior Architect	$ 135 - $	220
Senior Designer	$ 135 - $	210
Senior Project Manager	$ 135 - $	230

ENGINEERING & SURVEYING		
Associate Engineer	$ 90 - $	135
Construction Inspector	$ 105 - $	175
Designer I	$ 55 - $	95
Designer II	$ 75 - $	120
Designer III (Structural)	$ 90 - $	135
Engineer I	$ 85 - $	135
Engineer II	$ 105 - $	160
Land Surveyor	$ 115 - $	160
Manager of Engineering Services	$ 170 - $	280
Manager of Surveying	$ 150 - $	230
Party Chief	$ 90 - $	145
Principal	$ 180 - $	350
Project Engineer	$ 125 - $	180
Project Manager	$ 145 - $	230
Senior Associate Engineer	$ 110 - $	185
Senior Designer	$ 110 - $	185
Senior Land Surveyor	$ 130 - $	195
Senior Party Chief	$ 115 - $	185
Senior Project Engineer	$ 135 - $	225
Supervisor of Surveying	$ 135 - $	205
Survey Technician I	$ 60 - $	90
Survey Technician II	$ 75 - $	115
Survey Technician III	$ 90 - $	155
Surveying Crew Rates		
REGULAR		
One person w/ GPS or Robotic Workstation	$ 125 - $	155
Two person	$ 175 - $	290
Three person	$ 235 - $	390
PREVAILING WAGE		
One person w/ GPS or Robotic Workstation	$ 150 - $	180
Two person	$ 225 - $	340
Three person	$ 325 - $	490

INTERIOR DESIGN		
Designer I	$ 55 - $	85
Designer II	$ 65 - $	115
Interior Designer I	$ 75 - $	125
Interior Designer II	$ 90 - $	150
Intern	$ 45 - $	80
Senior Interior Designer	$ 110 - $	195

LANDSCAPE ARCHITECTURE		
Assistant Designer	$ 70 - $	110
Associate Designer	$ 80 - $	125
Designer	$ 95 - $	135
Intern	$ 45 - $	80
Landscape Architect	$ 95 - $	145
Manager of Landscape Architecture	$ 150 - $	245
Principal	$ 180 - $	350
Principal Landscape Architect	$ 135 - $	235
Senior Designer	$ 105 - $	165
Senior Landscape Architect	$ 110 - $	175

PLANNING		
Assistant Planner	$ 75 - $	120
Associate Planner	$ 90 - $	155
Intern	$ 45 - $	80
Manager of Planning	$ 145 - $	26
Principal	$ 180 - $	350
Principal Planner	$ 140 - $	250
Senior Planner	$ 115 - $	205
Senior Urban Designer	$ 115 - $	205
Urban Designer	$ 90 - $	155

CORPORATE SERVICES		
Accounting Specialist	$ 60 - $	110
Business Development Coordinator	$ 85 - $	135
Chief Executive Officer	$ 195 - $	500
Graphic Designer	$ 80 - $	135
Marketing Manager	$ 110 - $	220
Marketing Specialist	$ 90 - $	150
Office Coordinator	$ 70 - $	125
Project Accountant	$ 65 - $	135
Project Administrator	$ 70 - $	125
Receptionist	$ 40 - $	80

Rev 3/1/2021

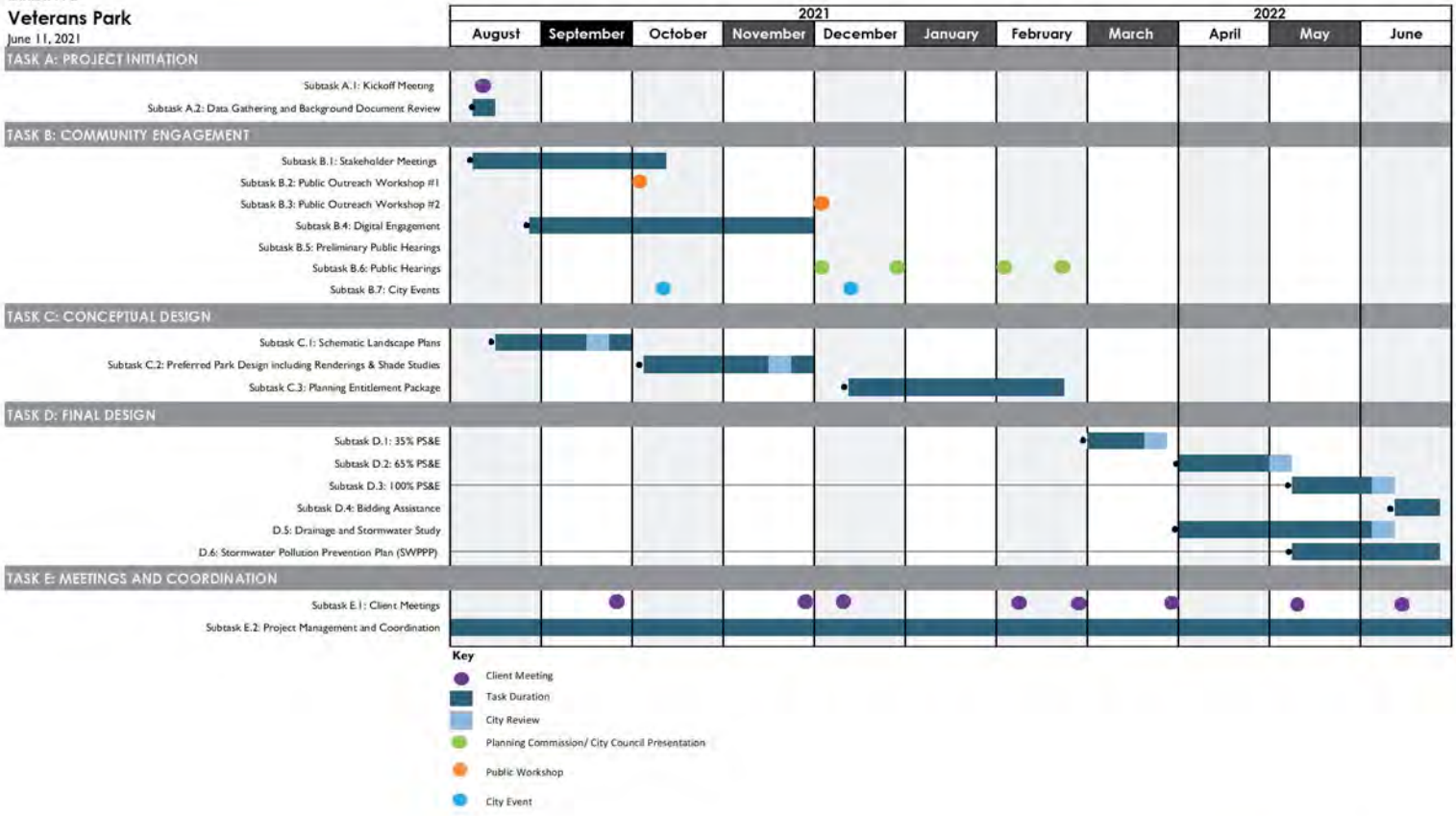
rrm design group

DocuSign Envelope ID: 42027E80-78D4-464D-A8E4-A7F69D7AF0C3

Exhibit A-2

Veterans Park

June 11, 2021



rrm design group

DocuSign Envelope ID: 42027E80-78D4-464D-A8E4-A7F69D7AF0C3

EXHIBIT B

INSURANCE REQUIREMENTS

Minimum Scope and Limits of Insurance

Consultant/Contractor shall maintain limits no less than:

1. Commercial General Liability, including operations, products, and completed operations, as applicable:
   $2,000,000 per occurrence/**$4,000,000** aggregate for bodily injury, personal injury, and property damage. If Commercial General Liability or other form of insurance with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.
2. Automobile Liability:
   $1,000,000 per accident for bodily injury and property damage.
3. Workers' Compensation and Employer's Liability:
   Statutory limits as required by the State of California including **$1,000,000** Employers' Liability per accident, per employee for bodily injury or disease. A waiver of subrogation is required for Workers' Compensation insurance. If Consultant/Contractor is a sole proprietor, then they must sign "Contractor Release of Liability."
4. Professional Liability/ Cyber Liability/Errors and Omissions:
   $2,000,000 per claim. Consultant/Contractor warrants that any retroactive date under this policy shall precede the effective date of this contract and, either continuous coverage will be maintained, or an extended discovery period will be exercised for a period of two years beginning at the time work under this contract is completed.

Deductibles and Self-Insured Retention

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

Acceptability of Insurers

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

Other Insurance Provisions

The general liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions:

1. The City of Livermore, its officers, officials, employees, and designated

DocuSign Envelope ID: 42027E80-78D4-464D-A8E4-A7F69D7AF0C3

volunteers are to be covered as additional insureds as respects: liability arising out of activities performed by or on behalf of the Consultant/Contractor; or automobiles owned, leased, hired or borrowed by the Consultant/Contractor. The coverage shall contain no special limitations on the scope of protection afforded to the City of Livermore, its officers, officials, employees, or volunteers.

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

Verification of Coverage

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

LIVERMORE
CALIFORNIA

EXHIBIT H

RAILROAD AVE

S. L ST

SCIENCE AND SOCIETY BUILDING

BLACK BOX THEATER

Gateway Element

Shade Tree, Typ

Table, Typ

Concrete Path, Typ

Ghost Train Planter

Linear Park

Bench, Typ

Mini Event Plaza

Bench, Typ

Entry Lawn

Flag Allee

Trellised Picnic Area with Flexible Seating

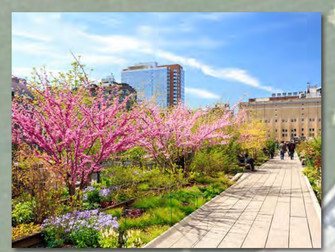
Playground

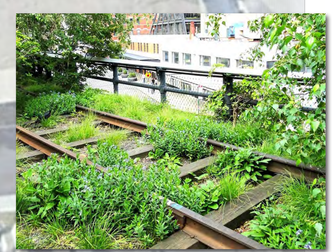
Gateway Element

Decomposed Granite Path, Typ

Stockman's Park

VETERANS WAY





CONCEPT 1: Flag Allée

Flag Allée creates a patriotic gateway that encourages visitors to reflect and remember. Flag poles stationed around the oval entry lawn memorialize Livermore's veterans before opening into the wider central lawn, perfect for larger memorial events and community gatherings.

Just bellow the entry lawn, a trellised picnic area shades visitors while the train-yard inspired playground engages the children of Livermore with their town's history, providing a play amenity that centers the site within its cultural context.

Veterans Park

CONCEPT 1: Flag Allée

Livermore, CA.

0' 10' 20' 40' 80'

SCALE 1" = 20' NOVEMBER 10, 2021

rrm design group

LIVERMORE
CALIFORNIA

EXHIBIT H

Veterans Park

CONCEPT 2: Flagpole Plaza

Livermore, CA.

CONCEPT 2: Flagpole Plaza

Flagpole Plaza creates a flexible event space that can cater to formal memorials or everyday use. Flags of the armed forces are massed at the heart of the site, memorializing Livermore's veterans in a central plaza. A specimen tree shades the plaza while lawn buffers the plaza from the playground to the South.

As the avenue arcs along the large, central lawn, a giant accent oak tree catches visitors' eyes and creates a serene sense of place that encourages passers-by to pause for a quite respite.

0' 10' 20' 40' 80'

SCALE 1" = 20' NOVEMBER 10, 2021

rrm design group

LIVERMORE
CALIFORNIA

EXHIBIT H

Veterans Park

CONCEPT 3: Central Lawn

Livermore, CA.

CONCEPT 3: Central Lawn

Central Lawn creates multiple protected and comfortable community gathering space while providing a direct, pleasant connection to neighboring destinations. Flags of the armed forces are set in the upper plaza, serving as the site's thematic focal point under the shade of the large trellises.

The circular turf lawn creates a central gathering space as people pass through the park, while buffering the upper plaza from the "Early Livermore" inspired playground.

Visitors are drawn through the site thanks to the strong connection created by the grand central lawn, while benches and shade trees create comfortable nodes.

0' 10' 20' 40' 80'

SCALE 1" = 20' NOVEMBER 10, 2021

rrm design group

DocuSign Envelope ID: 34EA2F0C-1129-46D0-BACB-44403DBAE072

IN THE CITY COUNCIL OF THE CITY OF LIVERMORE, CALIFORNIA

A RESOLUTION APPROVING THE TWO-YEAR FINANCIAL PLAN UPDATE FOR FISCAL YEAR 2021-22 AND FY 2022-23

The City Manager prepared and submitted to the City Council for its review the Two-Year Financial Plan Update for Fiscal Year 2021-22 and Fiscal Year 2022-23.

The City Council provided for public comment on the Two-Year Financial Plan.

The City Council wishes to adopt the Two-Year Financial Plan Update and order a copy of it be filed with the City Clerk and the Administrative Services Director for the City of Livermore.

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

1. The Two-Year Financial Plan Update for Fiscal Year 2021-22 and 2022-23 attached hereto as Exhibit A, is approved;

2. Funds in the amount of $615,927,393 are appropriated for the Two-Year Financial Plan Update for Fiscal Year 2021-22 and Fiscal Year 2022-23, including $129,493,285 for the Capital Improvement Program; and

3. Funds received from Lawrence Livermore National Lab and Sandia National Lab for back payments of business licenses will be allocated to prepay OPEB liabilities.

On motion of Council Member Munro, seconded by Council Member Carling, the foregoing resolution was passed and adopted on June 13, 2022, by the following vote:

AYES: Council Members Carling, Kiick, Munro, Vice Mayor Bonanno, and Mayor Woerner
NOES: None
ABSENT: None
ABSTAIN: None

ATTEST:

DocuSigned by:
Marie Weber
803794826BC44BB...

Marie Weber
City Clerk
6/15/2022 | 11:51 AM PDT

APPROVED AS TO FORM:

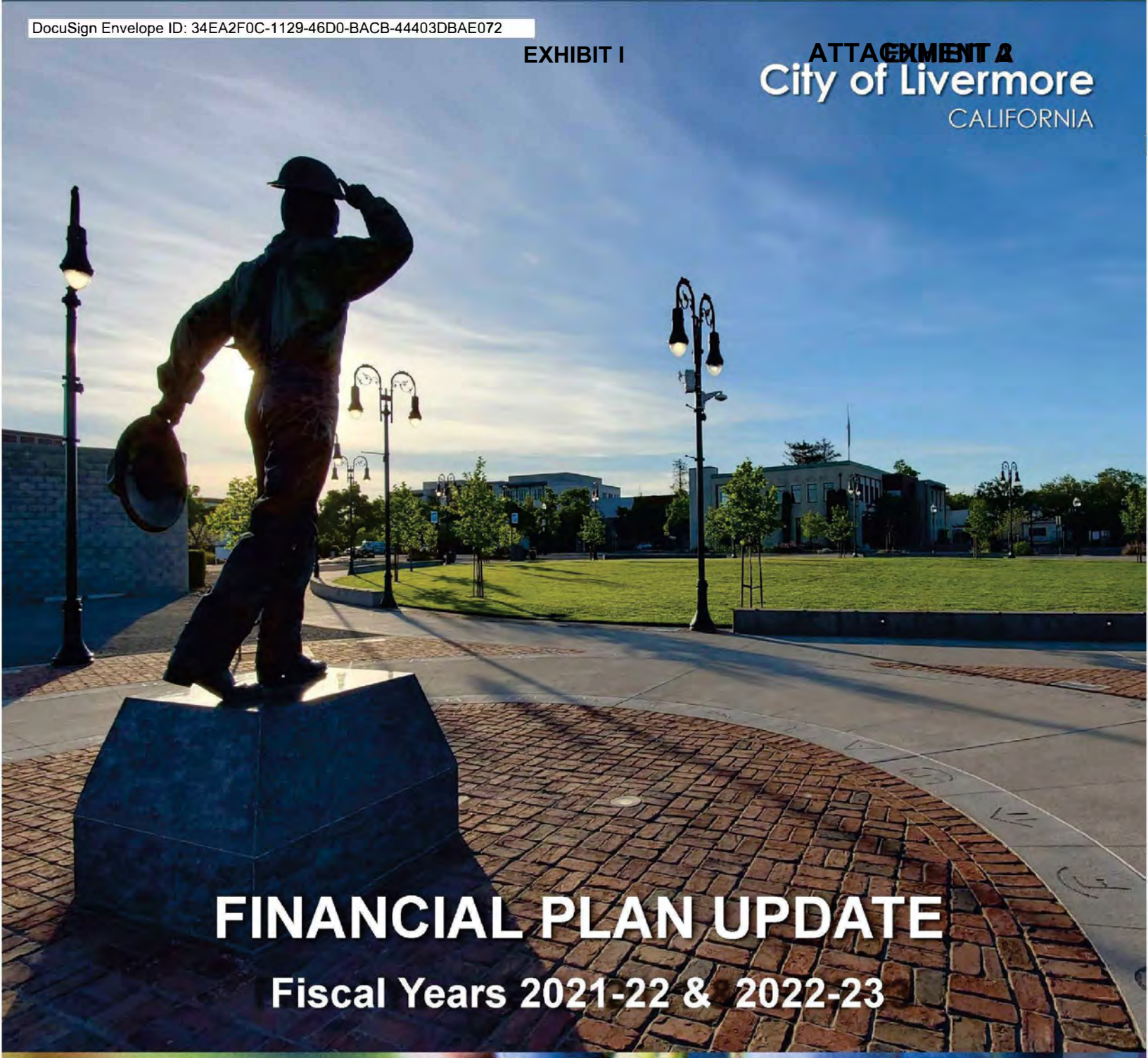
DocuSigned by:
Jason Alcala
ACD00D4E252C458...

Jason R. Alcala
City Attorney

Exhibit A – Two-Year Financial Plan Update for fiscal year 2021-22 and 2022-23

DocuSign Envelope ID: 34EA2F0C-1129-46D0-BACB-44403DBAE072

City of Livermore
CALIFORNIA



FINANCIAL PLAN UPDATE

Fiscal Years 2021-22 & 2022-23

DocuSign Envelope ID: 34EA2F0C-1129-46D0-BACB-44403DBAE072

General Fund Expenditures – by Department

Department	FY 2020-21 Actual	FY 2021-22 Existing Budget	FY 2021-22 Proposed Budget	FY 2021-22 Change	FY 2022-23 Existing Budget	FY 2022-23 Proposed Budget	FY 2022-23 Change
City Council	$ 292,587	$ 190,327	$ 261,587	$ 71,260	$ 201,364	$ 226,566	$ 25,202
City Manager	2,115,420	2,175,705	2,348,260	172,555	2,181,054	2,896,537	715,483
City Attorney	1,874,129	2,213,568	2,186,599	(26,969)	2,179,904	2,178,329	(1,575)
Administrative Services	6,459,231	7,276,064	7,636,219	360,155	7,534,044	8,684,680	1,150,636
Community Development	16,807,040	21,936,110	21,267,737	(668,373)	17,270,648	20,524,616	3,253,968
Fire	22,758,011	23,822,187	24,041,576	219,389	24,199,167	25,437,560	1,238,393
General Services	3,040,213	3,569,999	4,411,457	841,458	3,601,224	3,596,673	(4,551)
Innovation & Economic Development	4,401,048	3,106,986	2,893,620	(213,366)	3,117,460	2,786,435	(331,025)
Library	5,517,721	6,258,888	6,457,670	198,782	6,331,728	6,870,311	538,583
Police	38,168,354	41,631,320	40,664,368	(966,952)	43,019,382	44,455,554	1,436,172
Public Works	7,926,113	9,082,280	8,889,795	(192,485)	8,848,326	9,343,134	494,808
Total Operating Expenditures	**$109,359,867**	**$ 121,263,434**	**$121,058,888**	**$ (204,546)**	**$118,484,301**	**$ 127,000,395**	**$ 8,516,094**
Transfers Out	$ 4,189,577	$ 6,759,479	$ 6,294,486	$ (464,993)	$ 9,182,168	$ 8,218,044	$ (964,124)
Capital Improvements	4,367,190	14,207,000	13,577,000	(630,000)	1,090,000	1,897,000	807,000
Addition to Reserves	5,697,188	1,599,556	4,643,528	3,043,972	1,043,263	2,180,358	1,137,095
Total Expenditures	**$123,613,822**	**$ 143,829,469**	**$145,573,902**	**$ 1,744,433**	**$129,799,732**	**$ 139,295,797**	**$ 9,496,065**

General Fund Expenditures – by Category

Expense Category	FY 2020-21 Actual	FY 2021-22 Existing Budget	FY 2021-22 Proposed Budget	FY 2021-22 Change	FY 2022-23 Existing Budget	FY 2022-23 Proposed Budget	FY 2022-23 Change
Personnel Services	$ 33,724,109	$ 37,319,745	$ 36,424,489	$ (895,256)	$ 37,828,248	$ 40,360,639	$ 2,532,391
Supplmntl Personnel Svcs	26,407,327	29,286,282	27,985,199	(1,301,083)	30,158,021	29,622,797	(535,224)
Services & Supplies	49,130,697	54,657,407	56,649,200	1,991,793	50,448,932	56,620,959	6,172,027
Capital Outlay	97,734	-	-	-	49,100	396,000	346,900
Total Operating Expenditures	**$ 109,359,867**	**$ 121,263,434**	**$ 121,058,888**	**$ (204,546)**	**$ 118,484,301**	**$ 127,000,395**	**$ 8,516,094**
Transfers Out	$ 4,189,577	$ 6,759,479	$ 6,294,486	$ (464,993)	$ 9,182,168	$ 8,218,044	$ (964,124)
Capital Improvement	4,367,190	14,207,000	13,577,000	(630,000)	1,090,000	1,897,000	807,000
Addition to Reserves	5,697,188	1,599,556	4,643,528	3,043,972	1,043,263	2,180,358	1,137,095
Total Expenditures	**$ 123,613,822**	**$ 143,829,469**	**$ 145,573,902**	**$ 1,744,433**	**$129,799,732**	**$ 139,295,797**	**$ 9,496,065**

DocuSign Envelope ID: 34EA2F0C-1129-46D0-BACB-44403DBAE072

Citywide Total Revenues by Fund

Fund Type	FY 2020-21 Actual	FY 2021-22 Existing Budget	FY 2021-22 Proposed Budget	FY 2021-22 Change	FY 2022-23 Existing Budget	FY 2022-23 Proposed Budget	FY 2022-23 Change
General Fund							
General Fund	$ 128,639,967	$126,720,204	$ 133,354,121	$ 6,633,917	$ 125,712,280	$ 132,457,992	$ 6,745,712
Total General Fund	**$ 128,639,967**	**$126,720,204**	**$ 133,354,121**	**$ 6,633,917**	**$ 125,712,280**	**$ 132,457,992**	**$ 6,745,712**
Enterprise Funds							
Airport	$ 3,807,332	$ 3,884,716	$ 4,036,710	$ 151,994	$ 3,923,290	$ 4,154,716	$ 231,426
Airport Grant	296,157	430,000	430,000	-	8,145,000	8,145,000	-
Storm Water	2,907,114	3,946,175	3,510,538	(435,637)	3,951,878	3,851,878	(100,000)
Storm Drain	177,161	341,680	224,680	(117,000)	346,680	164,680	(182,000)
FEMA Storm Reimbursement	45,288	797,635	119,852	(677,783)	970,000	235,625	(734,375)
Sewer	25,657,689	27,543,847	27,545,347	1,500	28,936,805	28,936,805	-
Sewer Replacement	8,089,827	8,107,623	8,107,623	-	9,107,623	9,107,623	-
Sewer Connection Fees	2,019,585	2,144,589	682,589	(1,462,000)	2,078,589	1,462,589	(616,000)
LAVWMA	4,136,092	3,337,423	3,337,423	-	3,337,423	3,337,423	-
Water	17,747,755	17,577,448	17,549,815	(27,633)	18,262,402	18,214,092	(48,310)
Water Connection Fees	127,257	463,326	85,326	(378,000)	424,326	305,326	(119,000)
Water Replacement	2,070,192	2,080,937	2,080,937	-	2,080,937	2,080,937	-
Total Enterprise Funds	**67,081,449**	**70,655,399**	**67,710,840**	**(2,944,559)**	**81,564,953**	**79,996,694**	**(1,568,259)**
Capital Project Funds							
Developers Deposit	$ 200,000	$ 6,176	$ 6,176	$ -	$ 6,176	$ 6,176	$ -
Vasco Ace - Connector Rd	184	200	200	-	200	200	-
Traffic Impact Fee (TIF)	606,936	4,688,249	1,795,249	(2,893,000)	2,649,249	3,095,249	446,000
2022 COP Construction Fund	-	39,903,340	-	(39,903,340)	-	50,000,000	50,000,000
TVTC 20% Fee	162,971	1,930,162	265,162	(1,665,000)	1,426,162	1,215,162	(211,000)
Downtown Revitlization Fee	5,850	552,000	-	(552,000)	303,000	150,000	(153,000)
HHS - Human Services Facilities Fee	108,287	120,000	50,000	(70,000)	120,000	120,000	-
Parking In Lieu Fee	39,512	-	3,000,000	3,000,000	-	-	-
Park Fee - AB 1600	1,074,143	4,889,571	832,571	(4,057,000)	3,676,571	3,632,571	(44,000)
Transferable Development Credits	-	2,780,876	-	(2,780,876)	-	4,447,828	4,447,828
El Charro Infrastructure	453,579	21,468	21,468	-	15,000	15,000	-
Solid Waste & Recycling Impact Fee	1,286,024	1,324,604	1,305,828	(18,776)	1,364,342	1,354,666	(9,676)
Other Capital Projects	-	-	-	-	-	-	-
Total Capital Project Funds	**$ 3,937,486**	**$ 56,216,646**	**$ 7,276,654**	**$ (48,939,992)**	**$ 9,560,700**	**$ 64,036,852**	**$ 54,476,152**
Debt Service Funds							
2020 COPs Series A	$ 228,171	$ 475,600	$ 480,000	$ 4,400	$ 490,850	$ 497,300	$ 6,450
2020 COPs Series B	1,076,684	3,850,946	3,881,018	30,072	3,882,015	3,882,372	357
2022 COPs Debt Service	-	1,112,272	-	(1,112,272)	2,570,626	1,865,000	(705,626)
Total Debt Service Funds	**$ 1,304,855**	**$ 5,438,818**	**$ 4,361,018**	**$ (1,077,800)**	**$ 6,943,491**	**$ 6,244,672**	**$ (698,819)**
Permanent Funds							
Doolan Canyon Preserv Endowment	$ 186,198	$ 66,244	$ 66,244	$ -	$ 66,244	$ 66,244	$ -
Total Permanent Funds	**$ 186,198**	**$ 66,244**	**$ 66,244**	**$ -**	**$ 66,244**	**$ 66,244**	**$ -**

DocuSign Envelope ID: 34EA2F0C-1129-46D0-BACB-44403DBAE072

Citywide Total Expenditures by Fund

Fund	FY 2020-21 Actual	FY 2021-22 Existing Budget	FY 2021-22 Proposed Budget	FY 2021-22 Change	FY 2022-23 Existing Budget	FY 2022-23 Proposed Budget	FY 2022-23 Change
General Fund							
General Fund	$ 123,613,822	$ 143,829,469	$ 145,573,902	$ 1,744,433	$ 129,799,732	$ 139,295,797	$ 9,496,065
General Fund Total	**$ 123,613,822**	**$ 143,829,469**	**$ 145,573,902**	**$ 1,744,433**	**$ 129,799,732**	**$ 139,295,797**	**$ 9,496,065**
Enterprise							
Airport	$ 3,460,302	$ 4,377,309	$ 3,931,800	$ (445,509)	$ 4,794,834	$ 4,981,455	$ 186,621
Airport Grant	296,157	430,000	-	(430,000)	8,145,000	8,575,000	430,000
Storm Water	2,839,263	4,020,141	3,538,595	(481,546)	3,753,746	3,783,549	29,803
Storm Drain	282,939	54,681	125,024	70,343	12,206	11,206	(1,000)
FEMA Storm Reimbursement	576,441	2,725,021	230,000	(2,495,021)	970,000	462,635	(507,365)
Sewer	25,801,675	28,399,782	27,098,950	(1,300,832)	28,691,216	29,582,850	891,634
Sewer Replacement	5,756,961	4,526,249	3,113,546	(1,412,703)	19,720,241	19,638,241	(82,000)
Sewer Connection Fees	3,239,460	2,273,475	1,946,961	(326,514)	6,503,475	7,644,556	1,141,081
LAVWMA	3,324,490	3,660,481	3,660,481	-	3,763,440	3,763,440	-
Water	17,738,866	19,112,075	18,625,988	(486,087)	19,091,370	19,222,198	130,828
Water Connection Fees	199,907	647,358	299,858	(347,500)	837,984	1,121,807	283,823
Water Replacement	859,701	880,253	803,253	(77,000)	2,711,453	832,453	(1,879,000)
Enterprise Total	**$ 64,376,162**	**$ 71,106,825**	**$ 63,374,456**	**$ (7,732,369)**	**$ 98,994,965**	**$ 99,619,390**	**$ 624,425**
Capital Projects							
Developers Deposit	$ 200,000	$ -	$ -	$ -	$ -	$ -	$ -
Traffic Impact Fee (TIF)	805,227	2,592,744	1,308,744	(1,284,000)	3,587,495	2,980,106	(607,389)
2022 COP Construction Fnd	-	1,685,000	1,675,000	(10,000)	34,890,000	16,580,000	(18,310,000)
TVTC 20% Fee	14,534	2,261,000	1,626,000	(635,000)	1,521,250	2,536,250	1,015,000
Downtown Revitlization Fee	-	-	-	-	-	150,000	150,000
HHS - Human Services Facilities Fee	200,315	2,039,726	420,000	(1,619,726)	-	1,739,835	1,739,835
Parking In Lieu Fee	-	110,000	72,000	(38,000)	50,000	50,000	-
Park Fee - AB 1600	1,346,924	7,905,000	6,485,000	(1,420,000)	7,490,000	1,998,000	(5,492,000)
El Charro Infrastructure	453,579	21,468	-	(21,468)	15,000	-	(15,000)
El Charro Specific Plan	433,477	-	-	-	-	-	-
Solid Waste & Recycling Impact Fee	642,044	963,198	550,000	(413,198)	3,388,198	5,075,000	1,686,802
Other Capital Projects	3,898	-	-	-	-	-	-
Capital Projects Total	**$ 4,099,998**	**$ 17,578,136**	**$ 12,136,744**	**$ (5,441,392)**	**$ 50,941,943**	**$ 31,109,191**	**$ (19,832,752)**
Debt Service							
2020 COPs Series A	$ 229,161	$ 475,000	$ 480,000	$ 5,000	$ 490,250	$ 497,300	$ 7,050
2020 COPs Series B	1,094,699	3,850,440	3,881,018	30,578	3,881,509	3,882,372	863
2022 COPs Debt Service	-	1,112,272	-	(1,112,272)	2,570,626	1,865,000	(705,626)
Debt Service Total	**$ 1,323,860**	**$ 5,437,712**	**$ 4,361,018**	**$ (1,076,694)**	**$ 6,942,385**	**$ 6,244,672**	**$ (697,713)**
Permanent							
Dooln Cnyn Presrv Endwmnt	$ 26,321	$ 26,000	$ 28,000	$ 2,000	$ 26,000	$ 28,000	$ 2,000
Permanent Total	**$ 26,321**	**$ 26,000**	**$ 28,000**	**$ 2,000**	**$ 26,000**	**$ 28,000**	**$ 2,000**

DocuSign Envelope ID: 34EA2F0C-1129-46D0-BACB-44403DBAE072

Citywide Expenditures by Division – FY2021-22 Proposed Budget (Continued)

Department/Division	General Fund	Enterprise Funds	Capital Projects Funds	Debt Service Funds	Permanent Funds	Special Revenue Funds	Internal Service Funds	Total Expenditures
Library								
Library	$ 6,457,670	$ -	$ -	$ -	$ -	$ 193,974	$ -	$ 6,651,644
Library Total	**$ 6,457,670**	**$ -**	**$ -**	**$ -**	**$ -**	**$ 193,974**	**$ -**	**$ 6,651,644**
General Services								
General Services	$ 4,411,457	$ -	$ -	$ 4,361,018	$ -	$ -	$ -	$ 8,772,475
General Services Total	**$ 4,411,457**	**$ -**	**$ -**	**$ 4,361,018**	**$ -**	**$ -**	**$ -**	**$ 8,772,475**
Police								
Horizons	$ -	$ -	$ -	$ -	$ -	$ 1,085,590	$ -	$ 1,085,590
Police	40,664,368	-	-	-	-	762,491	-	41,426,859
Police Total	**$ 40,664,368**	**$ -**	**$ -**	**$ -**	**$ -**	**$ 1,848,081**	**$ -**	**$ 42,512,449**
Public Works								
Airport	$ -	$ 3,366,800	$ -	$ -	$ -	$ -	$ -	$ 3,366,800
Maintenance	7,468,385	-	-	-	-	3,824,685	9,008,849	20,301,919
Public Works	1,421,409	-	-	-	-	1,393,985	-	2,815,394
Sewer	-	20,728,483	-	-	-	-	-	20,728,483
Stormwater User	-	3,543,767	-	-	-	-	-	3,543,767
Water	-	17,224,841	-	-	-	-	-	17,224,841
Public Works Total	**$ 8,889,795**	**$ 44,863,891**	**$ -**	**$ -**	**$ -**	**$ 5,218,670**	**$ 9,008,849**	**$ 67,981,204**
Total Operating Expenditures	**$ 121,058,888**	**$ 44,863,891**	**$ -**	**$ 4,361,018**	**$ 28,000**	**$ 16,227,142**	**$ 21,789,604**	**$ 208,328,543**
Transfers Out	$ 6,294,486	$ 14,219,565	$ 62,435	$ -	$ -	$ 1,638,875	$ -	$ 22,215,361
Capital Improvements	13,577,000	4,291,000	12,074,309	-	-	6,323,937	812,304	37,078,550
Addition to Reserves	4,643,528	-	-	-	-	-	-	4,643,528
Total Expenditures	**$ 145,573,902**	**$ 63,374,456**	**$ 12,136,744**	**$ 4,361,018**	**$ 28,000**	**$ 24,189,954**	**$ 22,601,908**	**$ 272,265,982**

DocuSign Envelope ID: 34EA2F0C-1129-46D0-BACB-44403DBAE072

Citywide Expenditures by Division – FY2022-23 Proposed Budget (Continued)

Department/Division	General Fund	Enterprise Funds	Capital Projects Funds	Debt Service Funds	Permanent Funds	Special Revenue Funds	Internal Service Funds	Total Expenditures
Library								
Library	$ 6,870,311	$ -	$ -	$ -	$ -	$ 198,859	$ -	$ 7,069,170
Library Total	**$ 6,870,311**	**$ -**	**$ -**	**$ -**	**$ -**	**$ 198,859**	**$ -**	**$ 7,069,170**
General Services								
General Services	$ 3,596,673	$ -	$ -	$ 6,244,672	$ -	$ -	$ -	$ 9,841,345
General Services Total	**$ 3,596,673**	**$ -**	**$ -**	**$ 6,244,672**	**$ -**	**$ -**	**$ -**	**$ 9,841,345**
Police								
Horizons	$ -	$ -	$ -	$ -	$ -	$ 1,183,521	$ -	$ 1,183,521
Police	44,455,554	-	-	-	-	847,341	-	45,302,895
Police Total	**$ 44,455,554**	**$ -**	**$ -**	**$ -**	**$ -**	**$ 2,030,862**	**$ -**	**$ 46,486,416**
Public Works								
Airport	$ -	$ 3,562,105	$ -	$ -	$ -	$ -	$ -	$ 3,562,105
Maintenance	7,679,703	-	-	-	-	4,295,441	8,524,838	20,499,981
Public Works	1,663,431	-	-	-	-	1,417,461	-	3,080,892
Sewer	-	22,985,632	-	-	-	-	-	22,985,632
Stormwater User	-	3,659,130	-	-	-	-	-	3,659,130
Water	-	17,993,050	-	-	-	-	-	17,993,050
Public Works Total	**$ 9,343,134**	**$ 48,199,917**	**$ -**	**$ -**	**$ -**	**$ 5,712,902**	**$ 8,524,838**	**$ 71,780,791**
Total Operating Expenditures	**$ 127,000,395**	**$ 48,199,917**	**$ 2,139,835**	**$ 6,244,672**	**$ 28,000**	**$ 16,199,784**	**$ 24,654,934**	**$ 224,467,537**
Transfers Out	$ 8,218,044	$ 15,030,488	$ 213,995	$ -	$ -	$ 1,136,224	$ -	$ 24,598,751
Capital Improvements	1,897,000	36,388,985	28,755,361	-	-	22,323,389	3,050,000	92,414,735
Addition to Reserves	2,180,358	-	-	-	-	-	-	2,180,358
Total Expenditures	**$ 139,295,797**	**$ 99,619,390**	**$ 31,109,191**	**$ 6,244,672**	**$ 28,000**	**$ 39,659,397**	**$ 27,704,934**	**$ 343,661,381**

DocuSign Envelope ID: 34EA2F0C-1129-46D0-BACB-44403DBAE072

Projected Fund Balances FY 2021-22

Fund Name	Beginning Fund Balance FY 2021-22	Operating Revenue	Transfers In	Other Financing Sources	Total Sources	Operating Expenditure	Capital Expenditure	Transfers Out	Reserves	Total Uses	Estimated Ending Fund Balance FY 2021-22
General Fund											
General Fund	$ 26,273,570	$ 132,648,846	$ 705,275	$ -	$ 159,627,691	$ 121,058,888	$ 13,577,000	$ 6,294,486	$ 4,643,528	$ 145,573,902	$ 14,053,789
General Fund Total	**$ 26,273,570**	**$ 132,648,846**	**$ 705,275**	**$ -**	**$ 159,627,691**	**$ 121,058,888**	**$ 13,577,000**	**$ 6,294,486**	**$ 4,643,528**	**$ 145,573,902**	**$ 14,053,789**
Enterprise Funds											
Airport	$ 5,457,827	$ 4,036,710	$ -	$ -	$ 9,494,537	$ 3,366,800	$ 565,000	$ -	$ -	$ 3,931,800	$ 5,562,737
Airport Grant	-	430,000	-	-	430,000	-	-	-	-	-	430,000
Storm Water	162,308	1,143,175	2,367,363	-	3,672,846	3,418,743	70,000	49,852	-	3,538,595	134,251
Storm Drain	7,018,889	224,680	-	-	7,243,569	125,024	-	-	-	125,024	7,118,545
FEMA Storm Reimbursement	2,617,834	70,000	49,852	-	2,737,686	-	230,000	-	-	230,000	2,507,686
Sewer	19,593,144	27,545,347	-	-	47,138,491	16,498,950	-	10,600,000	-	27,098,950	20,039,541
Sewer Replacement	30,395,733	107,623	8,000,000	-	38,503,356	516,546	2,597,000	-	-	3,113,546	35,389,810
Sewer Connection Fees	14,059,911	682,589	-	-	14,742,500	52,506	566,000	1,328,455	-	1,946,961	12,795,539
LAVWMA	5,279,130	8,968	3,328,455	-	8,616,553	3,660,481	-	-	-	3,660,481	4,956,072
Water	10,649,060	17,308,557	241,258	-	28,198,875	16,625,988	-	2,000,000	-	18,625,988	9,572,887
Water Connection Fees	1,263,410	85,326	-	-	1,348,736	8,600	50,000	241,258	-	299,858	1,048,878
Water Replacement	21,809,995	80,937	2,000,000	-	23,890,932	590,253	213,000	-	-	803,253	23,087,679
Enterprise Funds Total	**$ 118,307,241**	**$ 51,723,912**	**$ 15,986,928**	**$ -**	**$ 186,018,081**	**$ 44,863,891**	**$ 4,291,000**	**$ 14,219,565**	**$ -**	**$ 63,374,456**	**$ 122,643,625**
Capital Projects											
Developers Deposit	$ -	$ 6,176	$ -	$ -	$ 6,176	$ -	$ -	$ -	$ -	$ -	$ 6,176
Vasco Ace - Connector Rd	69,145	200	-	-	69,345	-	-	-	-	-	69,345
Traffic Impact Fee (TIF)	23,419,899	1,795,249	-	-	25,215,148	-	1,246,309	62,435	-	1,308,744	23,906,404
2022 COP Construction Fund	-	-	-	-	-	-	1,675,000	-	-	1,675,000	(1,675,000)
TVTC 20% Fee	3,878,759	265,162	-	-	4,143,921	-	1,626,000	-	-	1,626,000	2,517,921
Isabel / I-580 Interchange	-	-	-	-	-	-	-	-	-	-	-
Downtown Revitlization Fee	(3,874,396)	-	-	-	(3,874,396)	-	-	-	-	-	(3,874,396)
HHS - Human Services Fac. Fee	2,584,411	50,000	-	-	2,634,411	-	420,000	-	-	420,000	2,214,411
Parking In Lieu Fee	162,065	3,000,000	-	-	3,162,065	-	72,000	-	-	72,000	3,090,065
Former Rte 84-Repair Funds	-	-	-	-	-	-	-	-	-	-	-
Park Fee - AB1600	7,712,466	832,571	-	-	8,545,037	-	6,485,000	-	-	6,485,000	2,060,037
Transferable Dev. Credits	14,557,752	-	-	-	14,557,752	-	-	-	-	-	14,557,752
El Charro Infrastructure	-	21,468	-	-	21,468	-	-	-	-	-	21,468
El Charro Specific Plan	33,849	-	-	-	33,849	-	-	-	-	-	33,849
SW & Rec Impact Fee	3,491,739	1,305,828	-	-	4,797,567	-	550,000	-	-	550,000	4,247,567
Capital Projects Total	**$ 52,035,689**	**$ 7,276,654**	**$ -**	**$ -**	**$ 59,312,343**	**$ -**	**$ 12,074,309**	**$ 62,435**	**$ -**	**$ 12,136,744**	**$ 47,175,599**
Debt Service											
2020 COPs Series A	$ -	$ -	$ 480,000	$ -	$ 480,000	$ 480,000	$ -	$ -	$ -	$ 480,000	$ -
2020 COPs Series B	-	-	3,881,018	-	3,881,018	3,881,018	-	-	-	3,881,018	-
2022 COPs Debt Service	-	-	-	-	-	-	-	-	-	-	-
Debt Service Total	**$ -**	**$ -**	**$ 4,361,018**	**$ -**	**$ 4,361,018**	**$ 4,361,018**	**$ -**	**$ -**	**$ -**	**$ 4,361,018**	**$ -**
Permanent Funds											
Doolan Canyon Pres. Endow.	$ 692,717	$ 66,244	$ -	$ -	$ 758,961	$ 28,000	$ -	$ -	$ -	$ 28,000	$ 730,961
Permanent Funds Total	**$ 692,717**	**$ 66,244**	**$ -**	**$ -**	**$ 758,961**	**$ 28,000**	**$ -**	**$ -**	**$ -**	**$ 28,000**	**$ 730,961**

DocuSign Envelope ID: 34EA2F0C-1129-46D0-BACB-44403DBAE072

Projected Fund Balances FY 2022-23

Fund Name	Beginning Fund Balance FY 2022-23	Operating Revenue	Transfers In	Other Financing Sources	Total Sources	Operating Expenditure	Capital Expenditure	Transfers Out	Reserves	Total Uses	Estimated Ending Fund Balance FY 2022-23
General Fund											
General Fund	$ 14,053,789	$ 131,605,073	$ 852,919	$ -	$ 146,511,781	$ 127,000,395	$ 1,897,000	$ 8,218,044	$ 2,180,358	$ 139,295,797	$ 7,215,984
General Fund Total	**$ 14,053,789**	**$ 131,605,073**	**$ 852,919**	**$ -**	**$ 146,511,781**	**$ 127,000,395**	**$ 1,897,000**	**$ 8,218,044**	**$ 2,180,358**	**$ 139,295,797**	**$ 7,215,984**
Enterprise Funds											
Airport	$ 5,562,737	$ 4,154,716	$ -	$ -	$ 9,717,453	$ 3,562,105	$ 1,419,350	$ -	$ -	$ 4,981,455	$ 4,735,998
Airport Grant	430,000	8,145,000	-	-	8,575,000	-	8,575,000	-	-	8,575,000	-
Storm Water	134,251	1,151,878	2,700,000	-	3,986,129	3,647,924	75,000	60,625	-	3,783,549	202,579
Storm Drain	7,118,545	164,680	-	-	7,283,225	11,206	-	-	-	11,206	7,272,019
FEMA Storm Reimbursement	2,507,686	175,000	60,625	-	2,743,311	-	462,635	-	-	462,635	2,280,676
Sewer	20,039,541	28,936,805	-	-	48,976,346	18,182,850	-	11,400,000	-	29,582,850	19,393,496
Sewer Replacement	35,389,810	107,623	9,000,000	-	44,497,433	978,241	18,660,000	-	-	19,638,241	24,859,192
Sewer Connection Fees	12,795,539	1,462,589	-	-	14,258,128	61,101	6,255,000	1,328,455	-	7,644,556	6,613,572
LAVWMA	4,956,072	8,968	3,328,455	-	8,293,495	3,763,440	-	-	-	3,763,440	4,530,055
Water	9,572,887	17,972,684	241,408	-	27,786,979	17,222,198	-	2,000,000	-	19,222,198	8,564,782
Water Connection Fees	1,048,878	305,326	-	-	1,354,204	180,399	700,000	241,408	-	1,121,807	232,397
Water Replacement	23,087,679	80,937	2,000,000	-	25,168,616	590,453	242,000	-	-	832,453	24,336,163
Enterprise Funds Total	**$ 122,643,625**	**$ 62,666,206**	**$ 17,330,488**	**$ -**	**$ 202,640,319**	**$ 48,199,917**	**$ 36,388,985**	**$ 15,030,488**	**$ -**	**$ 99,619,390**	**$ 103,020,929**
Capital Projects											
Developers Deposit	$ 6,176	$ 6,176	$ -	$ -	$ 12,352	$ -	$ -	$ -	$ -	$ -	$ 12,352
Vasco Ace - Connector Rd	69,345	200	-	-	69,545	-	-	-	-	-	69,545
Traffic Impact Fee (TIF)	23,906,404	3,095,249	-	-	27,001,653	-	2,916,111	63,995	-	2,980,106	24,021,547
2022 COP Construction Fund	(1,675,000)	-	-	50,000,000	48,325,000	400,000	16,180,000	-	-	16,580,000	31,745,000
TVTC 20% Fee	2,517,921	1,215,162	-	-	3,733,083	-	2,536,250	-	-	2,536,250	1,196,833
Isabel / I-580 Interchange	-	-	-	-	-	-	-	-	-	-	-
Downtown Revitlization Fee	(3,874,396)	150,000	-	-	(3,724,396)	-	-	150,000	-	150,000	(3,874,396)
HHS - Human Services Fac. Fee	2,214,411	120,000	-	-	2,334,411	1,739,835	-	-	-	1,739,835	594,576
Parking In Lieu Fee	3,090,065	-	-	-	3,090,065	-	50,000	-	-	50,000	3,040,065
Former Rte 84-Repair Funds	-	-	-	-	-	-	-	-	-	-	-
Park Fee - AB1600	2,060,037	3,632,571	-	-	5,692,608	-	1,998,000	-	-	1,998,000	3,694,608
Transferable Dev. Credits	14,557,752	4,447,828	-	-	19,005,580	-	-	-	-	-	19,005,580
El Charro Infrastructure	21,468	15,000	-	-	36,468	-	-	-	-	-	36,468
El Charro Specific Plan	33,849	-	-	-	33,849	-	-	-	-	-	33,849
SW & Rec Impact Fee	4,247,567	1,354,666	-	-	5,602,233	-	5,075,000	-	-	5,075,000	527,233
Capital Projects Total	**$ 47,175,599**	**$ 14,036,852**	**$ -**	**$ 50,000,000**	**$ 111,212,451**	**$ 2,139,835**	**$ 28,755,361**	**$ 213,995**	**$ -**	**$ 31,109,191**	**$ 80,103,260**
Debt Service											
2020 COPs Series A	$ -	$ -	$ 497,300	$ -	$ 497,300	$ 497,300	$ -	$ -	$ -	$ 497,300	$ -
2020 COPs Series B	-	-	3,882,372	-	3,882,372	3,882,372	-	-	-	3,882,372	-
2022 COPs Debt Service	-	-	1,325,000	540,000	1,865,000	1,865,000	-	-	-	1,865,000	-
Debt Service Total	**$ -**	**$ -**	**$ 5,704,672**	**$ 540,000**	**$ 6,244,672**	**$ 6,244,672**	**$ -**	**$ -**	**$ -**	**$ 6,244,672**	**$ -**
Permanent Funds											
Doolan Canyon Pres. Endow.	$ 730,961	$ 66,244	$ -	$ -	$ 797,205	$ 28,000	$ -	$ -	$ -	$ 28,000	$ 769,205
Permanent Funds Total	**$ 730,961**	**$ 66,244**	**$ -**	**$ -**	**$ 797,205**	**$ 28,000**	**$ -**	**$ -**	**$ -**	**$ 28,000**	**$ 769,205**

DocuSign Envelope ID: 34EA2F0C-1129-46D0-BACB-44403DBAE072

Project	Project Name	Fund	Fund Name
201960	Trevarno Infrastructure	251	Water Connection Fees
		251 Total	
202130	Airway Lift Station Improvements	259	Water Replacement
		259 Total	
199838	Las Positas Rd Widening - Hilliker To First	306	Traffic Impact Fee (TIF)
200259	North Canyons Pkwy/Dublin Blvd Connection	306	Traffic Impact Fee (TIF)
200720	El Charro Specific Plan Infrastructure	306	Traffic Impact Fee (TIF)
201028	Foley Road Realignment	306	Traffic Impact Fee (TIF)
201431	Traffic Signal Installation Program	306	Traffic Impact Fee (TIF)
201837	Vasco Road Widening	306	Traffic Impact Fee (TIF)
201937	Intersection Improvements @ Jack London / Isabel	306	Traffic Impact Fee (TIF)
		306 Total	
202118	Livermore Village Remediation	320	2022 COP Construction Fund
202119	Livermore Village Joint Trench	320	2022 COP Construction Fund
586003	Livermore Village L Street Garage	320	2022 COP Construction Fund
		320 Total	
199238	Isabel Ave/I-580 Interchange	321	TVTC 20% Fee
199352	Vasco Road/I-580 Interchange	321	TVTC 20% Fee
		321 Total	
202032	Multi -Service Center Improvements	333	HHS - HS Facilities Fee
		333 Total	
201715	I Street Garage And Land Acquisition	335	Parking In Lieu Fee
202120	Downtown Surface Parking	335	Parking In Lieu Fee
		335 Total	
200429	Doolan Park Landscape Rehabilitation Project	337	Park Fee - AB 1600
200646	Park Facilities Fee Reimbursements	337	Park Fee - AB 1600
201436	Livermorium Park-Plaza At Mills Square	337	Park Fee - AB 1600
201945	Las Colinas Trail (T-6, Segment E1)	337	Park Fee - AB 1600
201955	Arroyo Rd Trail (T-13, Segment B)	337	Park Fee - AB 1600
202118	Livermore Village Remediation	337	Park Fee - AB 1600
202119	Livermore Village Joint Trench	337	Park Fee - AB 1600
202121	Veteran's Park	337	Park Fee - AB 1600
		337 Total	
200720	El Charro Specific Plan Infrastructure	340	El Charro Infrastructure
		340 Total	
202101	Street Resurfacing 2021	344	SW&R Impact Fee
202104	Slurry Seal 2021	344	SW&R Impact Fee
202204	Slurry Seal 2022	344	SW&R Impact Fee
202301	Street Resurfacing 2023	344	SW&R Impact Fee
202304	Slurry Seal 2023	344	SW&R Impact Fee
		344 Total	
200028	Police Facility Expansion	603	LPD - Cops Ahead AB 3229
201958	Real Time Awarness Center	603	LPD - Cops Ahead AB 3229
		603 Total	
201028	Foley Road Realignment	604	So Liv Val Spec Plan Fee
		604 Total	

DocuSign Envelope ID: 34EA2F0C-1129-46D0-BACB-44403DBAE072

FY 2021-22 Existing Budget	FY 2021-22 Proposed Budget	FY 2021-22 Change	FY 2022-23 Existing Budget	FY 2022-23 Proposed Budget	FY 2022-23 Change
$ 180,000	$ 50,000	$ (130,000)	$ 535,000	$ 700,000	$ 165,000
$ 180,000	**$ 50,000**	**$ (130,000)**	**$ 535,000**	**$ 700,000**	**$ 165,000**
$ 290,000	$ 213,000	$ (77,000)	$ 2,121,000	$ 242,000	$ (1,879,000)
$ 290,000	**$ 213,000**	**$ (77,000)**	**$ 2,121,000**	**$ 242,000**	**$ (1,879,000)**
$ 169,000	$ -	$ (169,000)	$ 441,000	$ 169,000	$ (272,000)
150,000	50,000	(100,000)	125,000	225,000	100,000
561,309	561,309	-	-	-	-
250,000	-	(250,000)	270,000	179,611	(90,389)
50,000	10,000	(40,000)	-	-	-
1,100,000	620,000	(480,000)	1,637,500	2,117,500	480,000
250,000	5,000	(245,000)	1,050,000	225,000	(825,000)
$ 2,530,309	**$ 1,246,309**	**$ (1,284,000)**	**$ 3,523,500**	**$ 2,916,111**	**$ (607,389)**
$ 265,000	$ 115,000	$ (150,000)	$ 390,000	$ 520,000	$ 130,000
250,000	-	(250,000)	-	260,000	260,000
820,000	1,560,000	740,000	34,500,000	15,400,000	(19,100,000)
$ 1,335,000	**$ 1,675,000**	**$ 340,000**	**$ 34,890,000**	**$ 16,180,000**	**$ (18,710,000)**
$ 676,000	$ 876,000	$ 200,000	$ 20,000	$ 200,000	$ 180,000
1,585,000	750,000	(835,000)	1,501,250	2,336,250	835,000
$ 2,261,000	**$ 1,626,000**	**$ (635,000)**	**$ 1,521,250**	**$ 2,536,250**	**$ 1,015,000**
$ 399,591	$ 420,000	$ 20,409	$ -	$ -	$ -
$ 399,591	**$ 420,000**	**$ 20,409**	**$ -**	**$ -**	**$ -**
$ 60,000	$ 60,000	$ -	$ -	$ -	$ -
50,000	12,000	(38,000)	50,000	50,000	-
$ 110,000	**$ 72,000**	**$ (38,000)**	**$ 50,000**	**$ 50,000**	**$ -**
$ -	$ -	$ -	$ 240,000	$ 240,000	$ -
2,600,000	2,200,000	(400,000)	1,400,000	500,000	(900,000)
4,195,000	4,000,000	(195,000)	-	920,000	920,000
220,000	5,000	(215,000)	1,880,000	8,000	(1,872,000)
20,000	10,000	(10,000)	-	-	-
120,000	135,000	15,000	170,000	150,000	(20,000)
300,000	35,000	(265,000)	-	100,000	100,000
450,000	100,000	(350,000)	3,800,000	80,000	(3,720,000)
$ 7,905,000	**$ 6,485,000**	**$ (1,420,000)**	**$ 7,490,000**	**$ 1,998,000**	**$ (5,492,000)**
$ 21,468	$ -	$ (21,468)	$ 15,000	$ -	$ (15,000)
$ 21,468	**$ -**	**$ (21,468)**	**$ 15,000**	**$ -**	**$ (15,000)**
$ 500,000	$ 350,000	$ (150,000)	$ 3,000,000	$ 4,925,000	$ 1,925,000
200,000	200,000	-	-	100,000	100,000
50,000	-	(50,000)	100,000	50,000	(50,000)
-	-	-	50,000	-	(50,000)
-	-	-	25,000	-	(25,000)
$ 750,000	**$ 550,000**	**$ (200,000)**	**$ 3,175,000**	**$ 5,075,000**	**$ 1,900,000**
$ -	$ -	$ -	$ -	$ 290,000	$ 290,000
345,000	345,000	-	-	-	-
$ 345,000	**$ 345,000**	**$ -**	**$ -**	**$ 290,000**	**$ 290,000**
$ -	$ 100,000	$ 100,000	$ -	$ 240,389	$ 240,389
$ -	**$ 100,000**	**$ 100,000**	**$ -**	**$ 240,389**	**$ 240,389**

DocuSign Envelope ID: 34EA2F0C-1129-46D0-BACB-44403DBAE072

Project	Project Name	Fund	Fund Name
Airport Program			
201314	Slurry Seal Northside Aprons And Taxi Lanes	210	Airport
201425	Airport Pavement Maintenance	210	Airport
201615	Airport Water Quality And HMP Basins	210	Airport
201718	Airport Airfield Markings Maintenance	210	Airport
201849	FBO Building Flood Proofing	210	Airport
202017	Airport Geometry Study Improvements (AIP27)	210	Airport
202017	Airport Geometry Study Improvements (AIP27)	212	Airport Grant
202019	Airport Rescue And Firefighting Facility	210	Airport
			Total Airport Program
Downtown Revitalization Program			
200827	Downtown Streetscape Phase II	651	Gas Tax - SB1
200827	Downtown Streetscape Phase II	678	Measure B-Local St & Rd
200827	Downtown Streetscape Phase II	688	Measure Bb-Local St & Rd
201434	Acquisition Of Downtown Paseo	688	Measure Bb-Local St & Rd
201436	Livermorium Park-Plaza At Mills Square	337	Park Fee - AB 1600
201715	I Street Garage And Land Acquisition	001	General Fund
201715	I Street Garage And Land Acquisition	239	Water Resources Replacement
201715	I Street Garage And Land Acquisition	335	Parking In Lieu Fee
201715	I Street Garage And Land Acquisition	650	Gas Taxes
201715	I Street Garage And Land Acquisition	678	Measure B-Local St & Rd
201841	Downtown Street Lighting Enhancement	650	Gas Taxes
201856	Downtown East Side Public Improvements	650	Gas Taxes
201959	Downtown Sidewalk And Misc ADA Improv 2019-21	678	Measure B-Local St & Rd
201959	Downtown Sidewalk And Misc ADA Improv 2019-21	681	Local Vehicle Reg Fee
202116	Railroad Ave Street Improvements	239	Water Resources Replacement
202116	Railroad Ave Street Improvements	651	Gas Tax - SB1
202116	Railroad Ave Street Improvements	688	Measure BB-Local St & Rd
202117	Downtown Bike Parking	677	Measure B-Bike/Pedestrian
202118	Livermore Village Remediation	320	2022 COP Construction Fund
202118	Livermore Village Remediation	337	Park Fee - AB 1600
202118	Livermore Village Remediation	611	Low Income Housing Fund
202119	Livermore Village Joint Trench	320	2022 COP Construction Fund
202119	Livermore Village Joint Trench	337	Park Fee - AB 1600
202119	Livermore Village Joint Trench	650	Gas Taxes
202120	Downtown Surface Parking	001	General Fund
202120	Downtown Surface Parking	335	Parking In Lieu Fee
202121	Veteran's Park	337	Park Fee - AB 1600
202225	Flag Pole Plaza & Downtown Streetscape Improvements	688	Measure BB-Local St & Rd
583018	Livermore Village Infrastructure	611	Low Income Housing Fund
583018	Livermore Village Infrastructure	650	Gas Taxes
586003	Livermore Village L Street Garage	001	General Fund
586003	Livermore Village L Street Garage	320	2022 COP Construction Fund
			Total Downtown Revitalization Program

DocuSign Envelope ID: 34EA2F0C-1129-46D0-BACB-44403DBAE072

FY 2021-22 Existing Budget	FY 2021-22 Proposed Budget	Change	FY 2022-23 Existing Budget	FY 2022-23 Proposed Budget	Change
$ -	$ -	$ -	$ 19,000	$ 19,000	$ -
30,000	30,000	-	30,000	30,000	-
20,000	30,000	10,000	100,000	20,000	(80,000)
30,000	30,000	-	30,000	30,000	-
445,000	375,000	(70,000)	-	-	-
330,000	100,000	(230,000)	935,350	1,165,350	230,000
430,000	-	(430,000)	8,145,000	8,575,000	430,000
-	-	-	155,000	155,000	-
$ 1,285,000	**$ 565,000**	**$ (720,000)**	**$ 9,414,350**	**$ 9,994,350**	**$ 580,000**
$ -	$ 1,089,425	$ 1,089,425	$ -	$ -	$ -
1,700,000	810,575	(889,425)	-	-	-
-	450,000	450,000	-	-	-
400,000	-	(400,000)	-	400,000	400,000
4,195,000	4,000,000	(195,000)	-	920,000	920,000
11,940,000	12,575,000	635,000	-	25,000	25,000
450,000	450,000	-	-	-	-
60,000	60,000	-	-	-	-
200,000	200,000	-	-	-	-
50,000	50,000	-	-	-	-
-	8,000	8,000	-	-	-
20,000	20,000	-	50,000	10,000	(40,000)
464,000	-	(464,000)	-	500,000	500,000
1,010,000	120,000	(890,000)	-	1,000,000	1,000,000
-	-	-	-	115,000	115,000
-	240,000	240,000	-	350,000	350,000
875,000	-	(875,000)	-	885,000	885,000
-	5,000	5,000	-	-	-
265,000	115,000	(150,000)	390,000	520,000	130,000
120,000	135,000	15,000	170,000	150,000	(20,000)
205,000	470,000	265,000	300,000	355,000	55,000
250,000	-	(250,000)	-	260,000	260,000
300,000	35,000	(265,000)	-	100,000	100,000
250,000	35,000	(215,000)	-	170,000	170,000
310,000	-	(310,000)	70,000	370,000	300,000
50,000	12,000	(38,000)	50,000	50,000	-
450,000	100,000	(350,000)	3,800,000	80,000	(3,720,000)
-	-	-	-	200,000	200,000
65,000	-	(65,000)	460,000	-	(460,000)
70,000	3,600	(66,400)	460,000	5,000	(455,000)
820,000	-	(820,000)	-	-	-
820,000	1,560,000	740,000	34,500,000	15,400,000	(19,100,000)
$ 25,339,000	**$ 22,543,600**	**$ (2,795,400)**	**$ 40,250,000**	**$ 21,865,000**	**$ (18,385,000)**

DocuSign Envelope ID: 83209C60-104F-4CE5-9479-79428D621B4F

IN THE CITY COUNCIL OF THE CITY OF LIVERMORE, CALIFORNIA

A RESOLUTION APPROVING THE TWO-YEAR BUDGET FOR FISCAL YEAR 2023-24 AND FISCAL YEAR 2024-25

The City Manager of the City of Livermore prepared and submitted to the City Council for its review the Two-Year Budget for FY 2023-24 and FY 2024-25.

The City Council provided for public comment on the Two-Year Budget.

The City Council wishes to adopt the Two-Year Budget and order a copy of it be filed with the City Clerk and the Administrative Services Director of the City of Livermore.

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

1. The Two-Year Budget for Fiscal Years 2023-24 and 2024-25, attached hereto as Exhibit A, is approved.

2. Funds in the amount of $740,422,453 are appropriated for the Two-Year Budget for FY 2023-24 and FY 2024-25, including $212,874,900 for the Capital Improvement Program.

On motion of Vice Mayor Kiick, seconded by Council Member Branning, the foregoing resolution was passed and adopted on June 12, 2023, by the following vote:

AYES:	Council Members Barrientos, Branning, Carling, Vice Mayor Kiick, and Mayor Marchand
NOES:	None
ABSENT:	None
ABSTAIN:	None

ATTEST:

DocuSigned by:
Marie Weber
803794826BC44BB...

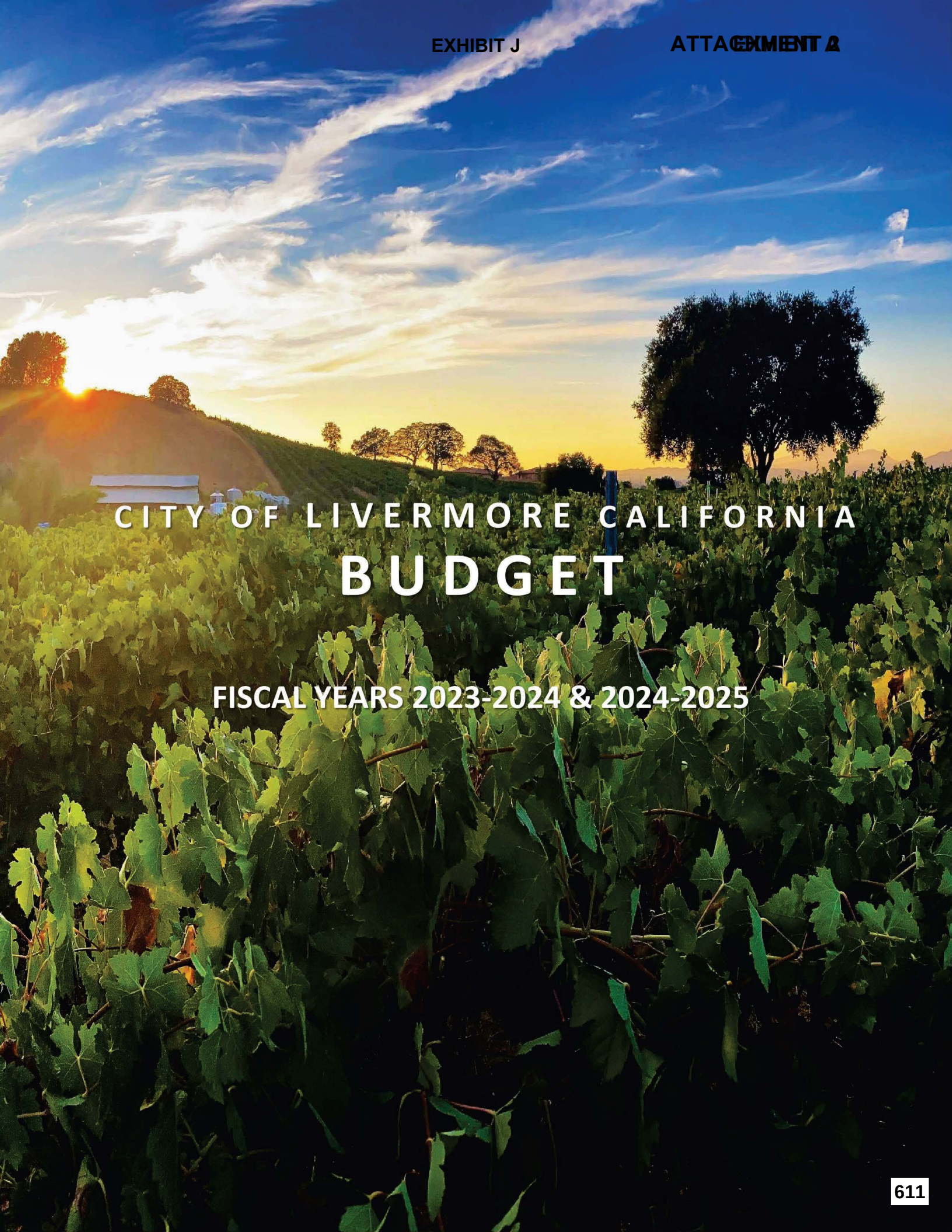
Marie Weber
City Clerk
6/23/2023 | 8:33 AM PDT

APPROVED AS TO FORM:

DocuSigned by:
Jason Alcala
ACD00D4E252C458...

Jason R. Alcala
City Attorney

Exhibit A – Two-Year Budget for Fiscal Years 2023-24 and 2024-25
Exhibit B – Fiscal Year 2023-2028 5-year Capital Improvement Plan



CITY OF LIVERMORE CALIFORNIA

BUDGET

FISCAL YEARS 2023-2024 & 2024-2025

OVERVIEW

This document reflects the City's continued use of a two-year budget which emphasizes long-range planning and effective program management including:

- Reinforcing the importance of long-range planning to manage the City's fiscal affairs.
- Concentrating on developing a budget to accomplish the City's goals and objectives.
- Establishing realistic timeframes for achieving goals and objectives.
- Creating a pro-active budget that provides for stable operations and assures the City's long-term fiscal health.
- Promoting predictable, smooth spending patterns.
- Reducing the amount of time and resources allocated to preparing annual budgets.

Appropriations are for a two-year period; however, there is usually an update for the second year of the budget to reflect revised revenue and expenditure assumptions. Additionally, unexpended Capital Improvement Program (CIP) appropriations from the first year may be carried over into the second year with the approval of the City Manager.

PURPOSE OF THE BUDGET

Although the City's budget document may introduce new plans or policy goals, its main purpose is to serve as the Council's primary tool to allocate resources to implement existing plans and policies.

Through various policy documents and plans - such as the 5-year Strategic Plan, General Plan; Downtown Specific Plan; Urban Growth Boundary, and South Livermore Specific Plan - the City has set several long-term goals to accomplish.

The fundamental purpose of the City's Budget is to link what needs to be accomplished in the near term with the resources required to do so.

The City's Budget process does this by:

- Identifying the most important things to be accomplished for the community.
- Establishing a reasonable time frame and organizational responsibility for achieving them.
- Allocating the resources necessary to do so.

BUDGET ORGANIZATION

To identify the most critical programs and projects for the City to accomplish over the next two years and allocate the resources to do so, the budget serves four roles:

1. **Policy Document** sets forth goals and objectives to be accomplished.
2. **Fiscal Plan** identifies and appropriates the resources necessary to accomplish goals and objectives and deliver services while maintaining the City's fiscal health.
3. **Operations Guide** describes the basic organizational units and activities of the City.
4. **Communications Tool** provides the public with a blueprint of how public resources are used and how these allocations are made.

In meeting these roles, the budget is organized into ten sections. Each section is introduced by an overview that describes its purpose, format, and content.

INTRODUCTION

This section consists of the Letter from the City Manager, which provides an overview of the FY 2023-25 Budget. Also included are the GFOA Distinguished Budget Presentation Award and the resolution adopting the Two-Year Financial Plan.

ABOUT LIVERMORE

Includes a historical overview of the community, City highlights and accomplishments, mission statement, organizational values, organization chart, map, and 5-year Strategic Plan. In addition, this section describes the other major policy documents and preparation guidelines used in developing and executing the Financial Plan, including Significant Accounting Policies, Budget Policy, Debt Policy, and Constitutional Spending Limits.

LONG-TERM FINANCIAL PLAN

The Long-Term Financial Plan (LTFP) is a 5-year financial forecast of the General Fund. It is intended to provide a frame of reference to help evaluate the City's financial condition and help assess the long-term financial implications of current and proposed budgets, programs, and assumptions.

BUDGET SUMMARY

This section provides financial summaries, including an overview of revenues, expenditures, and transfers over the 2-year budget cycle, fund balance by major and non-major funds, long-term debt information and budgeted debt service schedules. Sources and uses schedules are presented by fund type, sources of revenues, as well as major category expenditures. Also included is the Capital Improvement Program budget impact on the operating budget and a list of funds by department.

DEPARTMENT NARRATIVES

Presents the operating programs that form the City's basic organizational units:

- Establish policies and goals that define the nature and level of services to be provided.
- Identify activities performed in delivering program services.
- Propose objectives for improving the delivery of service.
- Identify the resources required to perform activities and accomplish objectives.
- Identifies performance measures used to analyze outcomes of City services and progress towards implementing major goals and objectives.

REVENUES

This section provides combined and individual statements of revenues for each of the City's operating funds. It includes financial and statistical information such as revenue estimates, assumptions, and inter-fund transactions.

EXPENDITURES

Provides a summary of expenditures and expenditures by major expense category for each of the City's operating funds.

FUND BALANCES

Provides combined statements of fund balance changes for each of the City's operating funds by year.

CAPITAL IMPROVEMENT PLAN

Presents the City's Capital Improvement Program budget.

STAFF ALLOCATION

Includes authorized staffing levels and allocation history.

APPENDIX

Provides a listing and description of all City funds and the relationship of departments with funds. It also includes a Glossary of Terms that may be unique to local government finance departments or the City's Financial Plan.

Airport

The City operates a general aviation airport located southwest of State Route 84, Airway Boulevard, and I-580. The airport is operated as an independent enterprise fund. Airport projects in the 2023-28 CIP includes projects to enhance Airport safety and operations and to rehabilitate existing facilities.

Airport Project expenditures are approximately 3% of the total proposed CIP budget with $5.6 million in Fiscal Year 2023-24 and 2024-25. Projects include construction of the airfield safety improvements outlined in the Airfield Geometry Study, and airport pavement maintenance. Funding for airport projects is provided from airport operating revenues and Federal Aviation Administration grants.

Projects listed herein comply with the current Airport Layout Plan, and the City's General Plan. Airport projects are derived from the 2014 Airport Layout Plan.

Downtown

Downtown projects are intended to revitalize and enhance the downtown economically and aesthetically through land acquisition, design and construction of public infrastructures including those which support the Downtown Core Plan approved by City Council in January 2017.

Downtown Revitalization projects are the second largest source of expenditures with approximately 18% of the total proposed CIP budget or $38.1 million over Fiscal Year 2023-24 and 2024-25. Some of the major expenditures include the Livermore Village Parking Garage; Flagpole Plaza and Downtown Streetscape Improvements, Downtown Sidewalk and Miscellaneous ADA Improvements, Downtown Landscape Rehabilitation, and Veterans Park. Projects are funded primarily through General Fund, park fees, Measure BB, R&R Infrastructure Reserves, bond funding, and grants.

Projects included in this programmatic area are consistent with the City's General Plan and Downtown Specific Plan. Projects are funded primarily through General Fund, park fees, Measure BB, R&R Infrastructure Reserves and grants.

Parks and Beautification

The objective of the Parks and Beautification programmatic areas is to improve, renovate, and enhance existing City-owned or maintained park areas, public spaces, roadways, walls, and medians. Although the Livermore Area Recreation and Park District (LARPD) is the responsible agency for maintaining most of the parks in Livermore, there are several City-owned properties as well as streetscapes that are constructed and maintained by the City.

Parks and Beautification Projects account for approximately 3% of the total proposed CIP expenditures, $5.9 million in Fiscal Year 2023-24 and 2024-25. Projects that are funded in the 2023-28 CIP include reimbursements to LARPD for their eligible park development impact fee-funded projects, Doolan Park Landscape Rehabilitation, Springtown Open Space Improvements, Phase 1, and Elaine Avenue Median Landscaping. Additional Park projects are shown in the Downtown category. Projects are funded primarily through General Fund, park fees, Measure BB, Capital Reserves and grants.

Projects listed herein comply with the goals and policies of the City's General Plan and Downtown Specific Plan and the Park Facilities Fee Study.

Airport

The City operates a general aviation airport located southwest of State Route 84, Airway Boulevard, and I-580. The airport is operated as an independent enterprise fund. Airport projects in the 2023-28 CIP includes projects to enhance Airport safety and operations and to rehabilitate existing facilities.

Airport Project expenditures are approximately 3% of the total proposed CIP budget with $5.6 million in Fiscal Year 2023-24 and 2024-25. Projects include construction of the airfield safety improvements outlined in the Airfield Geometry Study, and airport pavement maintenance. Funding for airport projects is provided from airport operating revenues and Federal Aviation Administration grants.

Projects listed herein comply with the current Airport Layout Plan, and the City's General Plan. Airport projects are derived from the 2014 Airport Layout Plan.

Downtown

Downtown projects are intended to revitalize and enhance the downtown economically and aesthetically through land acquisition, design and construction of public infrastructures including those which support the Downtown Core Plan approved by City Council in January 2017.

Downtown Revitalization projects are the second largest source of expenditures with approximately 18% of the total proposed CIP budget or $38.1 million over Fiscal Year 2023-24 and 2024-25. Some of the major expenditures include the Livermore Village Parking Garage, Flagpole Plaza and Downtown Streetscape Improvements, Downtown Sidewalk and Miscellaneous ADA Improvements, Downtown Landscape Rehabilitation, and Veterans Park. Projects are funded primarily through General Fund, park fees, Measure BB, R&R Infrastructure Reserves, bond funding, and grants.

Projects included in this programmatic area are consistent with the City's General Plan and Downtown Specific Plan. Projects are funded primarily through General Fund, park fees, Measure BB, R&R Infrastructure Reserves and grants.

Parks and Beautification

The objective of the Parks and Beautification programmatic areas is to improve, renovate, and enhance existing City-owned or maintained park areas, public spaces, roadways, walls, and medians. Although the Livermore Area Recreation and Park District (LARPD) is the responsible agency for maintaining most of the parks in Livermore, there are several City-owned properties as well as streetscapes that are constructed and maintained by the City.

Parks and Beautification Projects account for approximately 3% of the total proposed CIP expenditures, $5.9 million in Fiscal Year 2023-24 and 2024-25. Projects that are funded in the 2023-28 CIP include reimbursements to LARPD for their eligible park development impact fee-

Downtown Revitalization

Summary of Downtown Revitilization Projects:

Project Name	Prior Years	FY 2022-23
200512 - Downtown Landscape Rehabilitation	$ -	$ -
200827 - Downtown Streetscape Phase II	$ 1,556,441.29	$ 1,030,000.00
201436 - Livermorium Park - Plaza at Mills Square	$ 5,301,771.48	$ 160,000.00
201715 - I Street Garage and Land Acquisition	$ 16,154,669.06	$ 325,000.00
201824 - Iron Horse Trail - Downtown	$ -	$ -
201959 - Downtown Sidewalk and Misc. ADA Improvements 2019-21	$ 85,981.73	$ 33,000.00
202118 - Livermore Village Remediation	$ 728,120.38	$ 620,000.00
202119 - Livermore Village Joint Trench	$ 52,400.67	$ 300,000.00
202120 - Downtown Surface Parking	$ 30,173.75	$ 130,000.00
202121 - Veterans Park	$ 95,159.23	$ 20,000.00
202225 - Flag Pole Plaza and Downtown Streetscape Improvements	$ -	$ 60,000.00
583018 - Livermore Village Infrastructure	$ 839,975.81	$ 5,000.00
586003 - Livermore Village L Street Garage	$ 1,692,055.37	$ 5,000,000.00
Total Downtown Revitilization Funding	**$ 26,536,748.77**	**$ 7,683,000.00**

CITY OF LIVERMORE CALIFORNIA

FY 2023-25 Capital Improvement Plan

Project Description

Public park between work force housing buildings at northwest corner of Livermore Village. Approximately 30,000 to 40,000 square feet of landscaping and hardscape.

Project Justification

During public outreach for Downtown Core Development open space and parks was one of the top priorities. Veterans Park will provide complimentary open space to Stockmen's Park and provide a continuous strip of public open space between North Livermore Ave and L Street.

Project Funding

Park Fees (Fund 337) will pay for these public park improvements. Eden was awarded $1,000,000 in Congressional funding for Veterans Park which will offset some of these Park Fee expenses.

O&M Cost Assumptions

O&M costs are estimated at $60,000 per year beginning FY 26-27.

Funding Source and Budgeted Expenditures - Project #202121 - Veterans Park

	FY 2022-23	FY2023-24	FY2024-25	FY2025-26	FY2026-27	FY2027-28	FY2028-43
(337) PARK FEE - AB 1600	$20,000	$185,000	$185,000	$5,000,000	$0	$0	$0
TOTAL	**$20,000**	**$185,000**	**$185,000**	**$5,000,000**	**$0**	**$0**	**$0**

Project Expenditures by Program

Fund	Project Name		FY 2022-23
210	201314 - Slurry Seal Northside Aprons and Taxi Lanes	$	19,000.00
210	201425 - Airport Pavement Maintenance	$	30,000.00
210	201718 - Airport Airfield Markings Maintenance	$	30,000.00
210	201849 - FBO Building Flood Proofing	$	60,000.00
210	202017 - Airport Geometry Study Improvements (AIP27)	$	239,283.00
212	202017 - Airport Geometry Study Improvements (AIP27)	$	1,760,717.00
	TOTAL AIRPORT	**$**	**2,139,000.00**
001	200512 - Downtown Landscape Rehabilitation	$	-
651	200827 - Downtown Streetscape Phase II	$	450,000.00
678	200827 - Downtown Streetscape Phase II	$	130,000.00
687	200827 - Downtown Streetscape Phase II	$	-
688	200827 - Downtown Streetscape Phase II	$	450,000.00
337	201436 - Livermorium Park-Plaza at Mills Square	$	160,000.00
001	201715 - I Street Garage and Land Acquisition	$	325,000.00
624	201824 - Iron Horse Trail - Downtown	$	-
681	201959 - Downtown Sidewalk and Misc ADA Improvements 2019-21	$	33,000.00
320	202118 - Livermore Village Remediation	$	500,000.00
337	202118 - Livermore Village Remediation	$	20,000.00
611	202118 - Livermore Village Remediation	$	100,000.00
320	202119 - Livermore Village Joint Trench	$	200,000.00
337	202119 - Livermore Village Joint Trench	$	50,000.00
650	202119 - Livermore Village Joint Trench	$	50,000.00
001	202120 - Downtown Surface Parking	$	80,000.00
335	202120 - Downtown Surface Parking	$	50,000.00
337	202121 - Veterans Park	$	20,000.00
650	202225 - Flag Pole Plaza and Downtown Streetscape Improvements	$	-
688	202225 - Flag Pole Plaza and Downtown Streetscape Improvements	$	60,000.00
337	583018 - Livermore Village Infrastructure	$	-
611	583018 - Livermore Village Infrastructure	$	-
650	583018 - Livermore Village Infrastructure	$	5,000.00
320	586003 - Livermore Village L Street Garage	$	5,000,000.00
	TOTAL DOWNTOWN REVITILIZATION	**$**	**7,683,000.00**
337	200429 - Doolan Park Landscape Rehabilitation	$	-
337	200646 - Park Facilities Fee Reimbursements	$	500,000.00
001	200654 - Decorative Wall Replacement - Citywide	$	60,000.00
001	201416 - Hagemann Farm Site Assessment & Renovation	$	-
001	201813 - Citywide Street Tree Irrigation	$	-
001	202014 - Stanley Blvd Median Improvements	$	-
608	202122 - Citywide Sculptures	$	70,000.00
608	202318 - Citywide Art Installation	$	-
337	202319 - Springtown Open Space Phase 1 Improvements	$	-
001	202324 - Elaine Ave Median Landscaping	$	-
650	202520 - Springtown Boulevard Median Improvements	$	-
337	202611 - Slurry Seal Northside Aprons and Taxi Lanes	$	-
	TOTAL PARKS & BEAUTIFICATION	**$**	**630,000.00**
001	200439 - New Civic Center Meeting Hall	$	85,000.00
740	201518 - Carpet Replacement for City Buildings	$	675,000.00
740	201830 - City Hall HVAC & Central Plant Chiller Replacement	$	1,300,000.00
740	201833 - Generator Replacement at Fire Station No. 6	$	80,000.00
740	201930 - Fleet Services Fuel Dispenser	$	100,000.00

651	202104 - Slurry Seal 2023	$	-	$ -
740	202104 - Slurry Seal 2024	$	-	$ -
		TOTAL	**$ 306,530**	**$ 310,000**
677	202106 - Annual Crosswalk Safety Improvement 2021-22	$	-	$ -
		TOTAL	**$ -**	**$ -**
650	202107 - ADA Access Ramps 2020-21	$	53,990	$ 20,000
		TOTAL	**$ 53,990**	**$ 20,000**
221	202112 - Storm Drain Trash Capture Devices	$	-	$ -
698	202112 - Storm Drain Trash Capture Devices	$	-	$ -
		TOTAL	**$ -**	**$ -**
677	202114 - 2022 ATP Bike Lane Improvements	$	-	$ -
687	202114 - 2022 ATP Bike Lane Improvements	$	-	$ -
688	202114 - 2022 ATP Bike Lane Improvements	$	-	$ -
		TOTAL	**$ -**	**$ -**
239	202116 - Railroad Ave Street Improvements	$	-	$ -
651	202116 - Railroad Ave Street Improvements	$	251,512	$ 100,000
688	202116 - Railroad Ave Street Improvements	$	-	$ 40,000
		TOTAL	**$ 251,512**	**$ 140,000**
320	202118 - Livermore Village Remediation	$	115,000	$ 500,000
337	202118 - Livermore Village Remediation	$	135,000	$ 20,000
611	202118 - Livermore Village Remediation	$	478,120	$ 100,000
		TOTAL	**$ 728,120**	**$ 620,000**
320	202119 - Livermore Village Joint Trench	$	-	$ 200,000
337	202119 - Livermore Village Joint Trench	$	26,022	$ 50,000
650	202119 - Livermore Village Joint Trench	$	26,379	$ 50,000
		TOTAL	**$ 52,401**	**$ 300,000**
001	202120 - Downtown Surface Parking	$	-	$ 80,000
335	202120 - Downtown Surface Parking	$	30,174	$ 50,000
		TOTAL	**$ 30,174**	**$ 130,000**
337	202121 - Veterans Park	$	95,159	$ 20,000
		TOTAL	**$ 95,159**	**$ 20,000**
608	202122 - Citywide Sculptures	$	34,690	$ 70,000
698	202122 - Citywide Sculptures	$	-	$ -
		TOTAL	**$ 34,690**	**$ 70,000**
698	202123 - Stream Maintenance by Contractors	$	128,514	$ 10,000
		TOTAL	**$ 128,514**	**$ 10,000**
740	202125 - UPS Replacements at Civic Center	$	-	$ -
		TOTAL	**$ -**	**$ -**
740	202126 - Recoating of Civic Center Library	$	-	$ -
		TOTAL	**$ -**	**$ -**
239	202128 - WRP UV Treatment System Replacement	$	2,039	$ 363,000
241	202128 - WRP UV Treatment System Replacement	$	1,000	$ 124,000
		TOTAL	**$ 3,039**	**$ 487,000**

LIVERMORE
CALIFORNIA

INTEROFFICE MEMORANDUM

Date: June 14, 2024

To: Marianna Marysheva, City Manager
Brent Smith, Community Development Director
Debbie Elam, Acting City Clerk

From: Jason R. Alcala, City Attorney

Subject: Analysis of Referendum Process and Appellate Court Decision in *Move Eden Housing v. City of Livermore*, 100 Cal.App.5th 263 (2024)

This memorandum provides information on referenda and their processing, and the Appellate Court decision in the matter of *Move Eden Housing v. City of Livermore*, 100 Cal.App.5th 263 (2024) attached hereto.

I. Referenda.

1. Power of Referendum

The power of referendum is generally reserved to the People of California by the California Constitution.[1] Referendum limits the Legislature's power by reserving to the state electorate the final approval of statutes.[2] Similarly, the California Constitution reserves to the city's electors the power of referendum over a city's legislative acts, subject to procedures that the Legislature shall provide.[3]

2. Power of Referendum is Limited to Legislative Acts

The right of referendum is jealously guarded by the courts as a fundamental right, but it is well established principal of law by those same courts "that a referendum may be used to review only legislative acts and not executive or administrative acts of a local government."[4]

California courts have determined that an act is legislative when it adopts a new policy or plan, declares a public purpose, and provides ways and means of its accomplishment.[5]

---

[1] Cal.Const.art. IV, § 1.
[2] Cal.Const.art. II, § 9(a).
[3] Cal.Const.art. II, § 11(a); see also, Cal.Elec.Code §§ 9235 et seq. [setting forth the municipal referendum procedures established by the Legislature].
[4] *Worthington v. City Council of City of Rohnert Park* (2005) 130 Cal.App.4th 1132, 1140.
[5] City of San Diego v. Dunkl, (2001) 86 Cal.App.4th 384, 399-400, emphasis, citations, and quotations omitted; s*ee also,* 38 Cal.Jur.3d *Initiative and Referendum* §§ 1 and 10-13; s*ee also, Simpson v. Hite,*

Those same courts have determined that subsequent actions implementing an adopted policy or plan are administrative and not subject to referendum.[6] California courts have repeatedly held that the referendum power does not extend to administrative or executive acts.[7] Unlike new legislative policy decisions, administrative and executive acts implementing adopted policies are not subject to referendum because those steps are necessary for the efficient administration and operation of government.[8]

It bears noting there even a number of legislative acts exempt from referendum.[9] As such, the right to referendum is not absolute.

3. Referendum Process

California Elections Code Sections 9235 through 9247 set forth the requirements to process referendum petitions by general law cities like Livermore.

To qualify, Elections Code section 9215 states a referendum petition must contain signatures of at least 10% of registered Livermore voters based on the county election official's last official Report of Registration to the Secretary of State.

Upon timely submission of a referendum petition, the City Clerk performs a technical review to determine whether the form of the referendum complies with the requirements of the Elections Code. Following the technical review, the City Clerk then performs a prima facie review to determine whether the number of signatures affixed to the petition equals or exceeds the 10% threshold (i.e. the "raw count"). If the number of signatures in the raw count does not equal the 10% threshold, the petition is not accepted for filing and is returned to the petitioner.

Once the petition is accepted for filing, the elections official has 30 days, excluding weekends and holidays, to examine the signatures for validity (i.e. the "signature verification process"). The elections official can perform a full examination of signatures or may use a random sampling method established by the Elections Code. Because Livermore coordinates with Alameda County to conduct elections, the signature verification process is performed by the Alameda County Registrar of Voters.

If the Alameda County Registrar of Voters certifies the referendum is signed by at least 10% of the registered voters in the City, the results of the verification are then certified to

---

(1950) 36 Cal.2d 125, 129-130; see also, Lincoln Property Co. No. 41 Inc. v. Law, (1975) 45 Cal.App.3d 230, 231-232 and 234-35; s*ee also, Fishman v. City of Palo Alto, (19780)* 86 Cal.App.3d 506, 511-512; s*ee also, Southwest Diversified, Inc. v. City of Brisbane* (1991) 229 Cal.App.3d 1548, 1557-58; s*ee also, Worthington*, 130 Cal.App.4th at 1141 ("The power to be exercised is legislative in its nature if it prescribes a new policy or plan; whereas, it is administrative in its nature if it merely pursues a plan already adopted by the legislative body itself, or some power superior to it"); *see also, Valentine v. Town of Ross*, (1974) 39 Cal.App.3d 954, 957.

[6] Ibid.

[7] Ibid.

[8] Ibid.

[9] Cal.Const.art.II, §§ 9(a) and 11(a).

the City Council. During the pendency of the signature verification process and following certification of the referendum petition, the legislative act protested by the referendum is suspended and the City Council, at its sole discretion, must either repeal the protested legislative act, or call an election for the voters to approve or reject the protested legislative act.[10]

Following a repeal or rejection of the protested legislative act, the City Council cannot adopt that same or similar legislative act for a period of one year.[11] However, the City Council may nevertheless deal further with the subject matter of the suspended action so long as it avoids the legislative act that was protested.[12] That exception is referred to as the Stratham Rule and has been followed and endorsed by several courts.[13]

It also bears noting the proponent of a referendum may withdraw it at any time before the 88th day before an election without any notice to the persons signing the petition.[14]

II. Analysis of *Move Eden Housing v. City of Livermore*, 100 Cal.App.5th 263 (2024)

The First District Court of Appeal opinion in *Move Eden Housing v. City of Livermore,* 100 Cal.App.5th 263 (2024) held that "the construction of and improvements to a new public park" in Resolution No. 2022-085 "was a legislative act subject to the referendum power" because the "agreement at issue approved the construction of and improvements to a new public park."[15] The opinion also held that "the City did not act legislatively in approving loan terms and an indemnity provision relating to hazardous waste" in the *Amended and Restated Disposition, Development, and Loan Agreement* with Eden Housing.[16]

The Court reasoned that the primary substantive decisions for the affordable housing project were made prior to 2022 and are not subject to referendum, but that the primary substantive decisions to fund the construction of and improvements to Veterans Park "were only set out in the 2022 Agreement."[17]

Based upon the administrative record before it, the Appellate Court determined the *Amended and Restated Disposition, Development and Loan Agreement* with Eden Housing, Inc. for "the first time, authorizes the construction of and improvements to

---

[10] Cal.Elec.Code §§ 9237 and 9241.
[11] Cal.Elec.Code § 9241.
[12] *In re Stratham, (1920) 45 Cal.App. 436, at 439-440; see also, Reagan v. Sausalito, (1962) 210 Cal.App.2d 618, 629-631; see also,* 38 Cal.Jur.3d *Initiative and Referendum, § 90.*
[13] *See, Rubalcava v. Martinez, (2007) 158 Cal.App.4th 563, at 569-570; see also, Assembly v. Deukmejian*, (1982) 30 Cal.3d 638, at 678; *Gilbert v. Ashley*, (1949) 93 Cal.App.2d 414, at 415; *Martin v. Smith*, (1959) 176 Cal.App.2d 115, at 118; *Reagan v. City of Sausalito,* (1962) 210 Cal.App.2d 618, at 629-630; Lindelli v. Town of San Anselmo, (2003) 111 Cal.App.4th 1099, 1109-1110.
[14] Cal.Elec.Code § 9237.2.
[15] *Move Eden Housing v. Livermore, (2024) 100 Cal.App.5th 263, 269.*
[16] Ibid, Footnote 1.
[17] *Move Eden Housing v. Livermore, (2024) 100 Cal.App.5th 263, 278.*

Veteran's [SIC] Park" and was therefore political in nature and an exercise of its legislative powers.[18] The Appellate Court determined that the prior agreement merely contained an option for that work, and that the 2022 agreement for the first time authorized that work. The Appellate Court, however, did not have the benefit of a full administrative record on this matter.

As you and the community are aware, over the years prior to the adoption of Resolution No. 2022-085 the City Council made a series of decisions to implement its legislative decision to approve the location, design, and construction Veterans Park as a City park between the two buildings for the 130 units of workforce housing.

However, that information was not in the record before the Appellate Court, and the Appellate Court's opinion controls at this time. Therefore, the City Council must now act on the referendum protesting the portion of Resolution No. 2022-085 that approved the construction of and improvements to Veterans Park.

If the administrative record before the Appellate Court contained the City Council's prior legislative acts, that would have provided the information the Appellate Court needed to determine that it was the City Council's earlier acts, and not the adoption of Resolution No. 2022-085, that fixed the City's policy for the construction of and improvements to Veterans Park as a public project just as the Appellate Court did for the portions of the Resolution that approved the affordable housing project.[19] As such, I recommend that information be assembled to clearly show that the location, design, and construction of Veterans Park as a City park was not first authorized by Resolution No. 2022-085 so that the administrative record for any subsequent review by the court is complete on that issue.

The City Council must either repeal Resolution No. 2022-085 or send the portions that approved the construction of and improvements to Veterans Park to the voters for approval or rejection. Absent approval by the voters, the construction of and improvements to Veterans Park in the *Amended and Restated Disposition, Development and Loan Agreement* with Eden Housing is suspended for one-year from the date of repeal or rejection. Consistent with the Stratham rule, the City Council may deal with the remaining subject matter of Resolution No. 2022-085 so long is it avoids, for a period of one year, the protested legislative act to approve the construction of and improvements to Veterans Park.

cc: Paul Spence, Assistant City Manager
Marie Weber, Deputy City Manager

Attachments
Move Eden Housing v. City of Livermore, 100 Cal.App.5th 263 (2024)

[18] *Move Eden Housing v. Livermore, (2024) 100 Cal.App.5th 263, 275-278.*
[19] *Move Eden Housing v. Livermore, (2024) 100 Cal.App.5th 263, 278.*

ATTACHMENT 3

100 Cal.App.5th 263
Court of Appeal, First District, Division 5, California.

MOVE EDEN HOUSING et al., Plaintiffs and Appellants,
v.
CITY OF LIVERMORE et al., Defendants and Respondents;
Eden Housing, Inc., Real Party in Interest and Respondent.

A167346
|
Filed March 6, 2024
|
As Modified on Denial of Rehearing March 15, 2024
|
Certified for Partial Publication. *

Synopsis

Background: Objectors petitioned for writ of mandate seeking to compel city, pursuant to Elections Code, to process objectors' referendum petition challenging city's resolution approving affordable housing project that contained component of a new public park. Developer moved for bond. The Superior Court, Alameda County, No. 22CV015399, Michael Markman, J., granted motion for bond and denied petition. Objectors appealed.

Holdings: The Court of Appeal, Simons, J., held that:

city's adoption of resolution was a legislative act subject to local referendum power;

city did not act as state's administrative agent under statutes dissolving community redevelopment agencies; and

proceeding was to enforce Elections Code thus precluding statutory bond requirement.

Reversed and remanded with directions.

Procedural Posture(s): Petition for Rehearing; On Appeal; Petition for Writ of Mandate; Motion for Bond.

****829** Trial Court: Alameda County Superior Court, Trial Judge: Hon. Michael Markman (Alameda County Super. Ct. No. 22CV015399)

Attorneys and Law Firms

Latham & Watkins LLP, Winston P. Stromberg, Michelle Cornell-Davis, Los Angeles, and Kevin A. Homrighausen, Costa Mesa, for Plaintiffs and Appellants.

Richards, Watson & Gershon, T. Peter Pierce and Steven A. Nguy, San Francisco; Jason Alcala and Kimberly D. Cilley, City Attorney, for Defendants and Respondents.

Cox, Castle & Nicholson LLP, Andrew B. Sabey, Scott B. Birkey, San Francisco, Robbie C. Hull, for Real Party in Interest and Respondents.

Opinion

SIMONS, J.

***268** Plaintiffs and appellants Move Eden Housing (Move Eden), Richard Ryon, and Thomas Ramos (jointly, plaintiffs) appeal the superior court's denial of their petition for a writ of mandate requiring respondents City of Livermore (City) and Livermore City Clerk Marie Weber (City Clerk) (jointly, respondents) to process plaintiffs' referendum petition in accordance with the Elections Code. The proposed referendum challenges a City Council resolution approving a development agreement between the City and real party in interest Eden Housing, Inc. (Eden Housing) for development of housing in downtown Livermore.

The referendum petition presented to the City Clerk contained more than the minimum number of signatures required by the Election Code, but, on advice from the City Attorney, the City Clerk refused to take further action on the petition. The City took the position that the proposed referendum would ***269** be invalid because the challenged resolution was an administrative act. The superior court agreed and denied the writ petition.

We reverse. Adoption of the challenged resolution was a legislative act subject to the referendum power, because the development agreement at issue approved the construction of and improvements to a new public park. [1] We also conclude that, in approving the development agreement, the City did not act as an administrative agent for the State of California under the statutes dissolving California's redevelopment

 © 2024 Thomson Reuters. No claim to original U.S. Government Works.

agencies, enacted starting in 2011. We direct the superior court to order respondents to process the referendum petition as required by the Elections Code. We also reverse the court's order requiring plaintiffs to file an undertaking under Code of Civil Procedure section 529.2 as a security for costs and damages due to the action.

BACKGROUND

The present appeal involves a proposed residential development and new public park in downtown Livermore (the Project), at the location of a former supermarket, in an area bounded by Railroad Avenue, Livermore Avenue, First Street, and L Street (the Property). (See ****830** *Save Livermore Downtown v. City of Livermore* (2022) 87 Cal.App.5th 1116, 1122, 304 Cal.Rptr.3d 103 (*Save Livermore Downtown*) [describing the Project in a proceeding challenging the City's compliance with environmental and zoning laws].)

In 2008, the City's former Redevelopment Agency acquired the Property using the City's inclusionary housing funds, and, in 2009, a portion of the purchase price was refinanced using "Residential Development Loan Program" funds from the State of California. The funds were awarded to the City for "site acquisition and pre-development expenses" in the City's downtown. The City loaned the funds to the former Redevelopment Agency, and a deed restriction was recorded requiring any development of the Property to include "at least" 28 units of "low-income" housing and 56 units of "moderate-income" housing. The restriction was "a condition of accepting" the development funds from the State. When the State of California dissolved the Redevelopment Agency (see Part IV.A., *post*), the Property was included in a long range property management plan (Long Range Plan), which the State approved. The Long Range Plan identified the Property as a housing asset to be transferred to the City as the successor to the former redevelopment agency; it specified that the "goal" is to develop the Property "as a high density residential project with an affordable component and repay the $5,000,000 State" redevelopment loan.

***270** In 2018, the City and Eden Housing entered into a Disposition and Development and Loan Agreement for development of the Property (2018 Agreement). The 2018 Agreement recited that, in January, the City Council "approved the development of the Livermore Village Site [2] to include a public park, up to 130 units of workforce housing, a science center, a black box theater, and retail space." The City selected Eden Housing to develop housing at the Property, and the agreement states a portion of the Property "will be dedicated to the City for a park." The City agreed to sell the Property to Eden Housing, after satisfaction of various conditions, for the Property's fair market value at the time of sale and to make "a future acquisition loan to [Eden Housing] in the amount of the Purchase Price of the Property." The term of the loan would be 55 years, at either "3% annual simple interest" or "the long-term applicable federal rate for annual compounding published by the Internal Revenue Service," with the City and Eden Housing agreeing "upon the Site Acquisition Loan's applicable interest prior to Site acquisition, based on the Project's overall financial feasibility and Investor requirements." The 2018 Agreement also stated that Eden Housing "and City shall enter into an indemnity agreement to apportion any potential liability related to Hazardous Materials at, on, in, beneath, or from the Property from and after the date of the close of escrow between the Parties. The form of the indemnity agreement shall be mutually agreed upon by the Parties."

In December 2020, the City reviewed "Conceptual Plans" and "instructed staff to move forward" (capitalization omitted) with the Project. In May 2021, the City approved land use entitlements for the Project, subject to conditions. That same month, the City approved an amended development agreement (2021 Agreement). The approval resolution and the 2021 Agreement recited that the City and Eden Housing "wish to amend the [2018 Agreement] to clarify the definition of the Property subject to transfer by City for development of the Project, define development and financial obligations for Veteran's Park, allow for reimbursement by City to ****831** Developer for certain emergency vehicle access road improvements adjacent to the Project, and to update the entitlement, financing and development timeline in the Schedule of Development." With respect to the park, the 2021 Agreement stated, "[a]t City's option, City and Developer may negotiate a future construction and reimbursement agreement with Developer to coordinate the construction of the Veteran's Park Improvements. These improvements would be exclusive of any development loan provided by the City for development of the Project."

In June 2021, a group known as Save Livermore Downtown filed a petition for a writ of mandate alleging that the City violated the California Environmental Quality Act (CEQA) and state and local planning and zoning laws in approving the Project. The ***271** trial court denied the petition and

this court affirmed. (*Save Livermore Downtown, supra*, 87 Cal.App.5th 1116, 304 Cal.Rptr.3d 103.)

On May 24, 2022, the City adopted Resolution No. 2022-085 (the Resolution), which is the subject of the present action. The Resolution authorized the execution of an "Amended and Restated Disposition, Development and Loan Agreement" for the Project (2022 Agreement). The 2022 Agreement states that it supersedes the original 2018 Agreement, as amended in 2021. Among other provisions, the 2022 Agreement requires the City to make a loan to Eden Housing for the purchase price of the Property ($7.8 million), at an interest rate of 3 percent and payable over 55 years. The 2022 Agreement also reflects the City's decision to spend $5.5 million on constructing and improving Veteran's Park as part of the Project. In particular, the agreement provides, "The Parties agree that the Developer will manage the construction of the Veteran's Park Improvements but that the City will pay for the costs of the Veteran's Park Improvements at its sole expense. City and Developer will negotiate a future construction management and reimbursement agreement to coordinate the construction of the Veteran's Park Improvements. The Agreement shall authorize reimbursement for the construction of the park, per the designs and specifications issued by the City, and shall not exceed [$5.5 million] ... without additional approval of the City Council." Finally, to address historic subsurface contamination of the Property, the 2022 Agreement requires the City and Eden Housing to enter into an indemnity agreement "to apportion costs and potential liability related to Hazardous Materials" at the Project site, with the City's obligation not to exceed $4.3 million.

On May 27, 2022, counsel for plaintiff and appellant Richard Ryon provided the City Clerk with a proposed summary of the Resolution for the purpose of a proposed referendum on the Resolution. On June 3, plaintiff and appellant Move Eden was formed to, among other things, promote the qualification of the proposed referendum. On June 9, the City Attorney approved a summary for purposes of the proposed referendum. Move Eden then sought to obtain the statutorily required number of signatures from registered voters to qualify the referendum for the November 2022 ballot. On July 8, the referendum proponents submitted the referendum petition to the City Clerk with more than the required number of signatures.

On July 13, 2022, the City Clerk sent a letter to plaintiff and appellant Ryon stating that she "took in the petition ... for the purpose of making the *prima facie* count of signatures to determine whether the total number of signatures equals or is in excess of the minimum number of signatures ***272** required, which is 5,702," citing ****832** Elections Code section 9210.[3] A prima facie signature count was prepared, counting 9,737 total signatures and noting it was "not a determination that signatures are valid." However, rather than accepting the petition for filing and determining the validity of the signatures pursuant to statutory requirements (see Part II, *post*), the City Clerk's letter stated that, "[b]ased on the advice from the City Attorney and special counsel, ... the City has determined that Resolution No. 2022-085 was an administrative act, not a legislative act, and not subject to referendum." On that basis, the City Clerk stated that the petition is "not eligible for filing or processing as a referendum" and "the City is taking no further action on this petition."

In August 2022, plaintiffs commenced the present action by filing a petition for writ of mandate (Petition) seeking to compel the City and the City Clerk to process the referendum petition in accordance with the Elections Code.

In September 2022, Eden Housing filed a motion for a bond pursuant to Code of Civil Procedure section 529.2. In October, the superior court granted the motion, directing plaintiffs to file an undertaking in the amount of $500,000 as security for costs and damages due to the action.

In January 2023, the superior court denied the Petition on the merits. The court concluded the Resolution was not subject to challenge by referendum because it was an administrative act or, in the alternative, because the City acted as an administrative agent of the State in adopting it. The court concluded that either it was lawful for the City Clerk to refuse to process the referendum petition, or it is proper to " 'retroactively validate[ ]' " the conclusion that the proposed referendum is invalid, even if the City Clerk violated the law. The superior court denied the Petition, and the present appeal followed.

DISCUSSION

I. *Standard of Review*

A traditional writ of mandate under Code of Civil Procedure section 1085 " 'is used to compel a public entity to perform a legal and usually ministerial duty.' " (*Schmid v. City & County of San Francisco* (2021) 60 Cal.App.5th 470, 484–485, 274 Cal.Rptr.3d 727.) " 'On appeal following a

trial court's decision on a petition for a writ of mandate, the reviewing court " 'need only review the record to determine whether the trial court's findings are supported by substantial evidence.' " [Citation.] However, we review ***273** questions of law independently. [Citation.] Where, as here, the facts are undisputed and the issue involves statutory interpretation, we exercise our independent judgment and review the matter de novo. [Citation.]' [Citations.] [¶] The trial court's determination that [respondents'] actions did not violate the Elections Code is a legal finding subject to independent review." (*Lindelli v. Town of San Anselmo* (2003) 111 Cal.App.4th 1099, 1104, 4 Cal.Rptr.3d 453 (*Lindelli*).)

II. *Referendum Process and Judicial Review*

"Under the California Constitution, '[t]he legislative power of this State is vested in the California Legislature ... but the people reserve to themselves the powers of initiative and referendum.' (Cal. Const., art. IV, § 1.) ... The initiative power allows voters to propose new measures and place them on the ballot for a popular vote. If the measure is approved by popular vote, it becomes law. (Cal. Const., art. II, §§ 8, 10, subd. (a).) The referendum power, by contrast, allows voters ****833** to weigh in on laws that have already been passed by their elected representatives. Any voter or group of voters that gathers enough signatures can place a legislative enactment on the ballot for an up or down vote. A referendum suspends operation of the law until it is approved by a majority of voters." (*Wilde v. City of Dunsmuir* (2020) 9 Cal.5th 1105, 1111, 266 Cal.Rptr.3d 688, 470 P.3d 590.)

"Under [ ] section 9237, if a petition protesting the adoption of an ordinance is signed by more than 10 percent of the voters of the city, 'the effective date of the ordinance shall be suspended and the legislative body shall reconsider the ordinance.' If the legislative body does not repeal the ordinance, then it 'shall submit the ordinance to the voters' and '[t]he ordinance shall not become effective until a majority of the voters voting on the ordinance vote in favor of it.' ([ ]§ 9241.) Local governments are not empowered to exercise discretion in determining whether a duly certified referendum is placed on the ballot. [Citations.] If the local government believes an initiative or referendum is unlawful and should not be presented to voters, it should file a petition for a writ of mandate seeking to remove it from the ballot." (*Save Lafayette v. City of Lafayette* (2018) 20 Cal.App.5th 657, 663, 229 Cal.Rptr.3d 238 (*Save Lafayette*); see also *Friends of Bay Meadows v. City of San Mateo* (2007) 157 Cal.App.4th 1175, 1185–1186, 68 Cal.Rptr.3d 916 (*Bay Meadows*).)[4]

***274** Although the law is clear that local governments are not permitted to refuse to process a referendum due to concerns about its validity, "[i]n practice, and in the interest of equity and judicial economy, courts have allowed local governments to assert such invalidity as a 'defense' in the original writ proceeding. [Citation.] But in doing so, neither courts nor litigants should lose sight of the fact that the burden of establishing this 'defense' falls squarely on the entity or person asserting the" referendum's invalidity. (*Save Stanislaus, supra*, 13 Cal.App.4th at p. 150, 16 Cal.Rptr.2d 408.) The standard for such "preelection review" of a referendum "is one of great deference where 'a court will remove an initiative [or referendum] from the ballot only "on a compelling showing that a proper case has been established for interfering." ' [Citation.] If a city refuses to place a referendum on the ballot, 'this refusal—improper as it is—may be retroactively validated by a judicial declaration that the measure should not be submitted to the voters.' " (*Save Lafayette*, *supra*, 20 Cal.App.5th at pp. 663–664, 229 Cal.Rptr.3d 238.)

"The Constitution 'speaks of the initiative and referendum, not as a right granted the people, but as a power reserved by them.' [Citation.] Since then, courts have ****834** consistently declared it their duty to ' "jealously guard" ' and liberally construe the right so that it ' "be not improperly annulled." ' [Citation.] Moreover, when weighing the tradeoffs associated with the initiative [or referendum] power, we have acknowledged the obligation to resolve doubts in favor of the exercise of the right whenever possible." (*California Cannabis Coal. v. City of Upland* (2017) 3 Cal.5th 924, 934, 222 Cal.Rptr.3d 210, 401 P.3d 49; see also *Associated Home Builders etc., Inc. v. City of Livermore* (1976) 18 Cal.3d 582, 591, 135 Cal.Rptr. 41, 557 P.2d 473 (*Associated Home Builders*).)

Respondents appear to argue the City Clerk's action was *not* unlawful because the superior court subsequently agreed the proposed referendum was invalid. They are mistaken. An election official may not "refuse to submit an initiative [or referendum] measure to the electorate on the ground that it deals with a matter not subject to the initiative [or referendum]." (*Farley v. Healey* (1967) 67 Cal.2d 325, 327, 62 Cal.Rptr. 26, 431 P.2d 650; accord *Yost, supra*, 36 Cal.3d at p. 564, fn. 2, 205 Cal.Rptr. 801, 685 P.2d 1152 [following *Farley* in referendum context]; see also *Bay Meadows, supra*, 157 Cal.App.4th at p. 1187, 68 Cal.Rptr.3d 916 ["The role of the election official is meant to be as impersonal as

possible. There is to be no concern ***275** with whether a referendum 'will be valid if enacted.' "].) Rather, "In certifying a referendum petition, a clerk's duty is limited to the ministerial function of determining whether the procedural requirements have been met." (*Lin v. City of Pleasanton* (2009) 175 Cal.App.4th 1143, 1155, 96 Cal.Rptr.3d 730, 176 Cal.App.4th 408 (2009).) The case respondents rely upon, *Am. Fed'n of Lab. v. Eu* (1984) 36 Cal.3d 687, 206 Cal.Rptr. 89, 686 P.2d 609, is not to the contrary. That case did not involve a local government's refusal to process a petition; instead, opponents of an initiative filed an action to prevent it from appearing on the ballot. (*Id.* at p. 694, 206 Cal.Rptr. 89, 686 P.2d 609.)

In the present case, the City Clerk made a determination "that the number of signatures, prima facie, equals or is in excess of the minimum number of signatures required." (§ 9210, subd. (b).) In these circumstances, the law directs that the clerk "shall accept the petition for filing" (§ 9210, subd. (b)) and then "shall examine the petition and certify the results" pursuant to statutory procedures (§ 9240). [5] "The word 'shall' indicates a mandatory or ministerial duty." (*Lazan v. Cnty. of Riverside* (2006) 140 Cal.App.4th 453, 460, 44 Cal.Rptr.3d 394.) But, instead of complying with her statutory obligations, the City Clerk refused to process the referendum petition based on legal advice that the Resolution was not subject ****835** to the referendum power. In doing so, the City Clerk violated her duties under the Elections Code. " 'Improper as' " the clerk's conduct was, we nevertheless proceed to the question of whether the City has made a " ' "compelling showing" ' " that the proposed referendum " 'should not be submitted to the voters.' " (*Save Lafayette, supra*, 20 Cal.App.5th at pp. 663–664, 229 Cal.Rptr.3d 238).

III. *Due to The Policy Decision to Construct and Improve Veteran's Park, Adoption of The Resolution Was a Legislative Act*

"Courts have long observed that '[t]he power of referendum applies only to acts that are legislative in character; executive or administrative acts ***276** are not within the scope of that remedy.' ... 'This legislative-administrative dichotomy reflects a determination to balance the ideal of direct legislation by the people against the practical necessity of freeing municipal governments from time consuming and costly referenda on merely administrative matters.' " (*San Bruno Comm. for Econ. Just. v. City of San Bruno* (2017) 15 Cal.App.5th 524, 530, 223 Cal.Rptr.3d 250 (*San Bruno*); see also *Yost, supra*, 36 Cal.3d at p. 569, 205 Cal.Rptr. 801, 685 P.2d 1152 ["The powers of referendum and initiative apply only to legislative acts by a local governing body."].)

"Although the test is not precise and the published decisions reflect some inconsistency in approach, '[l]egislative acts generally are those which declare a public purpose and make provisions for the ways and means of its accomplishment. Administrative acts, on the other hand, are those which are necessary to carry out the legislative policies and purposes already declared by the legislative body.' [Citation.] Alternatively stated, ' "[t]he power to be exercised is legislative in its nature if it prescribes a new policy or plan; whereas, it is administrative in its nature if it merely pursues a plan already adopted by the legislative body itself, or some power superior to it." ' [Citation.] 'The plausible rationale for this rule espoused in numerous cases is that to allow the referendum or initiative to be invoked to annul or delay the executive or administrative conduct would destroy the efficient administration of the business affairs of a city or municipality.' " (*San Bruno*, *supra*, 15 Cal.App.5th at p. 530, 223 Cal.Rptr.3d 250 [italics omitted].)

The Supreme Court's decision in *Hopping v. Council of Richmond* (1915) 170 Cal. 605, 150 P. 977 (*Hopping*), is instructive. In *Hopping*, the issue was whether city council resolutions providing "for the acquisition ... of certain tracts of land and the construction of a building thereon for a city hall and city offices" were legislative and subject to referendum. (*Id.* at p. 607, 150 P. 977.) The Supreme Court concluded the challenged resolutions were legislative because "[t]hey involved and required a determination by the council that the public interest of the city required that it should have a city hall, that the same should be located on the land offered for that purpose, that said offer should be accepted, that a suitable building should be erected thereon, that the money of the city should be appropriated and used in the construction thereof, and that, when completed, the building should be occupied and used by the city officers as a city hall and for municipal purposes ...." (*Id.* at pp. 614–615, 150 P. 977; see also *Citizens Against a New Jail v. Bd. of Supervisors* (1976) 63 Cal.App.3d 559, 563, 134 Cal.Rptr. 36 ["factors of cost and practicality" make decision to build new jail or renovate old jail legislative]; *Duran v. Cassidy* (1972) 28 Cal.App.3d 574, 581, 104 Cal.Rptr. 793 [whether to invest public funds ****836** in a municipal golf course is a legislative policy decision]; *Reagan v. City of Sausalito* (1962) 210 Cal.App.2d 618, 624, 628, 26 Cal.Rptr. 775 (*Reagan*) [decision to purchase property is a legislative act]; *Knowlton v. Hezmalhalch* (1939) 32 Cal.App.2d 419, 435,

89 P.2d 1109 [determination ***277** to construct city hall and appropriation of funds therefor were legislative acts]; *Burdick v. City of San Diego* (1938) 29 Cal.App.2d 565, 569, 84 P.2d 1064 (*Burdick*) [determination to construct police station and appropriation of funds therefor were legislative acts].)

The 2022 Agreement, for the first time, authorizes the construction of and improvements to Veteran's Park. Respondents argue the City had "already approved a future negotiation" regarding construction of Veteran's Park, but we observe that the 2021 Agreement only states the City in its "sole discretion" has the "option" to negotiate an agreement to fund construction of the park and improvements. At oral argument, respondents argued only that the 2021 Agreement "put[ ] the *possibility* on the table." (Italics added.) Thus, the record demonstrates that the Resolution approving the 2022 Agreement was the initial relevant policy determination regarding the park's construction and improvements. Contrary to respondents' suggestion, with respect to the park, the Resolution did not involve *merely* the City's determination to appropriate specific amounts of public funds for a plan that had already been adopted.

Burdick informs this analysis. There, the City of San Diego decided to erect a police station at a designated site and, in a series of acts, developed plans for the facility and appropriated funds for the project. (*Burdick, supra*, 29 Cal.App.2d at pp. 566–568, 84 P.2d 1064.) Subsequently, the city council approved a resolution authorizing a call for construction bids. (*Id.* at pp. 568–569, 84 P.2d 1064.) The court of appeal held that the *final* resolution was *not* subject to referendum, explaining, "Prior to the passage of [the resolution], the site for the police station had been designated and accepted. The city council had decided to erect the structure on that site. Money for the work had been appropriated and was available. The plans for the building had been approved and remained unchanged. The specifications and form of the contract had been approved. The three earlier acts were legislative in character and fixed the policy of the City of San Diego to erect the police station on the designated site." (*Id.* at p. 569, 84 P.2d 1064.) In the present case, the challenged Resolution is not analogous to the final resolution at issue in *Burdick*; instead, in approving the construction and improvement of Veteran's Park, the Resolution corresponds to the *prior* legislative approval of construction of a police station.

The trial court relied on *San Bruno, supra*, 15 Cal.App.5th 524, 223 Cal.Rptr.3d 250, in deciding adoption of the Resolution was an administrative act. In *San Bruno*, the Court of Appeal concluded a resolution approving the sale of property to a hotel developer was not a legislative act subject to a referendum. (*Id.* at p. 528, 223 Cal.Rptr.3d 250.) The *San Bruno* court distinguished *Hopping* in language that undermines respondents' position: "In the present case, the City is not acquiring land for any municipal purpose, and is not appropriating any of its own funds in ***278** connection with the real estate transaction. Instead, the City is selling land to a private developer for a profit, and is not providing any subsidy to the developer." (*San Bruno*, 15 Cal.App.5th at p. 531, 223 Cal.Rptr.3d 250.) In contrast, the Resolution at issue here involves a public policy determination to construct and improve Veteran's Park ****837** at the public's expense. (*Hopping, supra*, 170 Cal. at pp. 613–614, 150 P. 977.)

San Bruno also concluded the contract to sell land in that case was an administrative act because "the primary substantive decisions pertaining to the proposed development [had] already been made." (*San Bruno, supra*, 15 Cal.App.5th at p. 536, 223 Cal.Rptr.3d 250.) In the present case, although the "primary substantive decisions" relating to the housing aspects of the Project were made prior to the 2022 Agreement, the "primary substantive decisions" regarding Veteran's Park were only set out in the 2022 Agreement. (Cf. *id.* at p. 536, 223 Cal.Rptr.3d 250 [noting that the resolution at issue in the case did "not include any new action to further amend the Specific Plan, adopt new legislation, or otherwise take legislative action"].) The City's decision to construct and improve Veteran's Park for $5.5 million was "political in nature" (*id.* at p. 534, 223 Cal.Rptr.3d 250), and, in so deciding, the City "could consider the questions of public good, public interests, and public policy involved solely by virtue of and in the exercise of its legislative powers, and its action thereon was clearly an act in the exercise of that power." (*Hopping, supra*, 170 Cal. at p. 615, 150 P. 977.)

IV. *The City Was Not Acting as the State's Administrative Agent in Approving the Resolution*

The superior court also accepted respondents' argument that, even if the Resolution would typically be considered a legislative act, approval of the Resolution was, in the language of *Yost*, "administrative in nature by virtue of the fact that the council was acting under the authority delegated by the state to implement [the redevelopment dissolution process]—that, in effect, the [dissolution law] preempts the exercise of the power of referendum." (*Yost, supra*, 36 Cal.3d at p. 570, 205 Cal.Rptr. 801, 685 P.2d 1152.) We reject that alternate basis to affirm.

A. *Legal Principles and the Dissolution Law*

"Acts of a local governing body which, in a purely local context, would otherwise be legislative and subject to referendum may ... become administrative 'in a situation in which the state's system of regulation over a matter of statewide concern is so pervasive as to convert the local legislative body into an administrative agent of the state.' " (*Yost, supra*, 36 Cal.3d at p. 570, 205 Cal.Rptr. 801, 685 P.2d 1152.) Stated differently, acts are considered administrative where "the state has acted to establish the basic policy and has vested the responsibility for carrying out that policy" to a local governing body. (*Simpson v. Hite* (1950) 36 Cal.2d 125, 130, 222 P.2d 225.) Nevertheless, in light of the presumption in ***279** favor of the right to initiative and referendum, there must be a "definite indication that the Legislature, as part of the exercise of its power to preempt all local legislation in matters of statewide concern, has intended to restrict that right." (*DeVita, supra*, 9 Cal.4th at p. 776, 38 Cal.Rptr.2d 699, 889 P.2d 1019; accord *City of Morgan Hill v. Bushey* (2018) 5 Cal.5th 1068, 1078–1079, 236 Cal.Rptr.3d 835, 423 P.3d 960 (*Bushey*).)

"In the aftermath of World War II, the Legislature authorized the formation of community redevelopment agencies in order to remediate urban decay. [Citations.] The Community Redevelopment Law 'was intended to help local governments revitalize blighted communities.' " (*California Redevelopment Assn. v. Matosantos* (2011) 53 Cal.4th 231, 245–246, 135 Cal.Rptr.3d 683, 267 P.3d 580 (*Matosantos*); see also ****838** *Marek v. Napa Cmty. Redevelopment Agency* (1988) 46 Cal.3d 1070, 1082, 251 Cal.Rptr. 778, 761 P.2d 701 [the redevelopment law was intended to remove and prevent blight, to create jobs and low-to-moderate income housing, and to attract private investment].)

"[I]n the summer of 2011 the Legislature enacted legislation ... that barred any new redevelopment agency obligations, and established procedures for the windup and dissolution of the obligations of the nearly 400 redevelopment agencies then existing." (*City of Pasadena v. Cohen* (2014) 228 Cal.App.4th 1461, 1463, 176 Cal.Rptr.3d 729.)[6] The move "reflected a state policy to curtail perceived abuses of the [redevelopment law] by which [redevelopment agencies] and their 'sponsor' entities (usually cities) ... used an increasing share of local property taxes as 'tax increments' (increases in property tax attributable to [agency] projects) for their own benefit." (*City of Grass Valley v. Cohen* (2017) 17 Cal.App.5th 567, 573, 226 Cal.Rptr.3d 543; see also *Matosantos, supra*, 53 Cal.4th at p. 248, 135 Cal.Rptr.3d 683, 267 P.3d 580 [explaining that the Legislature was particularly concerned that property tax revenues were shifted away from school districts]; *id.* at p. 247, 135 Cal.Rptr.3d 683, 267 P.3d 580 [pointing out that, by 2011, redevelopment agencies received "12 percent of all property tax revenue in the state"]; *Stephenshaw*, *supra*, 91 Cal.App.5th at p. 357, 308 Cal.Rptr.3d 418.)

Prior to dissolution, redevelopment agencies were usually "governed by the sponsoring community's own legislative body. [Citations.] An agency [was] ***280** authorized to 'prepare and carry out plans for the improvement, rehabilitation, and redevelopment of blighted areas.' [Citation.] To carry out such redevelopment plans, agencies [could] acquire real property ... and undertake certain improvements to other public facilities in the project area [citation]. While redevelopment agencies [ ] used their powers in a wide variety of ways, in one common type of project the redevelopment agency [bought] and [assembled] parcels of land, buil[t] or enhance[d] the site's infrastructure, and transfer[red] the land to private parties on favorable terms for residential and/or commercial development." (*Matosantos, supra*, 53 Cal.4th at p. 246, 135 Cal.Rptr.3d 683, 267 P.3d 580.)

As explained in *Matosantos*, the redevelopment dissolution legislation "dissolves all redevelopment agencies [citation] and transfers control of redevelopment agency assets to successor agencies, which are contemplated to be the city or county that created the redevelopment agency [citations].... [S]uccessor agencies [are required] to continue to make payments and perform existing obligations." (*Matosantos, supra*, 53 Cal.4th at p. 251, 135 Cal.Rptr.3d 683, 267 P.3d 580; see also Health and Saf. Code, § 34167; *Stephenshaw, supra*, 91 Cal.App.5th at pp. 357–358, 308 Cal.Rptr.3d 418.)

As relevant in the present case, Health and Safety Code section 34191.5, subdivision (b) requires a successor agency to "prepare a long-range property management ****839** plan that addresses the disposition and use of the real properties of the former redevelopment agency" and submit the plan for approval by the Department of Finance and a local "oversight board" (*id.* at § 34179). The plan must inventory the former redevelopment agency properties with specified information and "[a]ddress the use or disposition of all of the properties in the trust." (*Id.* at § 34191.5, subd. (c).) A property may not be transferred "unless the long-range property management plan

has been approved by the oversight board and the Department of Finance." (*Id.* at § 34191.5, subd. (c)(2)(C).) In reviewing such a plan, "[t]he department shall only consider whether the long-range property management plan makes a good faith effort to address the requirements set forth in subdivision (c)" (*id.* at § 34191.5, subd. (d)), requiring an inventory and proposed disposition of all properties. An approved plan "govern[s], and supersede[s] all other provisions relating to, the disposition and use of the real property assets of the former redevelopment agency." (*Id.* at § 34191.3, subd. (a).) Finally, the legislation specifies that "[a]ctions to implement the disposition of property pursuant to an approved long-range property management plan shall not require review by the department." (*Id.* at § 34191.5, subd. (f).)

B. *Respondents' Authorities*

The City's Long Range Plan identified the Property as a housing asset to be transferred to the City with the "goal" of development of a "high density ***281** residential project with an affordable component." The Long Range Plan was approved by the Department of Finance.

Respondents assert that "Redevelopment Dissolution preempts local governments' legislative powers," but they do not clarify why that is so. Although the Dissolution Law required the City to inventory and describe the disposition of the former redevelopment agency properties, and although the approved Long Range Plan thereafter governed the disposition of the Property, respondents fail to explain how that rendered the City's decision to construct and improve Veteran's Park administrative. The Long Range Plan says nothing about the construction of a public park, and respondents are misplaced in arguing the City merely acted as an administrative agent of the State in making the policy decision to do so.

The cases respondents rely upon are distinguishable because they involve instances where "the local legislative body's discretion was largely preempted by statutory mandate." (*DeVita, supra*, 9 Cal.4th at p. 776, 38 Cal.Rptr.2d 699, 889 P.2d 1019.) Thus, in *Simpson v. Hite, supra*, 36 Cal.2d 125, 133–134, 222 P.2d 225, the court held that the initiative or referendum power could not be used to interfere with a board of supervisors' duty to provide suitable accommodations for courts. But, as explained in *Yost, supra*, 36 Cal.3d at p. 573, 205 Cal.Rptr. 801, 685 P.2d 1152, "the *only* discretion left to the local government by the Legislature in *Simpson* was the choice of a site for a municipal and superior court. The board of supervisors had a duty to provide suitable quarters for the courts..." (See also *Bushey, supra*, 5 Cal.5th at p. 1083, 236 Cal.Rptr.3d 835, 423 P.3d 960 [distinguishing *Simpson* on same ground]; *Associated Home Builders*, *supra*, 18 Cal.3d at p. 596, fn. 14, 135 Cal.Rptr. 41, 557 P.2d 473 [characterizing *Simpson* as a case "in which the state's system of regulation over a matter of statewide concern is so pervasive as to convert the local legislative body into an administrative agent of the state"].) No analogous mandate constrained the City's discretion here.

****840** Also distinguishable are cases arising in the context of the Housing Authorities Law, enacted "to take advantage of the federal loans provided by the United States Housing Authority Act of 1937" and thereby provide for "low-rent, safe and sanitary dwellings" throughout the State. (*Kleiber v. San Francisco* (1941) 18 Cal.2d 718, 719, 723, 117 P.2d 657 (*Kleiber*).) The court in *Kleiber* rejected a claim that certain contracts entered into pursuant to the Housing Authorities Law were void because they were legislative acts that under the San Francisco charter had to be accomplished by ordinance. (*Kleiber*, at p. 719, 117 P.2d 657.) The court concluded that the challenged resolutions were administrative, because "[t]he public purpose here involved was declared and made law by the legislature of this state ...." (*Id.* at p. 723, 117 P.2d 657.) Upon a local finding of necessity, the law provided for the operation of a local housing authority and "prescribed the powers, duties and obligations of the authority and of the city in carrying out ***282** its salutary purposes. Every necessary legislative act was completed by the legislature. There was nothing left to do except to administer the law." (*Id.* at pp. 720, 724, 117 P.2d 657.)

In *Hous. Auth. of City of Los Angeles v. City of Los Angeles* (1952) 38 Cal.2d 853, 243 P.2d 515 (*Housing Authority of L.A.*), the City of Los Angeles sought to avoid performance of its obligations under an agreement between the city and the local housing authority relating to a previously approved project. (*Id.* at pp. 856–857, 243 P.2d 515.) The Supreme Court concluded that the applicable state and federal laws did not permit "the city's attempted cancellation, abandonment and abrogation of its contracts." (*Id.* at p. 870, 243 P.2d 515.) Citing *Kleiber*, the court concluded that, "having taken the initial discretionary action to bring the housing authority into operation and having approved a project and entered into a cooperation agreement, there was nothing left to be done by either contracting party but to perform administratively whatever was necessary to carry the agreement into effect." (*Id.* at p. 862, 243 P.2d 515.)

A third housing authority case not cited by the parties is *Hous. Auth. of City of Eureka v. Superior Ct. of Humboldt Cnty.* (1950) 35 Cal.2d 550, 219 P.2d 457 (*Housing Authority of Eureka*). That case, unlike *Kleiber* and *Housing Authority of L.A.*, did involve the referendum power. There, citizens sought to challenge by referendum the local housing authority's application to the federal government for a loan of money to be used in the construction of low-rent public housing, approved by the city council. (*Id.* at pp. 552–555, 219 P.2d 457.) Citing *Kleiber*, the Supreme Court concluded that the city acted administratively in approving the loan application and, therefore, the resolution was not subject to the referendum power. (*Housing Authority of Eureka*, at pp. 558–559, 219 P.2d 457.)

The Supreme Court subsequently narrowly construed the *Housing Authority of Eureka* decision. *Bushey* characterized the decision as one "where state law mandates a certain result with no discretion or that involves an 'administrative' task." (*Bushey, supra*, 5 Cal.5th at p. 1083, 236 Cal.Rptr.3d 835, 423 P.3d 960.) Similarly, the court in *DeVita, supra*, 9 Cal.4th at p. 776, 38 Cal.Rptr.2d 699, 889 P.2d 1019, characterized the *Housing Authority of Eureka* decision as involving an "area[ ] in which the local legislative body's discretion was largely preempted by statutory mandate." The present case is distinguishable. The redevelopment dissolution laws sought to free up real estate resources held by redevelopment agencies while still honoring prior commitments. (****841** *Stephenshaw, supra*, 91 Cal.App.5th at pp. 357–358, 308 Cal.Rptr.3d 418.) While the Long Range Plan specifies use of the Property as high density housing with an affordable component, in deciding to construct and improve Veteran's Park, the City made discretionary policy determinations that were not dictated by the Long Range Plan or any provision of the Dissolution Law. Accordingly, contrary to respondents' view, this is not a case where there is a " 'definite indication' or a ' "clear showing" ' " the Legislature intended, in ***283** enacting the Dissolution Law, to "limit[ ] the local legislative body's discretion such that its task is 'administrative' rather than 'legislative.' " (*Bushey*, 5 Cal.5th at p. 1079, 236 Cal.Rptr.3d 835, 423 P.3d 960.) [7]

C. *The* Yost *and* Bushey *Decisions*

Yost, supra, 36 Cal.3d 561, 205 Cal.Rptr. 801, 685 P.2d 1152, is instructive. That case involved a petition for writ of mandate to compel a city clerk to process a referendum petition challenging a city council's authorization of a hotel and conference center on undeveloped coastal land pursuant to the city's local coastal plan approved by the Coastal Commission. (*Id.* at pp. 565–566, 569, 205 Cal.Rptr. 801, 685 P.2d 1152.) The Supreme Court held that the Coastal Act did not preempt local planning authority or the power of the voters to act through referendum. (*Id.* at p. 565, 205 Cal.Rptr. 801, 685 P.2d 1152.) Although the court recognized that "the Coastal Act is an attempt to deal with coastal land use on a statewide basis," the court observed that the act only "sets minimum standards and policies with which local governments within the coastal zone must comply; it does not mandate the action to be taken by a local government in implementing local land use controls." (*Id.* at pp. 571–572, 205 Cal.Rptr. 801, 685 P.2d 1152.) Because the law "leaves wide discretion to a local government not only to determine the contents of its land use plans, but to choose how to implement these plans," in making planning decisions "a city is acting legislatively and its actions are subject to the normal referendum procedure." (*Id.* at p. 573, 205 Cal.Rptr. 801, 685 P.2d 1152.) Similarly, the Dissolution Law and the approved Long Range Plan left wide discretion to the City in determining the content of the 2022 Agreement. [8]

Bushey, supra, 5 Cal.5th 1068, 236 Cal.Rptr.3d 835, 423 P.3d 960, though not cited by the parties, is also instructive. In *Bushey*, a city filed a petition for writ of mandate contesting the validity of a referendum on a city rezoning ordinance in support of a hotel project. (****842** *Id.* at pp. 1076–1077, 236 Cal.Rptr.3d 835, 423 P.3d 960.) The Supreme Court held the ordinance was ***284** subject to challenge by referendum even though, if approved, the referendum would create a temporary inconsistency with the city's general plan. (*Id.* at pp. 1075–1076, 236 Cal.Rptr.3d 835, 423 P.3d 960.) The court acknowledged that local zoning and general plans raise issues of " 'statewide concern' " and that the Legislature had mandated local governments to adopt general plans and required conformity between general plans and zoning ordinances. (*Id.* at p. 1079, 236 Cal.Rptr.3d 835, 423 P.3d 960.) Nevertheless, the court concluded that the Legislature had *not* "preempted local electors' power to challenge by referendum a local government ordinance ... aligning the relevant zoning designations with the amended general plan." (*Id.* at p. 1080, 236 Cal.Rptr.3d 835, 423 P.3d 960.) Critically, the local government had *other* options to bring the general plan and zoning into conformity if the referendum passed. (*Id.* at pp. 1083, 1090–1091, 236 Cal.Rptr.3d 835, 423 P.3d 960.) As the court explained, "Where the local government can still implement one of multiple approaches to achieve consistency between the

zoning ordinance and the general plan while complying with [state law], *the zoning ordinance is best understood as the product of a discretionary policy choice about the proper use of the land*." (*Id.* at p. 1083, 236 Cal.Rptr.3d 835, 423 P.3d 960 [emphasis added].) The same reasoning applies here. Although the 2022 Agreement is consistent with the Long Range Plan, it is not the *only* consistent approach. Because the City had many choices about *how* to develop the Property, its decision to construct and improve Veteran's Park as part of the Project was, as *Bushey* phrased it, "a discretionary policy choice about the proper use of the land." (*Ibid.*)

D. *Conclusion*

Under respondents' view, the City acts as a mere administrative agent of the State in developing the Property as a "high density residential project with an affordable component," regardless of the discretionary decisions the City makes in doing so. Respondents are mistaken. Because there is no " 'definite indication' " (*Bushey, supra*, 5 Cal.5th at pp. 1078–1079, 236 Cal.Rptr.3d 835, 423 P.3d 960) that the Legislature, in enacting the Dissolution Law, intended to preempt local discretionary policy decisions regarding municipal developments, the superior court erred in concluding the referendum power did not encompass the Resolution on the ground that the City was acting as an administrative agent of the State.

V. *The City's Approvals of the Loan Terms and Indemnification Provision in the 2022 Agreement Did Not Render the Resolution Legislative* **

Unpublished Text Follows

Plaintiffs also contend the Resolution was legislative because, in the 2022 Agreement, the City (1) agreed to provide Eden Housing with a $7.8 million loan at 3 percent simple interest to be repaid over 55 years, and (2) agreed to bear up to $4.3 million in liability under an indemnification provision. At oral argument, both parties agreed that, moving forward, it would be helpful for this court to resolve those contentions.

As to the loan terms, the 2018 Agreement provided that, "The price of the property shall be equal to the appraised fair market value of the Property, and such appraisal shall be performed by an appraiser that is mutually agreed upon by the City and the Developer." That policy decision to sell the Property for fair market value was the relevant declaration of policy and "provision[ ] for the ways and means of its accomplishment," and the subsequent approval of the amount was an administrative act carrying out the previously determined "legislative policies and purposes." (*San Bruno, supra*, 15 Cal.App.5th at p. 530.) The same is true of the specification of 3 percent as the rate of interest. The 2018 Agreement provided that 3 percent was one of two potential interest rates, with the rate to be agreed upon "based on the Project's overall financial feasibility and Investor requirements." The ultimate determination that the Project finances supported selection of the 3 percent rate was an administrative determination pursuant to the policy established in the 2018 Agreement. Finally, the 55-year loan term was already specified in the 2018 Agreement. Accordingly, approval of the loan terms in the 2022 Agreement was not a legislative act.

The indemnification provision in the 2022 Agreement authorizes the City Manager "to negotiate and execute [an] indemnity and cooperation agreement in an amount not to exceed $4,300,000," in order to "apportion costs and any potential liability related to Hazardous Materials at, on, in, beneath, or from the Property ..." At oral argument, plaintiffs conceded that, absent agreement from Eden Housing to assume a portion of the liability, the City would bear the liability. Plaintiffs further conceded that the effect of the 2022 Agreement was to cap the City's potential liability at $4.3 million, and that the cap benefitted taxpayers by limiting the City's liability. Finally, plaintiffs conceded that approval by the City of a stand-alone agreement identical to the indemnification provision would be an administrative act. On appeal, plaintiffs, as appellants, bear the burden of showing the superior court erred. (*L.O. v. Kilrain* (2023) 96 Cal.App.5th 616, 619.) Given their concessions, they fail to do so. They cite no authority that or reasoning why a municipality's decision to enter into a contract that potentially saves public funds by limiting liability is legislative, especially after the municipality has already approved a contract acknowledging its potential liability. And they cite no authority that or reasoning why a determination that is otherwise administrative may be treated as legislative because the provision at issue is part of a larger agreement, the approval of which is legislative due to a wholly unrelated provision. Accordingly, plaintiffs have not shown approval of the indemnification provision in the 2022 Agreement was a legislative act. [9]

End of Unpublished Text

VI. *The Superior Court Erred in Requiring a Bond*

As noted previously, the superior court required plaintiffs to furnish an undertaking in the amount of $500,000 under

***285** Code of Civil Procedure section 529.2. That statute provides that a defendant in a civil action "brought by any plaintiff to challenge a housing project which is a development project ... and which meets or exceeds the requirements for low- or moderate-income housing" may request an order requiring the plaintiff "to furnish an undertaking as security for costs and any damages that may be incurred by the defendant by the conclusion of the action or proceeding as the result of a delay in ****843** carrying out the development project." (Code Civ. Proc. § 529.2, subd. (a).) "The motion shall be made on the grounds that: (1) the action was brought in bad faith, vexatiously, for the purpose of delay, or to thwart the low- or moderate-income nature of the housing development project, and (2) the plaintiff will not suffer undue economic hardship by filing the undertaking." (*Ibid.*)

On appeal, plaintiffs contend the superior court erred in concluding the present action is within the scope of Code of Civil Procedure section 529.2. They argue the writ was brought "to enforce provisions of the Elections Code and secure for the City's voters their right to referendum" rather than to challenge the Project.

We agree. Although the *proposed referendum* challenges the Project and would have the effect of delaying the Project if it meets the statutory requirements, the present action is not itself a challenge to the Project. Instead, it is a challenge to the City Clerk's violation of the Elections Code. (Cf. *Save Livermore Downtown, supra*, 87 Cal.App.5th at p. 1123, 304 Cal.Rptr.3d 103 [bond appropriate in action alleging "the project violated state and local planning and zoning laws" and CEQA].) It is revealing that, if the City Clerk had complied with her legal obligations and processed the referendum, then plaintiffs would not have had to file the present action. Instead, any challenge to the validity of the referendum could have been heard pursuant to a petition brought by the City. (*Save Lafayette, supra*, 20 Cal.App.5th at p. 663, 229 Cal.Rptr.3d 238 ["If the local government believes an initiative or referendum is unlawful and should not be presented to voters, it should file a petition for a writ of mandate seeking to remove it from the ballot."].) In *those* circumstances, no colorable claim that plaintiffs were required to post a bond under Code of Civil Procedure section 529.2 would exist. Requiring plaintiffs to file an undertaking in the present circumstances, in effect, rewards the City's chosen partner Eden Housing for the City's violation of clear and well-established law protecting the people's constitutional referendum power. (See Part II, *ante*.)

Real party in interest Eden Housing argues that, in challenging the City Clerk's refusal to process the referendum petition, plaintiffs' action "challenges a City determination that directly impacts the Project." But Eden Housing proposes no plain language interpretation of Code of Civil Procedure section 529.2 that encompasses an action that does not directly challenge any ***286** aspect of a housing project. At oral argument, Eden Housing attempted to analogize plaintiffs' action to enforce the referendum power to a CEQA action to enforce environmental protections. But Code of Civil Procedure section 529.2 expressly states that CEQA actions are within the scope of the statute. (Code Civ. Pro. § 529.2, subd. (a) [referencing "actions brought pursuant to Section 21167 of the Public Resources Code"].)

Because the present action does not come within the plain language of Code of Civil Procedure section 529.2, the superior court erred as a matter of law in requiring plaintiffs to file an undertaking under that statute.

DISPOSITION

The judgment is reversed and the case is remanded to the superior court with directions to issue a peremptory writ of mandate ordering respondents to process the referendum petition as required by the Elections Code. The superior court's order requiring plaintiffs to file an undertaking under ****844** Code of Civil Procedure section 529.2 is also reversed. Costs on appeal are awarded to plaintiffs/appellants.

We concur.

JACKSON, P. J.

CHOU, J.

All Citations

100 Cal.App.5th 263, 318 Cal.Rptr.3d 826, 2024 Daily Journal D.A.R. 2083

ATTACHMENT 3

Footnotes

* Pursuant to California Rules of Court, rules 8.1105(b) and 8.1110, this opinion is certified for publication with the exception of part V.

1 In a portion of the opinion not certified for publication, we conclude the City did not act legislatively in approving loan terms and an indemnity provision relating to hazardous waste.

2 The Livermore Village Site is a larger area that includes the Property.

3 All undesignated section references are to the Elections Code.

4 Courts have not distinguished between referendums and initiatives with respect to the ministerial duty to act in accordance with the Elections Code in processing referendum and initiative petitions. (See *Save Stanislaus Area Farm Econ. v. Bd. of Supervisors* (1993) 13 Cal.App.4th 141, 152, fn. 3, 16 Cal.Rptr.2d 408 (*Save Stanislaus*) ["There is no textual basis for construing the power of referendum as broader than the initiative power, or vice versa."]; see also, e.g., *Yost v. Thomas* (1984) 36 Cal.3d 561, 564, fn. 2, 205 Cal.Rptr. 801, 685 P.2d 1152 (*Yost*) [substituting word "referendum" for "initiative" in quoting prior case on issue of clerk's duty to process referendum]; *Save Lafayette, supra*, 20 Cal.App.5th at pp. 663–664, 229 Cal.Rptr.3d 238 [relying on both initiative and referendum caselaw on the topic].) Respondents cite no authority to the contrary.

We also observe that, "it is well established that any legislative act may be enacted by initiative and may be subject to referendum, regardless of whether that act is denominated an 'ordinance' or 'resolution.' " (*DeVita v. Cnty. of Napa* (1995) 9 Cal.4th 763, 787, fn. 9, 38 Cal.Rptr.2d 699, 889 P.2d 1019 (*DeVita*).)

5 Section 9210 provides in relevant part, "When the petition is presented for filing, the elections official shall do all of the following: [¶] (a) Ascertain the number of registered voters of the city last reported by the county elections official to the Secretary of State pursuant to Section 2187 effective at the time the notice specified in Section 9202 was published. [¶] (b) Determine the total number of signatures affixed to the petition. If, from this examination, the elections official determines that the number of signatures, prima facie, equals or is in excess of the minimum number of signatures required, he or she shall accept the petition for filing." Section 9240 provides, "After the petition has been filed as herein provided, the elections official shall examine the petition and certify the results in the same manner as are county petitions in Sections 9114 and 9115 except that, for the purposes of this section, references to the board of supervisors shall be treated as references to the legislative body of the city." Sections 9114 and 9115 detail procedures for validation of signatures on a petition. If "the petition is found to be sufficient, the elections official shall certify the results of the examination to the [city council]." (§§ 9114, 9115, subd. (f).)

6 The initial legislation was Assembly Bill No. 26 (2011-2012 1st Ex. Sess., ch. 5), which was upheld in *Matosantos* and went into effect on February 1, 2012. (*Matosantos, supra*, 53 Cal.4th at p. 275, 135 Cal.Rptr.3d 683, 267 P.3d 580.) "The Legislature subsequently adopted additional legislation—Assembly Bill No. 1484 (2011-2012 Reg. Sess.), eff. June 27, 2012, Assembly Bill No. 471 (2013-2014 Reg. Sess.), eff. Feb. 18, 2014, and Senate Bill No. 107 (2015-2016 Reg. Sess.), eff. Sept. 22, 2015—to clarify or modify the dissolution and wind down process. [Citations.] Taken together, we shall refer to these laws as the 'Dissolution Law.' " (*City of Chula Vista v. Stephenshaw* (2023) 91 Cal.App.5th 352, 357, 308 Cal.Rptr.3d 418 (*Stephenshaw*).)

7 Although respondents do not cite to them, we observe that several cases have held that local decisions pursuant to the Community Redevelopment Law were beyond the reach of the referendum power. (*Gibbs v. City of Napa* (1976) 59 Cal.App.3d 148, 154, 130 Cal.Rptr. 382; see also *PR/JSM Rivara LLC v. Cmty. Redevelopment Agency* (2009) 180 Cal.App.4th 1475, 1482, 104 Cal.Rptr.3d 52; *Walker v. City of Salinas*

(1976) 56 Cal.App.3d 711, 718, 128 Cal.Rptr. 832; *Andrews v. City of San Bernardino* (1959) 175 Cal.App.2d 459, 346 P.2d 457.) But the City in this case did *not* act pursuant to the redevelopment law. Instead, the present case involves the *Dissolution Law*. As we have explained, the City was bound only by the very general specification in the Long Range Plan to build housing with an affordable component on the Property.

8 Respondents argue *Yost* is distinguishable because section 30500, subdivision (c) of the Public Resources Code states, "The precise content of each local coastal program shall be determined by the local government, consistent with Section 30501, in full consultation with the commission ...." (See also *Yost, supra*, 36 Cal.3d at pp. 571–572, 205 Cal.Rptr. 801, 685 P.2d 1152.) However, even though the Dissolution Law does not contain a precisely analogous provision, respondents point to no provision denying cities a comparable level of discretion over local developments.

** See footnote *, *ante*.

9 At oral argument, respondents requested that this court direct the superior court to process the referendum only as to those parts of the 2022 Agreement that involved legislative determinations, citing *Dye v. Council of City of Compton*, 80 Cal.App.2d 486, 487, 182 P.2d 623. But the issue in *Dye* was whether the referendum power permitted a challenge to only parts of a city ordinance. (*Id.* at p. 488, 182 P.2d 623.) The court did not suggest that, where a referendum petition challenges the whole of a resolution or ordinance, as in the present case, it would be proper to limit the scope of the referendum. Given respondents' failure to present authority supporting their request, we decline it.

End of Document

© 2024 Thomson Reuters. No claim to original U.S. Government Works.

IN THE CITY COUNCIL OF THE CITY OF LIVERMORE, CALIFORNIA

A RESOLUTION ACCEPTING THE ALAMEDA COUNTY REGISTRAR OF VOTERS CERTIFICATION AS TO THE SUFFICIENCY OF SIGNATURES ON THE REFERENDUM PETITION AGAINST RESOLUTION NO. 2022-085

On May 24, 2022, the City Council adopted Resolution No. 2022-085 authorizing the execution of an *Amended and Restated Disposition, Development and Loan Agreement* with Eden Housing, Inc. ("Eden Housing") for the development of the downtown multi-family housing site. That agreement amended the then existing agreement with Eden Housing for the affordable housing project that was first approved by the City Council on November 26, 2018, (Resolution No. 2018-197), and that was later amended by the City Council on May 25, 2021, (Resolution No. 2021-073). Resolution No. 2022-085 also approved the language in the agreement for the construction of and improvements to Veterans Park.

On July 9, 2022, Move Eden Housing's ("MEH") petition against Resolution 2022-085 was presented to the City Clerk for processing as a referendum. The Report of Registration at the time of filing the petition identified 57,028 registered Livermore voters, establishing the 10% threshold at 5,702 signatures.

The City Clerk's technical review determined the referendum petition appeared on its face to comply with all format requirements. The City Clerk then completed a prima facie review of signatures and identified 9,737 unverified signatures affixed to the petition, which exceeds the required number of signatures to qualify the petition for further examination. Although numerous signatures were scratched out, the City Clerk nevertheless counted the signature as part or her prima facie review if she could see the signature along with a printed name, address, and city for the signer.

On July 13, 2022, the City Clerk advised MEH, based upon legal advice, that she would not process the petition as a referendum because it only contains administrative acts and did not contain any new legislative acts by the City Council. As the City Clerk explained, since the referendum petition does not challenge a legislative act, it was therefore not eligible for processing as a referendum.

Litigation ensued, and MEH identified and asserted it protested the following aspects of Ordinance No. 2022-085 that it asserted were legislative acts:

- Policy decision to construct and improve Veterans Park;
- Policy decision to loan Eden Housing money to buy the property; and,
- Policy decision to limit the City of Livermore's ("City") indemnity owed to Eden Housing for the remediation of environmental contamination on the property.

On January 25, 2023, the Trial Court entered judgment in the City's favor after finding "the Court confirms that the referendum at issue here was improper under California Law because it is directed at an administrative act and not a legislative one."

On March 6, 2024, the Appellate Court reversed the Trial Court's decision and issued an opinion finding that Resolution No. 2022-085 is subject to referendum because it approved "the construction of and improvements to a new public park," which is Veterans Park, in the agreement. The Appellate Court determined that the prior agreement merely contained an option for that work, and that the 2022 agreement for the first time authorized that work. The Appellate Court's opinion also determined that MEH's other protested aspects were administrative acts, not legislative, and therefore not subject to referendum. The Appellate Court specifically held that "the approval of the loan terms in the 2022 agreement is not a legislative act" and "plaintiffs have not shown approval of the indemnification provision in the 2022 agreement was a legislative act."

The Appellate Court having determined the portions of Resolution No. 2022-085 approving the construction of and improvements to Veterans Park is subject to referendum, the City Clerk resumed processing the petition as a referendum and delivered the petition to the Alameda County Registrar of Voters and requested full examination of the signatures.

On June 4, 2024, the Alameda County Registrar of Voters determined the number of unverified legible signatures (in contrast to the City Clerk's prima facie review which includes both legible and illegible signatures) was 8,019. The Registrar then performed an examination of the signatures and issued a certificate of sufficiency after determining the petition contained 6,043 valid signatures.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Livermore that it hereby accepts the Alameda County Registrar of Voters certification as to the sufficiency of the petition, attached hereto as Exhibit A.

On motion of Council Member _____, seconded by Council Member _____, the foregoing resolution was passed and adopted on June 24, 2024, by the following vote:

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

ATTEST:

_____
Deborah L. Elam
Acting City Clerk

APPROVED AS TO FORM:

/s/ Jason R. Alcala
Jason R. Alcala
City Attorney

Exhibit A – Registrar of Voters Certification

REGISTRAR OF VOTERS CERTIFICATE TO PETITION

I, **Tim Dupuis**, Registrar of Voters for the County of Alameda, State of California, hereby certify that:

A Referendum Petition Entitled: Referendum Against Resolution No. 2022-085 (DDLA with Eden Housing) **was** filed with the Livermore City Clerk within the statutory time limit and forwarded to this office for verification on April 18, 2024; and

The petition contained **8,019** unverified signatures: and

Pursuant to California Elections Code section 9215, in order to be sufficient, the petition must have been signed by **5,702** qualified registered voters of the City of Livermore, that number being equal to ten percent of the total registered voters of the City at the last Report of Registration to the Secretary of State; and

I have examined, or caused to be examined, signatures on the petition pursuant to California Elections Code sections 9211 and 9115; and

Have determined that the petition contained **6,043** valid signatures of qualified registered voters in the City of Livermore based on the line-by-line examination set forth in section 9115 (b) of the California Elections Code; and

That this number represents the total number of signatures needed to qualify the initiative; therefore

The petition is found to be sufficient to require the City Council of the City of Livermore to take the appropriate action specified in the California Elections Code.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal this **4th** day of **June 2024**.

DocuSigned by:
Cynthia Cornejo
6E5C0617DC2444D...

for Tim Dupuis
Registrar of Voters
County of Alameda
State of California

IN THE CITY COUNCIL OF THE CITY OF LIVERMORE, CALIFORNIA

A RESOLUTION REPEALING RESOLUTION NO. 2022-085

On May 24, 2022, the City Council adopted Resolution No. 2022-085 authorizing the execution of an *Amended and Restated Disposition, Development and Loan Agreement* with Eden Housing, Inc. ("Eden Housing") for the development of the downtown multi-family housing site. That agreement amended the then existing agreement with Eden Housing for the affordable housing project that was first approved by the City Council on November 26, 2018, (Resolution No. 2018-197), and that was later amended by the City Council on May 25, 2021, (Resolution No. 2021-073). Resolution No. 2022-085 also approved the language in the agreement for the construction of and improvements to Veterans Park.

On July 9, 2022, Move Eden Housing's ("MEH") petition against Resolution 2022-085 was presented to the City Clerk for processing as a referendum. The Report of Registration at the time of filing the petition identified 57,028 registered Livermore voters, establishing the 10% threshold at 5,702 signatures.

The City Clerk's technical review determined the referendum petition appeared on its face to comply with all format requirements. The City Clerk then completed a prima facie review of signatures and identified 9,737 unverified signatures affixed to the petition, which exceeds the required number of signatures to qualify the petition for further examination. Although numerous signatures were scratched out, the City Clerk nevertheless counted the signature as part or her prima facie review if she could see the signature along with a printed name, address, and city for the signer.

On July 13, 2022, the City Clerk advised MEH, based upon legal advice, that she would not process the petition as a referendum because it only contains administrative acts and did not contain any new legislative acts by the City Council. As the City Clerk explained, since the referendum petition does not challenge a legislative act, it was therefore not eligible for processing as a referendum.

Litigation ensued, and MEH identified and asserted it protested the following aspects of Ordinance No. 2022-085 that it asserted were legislative acts:

- Policy decision to construct and improve Veterans Park;
- Policy decision to loan Eden Housing money to buy the property; and,
- Policy decision to limit the City of Livermore's ("City") indemnity owed to Eden Housing for the remediation of environmental contamination on the property.

On January 25, 2023, the Trial Court entered judgment in the City's favor after finding "the Court confirms that the referendum at issue here was improper under California Law because it is directed at an administrative act and not a legislative one."

On March 6, 2024, the Appellate Court reversed the Trial Court's decision and issued an opinion finding that Resolution No. 2022-085 is subject to referendum because it approved "the construction of and improvements to a new public park," which is Veterans Park, in the agreement. The Appellate Court determined that the prior agreement merely contained an option for that work, and that the 2022 agreement for the first time authorized that work. The Appellate Court's opinion also determined that MEH's other protested aspects were administrative acts, not legislative, and therefore not subject to referendum. The Appellate Court specifically held that "the approval of the loan terms in the 2022 agreement is not a legislative act" and "plaintiffs have not shown approval of the indemnification provision in the 2022 agreement was a legislative act."

The City Council understands how the Appellate Court reached its conclusion regarding Veterans Park based upon the administrative record it considered. However, the City Council also understands that record focused on the housing project and the inclusion of Veterans Park in the agreement for the project, rather than the long history of Council decisions for the construction of Veterans Park that occurred prior to the 2022 agreement. That history is thoughtfully set forth in the staff report for this adoption of this resolution, and clearly reflects that the City Council's prior actions fixing the City's policy to construct Veterans Park as a public project prior to the adoption of Resolution No. 2022-085.

The Appellate Court having determined the portions of Resolution No. 2022-085 approving the construction of and improvements to Veterans Park is subject to referendum, the City Clerk resumed processing the petition as a referendum and delivered the petition to the Alameda County Registrar of Voters and requested full examination of the signatures.

On June 4, 2024, the Alameda County Registrar of Voters determined the number of unverified legible signatures (in contrast to the City Clerk's prima facie review which includes both legible and illegible signatures) was 8,019. The Alameda County Registrar of Voters then performed an examination of the signatures and issued a certificate of sufficiency after determining the petition contained 6,043 valid signatures.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Livermore that it respects the Appellate Court's opinion that the approval of the construction of and improvements to Veterans Park is a legislative act, and the will of the voters to set aside that act, and hereby repeals Resolution No. 2022-085.

On motion of Council Member _____, seconded by Council Member _____, the foregoing resolution was passed and adopted on June 24, 2024, by the following vote:

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

ATTEST:

_____
Deborah L. Elam
Acting City Clerk

APPROVED AS TO FORM:

/s/ Jason R. Alcala
Jason R. Alcala
City Attorney

IN THE CITY COUNCIL OF THE CITY OF LIVERMORE, CALIFORNIA

A RESOLUTION CALLING FOR AND GIVING NOTICE OF THE HOLDING OF AN ELECTION TO SUBMIT RESOLUTION NO. 2022-085 TO THE VOTERS TO APPROVE OR SET ASIDE THE LEGISLATIVE ACTS FOR THE CONSTRUCTION OF AND IMPROVEMENT TO VETERANS PARK THAT WERE PROTESTED BY REFERENDUM, AND CONSOLIDATING THAT ELECTION WITH THE GENERAL MUNICIPAL ELECTION TO BE HELD TUESDAY, NOVEMBER 5, 2024

On May 24, 2022, the City Council adopted Resolution No. 2022-085 authorizing the execution of an *Amended and Restated Disposition, Development and Loan Agreement* with Eden Housing, Inc. (Exhibit A) for the development of the downtown multi-family housing site. That agreement amended the then existing agreement with Eden Housing, Inc. ("Eden Housing") for the affordable housing project that was first approved by the City Council on November 26, 2018, (Resolution No. 2018-197), and that was later amended by the City Council on May 25, 2021, (Resolution No. 2021-073). Resolution No. 2022-085 also approved language in the agreement for the construction of and improvements to Veterans Park, which language has been pulled from the agreement and set forth in Exhibit B to this resolution for clarity.

On July 9, 2022, Move Eden Housing's ("MEH") petition against Resolution 2022-085 was presented to the City Clerk for processing as a referendum. The Report of Registration at the time of filing the petition identified 57,028 registered Livermore voters, establishing the 10% threshold at 5,702 signatures.

The City Clerk's technical review determined the referendum petition appeared on its face to comply with all format requirements. The City Clerk then completed a prima facie review of signatures and identified 9,737 unverified signatures affixed to the petition, which exceeds the required number of signatures to qualify the petition for further examination. Although numerous signatures were scratched out, the City Clerk nevertheless counted the signature as part or her prima facie review if she could see the signature along with a printed name, address, and city for the signer.

On July 13, 2022, the City Clerk advised MEH, based upon legal advice, that she would not process the petition as a referendum because it only contains administrative acts and did not contain any new legislative acts by the City Council. As the City Clerk explained, since the referendum petition does not challenge a legislative act, it was therefore not eligible for processing as a referendum.

Litigation ensued, and MEH identified and asserted it protested the following aspects of Ordinance No. 2022-085 that it asserted were legislative acts:

- Policy decision to construct and improve Veterans Park;
- Policy decision to loan Eden Housing money to buy the property; and,

- Policy decision to limit the City of Livermore's ("City") indemnity owed to Eden Housing for the remediation of environmental contamination on the property.

On January 25, 2023, the Trial Court entered judgment in the City's favor after finding "the Court confirms that the referendum at issue here was improper under California Law because it is directed at an administrative act and not a legislative one."

On March 6, 2024, the Appellate Court reversed the Trial Court's decision and issued an opinion finding that Resolution No. 2022-085 is subject to referendum because it approved "the construction of and improvements to a new public park," which is Veterans Park, in the agreement. The Appellate Court determined that the prior agreement merely contained an option for that work, and that the 2022 agreement for the first time authorized that work. The Appellate Court's opinion also determined that MEH's other protested aspects were administrative acts, not legislative, and therefore not subject to referendum. The Appellate Court specifically held that "the approval of the loan terms in the 2022 agreement is not a legislative act" and "plaintiffs have not shown approval of the indemnification provision in the 2022 agreement was a legislative act."

The City Council understands how the Appellate Court reached its conclusion regarding Veterans Park based upon the administrative record it considered. However, the City Council also understands that record focused on the housing project and the inclusion of Veterans Park in the agreement for the project, rather than the long history of Council decisions for the construction of Veterans Park that occurred prior to the 2022 agreement. That history is thoughtfully set forth in the staff report for this adoption of this resolution, and clearly reflects that the City Council's prior actions fixing the City's policy to construct Veterans Park as a public project prior to the adoption of Resolution No. 2022-085. While the City Council disagrees with the Appellate Court's decision, the City Council respects and will abide by that decision.

The Appellate Court having determined the portions of Resolution No. 2022-085 approving the construction of and improvements to Veterans Park is subject to referendum, the City Clerk resumed processing the petition as a referendum and delivered the petition to the Alameda County Registrar of Voters and requested full examination of the signatures.

On June 4, 2024, the Alameda County Registrar of Voters determined the number of unverified legible signatures (in contrast to the City Clerk's prima facie review which includes both legible and illegible signatures) was 8,019. The Alameda County Registrar of Voters then performed an examination of the signatures and issued a certificate of sufficiency after determining the petition contained 6,043 valid signatures.

Previously, on May 13, 2024, the City Council adopted Resolution No. 2024-074 calling for and giving notice of the holding of a General Municipal Election in the City of Livermore to be consolidated with the Statewide General Election on November 5, 2024.

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

1. Under the requirements of the laws of the State of California relating to general law cities within the State, there is hereby called and ordered held in the City of Livermore, County of Alameda, State of California, a municipal election for the purpose of submitting Resolution No. 2022-085 to the qualified electors of the City to approve or set aside the legislative acts for the approval of the construction of and improvements to Veterans Park in the *Amended and Restated Disposition, Development and Loan Agreement,* Exhibit A, to approve the language for the development of and improvements to Veterans Park identified in Exhibit B for clarity, pursuant to the referendum measure that is attached as Exhibit C, each incorporated herein by reference. The ballot question shall read as follows:

Measure: Referendum of the Construction of and Improvements to Veterans Park by Resolution No. 2022-085.

Shall the legislative acts in City Council Resolution No. 2022-085 approving the construction of and improvements to Veterans Park in an *Amended and Restated Disposition, Development and Loan Agreement* be adopted?

[ ] Yes
[ ] No

2. Under the laws of the State of California relating to general law cities, and in particular section 1405 of the Elections Code, it is hereby ordered that the election on the referendum measure is to be consolidated with the General Municipal Election in the City of Livermore that is to be consolidated with the Statewide General Election on November 5, 2024, that was ordered by Resolution No. 2024-074.

3. The County Election Department is authorized to canvass the returns of the election on the referendum measure.

4. Under Elections Code section 10002, the City Council of the City of Livermore requests the Alameda County Board of Supervisors to permit the Registrar of Voters to render assistance in all required election services in the conduct of the November 5, 2024, municipal election. The requested services include, but are not limited to, the following:

a. Precinct consolidation, establishment of voting centers, securing election officers, preparing and mailing notices of appointment and publication of precinct officers and vote center locations;

b. Typesetting, printing, and translating sample ballots, which includes ballot notifications, ballot arguments, statements of candidates' qualifications, and mailing to registered voters;

c. Printing of official ballots;

d. Purchasing precinct supplies and vote by mail voter supplies;

e. Providing for vote by mail voting;

f. Delivery of voting booths, ballots, ballot boxes, and precinct supplies to precincts/election officers;

g. Tabulation of votes;

h. Canvassing and certifying to the City Clerk the results of elections; and

i. All things necessary or incidental to the above in accordance with California election law in effect at the time of the election or other functions as may be requested from time to time by the City

5. The City Clerk is hereby directed to forthwith file a certified copy of this resolution with the Board of Supervisors and the County Election Department of the County of Alameda.

6. The City Clerk is directed to transmit a copy of the referendum measure to the City Attorney, and the City Attorney is instructed to prepare an impartial analysis thereof, consistent with the provisions of section 9280 of the Elections Code. The City Clerk is further instructed to include the City Attorney's impartial analysis in the Voters Information Pamphlet.

7. Pursuant to the requirements of the laws of the State of California relating to general law cities within the State, and in particular sections 9282 and 9286(a) of the Elections Code which states that arguments must be submitted within 14 days of calling the election, arguments for and against the referendum measure may be submitted to the City Clerk, 1052 South Livermore Avenue, no later than 5:00 p.m. on Friday, June 28, 2024.

8. Pursuant to section 9285 of the Elections Code, rebuttal arguments will be permitted and must be submitted to the City Clerk, 1052 South Livermore Avenue, no later than 5:00 p.m. on Monday, July 8, 2024.

9. Voting shall be available on the referendum measure in the ways set forth in Resolution 2024-074 that ordered Livermore’s General Election for November 5, 2024.

10. The City Clerk is hereby directed to post and/or publish all official notices and printed matters, and in cooperation with the County of Alameda, furnish all supplies necessary to lawfully conduct the election.

11. Notice of the time and place of holding the election is hereby given and the City Clerk is directed to give such further or additional notice of the election in the time, form, and manner as required by law.

12. In all particulars not recited in this resolution, the election shall be held and conducted as provided by law for holding municipal elections.

13. This resolution shall take effect immediately.

On motion of Council Member _____, seconded by Council Member _____, the foregoing resolution was passed and adopted on June 24, 2024, by the following vote:

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

ATTEST:

_____
Deborah L. Elam
Acting City Clerk

APPROVED AS TO FORM:

/s/ Jason R. Alcala
Jason R. Alcala
City Attorney

Exhibit A – Resolution No. 2022-085
Exhibit B – Language from Agreement for the Construction of and Improvement to Veterans Park
Exhibit C – Referendum Measure

DocuSign Envelope ID: FA6C0401-9A2E-4AFE-8235-4A3F31941446

EXHIBIT A

IN THE CITY COUNCIL OF THE CITY OF LIVERMORE, CALIFORNIA

A RESOLUTION AUTHORIZING EXECUTION OF AN AMENDED AND RESTATED DISPOSITION, DEVELOPMENT AND LOAN AGREEMENT ("DDLA") WITH EDEN HOUSING, INC. FOR DEVELOPMENT OF THE DOWNTOWN MULTI-FAMILY HOUSING SITE

(APN 098-0289-022-00)

On February 9, 2004, the City Council certified the General Plan and Downtown Specific Plan Environmental Impact Report ("Specific Plan EIR") (SCH No.: 2003032038).

On March 30, 2009, the City Council certified the Downtown Specific Plan Amendments and Regional Performing Arts Theater Subsequent Environmental Impact Report ("Specific Plan Subsequent EIR") (SCH No.: 2008092085).

On September 10, 2018, May 13, 2019, and October 26, 2020, the City Council adopted addenda to the Downtown Specific Plan Subsequent Environmental Impact Report by Resolution Nos: 2018-153, 2019-064, and 2020-178.

On November 27, 2018, the City of Livermore ("City") and Eden Housing, Inc. ("Eden") entered into a Disposition, Development and Loan Agreement ("DDLA") with respect to the approximately 2.0-acre City owned site for the 130-unit, affordable, multi-family, "workforce" housing component of the Downtown Plan.

On May 26, 2021, the City and Eden entered into a First Amendment to the DDLA to define the development and financial obligations for Veteran's Park, allow for reimbursement by City to Developer for certain emergency vehicle access road improvements adjacent to the Project, and to update the entitlement, financing, and development timeline in the Schedule of Development.

On June 24, 2021, a Petition for Writ of Mandate was filed by Save Livermore Downtown, challenging the City's CEQA determination (the "Litigation"). On February 14, 2022, the Court entered judgment denying the Petition for Writ of Mandate with prejudice. On April 13, 2022, a further appeal was filed by Save Livermore Downtown. The case is currently still pending.

Now, the City and Eden desire to enter into an Amended and Restated DDLA and make several modifications and additions that will facilitate the development process, enumerate specific financial contributions and agreements that would be under the authority of the City Manager to execute, and modify the Schedule of Performance to extend the time period for Eden to complete development of the project in light of the pending Litigation.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Livermore finds that the Amended and Restated Disposition, Development and Loan Agreement with Eden Housing, Inc. is within the scope of the Specific Plan EIR, dated February 9, 2004 (SCH No.: 2003032038), the Specific Plan Subsequent EIR, dated March 30, 2009 (SCH No.: 2008092085), and the Specific Plan Subsequent EIR Addenda 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.

The DDLA is also exempt from the provisions of CEQA pursuant to CEQA Guidelines Sections 15182 (c), 15332, 15304 (a)(b) and 15308 and none of the exceptions to the categorical exemptions in CEQA Guidelines Section 15300.2 apply, as described in the Eden Housing Project resolution, dated May 26, 2021 (Resolution 2021-071).

BE IT FURTHER RESOLVED by the City Council of the City of Livermore that the City Manager is authorized to execute the Amended and Restated Disposition, Development and Loan Agreement, attached hereto as Exhibit A, and is granted the authority to execute the final documents and agreements referenced in the Agreement and other related documents to implement the intent and terms of the Agreement, as well as the specific delegations of authority set forth in the Agreement.

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

AYES:	Council Members Carling, Kiick, Munro, Vice Mayor Bonanno, and Mayor Woerner
NOES:	None
ABSENT:	None
ABSTAIN:	None

ATTEST:

DocuSigned by:
Marie Weber
803794826BC44BB...

Marie Weber
City Clerk
5/27/2022 | 10:16 AM PDT

APPROVED AS TO FORM:

DocuSigned by:
Kelly Trujillo
00C7E9AD0C44488...

Kelly Trujillo
Assistant City Attorney

Exhibit A – Amended and Restated Disposition, Development, and Loan Agreement

DocuSign Envelope ID: FA6C0401-9A2E-4AFE-8235-4A3F31941446

AMENDED AND RESTATED
DISPOSITION AND DEVELOPMENT AND LOAN AGREEMENT

by and between

CITY OF LIVERMORE

and

EDEN HOUSING, INC.
May 24, 2022

Prior Agreements:

1. Disposition and Development Agreement, dated November 27, 2018, approved by City Council Resolution No. 2018-197.

2. First Amendment to the DDLA, dated May 26, 2021 approved by City Council Resolution No. 2021-073.

DocuSign Envelope ID: FA6C0401-9A2E-4AFE-8235-4A3F31941446

TABLE OF CONTENTS

ARTICLE 1. SUBJECT OF THE AGREEMENT	**3**
Section 1.1 Purpose of this Agreement	3
Section 1.2 Parties to the Agreement	4
ARTICLE 2. DEFINITIONS	**4**
Section 2.1 Definitions	4
Section 2.2 Exhibits	10
ARTICLE 3. CITY FINANCIAL ASSISTANCE	**11**
Section 3.1 Predevelopment Loan	11
Section 3.2 Acquisition Loan	12
Section 3.3 Development Loan/*Contribution*	15
Section 3.4 Financing for EVA Improvements	15
Section 3.5 Construction and Financing for Veterans Park Improvements	15
ARTICLE 4. PREDISPOSITION REQUIREMENTS	**16**
Section 4.1 City's Conditions Precedent to Close of Escrow	16
Section 4.2 Financing Commitment	16
Section 4.3 City Approvals	16
Section 4.4 Organizational Documents	16
Section 4.5 Federal Environmental Review and Clearance	16
Section 4.6 Insurance	17
Section 4.7 Time Extensions	17
Section 4.8 Lease Back of the Undivided Parcel	17
ARTICLE 5. DISPOSITION OF THE UNDIVIDED PARCEL	**17**
Section 5.1 Purchase and Sale	18
Section 5.2 Purchase Price	18
Section 5.3 Opening Escrow	18
Section 5.4 Additional Closing Conditions	18
Section 5.5 Deposit of Documents	19
Section 5.6 Close of Escrow	19

DocuSign Envelope ID: FA6C0401-9A2E-4AFE-8235-4A3F31941446

Section 5.7 Additional Escrow Instructions 20
Section 5.8 Condition of Title to the Property 20
Section 5.9 Condition of the Property 20
Section 5.10 Inspections; Condition of Site 22
Section 5.11 Right of Entry 22
Section 5.12 Real Estate Commissions 23

ARTICLE 6. HAZARDOUS MATERIALS REPRESENTATIONS **23**
Section 6.1 Existing Hazardous Materials 23
Section 6.2 Indemnification and Cooperation 24

ARTICLE 7. DESIGN REQUIREMENTS **25**
Section 7.1 Project Design 25
Section 7.2 Additional Permits and Approvals 25
Section 7.3 City Review 25

ARTICLE 8. PRE-CONSTRUCTION AND CONSTRUCTION OF THE IMPROVEMENTS **25**
Section 8.1 Commencement of Construction 25
Section 8.2 Completion of Construction 25
Section 8.3 Construction Pursuant to Scope and Plans 26
Section 8.4 Mechanics' Liens 26
Section 8.5 Compliance with Applicable Law 26
Section 8.6 Progress Reports 28
Section 8.7 Entry by City 28
Section 8.8 Non-Discrimination During Construction; Equal Opportunity. 28
Section 8.9 Insurance Requirements 29
Section 8.10 Dedication of Veterans Park Parcel 29
Section 8.11 Reserved Parking for the Project's Residents 29

ARTICLE 9. OBLIGATIONS WHICH CONTINUE THROUGH AND BEYOND THE COMPLETION OF CONSTRUCTION **30**
Section 9.1 Affordable Housing Use 30
Section 9.2 Downtown Landscape Maintenance District 30
Section 9.3 Maintenance 30

DocuSign Envelope ID: FA6C0401-9A2E-4AFE-8235-4A3F31941446

Section 9.4 Developer To Indemnify City 30
Section 9.5 Hazardous Materials 31
Section 9.6 Non-Discrimination 33

ARTICLE 10. ASSIGNMENT AND TRANSFERS **33**
Section 10.1 Definitions 33
Section 10.2 Purpose of Restrictions on Transfer 34
Section 10.3 Prohibited Transfers 34
Section 10.4 Permitted Transfers 34
Section 10.5 Effectuation of Permitted Transfers 35

ARTICLE 11. SECURITY FINANCING AND RIGHTS OF HOLDERS **36**
Section 11.1 No Encumbrances Except for Development Purposes 36
Section 11.2 Holder Not Obligated to Construct 36
Section 11.3 Notice of Default and Right to Cure 36
Section 11.4 Cure of Developer Defaults 37
Section 11.5 Failure of Holder to Complete Development 38
Section 11.6 Right of City to Cure 38
Section 11.7 Right of City to Satisfy Other Liens 39
Section 11.8 Holder to be Notified 39
Section 11.9 Modifications 39

ARTICLE 12. DEFAULT AND REMEDIES **39**
Section 12.1 Application of Remedies 39
Section 12.2 Fault of City 39
Section 12.3 Fault of Developer 40
Section 12.4 Right of Reverter 430
Section 12.5 Damages 431
Section 12.6 Rights and Remedies Cumulative 42
Section 12.7 Survival 42

ARTICLE 13. GENERAL PROVISIONS **43**
Section 13.1 Identity of Developer 43
Section 13.2 Notices, Demands and Communications 44

DocuSign Envelope ID: FA6C0401-9A2E-4AFE-8235-4A3F31941446

Section 13.3 Non-Liability of Officials, Employees and Agents 45
Section 13.4 Enforced Delay 45
Section 13.5 Intentionally Omitted 45
Section 13.6 Inspection of Books and Records 46
Section 13.7 Title of Parts and Sections 46
Section 13.8 Applicable Law 46
Section 13.9 Severability 46
Section 13.10 Legal Actions 46
Section 13.11 Binding Upon Successors; Covenants to Run With Land 46
Section 13.12 Parties Not Co-Venturers 46
Section 13.13 Entire Understanding of the Parties 46
Section 13.14 Counterparts 47
Section 13.15 Amendments 47
Section 13.16 Recordation of Memo of DDLA 47
Section 13.17 Standard of Approval 47
Section 13.18 Effectiveness of Agreement 47
Section 13.19 Delegation of Authority to City Manager 46

DocuSign Envelope ID: FA6C0401-9A2E-4AFE-8235-4A3F31941446

AMENDED AND RESTATED
DISPOSITION AND DEVELOPMENT AND LOAN AGREEMENT

THIS AMENDED AND RESTATED DISPOSITION AND DEVELOPMENT AND LOAN AGREEMENT (this "Agreement") is made as of May 24, 2022, by and between the City of Livermore, a municipal corporation (the "City"), and Eden Housing, Inc. a California public benefit corporation (the "Developer"), with reference to the following facts, purposes, and understandings.

RECITALS

A. These Recitals refer to and utilize certain capitalized terms that are defined in Article 2 and various other areas of this Agreement. The Parties intend to refer to those definitions in connection with their use in these Recitals.

B. City is the owner of a certain property that is approximately 5.5 acres, bound by Railroad Avenue, Livermore Avenue, First Street, and L Street. This property is commonly referred to as the "Livermore Village Site".

C. In 2008, the former Redevelopment Agency acquired the Livermore Village Site from Livermore Village I, LLC for approximately $10,100,000 from City inclusionary housing funds (Fund 611). A portion of this amount was refinanced using a loan from the State Residential Development Loan Program, which required a deed restriction on the property to require low-income and moderate-income housing units be developed on the property. Both of these sources restrict the use of the site to a residential development with an affordable component. In 2010 the Livermore Village Site was subdivided into three parcels for the purpose of separate public community uses, private community uses, and housing. Upon dissolution of the Livermore Redevelopment Agency, the Undivided Parcel was identified as a housing asset in the Long Range Property Management Plan, which was approved by the Livermore Successor Agency Oversight Board and California Department of Finance, and was transferred to the City as the Housing Successor to the Livermore Redevelopment Agency.

D. On January 29, 2018, the City Council approved the development of the Livermore Village Site to include a public park, up to 130 units of workforce housing, a science center, a black box theater, and retail space.

E. The City selected Eden Housing, Inc. as the Developer of the Undivided Parcel through a Request for Qualifications to develop the Undivided Parcel, more particularly described in Exhibit A, attached hereto. Through a competitive process in response to the City's goals and objectives for the Undivided Parcel, the Developer proposed to develop low-income and workforce housing on the Property.

F. The Developer obtained Entitlements from the City to construct the Project consistent of workforce housing, which will be comprised of up to 130 units of non-age restricted, multi-family rental housing over two phases of development, which will be affordable

DocuSign Envelope ID: FA6C0401-9A2E-4AFE-8235-4A3F31941446

for households with a range of incomes no greater than 110% of Area Median Income for Alameda County, on the Property.

G. On May 24, 2021, Developer obtained approval from the City for Vesting Tentative Parcel Map No. 11186 on behalf of the City for recordation of the Parcel Map in the Official Records of Alameda County (the "Tentative Map"), subdividing the Undivided Parcel into the following three parcels: (i) Parcel 1, as shown on the Tentative Map (the "Housing Parcel North"); (ii) Parcel 2, as shown on the Tentative Map (the "Veterans Park Parcel"); and (iii) Parcel 3, as shown on the Tentative Map (the "Housing Parcel South"). Parcels 1 and 3 are also referred to collectively as the Property and more fully depicted in Exhibit M, attached hereto and Parcel 2 is more fully depicted in Exhibit N, attached hereto.

H. The City has concluded that the Developer has the necessary expertise, skill, and ability to carry out the commitments contained in this Agreement.

I. Upon satisfaction of the conditions precedent set forth in this Agreement, City will convey the Undivided Parcel to Developer upon the terms and conditions set forth herein, and City will provide a loan to assist in financing Developer's acquisition of the Property. City has additionally provided a predevelopment loan to the Developer in an amount up to Five Hundred Thousand Dollars ($500,000) (the "Predevelopment Loan") that helped finance the initial predevelopment and expenses necessary to assess and determine the final scope of development and obtain entitlements to develop the Project. City and Developer agree that City may, but is not obligated to, provide a future development loan and/or other financial contribution to fund development and/or operations of the Project in an amount that will be determined through the activities provided for herein. Approval of any future development loan amounts shall be subject to approval of a final financing plan by the City and the timely submittal of items described in this Agreement.

J. Developer intends to assign this Agreement and the obligations contained herein to its Affiliate DTLM, L.P. ("Housing North Developer") to develop the Housing Parcel North with 79 affordable units (the "Housing North Phase") and to thereafter assign a portion of this Agreement its Affiliate DTLM South, L.P. (the "Housing South Developer"), which will develop the Housing Parcel South with 51 affordable units (the "Housing South Phase"), as more particularly described herein.

K. The City and Developer intend to continue in good faith discussions and negotiations of the Project Objectives attached hereto as Exhibit B. To facilitate development of a public park on the Veterans Park Parcel, the Developer will dedicate that Parcel back to the City upon the closing of construction financing for the first phase of the Project and in accordance with the Schedule of Performance.

L. Pursuant to CEQA, the City (in its capacity as "lead agency") approved on September 10, 2018 an Addendum to the Downtown Specific Plan 2009 Subsequent Environmental Impact Report.

DocuSign Envelope ID: FA6C0401-9A2E-4AFE-8235-4A3F31941446

M. On November 27, 2018, the City and Developer entered into a Disposition and Development and Loan Agreement, which was subsequently amended by a First Amendment to the DDLA dated May 26, 2021, which updated certain definitions, exhibits and provisions (as amended, the "Original Agreement"). This Agreement is intended to amend and restate and supersede the Original Agreement and will capture all necessary changes to the Original Agreement.

N. The Developer has subsequently formed the Housing North Developer entity to serve as the developer of the Project. All of Eden Housing Inc., rights and obligations under the Agreement shall be assigned to the Housing North Developer through execution of an assignment upon approval of this Agreement.

O. On June 24, 2021, Save Livermore Downtown filed a Petition for Writ of Mandate in Alameda County Superior Court, challenging the City's approval of the Project. Litigation ensued and on February 14, 2022, Alameda County Superior Court Judge Roesch denied the petition and entered judgment in favor of the City of Livermore. SLD filed an appeal on April 13, 2022 and the appeal is still pending (the "Litigation").

P. On April 4, 2022, a Request for Stay of Expiration Date for the Project Entitlements and Approvals during the pendency of the above-referenced litigation, including any appeals, was submitted to the City by the Developer. On May 9, 2022, the City granted the request. Those documents are attached hereto as Exhibit P.

Q. Now, to ensure the Project continues to move forward in a timely manner, the parties desire to update this Agreement to allow for transfer of the Undivided Parcel upon completion of federal environmental review and clearance, to make arrangements for an interim use of public parking prior to construction of the housing and cooperation between the parties regarding the environmental condition of the Undivided Parcel, and update the entitlement, financing, and development timeline in the Schedule of Performance.

NOW, THEREFORE, in consideration of the mutual covenants herein, the City and the Developer agree that the recitals are true and correct and further agree as follows:

ARTICLE 1. SUBJECT OF THE AGREEMENT

Section 1.1 Purpose of this Agreement. The purpose of this Agreement is to provide the terms and conditions under which the Developer shall: prepare or cause to be prepared all required documents necessary to receive development approvals for the Project, to obtain title to the Property, and develop the Project. This Agreement shall also provide terms and conditions under which the City shall convey the Undivided Parcel to the Developer for the purpose of developing, building, and operating affordable Workforce Housing at rents that are for households earning up to 110% of Area Median Income, in accordance with the Project Objectives, attached hereto as Exhibit B, and the City to contribute certain funds for the acquisition and predevelopment of the Property.

DocuSign Envelope ID: FA6C0401-9A2E-4AFE-8235-4A3F31941446

Section 1.2 Parties to the Agreement.

(a) The City. The City is a municipal corporation, organized and existing under the laws of the State of California. The office of the City is located at 1052 S. Livermore Avenue, Livermore, California 94550.

(b) The Developer. The Developer is Eden Housing, Inc., a California nonprofit public benefit corporation. For purposes of this Agreement, the principal address of Developer is 22645 Grand Street, Hayward, California 94541.

The qualifications and identity of Developer are of particular concern to the City, and it is because of such qualifications and identity that the City has entered into this Agreement with Developer. No voluntary or involuntary successor in interest of Developer shall acquire any rights or powers under this Agreement except as expressly set forth herein.

Notwithstanding anything to the contrary contained herein, this Agreement is assignable and transferable to Housing North Developer and/or Housing South Developer, so long as any such assignment or other document evidencing such assignment is acceptable to the City. Following any such assignment, the Housing North Developer and/or Housing South Developer may transfer limited partner interests to a tax credit investor ("Investor"), and such Investor may further transfer its limited partner interests, and the Investor may remove a general partner of the Housing North Developer and/or Housing South Developer (as applicable) pursuant to the terms of its limited partnership agreement, without the consent of the City.

ARTICLE 2. DEFINITIONS

Section 2.1 Definitions. In addition to the terms defined elsewhere in this Agreement, the following capitalized words shall have the following meanings:

(a) "Affiliate" means any Person which (1) directly or indirectly through one or more intermediaries, (i) Controls, or (ii) is Controlled by, or (iii) is under common Control with, Developer.

(b) "Agreement" shall mean this Amended and Restated Disposition and Development and Loan Agreement.

(c) "Area Median Income" shall have the meaning set forth in the form of the Regulatory Agreement attached to this Agreement as Exhibit H.

(d) "Building Permit" shall mean an excavation, foundation or other building permit issued by the City ministerially 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.

DocuSign Envelope ID: FA6C0401-9A2E-4AFE-8235-4A3F31941446

(f) "Certificate of Occupancy" shall mean that certificate issued by the City to the Developer to allow occupancy of the Project.

(g) "Close of Escrow" shall have the meaning set forth in Section 5.6.

(h) "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.

(i) "City" shall mean the City of Livermore.

(j) "City Documents" shall mean collectively, this Agreement, the Seller Take-Back Property Acquisition Note (Exhibit F), the Seller Take-Back Property Acquisition Deed of Trust (Exhibit G), the Predevelopment Loan Promissory Note (Exhibit E), the Predevelopment Loan Note Assignment and Amendment, the Predevelopment Loan Deed of Trust (Exhibit G), and the Regulatory Agreement (Exhibit H).

(k) "City Event of Default" shall mean any event of default by the City as set forth in Section 12.2, subject to any applicable notice and cure rights set forth therein.

(l) "City Impact Fees" shall mean all fees set forth in the schedule of fees adopted by the City on July 1, 2018, with the exception of those fees that are paid to the City on behalf of and passed through to a third party agency.

(m) "Deed of Trust" shall mean the deed of trust to be recorded against the Undivided Parcel and subsequently the Property to secure repayment of the Pre-Development and Site Acquisition Loans. A form of Deed of Trust is attached to this Agreement as Exhibit G.

(n) "Developer" shall mean Eden Housing, Inc., or any permitted transferee of the Developer in accordance with Article 10.

(o) "Developer Event of Default" shall mean any event of default by the Developer as set forth in Section 12.3 or 12.4, 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.

(q) "Eligible Household" shall have the meaning set forth in the Regulatory Agreement, attached to this Agreement as Exhibit H.

DocuSign Envelope ID: FA6C0401-9A2E-4AFE-8235-4A3F31941446

(r) "Entitlements" shall mean, collectively, zoning approvals, conditional use permit and any other discretionary approvals required for construction of the Project. For definitional purposes in this Agreement, "Entitlements" do not include the Building Permit, the Final Map, or any other ministerial approvals.

(s) "Escrow" shall mean the escrow opened with the Escrow Holder to close the transactions described in Article 5.

(t) "Escrow Holder" shall mean Old Republic Title Company.

(u) "Final Construction Drawings" shall mean final drawings for the construction of the Improvements used to obtain a Building Permit from the City.

(v) "Final Map" shall mean Final Parcel Map 11186.

(w) "Force Majeure" shall have the meaning set forth in Section 13.4.

(x) "Grant Deed" shall mean the grant deed by which the City conveys its fee estate in the Undivided Parcel to the Developer. A form of the Grant Deed is attached to this Agreement as Exhibit L.

(y) "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

DocuSign Envelope ID: FA6C0401-9A2E-4AFE-8235-4A3F31941446

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, medical supplies and equipment or janitorial supply products customarily used in the construction, maintenance, rehabilitation, use, occupancy or management of a medical office building and its supporting parking structure, and which are used and stored in accordance with all applicable environmental ordinances and regulations.

(z) "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.

(aa) "Housing North Developer" has the meaning set forth in Recital J

(bb) "Housing North Phase" has the meaning set forth in Recital J.

(cc) "Housing South Developer" has the meaning set forth in Recital J.

(dd) "Housing South Phase" has the meaning set forth in Recital J.

(ee) "Improvements" shall mean up to 130 units of multi-family rental housing to be constructed in accordance with the Project Documents. As the context requires, the term "Improvements" shall refer to the 79 units of housing to be constructed on the Housing North Phase and the 51 units of housing to be constructed on the Housing South Phase individually.

(ff) "Indemnitees" shall have the meaning set forth in Section 9.4.

(gg) [Intentionally deleted].

(hh) "Official Records" means the Official Records of Alameda County.

(ii) [Intentionally deleted].

(jj) [Intentionally deleted].

(kk) "Parties" shall mean the City and the Developer.

(ll) "Party" shall mean either the City or the Developer depending on the context.

(mm) "Permitted Exceptions" shall mean the following exceptions to title with respect to the Property:

DocuSign Envelope ID: FA6C0401-9A2E-4AFE-8235-4A3F31941446

(1) the lien of any non-delinquent property taxes and assessments;

(2) all 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.

(nn) "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.

(oo) Intentionally Omitted.

(pp) "Pro Forma" shall mean the preliminary sources and uses of funds for the development of the Project on the Housing Parcel North and Housing Parcel South , which will be submitted to the City in accordance with the Schedule of Performance and subject to approval by the City.

(qq) "Project" shall mean (i) the Property and (ii) the Improvements, as more fully set forth in the Project Objectives. As the context requires, the term "Project" shall refer to the Housing North Phase and Housing South Phase individually.

(rr) "Project Documents" shall mean the site plan, elevations and landscaping plans submitted by the Developer to enable the Developer to obtain the Entitlements or other City permits, approvals, or authorizations for development of the Project.

(ss) "Project Objectives" shall mean the description of preliminary characteristics of the Project, desired items the Parties will strive to achieve, and shall serve as the basis to inform application documents for the Entitlements, attached hereto as Exhibit B.

(tt) "Property" shall collectively mean the City-owned parcels defined as Parcel 1 ("Housing Parcel North") and 3 ("Housing Parcel South") on Vesting Tentative Parcel Map 11186, as more particularly described in Exhibit M, attached to this Agreement.

(uu) "Purchase Price" shall have the meaning set forth in Section 5.2.

DocuSign Envelope ID: FA6C0401-9A2E-4AFE-8235-4A3F31941446

(vv) "Regulatory Agreement" shall have the meaning set forth in Section 9.1, and a form of which is attached as Exhibit H.

(ww) "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 Undivided Parcel to the Developer and the construction of the Improvements. The Schedule of Performance is attached to this Agreement as Exhibit C.

(xx) "Security Financing Interests" has the meaning set forth in Section 11.1.

(yy) "Seller Take-Back Property Acquisition Note" has the meaning set forth in Section 3.2(a), a form of which is attached as Exhibit F.

(zz) "Site Acquisition Loan" has the meaning set forth in Section 3.2(a).

(aaa) "TCAC" shall mean the California Tax Credit Allocation Committee, which administers the low income tax credit financing program.

(bbb) "Title Company" shall mean Old Republic Title Company.

(ccc) "Title Policy" has the meaning set forth in Section 5.3.

(ddd) "Transfer" shall mean a transfer of this Agreement or an interest in the Developer, as more particularly described in Article 10.

(eee) "Workforce Housing" shall mean non age-restricted housing that is targeted to a broad range of working incomes, up to 110% Area Median Income. To the extent permitted by law and consistent with the program regulations for funding sources used for development of the Project, selection priority will be provided first to Livermore Valley Joint Unified School District school teachers, employees working for businesses in the Livermore Downtown, first responders employed in Livermore (including emergency medical personnel), professional artists working in Livermore, and then to all other persons who live or work in Livermore. Notwithstanding the foregoing, in the event of a conflict between this provision and the provisions of Section 42 or Section 142 of the Internal Revenue Code of 1986, as amended, the provisions of such Section 42 or Section 142, as applicable, shall control.

(fff) "EVA Improvements" is defined as the Emergency Vehicle Access Improvements which are identified on Vesting Tentative Parcel Map 11186 and in the associated Engineering Conditions (Sections 7.c & d) for the Project approval.

(ggg) "Veterans Park Parcel" is defined as Parcel 2 on Vesting Tentative Parcel Map 11186, as more particularly described in Exhibit N, attached to this Agreement. This parcel will be dedicated back to the City upon construction financing closing for the first phase of the Project and in accordance with the Schedule of Performance.

DocuSign Envelope ID: FA6C0401-9A2E-4AFE-8235-4A3F31941446

(hhh) "Veterans Park Improvements" is defined as the constructed improvements within the Veterans Park Parcel which shall be entitled and designed at the sole discretion of the City.

(iii) "Undivided Parcel" is defined as that real property in the City of Livermore known as Lot 1 of Tract Map No. 8574, recorded December 23, 2020, in Book 365 of Maps at pages 15-19, in Alameda County Records, as more particularly described in Exhibit A.

Section 2.2 Exhibits. The following exhibits are attached to and incorporated into this Agreement:

Exhibit A:	Description of the Undivided Parcel
Exhibit B:	Project Objectives
Exhibit C:	Schedule of Performance
Exhibit D:	Intentionally Omitted
Exhibit E:	Predevelopment Loan Promissory Note dated November 27, 2018
Exhibit F:	Form of Seller Take-Back Property Acquisition Loan Promissory Note
Exhibit G:	Form of City Deed of Trust for both Predevelopment Loan and Seller Take-Back Property Acquisition Deed of Trust
Exhibit H:	Form of Regulatory Agreement
Exhibit I:	Insurance Requirements
Exhibit J:	City Impact Fee Schedule dated July 1, 2018
Exhibit K:	Form of Memo of DDLA
Exhibit L:	Form of Grant Deed
Exhibit M:	Description of the Property – Housing Parcel North and Housing Parcel South
Exhibit N:	Description of the Veterans Park Parcel
Exhibit O:	Form of Temporary Parking Lease Agreement
Exhibit P:	Request for Stay of Expiration Date for the Project Entitlements and Approvals and Approval by City of Livermore

DocuSign Envelope ID: FA6C0401-9A2E-4AFE-8235-4A3F31941446

Exhibit Q: Form of Irrevocable Parking Spaces Lease

ARTICLE 3. CITY FINANCIAL ASSISTANCE

Section 3.1 Predevelopment Loan.

(a) Loan amount. The City provided a predevelopment loan of Five Hundred Thousand Dollars ($500,000) for predevelopment costs including architecture and design costs, legal and specialty consultant fees, site feasibility analysis, title review, due diligence, and preconstruction costs. The Predevelopment Loan is evidenced by the Predevelopment Note between Developer and City dated November 27, 2018, attached as Exhibit E. Prior to transfer of the Undivided Parcel, the City, Developer and Housing North Developer shall enter into an assignment and amendment of the Predevelopment Note to: (i) assign the Note from Developer to Housing North Developer as contemplated in Recital J; and (ii) to amend the Predevelopment Loan Term set forth in the Note attached as Exhibit E to 65 years.

(b) Interest. The City Predevelopment Loan shall bear three percent (3%) annual interest.

(c) Loan repayment. The City Predevelopment Loan shall have a term that expires on the sooner of the date fifty-five (55) years from either the conversion of the permanent financing (the "Predevelopment Loan Term") or 65 years from the date of this Agreement, unless otherwise terminated for infeasibility as described herein. The City Predevelopment Loan repayment shall be deferred during development of the Project. Upon issuance of a certificate of occupancy, payment on the City Predevelopment Loan shall be made from a pro rata share of residual receipts, the terms of which are described in the Predevelopment Loan Note.

Developer shall have the right to prepay the City Predevelopment Loan at any time, with no prepayment penalty. However, this DDLA shall remain in effect for the duration of the Predevelopment Loan Term, regardless of any prepayment or timely payment of the City Predevelopment Loan.

All principal and interest on the City Predevelopment Loan shall, at the option of the City, be due and payable upon the earliest of: (i) the occurrence of an Event of Default, as described in Section 3.2(e), for which the City exercises its right to cause the indebtedness to become immediately due and payable; or (ii) subject to the terms of Section 3.1(e) below.

Developer shall be responsible for payment of the principal of, or interest on, the City Predevelopment Loan as described in the Predevelopment Loan Promissory Note, attached hereto as Exhibit E. The sole recourse of the City with respect to principal of, or interest on, the Predevelopment Loan shall be as described in the Predevelopment Loan Promissory Note.

Upon the transfer of the Undivided Parcel to Developer, the Predevelopment Loan shall be secured by a deed of trust recorded against the Undivided Parcel (the "Predevelopment Loan

DocuSign Envelope ID: FA6C0401-9A2E-4AFE-8235-4A3F31941446

Deed of Trust", form of which is attached to this Agreement as Exhibit G). Once the Final Map is recorded and in accordance with the Schedule of Performance, and upon the close of construction financing for the first phase of the Project, the Veterans Park Parcel shall be dedicated back to the City, free and clear of any encumbrances (except as otherwise provided herein). The parties shall execute necessary documents to remove any encumbrances from the Veterans Park Parcel, including but not limited to a partial reconveyance of the Predevelopment Loan Deed of Trust and partial termination of the Regulatory Agreement.

(d) In the event that this Agreement is partially assigned to the Housing South Developer as contemplated in Section 1.2, at Developer's option in its sole discretion, the Predevelopment Loan shall be partially assigned to Housing South Developer and the Predevelopment Loan documents will be modified accordingly. In such an event, the City hereby acknowledges and agrees that there shall be no cross defaults between the Predevelopment Loan and applicable loan documents for the Housing North Developer and the Predevelopment Loan and applicable loan documents for the Housing South Developer.

(e) Termination for Infeasibility. Predevelopment Loan shall terminate if during the predevelopment analysis the Project is determined to be infeasible. City shall have no obligations to disburse additional funds. In the event that, prior to Developer's construction finance closing, the Project is determined by Developer or City to be infeasible through no fault of Developer, or if Developer terminates pursuant to Section 5.10, the Predevelopment Loan shall terminate and Developer's obligation to repay such Predevelopment Loan shall be forgiven.

Section 3.2 Site Acquisition Loan.

(a) Loan amount. City shall make an acquisition loan to the Developer in the amount of the Purchase Price of the Property ("Site Acquisition Loan"). The purchase price of the property shall be Seven Million Eight Hundred Thousand Dollars ($7.8M). The Site Acquisition Loan shall be evidenced and secured by the Seller Take-Back Note and Seller-Take Back Site Acquisition Deed of Trust recorded against the Undivided Parcel, the forms of which are attached as Exhibit F and Exhibit G.

(b) Interest. The Site Acquisition Loan shall bear interest at 3% annual simple interest.

(c) Loan conditions to disbursement. Disbursement of Site Acquisition Loan shall be contingent on the Developer entering into a Regulatory Agreement to provide for affordable rents in no more than forty-nine percent (49%) of units in the Project in the form attached hereto as Exhibit H.

(d) Loan repayment. Annual payments on the Seller Take-Back Note shall be due and payable on a pro-rata residual receipts basis in accordance with the formula set forth in the Seller Take-Back Note. The annual loan payments shall commence upon conversion of the project to permanent financing and continue for fifty-five years. The entire outstanding principal balance of the Site Acquisition Loan, together with interest accrued thereon and all other sums accrued, shall be payable in full on the date Maturity Date, as defined in the Seller Take-Back

DocuSign Envelope ID: FA6C0401-9A2E-4AFE-8235-4A3F31941446

Note. City shall have the right to accelerate the Maturity Date and declare all sums payable under the Seller Take-Back Note immediately due and payable upon the expiration of all applicable cure periods following the occurrence of an event of borrower default, as described in Section 3.2(e).

Upon the transfer of the Undivided Parcel to Developer, the Site Acquisition Loan shall be secured by a deed of trust recorded against the Undivided Parcel, a form of which is attached to this Agreement as Exhibit G. The Veterans Park Parcel shall be dedicated back to the City, free and clear of any encumbrances (except as otherwise provided herein), upon close of construction financing for the first phase of the Project on the timeframe specified by the Schedule of Performance. The parties shall execute necessary documents to remove any unauthorized encumbrances from the Veterans Park Parcel including but not limited to a partial reconveyance of the Seller-Take Back Site Acquisition Deed of Trust and partial termination of the Regulatory Agreement.

(e) Event of Site Acquisition Loan Default. The following events shall constitute an event of default under the Site Acquisition Loan:

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

(2) A transfer occurs in violation of Article 10;

(3) Developer fails to maintain insurance, as required in Section 4.6 and fails to cure such default within five days;

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

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

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

(7) If, pursuant to or within the meaning of the United States Bankruptcy Code or any other federal or state law relating to insolvency or relief of debtors ("Bankruptcy Law"), Developer or any general partner thereof (i) commences a voluntary case

DocuSign Envelope ID: FA6C0401-9A2E-4AFE-8235-4A3F31941446

or proceeding; (ii) consents to the entry of an order for relief against Borrower or any general partner thereof in an involuntary case; (iii) consents to the appointment of a trustee, receiver, assignee, liquidator or similar official for Developer or any general partner thereof; (iv) makes an assignment for the benefit of its creditors; or (v) admits in writing its inability to pay its debts as they become due;

(8) A court of competent jurisdiction shall have made or entered any decree or order (i) adjudging the Developer to be bankrupt or insolvent, (ii) approving as properly filed a petition seeking reorganization of the Developer or seeking any arrangement for Developer under bankruptcy law or any other applicable debtor's relief law or statute of the United States or any state or other jurisdiction, (iii) appointing a receiver, trustee, liquidator, or assignee of the Developer in bankruptcy or insolvency or for any of its properties, or (iv) directing the winding up or liquidation of the Developer, in each case if such decree, order, petition, or appointment is not removed or rescinded within ninety (90) days;

(9) Developer shall have assigned its assets for the benefit of its creditors (other than pursuant to a mortgage loan) or suffered a sequestration or attachment of or execution on any substantial part of its property, unless the property so assigned, sequestered, attached or executed upon shall have been returned or released within ninety (90) days after such event (unless a lesser time period is permitted for cure pursuant to paragraphs (7) or (8) above or pursuant to any other mortgage on the Property, in which event such lesser time period shall apply under this subsection as well) or prior to any sooner sale pursuant to such sequestration, attachment, or execution;

(10) Developer shall have voluntarily suspended its business or Developer shall have been dissolved or terminated;

(11) A material breach of this Agreement or any City Document and remains uncured beyond any applicable cure period.

(f) If, in the City's sole discretion, the Developer fails to observe or perform any condition contained in Section 3.2(d) or (e), or take diligent action towards the cure or remedy of such event, for a period of sixty (60) days after written notice from the City specifying such failure and requesting that it be cured, such event shall be deemed a default under the Site Acquisition Loan and the City shall be entitled, and in addition to all other remedies provided by law or in equity, to compel specific performance by the Developer of its obligations under the Site Acquisition Loan. Any investor or limited partner of Developer or Developer's assignee shall have the same notice and cure rights granted to Developer, and any cure tendered by such investor shall be accepted or rejected on the same basis as if tendered by Developer.

(g) City and Developer acknowledge and agree that the City is conveying the Undivided Parcel prior to recordation of the Final Map. In the event that the Property Undivided Parcel and Project are subdivided into more than one parcel and/or ownership structure, the Site Acquisition Loan may be divided into multiple loans, to be allocated proportionally amongst some or all of the subdivided Property and Project as mutually determined by the City and Developer, each with terms in accordance with this Section 3.2. If requested by either City or

DocuSign Envelope ID: FA6C0401-9A2E-4AFE-8235-4A3F31941446

Developer, this Agreement, the Site Acquisition Loan documents, and the Regulatory Agreement may be amended to reflect any such changes.

The City hereby acknowledges and agrees that there shall be no cross defaults between the Site Acquisition Loan and applicable loan documents (including the Regulatory Agreement) once those are divided and assigned to the Affiliated limited partnership.

Section 3.3 Development Loan/Contribution. Subject to approval of a final finance plan, the City may, but is not obligated to, make a future development loan and/or other financial contribution ("Development Loan/Contribution") to be disbursed to pay for development and/or operations costs in connection with the Project. The Development Loan/Contribution shall be contingent upon the City and Developer agreeing to terms for each phase of development. Development Loan/Contribution will only be disbursed following approval of the finance plan, and the necessary land use, environmental, and permit approvals. A Development Loan/Contribution agreement, the form of which shall be mutually agreed upon by City and Developer and be consistent with this Agreement, will control the specific terms of the Development Loan/Contribution. The amount of the Predevelopment Loan allocated to each phase may be included in the Development Loan/Contribution for such phase and be deemed to have been previously disbursed.

Section 3.4 Financing for EVA Improvements. As set forth in this subsection and subject to the conditions set forth herein, the City will reimburse Developer for the approved costs associated with constructing EVA Improvements solely consisting of the installation of retractable bollards described in 7c of the City's Engineering Conditions ("EVA Improvement Reimbursables") that are approved by the City. Developer shall first provide the City with a cost proposal for the EVA Improvement Reimbursables, including design and construction, and City shall maintain the right to approve or disapprove costs. Reimbursement of City-approved costs will not be included as part of City's loan assistance to develop the Project. Improvements shall be constructed in compliance with all applicable laws as described in Sections 8.5 and in Exhibit B. Developer will submit actual invoices to City only for that portion of work which is approved for reimbursement by City.

Section 3.5 Construction and Financing for Veterans Park Improvements. The Parties agree that the Developer will manage the construction of the Veterans Park Improvements but that the City will pay for the costs of the Veterans Park Improvements at its sole expense. City and Developer will negotiate a future construction management and reimbursement agreement to coordinate the construction of the Veterans Park Improvements. The Agreement shall authorize reimbursement for the construction of the park, per the designs and specifications issued by the City, and shall not exceed Five Million Five Hundred Thousand Dollars ($5,500,000) (not including any grants obtained by Developer to help fund the construction costs), without additional approval of the City Council. The Agreement and the procurement of the contractor

DocuSign Envelope ID: FA6C0401-9A2E-4AFE-8235-4A3F31941446

who will build the park shall comply with all applicable local, state, and federal procurement laws to the extent such laws apply.

These improvements would be exclusive of any development loan provided by the City for development of the Project.

ARTICLE 4. PREDISPOSITION REQUIREMENTS

Section 4.1 City's Conditions Precedent to Close of Escrow. As conditions precedent to the Close of Escrow for the Undivided Parcel, the conditions set forth in this Article 4 and Section 6.2 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 4.7) 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 Article 4 and Section 6.2.

Section 4.2 Financing Commitment. The Developer shall provide the City with a preliminary development Pro Forma, setting forth the Developer's estimate of sources and uses of funds for development of the Project. No later than the time specified in the Schedule of Performance, but not as a condition to Close of Escrow, the Developer will submit a true copy of each letter of interest from lenders, TCAC, and/or equity partners to provide funds in the amounts necessary to fully finance the projected costs of development of the Improvements, each of which shall be approved by the City. Prior to conveyance of the Housing South Parcel as contemplated in Recital J and section 1.2(b), but not as a condition to Close of Escrow on the Undivided Parcel, Developer shall have either (i) obtained all financing necessary to build the Improvements, or (ii) will close on the financing necessary to build the Improvements.

Section 4.3 City Approvals. The Developer shall obtain all Entitlements necessary for the Improvements. Developer and City acknowledge that the Litigation is pending, and therefore the Parties agree that Entitlements issued by the City during the pendency of the Litigation shall be deemed to have been obtained.

Section 4.4 Organizational Documents. The City shall approve the Developer's organizational documents in the time specified in the Schedule of Performance.

Section 4.5 Federal Environmental Review and Clearance. Notwithstanding any other provision in this Agreement, the City shall have no obligation to sell the Undivided Parcel, the Developer shall have no obligation to purchase the Undivided Parcel, and no transfer of title to the Developer may occur, unless and until the City has provided the Developer with written notification that: (1) the City has completed a federally required environmental review pursuant to the National Environmental Policy Act ("NEPA") and the City's request for release of funds has been approved and, subject to any other conditions in this Article 4, (a) the purchase may proceed, or (b) the purchase may proceed only if certain conditions to address issues in the environmental review are satisfied before or after the purchase of the Undivided Parcel; or (2) it has determined the purchase is exempt from federal environmental review pursuant to NEPA and

DocuSign Envelope ID: FA6C0401-9A2E-4AFE-8235-4A3F31941446

a request for release of funds is not required. The City shall use its best efforts to conclude the environmental review pursuant to NEPA of the Undivided Parcel expeditiously.

Section 4.6 Insurance. 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 I, which may be modified from time to time by the City's Risk Manager upon written notice, provided that such modifications are commercially reasonable and reasonably financially feasible.

Section 4.7 Time Extensions. The City Manager shall have the authority to approve two extensions of the Schedule of Performance, as mutually agreed upon in writing between the Parties and which the City Manager deems reasonable and appropriate.

Section 4.8 Lease Back of the Undivided Parcel. Prior to the Close of Escrow on the Undivided Parcel, the parties shall enter into a Temporary Parking Lease for the Undivided Parcel in substantial conformance with Exhibit O wherein parking will be available for public parking until construction of the first phase of the Project commences and shall deposit an executed counterpart of the Temporary Parking Lease Agreement for the Undivided Parcel with the Escrow Holder. As further set forth in the Temporary Parking Lease Agreement, the lease shall be a triple net lease, with City responsible for payment of all costs it incurs during its lease of the Undivided Parcel. In addition, in consideration for the use of the Undivided Parcel during the lease period, City shall either pay directly or reimburse Developer for all third party costs incurred as a result of Developer's ownership of the property, including insurance, property taxes and assessments and any other expenses which are required to be paid directly by the Developer as part of the operation of the Undivided Parcel as temporary public parking. Any other expenses that the City shall be responsible for under the Temporary Parking Lease Agreement other than insurance, property taxes and assessments shall be subject to review and approval by the City prior to commitment or obligation by the Developer. City's obligations to reimburse Developer for insurance, property taxes and assessments under the Lease shall not exceed One Hundred Twenty Thousand ($120,000) per year, for the term of the lease, increasing 3% annually, or further Council approval shall be required.

Section 4.9 Air Rights to Housing Parcels. Prior to the Close of Escrow on the disposition of the Undivided Parcel the parties shall have taken the necessary steps to ensure that the City will receive the air rights to Parcels 1 and 3 at and above the elevation of 534 feet by modifying the Veterans Park Parcel accordingly. The intent of this paragraph is to ensure that the Project shall not exceed the entitled height elevation of 534, or 52 feet above the surface elevation (the benchmark elevation is 482 feet, measured from a monument at the corner of Railroad Avenue and L Street), provided, however, that the City shall provide Developer with a temporary access easement to access the air rights above Parcels 1 and 3 during construction of the Project. Veterans Park Parcel shall be dedicated back to the City as described in Section 8.10.

ARTICLE 5. DISPOSITION OF THE UNDIVIDED PARCEL

DocuSign Envelope ID: FA6C0401-9A2E-4AFE-8235-4A3F31941446

Section 5.1 Purchase and Sale. Provided the predisposition requirements set forth in Article 4 and the additional closing conditions set forth in Section 5.4 have been satisfied, the City shall sell to the Developer, and the Developer shall purchase from the City, the Undivided Parcel pursuant to the terms, covenants, and conditions of this Agreement.

Section 5.2 Purchase Price. The Purchase Price for the Property shall be $7,800,000 (Seven Million Eight Hundred Thousand Dollars).

Section 5.3 Opening Escrow. To accomplish the conveyance of the Undivided Parcel from the City to the Developer, in accordance with 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. At Close of Escrow, Title Company shall provide Developer (at Developer's sole cost and expense) an ALTA owner's policy of title insurance issued by the Title Company insuring fee title to the Property vested in Developer subject only to the Permitted Exceptions (the "Title Policy").

Section 5.4 Additional Closing Conditions. Subject to the satisfaction of all predisposition conditions to the Close of Escrow set forth in this section, the Close of Escrow shall occur and the City shall convey, and the Developer shall accept conveyance of, a fee interest in the Property pursuant to the Grant Deed, a form of which is attached to this Agreement as Exhibit L.

The following shall constitute conditions to the completion of the Close of Escrow:

(a) The conditions precedent set forth in Article 4 above shall have been satisfied.

(b) The Developer shall have deposited the following with the Escrow Holder: (i) City Documents, executed and acknowledged as applicable, (ii) Developer's share of closing costs, and (iii) any other documents required by Article 4 and Section 6.2 and 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.

(c) 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.

(d) The representations and warranties of Developer as set forth in Section 13.1 remain true and correct in all material respects. There has been no material adverse change in the financial condition of the Developer as of the date of the Close of Escrow.

(e) Title Company shall be prepared to issue the Title Policy without any exceptions other than the Permitted Exceptions.

(f) Reserved.

DocuSign Envelope ID: FA6C0401-9A2E-4AFE-8235-4A3F31941446

(g) The City shall have deposited the following with the Escrow Holder (i) the Grant Deed, in recordable form, (ii) an owner's affidavit as reasonably and customarily required by the Title Company, and (iii) any other documents required by Article 4 and Section 6.2 and 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.

Section 5.5 Deposit of Documents. Within ten (10) business days after the satisfaction or waiver of all of the conditions set forth in Article 4, the Parties shall deposit into Escrow any and all documents and funds necessary to effectuate the Close of Escrow. Each such agreement, instrument and document shall be duly executed, and in recordable form if it is to be recorded.

Section 5.6 Close of Escrow. Provided that all of the conditions set forth in Article 4 have been satisfied or waived and all of the documents set forth in Section 5.5 have been deposited into Escrow, Escrow Holder shall do all of the following:

(a) Complete all blank spaces, if any, in the Grant Deed, including the effective dates thereof;

(b) Attach thereto final and accurate legal descriptions consistent with the title policies required under this Agreement;

(c) Deliver copies of fully executed originals of Grant Deed to the appropriate parties; and

(d) Cause to be recorded or distributed (as set forth 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 Seller Take-Back Site Acquisition Deed of Trust and Predevelopment Loan Deed of Trust;

(3) Record in the Official Records the Regulatory Agreement;

(4) File any informational reports required by Internal Revenue Code Section 6045(e), as amended, and any other applicable requirements;

(5) 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 into Escrow, with such recording and filing date and information endorsed thereon;

(6) Provide the Title Policy to Developer; and

DocuSign Envelope ID: FA6C0401-9A2E-4AFE-8235-4A3F31941446

(7) Distribute or record such other documents as may be specified in the Parties' escrow instructions, if any.

The date on which the Escrow Holder records the last of the above items shall be the "Close of Escrow."

Section 5.7 Additional Escrow Instructions. The Parties shall execute such further escrow instructions as Escrow Holder may require; provided that Escrow Holder shall not require the imposition of any additional obligations or liabilities on the Parties. Such further escrow instructions shall not modify the provisions of this Agreement unless the Parties otherwise expressly provide for such modification in such additional instructions.

Section 5.8 Condition of Title to the Property. The City shall convey the fee interest in the Undivided Parcel to the Developer free of all liens, encumbrances, clouds, conditions, and rights of occupancy and possession, except the (a) the Permitted Exceptions, (b) reservations, licenses, easements and rights of way in, to, over or affecting the Property for any purpose whatsoever that are existing as of the date of this Agreement and have been disclosed to Developer in writing or are otherwise known to Developer or would be apparent or discoverable by an ALTA survey of the Property. Notwithstanding the foregoing, City acknowledges and hereby agrees to remove that certain easement dated November 7, 1978 and recorded May 18, 1979, as Instrument No 79-095080 prior to conveyance of the Undivided Parcel.

Section 5.9 Condition of the Undivided Parcel.

(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, EXPRESS (EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT) OR IMPLIED, FROM 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

DocuSign Envelope ID: FA6C0401-9A2E-4AFE-8235-4A3F31941446

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, EXCEPT AS PROVIDED IN ARTICLE 6, 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 RESPECTIVE AGENTS, EMPLOYEES OR CONTRACTORS 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 as provided in Section 6.2, 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, employees, officers, directors, representatives, and agents (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 5.9(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

DocuSign Envelope ID: FA6C0401-9A2E-4AFE-8235-4A3F31941446

hereafter give rise to 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 THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY."

Developer's Initials: _____

(b) The provisions of this section shall survive the termination of this Agreement.

Section 5.10 Inspections; Condition of Site. Developer shall conduct its own investigation of the Property, its physical condition, the soils and environmental conditions of the Property and all other matters which, in Developer's sole and absolute judgment, affect or influence Developer's willingness to develop the Property pursuant to this Agreement. Within the time set forth in the Schedule of Performance, Developer shall provide written notice to City of Developer's determinations concerning the suitability of the physical condition of the Property and its economic feasibility for development and intended use. If, in the Developer's sole and absolute discretion, the physical condition of the Property is unsuitable for the use or uses to which the Property will be put, or that it is not economically feasible for Developer to develop the Project pursuant to this Agreement, then Developer shall have the option to (a) take any action necessary to place the Property in a condition suitable for development, at no cost to City; or (b) terminate this Agreement pursuant to the provisions in Section 3.1(e). If Developer has not given written notice to City of its determination concerning the suitability of Property within the time set forth in the Schedule of Performance, Developer shall be deemed to have waived its right to terminate this Agreement pursuant to this Section.

Section 5.11 Right of Entry. Prior to the Close of Escrow, City will grant to the Developer and the Developer's agents the right to enter upon the Property for the exclusive purpose of conducting studies and investigations that will assist the Developer in performing its due diligence investigation. 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 Housing Programs Manager.

DocuSign Envelope ID: FA6C0401-9A2E-4AFE-8235-4A3F31941446

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 to the levels required by the City's Risk Manager.

The Developer shall indemnify, defend and hold the City of Livermore, Indemnitees, as defined in Section 9.4 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 Indemnitee, 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.

Section 5.12 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.

ARTICLE 6. HAZARDOUS MATERIALS REPRESENTATIONS

Section 6.1 Existing Hazardous Materials. Environmental investigations conducted at the Undivided Parcel found limited areas of metals (lead, arsenic) in shallow soil, total petroleum hydrocarbons (TPH) in soil and groundwater, and volatile organic compounds (VOCs) in groundwater and soil gas (air in between soil particles). Environmental investigations conducted to support development off-property, at adjacent properties, found VOCs associated with former dry-cleaning operations to the south of the Undivided Parcel.
Data from the recent investigation and prior sampling events indicate the following:

- Soil: Metals were confirmed in shallow soil within the areas proposed for excavation during the proposed development of the Undivided Parcel. The detected metals concentrations are generally within the range of naturally occurring (background) levels or, when evaluated as a whole, less than Water Board Tier 1 environmental screening levels.
- Groundwater: Chemicals detected in groundwater include tetrachloroethene (PCE), total petroleum hydrocarbons (TPH) as diesel, and chloroform. Based on historical site use and known use of neighboring properties, these chemicals are a result of releases from upgradient sources and concentrations have been decreasing over time.
- Soil Vapor: Chemicals detected in soil vapor include PCE and benzene. VOCs detected in soil vapor at the Property are likely the result of one or more VOCs release(s) from historical dry-cleaning operations at the, adjacent, former Quality Cleaners located south of the Property at 2048 First Street, rather than the result of past use of the Property.

DocuSign Envelope ID: FA6C0401-9A2E-4AFE-8235-4A3F31941446

Data was used to evaluate potential health risks to future occupants of the planned residential buildings. Based on this assessment, using conservative (health protective) assumptions, the estimated risks are well within levels considered by the California and United States Environmental Protection Agencies to be protective of human health and do not warrant further remediation or mitigation as part of the proposed development of the Property.

The San Francisco Bay Regional Water Quality Control Board ("Water Board") has required submittal of a Site Management Plan ("SMP") prior to the start of construction on the Property. The SMP is intended to ensure protection of human health at the property by establishing procedures and protocols to be followed during construction and post-construction. The SMP includes procedures to help ensure that chemicals (e.g., petroleum and metals) in soil and groundwater from historical site uses and uses at other nearby sites are safely managed and disposed of should they be encountered during site development. The SMP will also include protocols for confirmation testing to demonstrate that volatile organic compounds in soil gas do not pose a risk to future occupants.

Once completed and approved by the Water Board, the SMP will be provided to the Developer in accordance with the Schedule of Performance.

Section 6.2 Indemnification and Cooperation. After Developer completes analysis of the SMP and the environmental condition of the Property, and prior to the close of escrow for the Undivided Parcel, the Developer and City shall enter into an indemnity and cooperation agreement to apportion costs and any potential liability related to Hazardous Materials at, on, in, beneath, or from the Property from and after the date of the close of escrow between the Parties.

The Parties acknowledge that no remediation or mitigation is required for the Undivided Parcel in order to develop the Project as more particularly described in section 6.1, above. The indemnity and cooperation agreement between the parties will delineate each party's responsibilities regarding the following:

- Soil Handling Protocols for the development of the Project;
- Post Construction Confirmation Testing to Confirm Results of the City's Human Health Assessment; and
- Operation and Maintenance of the HVAC system in the Project's garage.

The indemnity and cooperation agreement shall also address any action items resulting from the City's remedial work plan to be submitted for Water Board review and approval; and access issues related to neighboring sites, including any need for access to install groundwater monitoring or soil vapor wells to the south of the Housing Parcel South, should the City be unable to place the wells in the Public Right of Way.

The City Manager is authorized to negotiate and execute the indemnity and cooperation agreement in an amount not to exceed $4,300,000, subject to the City Attorney's approval of the agreement as to form. The obligations of the City under the indemnity and cooperation agreement shall not exceed $4,300,000, without further council approval.

DocuSign Envelope ID: FA6C0401-9A2E-4AFE-8235-4A3F31941446

Furthermore, Developer shall have no responsibility for any environmental compliance costs resulting from the City's other open Water Board cases applicable to other city-owned properties near the Project site.

ARTICLE 7. DESIGN REQUIREMENTS

Section 7.1 Project Design. The Parties acknowledge that the Developer worked with City in designing the Project to standards that are acceptable to City and that met the objectives identified in the Project Objective, attached as Exhibit B. To the extent any further Entitlements are required for the Project, Developer acknowledges and agrees that the City has full authority and discretion to grant or deny applications for Entitlements.

Section 7.2 Additional Permits and Approvals. Within the time specified in the Schedule of Performance (as such times may be extended pursuant to Section 4.7 or by mutual agreement of the Parties), Developer shall obtain all ministerial permits and approvals necessary to construct the Improvements. All applications for such ministerial 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 ministerial permits or approvals, and in no way limits the City's approval process for any such permit and approval. The City shall provide reasonable assistance to the Developer in securing such ministerial permits and approvals.

Section 7.3 City Review. Except for the activities to be performed by or on behalf of the City as otherwise contemplated herein, the Developer shall be solely responsible for all aspects of the Developer's conduct in connection with the Project, including, but not limited to, the quality and suitability of the Project Documents, the supervision of construction work for the Project and the Veterans Park Improvements, and the qualifications, financial condition, and performance of all architects, engineers, contractors, subcontractors, suppliers, consultants, and property managers. Except for the activities to be performed by or on behalf of the City as otherwise contemplated herein, 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.

ARTICLE 8. PRE-CONSTRUCTION AND CONSTRUCTION OF THE IMPROVEMENTS

Section 8.1 Commencement of Construction. The Developer shall commence pre-construction activities and the construction of the Improvements within the times set forth in the Schedule of Performance. Construction shall be deemed to commence on the date the Developer issues a notice to proceed pursuant to a valid Building Permit from the City.

Section 8.2 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, subject to Force Majeure

DocuSign Envelope ID: FA6C0401-9A2E-4AFE-8235-4A3F31941446

requirements in Section 13.4 of this Agreement. As between the City and the Developer, except for, Veterans Park Improvements, and work contemplated by the Cooperation and Indemnity Agreement referenced in section 6.2, above, the Developer shall be solely responsible for the construction of the Improvements, including all costs of construction (except for the EVA Improvement Reimbursables referenced in Section 3.4).

Section 8.3 Construction Pursuant to Scope and Plans.

(a) The Developer shall construct the Improvements in accordance with 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 approval 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 City Approval prior to making such change. The City, through the City Manager or his/her designee, shall reasonably approve or disapprove a proposed material change within fifteen (15) days after receipt by the City. If City does not approve or disapprove within fifteen (15) days after receipt by the City, such non-response shall be deemed approval. If the City rejects the proposed material change, then, upon request of Developer, the City shall provide the Developer with the specific reasons therefor, and the approved Final Construction Drawings shall continue to control.

The obligations of the City pursuant to this section are separate from the rights the City may have in exercising its municipal regulatory authority and nothing contained herein shall limit the City's rights under its regulatory authority.

(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 8.4 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 8.5 Compliance with Applicable Law; Prevailing Wage Requirement.

DocuSign Envelope ID: FA6C0401-9A2E-4AFE-8235-4A3F31941446

a) The Developer shall cause all construction to be performed in compliance with: 1) 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. (2) 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 the payment of all applicable fees, procurement of each permit, license, or other authorization that may be required by any governmental agency having jurisdiction, and the Developer shall be responsible to the City for the procurement and maintenance thereof, as may be required of the Developer and all entities engaged in work on the Property.

b) The Developer shall pay and shall cause the contractor and subcontractors to pay prevailing wages in the construction of the Development as those wages are determined pursuant to California Labor Code Section 1720 et seq., to employ apprentices as required by California Labor Code Sections 1777.5 et seq., and the implementing regulations of the Department of Industrial Relations (the "DIR"). In addition, as applicable, the Developer shall cause its respective contractors and subcontractors in the construction of the Project to do all the following: 1) all calls for bids, bidding materials and the construction contract documents for the Project must specify that (A) no contractor or subcontractor may be listed on a bid proposal nor be awarded a contract for the Project unless registered with the DIR pursuant to Labor Code Section 1725.5, and (B) the Project is subject to compliance monitoring and enforcement by the DIR; 2) the Developer is required to provide the City all information required by Labor Code Section 1773.3 as set forth in the DIR's online form PWC-100 within 2 days of the award of the contract (https://www.dir.ca.gov/pwc100ext/); 3) the Developer shall cause its respective contractors to post job site notices, as prescribed by regulation by the DIR; or 3) the Developer shall cause its respective contractors to furnish payroll records required by Labor Code Section 1776 directly to the Labor Commissioner, at least monthly in the electronic format prescribed by the Labor Commissioner. Developer shall indemnify, hold harmless and defend (with counsel reasonably acceptable to the City) the City against any claim for damages, compensation, fines, penalties or other amounts arising out of the failure or alleged failure of any person or entity (including Developer, its contractor and subcontractors) to pay prevailing wages in accordance with the terms of this Agreement as determined pursuant to California Labor Code Section 1720 et seq., to employ apprentices pursuant to California Labor Code Section 1777.5 et seq., and implementing regulations of the DIR or to comply with the other applicable provisions of California Labor Code Sections 1720 et seq., 1777.5 et seq., and the implementing regulations of the DIR in connection with the construction of the Development. The requirements in this Subsection survive the repayment of the City Loans, the reconveyance of the Deed of Trust, and the expiration of the Regulatory Agreement.

DocuSign Envelope ID: FA6C0401-9A2E-4AFE-8235-4A3F31941446

c) The Developer shall defend (with counsel reasonably acceptable to the City) the City against any claim for damages, compensation, fines, penalties or other amounts arising out of the failure or alleged failure of any person or entity (including the Developer, its contractor and subcontractors) to pay prevailing wages in accordance with this Agreement as determined pursuant to Labor Code Sections 1720 et seq., and implementing regulations of the Department of Industrial Relations or comply with the other applicable provisions of Labor Code Sections 1720 et seq., to employ apprentices pursuant to Labor Code Sections 1777.5 et seq., and implementing regulations of the Department of Industrial Relations in connection with the construction, pursuant to this Agreement, of the Project and shall indemnify and hold the City harmless against any damages, compensation, fines, penalties or other amounts resulting from the successful prosecution of such claim.

d) The Developer shall construct the Project to comply with all applicable federal and state disabled persons accessibility requirements including but not limited to the Federal Fair Housing Act, Section 504 of the Construction Act of 1973, Title II and/or Title III of the Americans with Disabilities Act of 1990, Title 24 of the California Code of Regulations and the Uniform Federal Accessibility Standards, and in compliance with Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794, et seq.).

Section 8.6 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 8.7 Entry by City. After the expiration of the Temporary Parking Lease Agreement and the City's issuance of a Building Permit for the Project, but prior to the City's issuance of a Certificate of Occupancy has been issued by the City, the Developer shall permit the City, upon reasonable prior notice (which shall in no event be less than 48 hours), 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 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 are in addition to any rights of entry and inspection the City may have in exercising its municipal regulatory authority.

Section 8.8 Non-Discrimination During Construction; Equal Opportunity. The Developer (for purposes of this Section 8.8, the term "Developer" shall include Developer's

DocuSign Envelope ID: FA6C0401-9A2E-4AFE-8235-4A3F31941446

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, 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 agrees to 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 solicitations or advertisements for employment are in compliance with the aforementioned nondiscrimination factors; and

Section 8.9 Insurance Requirements. Developer, its contractors, subcontractors and/or agents shall furnish or cause to be furnished to the City duplicate originals of insurance policies, complete with additional insured and loss payee endorsement, as applicable pursuant to this Agreement. Developer shall, until Developer's obligations under this Agreement are paid and discharged in full, maintain and keep in full force and effect any insurance required by City, issued by companies approved and regulated by the State Department of Insurance in the amounts and terms set forth in Exhibit I. Upon reasonable written notice, Developer shall comply with any changes to the amounts and terms of insurance as may be required from time to time by the City's Risk Manager, provided that such changes are commercially reasonable and reasonably financially feasible.

Section 8.10 Dedication of Veterans Park Parcel. Developer shall dedicate the Veterans Park Parcel (Parcel 2) back to the City upon recordation of the Final Map and upon construction finance closing for the first phase of the Project, at the time specified in the Schedule of Performance. Parcel 2 shall have air rights over Parcels 1 and 3, as described in Section 4.10 above. Parcel 2 shall also be dedicated to the City free and clear of any encumbrances created by the Developer that have not been authorized by the City. Notwithstanding the foregoing, City hereby acknowledges and agrees that City will grant certain temporary construction easements to Housing North Developer and Housing South Developer necessary for the construction of the Project, in form and substance as mutually agreed upon by the Parties.

The parties hereto agree that irreparable damage would occur in the event Section 8.10 of this Agreement was not performed in accordance with the terms hereof and that the parties shall be entitled to specific performance of the terms hereof, in addition to any other remedy at law or in equity.

DocuSign Envelope ID: FA6C0401-9A2E-4AFE-8235-4A3F31941446

Section 8.11 Reserved Parking for the Project's Residents. The City agrees to enter into an irrevocable parking space lease, in a form substantially compliant with Exhibit Q, with the Developer for 16 reserved parking spaces for Project residents in the L Street Garage, which will be constructed and owned by the City to serve the Project. The spaces will be leased at $300 per space per year, for an annual cost of $4,800, for a 55-year term with a 2.5% escalator. The term will commence from lease-up of the first phase of the Project. The lease can be assumed by a future owner of the Project subject to any existing encumbrances, so long as the Project remains in compliance with its permanent affordable housing covenants.

ARTICLE 9. OBLIGATIONS WHICH CONTINUE THROUGH AND BEYOND THE COMPLETION OF CONSTRUCTION

Section 9.1 Affordable Housing Use. The Developer covenants to use the Property for affordable housing for a period of not less than 55 years, in conformance with the regulatory agreement ("Regulatory Agreement"), the form of which is attached hereto as Exhibit H. As further set forth herein, upon conveyance of the Housing South Parcel, the Regulatory Agreement shall be modified to reflect the correct unit count and mix for the Housing North Parcel, and a new regulatory agreement shall be executed by the Housing South Developer that will be specific to the Housing South Project.

Section 9.2 Downtown Landscape Maintenance District. The Parties acknowledge that the City's Downtown Landscape Maintenance District LL-859 applies to the Property upon completion of the construction of the Project. The parties agree that no other existing Community Facility District applies to the Project.

Section 9.3 Maintenance. The Developer hereby agrees that, after the Close of Escrow and prior to completion of construction of the Improvements, the Property shall be maintained in a neat and orderly condition and in accordance with industry health and safety standards, and that, once the Project is completed, the Project shall be well maintained as to both external and internal appearance of the buildings, the common areas, and the parking areas. 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, driveways, parking areas and landscaping, 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 9.4 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, employees, agents,

DocuSign Envelope ID: FA6C0401-9A2E-4AFE-8235-4A3F31941446

consultants, designated volunteers, and contractors (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 or the Property. 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. Developer's indemnification obligations set forth in this Section 9.4 shall not apply to Claims to the extent arising from the gross negligence or willful misconduct of the Indemnitees.

Section 9.5 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 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, except to the extent of any Existing Contamination (defined in Article 9.5(b)) and as further acknowledged in Article 7 herein;

(2) The Developer shall keep and maintain the Project and each portion thereof in material compliance with, and shall not cause or permit the Project or any portion thereof to be in violation of, any Hazardous Materials Laws;

DocuSign Envelope ID: FA6C0401-9A2E-4AFE-8235-4A3F31941446

(3) Upon receiving actual knowledge of any material lack of compliance in relation Hazardous Materials Laws, 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 Project pursuant to any applicable Hazardous Materials Laws; (B) any and all claims made or threatened by any third party, including without limitation the Water Board and any adjacent landowners, against the Developer or the Project 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 Project or to be otherwise subject to any restrictions on the ownership, occupancy, transferability or use of the Project under any Hazardous Materials Laws.

(b) Indemnity. Without limiting the generality of the indemnification set forth in Section 9.4, and subject to Section 6.2, and excepting any liability or Hazardous Materials Claims relating to the presence of any Hazardous Materials in environmental media at the Property as of Closing (collectively, "Existing Contamination"), , the Developer hereby agrees to indemnify, protect, hold harmless and defend (by counsel reasonably satisfactory to the City) the City, its elected officials, officers, employees, 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 Project; (2) the presence in, on or under the Project 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 Project, subsequent to the conveyance of the Property to the Developer, 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 Existing Contamination on or under the Property, or affecting any natural resources, unless and to the extent Developer materially exacerbates such Existing Contamination, but shall 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 by Developer or any employees, agents, contractors or subcontractors of the Developer, 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 9.5(b) shall not apply to any Indemnification Claims to the extent arising from the gross negligence or willful misconduct of the City, it's elected officials, officers, employees, and designated volunteers.. Solely in relation to the Existing

DocuSign Envelope ID: FA6C0401-9A2E-4AFE-8235-4A3F31941446

Contamination, the City hereby agrees to indemnify, protect, hold harmless and defend (by counsel reasonably satisfactory to the Developer) the Developer and its officers, contractors, employees, agents, tenants, and invitees 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 City, 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 Project,; and (2) the presence in, on or under the Project of any Hazardous Materials or any releases or discharges of any Hazardous Materials into, on, under or from the Property (collectively "City Indemnification Claims"). For avoidance of doubt nothing herein shall abrogate any of the Developer's responsibilities under the SMP, except as provided by the cooperation and indemnity agreement contemplated in section 6.2.

(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 9.5(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 9.6 Non-Discrimination.

(a) The Developer covenants and agrees for itself, its successors and its assigns in interest to the Site 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 Site 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).

ARTICLE 10. ASSIGNMENT AND TRANSFERS

Section 10.1 Definitions. As used in this Article 10, the term "Transfer" means:

DocuSign Envelope ID: FA6C0401-9A2E-4AFE-8235-4A3F31941446

(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 Project 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 fifty percent (50%) ownership interest in the Developer, or any contract or agreement to do any of the same.

Section 10.2 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 its subsequent use in accordance with the terms of this Agreement and the Regulatory 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 10.1 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 10.3 Prohibited Transfers. The limitations on Transfers set forth in this Article 11 shall apply from the Effective Date of this Agreement until the issuance of a Certificate of Occupancy by the City. 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 10.3. 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 10.4 Permitted Transfers. Notwithstanding the provisions of Section 10.3, the following Transfers shall be permitted (subject to satisfaction of the conditions of Section 10.5), 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 11.1).

(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.

DocuSign Envelope ID: FA6C0401-9A2E-4AFE-8235-4A3F31941446

(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 Improvements.

(e) The granting of temporary or permanent easements or permits to facilitate development of the Project.

(f) A Transfer to an Affiliate of Developer, provided that such Transfer does not result in a change of Control.

(g) A Transfer otherwise approved by the City.

(h) A Transfer permitted under Article 1 of this Agreement.

As a condition of the City approval of a Transfer described in Section 10.4(f),10.4(g), and 10.4(h) 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 10.4(f), the City must review and approve the transferee's organizational documents for the purposes of determining that such transferee is controlled by the Developer.

Section 10.5 Effectuation of Permitted Transfers.

(a) Other than as permitted in Section 10.4, 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 10.5 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

DocuSign Envelope ID: FA6C0401-9A2E-4AFE-8235-4A3F31941446

specifically assumes pursuant to the Assumption Agreement the obligations under this Agreement to indemnify the City with respect to the Project, 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.

(c) Notwithstanding the foregoing, the City and Developer acknowledge agree that, in accordance with Section 1.2 above, this Agreement and the rights and obligations hereunder shall be partially assigned to Housing South Developer upon the conveyance of the Housing Parcel South. The partial assignment shall be in writing, executed by the City, Developer and Housing South Developer, and shall include a partial assignment of all rights and obligations applicable to the Housing South Parcel hereunder (and under any other documents contemplated by this Agreement, including but not limited to the indemnity and cooperation agreement contemplated in Section 6.2) as well as language whereby City shall acknowledge and agree that there shall be no cross defaults under this Agreement between the Housing South Project and the Housing North Project.

ARTICLE 11. SECURITY FINANCING AND RIGHTS OF HOLDERS

Section 11.1 No Encumbrances Except for Development Purposes. Prior to the City's issuance of a Certificate of Occupancy, mortgages, deeds of trust, assignment of rents and security agreements, and other real property security instruments to secure the funds necessary for the construction and permanent financing of the Improvements as shown in the Financing Plan are permitted to be placed upon the Property only as permitted pursuant to this Section 12.1. 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 interest in the Property.

Until the Developer is entitled to issuance of a Certificate of Occupancy, the Developer may place mortgages, deeds of trust, or other reasonable methods of security on Developer's fee interest in the Property only for the purpose of securing acquisition of the fee interest and for predevelopment, construction and permanent financing approved by the City as part of the approved Financing Plan. City hereby acknowledges and agrees that Developer intends to obtain a predevelopment loan from the County of Alameda and that in the event such loan is obtained, the County may secure such loan with a deed of trust and regulatory agreement recorded against the Property, and which time such instruments will be deemed "Security Financing Interests" hereunder.

Section 11.2 Holder Not Obligated to Construct. The holder of any Security Financing Interest authorized by this Agreement is not obligated to construct or complete any improvements or to guarantee such construction or completion. However, nothing in this Agreement shall be deemed to permit or authorize any such holder 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.

Section 11.3 Notice of Default and Right to Cure. Whenever the City pursuant to its rights set forth in Article 12 delivers any notice to the Developer of the occurrence of a

DocuSign Envelope ID: FA6C0401-9A2E-4AFE-8235-4A3F31941446

Developer Event of Default (a "Cure Notice"), the City shall not exercise any remedy available to it unless and until each of the following have occurred: (a) written notice of the Developer Event of Default is provided to each and every then-existing holder of record of any Security Financing Interest (each an "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 12.3. 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 12. 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 12.3 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 such Encumbrance Holder to undertake or continue the construction or completion of the Improvements (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 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 11.4 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) thirty (30) 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 Article 12 to cure such Developer Event of Default if such Developer Event of Default can reasonably be cured by an Encumbrance Holder within such thirty (30)-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 (for example, by foreclosure of a Security Financing Interest), 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 thirty (30) days after its receipt of an 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

DocuSign Envelope ID: FA6C0401-9A2E-4AFE-8235-4A3F31941446

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 11.4 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.

As used herein, a "Foreclosure Transfer" shall mean any transfer of the entire fee interest of Developer in the Property 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 other transfer in lieu thereof. A "Foreclosure Transferee" shall mean any transferee (including without limitation an Encumbrance Holder) which acquires title to the fee interest of Developer in the Property pursuant to a Foreclosure Transfer.

Section 11.5 Failure of Holder to Complete Development. Subject to Section 11.4(b), in any case where six (6) months after default by the Developer in completion of construction of the Improvements under this Agreement, the holder of record of any Security Financing Interest, having first exercised its option to construct, has not proceeded diligently with construction, the City shall be afforded those rights against such holder it would otherwise have against the Developer under this Agreement.

Section 11.6 Right of 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 holder has not exercised its option to complete the construction of the Improvements, the City may, upon prior written notice to the Developer, cure the default, prior to the completion of any foreclosure. In such event the City shall be entitled to reimbursement from the Developer of all costs and expenses incurred by the City in curing the default. The City shall also be entitled to a lien upon the Developer's fee interest in the Property to the extent of such costs and disbursements. The City agrees that such lien shall be subordinate to any Security Financing Interest, and the City shall execute from time to time any and all documentation reasonably requested by the Developer to effect such subordination.

DocuSign Envelope ID: FA6C0401-9A2E-4AFE-8235-4A3F31941446

Section 11.7 Right of 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 11.8 Holder to be Notified. To the extent deemed necessary by the City, the Developer shall insert each term contained in this Article 11 into each Security Financing Interest or shall procure acknowledgement of such terms by each prospective holder of a Security Financing Interest prior to its coming into any security right or interest in the Property or portion thereof.

Section 11.9 Modifications. If a holder of a Security Financing Interest should, as a condition of providing financing or funding for development of all or a portion of the Improvements, request any modification of this Agreement in order to protect its interests in the Project or this Agreement, 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.

ARTICLE 12. DEFAULT AND REMEDIES

Section 12.1 Application of Remedies. The provisions of this Article shall govern the Parties' remedies for breach of this Agreement.

Section 12.2 Fault of City.

(a) Event of Default. Following notice and cure as set forth in subsection (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 a fee interest in 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

DocuSign Envelope ID: FA6C0401-9A2E-4AFE-8235-4A3F31941446

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 (excluding punitive damages and consequential damages); or (3) seeking specific performance or any other remedy available at law or in equity (excluding punitive damages and consequential damages).

Section 12.3 Fault of Developer.

(a) Event of Default. Following notice and cure as set forth in subsection (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 all conditions in Article 4 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 the manner and by the deadline set forth in Article 8 and the Schedule of Performance.

(3) The Developer breaches any provision of Article 7.

(4) The Developer attempts or completes a Transfer except as permitted under Article 10.

(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; or (5) failure, inability or admission in writing of its inability to pay its debts as they become due.

(6) The Developer defaults under any Security Financing Interest and has not cured such default within the applicable cure period contained in such agreement.

(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

DocuSign Envelope ID: FA6C0401-9A2E-4AFE-8235-4A3F31941446

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 (excluding, punitive damages and consequential damages); or (3) seeking specific performance or 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. Any investor limited partner of Developer's assignee shall have the same notice and cure rights granted to Developer, and any cure tendered by such investor shall be accepted or rejected on the same basis as if tendered by Developer.

Section 12.4 Right of Reverter. Following the Close of Escrow of the Undivided Parcel, (1) if the Developer fails to commence the pre-construction activities or construction of the Improvements by the dates listed in the Schedule of Performance (as such dates may be extended), or (2) if the City does not prevail in the Litigation; then the City may, in addition to other rights granted in this Agreement, re-enter and take possession of the Undivided Parcel or Property as the case may be with all improvements thereon, and revest in the City the estate previously conveyed to the Developer by the City with respect to the Undivided Parcel subject to the provisions set forth below.

The City's rights under this Section 12.4 shall terminate and be of no further force and effect once the Developer closes on construction financing for the first phase of the Project.

The interest created pursuant to this Section 12.4 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 Undivided Parcel or 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 Undivided Parcel or Property.

(c) Any leases affecting the Undivided Parcel or Property as of the date of such termination.

Upon revesting in the City of title to the Undivided Parcel as provided in this Section 12.4, the City shall, pursuant to its responsibilities under state law, use its best efforts to resell the Undivided Parcel 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. In addition, upon revesting in the City of title to the Undivided Parcel as provided in this Section 12.4, the Predevelopment Loan and Site Acquisition Loan shall be deemed paid in full and cancelled. It is anticipated that the sale of the

DocuSign Envelope ID: FA6C0401-9A2E-4AFE-8235-4A3F31941446

Undivided Parcel to a new buyer would be on substantially the same terms and that the payment price would be paid in in the form of an Acquisition Loan from the City evidence by a Seller Take Back Note and Deed of Trust.

If this clause is triggered because the City did not prevail in Litigation, the City shall reimburse Developer for actual costs incurred and paid as a result of its ownership of the Undivided Parcel, and not already reimbursed through the Lease Back provisions.

The rights established in this Section 12.4 are to be interpreted in light of the fact that the City will convey the Undivided Parcel to the Developer for development of the Project and not for speculation.

Section 12.5 Damages. This Agreement does not and shall not be interpreted in any manner to restrict, limit, or otherwise impair the City's governmental power. Developer acknowledges that the City's execution of this Agreement in no way limits the City's discretion in the permit and approval process in connection with development of the Project. Likewise, Developer acknowledges that the City's execution of this Agreement cannot and does not limit the City's ability to exercise its legislative authority.

City acknowledges the exercise of its legislative authority for a land use action, such as but not limited to a General Plan Amendment, Specific Plan Amendment, or zoning action (collectively, a "Land Use Action") that prevents the Project from being developed does not constitute a compensable taking absent extraordinary circumstances. Examples of extraordinary circumstances that could subject the City to a taking without payment of compensation include, but are not limited to, eliminating all value from the property, the denial of due process, and reclassifying the property in a manner to prevent its improvement so that it might be acquired at a lesser price.

The City acknowledges that Developer has expended significant resources to develop the Project that could have been used to develop affordable housing elsewhere and that could be lost, and obtained grant and/or loan funding that would need to be repaid, if the City subsequently exercises its legislative authority for a Land Use Action that prevents the Project from being developed. The City and Developer agree that they would be able to quantify the losses equal to the grant and/or loan funding that would need to be repaid should a Land Use Action by the City prevent the Project from being developed. The City and Developer also agree that quantifying the scope of the economic and noneconomic losses arising from a Land Use Action that prevents the Project from being developed is inherently difficult insofar as the action results in the loss of affordable housing opportunities, negatively impacts Developer's reputation, and cannot adequately capture the soft costs expended on the Project.

The City and Developer agree and stipulate that the repayment of Project grant and/or loan funds already expended for the Project that are not available for repayment and the agreed upon sum of $2,300,000 is a reasonable measure of the damages based upon their experience in the affordable housing industry and given the nature of the losses that may result from a Land Use Action that prevents the Project from being developed.

DocuSign Envelope ID: FA6C0401-9A2E-4AFE-8235-4A3F31941446

Therefore, in the event the City exercises is legislative authority for a Land Use Action that prevents the Project from being developed, then the City shall pay damages to Developer as follows:

(1) An amount equal to the grant and/or loan funds that were expended by Developer prior to the date of that Land Use Action that is not available for repayment in the event the awarding/loaning agency demands Developer repay the expended funds; and

(2) The stipulated amount of $2,300,000 for the losses that cannot be quantified.

The City and Developer further agree that these agreed upon sums are not penalties, and further agree that they are a reasonable measure of Developer's damages given the nature of the losses that may result from a Land Use Action by the City that prevents the Project from being developed.

This provision shall not apply in the event Developer or its successor applies to the City for a new Land Use Action for the Project site or for a different Project. The parties further agree that this provision shall not apply in the event an action by Developer, its successor, a court of competent jurisdiction, or the State of California prevents the Project from being developed.

Section 12.6 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 12.7 Survival. Upon termination of this Agreement under this Article 12, the following provisions of this Agreement shall survive: 5.9, 5.12, 8.4, 8.5, and 9.4, 9.5, 11.1, 13.3. This Section 12.7 exists for reference purposes only, and does not alter the scope or nature of the surviving provisions.

ARTICLE 13. GENERAL PROVISIONS

Section 13.1 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 California limited partnership duly organized, validly existing and in good standing under the laws of the State 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

DocuSign Envelope ID: FA6C0401-9A2E-4AFE-8235-4A3F31941446

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.

(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. Aside from the Litigation and unless otherwise disclosed in writing to the City prior to the date of this Agreement, there is no existing or, to the Developer's actual knowledge, pending or threatened litigation, suit, action or proceeding before any court or administrative agency affecting the Developer or the Undivided Parcel that would, if adversely determined, materially and adversely affect the Developer or the Undivided Parcel 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 under any agreement materially related to the development or operation of the Project, 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 Section 13.1 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 13.2 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 Attn: City Manager 1052 S. Livermore Avenue Livermore CA 94550
Developer	DTLM, L.P.

DocuSign Envelope ID: FA6C0401-9A2E-4AFE-8235-4A3F31941446

C/o Eden Housing, Inc.
22645 Grand Avenue
Hayward, CA 94541
Attn: Sr. VP of Development
KLeichner@edenhousing.org
Jeremy.Hoffman@edenhousing.org
Matt.Graves@edenhousing.org

with copies to:

Gubb & Barshay LLP
505 14th Street, Suite 450
Oakland, CA 94612
Attn: Evan Gross

Notices to Developer shall be sent by electronic mail in addition to other means of communication described above. 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 13.2. Delivery shall be deemed to have occurred at the time indicated on the receipt for delivery or refusal of delivery.

Section 13.3 Non-Liability of Officials, Employees and Agents. No member, official, employee, consultant, counsel, or agent 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 13.4 Enforced Delay. In addition to specific provisions of this Agreement, performance by any Party hereunder shall not be deemed to be in default where delays or defaults are due any of the following items that constitute Force Majeure for purposes of this Agreement: 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); unusually severe weather; inability to secure necessary labor, materials or tools; acts or the failure to act of any public or governmental agency or entity (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).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 13.4 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 13.5 Intentionally Omitted.

DocuSign Envelope ID: FA6C0401-9A2E-4AFE-8235-4A3F31941446

Section 13.6 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.

Section 13.7 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 13.8 Applicable Law. This Agreement shall be interpreted under and pursuant to the laws of the State of California.

Section 13.9 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 13.10 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 13.11 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 Section 10.4. 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 Undivided Parcel, 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 Undivided Parcel, or the applicable portion of the Undivided Parcel, from the requirements of this Agreement.

Section 13.12 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 13.13 Entire Understanding of the Parties. This Agreement constitutes the entire understanding and agreement of the Parties with respect to the conveyance of the Undivided

DocuSign Envelope ID: FA6C0401-9A2E-4AFE-8235-4A3F31941446

Parcel and the development of the Project. This Agreement supersedes the Disposition, Development and Loan Agreement dated November 11, 2018, as it was amended on May 16, 2021, but this agreement is also intended to fulfill and complete those agreements. In the event a court of competent jurisdiction determines that Government Code section 54234 prevents the sale and disposition of the Undivided Parcel or that a decision by the California Department of Housing and Community Development should prevent the sale and disposition of the Undivided Parcel, the Parties hereby express their intent that either of those situations will work to automatically revive the Development and Loan Agreement dated November 11, 2018, as it was amended on May 16, 2018, which may then be reinstated by the Parties in their collective discretion.

Section 13.14 Counterparts. This Agreement may be executed in counterparts and multiple originals.

Section 13.15 Amendments. The Parties can amend this Agreement only by means of a writing signed by both Parties.

Section 13.16 Recordation of Memo of DDLA. The Parties consents to the recordation of the memorandum of this Agreement, in the form attached as Exhibit K in the Official Records against Developer's interest in the Property.

Section 13.17 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 13.18 Effectiveness of Agreement. This Agreement is dated for convenience only and shall only become effective on the Effective Date.

Section 13.19 Delegation of Authority to City Manager. This Agreement may be amended from time to time as the Parties find is necessary. The City Manager shall have the authority to make minor amendments to effectuate the intent of this Agreement. Upon approval of this Agreement by the City Council, the City Manager shall also have the authority to execute the final documents and agreements referenced in this Agreement and other related documents to implement the intent and terms of this Agreement, as well as the specific delegations of authority set forth herein as approved by the City Council's resolution approving this Agreement.

DocuSign Envelope ID: FA6C0401-9A2E-4AFE-8235-4A3F31941446

WHEREFORE, the Parties have executed this Agreement as of the date first above written.

City:
City of Livermore, a municipal corporation

By: _____
Marc Roberts
Its: City Manager

Date: _____

APPROVED AS TO FORM

By: _____
Assistant City Attorney

DEVELOPER:

By: Eden Housing, Inc.,
a California nonprofit public benefit corporation,
its manager

By: _____
Name: Andrea Osgood
Title: Senior Vice President of Real Estate Development

DocuSign Envelope ID: FA6C0401-9A2E-4AFE-8235-4A3F31941446

EXHIBIT A

LEGAL DESCRIPTION UNDIVIDED PARCEL

REAL PROPERTY SITUATED IN THE CITY OF LIVERMORE, COUNTY OF ALAMEDA, STATE OF CALIFORNIA, AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

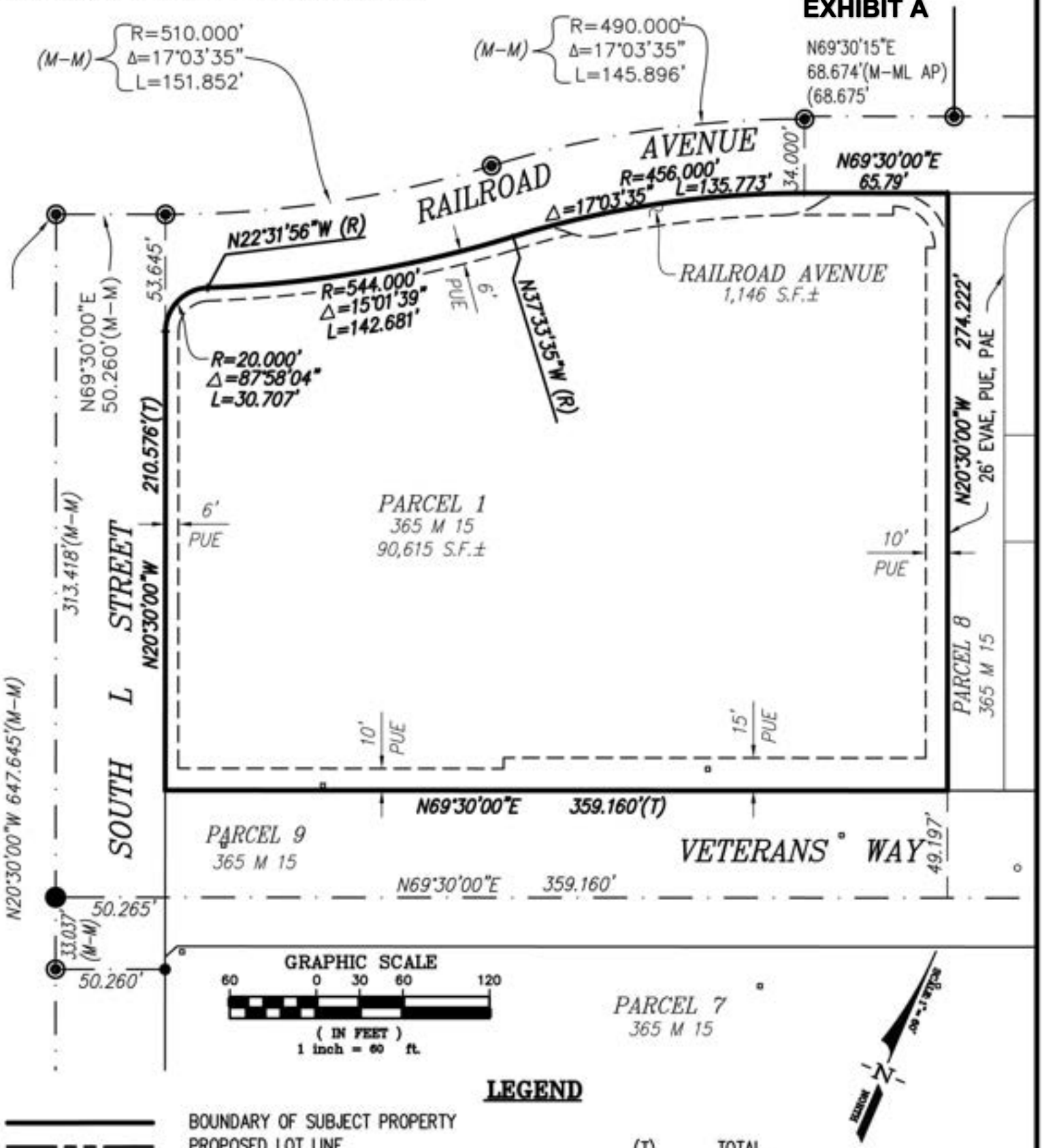
BEING ALL OF PARCEL 1 OF TRACT MAP NO. 8574, RECORDED DECEMBER 23, 2020, IN BOOK 365 OF MAPS AT PAGES 15-19, ALAMEDA COUNTY RECORDS.

CONTAINING 90,615 SQUARE FEET OF LAND MORE OR LESS

APN: 098-0289-22

DocuSign Envelope ID: FA6C0401-9A2E-4AFE-8235-4A3F31941446

EXHIBIT A



LEGEND

- BOUNDARY OF SUBJECT PROPERTY
- PROPOSED LOT LINE
- RIGHT OF WAY LINE
- MONUMENT LINE
- EXISTING PUBLIC UTILITY EASEMENT (PUE)
- ADJOINER LOT LINE
- 1/4" PIN WITH CUT CROSS IN CONC. MONUMENT WELL

(T)	TOTAL
(M-CL)	MONUMENT TO CENTERLINE
(CL-CL)	CENTERLINE TO CENTERLINE
(ML-ML)	MONUMENT LINE TO MONUMENT LINE
S.F.	SQUARE FEET
±	MORE OR LESS

EXHIBIT A

PLAT TO ACCOMPANY LEGAL DESCRIPTION

DocuSign Envelope ID: FA6C0401-9A2E-4AFE-8235-4A3F31941446

Exhibit B

Project Objectives

The Property shall be developed as multi-family affordable rental housing with up to 130 units. The Project was approved by City Council for entitlement May 24, 2021 and as part of the design and development of the Improvements, the Project shall make way for and accommodate the development of an open green/publicly accessible City-owned park space and pedestrian access path (Veterans Park) as generally depicted in the approved Downtown Concept Plan and described in the Downtown Core Landscape Design Guidelines.

Parties have satisfied through the Project entitlements, completion of environmental studies and as described herein the DDLA, the following elements:

- Configuration of the Property and potential Property subdivision
- Environmental Condition of the Property at Transfer
- Developer's contribution to the Downtown Landscape Maintenance District LL-859
- Design elements, which shall be consistent with zoning and downtown specific plan requirements.
- Integration with adjacent planned uses including, Stockman's Park, a Science and Society Center, Black Box Theater, and Veterans Park.
- Parking accommodations on the site
- A housing selection process to give application preferences for renting to local workers, including teachers, emergency responders (including emergency medical response), employees of businesses downtown, and professional artists as permitted by federal law.
- Unit sizes and mix of unit types
- Affordability levels, which shall, at a minimum, satisfy the restrictions in the First Amendment to a Notice of Affordability Restrictions on Transfer of Property and Declaration of Restrictive Covenants, recorded in the Official Records of Alameda County, document number 2018227103

Parties shall negotiate in good faith to finalize the following additional Project elements:

- A plan for ongoing operations and maintenance of the Improvements
- Financing of the Improvements

DocuSign Envelope ID: FA6C0401-9A2E-4AFE-8235-4A3F31941446

Schedule of Performance

#	Milestone	Due Date/Completion Date
Pre-Development		
1	Insurance Requirements Fulfilled	Completed
2	Organization Documents	Completed
3	Complete Site Due Diligence	Completed
4	Obtain Planning Approval/Development Entitlements	Completed
5	Preliminary Pro Forma	Completed
6	Appraisal	Completed
7	Predevelopment Loan	Completed
Prior to Close of Escrow on Undivided Parcel		
8	Final approved Regulatory Agreement and Prommissory Note For A&R DDLA	23-May-22
9	CC Approval of Amended and Restated DDLA	23-May-22
10	Federal Environmental Review and Clearance	22-Jul-22
11	Submit Application for Minor Amendment to Tentative Map	1-Jun-22
Close of Escrow on Undivided Parcel		30-Sep-22
Pre-Construction		
12	Financing Commitments	2 years post-litigation
13	Final Pro Forma	2 years post-litigation
14	Developer Submit Draft Final Map and Public Improvement Plans for review	2 years, 3 months post-litigation
15	Developer Submit draft Building Permit Plans for review	2 years, 3 months post-litigation
16	City Council Approval of Final Parcel Map, including acceptance of Veterans Park Parcel, Subdivision Improvement Agreement, & Public Improvement Plans	5 months post submittal (line 14)
17	Developer Dedicates Veterans Park Parcel to City via Final Map	On or before first phase construction financing closing
18	Close of Escrow on all Construction Financing	2 years + 194 days post-litigation
Commence Construction Phases 1 & 2		Within 60 days of City Issuance of Final Building Permit Plans for each phase
Complete Constructions Phases 1 & 2		3 years post commencement of each phase

DocuSign Envelope ID: FA6C0401-9A2E-4AFE-8235-4A3F31941446

EXHIBIT D

(INTENTIONALLY OMITTED)

DocuSign Envelope ID: FA6C0401-9A2E-4AFE-8235-4A3F31941446

EXHIBIT E **EXHIBIT A**

NOTICE TO BORROWER:

THIS DOCUMENT CONTAINS PROVISIONS
RESTRICTING RESALE AND ASSUMPTIONS

PROMISSORY NOTE
Downtown Housing Predevelopment Loan

Principal Amount: $500,000

November
~~September~~ 27, 2018
Portion of APN 098-0289-021-00

FOR VALUE RECEIVED, the undersigned Eden Housing, Inc. a California nonprofit public benefit corporation ("Borrower") whose address is 22645 Grand Street, Hayward California 94541, hereby promise(s) to pay to the order of the City of Livermore, a municipal corporation ("City"), at 1052 South Livermore Avenue, Livermore, California 94550, the principal amount of [FIVE HUNDRED THOUSAND Dollars ($500,000)], together with interest accrued thereon, as set forth in this Promissory Note ("Note").

Pursuant to that certain Disposition, Development and Loan Agreement ("DDLA") dated November ~~September~~ 27, 2018 by and between City and Borrower (the "Developer"), the Developer agreed to prepare a development plan for 130 units of affordable workforce housing (the "Project") on the Property (defined below).

In accordance with the DDLA, the property is a portion of APN 098-0289-021-00 located approximately at Railroad Avenue and L Street in the City of Livermore, Alameda County, California as depicted in Exhibit A attached hereto (the "Property").

In accordance with the DDLA, the Borrower intends to purchase, develop, own and operate the Project on the Property. Pursuant to the DDLA, the City has made an predevelopment loan to Borrower in the original principal amount of [FIVE HUNDRED THOUSAND] Dollars ($500,000) (the "Predevelopment Loan") to fund certain predevelopment costs associated with the proposed Project.

This Note is made and delivered pursuant to and in conjunction with the DDLA entered into by and between the City and Borrower dated as of even date herewith. All capitalized terms not otherwise defined in this Note shall have the meanings set forth in the DDLA.

1. Borrower's Obligation. This Note evidences the Borrower's obligation to pay the City the Principal Amount, as that term is subsequently defined, loaned to the Borrower by the City to finance Project predevelopment costs, as set forth in the DDLA. As a condition of receiving the Principal Amount, the Borrower promises and agrees to comply will all terms and conditions of this Note.

2. Principal. The principal amount of this Note, $500,000 ("Principal Amount"), loaned to the Borrower by the City to finance Project predevelopment costs, as set forth in the DDLA.

3. Interest. The Note shall bear simple interest at three percent (3%) annual interest as of the date of this Note.

DocuSign Envelope ID: FA6C0401-9A2E-4AFE-8235-4A3F31941446

4. Term. The entire indebtedness evidenced by this Note shall be repaid to the City by no later than the date that is the earlier of: (i) fifty-five (55) years from the date the Project's financing converts to permanent financing, or (ii) the sixtieth (60th) anniversary of the date hereof (the "Maturity Date"); unless otherwise terminated for infeasibility in accordance with Section 3.1(e) of the DDLA.

5. Repayment. The Borrower shall make payments towards principal and accrued interest due on the Predevelopment Loan from residual receipts pari passu with other City financing as described in the DDLA during the Term of this Note. This Note becomes due and payable in full on (a) the date the Property is sold or transferred in a manner which is ineligible under the terms of the DDLA, or (b) an Event of Default by Borrower which has not been cured as provided for in this Agreement, but in any event (c) no later than the Maturity Date. Any payments made by Borrower pursuant to this section shall be applied first to current annual interest due, and then to reduce the principal amount of the Predevelopment Loan. All payments by the Borrower shall be paid to the City in currency of the United States of America, which at the time of the payment is lawful for the payment of public and private debts.

All payments on this Note shall be made payable to the City of Livermore, and shall be delivered to the City at 1052 South Livermore Avenue, Livermore, California, 94550, or to such other place as the City may from time-to-time designate.

All payments on this Note shall be without expense to the City, and the Borrower agrees to pay all costs and expenses incurred in connection with the payment.

5.1 Annual Payments from Surplus Cash. By not later than July 1 of each year, Borrower shall pay to City fifty percent (50%) of Surplus Cash split pro rata with all other soft lenders approved by the City, generated by the Property during the previous calendar year to reduce the indebtedness owed under this Note.

By not later than June 1 of each year, Borrower shall provide to City Borrower's calculation of Surplus Cash for the previous calendar year, accompanied by such supporting documentation as City may reasonably request to substantiate Borrower's calculation of Surplus Cash. City shall have the right to inspect and audit Borrower's books and records concerning the calculation of Surplus Cash, and to object within ninety (90) days from receipt of Borrower's statement. Failure to timely object shall be deemed acceptance. If City does object, City shall specify the reasons for disapproval. Borrower shall have thirty (30) days to reconcile any disapproved item.

No later than November 1 of each year, Borrower shall provide to City a projected budget for the following calendar year which shall include an estimate of Surplus Cash. City will review the proposed budget and, if acceptable, approve it, which approval shall not be unreasonably withheld, provided, however, if the proposed budget has not been rejected by City within 30 days of receipt, City shall be deemed to have accepted the budget. If the budget is not acceptable, City shall specify the reasons for disapproval. Once approved, any changes to the budget that exceed ten percent (10%) of the total budget shall require City's prior written consent, which consent shall not be unreasonably withheld.

5.1.1 "Surplus Cash" shall mean for each calendar year during the term hereof, the amount by which Gross Revenue (defined below) exceeds Annual Operating Expenses

(defined below) for the Property. Surplus Cash shall also include net cash proceeds realized from any refinancing of the Property, less fees and closing costs reasonably incurred in connection with such refinancing, and any City-approved uses of the net cash proceeds of the refinancing.

5.1.2 "Gross Revenue" shall mean for each calendar year during the term hereof, all revenue, income, receipts and other consideration actually received from the operation and leasing of the Property. Gross Revenue shall include, but not be limited to: all rents, fees and charges paid by tenants; Section 8 payments or other rental subsidy payments received for the dwelling units; deposits forfeited by tenants; all cancellation fees, price index adjustments and any other rental adjustments to leases or rental agreements; and the proceeds of casualty insurance not required to be paid to the holders of Approved Senior Loans (provided however, expenditure of such proceeds for repair or restoration of the Property shall be included within Annual Operating Expenses in the year of the expenditure). Gross Revenue shall not include tenant security deposits, loan proceeds, capital contributions or similar advances, or interest earned on restricted reserve accounts.

5.1.3 "Annual Operating Expenses" shall mean for each calendar year during the term hereof, the following costs reasonably and actually incurred for the operation and maintenance of the Property to the extent that they are substantiated by such documentation as City may reasonably require: property taxes and assessments; debt service currently due and payable on a non-optional basis (excluding debt service due from residual receipts or surplus cash of the Property) on loans which have been approved in writing by the City and which are secured by deeds of trust senior in priority to the Deed of Trust ("Approved Senior Loans"); property management fees and reimbursements in amounts in accordance with industry standards for similar residential projects and paid pursuant to a property management agreement approved by City; premiums for property damage and liability insurance; utility service costs not paid for directly or indirectly by tenants; maintenance and repair costs; fees for licenses and permits required for the operation of the Property; expenses for security services; advertising and marketing costs; accounting costs; payment of deductibles in connection with casualty insurance claims not paid from reserves; tenant services; the amount of uninsured losses actually replaced, repaired or restored and not paid from reserves; cash deposits into reserves for capital replacements and operating expenses in the amount specified in the Regulatory Agreement or reasonably approved by the City; annual monitoring fees, if any, payable to the City or other public agencies in connection with loans provided for the Property; and other ordinary and reasonable operating expenses approved by City.

5.1.4 Exclusions from Annual Operating Expenses. Annual Operating Expenses shall exclude the following: contributions to Property operating or replacement reserves, except as provided in Section 5.1.3; debt service payments on any loan which is not an Approved Senior Loan, including without limitation, unsecured loans or loans secured by deeds of trust which are subordinate to the Deed of Trust; depreciation, amortization, depletion and other non-cash expenses; expenses paid for with disbursements from any reserve account; any amount paid to Borrower, or any entity controlled by the persons or entities in control of Borrower. Notwithstanding the foregoing limitation regarding payments to Borrower and related parties, the following fees shall be included in Annual Operating Expenses, subject to applicable limitations set forth in Section 5.1.3 above, even if paid to Borrower or an affiliate of Borrower: fees paid to a property management agent, resident

services agent, or social services agent; deferred developer fees; annual asset management fees paid to Borrower's limited partner; an annual partnership management fee paid to Borrower's general partner in an annual amount of up to $25,000 increasing no more than 3% annually; and subject to Section 5.1.5, repayment of cash advances by Borrower to cover Property operating expense deficits or emergency cash needs of the Property. Payments to Borrower or affiliates in excess of the limitations set forth in Section 5.1.3 shall not be counted toward Annual Operating Expenses for the purpose of calculating Surplus Cash.

5.1.5 Adjustments to Annual Operating Expenses. Notwithstanding anything to the contrary set forth herein, for the purpose of calculating Surplus Cash, Annual Operating Expenses shall include the repayment of operating deficit loans provided by Borrower provided however, interest payable on such loans may be included in Annual Operating Expenses only in an amount equivalent to the lesser of (i) interest accrued at the actual interest rate charged for the loan, or (ii) interest accrued at a rate equal to the Applicable Federal Rate.

6. Prepayment. At its option and without any premium or penalty, Borrower may pay all or a portion of the outstanding Principal Amount prior to the amount becoming due. The Borrower may make such prepayments at any time, or from time-to-time, before the prepaid amount is due. All prepayments shall be applied by the City to reduce the amount of the outstanding Principal Amount owed under this Note.

7. Encumbrances. The Borrower shall not encumber the Property, permit the covenancy, transfer, or encumbrance of the Property, allow the placement of any liens, notes or deeds on the Property, or use the Property as security for any note or loan, without the City's prior written approval; provided, however, that the approval of encumbrances consistent with the approved Financing Plan included in the DDLA shall not be unreasonably withheld. Any written approval by the City shall be consistent with the requirements of Section 12 below.

8. Payment Acceleration. The Principal Amount of this Note, together with all accrued interest and other outstanding payments and penalties, shall become immediately due and payable upon the occurrence of any of the following events, each subject to any applicable notice and cure periods:

A. The Borrower fails to use the Property in accordance with the DDLA, Loan Agreement or Regulatory Agreement;

B. The Borrower fails to cure a default consistent with the requirements of Section 9 below;

C. The transfer of the Property or this Note in violation of Section 11, and without the City's written approval consistent with the requirements of Sections 12 and 13 below;

D. The encumbrance of the Property in violation of Section 7, without the City's written approval consistent with the requirements of Sections 7 and 13;

E. Borrower is found to be in Default of the DDLA

9. Default – Notice & Opportunity to Cure. If, in the City's sole discretion, the Borrower fails to observe or perform any condition contained herein, or take diligent action towards the cure or remedy of such event, for a period of sixty (60) days after written notice from the City specifying such failure and requesting that it be cured, such event shall be deemed a default and the City shall be entitled, and in addition to all other remedies provided by law or in equity,

to compel specific performance by the Borrower of its obligations under this Note. Any investor limited partner of Borrower or Borrower's assignee shall have the same notice and cure rights granted to Borrower, and any cure tendered by such investor shall be accepted or rejected on the same basis as if tendered by Borrower.

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

11. Prohibited Transfers. Except as otherwise permitted by the terms of this Note or the DDLA, the Borrower is prohibited from transferring by sale, lease, trade, exchange, rental, gift, assignment, conveyance, the Property or any part thereof, or any trust or power, or any transfer in any other mode or form, of the Property or any part thereof or any interest therein; provided, however, that the Borrower may transfer any or all of its interest in the Property to a subsidiary or affiliate controlled by Borrower. Notwithstanding anything to the contrary contained herein, this Note shall be assignable and transferable in whole or in part to one or more limited partnerships affiliated with Borrower, so long as any such assignment or other document evidencing such assignment is acceptable to the City. Borrower may transfer limited partner interests to a tax credit investor (the "Investor"), and such Investor may further transfer its limited partner interests, and the Investor may remove Borrower's general partner pursuant to the terms of the Borrower's limited partnership agreement, with the City's consent, which consent will not be unreasonably withheld.

12. Permitted Transfers. Under the following limited circumstances, the City may give its prior written approval for the transfer of the Property: The Property is to be transferred to another qualified developer, as pre-determined by the City, which is a non-profit serving the same mission to provide housing under the DDLA, Loan Agreement and Regulatory Agreement and will assume the Borrower's rights and obligations under the Deed of Trust, this Note, and the DDLA, Loan Agreement and Regulatory Agreement.

13. Prior Written Approval. The City shall not unreasonably withhold its written approval of permitted transfers, encumbrances and refinancing by the Borrower. However, the City may only give written approval of those transfers, encumbrances, and refinancing authorized by this Note. The Borrower must request the City's written approval prior to pursuing any transfer, encumbrance, or refinancing. If not approved, or in violation of this Note, any unapproved transfer, encumbrance, or refinancing shall be null and void and the Borrower must deliver to the City any profits or benefit received from the transaction consistent with the requirements of Section 22.

14. Audit and Inspection. To the extent permissible under laws and regulations protecting individual confidentiality, the City shall have access to, and is hereby authorized by the Borrower to inspect, make copies or photographs of, the Property, books, utility accounts, and records of the Borrower pertaining to this Note and the Borrower's use of the Property.

DocuSign Envelope ID: FA6C0401-9A2E-4AFE-8235-4A3F31941446

15. Notices. Any demand or notice which either party desires to deliver to the other, shall be in writing and shall be delivered by hand, sent by a recognized overnight courier, deposited in the United States mail with a first-class prepaid postage and a return receipt requested, to ensure timely and complete delivery to the other party at the addresses noted above.

16. Attorney Fees and Costs. Borrower agrees that if any amounts due under this Note are not paid when due, to pay all costs and expenses of collection and reasonable attorney fees paid or incurred in connection with the collection or enforcement of this Note, whether or not suit is filed.

17. Severability. Every provision of this Note is intended to be severable. If any provision is held by a court of competent jurisdiction to be invalid, illegal, and unenforceable, the validity, legality, and enforceability, of the remaining provisions shall not in any way be affected or impaired.

18. Interpretation. The provisions of this Note have been arrived at through negotiation and each party had a full and fair opportunity to revise the provisions and have them reviewed by legal counsel. The parties agree that any ambiguities in construing or interpreting this Note shall not be resolved against either party as the drafting party. In the event of an inconsistency or conflict between the language of this Note and the DDLA, the language of the DDLA shall control.

19. Joint and Several Obligations. This Note is the joint and several obligations of all makers, sureties, guarantors and endorsers, and shall be binding upon them and their successors and assigns.

20. Negotiability. Except as otherwise provided herein, this Note is non-negotiable and not transferable by the Borrower. The City, in its sole discretion, may, in the event of an Event of Default by the Borrower that is not cured as provided for in the DDLA, negotiate a transfer, assignment, or assumption of this Note to any person and upon a minimum ninety (90) day written notice to the Borrower by the City.

21. Binding Upon Successors. All provisions of this Note shall be binding upon and inure to the benefit of the successors-in-interest, transferees, and assigns of the Borrower and the City, respectively.

22. Nonrecourse. Except as expressly provided in this Section 22, Borrower shall have no personal liability for payment of the principal of, or interest on, this Note, and the sole recourse of City with respect to the payment of the principal of, and interest on, this Note shall be to the Property and any other collateral held by City as security for this Note; provided however, nothing contained in the foregoing limitation of liability shall: (A) impair the enforcement against all such security for the Loan of all the rights and remedies of the City under the Deed of Trust as such may be amended, modified, or restated from time to time; (B) impair the right of City to bring a foreclosure action, action for specific performance or other appropriate action or proceeding to enable City to enforce and realize upon the Deed of Trust, the interest in the Property created thereby and any other collateral given to City in connection with the indebtedness evidenced hereby and to name the Borrower as party defendant in any such action; (C) be deemed in any way to impair the right of the City to assert the unpaid principal amount of the Loan as a demand for money within the meaning of Section 431.70 of the California Code of Civil Procedure or any successor provision thereto; (D) constitute a waiver of any right which City may have under any bankruptcy law to file a claim for the full amount of the indebtedness owed to City hereunder or to require that the Property shall continue to secure all of the indebtedness owed to City hereunder in

accordance with this Note and the Deed of Trust; or (E) limit or restrict the ability of City to seek or obtain a judgment against Borrower to (1) recover under any provision of the City Documents that obligates Borrower to indemnify City, or (2) recover from Borrower compensatory damages as well as other costs and expenses incurred by City (including without limitation reasonable attorneys' fees and expenses) arising as a result of the occurrence of any of the following: (a) any fraud or intentional misrepresentation on the part of the Borrower or any officer, director or authorized representative of Borrower in connection with the request for or creation of the Loan, or in any City Document, or in connection with any request for any action or consent by City in connection with the Loan; (b) any failure to maintain insurance as required pursuant to the City Documents; (c) failure to pay taxes, assessments or other charges which may become liens on the Property (subject to the right to contest as set forth in the DDLA); (d) the violation of the Borrower's obligations under Article I of the DDLA, except as limited by the provisions of such agreement; (e) the occurrence of any act or omission of Borrower that results in waste to or of the Property and which has a material adverse effect on the value of the Property; (f) the removal or disposal of any personal property or fixtures or the retention of rents, insurance proceeds, or condemnation awards in violation of the Deed of Trust; (g) the material misapplication of the proceeds of any insurance policy or award resulting from condemnation or the exercise of the power of eminent domain or by reason of damage, loss or destruction to any portion of the Property; and (h) the failure of Borrower to pay all amounts payable under this Note in full if Borrower Transfers the Property in violation of the DDLA or the Regulatory Agreement.

[Signature Page to Follow]

DocuSign Envelope ID: FA6C0401-9A2E-4AFE-8235-4A3F31941446

EXHIBIT A

DATE:

BORROWER

By: Andre H. McIntyre
Its: Senior Vice President

DocuSign Envelope ID: FA6C0401-9A2E-4AFE-8235-4A3F31941446

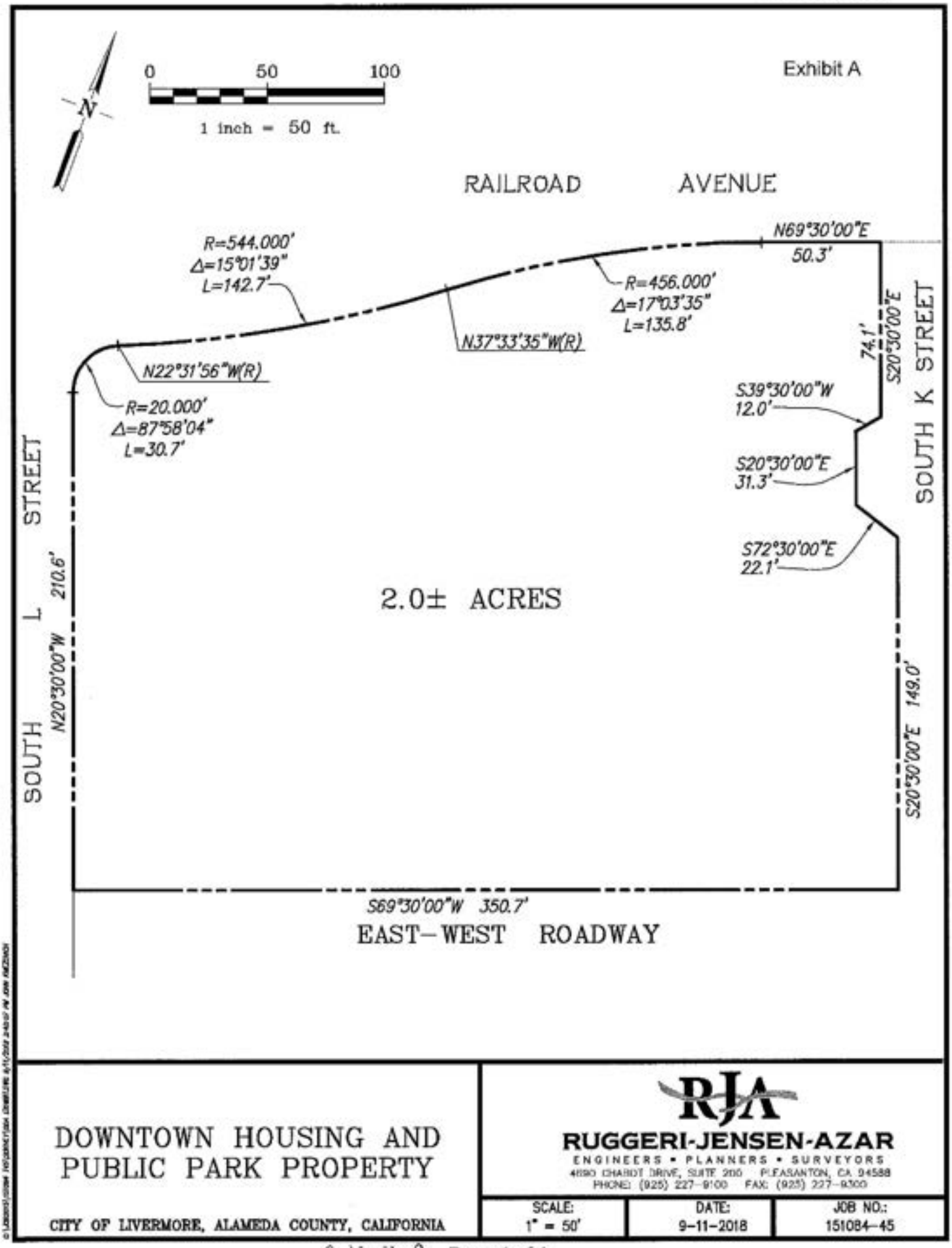
EXHIBIT A

Property Description

See attached

DocuSign Envelope ID: FA6C0401-9A2E-4AFE-8235-4A3F31941446

EXHIBIT A



DOWNTOWN HOUSING AND PUBLIC PARK PROPERTY

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" = 50'	9-11-2018	151084-45

DocuSign Envelope ID: FA6C0401-9A2E-4AFE-8235-4A3F31941446

NOTICE TO BORROWER:

THIS DOCUMENT CONTAINS PROVISIONS
RESTRICTING RESALE AND ASSUMPTIONS

PROMISSORY NOTE
Downtown Housing Project Site Acquisition
Secured by a Deed of Trust

Principal Amount: $7,800,000

[DATE]
[ADDRESS/APN: 098-0289-22]

FOR VALUE RECEIVED, the undersigned [NAME OF OWNER L.P.], [ENTITY TYPE] ("Borrower") whose address is [ ], hereby promise(s) to pay to the order of the City of Livermore, a municipal corporation ("City"), at 1052 South Livermore Avenue, Livermore, California 94550, the principal amount of Seven Million Eight Hundred Thousand Dollars ($7,800,000), together with interest accrued thereon, as set forth in this Promissory Note (the "Seller Take Back Note" or "Note").

Pursuant to that certain Amended and Restated Disposition, Development and Loan Agreement ("DDLA") dated May __ , 2022 by and between City and Borrower (the "Developer"), the Developer agreed to develop the "Undivided Parcel" as described in Exhibit A, attached hereto, into three parcels, and more particularly to develop 130 units of affordable workforce housing (the "Project") on the property as described in Exhibit B, attached hereto (the "Property").

In accordance with the DDLA, the Borrower intends to purchase, develop, own and operate the Project on the Property. Pursuant to the DDLA, the City has made an acquisition loan to Borrower in the original principal amount of Seven Million Eight Hundred Thousand Dollars ($7,800,000)(the "Site Acquisition Loan") to purchase the Property.

This Note is made and delivered pursuant to and in conjunction with the DDLA and that certain Affordable Housing Regulatory Agreement and Declaration of Restrictive Covenants entered into by and between the City and Borrower dated as of even date herewith (the "Regulatory Agreement"). All capitalized terms not otherwise defined in this Note shall have the meanings set forth in the DDLA. The Borrower's obligations with respect to this Note are secured by that certain Deed of Trust and Assignment of Rents (Short Form) entered into by Borrower for the benefit of the City as of even date herewith (the "Seller Take Back Site Acquisition Deed of Trust" or "Deed of Trust") executed by the Borrower concurrently herewith.

1. Borrower's Obligation. This Note evidences the Borrower's obligation to pay the City the Principal Amount, as that term is subsequently defined, loaned to the Borrower by the City to finance the Property's purchase, as set forth in the DDLA. As a condition of receiving the Principal Amount, the Borrower promises and agrees to comply will all terms and conditions of this Note.

DocuSign Envelope ID: FA6C0401-9A2E-4AFE-8235-4A3F31941446

2. Principal. The principal amount of this Note, $7,800,000("Principal Amount"), is loaned to the Borrower by the City to finance acquisition of the Property, as set forth in the DDLA.

3. Interest. The Note shall bear simple interest at three percent (3%)] annual interest as of the date of this Note.

4. Term. The entire indebtedness evidenced by this Note shall be repaid to the City by no later than the date that is the earlier of: (i) fifty-five (55) years from the date the Project's financing converts to permanent financing; or (ii) the sixty fifth (65th) anniversary of the date hereof (the "Maturity Date").

5. Repayment. The Borrower shall make payments towards principal and accrued interest due on the Property Acquisition Loan from residual receipts pari passu with other City and other soft lender financing from a pro rata share of Surplus Cash as described in 5.1 during the Term of this Note. This Note becomes due and payable in full on (a) the date the Property is sold or transferred in a manner which is ineligible under the terms of the DDLA, Loan Agreement, or Regulatory Agreement, or (b) an Event of Default by Borrower which has not been cured as provided for in this Agreement, but in any event (c) no later than the Maturity Date. Any payments made by Borrower pursuant to this section shall be applied first to pay current annual interest due, and then to reduce the principal amount of the Property Acquisition Loan. All payments by the Borrower shall be paid to the City in currency of the United States of America, which at the time of the payment is lawful for the payment of public and private debts.

All payments on this Note shall be made payable to the City of Livermore, and shall be delivered to the City at 1052 South Livermore Avenue, Livermore, California, 94550, or to such other place as the City may from time-to-time designate.

All payments on this Note shall be without expense to the City, and the Borrower agrees to pay all costs and expenses incurred in connection with the payment.

5.1 Annual Payments from Surplus Cash. By not later than July 1 of each year, Borrower shall pay to City fifty percent (50%) of Surplus Cash split pro rata with all other soft lenders approved by the City, generated by the Property during the previous calendar year to reduce the indebtedness owed under this Note.

By not later than June 1 of each year, Borrower shall provide to City Borrower's calculation of Surplus Cash for the previous calendar year, accompanied by such supporting documentation as City may reasonably request to substantiate Borrower's calculation of Surplus Cash. City shall have the right to inspect and audit Borrower's books and records concerning the calculation of Surplus Cash, and to object within ninety (90) days from receipt of Borrower's statement. Failure to timely object shall be deemed acceptance. If City does object, City shall specify the reasons for disapproval. Borrower shall have thirty (30) days to reconcile any disapproved item.

No later than November 1 of each year, Borrower shall provide to City a projected budget for the following calendar year which shall include an estimate of Surplus Cash. City will review the proposed budget and, if acceptable, approve it, which approval shall not be unreasonably withheld, provided, however, if the proposed budget has not been rejected by City within 30 days of receipt, City shall be deemed to have accepted the budget. If the budget is not acceptable, City shall specify the reasons for disapproval. Once approved, any

DocuSign Envelope ID: FA6C0401-9A2E-4AFE-8235-4A3F31941446

changes to the budget that exceed ten percent (10%) of the total budget shall require City's prior written consent, which consent shall not be unreasonably withheld.

5.1.1 "Surplus Cash" shall mean for each calendar year during the term hereof, the amount by which Gross Revenue (defined below) exceeds Annual Operating Expenses (defined below) for the Property. Surplus Cash shall also include net cash proceeds realized from any refinancing of the Property, less fees and closing costs reasonably incurred in connection with such refinancing, and any City-approved uses of the net cash proceeds of the refinancing.

5.1.2 "Gross Revenue" shall mean for each calendar year during the term hereof, all revenue, income, receipts and other consideration actually received from the operation and leasing of the Property. Gross Revenue shall include, but not be limited to: all rents, fees and charges paid by tenants; Section 8 payments or other rental subsidy payments received for the dwelling units; deposits forfeited by tenants; all cancellation fees, price index adjustments and any other rental adjustments to leases or rental agreements; and the proceeds of casualty insurance not required to be paid to the holders of Approved Senior Loans (provided however, expenditure of such proceeds for repair or restoration of the Property shall be included within Annual Operating Expenses in the year of the expenditure). Gross Revenue shall not include tenant security deposits, loan proceeds, capital contributions or similar advances, or interest earned on restricted reserve accounts.

5.1.3 "Annual Operating Expenses" shall mean for each calendar year during the term hereof, the following costs reasonably and actually incurred for the operation and maintenance of the Property to the extent that they are substantiated by such documentation as City may reasonably require: property taxes and assessments; debt service currently due and payable on a non-optional basis (excluding debt service due from residual receipts or surplus cash of the Property) on loans which have been approved in writing by the City and which are secured by deeds of trust senior in priority to the Deed of Trust ("Approved Senior Loans"); property management fees and reimbursements in amounts in accordance with industry standards for similar residential projects and paid pursuant to a property management agreement approved by City; premiums for property damage and liability insurance; utility service costs not paid for directly or indirectly by tenants; maintenance and repair costs; fees for licenses and permits required for the operation of the Property; expenses for security services; advertising and marketing costs; accounting costs; payment of deductibles in connection with casualty insurance claims not paid from reserves; tenant services; the amount of uninsured losses actually replaced, repaired or restored and not paid from reserves; cash deposits into reserves for capital replacements and operating expenses in the amount specified in the Regulatory Agreement or reasonably approved by the City; annual monitoring fees, if any, payable to the City or other public agencies in connection with loans provided for the Property; and other ordinary and reasonable operating expenses approved by City.

5.1.4 Exclusions from Annual Operating Expenses. Annual Operating Expenses shall exclude the following: contributions to Property operating or replacement reserves, except as provided in Section 5.1.3; debt service payments on any loan which is not an Approved Senior Loan, including without limitation, unsecured loans or loans secured by deeds of trust which are subordinate to the Deed of Trust; depreciation, amortization, depletion and other non-cash expenses; expenses paid for with disbursements from any reserve account; any amount paid to Borrower, or any entity controlled by the persons or

DocuSign Envelope ID: FA6C0401-9A2E-4AFE-8235-4A3F31941446

entities in control of Borrower. Notwithstanding the foregoing limitation regarding payments to Borrower and related parties, the following fees shall be included in Annual Operating Expenses, subject to applicable limitations set forth in Section 5.1.3 above, even if paid to Borrower or an affiliate of Borrower: fees paid to a property management agent, resident services agent, or social services agent; deferred developer fees; annual asset management fees paid to Borrower's limited partner; an annual partnership management fee paid to Borrower's general partner in an annual amount of up to $25,000 increasing no more than 3% annually; and subject to Section 5.1.5, repayment of cash advances by Borrower to cover Property operating expense deficits or emergency cash needs of the Property. Payments to Borrower or affiliates in excess of the limitations set forth in Section 5.1.3 shall not be counted toward Annual Operating Expenses for the purpose of calculating Surplus Cash.

5.1.5 Adjustments to Annual Operating Expenses. Notwithstanding anything to the contrary set forth herein, for the purpose of calculating Surplus Cash, Annual Operating Expenses shall include the repayment of operating deficit loans provided by Borrower provided however, interest payable on such loans may be included in Annual Operating Expenses only in an amount equivalent to the lesser of (i) interest accrued at the actual interest rate charged for the loan, or (ii) interest accrued at a rate equal to the Applicable Federal Rate.

6. Prepayment. At its option and without any premium or penalty, Borrower may pay all or a portion of the outstanding Principal Amount prior to the amount becoming due. The Borrower may make such prepayments at any time, or from time-to-time, before the prepaid amount is due. All prepayments shall be applied by the City to reduce the amount of the outstanding Principal Amount owed under this Note.

7. Encumbrances. The Borrower shall not encumber the Property, permit the covenancy, transfer, or encumbrance of the Property, allow the placement of any liens, notes or deeds on the Property, or use the Property as security for any note or loan, without the City's prior written approval; provided, however, that the approval of encumbrances consistent with the approved Financing Plan included in the DDLA shall not be unreasonably withheld. Any written approval by the City shall be consistent with the requirements of Section 12 below.

8. Payment Acceleration. The Principal Amount of this Note, together with all accrued interest and other outstanding payments and penalties, shall become immediately due and payable upon the occurrence of any of the following events, each subject to any applicable notice and cure periods:

A. The Borrower fails to use the Property in accordance with the DDLA, Loan Agreement or Regulatory Agreement;

B. The Borrower fails to cure a default consistent with the requirements of Section 9 below;

C. The transfer of the Property or this Note in violation of Section 11, and without the City's written approval consistent with the requirements of Sections 12 and 13 below;

D. The encumbrance of the Property in violation of Section 7, without the City's written approval consistent with the requirements of Sections 7 and 13;

E. Borrower is found to be in Default of the DDLA

DocuSign Envelope ID: FA6C0401-9A2E-4AFE-8235-4A3F31941446

9. Default – Notice & Opportunity to Cure. If, in the City's sole discretion, the Borrower fails to observe or perform any condition contained herein, or take diligent action towards the cure or remedy of such event, for a period of sixty (60) days after written notice from the City specifying such failure and requesting that it be cured, such event shall be deemed a default and the City shall be entitled, and in addition to all other remedies provided by law or in equity, to compel specific performance by the Borrower of its obligations under this Note. Any investor limited partner of Borrower or Borrower's assignee shall have the same notice and cure rights granted to Borrower, and any cure tendered by such investor shall be accepted or rejected on the same basis as if tendered by Borrower.

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

11. Prohibited Transfers. Except as otherwise permitted by the terms of this Note or the DDLA, the Borrower is prohibited from transferring by sale, lease, trade, exchange, rental, gift, assignment, conveyance, the Property or any part thereof, or any trust or power, or any transfer in any other mode or form, of the Property or any part thereof or any interest therein; provided, however, that the Borrower may transfer any or all of its interest in the Property to a subsidiary or affiliate controlled by Borrower. Notwithstanding anything to the contrary contained herein, this Note shall be assignable and transferable in whole or in part to one or more limited partnerships affiliated with Borrower, so long as any such assignment or other document evidencing such assignment is acceptable to the City. Borrower may transfer limited partner interests to a tax credit investor (the "Investor"), and such Investor may further transfer its limited partner interests, and the Investor may remove Borrower's general partner pursuant to the terms of the Borrower's limited partnership agreement, with the City's consent, which consent will not be unreasonably withheld.

12. Permitted Transfers. Under the following limited circumstances, the City may give its prior written approval for the transfer of the Property: The Property is to be transferred to another qualified developer, as pre-determined by the City, which is a non-profit serving the same mission to provide housing under the DDLA, Loan Agreement and Regulatory Agreement and will assume the Borrower's rights and obligations under the Deed of Trust, this Note, and the DDLA, Loan Agreement and Regulatory Agreement.

13. Prior Written Approval. The City shall not unreasonably withhold its written approval of permitted transfers, encumbrances and refinancing by the Borrower. However, the City may only give written approval of those transfers, encumbrances, and refinancing authorized by this Note. The Borrower must request the City's written approval prior to pursuing any transfer, encumbrance, or refinancing. If not approved, or in violation of this Note, any unapproved transfer, encumbrance, or refinancing shall be null and void and the Borrower must deliver to the City any profits or benefit received from the transaction consistent with the requirements of Section 22.

DocuSign Envelope ID: FA6C0401-9A2E-4AFE-8235-4A3F31941446

14. Audit and Inspection. To the extent permissible under laws and regulations protecting individual confidentiality, the City shall have access to, and is hereby authorized by the Borrower to inspect, make copies or photographs of, the Property, books, utility accounts, and records of the Borrower pertaining to this Note and the Borrower's use of the Property.

15. Notices. Any demand or notice which either party desires to deliver to the other, shall be in writing and shall be delivered by hand, sent by a recognized overnight courier, deposited in the United States mail with a first-class prepaid postage and a return receipt requested, to ensure timely and complete delivery to the other party at the addresses noted above.

16. Attorney Fees and Costs. Borrower agrees that if any amounts due under this Note are not paid when due, to pay all costs and expenses of collection and reasonable attorney fees paid or incurred in connection with the collection or enforcement of this Note, whether or not suit is filed.

17. Severability. Every provision of this Note is intended to be severable. If any provision is held by a court of competent jurisdiction to be invalid, illegal, and unenforceable, the validity, legality, and enforceability, of the remaining provisions shall not in any way be affected or impaired.

18. Interpretation. The provisions of this Note have been arrived at through negotiation and each party had a full and fair opportunity to revise the provisions and have them reviewed by legal counsel. The parties agree that any ambiguities in construing or interpreting this Note shall not be resolved against either party as the drafting party. In the event of an inconsistency or conflict between the language of this Note and the DDLA, the language of the DDLA shall control.

19. Joint and Several Obligations. This Note is the joint and several obligations of all makers, sureties, guarantors and endorsers, and shall be binding upon them and their successors and assigns.

20.. Negotiability. Except as otherwise provided herein, this Note is non-negotiable and not transferable by the Borrower. The City, in its sole discretion, may, in the event of an Event of Default by the Borrower that is not cured as provided for in the DDLA, negotiate a transfer, assignment, or assumption of this Note to any person and upon a minimum ninety (90) day written notice to the Borrower by the City.

21. Binding Upon Successors. All provisions of this Note shall be binding upon and inure to the benefit of the successors-in-interest, transferees, and assigns of the Borrower and the City, respectively.

22. Nonrecourse. Except as expressly provided in this Section 22, Borrower shall have no personal liability for payment of the principal of, or interest on, this Note, and the sole recourse of City with respect to the payment of the principal of, and interest on, this Note shall be to the Property and any other collateral held by City as security for this Note; provided however, nothing contained in the foregoing limitation of liability shall: (A) impair the enforcement against all such security for the Loan of all the rights and remedies of the City under the Deed of Trust as such may be amended, modified, or restated from time to time; (B) impair the right of City to bring a foreclosure action, action for specific performance or other appropriate action or proceeding to enable City to enforce and realize upon the Deed of Trust, the interest in the Property created thereby and any other collateral given to City in connection with the indebtedness evidenced hereby and to name the Borrower as party defendant in any such action; (C) be deemed in any way to impair the right of the City to assert the unpaid principal

DocuSign Envelope ID: FA6C0401-9A2E-4AFE-8235-4A3F31941446

amount of the Loan as a demand for money within the meaning of Section 431.70 of the California Code of Civil Procedure or any successor provision thereto; (D) constitute a waiver of any right which City may have under any bankruptcy law to file a claim for the full amount of the indebtedness owed to City hereunder or to require that the Property shall continue to secure all of the indebtedness owed to City hereunder in accordance with this Note and the Deed of Trust; or (E) limit or restrict the ability of City to seek or obtain a judgment against Borrower to (1) recover under any provision of the City Documents that obligates Borrower to indemnify City, or (2) recover from Borrower compensatory damages as well as other costs and expenses incurred by City (including without limitation reasonable attorneys' fees and expenses) arising as a result of the occurrence of any of the following: (a) any fraud or intentional misrepresentation on the part of the Borrower or any officer, director or authorized representative of Borrower in connection with the request for or creation of the Loan, or in any City Document, or in connection with any request for any action or consent by City in connection with the Loan; (b) any failure to maintain insurance as required pursuant to the City Documents; (c) failure to pay taxes, assessments or other charges which may become liens on the Property (subject to the right to contest as set forth in the DDLA); (d) the violation of the Borrower's obligations under Article I of the DDLA, except as limited by the provisions of such agreement; (e) the occurrence of any act or omission of Borrower that results in waste to or of the Property and which has a material adverse effect on the value of the Property; (f) the removal or disposal of any personal property or fixtures or the retention of rents, insurance proceeds, or condemnation awards in violation of the Deed of Trust; (g) the material misapplication of the proceeds of any insurance policy or award resulting from condemnation or the exercise of the power of eminent domain or by reason of damage, loss or destruction to any portion of the Property; and (h) the failure of Borrower to pay all amounts payable under this Note in full if Borrower Transfers the Property in violation of the DDLA or the Regulatory Agreement.

23. Amendment Contemplated by DDLA. Notwithstanding anything to the contrary contained herein, upon the conveyance as contemplated in Section 3.2 of the DDLA, this Note shall be modified as further set forth therein.

[Signature Page to Follow]

DocuSign Envelope ID: FA6C0401-9A2E-4AFE-8235-4A3F31941446

DATE:

BORROWER

By: [NAME]
[ENTITY TYPE]

By: _____
[NAME]
[TITLE]

Attachments

EXHIBIT A - Legal Description of Undivided Parcel

EXHIBIT B - Description of Property

DocuSign Envelope ID: FA6C0401-9A2E-4AFE-8235-4A3F31941446

EXHIBIT G

EXHIBIT A

RECORDING REQUESTED BY
Old Republic Title Company

AND WHEN RECORDED MAIL TO

City of Livermore
1052 S. Livermore Avenue
Livermore, Ca. 94550-4899

Loan No.:

A.P.N.: [098-0289-22]

Space Above This Line for Recorder's Use Only

File No.:

DEED OF TRUST AND ASSIGNMENT OF RENTS

(Short Form)

THIS DEED OF TRUST, made this _____ , 2022 between

TRUSTOR: [NAME OF OWNER L.P.], [ENTITY TYPE] whose address [ ]

TRUSTEE: Old Republic Title Company

and BENEFICIARY: City of Livermore, a Municipal Corporation

Witnesseth: That Trustor IRREVOCABLY GRANTS, TRANSFERS AND ASSIGNS to TRUSTEE IN TRUST, WITH POWER OF SALE, that property in the City of Livermore, Alameda County, State of California, described as:

SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF

If the Trustor/Grantor shall sell, convey or alienate said property, or any part thereof, or any interest therein, or shall be divested of his title or any interest therein in any manner or way, whether voluntarily or involuntarily, without the written consent of the Beneficiary being first had and obtained, Beneficiary shall have the right, at its option, except as prohibited by law, to declare any indebtedness or obligations secured hereby, irrespective of the maturity date specified in any Note evidencing the same, immediately due and payable.

TOGETHER WITH the rents, issues, and profits thereof, SUBJECT, HOWEVER, to the right, power and authority given to and conferred upon Beneficiary by paragraph 10 of the provisions, incorporated by reference, to collect and apply such rents, issues and profits.
FOR THE PURPOSE OF SECURING: 1. Performance of each agreement of Trustor, incorporated by reference or contained herein. 2. Payment of the indebtedness evidenced by one Promissory Note of even date herewith, and any extension or renewal thereof, in the principal sum of **$**_____, executed by Trustor in favor of Beneficiary or order. 3. Payment of such further sums as the then record Owner of said property hereafter may borrow from Beneficiary, when evidenced by another Note (or Notes) reciting it is so secured
TO PROTECT THE SECURITY OF THIS DEED OF TRUST, TRUSTOR AGREES: By the execution and delivery of this Deed of Trust and the Note secured hereby, that provisions (1) to (14), inclusive, of the fictitious deed of trust recorded in Santa Barbara County and Sonoma County on October 18, 1961, and in all other counties on October 23, 1961, in the book and page of the Official Records in the office of the county recorder of the county where said property is located, noted below and opposite the name of such county, viz:

EXHIBIT A

County	Book	Page	County	Book	Page	County	Book	Page	County	Book	Page	County	Book	Page
Alameda	435	684	Imperial	1091	501	Merced	1547	538	San Benito	271	383	Siskiyou	468	181
Alpine	1	250	Inyo	147	598	Modoc	184	851	San Bernadino	5567	61	Solano	1105	182
Amador	104	348	Kern	3427	60	Mono	52	429	San Francisco	A332	905	Sonoma	1851	689
Butte	1145	1	Kings	792	833	Monterey	2194	538	San Joaquin	2470	311	Stanislaus	1715	456
Calaveras	145	152	Lake	362	39	Napa	639	86	San Luis Obispo	1151	12	Sutter	572	297
Colusa	296	617	Lassen	171	471	Nevada	305	320	San Mateo	4078	420	Tehama	401	289
Contra Costa	3978	47	Los Angeles	T2055	899	Orange	5889	611	Santa Barbara	1878	860	Trinity	93	366
Del Norte	78	414	Madera	810	170	Placer	895	301	Santa Clara	5336	01	Tulare	2294	275
El Dorado	568	456	Marin	1508	339	Plumas	151	5	Santa Cruz	1431	494	Tuolumne	135	47
Fresno	4626	572	Mariposa	77	292	Riverside	3005	523	Shasta	684	528	Ventura	2062	386
Glenn	422	184	Mendocino	579	530	Sacramento	4331	62	Sierra	29	335	Yolo	653	245
Humboldt	657	527				San Diego Series 2 Book 1961, Page 183887						Yuba	334	486

2.

which provisions, identical in all counties, are printed below) hereby are adopted and incorporated herein and made a part hereof as fully as though set forth herein at length; that he will observe and perform said provisions; and that the references to property, obligations, and parties in said provisions shall be construed to refer to the property, obligations, and parties set forth in this Deed of Trust.

In accordance with Section 2924b, Civil Code, request is hereby made that a copy of any Notice of Default and a copy of any Notice of Sale be mailed to Trustor at Trustor's address hereinbefore set forth, or if none shown, to Trustor at property address.

FURTHERMORE, in the event of foreclosure or deed in lieu of foreclosure, any provisions herein or any provisions in any other collateral agreement restricting the use of the Property to low or moderate-income households or otherwise restricting the Trustor's ability to sell the Property shall have no further force or effect. Any person (including successors or assigns thereto) receiving title to the Property through a foreclosure or deed in lieu of foreclosure shall receive title to the Property free and clear from such restrictions.

NOTICE: A COPY OF ANY NOTICE OF DEFAULT AND OF ANY NOTICE OF SALE WILL BE SENT TO THE ADDRESS CONTAINED IN THIS RECORDED REQUEST. IF YOUR ADDRESS CHANGES, A NEW REQUEST MUST BE RECORDED.

Signature of Trustor(s)

_____

Dated: _____ , _____

_____

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

STATE OF California }
}ss.
COUNTY OF _____ }

On ___, before me, _____, Notary Public, personally appeared____, who proved to me 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.

_____ (Seal)
Signature of Notary Public

DocuSign Envelope ID: FA6C0401-9A2E-4AFE-8235-4A3F31941446

EXHIBIT A

DO NOT RECORD

The following is a copy of provisions (1) to (14), inclusive, of the fictitious Deed of Trust, recorded in each county in California, as stated in the foregoing Deed of Trust and incorporated by reference in said Deed of Trust as being a part thereof as if set forth at length therein.

TO PROTECT THE SECURITY OF THIS DEED OF TRUST, TRUSTOR AGREES:

(1) To keep said property in good condition and repair; not to remove or demolish any building thereon; to complete or restore promptly and in good and workmanlike manner any building which may be constructed, damaged or destroyed thereon, and to pay when due all claims for labor performed and materials furnished therefore; to comply with all laws affecting said property or requiring any alterations or improvements to be made thereon; not to commit or permit waste thereof; not to commit, suffer or permit any act upon said property in violation of law; to cultivate, irrigate, fertilize, fumigate, prune and do all other acts which from the character or use of said property may be reasonably necessary, the specific enumerations herein not excluding the general.

(2) To provide, maintain and deliver to Beneficiary fire insurance satisfactory to and with loss payable to Beneficiary. The amount collected under any fire or other insurance policy may be applied by Beneficiary upon indebtedness secured hereby and in such order as Beneficiary may determine, or at option of Beneficiary the entire amount so collected or any part thereof may be released to Trustor. Such application or release shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice.

(3) To appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee; and to pay all costs and expenses, including cost of evidence of title and attorneys' fees in a reasonable sum, in any such action or proceeding in which Beneficiary or Trustee may appear, and in any suit brought by Beneficiary to foreclose this Deed.

(4) To pay: at least ten days before delinquency, all taxes and assessments affecting said property, including assessments on appurtenant water stock; when due, all encumbrances, charges and liens, with interest, on said property or any part thereof, which appear to be prior or superior hereto; all costs, fees and expenses of this Trust. Should Trustor fail to make any payment or to do any act as herein provided, then Beneficiary or Trustee, but without obligation so to do and without notice to or demand upon Trustor and without releasing Trustor from any obligation hereof, may: make or do the same in such manner and to such extent as either may deem necessary to protect the security hereof, Beneficiary or Trustee being authorized to enter upon said property for such purposes; appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee; pay, purchase, contest or compromise any encumbrance, charge or lien which in the judgment of either appears to be prior or superior hereto; and, in exercising any such powers, pay necessary expenses, employ counsel and pay his reasonable fees.

(5) To pay immediately and without demand all sums so expended by Beneficiary or Trustee, with interest from date of expenditure at the rate called for in the note secured hereby, or at the amount allowed by law at date of expenditure, whichever is greater, and to pay for any statement provided for by law in effect at the date hereof regarding the obligation secured hereby any amount demanded by the Beneficiary not to exceed the maximum allowed by law at the time when said statement is demanded.

(6) That any award of damages in connection with any condemnation for public use of or injury to said property or any part thereof is hereby assigned and shall be paid to Beneficiary who may apply or release such moneys received by him in this same manner and with the same effect as above provided for disposition of proceeds of fire or other insurance.

(7) That by accepting payment of any sum secured hereby after its due date, Beneficiary does not waive his right either to require prompt payment when due of all other sums so secured or to declare default for failure so to pay.

(8) That at any time or from time to time, without liability therefore and without notice, upon written request of Beneficiary and presentation of this Deed of Trust and said note for endorsement, and without affecting the personal liability of any person for payment of the indebtedness secured hereby, Trustee may: reconvey any part of said property; consent to the making of any map or plat thereof; join in granting any easement thereon; or join in any extension agreement or any agreement subordinating the lien or charge hereof.

(9) That upon written request of Beneficiary stating that all sums secured hereby have been paid, and upon surrender of this Deed of Trust and said Note to Trustee for cancellation and retention and upon payment of its fees, Trustee shall reconvey, without warranty, the property then held hereunder. The recitals in such reconveyance of any matters or facts shall be conclusive proof of the truthfulness thereof. The Grantee is such reconveyance may be described as "the person or persons legally entitled thereto. Five years after issuance of such full reconveyance, Trustee may destroy said Note and this Deed of Trust (unless directed in such request to retain them.)

(10) That as additional security, Trustor hereby gives to and confers upon Beneficiary the right, power and authority, during the continuance of these Trusts, to collect the rents, issues and profits of said property, reserving unto Trustor the right, prior to any default by Trustor in payment of any indebtedness secured hereby or in performance of any agreement hereunder, to collect and retain such rents, issues and profits as they become due and payable. Upon any such default, Beneficiary may at any time without notice, either in person, by agent, or by a receiver to be appointed by a court, and without regard to the adequacy of any security for the indebtedness hereby secured, enter upon and take possession of said property or any part thereof, in his own name sue for or otherwise collect such rents, issues and profits, including those past due and unpaid, and apply the same, less costs and expenses of operation and collection, including reasonable attorneys' fees, upon any indebtedness secured hereby, and in such order as Beneficiary may determine. The entering upon and taking possession of said property, the collection of such rents, issues and profits and the application thereof as aforesaid, shall not cure or waive any default or notice of default hereunder or invalidate any act pursuant to such notice.

(11) That upon default by Trustor in payment of any indebtedness secured hereby or in performance of any agreement hereunder, Beneficiary may declare all sums secured hereby immediately due and payable by delivery to Trustee of written declaration of default and demand for sale and of written notice of default and of election to cause to be sold said property, which notice Trustee shall cause to be filed for record. Beneficiary also shall deposit with Trustee this Deed of Trust, said Note(s) and all documents evidencing expenditures secured hereby.

After the lapse of such time as may then be required by law following the recordation of said notice of default, and notice of sale having been given as then required by law, Trustee, without demand on Trustor, shall sell said property at the time and place fixed by it in said notice of sale, either as a whole or in separate parcels, and in such order as it may determine, at public auction to the highest bidder for cash in lawful money of the United States, payable at time of sale. Trustee may postpone sale of all or any portion of said property by public announcement at such time and place of sale, and from time to time thereafter may postpone such sale by public announcement at the time fixed by the preceding postponement. Trustee shall deliver to such purchaser its deed conveying the property so sold, but without any covenant or warranty, express or implied. The recitals in such deed of matters or facts shall be conclusive proof of the truthfulness thereof. Any person, including Trustor, Trustee, or Beneficiary as hereinafter defined, may purchase at such sale.

After deducting all costs, fees and expenses of Trustee and of this Trust, including cost of evidence of title in connection with sale, Trustee shall apply the proceeds of sale to payment of: all sums expended under the terms hereof, not then repaid, with accrued interest at the amount allowed by law in effect at the date hereof; all other sums then secured hereby; and the remainder, if any, to the persons or persons legally entitled thereto.

(12) Beneficiary, or any successor in ownership of any indebtedness secured hereby may, from time to time, by instrument in writing, substitute a successor or successors to any Trustee named herein or acting hereunder, which instrument, executed by the Beneficiary and duly acknowledged and recorded in the office of the recorder of the county or counties where said property is situated, shall be conclusive proof of proper substitution of such successor Trustee or Trustees, who shall, without conveyance from the Trustee predecessor, succeed to all its title, estate, rights, powers and duties, must contain the name of the original Trustor, Trustee and Beneficiary hereunder, the book and page where this Deed of Trust is recorded and the name and address of the new Trustee.

(13) That this Deed of Trust applies to, insures to the benefit of, and binds all parties hereto, their heirs, legatees, devisees, administrators, executors, successors and assigns. The term Beneficiary shall mean the owner and holder, including pledgees, of the Note secured hereby, whether or not named as Beneficiary herein. In this Deed of Trust, whenever the context so required, the masculine gender includes the feminine and/or neuter, and the singular number includes the plural.

(14) That Trustee accepts this Trust when this Deed of Trust, duly executed and acknowledged, is made a public record as provided by law. Trustee is not obligated to notify any party hereto of pending sale under any other Deed of Trust or of any action or proceeding in which Trustor, Beneficiary or Trustee shall be party unless brought by Trustee.

APN: File No.

DocuSign Envelope ID: FA6C0401-9A2E-4AFE-8235-4A3F31941446

EXHIBIT A

----------DO NOT RECORD----------

REQUEST FOR FULL RECONVEYANCE

To be used only when note has been paid.

To: _____, a California Corporation, **Trustee** Dated: _____

The undersigned is the legal owner and holder of all indebtedness secured by the within Deed of Trust. All sums secured by said Deed of Trust have been fully paid and satisfied; and you are hereby requested and directed, on payment to you of any sums owing to you under the terms of said Deed of Trust, to cancel all evidences of indebtedness, secured by said Deed of Trust, delivered to you herewith together with said Deed of Trust, to reconvey, without warranty, to the parties designated by the terms of said Deed of Trust, the estate now held by you under the same.

Mail Reconveyance to: _____

_____

_____

_____

_____ By _____

_____ By _____

Do not lose or destroy this Deed of Trust OR THE NOTE which it secures.
Both must be delivered to the Trustee for cancellation before reconveyance will be made.

Short Form
DEED OF TRUST
WITH POWER OF SALE
INDIVIDUAL

_____ **TITLE COMPANY, A CALIFORNIA CORPORATION**

APN: File No.

DocuSign Envelope ID: FA6C0401-9A2E-4AFE-8235-4A3F31941446

EXHIBIT A

The land referred to is situated in the County of Alameda, City of Livermore, State of California, and is described as follows:

[TITLE COMPANY TO ATTACH]

APN: File No.

DocuSign Envelope ID: FA6C0401-9A2E-4AFE-8235-4A3F31941446

EXHIBIT H

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

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

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

Space above this line for Recorder's use.

AFFORDABLE HOUSING REGULATORY AGREEMENT

AND

DECLARATION OF RESTRICTIVE COVENANTS

by and between

THE CITY OF LIVERMORE

and

[NAME OF PROJECT OWNER L.P. TO BE INSERTED]

_____, 2022

DocuSign Envelope ID: FA6C0401-9A2E-4AFE-8235-4A3F31941446

This Affordable Housing Regulatory Agreement and Declaration of Restrictive Covenants (this "**Agreement**") is entered into effective as of _____, 2022 ("**Effective Date**") by and between the City of Livermore, a municipal corporation ("**City**") and [NAME OF PROJECT OWNER L.P. TO BE INSERTED], a California [ENTITY TYPE] ("**Owner**"). The City and the Owner are collectively referred to herein as the "**Parties**."

RECITALS

A. Owner owns the real property located in the City of Livermore, Alameda County, California, at _____, known as Alameda County Assessor Parcel Nos. _____, and more particularly described in **Exhibit A** attached hereto (the "**Property**").

B. On ____, the City entered into an Amended and Restated Disposition, Development and Loan ("**DDLA**"), whereby City describes the terms for development and conveyance of the Property and provides for a predevelopment loan in the amount of $500,000 (the "**Predevelopment Loan"**) which is secured by a Predevelopment Promissory Note and Deed of Trust. Pursuant to the DDLA, Owner will develop, own, and operate an affordable housing development consisting of one hundred thirty (130) units of affordable workforce housing for families (the "**Project**").

C. Pursuant to the DDLA, the City has also agreed to provide a loan to Owner in the amount of $7,800,000 (the "**Site Acquisition Loan**") to assist in financing acquisition of the Property which is secured by a Seller Take Back Acquisition Promissory Note to evidence Owner's obligation to repay the Loan, and a Seller Take Back Acquisition Deed of Trust to be executed by Owner for the benefit of City and recorded substantially concurrently herewith. As a condition precedent to the funding of the Site Acquisition Loan, City requires the Project to be subject to the terms, conditions and restrictions set forth herein.

Capitalized terms used without definition herein shall have the meaning ascribed to such terms in the DDLA.

D. The DDLA provides that the Restricted Units to be developed on the Property will be required to be available to Eligible Households at Affordable Rents in accordance with this Agreement for a period of not less than the term of fifty-five (55) years.

E. The City recognizes there is a shortage of affordable housing and, in particular, and, in particular, lower and middle-income households face barriers which inhibit equal access to housing. Therefore, reserving affordable units for persons working in the community which allow them to live locally is needed to offer equal access to housing.

G. The purpose of this Agreement is to satisfy the affordability requirements of the City's affordable housing program and to regulate and restrict the occupancy and rents of the Project's Restricted Units for the benefit of the Project occupants and set forth the use and maintenance of the community buildings. The Parties intend the covenants set forth in this Agreement to run with the land and to be binding upon Owner and Owner's successors and assigns for the full term of this Agreement.

DocuSign Envelope ID: FA6C0401-9A2E-4AFE-8235-4A3F31941446

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

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

"**Actual Household Size**" means the actual number of persons in the applicable household.

"**Adjusted for Family Size Appropriate for the Unit**" shall be determined consistent with Section 50052.5(h) of the California Health and Safety Code, subject to the application of federal rules and regulations applicable to Project financing sources, including Section 42(g)(2) of the Internal Revenue Code of 1986 as amended (or successor provision).

"**Affordable Rent**" means for units that are restricted for rental to households with incomes of not more than one hundred ten percent (110%) of AMI, a monthly rent that does not exceed one-twelfth of thirty percent (30%) of one hundred ten percent (110%) of Area Median Income, Adjusted for Family Size Appropriate for the Unit, less a utility allowance and other fees and charges required to be paid by tenants of the Project on a non-optional basis which have been approved by the City.

"**Area Median Income**" **or** "**AMI**" means the median income for Alameda County, California, adjusted for Actual Household Size, as determined pursuant to California Tax Credit Allocation (**"TCAC"**) regulations.

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

"City Documents" means collectively, this Agreement, the DDLA, the City Notes, the City Deeds of Trust.

"**Claims**" is defined in Section 2.10.

"City Amended and Restated **Disposition, Development and Loan Agreement**" is defined in recital B-D.

"City **Pre-Development Deed of Trust"** is defined in Recital B.

"City **Pre-Development Note**" is defined in Recital B.

"Seller Take Back **Acquisition Deed of Trust**" is defined in Recital C.

"Site Acquisition Loan" is defined in Recital C.

"Seller Take Back Acquisition Note" is defined in Recital C.

"**City Deeds of Trust**" is defined as that City Predevelopment Deed of Trust and City Acquisition Deed of Trust.

DocuSign Envelope ID: FA6C0401-9A2E-4AFE-8235-4A3F31941446

"City Notes" is defined as the City Predevelopment Note and Seller Take Back Acquisition Note.

"**Eligible Household**" means a household for which gross household income upon initial occupancy does not exceed the maximum income level for a Restricted Unit as specified in Section 2.3.

"**Indemnitees"** is defined in Section 2.10.

"**Marketing and Tenant Selection Plan"** is defined in Section 6.5.

"**Rent**" means the total of monthly payments by the Tenant of a Unit for the following: use and occupancy of the Unit and land and associated facilities, including parking; any separately charged fees or service charges assessed by Owner that are customarily charged in rental housing and required of all Tenants, other than security deposits; an allowance for the cost of an adequate level of service for utilities paid by the Tenant, including garbage collection, sewer, water, electricity, gas and other heating, cooking and refrigeration fuel, but not telephone service or cable TV; and any other interest, taxes, fees or charges for use of the land or associated facilities and assessed by a public or private entity other than Owner, and paid by the Tenant.

"**Rent Restricted"** means limited to an Affordable Rent.

"Residential Project" means an affordable housing development on the Property consisting of 130 apartments (including up to 2 unrestricted manager's units) as described in Recital B.

"**Restricted Unit**" means a dwelling unit that is restricted by the City pursuant to this Agreement pursuant to 2.3.

"**Project**" is defined in Recital B.

"**Tenant**" means a household legally occupying a Unit pursuant to a valid lease with Owner.

"**Unit**" means one of the one hundred thirty (130) units in the Project, including the manager's unit(s).

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

A Legal Description of Property

B Insurance Requirements

C Form of Annual Report

2. Use and Affordability Restrictions. Owner hereby covenants and agrees, for itself and its successors and assigns, that pursuant to this Agreement the Residential Project shall be used solely

DocuSign Envelope ID: FA6C0401-9A2E-4AFE-8235-4A3F31941446

for the operation of a multifamily rental housing development of which sixty-three (63), which is no more than 49% of the total units, shall be Restricted Units. The Restricted Units shall consist of ___ studios, ___ 1-bedroom units, and ___ 2-bedroom units. Owner represents and warrants that it has not entered into any agreement that would restrict or compromise its ability to comply with the occupancy and affordability restrictions set forth in this Agreement, and Owner covenants that it shall not enter into any agreement that is inconsistent with such restrictions without the express written consent of City.

2.1 Intentionally Omitted.

2.2 Intentionally Omitted.

2.3 Affordability and Occupancy Requirements. Throughout the term of this Agreement (as defined in Section 4.1 below) Owner agrees that: (i) not less than Sixty Three (63) of the residential units shall be both Rent Restricted and occupied (or if vacant, available for occupancy) by Eligible Households whose gross household income is no greater than one hundred ten percent (110%) of AMI; and, (ii) all other units, except for two (2) of the residential units in the Project which shall be manager's units for which rent will not be restricted, will be restricted by the TCAC restrictive covenant to be recorded when the units are placed-in-service by TCAC's definition ("TCAC Units"). For the purpose of determining whether a household is an Eligible Household, gross household income shall be determined in accordance with TCAC regulations and federal regulations applicable to low-income housing tax credits. The Restricted Units shall generally reflect the unit bedroom mix of all of the units in the Project. Maximum unit occupancy standards shall be established according to TCAC regulations or in the absence of such regulations shall be two persons per bedroom plus one additional person. To the extent permitted by law and consistent with the program regulations for funding sources used for development of the Project, Owner shall give a preference in the rental of the residential units in the Project to Eligible Households who are Livermore Valley Joint Unified School District school teachers, employees working for businesses in the Livermore Downtown, first responders employed in Livermore (including emergency medical personnel), professional artists working in Livermore, and then to all other persons who live or work in Livermore. Notwithstanding the foregoing, in the event of a conflict between this provision and the provisions of Section 42 or Section 142 of the Internal Revenue Code of 1986, as amended, the provisions of such Section 42 or Section 142, as applicable, shall control. Owner shall develop marketing policies or other rental policies and procedures approved by the City, as may be amended from time to time, to ensure that residents and people who live or work in Livermore who qualify for the Project are provided adequate notice and opportunity to rent units in the Project.

(a) In the event that recertification of tenant incomes indicates that the number of Restricted Units actually occupied by Eligible Households falls below the number reserved for each income group as specified in this Section 2.3, Owner shall rectify the condition by renting the next available dwelling unit(s) in the Project to Eligible Household(s) until the required income mix is achieved. A dwelling unit shall qualify as "Rent Restricted" if the gross rent charged for such unit does not exceed the Affordable Rent for the applicable household income category as set forth in Section 2.3.

DocuSign Envelope ID: FA6C0401-9A2E-4AFE-8235-4A3F31941446

(b) Notwithstanding anything to the contrary contained in this Agreement, if other Project lenders, Project investors, or regulatory agencies restrict a greater number of units than restricted by this Agreement or require stricter household income eligibility or affordability requirements than those imposed hereby, the requirements of such other lenders, investors or regulatory agencies shall prevail, including without limitation, the rent and occupancy requirements imposed in connection with the use of project based vouchers or other rent subsidies.

2.4 Rents for Restricted Units. For all Restricted Units rents shall be limited to Affordable Rents for households of the applicable income limit and presumed household size in accordance with Section 2.3. A household which at initial occupancy qualifies in a particular income category shall be treated as continuing to be of such income category so long as the household's gross income does not exceed one hundred forty percent (140%) of the applicable income limit.

(a) For the purpose of determining whether a household is an Eligible Household , gross household income shall be determined in accordance with TCAC regulations and federal regulations applicable to low-income housing tax credits. In the event that TCAC no longer publishes the income and rent information that this Agreement contemplates that TCAC will publish, respectively, the City shall provide Owner with other income and rent determinations which are reasonably similar with respect to methods of calculation to those previously published by TCAC, as applicable.

(b) Subject to Section 2.3, if, upon recertification of the income of a tenant of a Restricted Unit, Owner determines that a Tenant of a Restricted Unit has an income exceeding the maximum qualifying income, such Tenant shall be permitted to continue occupying the Restricted Unit and upon sixty (60) days written notice, the Rent may be increased to one-twelfth (1/12th) of thirty percent (30%) of the actual adjusted income of the Tenant or the current fair market rent for that unit, whichever is less, and Owner shall rent the next available Unit of the appropriate size to an Eligible Household at a Rent not exceeding the maximum Rent specified in this Section, or designate another Unit in the Residential Project with a as a Restricted Unit, at a Rent not exceeding the maximum Rent specified in this Section.

(c) Initial Rents are subject to City approval. Rents may not be increased more often than once every twelve (12) months and by no more than five percent (5%) per year, except as otherwise provided in Sections 2.4(a), 2.5(b) or 2.6(c). Owner shall provide each Tenant with at least sixty (60) days written notice of any increase in Rent applicable to such Tenant. Owner shall comply with California rent control laws and tenant notification to the extent applicable. If there are any overlaps between this Agreement and the law, the more restrictive limits and noticing requirements shall govern.

2.5 Loss of Subsidy. It is anticipated that certain Units in the Development (the "Subsidy Units") will receive Project-Based Section 8 or other rental subsidies (the "Rental Subsidy") throughout the Term, as reflected in the Financing Plan for the Project. If any change in federal law occurs, or any action (or inaction) by Congress or any federal or state agency occurs, which results in a material reduction, termination or nonrenewal of the Rental Subsidy through no fault

DocuSign Envelope ID: FA6C0401-9A2E-4AFE-8235-4A3F31941446

of the Owner, such that the Rental Subsidy shown on the Finance Plan for the Development approved by the City is no longer available, Owner shall, in anticipation of such loss in Rental Subsidy, use good faith efforts for a period of ninety (90) days, to identify and obtain alternative sources of rental subsidies and shall provide the City progress reports on Owner's efforts to identify and obtain alternative sources of rental subsidies. If at the end of such ninety (90) day period Owner is unable to secure an alternate source of rental subsidy, notwithstanding Section 2.4, Owner may increase the rent on one or more of the City Restricted Units that overlap with a Subsidy Unit, up to sixty percent (60%) of AMI ("TCAC Maximum Rent Limit"), subject to the following requirements:

(a) Any such rent increase must be pursuant to a transition plan approved by the City showing how the rent increase will be implemented, and which Restricted Units will be subject to the increase, and, if applicable, be consistent with remedial measures set forth in California Code of Regulations Title 4, Division 17, Chapter 1, Section 10337(a)(3) or successor regulation applicable to California's Federal and State Low Income Housing Tax Credit Program;

(b) At the time Owner requests an increase in the Restricted Unit rent, Owner shall provide the City with a copy of the proposed Annual Operating Budget showing the impact of the loss or reduction of the Rental Subsidy;

(c) Any subsequent rent increases remain subject to Section 2.4 above; and,

(d) The number of Restricted Units subject to the rent increase and the level of rent increase may not be greater than the amount required to ensure that the Residential Project generates sufficient income to cover its operating costs and debt service as shown on the Annual Operating Budget, and as is necessary to maintain the financial stability of the Development.

(e) Upon receipt of any alternative rental subsidies, Owner shall reduce the rents on the Restricted Units back to the Affordable Rent, to the extent that the alternative rental subsidies provide sufficient income to cover the operating costs and debt service of the Development as shown on the Annual Operating Budget.

2.6 Rent Increases on Foreclosure.

Notwithstanding this Section 2.6, in the event that a senior lender foreclosures on the Project (or receives a deed in lieu of foreclosure), the Rents on one or more of the Restricted Units may be increased up to the TCAC Maximum Rent Limit to maintain the financial feasibility of the Project, subject to the following requirements:

(a) Any such rent increase must be pursuant to a transition plan approved by the City showing: (i) how the rent increase will be phased-in; (ii) which Restricted Units will be subject to the increase; and (iii) the operating income and expenses for the Residential Project comparing the current rent structure to the proposed rent structure;

DocuSign Envelope ID: FA6C0401-9A2E-4AFE-8235-4A3F31941446

(b) The number of Restricted Units subject to the rent increase and the level of rent increase may not be greater than the amount required to ensure that the Residential Project generates sufficient income to cover its operating costs and debt service, and as is necessary to maintain the financial stability of the Development; and

(c) The rent increase may occur only at the time of renewal of the term of the lease of an existing Tenant or the time of leasing a Restricted Unit to a new tenant. Any subsequent rent increases remain subject to Section 2.4 above.

2.7 Manager's Unit. Two (2) dwelling units in the Residential Project may be used as resident manager's units, and shall be exempt from the occupancy and rent restrictions set forth in this Agreement.

2.8 No Condominium Conversion. Owner shall not convert the Residential Project to condominium or cooperative ownership or sell condominium or cooperative rights to the Residential Project or any part thereof during the term of this Agreement.

2.9 Nondiscrimination; Compliance with Fair Housing Laws.

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

2.9.2 Non-Discrimination. Owner shall not restrict the rental, sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Property, or any portion thereof, on the basis of race, color, religion, creed, sex, sexual orientation, disability, marital status, ancestry, or national origin of any person. Owner covenants for itself and all persons claiming under or through it, and this Agreement is made and accepted upon and subject to the condition that there shall be no discrimination against or segregation of any person or group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Property or part thereof, nor shall Owner or any person claiming under or through Owner establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees in, of, or for the Property or part thereof. Owner shall include such provision in all deeds, leases, contracts and other instruments executed by Owner, and shall enforce the same diligently and in good faith.

All deeds, leases, and contracts pertaining to management of the Residential Project, made or entered into by Owner, its successors or assigns, as to any portion of the Property or the Improvements shall contain the following language:

(a) (1) In Deeds, the following language shall appear:

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

(b) (1) In Leases, the following language shall appear:

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

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

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

2.10 Relocation. Notwithstanding eviction, persons residing on the Property shall not be displaced before suitable replacement housing is available. Owner shall ensure that all occupants of the Property receive all notices, benefits and assistance to which they are entitled. All costs incurred in connection with the temporary and/or permanent displacement and/or

DocuSign Envelope ID: FA6C0401-9A2E-4AFE-8235-4A3F31941446

relocation of occupants of the Property, including without limitation payments to a relocation consultant, moving expenses, and payments for temporary and permanent relocation benefits pursuant to any applicable relocation laws shall be paid by Owner, and City shall have no responsibility for payment therefor. Owner shall be liable for any and all claims for applicable relocation benefits sought by any current, former or future tenant of the Residential Project.

To the greatest extent permitted by law, Owner shall indemnify, defend (with counsel approved by City) and hold the City and its elected and appointed officers, officials, employees, agents, consultants, contractors and representatives (collectively, the "**Indemnitees**") harmless from and against all liability, loss, cost, expense (including without limitation attorneys' fees and costs of litigation), claim, demand, action, suit, judicial or administrative proceeding, penalty, deficiency, fine, order, and damage (all of the foregoing collectively "**Claims**") arising from the breach of Owner's obligations set forth in this Section whether or not any insurance policies shall have been determined to be applicable to any such Claims. Owner's indemnification obligations set forth in this Section (i) shall survive the expiration or earlier termination of this Agreement, and (ii) shall not extend to Claims to the extent arising from the gross negligence or willful misconduct of the Indemnitees. City does not and shall not waive any rights against Owner that it may have by reason of any indemnity and hold harmless provision set forth in this Agreement because of the acceptance by City, or the deposit with City by Owner, of any of the insurance policies described in this Agreement.

2.11 Disabled Persons Occupancy.

(a) Owner shall cause the Residential Project to be operated at all times in compliance with all applicable federal, state, and local disabled persons accessibility requirements including, but not limited to the applicable provisions of: (i) the Unruh Act, (ii) the California Fair Employment and Housing Act, (iii) Section 504 of the Rehabilitation Act of 1973, (iv) the United States Fair Housing Act, as amended, (v) the Americans With Disabilities Act of 1990, and (vi) Chapters 11A and 11B of Title 24 of the California Code of Regulations, which relate to disabled persons access (collectively, the "Accessibility Requirements").

(b) Owner shall indemnify, protect, hold harmless and defend (with counsel reasonably satisfactory to the City) the City, and its board members, officers and employees, from all suits, actions, claims, causes of action, costs, demands, judgments and liens arising out of Owner's failure to comply with the Accessibility Requirements. This obligation to indemnify survives termination of this Agreement, repayment of the City Loans and the reconveyance of the Deeds of Trust.

3. Tenant Income Certifications; Reporting Requirements; Access to Information; Inspections.

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

DocuSign Envelope ID: FA6C0401-9A2E-4AFE-8235-4A3F31941446

(a) The identity of each household member;

(b) The total gross household income (as determined pursuant to Section 2.3); and

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

3.2 Annual Report; Inspections. Following completion of construction of the Project, by not later than March 1 of each year during the term of this Agreement, Owner shall submit an annual report ("**Annual Report**") to the City in form satisfactory to City, together with a certification that the Residential Project is in compliance with the requirements of this Agreement. Notwithstanding the Annual report requirements, Owner shall submit to the City an initial lease up report containing the tenant certification and occupancy information described in this section. The Annual Report shall, at a minimum, include the following information for each dwelling unit in the Residential Project: (i) unit number; (ii) number of bedrooms; (iii) current rent and other charges; (iv) dates of any vacancies during the previous year; (v) number of people residing in the unit; (vi) total gross household income of residents; (vii) documentation of source of household income; and (viii) the information required by Section 3.1.

Owner shall include with the Annual Report, an income recertification for each household, documentation verifying tenant eligibility, and such additional information as City may reasonably request from time to time in order to demonstrate compliance with this Agreement. The Annual Report shall conform to the format requested by City; provided however, during such time that the Residential Project is subject to a regulatory agreement restricting occupancy and/or rents pursuant to requirements imposed in connection with the use of state or federal low-income housing tax credits, Owner may satisfy the requirements of this Section that pertain to tenant income certification and rents by providing City with a copy of compliance reports required in connection with such financing.

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

(a) A Residential Project income and expense statement for the reporting period;

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

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

(d) Information on the status of the waiting list for units, including the number of households on the list and the number of persons qualifying for each of the City's selection preference categories on the list; and

DocuSign Envelope ID: FA6C0401-9A2E-4AFE-8235-4A3F31941446

(e) A financial audit of the books and records of the Residential Project prepared in accordance with generally accepted auditing standards by an independent certified public accountant. City may require the audit to be accompanied by a supplemental report prepared in accordance with City's requirements.

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

3.3. Maintenance of Records.

3.3.1 Owner shall maintain all records regarding the construction of the Project for five (5) years after final payment and all other pending matters are closed. Owner shall also maintain tenant leases, income certifications and other matters related to the leasing of the affordable units for a period of five (5) years after the final date of occupancy by the tenant.

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

3.4 Access to Records; Inspections.

3.4.1 Owner shall provide City and its authorized agents and representatives access to any books, documents, papers and records of the Residential Project for the purpose of making audits, examinations, excerpts and transcriptions.

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

4. Term of Agreement.

4.1 Term of Restrictions. This Agreement shall remain in effect until the fifty-fifth (55th) anniversary of the City's issuance of a final certificate of occupancy for the Project.

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

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

DocuSign Envelope ID: FA6C0401-9A2E-4AFE-8235-4A3F31941446

5. Binding Upon Successors; Covenants to Run with the Land. Owner hereby subjects its interest in the Property and the Project to the covenants and restrictions set forth in this Agreement. The City and Owner hereby declare their express intent that the covenants and restrictions set forth herein shall be deemed covenants running with the land and shall be binding upon and inure to the benefit of the heirs, administrators, executors, successors in interest, transferees, and assigns of Owner and City, regardless of any sale, assignment, conveyance or transfer of the Property, the Project or any part thereof or interest therein. Any successor-in-interest to Owner, including without limitation any purchaser, transferee or lessee of the Property or the Project (other than the tenants of the individual dwelling units within the Project) shall be subject to all of the duties and obligations imposed hereby for the full term of this Agreement. Each and every contract, deed, ground lease or other instrument affecting or conveying the Property or the Project or any part thereof, shall conclusively be held to have been executed, delivered and accepted subject to the covenants, restrictions, duties and obligations set forth herein, regardless of whether such covenants, restrictions, duties and obligations are set forth in such contract, deed, ground lease or other instrument. If any such contract, deed, ground lease or other instrument has been executed prior to the date hereof, Owner hereby covenants to obtain and deliver to City an instrument in recordable form signed by the parties to such contract, deed, ground lease or other instrument pursuant to which such parties acknowledge and accept this Agreement and agree to be bound hereby. Owner agrees for itself and for its successors that in the event that a court of competent jurisdiction determines that the covenants herein do not run with the land, such covenants shall be enforced as equitable servitudes against the Property and the Project in favor of City.

6. Property Management; Repair and Maintenance; Marketing.

6.1 Management Responsibilities. Owner shall be responsible for all management functions with respect to the Property and the Residential Project, including without limitation the selection of tenants, certification and recertification of household income and eligibility, evictions, collection of rents and deposits, maintenance, landscaping, routine and extraordinary repairs, replacement of capital items, and security. City shall have no responsibility for management or maintenance of the Property or the Residential Project. Owner shall submit its written management policies with respect to the Residential Project (the "Management Plan") to the City for its review and shall amend such policies in any way reasonably necessary to ensure that such policies comply with the provisions of this Agreement. The Management Plan shall minimally include the following:

(a) A parking management plan which details, among other things, how parking spaces will be allocated, assigned and how parking will be managed to encourage tenants, services providers and guests to use parking in accordance with the plan;

(b) Procedures for maintenance and management of the Residential Project;

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

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

(e) Such other requirements and criteria/procedures as City may determine

DocuSign Envelope ID: FA6C0401-9A2E-4AFE-8235-4A3F31941446

reasonably appropriate to comply with the terms of this Agreement.

6.2 Management Entity and Replacement of Management Agent. City shall have the right to review and approve the qualifications of the management entity proposed by Owner for the Residential Project, and shall have the right to review and approve any agreement executed between Owner and the management entity, which approval shall not be unreasonably withheld. The contracting of management services to a management entity shall not relieve Owner of its primary responsibility for proper performance of management duties. City hereby approves Eden Housing Management, Inc., a California nonprofit public benefit corporation, as the initial management entity for the Residential Project. Any subsequent management entity shall be subject to City review and approval, which shall not be unreasonably withheld or delayed. Upon City determination and delivery of written notice to Owner that Owner has failed to operate the Residential Project in accordance with this Agreement, subject to any applicable cure period and the approval of the Project lenders and equity investors, City may require Owner to contract with a qualified management agent selected by City and approved by the Project lender and equity investor, to operate the Residential Project, or to make such other arrangements as City deems necessary to ensure performance of the required functions. An on-site property management representative is required to reside on the property. If the on-site property management representative is not also the assigned property management staff for the Residential Project, then the representative shall still be available to address resident issues and to serve as the point of contact for City business and the public after regular business hours at the Property.

6.3 Repair, Maintenance and Security. Throughout the term of this Agreement, Owner shall at its own expense, maintain the Property and the Residential Project in good physical condition, in good repair, and in decent, safe, sanitary, habitable and tenantable living conditions in conformity with all applicable state, federal, and local laws, ordinances, codes, and regulations. Without limiting the foregoing, Owner agrees to maintain the Residential Project and the Property (including without limitation, the residential units, common areas, meeting rooms, landscaping, driveways, parking areas and walkways) in a condition free of all waste, nuisance, debris, unmaintained landscaping, graffiti, disrepair, abandoned vehicles/appliances, and illegal activity, and shall take all reasonable steps to prevent the same from occurring on the Property or at the Residential Project. Owner shall prevent and/or rectify any physical deterioration of the Property and the Residential Project and shall make all repairs, renewals and replacements necessary to keep the Property and the improvements located thereon in good condition and repair. Owner shall provide adequate security measures for the Residential Project, including without limitation, the installation of adequate lighting and deadbolt locks.

6.3.1 Additional Requirements. All construction work and professional services for the Residential Project shall be performed by persons or entities licensed or otherwise authorized to perform the applicable work or service in the State of California and shall have a current City of Livermore business license if required under local law. To the extent allowed by state and federal laws, Owner shall limit the installation of satellite dish, antenna and other such equipment to screened locations on the Property as approved by the City. Owner shall diligently work to resolve complaints related to noise, parking, litter or other neighborhood concerns.

6.4 City's Right to Perform Maintenance. In the event that Owner breaches any of the covenants contained in Section 6.3, and such default continues for a period of ten (10) days after

DocuSign Envelope ID: FA6C0401-9A2E-4AFE-8235-4A3F31941446

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

6.5 Marketing and Tenant Selection Plan. Not later than ninety (90) days following commencement of construction work on the Project, Owner shall submit for City review and approval, a plan for marketing and tenant selection for the Property ("**Marketing and Tenant Selection Plan**" or "**Plan**"). The Plan shall address in detail how Owner plans to market the Restricted Units to prospective Eligible Households, in accordance with fair housing laws and this Agreement, Owner's tenant selection criteria, City preferences, and how Owner plans to certify the eligibility of Eligible Households. The Plan shall include the proposed form of application, marketing materials and the form of rental agreement that Owner proposes to enter into with Residential Project tenants. Owner shall abide by the terms of the Marketing and Tenant Selection Plan in marketing and selecting tenants for the Property and the Residential Project, including implementation of the City's workforce selection preferences, and throughout the term of this Agreement, shall submit proposed modifications to City for review and approval.

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

(a) The actions to be taken by Owner to affirmatively market units in compliance with fair housing laws and in compliance with City's policies and procedures, including the policies described in Section 2.9 above;

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

(c) A requirement that eligible tenants be selected based on order of application, selection preference, lottery or other reasonable method approved by City and incorporates a method of prioritizing and establishing a screening order for applications. The preference system shall assign a priority order to Eligible Households for Restricted Units as described in section 2.3.

(d) A requirement that eligible applicants be notified of eligibility and, when possible, be provided an estimate regarding when a unit may be available;

DocuSign Envelope ID: FA6C0401-9A2E-4AFE-8235-4A3F31941446

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

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

(g) Maintenance of a waiting list of eligible applicants, including specific procedures for screening Project Based Section 8 eligible applicants in coordination with the Housing Authority of the City of Livermore;

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

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

(j) A requirement that a written rental agreement (subject to City approval) be executed with each eligible household selected to occupy a unit;

(k) Such other requirements and criteria/procedures as City may determine reasonably appropriate to comply with the terms of this Agreement.

6.6 Residential Lease Provisions. No later than four (4) months prior to the date construction of the Project is projected to be complete, Owner shall submit to the City Owner's proposed form of residential lease agreement for the City's review and approval, which approval shall not be unreasonably withheld or delayed. The form of lease must comply with all requirements of this Agreement, the other Loan Documents and must, among other matters:

(a) Provide for termination of the lease for failure: (i) to provide any information required under this Agreement or reasonably requested by Owner to establish or recertify the Tenant's qualification, or the qualification of the Tenant's household, for occupancy in the Residential Project in accordance with the standards set forth in this Agreement, or (ii) to qualify as a an Eligible household, as applicable, as a result of any material misrepresentation made by such Tenant with respect to the income computation.

(b) Be for an initial term of not less than one (1) year, unless by mutual agreement between the Tenant and Owner, and provide for no increase in Rent during such year. Notwithstanding the above, any Rent increases shall be subject to the requirements of Section 2.4.

(c) Include any provisions necessary to comply with the requirements of the Violence Against Women Reauthorization Act of 2013 (Pub. L. 113–4, 127 Stat. 54) applicable to HUD-funded programs. 5) Any termination of a lease or refusal to renew a lease for a Restricted Unit within the Development must be preceded by not less than sixty (60) days written notice to the Tenant by Owner specifying the grounds for the action. 6) Include a detailed listing of reasonable rules of conduct and occupancy which shall be in writing, shall be consistent with federal and state law, and shall be provided to each tenant

DocuSign Envelope ID: FA6C0401-9A2E-4AFE-8235-4A3F31941446

upon occupancy;

(d) Include a requirement that there be no storage on balconies and patios and that tenants must keep all balconies, patios and other exterior areas neat, clean and clutter free, including no clotheslines or laundry.

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

6.8 Resident Services Plan and Budget.

(a) No later than six (6) months prior to the projected date of the completion of the Project, Owner shall submit to the City a plan for providing supportive services to the Tenants (the "Resident Services Plan") and a budget for providing those services (the "Resident Services Budget") for the initial year of operation of the Residential Project. The Resident Services Plan must identify service provider(s) and staffing levels, and describe the services provided. The Resident Services Plan must include copies of contracts and/or memoranda of understanding for the provision of services by service providers, along with any annual compliance certifications. The Resident Services Budget must state the dollar value of the services, and the funding source(s) for the services (cash or in-kind).

(b) Upon receipt by the City of the proposed Resident Services Plan and Resident Services Budget, the City shall promptly review the same and approve or disapprove it within fifteen (15) days, provided that such approval shall not be unreasonably denied. If the Resident Services Plan and/or Resident Services Budget are not approved by the City, the City shall set forth in writing and notify Owner of the City's reasons for withholding such approval, which may include a request by the City for a change in the nature or scope of resident services or a change in service provider. Owner shall, within fifteen (15) days thereafter, submit a revised Resident Services Plan and/or Resident Services Budget for City approval in accordance with this subsection. If the City does not approve the revised Resident Service Plan, Owner shall be in Default hereunder.

(c) Owner shall thereafter submit to the City annual updates to the Resident Services Plan and Resident Services Budget by October 1st of each year of operation of the Development, identifying any changes made to the previously approved Resident Services Plan and Resident Services Budget. Any revisions to the Resident Services Plan and Resident Services Budget shall be subject to the City's review and approval and the process for timing and review of such revisions shall be subject to the process identified in Section 6.7.

6.9 Fees, Taxes, and Other Levies. Owner shall be responsible for payment of all fees, assessments, taxes, charges, liens and levies applicable to the Property or the Project, including

DocuSign Envelope ID: FA6C0401-9A2E-4AFE-8235-4A3F31941446

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

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

6.11 Property Damage or Destruction. If any part of the Residential Project is damaged or destroyed, Owner shall repair or restore the same, consistent with the occupancy and rent restriction requirements set forth in this Agreement. Such work shall be commenced as soon as reasonably practicable after the damage or loss occurs and shall be completed within one year thereafter or as soon as reasonably practicable, provided that insurance proceeds are available to be applied to such repairs or restoration within such period and the repair or restoration is financially feasible. During such time that lenders or low-income housing tax credit investors providing financing for the Project impose requirements that differ from the requirements of this Section the requirements of such lenders and investors shall prevail.

7. Recordation; Subordination. This Agreement shall be recorded in the Official Records of Alameda County. The City agrees that the City will not withhold consent to reasonable requests for subordination of this Agreement to deeds of trust provided for the benefit of lenders identified in the financing plan submitted to City for the Project, as such plan may be updated with City approval, provided that the instruments effecting such subordination include reasonable protections to the City in the event of default, including without limitation, extended notice and cure rights.

8. Transfer and Encumbrance.

8.1 Restrictions on Transfer and Encumbrance. During the term of this Agreement, except as permitted pursuant to the DDLA or this Agreement, Owner shall not directly or indirectly, voluntarily, involuntarily or by operation of law make or attempt any total or partial sale, transfer, conveyance, assignment or lease (collectively, "**Transfer**") of the whole or any part of the Property, the Project, or the improvements located on the Property, without the prior written consent of the City, which approval shall not be unreasonably withheld. In addition, prior to the expiration of the term of this Agreement, except as expressly permitted by this Agreement or the Loan Agreement, Owner shall not undergo any significant change of ownership without the prior written approval of City. For purposes of this Agreement, a "significant change of ownership" shall mean a transfer of the beneficial interest of more than twenty-five percent (25%) in aggregate of the present ownership and /or control of Owner, taking all transfers into account on a cumulative basis; provided however, neither the admission of an investor limited partner, nor the transfer by the investor limited partner to subsequent limited partners shall be restricted by this provision.

DocuSign Envelope ID: FA6C0401-9A2E-4AFE-8235-4A3F31941446

8.2 Permitted Transfers. Notwithstanding any contrary provision of the City Documents, the prohibitions on Transfer set forth herein shall not be deemed to prevent: (i) the granting of easements or permits to facilitate development of the Property; (ii) the dedication of any property required pursuant to the Loan Agreement; (iii) the lease of individual dwelling units to tenants for occupancy as their principal residence in accordance with this Agreement; (iv) assignments creating security interests for the purpose of financing the acquisition, construction, or permanent financing of the Project or the Property in accordance with the Loan Agreement, or Transfers directly resulting from the foreclosure of, or granting of a deed in lieu of foreclosure of, such a security interest; (v) the admission of limited partners and any transfer of limited partnership interests in accordance with Owner's, or the Approved Partnership's, as applicable, agreement of limited partnership (the "Partnership Agreement"); (vi) the removal of the general partner by the investor limited partner for cause in accordance with the terms of the Partnership Agreement, provided that the replacement general partner is an entity reasonably satisfactory to City or is an affiliate of the investor limited partner that will serve as general partner for an interim period of no more than 180 days; or (vii) the transfer of the managing partner's interest in a limited partnership to a nonprofit entity that is tax-exempt under Section 501(c)(3) of the Internal Revenue Code of 1986 as amended (or to an entity wholly-owned thereby), provided such replacement general partner is reasonably satisfactory to City.

8.3 Requirements for Proposed Transfers. The City may, in the exercise of its sole discretion, consent to a proposed Transfer of this Agreement, the Property, the Improvements or part thereof if all of the following requirements are met (provided however, the requirements of this Section 8.3 shall not apply to Transfers described in clauses (i), (ii), (iii), (iv)(v) and (vii) of Section 8.2, and solely with respect to the removal of the general partner by the investor limited partner for a default under the Partnership Agreement, clause (vi) of Section 8.2, provided that the provisions of this Section 8.3 shall apply to the selection of a replacement general partner in the event of a removal of the general partner in accordance with clause (vi) of Section 8.2.

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

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

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

(d) Except in the case of partnership interest Transfers, the Transfer shall be

DocuSign Envelope ID: FA6C0401-9A2E-4AFE-8235-4A3F31941446

effectuated pursuant to a written instrument satisfactory to the City in form recordable in the Official Records.

(e) Consent to any proposed Transfer may be given by the City's Authorized Representative unless the City's Authorized Representative, in his or her discretion, refers the matter of approval to the City Council. If the City has not rejected a proposed Transfer or requested additional information regarding a proposed Transfer in writing within forty-five (45) days following City's receipt of written request by Owner, the proposed Transfer shall be deemed approved.

8.4 Effect of Transfer without City Consent. In the absence of specific written agreement by the City, no Transfer of the Property or the Project shall be deemed to relieve the Owner or any other party from any obligation under this Agreement. It shall be an Event of Default hereunder entitling City to pursue remedies including without limitation, acceleration of the Loan and/or foreclosure under the Deed of Trust if without the prior written approval of the City, Owner assigns or Transfers this Agreement, the Improvements, or the Property in violation of Section 8. This Section 8.4 shall not apply to Transfers described in clauses (i), (ii), (iii), (iv), (v) and (vii) of Section 8.2., and solely with respect to the removal of the general partner by the investor limited partner for a default under the Partnership Agreement, provided that the provisions of this Section 8.4 shall apply to the selection of a replacement general partner in the event of a removal of the general partner in accordance with clause (v) of Section 8.2.

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

8.6 Encumbrances. Owner agrees to use good faith commercially reasonable efforts to ensure that all deeds of trust or other security instruments and any applicable subordination agreement recorded against the Property, the Project or part thereof in accordance with the DDLA for the benefit of a lender other than City ("**Third-Party Lender**") shall contain each of the following provisions: (i) Third-Party Lender shall use its best efforts to provide to City a copy of any notice of default issued to Owner concurrently with provision of such notice to Owner; (ii) City shall have the reasonable right, but not the obligation, to cure any default by Owner within the same period of time provided to Owner for such cure extended by an additional ninety (90) days; (iii) provided that City has cured any default under Third-Party Lender's deed of trust and other loan documents, City shall have the right to foreclose the Deed of Trust, and take title to the Project without acceleration of Third-Party Lender's debt; and (iv) City shall have the right to transfer the Project without acceleration of Third-Party Lender's debt to a nonprofit corporation or other entity which shall own and operate the Project as an affordable rental housing Project, subject to the prior written consent of the Third-Party Lender. Owner agrees to provide to City a copy of any notice of default Owner receives from any Third-Party Lender within five (5) business days following Owner's receipt thereof.

8.7 Mortgagee Protection. No violation of any provision contained herein shall defeat or render invalid the lien of any mortgage or deed of trust made in good faith and for value upon

DocuSign Envelope ID: FA6C0401-9A2E-4AFE-8235-4A3F31941446

all or any portion of the Project or the Property, and the purchaser at any trustee's sale or foreclosure sale shall not be liable for any violation of any provision hereof occurring prior to the acquisition of title by such purchaser. Such purchaser shall be bound by and subject to this Agreement from and after such trustee's sale or foreclosure sale. Promptly upon determining that a violation of this Agreement has occurred, City shall give written notice to the holders of record of any mortgages or deeds of trust encumbering the Project or the Property that such violation has occurred.

9. Default and Remedies.

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

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

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

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

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

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

(f) Owner's default in the performance of any term, provision or covenant under this Agreement (other than an obligation enumerated in this Section 9.1), and unless such provision specifies a shorter cure period for such default, the continuation of such default for ten (10) days in the event of a monetary default or thirty (30) days in the event of a non-monetary default following the date upon which City shall have given written notice of the default to Owner, or if the nature of any such non-monetary default is such that it cannot be cured within thirty (30) days, Owner's failure to commence to cure the default within thirty (30) days and thereafter prosecute the curing of such default with due diligence and in good faith to completion, provided that Owner's due diligence and good faith shall be determined in the City's reasonable discretion and shall be demonstrated through efforts reported to the City no less frequently than monthly following the notice of default, but in no event longer than 180 days from receipt of the notice of default.

The limited partners of Owner shall have the right to cure any default of Owner hereunder upon the same terms and conditions afforded to Owner; provided however, if the default is of such nature that the limited partners reasonably determine that it is necessary to replace the general

DocuSign Envelope ID: FA6C0401-9A2E-4AFE-8235-4A3F31941446

partner of Developer in order to cure such default, then the cure period shall be extended by an additional sixty (60) days after the removal and replacement of such general partner, provided that the limited partners have promptly commenced and diligently proceeded with all requisite actions to effect such removal and replacement. City shall provide a copy of any notice of default hereunder to the limited partners at the address set forth in Section 11.3 hereof, or to such other address provided to the City in writing, concurrently with the provision of such notice to Owner.

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

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

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

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

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

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

10. Indemnity. To the greatest extent permitted by law, Owner shall indemnify, defend (with counsel approved by City) and hold the Indemnitees harmless from and against all Claims arising directly or indirectly, in whole or in part, as a result of or in connection with Owner's construction, management, or operation of the Property and the Project or any failure to perform any obligation as and when required by this Agreement. Owner's indemnification obligations under this Section 10 shall not extend to Claims to the extent resulting from the gross negligence or willful misconduct of Indemnitees. The provisions of this Section 10 shall survive the expiration or earlier termination of this Agreement. City does not and shall not waive any rights against Owner that it may have by reason of any indemnity and hold harmless provision set forth in this Agreement because of the acceptance by City, or the deposit with City by Owner, of any of the insurance policies described in this Agreement.

10.1 Terms Applicable to Indemnity Provisions. The terms set forth in this Section 10.1 shall apply to all provisions of this Agreement that pertain to Owner's obligations to indemnify

DocuSign Envelope ID: FA6C0401-9A2E-4AFE-8235-4A3F31941446

City and the other Indemnitees, including without limitation, Sections 2.10 and 10. In connection with each such provision, all of the following shall apply:

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

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

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

11. Miscellaneous.

11.1 Amendments. This Agreement may be amended or modified only by a written instrument signed by both Parties.

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

11.3 Notices. Except as otherwise specified herein, all notices to be sent pursuant to this Agreement shall be made in writing, and sent to the Parties at their respective addresses specified below or to such other address as a Party may designate by written notice delivered to the other parties in accordance with this Section. All such notices shall be sent by: (i) personal delivery, in which case notice is effective upon delivery; (ii) certified or registered mail, return receipt

DocuSign Envelope ID: FA6C0401-9A2E-4AFE-8235-4A3F31941446

requested, in which case notice shall be deemed delivered upon receipt if delivery is confirmed by a return receipt; or (iii) nationally recognized overnight courier, with charges prepaid or charged to the sender's account, in which case notice is effective on delivery if delivery is confirmed by the delivery service.

City: City of Livermore
1052 S. Livermore Avenue
Livermore, CA 94550
Attention: City Manager

Owner: Eden Housing, Inc.
22645 Grand Street
Hayward, CA 94541
Attention: VP of Real Estate Development

11.4 Notice of Expiration of Term.

(a) At least six (6) months prior to the expiration of the Term, Owner shall provide by first-class mail, postage prepaid, a notice to all Tenants containing (i) the anticipated date of the expiration of the Term, (ii) any anticipated increase in Rent upon the expiration of the Term, (iii) a statement that a copy of such notice will be sent to the City, and (iv) a statement that a public hearing may be held by the City on the issue and that the Tenant will receive notice of the hearing at least fifteen (15) days in advance of any such hearing. Owner shall also file a copy of the above-described notice with the City Manager.

(b) In addition to the notice required above, Owner shall comply with the requirements set forth in California Government Code Sections 65863.10 and 65863.11. Such notice requirements include: (i) a twelve (12) month notice to existing tenants, prospective tenants and Affected Public Agencies (as defined in California Government Code Section 65863.10(a), which would include the City Manager) prior to the expiration of the Term, (ii) a six (6) month notice requirement to existing tenants, prospective tenants and Affected Public Agencies prior to the expiration of the Term; (iii) a notice of an offer to purchase the Development to "qualified entities" (as defined in California Government Code Section 65863.11(d)), if the Development is to be sold within five (5) years of the end of the Term; (iv) a notice of right of first refusal within the one hundred eighty (180) day period that qualified entities may purchase the Development.

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

11.6 Parties Not Co-Venturers; Independent Contractor; No Agency Relationship. Nothing in this Agreement is intended to or shall establish the Parties as partners, co-venturers, or principal and agent with one another. The relationship of Owner and City shall not be construed as a joint venture, equity venture, partnership or any other relationship. City neither undertakes nor assumes any responsibility or duty to Owner (except as expressly provided in this Agreement)

DocuSign Envelope ID: FA6C0401-9A2E-4AFE-8235-4A3F31941446

or to any third party with respect to the Project. Owner and its employees are not employees of City but rather are, and shall always be considered independent contractors. Furthermore, Owner and its employees shall at no time pretend to be or hold themselves out as employees or agents of City. Except as City may specify in writing, Owner shall not have any authority to act as an agent of City or to bind City to any obligation.

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

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

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

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

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

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

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

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

DocuSign Envelope ID: FA6C0401-9A2E-4AFE-8235-4A3F31941446

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

11.16 Amendment Contemplated by DDLA. Notwithstanding anything to the contrary contained herein, upon the conveyance as contemplated in Section 3.2 of the DDLA, this Agreement shall be modified as further set forth therein.

SIGNATURES ON FOLLOWING PAGE(S).

DocuSign Envelope ID: FA6C0401-9A2E-4AFE-8235-4A3F31941446

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

CITY:

CITY OF LIVERMORE, a California municipal corporation

By:_____

Print Name: _____

Title: City Manager

ATTEST:

By:_____

APPROVED AS TO FORM:

_____
Assistant City Attorney

OWNER:

By: _____

Print Name: _____
Title: _____

SIGNATURES MUST BE NOTARIZED.

EXHIBIT A

ACKNOWLEDGMENT

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

State of California)
) ss
County of _____)

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

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

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

WITNESS my hand and official seal.

_____
(Notary Signature)

EXHIBIT A

ACKNOWLEDGMENT

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

State of California)
) ss
County of _____)

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

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

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

_____
(Notary Signature)

DocuSign Envelope ID: FA6C0401-9A2E-4AFE-8235-4A3F31941446

Exhibit A

LEGAL DESCRIPTION OF THE PROPERTY

(Legal Description Attached)

DocuSign Envelope ID: FA6C0401-9A2E-4AFE-8235-4A3F31941446

Exhibit B

Insurance Requirements

(Insurance Requirements to be attached.)

DocuSign Envelope ID: FA6C0401-9A2E-4AFE-8235-4A3F31941446

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

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

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

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

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

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

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

DocuSign Envelope ID: FA6C0401-9A2E-4AFE-8235-4A3F31941446

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

Verification of Coverage

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

DocuSign Envelope ID: FA6C0401-9A2E-4AFE-8235-4A3F31941446

Exhibit C

Form of Annual Report

(Form of Annual Report Attached)

DocuSign Envelope ID: FA6C0401-9A2E-4AFE-8235-4A3F31941446

Exhibit C to Regulatory Agreement

LIVERMORE

MULTI-FAMILY RENTAL PROJECT ANNUAL REPORT

PROJECT CONTACT INFORMATION

Property Information

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

Owner Information

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

Management Agent Information

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

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

DocuSign Envelope ID: FA6C0401-9A2E-4AFE-8235-4A3F31941446

LIVERMORE

MULTI-FAMILY RENTAL PROJECT ANNUAL REPORT

Property Name & Address	
Person Completing Report	
Date	
Report Period	

Compliance with Required Number of Low Income Units

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

Compliance with Rent Limits

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

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

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

Name of Project Owner or Authorized Agent	Title

DocuSign Envelope ID: FA6C0401-9A2E-4AFE-8235-4A3F31941446

Restricted Unit Occupant Information

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

DocuSign Envelope ID: FA6C0401-9A2E-4AFE-8235-4A3F31941446

LIVERMORE

MULTI-FAMILY RENTAL PROJECT ANNUAL REPORT

PROPERTY CONDITION REPORT

Property Name	
Address	
Name of Person Completing Report	
Reporting Period	

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

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

DocuSign Envelope ID: FA6C0401-9A2E-4AFE-8235-4A3F31941446

EXHIBIT A

INSURANCE REQUIREMENTS
REGULATORY / LOAN AGREEMENTS

Minimum Scope and Limits of Insurance

Owner/Borrower shall maintain limits no less than:

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

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

Deductibles and Self-Insured Retention

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

Acceptability of Insurers

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

Other Insurance Provisions

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

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

DocuSign Envelope ID: FA6C0401-9A2E-4AFE-8235-4A3F31941446

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

Verification of Coverage

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

DocuSign Envelope ID: FA6C0401-9A2E-4AFE-8235-4A3F31941446

CITY OF LIVERMORE COMMUNITY DEVELOPMENT DEPARTMENT

EXHIBIT J

EXHIBIT A

PLANNING APPLICATION FEES

Effective July 1, 2018

A. CEQA	
County Clerk Filing Fee – NOE, NOD, Other	$50.00
Notice of Exemption (NOE) – City Fee	$173.00
Negative Declaration (NOD) – City Fee	$5,796.00
Negative Declaration – Fish & Game §711.4 Fee (if applicable)	$2,280.75
Environmental Impact Report – City Fee *(Required deposit of 20 percent of contract amount)*	T&M
Environmental Impact Report – Setup, RFP, etc. "to establish base fee"	$8,424.00
Environmental Impact Report – Fish & Game §711.4 Fee (if applicable)	$3,168.00
B. Downtown Design Review	
Downtown Minor Design Review – Staff Level *(Fencing, painting, permanent and temporary signs, lighting, landscaping, hardscape, streetscape, etc. Applies to commercial, historic, and residential [duplex & multi-family.])*	No Fee
Downtown Administrative Design Review – Staff Level *(Exterior building modifications, including awnings, windows, doors, trim, and Master Sign Programs. Applies to commercial, historic, and residential.)*	$1,382.00
Downtown Design Review Amendment – Planning Commission, Project Review	$9,091.00
Downtown Design Review – Small Additions *(Additions or modifications between 0-1,500 square feet or 15 percent of existing building area. Applies to commercial, historic, and residential [duplex & multi-family.])*	$4,318.00
Downtown Design Review – Large Additions, Staff Level *(Additions between 1,501-29,999 square feet or over 15 percent of existing building area; commercial, retail or office structures up to 29,999 square feet; residential projects of 39 or less units, etc. Applies to commercial, historic, and residential [duplex & multi-family.])*	$7,484.00
Downtown Design Review – Planning Commission *(Commercial, retail, office structures, and additions of 30,001 square feet or more, residential projects of 40 or more units, etc. Applies to commercial, historic, and residential [duplex & multi-family])*	$10,440.00
C. Legislative Acts	
Annexation/Pre-Zoning	$26,395.00
Out of Area Service Agreement	$21,067.00
Rezoning *(Development Code Amendment or Zoning Map Amendment)*	$10,008.00
Development Agreement – No Policy Change	$15,688.00
Development Agreement – Policy/Ordinance Change	$21,060.00
Development Agreement – Minor Amendment *(Staff Level)*	$8,918.00
General Plan Amendment/Specific Plan Amendment	$17,348.00
Housing Implementation Program	$13,624.00
Housing Implementation Program Amendment	$9,180.00
Planned Development District	$11,601.00
Planned Unit Development *(SLVSP)*	$11,601.00
Planned Unit Development Amendment	$10,478.00
Planned Development District Amendment (via DCA)	$10,478.00
Policy Proposal	T&M
Policy Proposal Amendment	T&M
Municipal Code Amendment	$25,158.00
D. Miscellaneous	
Appeal	$3,597.00
Temporary Sign Registration Fee – Commercial	$57.00
Williamson Act Contract Creation	$7,772.00
Williamson Act Contract Cancellation	$10,333.00
Consistency Determination	$7,762.00
Staff Research Time, per hour – including Zoning Use Verification (ZUV)	$173.00
E. Permits	
Conditional Use Permit (Public Hearing) [1]	$10,674.00

DocuSign Envelope ID: FA6C0401-9A2E-4AFE-8235-4A3F31941446

Conditional Use Permit – Residential and Minor Non-Residential (*Existing building with non-residential General Plan designation of 3,000 square feet or less with no significant traffic, parking, noise, odor, or other environmental considerations).*	$5,181.00
Conditional Use Permit Amendment	$8,304.00
Home Occupation Permit	$90.00
Sign Design Review	$510.00
New or Amended Master Sign Program	$2,055.00
Master Sign Approval	No Fee
Variance – General	$10,819.00
Variance – Developed Residential	$1,573.00
Variance, Minor – General	$4,649.00
Variance, Minor – Developed Residential	$812.00
Reasonable Accommodations (*Livermore Development Code Chapter 9.06)*	$173.00
Temporary Use Permit – Temporary Uses, seasonal *(e.g., Christmas tree lots, rallies, and carnivals)*	$500.00
Temporary Use Permit – Temporary Uses, seasonal (Non-profit organization)	$61.00
Temporary Use Permit – Model Home Complex *(including construction trailer, sales office, and homes)*	$3,150.00
Zoning Use Permit	$432.00
Large Family Day Care	$367.00
Certificate of Appropriateness – Historic Preservation Commission	$500.00
Certificate of Appropriateness – Staff Level	$100.00
Zoning Clearance – Level 1 *(Exterior building modifications, including awnings, windows, doors, and trim)*	$423.00
Zoning Clearance – Level 2 *(New single-family residence or significant remodel [e.g. additions, changes to building form] of existing single-family residence in Transect Zone)*	$658.00
Secondary Dwelling Unit	$600.00
Tree Removal Permit – Commercial *(for Residential Tree Removal see Ordinance)*	$734.00
F. Site Plan Design Review	
Site Plan Design Review – Public Hearing *(Construction of new non-residential development or residential development containing five or more units.)*	$25,727.00
Site Plan Design Review – Staff Level *(Construction of new condominium, duplex, or multi-family residential containing four or less units.)*	$14,514.00
Site Plan Design Review Modification – Major Addition, Planning Commission *(Major additions to non-residential development or additions of five or more units to a residential development.)*	$18,955.00
Site Plan Design Review Modification – Minor Addition, Staff Level *(Minor non-residential additions or additions to a condominium, duplex, or multi-family residence containing four or less units.)*	$9,139.00
Site Plan Design Review Modification – Major Modification, Staff Level *(Major exterior building, landscaping, or parking modifications.)*	$2,446.00
Site Plan Design Review Modification – Minor Modification, Staff Level *(Minor exterior building and landscape modifications such as new awnings, windows, doors, and trim.)*	$903.00
G. Subdivisions	
Open Space Agricultural Easements/Amendments	$7,930.00
Lot Line Adjustment/Certificate of Compliance - Application	$3,215.00
Parcel Map Waiver or Parcel Merger *(Staff Level)*	$5,023.00
Tentative Parcel Map *(Public Hearing)*	$13,935.00
Parcel Map Amendment – Public Hearing	$11,543.00
Parcel Map Amendment – Staff Level Review *(Extension)*	$2,730.00
Tentative Tract Map *(Base fee plus $94 per lot or unit)*	$18,210.00
Tentative Tract Map Amendment – Public Hearing	$12,050.00
Tentative Tract Map Amendment – Staff Level *(Extension)*	$6,636.00
City Wide - Transferrable Development Credits (TDC) Program In-Lieu Fee Ordinance 1979, Development Code Section 4.02.06D	

DocuSign Envelope ID: FA6C0401-9A2E-4AFE-8235-4A3F31941446

1.5 Credits per single-family detached dwelling, in excess of baseline density within a density range of 1-7 du/acre, 1.25 credits per single family detached dwelling in excess of baseline density within a density range of 8-14 du/acre and 1/2 credit per multi-family attached dwelling - Current In-Lieu credit is $16,352.31. TDC Ordinance does not apply to residential projects in Downtown Specific Plan, affordable units covered by an agreement and residential projects that have received housing units through the City's Housing Implementation Program (HIP).
Applications involving multiple processes in Sections C, E, F, or G above can be reduced by 10 percent.
Notes: ➢ *T&M – Applicant shall be charged on a time and materials basis.* ➢ *Projects that do not fit any category or are otherwise extraordinary may be charged on a T&M basis at the Director's discretion.* ➢ *Staff time required on a project, post entitlement, and not part of another formal application (e.g., Final Map, plot plan) will be recovered on a T&M basis at the Director's discretion.* ➢ *The fees calculated above reflect standard processing time. Projects requiring excessive review time will be recovered on a T&M basis.*
(1) For new construction or additions, Conditional Use Permit fee must be combined with applicable Site Plan Design Review fee. Applications involving both Conditional Use Permit and Site Plan Design Review fees can be reduced by 10 percent. (2) All projects with in the Downtown Specfic Plan are subject to both City Wide General Plan & Downtown Specific Plan - cost

DocuSign Envelope ID: FA6C0401-9A2E-4AFE-8235-4A3F31941446

BUILDING PERMITS

TYPE OF FEE	CITY RESOLUTION	AMOUNT OF FEE
Building Permit	Title 15.04.070	FEE VARIES ACCORDING TO BUILDING TYPE, BUILDING USE, AND BUILDING SIZE
Change of Address	Resolution 2008-123	$490

ENCROACHMENT PERMITS

TYPE OF FEE	CITY CODE, RESOLUTION, AND WHEN PAYABLE		AMOUNT OF FEE		
Encroachment Permit	Title 12.08.090 Ord. 345 Title 3.20.010 Reso. 2017-151	With Encroachment Permit Application, or Building Permit (site plans)	Encroachment Permit Simple Plan Check/Processing Encroachment Inspection	 Simple Major	$156.00 $402.00 $649.00
Telecommunication Encroachment Permit	Reso. 2017-151	With Encroachment Permit Application	Encroachment Permit Processing Fee *(All Telecomm permits)* Encroachment Permit Simple Plan Check Simple Inspection (with up to 2 days inspection)		$492.00 $691.00 $156.00
Telecommunication Plan Check Fee	Reso . 2017-151	When first submitted with adjustment upon plan approval	Telecommunication Plan Check Fee: 8.35% 4.22% 3.34%	 Up to $250,000 Project Valuation $250,001 - $1,000,000 $1,000,001 and over	
Encroachment and Telecommunication Inspection (Project Valuation)	Reso 2017-151	With Encroachment Permit Application	Encroachment Inspection Fee: minimum $402 25.42% 9.11% 5.08%	 Up to $5,000 $5,001 - $25,000 $25,001 +	
Encroachment Permit - Traffic Control (Use for simple, major, and Telecomm permits)	Reso 2017-151	With Encroachment Permit Application	Traffic Control = one hour per day or T&M		$337.00
New Technology Encroachment Permit	Reso. 2008-123	With Encroachment Permit Application	$510		

TRANSPORTATION PERMITS

TYPE OF FEE	CITY RESOLUTION	AMOUNT OF FEE
Transportation Permit - Single Trip	Reso 2017-151	$16
Transportation Permit - Annual	Reso 2017-151	$90
Transportation Permit - Repetitive	Reso 2017-151	$90

DocuSign Envelope ID: FA6C0401-9A2E-4AFE-8235-4A3F31941446

CITY OF LIVERMORE COMMUNITY DEVELOPMENT DEPARTMENT

ENGINEERING AND MAP FEES

EXHIBIT A

Effective July 1, 2018

MAP AND PLAN CHECK FEES

TYPE OF FEE	CITY CODE AND RESOLUTION	WHEN PAYABLE	AMOUNT OF FEE		
Tract Map, Parcel Map and Surveys Checking Fees	Title 18.08.050 Title 18.12.020 Reso. 2017-	When map is first submitted	Deposit plus time and materials, (City Staff).	Tract/Parcel Map Parcel Map Waiver Each additional lot over 10	$9,233.00 $5,834.00 $117.00
Improvement Plan Check Fee	Reso . 2017-151	When first submitted with adjustment upon plan approval	Improvement Plan Check Fee: 8.35% 4.22% 3.34%	 Up to $250,000 Project Valuation $250,001 - $1,000,000 $1,000,001 and over	
Inspection for Public Improvements	Title 12.08.090 Ord. 345 Title 3.20.010 Reso. 2017-151	With Final Map approval (Tract Maps)	Public Improvement Inspection Fee: 9.71% 8.95% 6.57%	 Up to $250,000 Project Valuation $250,001 - $1,000,000 $1,000,001 and over	
Certificate of Compliance	Reso. 2008-123	With Application	$760	(Engineering Fee Only, see Planning Application Fee.)	
Abandonment/Vacation	Reso 2017-151	With Application	$12,466.00		
O&M Agreement/ Stormwater Plan check	Reso 2017-151	With Application	*If separate from map plan check*	$9,994.00	
Stormwater Inspection Fee	Reso 2017-151	With Application	*If inspected seperately from tract*	$1,607.00	
Benefit District		With Building Permit or Tract Acceptance	CHECK TO SEE IF AREA IS WITHIN A BENEFIT DISTRICT		
Tax on Construction	Title 3.08.640 Ord. 959 Ord. 1135	With Building Permit	1-3/4% of Estimated Construction Cost or $650 per Residential Unit (Greater Amount)		Ind. Only 1-3/4% of Estimated Construction Cost
Additional Plan Check	Reso. 2017-151	Additional Plan Check after 3 reviews (collected prior to each additional check)	$782.00		
Subdivision Improvement Agreement Amendment/Extension	Reso 2017-151	With Application	$781.00		
Research/Map Creation Fee	Reso. 2008-123	At time of request	Hourly	$140	

FEMA FLOOD PLAIN DETEMINATION / LETTER OF MAP REVISION

TYPE OF FEE	CITY RESOLUTION	AMOUNT OF FEE
Floodplain Determination - Written deterninants on FEMA form	Reso 2017-151	$94.00
FEMA Flood Plain Determination/LOMR	Reso 2017-151	$3,123
FEMA Flood Plain Determination/LOMA	Reso 2017-151	$312

SOUTH LIVERMORE VALLEY SPECIFIC PLAN DEVELOPMENT FEES (1)

TYPE OF FEE	CITY CODE AND RESOLUTION	FEE PER RESIDENTIAL UNIT
Plan preparation fee	Resolution 2003-114	$1,383
Recycled water fee	Resolution 98-175	20% of the current Alameda County Water Connection Fee
Major attraction fee	Resolution 2003-114	$1,267
South Livermore Road Improvement fee	Resolution 2003-114	$11,069

DocuSign Envelope ID: FA6C0401-9A2E-4AFE-8235-4A3F31941446

CITY OF LIVERMORE COMMUNITY DEVELOPMENT DEPARTMENT

DEVELOPMENT IMPACT AND CONNECTION FEES

EXHIBIT A

Effective July 1, 2018

TYPE OF FEE	CITY CODE AND RESOLUTION	WHEN PAYABLE	AMOUNT OF FEE
City Storm Drainage (1)	Title 13.44.020,050,100 Ord. 1923 Reso. 2010-177	With Building Permit	$0.45/SF Impervious Surface
County Storm Drainage Building Zone 7	ACFC & WCD Co. Ord. 0-2010-001 Reso. R-2001-4	With Building Permit	$1.00/SF Impervious Surface
County Storm Drainage Public Improvements e.g. streets, sidewalks, trails, etc.	ACFC & WCD Co. Ord. 0-2010-001 Reso. R-2001-4	With filing of Final Map or approval of Improvement Plans	$1.00/SF Impervious Surface
County Storm Drainage - Capital Improvements	ACFC & WCD Co. Ord. 0-2010-001 Reso. R-2001-4	With award of contract	$1.00/SF Impervious Surface
Sanitary Sewer Connection	Title 13.28.050 Ord. 1740 Reso. 2010-177	With Building Permit	See Attached Exhibit "A"
Park Land Dedication	Title18.32.020 Ord. 1744 Reso. 2004-259	Concurrently with, or before the filing of the first parcel or final map	The City may approve a credit against the Park Facilities Fee for park land dedication made under LMC 18.32.020. The credit may not exceed the value of the dedication requirement. See LMC 12.60.070 for credit details N/A for Non-Residential
Park Facilities Fee	Title 12.60 Ord. 1743 Reso. 2005-152	With Building Permit	See Attached Exhibit "B"
City Water Connection (2)	Title 13.20.020 Ord. 1507 Reso. 2010-177	With Building Permit	5/8" $4,467 3/4" $6,701 1" $11,168 1-1/2" $22,337 2" $35,739 Price per User for Meter Size, FOR LARGER METERS, INQUIRE
Alameda County Water Connection Zone 7	Ord. FC 72-1 as amended by FC-96-1792 and updated 10-20-10	With Building Permit See Zone 7 Attachment	5/8" $28,170 3/4" $42,255 1" $70,425 Price per User for Meter Size, FOR LARGER METERS, INQUIRE
In-Lieu Low Income Housing Fee (Residential) For Sale & Neighborhood Plan Areas	Title 3.26 Reso. 2016-142 Ord. 1988 and 1989	With Building Permit **(Effective 1/12/2018)**	$25.37/SF for all residential housing developments 10 units or less. Projects more than 10 units are subject to must-build requirement of ordinance. Rental exempt from In-Lieu with exception of Neighborhood Plan Areas (Pell & Brisa)
Low Income Housing Impact Fee (Commercial and Industrial)	Title 3.26 Reso. 99-18 Ord. 1549	With Building Permit	**Commercial** / **Unit** / **KSF Fee per Unit** Retail Commercial / KSF / $1,384 Discount/Service Retail / KSF / $1,042 Office Commercial / KSF / $889 Hotels/Motels / Room / $679 **Industrial** Manufacturing / KSF / $427 Warehouse/Storage / KSF / $124 Business/Commercial / KSF / $883 Industrial, High Intensity / KSF / $438 Industrial, Low Intensity / KSF / $277
City Wide General Plan - cost recovery (2)	Resolution 2008-123		$0.39/sf

(1) Subject to adjustment each year per Construction Cost Index

(2) Areas within the California Water Service Area do not pay a City water connection fee. Areas within the Greenville/Vasco Assessment District or within Triad Park do not pay a City water connection fee. The fee for a single family residential unit is the 5/8 inch meter fee.

DocuSign Envelope ID: FA6C0401-9A2E-4AFE-8235-4A3F31941446

CITY OF LIVERMORE COMMUNITY DEVELOPMENT DEPARTMENT

DEVELOPMENT IMPACT AND CONNECTION FEES

EXHIBIT A

Effective July 1, 2018

TYPE OF FEE	CITY CODE AND RESOLUTION	WHEN PAYABLE	AMOUNT OF FEE
Traffic Impact Fee **NOTE:** If special Assessment District exists, special calculations are required	For info regarding the appropriate development categories see Section 12.30 of the City of Livermore Municipal Code Reso 2005-151 Ord. 1742	With Building Permit	See Attached Exhibit "C"
Tri-Valley Transportation Development (TVTD) Fee (1)	Title 12.24.050 Ord. 2012 Reso. 2014-184	With Building Permit	Residential — Fee Per Unit Single family — $4,613.65 Multi-family — $3,178.06 Secondary Dwelling — $1,845.46 Non Residential — Per KSF Retail — $3,410.00 Office — $7,840.00 Industrial — $4,570.00 Other — Average Peak Hour Trip $5,126.36
SCHOOL IMPACT FEES:			
The City of Livermore collects School Mitigation Development Fees (school fees) on behalf of the Livermore Valley Joint Unified School District. The fees must be paid for by cash or a check made out to the City of Livermore. Fees are due upon issuance of a qualifying building permit. *See Attached Exhibit "D"*			
SOCIAL / HUMAN SERVICES FACILITY			
Social/Human Services Facility Fee	Title 12.70 Ord. 1851	With Building Permit	See Attached Exhibit "E"
ART IN PUBLIC PLACES			
Art in Public Places Fee (3)	Ord. 1836 Title 12.51		0.33% of total project valuation

DOWNTOWN SPECIFIC PLAN DEVELOPMENT FEES		
TYPE OF FEE	**CITY RESOLUTION**	**AMOUNT OF FEE**
In-Lieu Payment for Public Open Space	Resolution 2005-041	$50 per square foot of required open space
In-Lieu Parking Fee	Resolution 2017-006	$18,500.00
In-lieu Parking Fee Subsidy - Vacant or underutilized Specific Plan Core Area parcel fronting First Street with a building addition.	Resolution 2017-137 *(Program expires July 24, 2019)*	Reduction in the in-lieu parking fee by 50%, from $18,500 to $9,250 per space, for up to 7 spaces per project.
In-lieu Parking Fee Subsidy - Vacant or underutilized Specific Plan Core Area parcel fronting First Street with a new building.	Resolution 2017-137 *(Program expires July 24, 2019)*	Reduction in the in-lieu parking fee by 50%, from $18,500 to $9,250 per space, for up to 10 parking spaces per project.
Downtown Revitalization Fee	Title 12.32	Residential — Fee Per Unit Dwelling Unit — $5,847 Non Residential (6) — Per SF Retail/Office — $18.02
Downtown Specific Plan - cost recovery	Resolution 2008-123	$0.31/SF

CITY OF LIVERMORE COMMUNITY
DEVELOPMENT DEPARTMENT

EXHIBIT A

EFFECTIVE 07/01/18

EXHIBIT A
Wastewater Connection Fee Schedule
(fees Calculated from base year)

User Classification	Avg Daily Wastewater Flow Factor Gallons Per Day/Unit	Unit[1]	Cost Per GPD	Cost Per Unit
Residential (BOD & SS = 285 mg/L)				
Single-family residential	180	House	$37.03	$6,665.40
Multi-family residential				
Studio	95	Residential Unit	$37.03	$3,517.85
One Bedroom	107	Residential Unit	$37.03	$3,962.21
Two Bedroom	138	Residential Unit	$37.03	$5,110.14
Three Bedroom	157	Residential Unit	$37.03	$5,813.71
Four Bedroom	180	Residential Unit	$37.03	$6,665.40
Commercial (BOD & SS = 285 mg/L unless otherwise shown)				
Auto repair shops/Auto dealers	0.11	Square Foot of Bldg	$37.03	$4.07
Assembly Facilities[2]	0.15	Square Foot of Bldg	$37.03	$5.55
Eating drinking facilities w/o cooking	0.35	Square Foot of Bldg	$37.03	$12.96
Gas Stations	0.47	Square Foot of Bldg	$37.03	$17.40
General Use	0.04	Square Foot of Bldg	$37.03	$1.48
Gyms, Health Clubs	0.30	Square Foot of Bldg	$37.03	$11.11
Hotels, Motels (excluding dining facilities)	0.15	Square Foot of Bldg	$37.03	$5.55
Markets	0.19	Square Foot of Bldg	$37.03	$7.04
Mixed Use[3]	0.10	Square Foot of Bldg	$37.03	$3.70
Medical/Dental Office/ Clinic	0.22	Square Foot of Bldg	$37.03	$8.15
Restaurants (1,000 mg/L BOD, 600 mg/L SS)	0.55	Square Foot of Bldg	$54.56	$30.01
Warehouse/Distribution	0.01	Square Foot of Bldg	$37.03	$0.37
Industrial/Other (Other Wastewater Customers Not Listed Above)				
Calculate Case-by-Case Based on Actual Flows/Strengths and Following Rates				
Connection Fee = (F x "Flow") + (B x "BOD") + (S x "SS")				
F = Flow cost $/gpd $27.70				
B = BOD cost $/lb-day $2,409.69				
S = SS cost $/lb-day $980.90				
discharge				
flow, in				
"BOD" = The				
"SS" = The				

Governing Municipal Code Section: 13.28.050
Index Used: ENR 20- City Construction Cost Index

Indices:	*Base Year* (A)	*Previous Fee Update* (B)	*Current Fee Update* (C)	*% Change Previous Update to Current Update* (D) =(C/B)-1
Index Date	May-10	May-17	May-18	
Index Value	8,761.47	10,692.17	11,068.57	3.52%

Discussion:

The base year unit fees for Flow, BOD, and SS were determined in theMarch 2010 Wastewater, Water, Storm Drain Connection Fee Study for Expansion of Sanitary Sewer, Water Reclamation Plant, and Wastewater Disposal Facilities prepared for the City of Livermore by Craig R. Lawson Utility Management Consultant.

Notes:

1. Building square footage means the square footage sum of the floor area at each floor level included with the surrounding principal outside faces of exterior walls of a building or portions thereof, including mezzanines and lobbies. It does not include floor area devoted to vehicle parking, necessary interior driveways and ramps. The gross floor area of a building or portions thereof that doesn't have surrounding exterior walls shall include the usable area under the horizontal projection of the roof or floor above.

2. Theaters can alternately estimate daily flow based on 2 gallons per seat ($71.54 per seat)

3. Mixed Use applies to parcels with Mixed Use zoning and in the Downtown Core District only.

4. This value is based by formula on BOD

6. Adjustments. The city council may, by resolution, adjust the fee schedule, including the flow factors, from time to time. Once the fee is established, it shall automatically be increased annually based upon the Engineering News Record (ENR) 20- City construction Cost Index. In calculating the adjustment, the rate (in each use category, including the flow, BOD and SS costs) for the base year is multiplied by the index for the then-current year, divided by the base year index.

EXHIBIT A

EFFECTIVE 07/01/18

EXHIBIT B
Park Facilities Fee Schedule

LAND USE	TOTAL FEE
Residential (per dwelling unit)	
Single Family (& 4 bedroom multi-family)	$16,836
Multi-Family 3 bedrooms	$14,649
Multi-Family 2 bedrooms	$12,910
Multi-Family 1 bedroom	$9,990
Multi-Family Studio	$8,925
Senior Housing	$2,864
Non-Residential (per 1,000 sq ft)	
Commercial	$2,134
Office	$3,052
Industrial	$1,419
Warehouse	$1,066

Source - Park Facilities Fee Study (2004) Table 8; MuniFinancial

EXHIBIT C
Traffic Impact Fees Schedule

Land Uses	Units of Use	Fee Rates
Citywide Except Downtown		
Residential		
Single-Family	d.u.	$9,265
Multi-Family		
Studio	d.u.	$4,318
1 Bedroom	d.u.	$4,834
2 Bedroom	d.u.	$6,246
3 or more Bedroom	d.u.	$7,305
Senior Housing	d.u.	$2,843
Commercial	K s.f.	$25,163
Office	K s.f.	$16,108
Industrial	K s.f.	$10,001
Warehouse	K s.f.	$5,053
Hotel/Motel	per/room	$7,264
Downtown Specific Plan		
Multi-Family		
Studio	d.u.	$2,650
1 Bedroom	d.u.	$2,968
2 Bedroom	d.u.	$3,835
3 or more Bedroom	d.u.	$4,485
Commercial	K s.f.	$11,393
Other	Average Peak Hour Trip	$11,579

Exhibit "D"

LIVERMORE VALLEY JOINT UNIFIED SCHOOL DISTRICT
SUMMARY OF SCHOOL MITIGATION PROGRAM

INDUSTRIAL/COMMERCIAL:		$0.61/sq.ft.
RENTAL-SELF STORAGE SPACE:		$0.021/sq.ft.
RESIDENTIAL:		$3.79/sq.ft.
	ADDITIONS-	$3.79/sq.st. (501 sq.ft. or more) Residential additions 500 sq.ft. or less are exempt
HOTEL/MOTEL:		$0.356/sq.ft.

Livermore Valley Joint Unified School District Resolution: 045 - 17/18

* Additions are cumulative over time to a limit of 500 sf before fees are assesed. Once assessed, fees are paid on the entire added square footage.

** The fee owed is based upon the fee amount in effect at the time the fee is paid.

LIVERMORE VALLEY JOINT UNIFIED SCHOOL DISTRICT
685 East Jack London Blvd, Livermore, Ca 94551

FACILITIES PLANNING AND CONSTRUCTION
Jan Shipley, Construction Supervisor (925) 606-3390
Facilities Fax Number (925) 606-3327

EXHIBIT E
Social and Human Service Facility Fee Schedule

Land Uses	Units of Use	Fee Rates
Residential Uses		
Single-Family Detached	d.u.	$1,677
Single-Family Attached	d.u.	$1,415
Multi-Family	d.u.	$1,298
Mobile Home	d.u.	$996
Secondary Unit	d.u.	$996
Non-Residential Uses		
Commercial		
Office	K s.f.	$7
Retail	K s.f.	$5
Service	K s.f.	$5
Industrial		
Manufacturing/R&D	K s.f.	$3
Warehousing	K s.f.	$2
Office	K s.f.	$6
Construction/Repair/Wholesale	K s.f.	$3
Other Non-Residential	K s.f.	$5

DocuSign Envelope ID: FA6C0401-9A2E-4AFE-8235-4A3F31941446

EXHIBIT A

Zone 7 M&I Connection Fee Rate Schedule

Effective Janaury 1, 2018

Meter Size		Recommended Maximum Rate for Continuous Use (gpm)	Connection Fee Amount
5/8" & 1" FS*		10	$28,170
3/4"		15	$42,255
1"		25	$70,425
1 1/2"	(DISPLACEMENT TYPE)	50	$140,850
	Omni C2	160	$450,720
	Omni T2	160	$450,720
2"	(DISPLACEMENT TYPE)	80	$225,360
	Mueller MVR **Pleasanton Only**	115	$323,955
	Omni C2	160	$450,720
	Omni T2	200	$563,400
3" to 10"			**

* When the Fire Department requires fire sprinklers, a 1-inch meter may be obtained at the same rate as a 5/8-inch meter.

** Connection fees for meter sizes 3-inches and above will be determined by using the fee factor for maximum continuous flow rate.

Fees for meters other than those listed above will be determined based upon the maximum continuous flow rating for the brand and type of meter.

These fees are based on the Maximum Continuous Flow Rate through a 5/8" meter as defined by AWWA C700 for Cold-Water Meter -- Displacement Type, Bronze Case.
Any changes to meter capacities will affect the above connection fees.

Currently, the 2-inch Mueller MVR is only available in Pleasanton.

DocuSign Envelope ID: FA6C0401-9A2E-4AFE-8235-4A3F31941446

EXHIBIT A

ALAMEDA COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT, ZONE 7
100 NORTH CANYONS PARKWAY, LIVERMORE, CA 94551-9486 • PHONE (925) 454-5000

WATER CONNECTION FEE INFORMATION SHEET

Effective January 1, 2018

I. GENERAL BACKGROUND

A. The Water Connection Charge Ordinance No. FC 72-1 as amended for Zone 7 was established January 18, 1972. The ordinance is applicable over the Zone 7 area that includes Livermore, Pleasanton, Dublin, Sunol, and surrounding communities. The Ordinance requires a one-time water connection fee for all new water services from a water system that is directly connected to the Zone 7 water supply system. This fee is used for funding the costs of expanding the Zone 7 water treatment and distribution system to serve new development.

B. The amount charged for a water connection is determined by the size of the meter to be installed. The meter sizes and corresponding water connection fees are listed below.

II. PROCEDURES FOR PAYMENT OF WATER CONNECTION FEES IN LIVERMORE, PLEASANTON, & DUBLIN

The water connection fees are collected by the Building Departments of the Cities of Livermore and Pleasanton, and by the Dublin San Ramon Services District, which are agents for Zone 7.

III. WATER CONNECTION FEE SCHEDULE - FEES ARE REVIEWED AND SUBJECT TO PERIODIC MODIFICATION

Meter Size	Fee Factor	Connection Fee
5/8" (DISPLACEMENT TYPE)	1.0	$28,170
3/4" (DISPLACEMENT TYPE)	1.5	$42,255
1" (DISPLACEMENT TYPE)	2.5	$70,425
1½" (DISPLACEMENT TYPE)	5.0	$140,850
1½" (OMNI C2)	16.0	$450,720
1½" (OMNI T2)	16.0	$450,720
2" (DISPLACEMENT TYPE)	8.0	$225,360
2" Mueller MVR	11.5	$323,955
2" (OMNI C2)	16.0	$450,720
2" (OMNI T2)	20.0	$563,400

* Connection fees for meters 3-inch and larger and for meters with fee factors other than those listed above, will be determined by Zone 7, using the fee factor for Maximum Rate for Continuous Operation, as defined by AWWA. These fees are based on the Maximum Continuous Flow Rate through a 5/8" meter and are proportional based on flow ratings for the various sized meters. Flow ratings for displacement type meters are defined by AWWA C700 for Cold-Water Meter -- Displacement Type, Bronze Case. Flow ratings for turbine type meters are defined by AWWA C701 for Cold Water Meters -- Turbine Type, For Customer Service. Any changes to meter capacities will affect the above connection fees.

NOTE: This new fee schedule is effective January 1, 2018

DocuSign Envelope ID: FA6C0401-9A2E-4AFE-8235-4A3F31941446

IV. EXEMPTIONS

No fee will be collected for SEPARATE private fire service connections. See Section VI of the Ordinance (copy available upon request).

V. PARTIAL EXEMPTIONS

A partial exemption sometimes applies for domestic fire sprinkling systems up to 1" meter size. See Section VI of the Ordinance (copy available upon request).

VI. FOR FURTHER INFORMATION

Call Steven Ellis at (925) 454-5037 or e-mail at sellis@zone7water.com.

DocuSign Envelope ID: FA6C0401-9A2E-4AFE-8235-4A3F31941446

EXHIBIT K

RECORDING REQUESTED BY AND WHEN RECORDED MAIL TO:

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

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

Space above this line for Recorder's use.

MEMORANDUM OF AMENDED AND RESTATED DISPOSITION, DEVELOPMENT AND LOAN AGREEMENT

THIS MEMORANDUM OF AMENDED AND RESTATED DISPOSITION, DEVELOPMENT AND LOAN AGREEMENT (the "Memo of DDLA") is made as of _____, 2022, by and between the City of Livermore, a municipal corporation (the "City") and Eden Housing Inc., a California non-profit public benefit corporation ("Developer") to confirm that the City and the Developer are parties to that certain Amended and Restated Disposition, Development and Loan Agreement dated as of May _____, 2022, as may be amended from time to time (the "DDLA"). The DDLA concerns the sale of real property in Livermore, California, which real property is described in the attached Exhibit A and the development of an approximately one hundred thirty (130) unit multi-family housing project. The DDLA 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 DDLA are inconsistent with the terms or provisions of the DDLA, the terms and provisions of the DDLA 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: City Manager

Date: _____

APPROVED AS TO FORM

By: _____
Assistant City Attorney

DocuSign Envelope ID: FA6C0401-9A2E-4AFE-8235-4A3F31941446

DEVELOPER:

Eden Housing,
a California non profit public benefit corporation

By: _____

Name: _____
Title: _____

DocuSign Envelope ID: FA6C0401-9A2E-4AFE-8235-4A3F31941446

EXHIBIT A
Property Description

DocuSign Envelope ID: FA6C0401-9A2E-4AFE-8235-4A3F31941446

EXHIBIT L

EXHIBIT A

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:
Eden Housing
22654 Grand Avenue
Hayward, CA 94541

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 098-0289-22

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
[INSERT NAME OF OWNER, L.P.], a [STATUS] ("Grantee")

the real property in the City of Livermore
County of Alameda, State of California, as described in Exhibit A

FOR LEGAL DESCRIPTION
SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF

Subject to the Notice of Affordability Restrictions on Transfer of Property and Dedication of Covenants and Restrictions executed by the Cit of Livermore, a municipal corporation and Redevelopment Agency of the City of Livermore, a body politic and corporate Recorded on January 12, 2009 as Instrument No. 2009-028632, and modification ececuted by the City of Livermore, Recorded November 19, 2018 as Instrument No. 2018-227103, which shall be considered to be incorporated herein and be a part hereof.

City of Livermore, a municipal corporation

_____
Signature:

_____
Name: Title:

DocuSign Envelope ID: FA6C0401-9A2E-4AFE-8235-4A3F31941446

ACKNOWLEDGMENT

STATE OF CALIFORNIA)
) ss.
COUNTY OF ALAMEDA)

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.

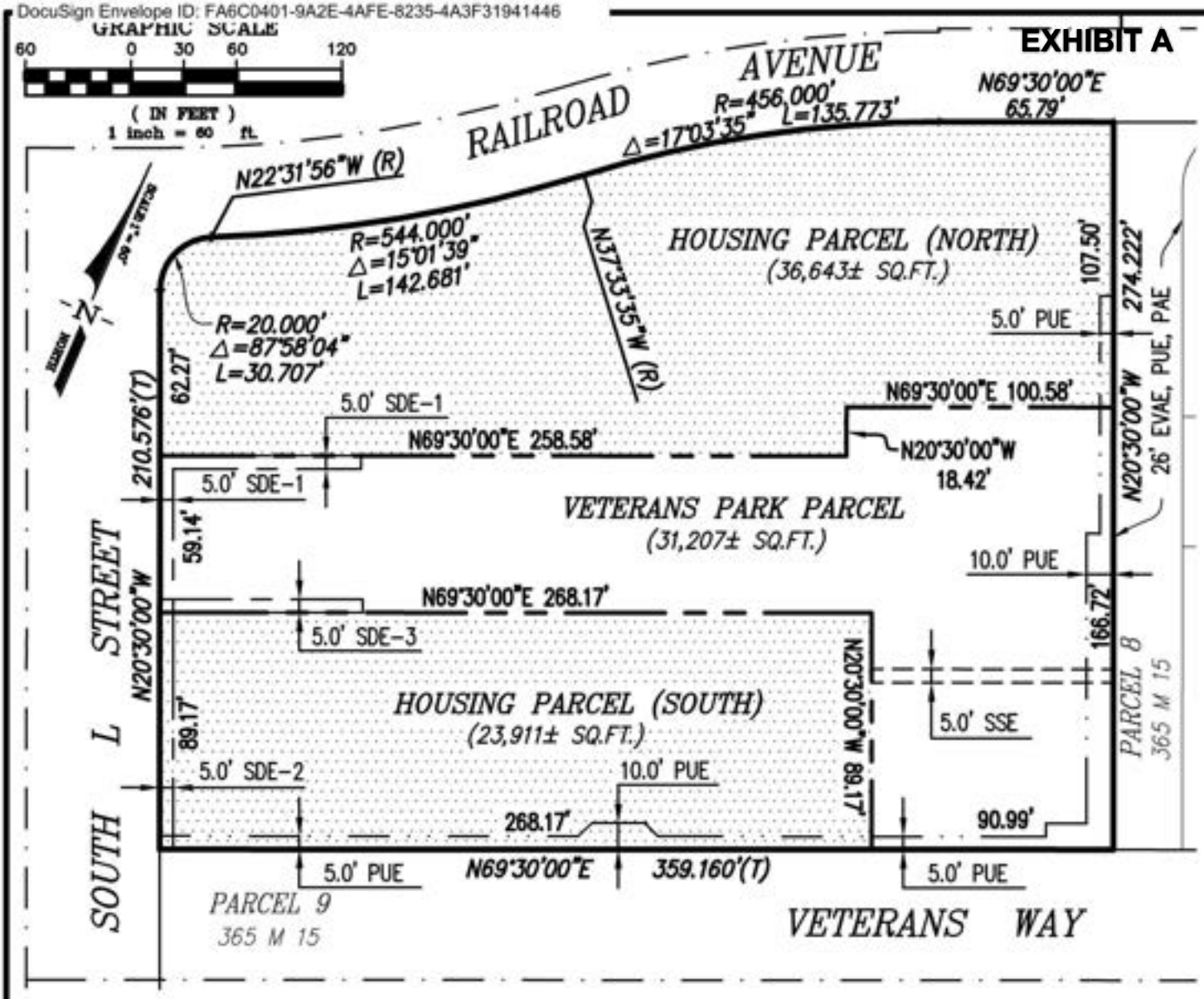
I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature_____ **(Seal)**

DocuSign Envelope ID: FA6C0401-9A2E-4AFE-8235-4A3F31941446

EXHIBIT A



LEGEND

———	BOUNDARY OF SUBJECT PROPERTY
— — —	PROPOSED LOT LINE
———	RIGHT OF WAY LINE
— · — · —	MONUMENT LINE
— — — —	PRIVATE SANITARY SEWER EASEMENT LINE (SSE)
——— - ———	PRIVATE STORM DRAIN EASEMENT (SDE)
——— · · ———	PUBLIC UTILITY EASEMENT (PUE)
———	ADJOINER LOT LINE
(T)	TOTAL
S.F.	SQUARE FEET
±	MORE OR LESS

PROPOSED EASEMENT NOTES

THE FOLLOWING EASEMENTS ARE PROPOSED ON THE SUBJECT PROPERTY:

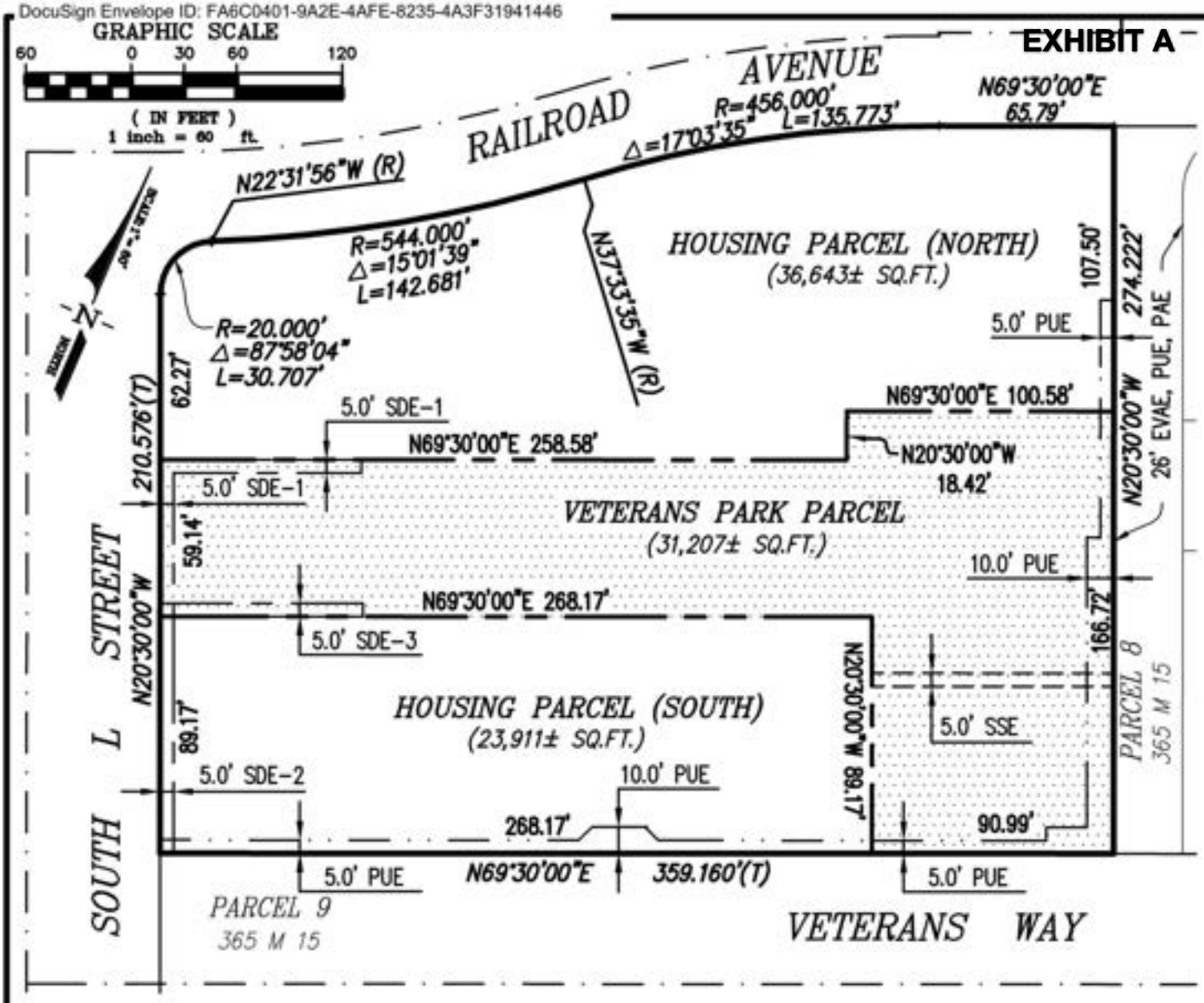
1. 5.0' WIDE PRIVATE SANITARY SEWER EASEMENT (SSE) ACROSS VETERANS PARK PARCEL FOR THE BENEFIT OF HOUSING PARCEL (SOUTH).
2. 5.0' WIDE PRIVATE STORM DRAIN EASEMENT (SDE-1) ACROSS VETERANS PARK PARCEL FOR THE BENEFIT OF HOUSING PARCEL (NORTH).
3. 5.0' WIDE PRIVATE STORM DRAIN EASEMENT (SDE-2) ACROSS HOUSING PARCEL (SOUTH) FOR THE BENEFIT OF HOUSING PARCEL (NORTH) & VETERANS PARK PARCEL.
4. 5.0' WIDE PRIVATE STORM DRAIN EASEMENT (SDE-3) ACROSS VETERANS PARK PARCEL FOR THE BENEFIT OF HOUSING PARCEL (SOUTH).
5. PUBLIC UTILITY EASEMENT OF VARYING WIDTH (BETWEEN 5.0' AND 10.0' WIDE) ALONG THE SOUTH AND EAST PROPERTY LINES, FOR PUBLIC PURPOSES.
6. VETERANS PARK PARCEL SHALL BE DESIGNATED AS A PARK AND OPEN SPACE WITH PUBLIC ACCESS THAT SHALL BE MAINTAINED BY THE CITY.

EXHIBIT M

HOUSING PARCELS

DocuSign Envelope ID: FA6C0401-9A2E-4AFE-8235-4A3F31941446

EXHIBIT A



LEGEND

———	BOUNDARY OF SUBJECT PROPERTY
— — —	PROPOSED LOT LINE
———	RIGHT OF WAY LINE
— · — · —	MONUMENT LINE
— — — —	PRIVATE SANITARY SEWER EASEMENT LINE (SSE)
— - —	PRIVATE STORM DRAIN EASEMENT (SDE)
— · · —	PUBLIC UTILITY EASEMENT (PUE)
———	ADJOINER LOT LINE
(T)	TOTAL
S.F.	SQUARE FEET
±	MORE OR LESS

PROPOSED EASEMENT NOTES

THE FOLLOWING EASEMENTS ARE PROPOSED ON THE SUBJECT PROPERTY:

1. 5.0' WIDE PRIVATE SANITARY SEWER EASEMENT (SSE) ACROSS VETERANS PARK PARCEL FOR THE BENEFIT OF HOUSING PARCEL (SOUTH).
2. 5.0' WIDE PRIVATE STORM DRAIN EASEMENT (SDE-1) ACROSS VETERANS PARK PARCEL FOR THE BENEFIT OF HOUSING PARCEL (NORTH).
3. 5.0' WIDE PRIVATE STORM DRAIN EASEMENT (SDE-2) ACROSS HOUSING PARCEL (SOUTH) FOR THE BENEFIT OF HOUSING PARCEL (NORTH) & VETERANS PARK PARCEL.
4. 5.0' WIDE PRIVATE STORM DRAIN EASEMENT (SDE-3) ACROSS VETERANS PARK PARCEL FOR THE BENEFIT OF HOUSING PARCEL (SOUTH).
5. PUBLIC UTILITY EASEMENT OF VARYING WIDTH (BETWEEN 5.0' AND 10.0' WIDE) ALONG THE SOUTH AND EAST PROPERTY LINES, FOR PUBLIC PURPOSES.
6. VETERANS PARK PARCEL SHALL BE DESIGNATED AS A PARK AND OPEN SPACE WITH PUBLIC ACCESS THAT SHALL BE MAINTAINED BY THE CITY.

EXHIBIT N

PARK PARCEL

DocuSign Envelope ID: FA6C0401-9A2E-4AFE-8235-4A3F31941446

EXHIBIT O

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

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

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

Space above this line for Recorder's use.

TEMPORARY PARKING LEASE AGREEMENT
(Undivided Parcel)

THIS LEASE AGREEMENT ("Lease") dated as of this _____ day of _____, 2022, (the "Effective Date") is made and entered into by and between [NAME OF PROJECT OWNER L.P. TO BE INSERTED], a California [ENTITY TYPE] ("Lessor") and the City of Livermore, a municipal corporation ("City" or "Lessee").

RECITALS

A. On_____, the City and Lessor entered into an Amended and Restated Disposition, Development and Loan Agreement (the "DDLA"), wherein the City agreed to set forth the terms and conditions for the City to sell the Undivided Parcel (more particularly described in Exhibit A) for purposes of developing an affordable housing project consisting of two buildings and 130 units on portions of the property, referred to as the Housing Parcels. The Housing Parcels are more particularly described in Exhibit M to the DDLA and included herein by this reference.

B. Currently, the City is using the Undivided Parcel as a temporary paved surface public parking lot. Upon sale of the Undivided Parcel, Lessor has agreed to lease the Undivided Parcel back to City at the cost of actual third-party expenses incurred by Lessor for the City's continued use as a temporary paved surface public parking lot until the commencement of the Project on the Housing Parcels as further described herein.

C. The Lessor desires to lease the Leased Premises to City and City desires to lease from Lessor the Leased Premises on the terms and conditions contained in this Lease Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual promises contained herein, the parties hereby agree as follows:

1. Leased Premises. Lessor leases to City and City leases from Lessor, the entire Undivided Parcel, also known as the Leased Premises, as indicated on Exhibit A.

DocuSign Envelope ID: FA6C0401-9A2E-4AFE-8235-4A3F31941446

2. **Possession; Delay in Delivery of Possession.**

(a) Except as otherwise provided in this Lease Agreement, City agrees to accept possession of the Leased Premises in its existing "as is" condition, including, but not limited to, all patent and latent defects and subject to all applicable laws, ordinances, and regulations governing and regulating the use of the Leased Premises and any recorded covenants, conditions, restrictions, easements, licenses, or right of ways.

(b) If Lessor, for any reason whatsoever, cannot deliver possession of the Leased Premises to City on or before the Effective Date, this Lease Agreement shall not be void or voidable and no obligation of City shall be affected thereby, and neither Lessor nor Lessor's agents shall be liable to City for any loss or damage resulting therefrom.

3. **Rent; Triple Net Lease.** Lessor agrees to lease the Leased Premises to the City for no rent; provided, however, that this Lease is a triple net lease and the City will be responsible to pay actual costs, charges, taxes, impositions, and other obligations it incurs related to the Leased Premises accruing after the Effective Date for the duration of the Term. If the Lessor pays any such amounts, whether to cure a default or otherwise protect its interests hereunder, the Lessor will be entitled to be reimbursed by City the full amount of such payments as additional rent within thirty (30) days of written demand by the Lessor.

4. **Term.** This Lease Agreement shall commence on the Effective Date and terminate 30 days following written notice from Lessor to City that construction on the Housing Parcels shall begin within 60 days. Upon termination of the Lease, City agrees to execute a termination notice that shall be recorded against the Leased Premises. This Lease Agreement shall supersede and replace any other lease agreement between said parties, or their predecessors in interest, concerning the use of the Leased Premises, or any other space or area of the Housing Parcels.

5. **City's Use of Leased Premises.**

(a) **Use of Leased Premises.** City shall only use the Leased Premises for (i) the purpose of a temporary paved surface public parking lot and (2) for access to the site for the purposes of any environmental testing and monitoring requirements described in the DDLA and the indemnity and cooperation agreement (as described in the DDLA).

(b) **Rules Regarding Use.** City's use of the Leased Premises shall be subject to the following rules:

(i) City shall not allow, authorize, or permit the Leased Premises, or any part thereof, to be used for any use or any illegal activity or purpose in violation of federal or state laws and/or ordinances, regulations and requirements of County, City, or any other enforcement authority.

(ii) City shall not commit, allow, or permit to be used for any offensive or improper use or nuisance, the Leased Premises which may unreasonably or unlawfully disturb or damage the Hotel Parcel or Leased Premises.

(iii) City shall not leave or store any trash, garbage, or refuse of any kind in, on, or about the Leased Premises and shall cause any refuse, trash, or other waste deposited on the Leased Premises by any of its employees, agents, or representatives to be picked up and disposed of in the appropriate manner so as to keep the Leased Premises in a neat and clean condition.

(iv) City shall not use, commit, allow, or permit to be used or committed, any waste upon the Leased Premises.

(c) Hazardous Materials. City shall not cause or permit any Hazardous Materials to be permanently stored, used or disposed of in the Leased Premises, by City's agents, employees, contractors or invitees, without having obtained Lessor's prior, written consent. For purposes of this Lease Agreement, the following terms shall have the meanings set forth below:

"Hazardous Materials" shall mean any toxic or hazardous wastes, pollutants, materials or substances, including, without limitation, asbestos, PCB's, petroleum products, radioactive substances or their by-products, other substances defined or listed as "hazardous substances," "hazardous materials," "hazardous wastes" or "toxic substances in or pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. §§ 9601 et seq. ("CERCLA"); the Hazardous Materials Transportation Act, 49 U.S.C §§ 5101 et seq.; the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901 et seq.; the Toxic Substance Control Act of 1976, 15 U.S.C. §§ 2601 et seq.; any "toxic pollutant" under the Clean Water Act, 33 U.S.C. §§ 1251 et seq.; any hazardous air pollutant under the Clean Air Act, 42 U.S.C. §§ 7401 et seq.; the California Hazardous Substance Account Act, California Health & Safety Code ("HSC") §§ 25300 et seq., the Hazardous Waste Disposal Land Use Act, HSC §§ 25100 et seq.; in or pursuant to or identified as causing cancer or reproductive toxicity in the California Safe Drinking Water & Toxic Enforcement Act of 1986, HSC §§ 25249.5 et seq.; and HSC §§ 25117, 25316; all as such laws may be amended; any hazardous or toxic substance, material, chemical, waste, or pollutant now or hereafter regulated under any other applicable Federal, State, or local environmental laws, without limitation; and any other matter in the nature thereof arising pursuant to the jurisdiction of any public agency.

"Hazardous Discharge" and "Contamination" shall mean the happening of any event involving an emission, spill, release, or discharge ("Release") into or upon (i) the air, (ii) soils or any improvements located thereon, (iii) surface or ground water, (iv) the sewer, septic system, or waste treatment, storage, or disposal system servicing the Leased Premises, of any Hazardous Material, or (v) any other matter in the nature thereof arising pursuant to the jurisdiction of any public agency.

"Environmental Laws" shall mean all applicable Federal, State, and local laws, ordinances, regulations, orders, procedures, policies, and directives of every kind and nature whatsoever pertaining to Hazardous Materials in, at, on, under, or from the Leased Premises or any portion thereof.

6. City Obligations.

DocuSign Envelope ID: FA6C0401-9A2E-4AFE-8235-4A3F31941446

(a) Services and Utilities. City shall pay directly for basic electricity and power for the Leased Premises to support the public parking use.

(b) Maintenance. Except as otherwise provided herein or in the DDLA, City shall at its own cost and expense, maintain the Leased Premises, and every part thereof, in good and sanitary order, condition, and repair during the term of the Lease. City shall be responsible for the cost of any and all repairs or maintenance to the Leased Premises, caused by negligent, careless, or willful acts of City, its employees, agents, equipment, or invitees.

(c) Reimbursement of Third-Party Expenses: During the term of the Lease, City shall reimburse Lessor for Lessor-paid insurance, property taxes and County and City assessments, and other expenses which are required to be paid directly by Lessor as part of the operation of the Leased Premises as temporary public parking . City's reimbursement obligations under this Section 6(c) shall not exceed $120,000 dollars per year, increasing 3% annually, or further Council approval shall be required.

7. Condition of Leased Premises. City represents and warrants that it has made a thorough and complete inspection of the Leased Premises using qualified consultants and experts of its own choosing, and the Leased Premises is suitable for a temporary, surface public parking lot and in good and sanitary order, repair, and condition. City hereby accepts the Leased Premises in its present condition and, except as otherwise may be set forth herein, without representation or warranty by Lessor as to the condition of such Leased Premises or as to the use of the Leased Premises.

8. Construction and Repair.

(a) Mechanic's Lien. City shall pay, or cause to be paid, all costs and expenses for work done by City, or caused to be done by City, on the Leased Premises of a character which could result in any lien on the Housing Parcel, and City will keep the Leased Premises free and clear of any mechanic's lien and/or other lien on account of work done for City or at its request.

Should any claims of lien be filed and/or recorded against the Leased Premises, or any action affecting the title thereto commenced, City shall give Lessor written notice thereof as soon as it has knowledge of the action.

(b) Construction. City shall not build or construct any improvement, or make any structural change, addition, or remodeling to the Leased Premises without the Lessor's prior written consent. In the event that Lessor provides City with the required written consent, City shall at its own cost comply with any and all Federal, State, or local laws

and/or regulations applicable to any such construction, alteration, or remodeling to or within the Leased Premises to upgrade them to satisfy current standards.

9. Encumbrances. City shall keep the Leased Premises free and clear of all encumbrances except with the prior written approval of Lessor.**Destruction.** If the Leased Premises is totally destroyed during the term of this Lease Agreement by fire, flood,

DocuSign Envelope ID: FA6C0401-9A2E-4AFE-8235-4A3F31941446

earthquake, or other casualty, whether or not covered by insurance, this Lease Agreement shall terminate.

10. Condemnation. If all or part of the Leased Premises is taken by condemnation such that the Leased Premises is no longer usable for a temporary, paved surface public parking lot, this Lease Agreement shall terminate. City shall be entitled only to that portion of the proceeds of condemnation which is directly attributable to the value of City's interest in this Lease Agreement.

11. Compliance with Laws. City agrees to comply with all applicable zoning, municipal, county and state laws, ordinances and regulations governing the use of the Leased Premises. City agrees to secure and maintain throughout the Term and any Extended Term any federal, state or local licenses or permits required in order to use the Leased Premises for a temporary surface public parking lot. City's failure to do so shall be considered a material breach of this Lease Agreement. City is responsible for compliance with all Federal requirements for improvements, construction and/or repair work outside of the Lessor's obligations.

12. Assignment.

(a) Prohibition Against Assignment and Encumbrance. This Lease Agreement and any rights or obligations of City hereunder shall not be sold, assigned, transferred, leased, assigned, sublet, conveyed, hypothecated either in whole or in part, or in any manner, without Lessor's prior written consent. The City shall not allow any other person or entity to occupy or use all or any part of the Hotel Parcel or Leased Premises without first obtaining Lessor's written consent. Consent to any assignment shall not constitute a further waiver of the provisions of this section.

(b) Involuntary Assignment. No interest of Lessee in this Lease Agreement shall be assignable by operation of law, including, without limitation, the transfer of this Lease Agreement by testacy or intestacy. Each of the following acts shall be considered an involuntary assignment:

(i) If City is or becomes bankrupt or insolvent, makes an assignment for the benefit of creditors, or institutes a proceeding under the Bankruptcy Act in which City is the bankrupt party; or, if the City is a partnership or consists of more than one person or entity, if any partner of the partnership or other person or entity is or becomes bankrupt or insolvent, or makes an assignment for the benefit of creditors;

(ii) If a writ of attachment or execution is levied on this Lease Agreement;

(iii) If, in any proceeding or action to which Lessee is a party, a receiver is appointed with authority to take possession of the Leased Premises.

(iv) An involuntary assignment shall constitute a default by City and Lessor shall have the right to elect to terminate this Lease Agreement, in which case this Lease Agreement shall not be treated as an asset of City.

DocuSign Envelope ID: FA6C0401-9A2E-4AFE-8235-4A3F31941446

(v) If a writ of attachment or execution is levied on this Lease Agreement, City shall have ten (10) days in which to cause the attachment or execution to be removed. If any involuntary proceeding in bankruptcy is brought against Lessee, or if a receiver is appointed, Lessee shall have sixty (60) days in which to have the involuntary proceeding dismissed or the receiver removed.

13. Taxes. Except as otherwise provided in Section 3 above, Lessor shall pay during the term of this Lease Agreement, without abatement, deduction, or offset, any and all real and personal property taxes, general and special assessments, and other charges (including any increase caused by a change in the tax rate or by a change in assessed valuation) of any description levied or assessed during the term of this Lease Agreement by any governmental agency or entity on or against the Undivided Parcel, improvements located on the Housing Parcels, personal property located on or in the Housing Parcels or improvements, and the leasehold interest created by this Lease Agreement.

14. Indemnity. City agrees to and shall defend, indemnify, protect and hold harmless Lessor, its officers, directors, employees and agents harmless from and against any and all loss, damage, injury, accident, casualty, liability, claim, cost or expense (including, but not limited to, reasonable attorneys' fees) of any kind or character to any person or property arising from or related to any act or omission of City, its employees, agents or contractors, the City's use of the Leased Premises, or as a result of this Lease Agreement. To the greatest extent by law, City waives all claims or demands against Lessor for any loss, damage, or injury to City or City's property in connection with this Lease Agreement or the operation or use of the City's property by City or its agents, servants or contractors or employees and agrees to so indemnify and hold Lessor harmless.

15. Reserved.

16. Termination.

(a) Termination for Cause. In the event City engages in, or permits any other person to engage in, any illegal activities in, on, or about the Housing Parcel or the Leased Premises, whether with or without a criminal conviction, Lessor shall have the right to immediately terminate this Lease Agreement and demand City surrender the Leased Premises.

Except for immediate termination as provided for in this Lease Agreement, should City at any time during the term of this Lease Agreement be in default in the performance of any of the terms, conditions, rules, covenants, or requirements herein contained or otherwise agreed to by the parties, including the rules and regulations established by Lessor regarding the use of, or access to, the Housing Parcels and Leased Premises, and should such default continue for thirty (30) days after written notice thereof from Lessor to City specifying the particulars of such default, or should City vacate or abandon the Leased Premises, then in any such event it shall be at the option of the Lessor, the Lessor's right to declare this Lease Agreement terminated and re-enter the Leased Premises and take possession thereof and remove City's fixtures and furnishings, and City shall have no further claim thereon or hereunder.

DocuSign Envelope ID: FA6C0401-9A2E-4AFE-8235-4A3F31941446

(b) Lessor's remedies in this section shall be in addition and supplemental to any and all other rights or remedies which Lessor may have pursuant to this Lease Agreement and/or under the law.

(c) In the event that the County of Alameda ("County") provides a loan to Lessor, and so requires, this Lease may be terminated in the event of an uncured default under the County loan and/or subordinated to the County loan.

17. Default. Any of the following events or occurrences shall constitute a material breach of this Lease Agreement by City and, after the expiration of any applicable grace period, shall constitute an event of default (each an "Event of Default"):

(a) The failure by City to perform any obligation under this Lease Agreement, which by its nature City has no capacity to cure;

(b) The failure by City to perform any other obligation under this Lease Agreement, if the failure has continued for a period of ten (10) days after Lessor demands in writing that City cure the failure. If, however, by its nature the failure cannot be cured within ten (10) days, City may have a longer period as is necessary to cure the failure, but this is conditioned on City's promptly commencing to cure within the ten (10) day period and thereafter completing the cure within thirty (30) days after Lessor demands in writing that City cure the failure. City shall indemnify and defend Lessor against any liability, claim, damage, loss, or penalty that may be threatened or may in fact arise from that failure during the period the failure is uncured;

(c) Any of the following: a general assignment by City for the benefit of City's creditors; any voluntary filing, petition, or application by City under any law relating to insolvency or bankruptcy, whether for a declaration of bankruptcy, a reorganization, an arrangement, or otherwise; the abandonment, vacation, or surrender of the Leased Premises by Lessee without Lessor's prior written consent; or the dispossession of City from the Leased Premises (other than by Lessor) by process of law or otherwise;

(d) The abandonment of the Leased Premises by City.

18. Remedies. Upon the occurrence of an Event of Default, Lessor may pursue all rights or remedies available to Lessor at law or in equity.

19. Waiver. Any express or implied waiver of a breach of any term of this Lease Agreement shall not constitute a waiver of any further breach of the same or other term of this Lease Agreement.

20. Surrender of Leased Premises. Upon the expiration of this Lease Agreement, or no later than ten (10) days after its termination, City shall surrender the Leased Premises to Lessor, and all improvements and alterations thereto, in good condition except for ordinary wear and tear occurring after the last necessary maintenance made by City and/or destruction to the Leased Premises covered by Section 10 of this Lease Agreement.

Lessor may elect to retain or dispose of in any manner any alterations,

improvements, fixtures, or furnishings that City does not remove from the Leased Premises on expiration or termination of the Lease Agreement by giving at least ten (10) days' notice to City. Title to any such improvements, alterations, fixtures, or furnishings that Lessor elects to retain or dispose of on expiration of the ten (10) day period shall vest in Lessor. City waives all claims against Lessor for any damage to City resulting from Lessor's retention or disposition of any such improvements, alterations, fixtures, or furnishings. City shall be liable to Lessor for Lessor's costs for storing, removing, and disposing of any improvements, alterations, fixtures, or furnishings.

21. **Entry by Lessor.** City shall permit Lessor, its officers, employees, and agents to enter into and upon the Leased Premises upon reasonable notice for the purpose of inspecting the Leased Premises, predevelopment activities related to the Project, enforcing the rules and regulations under this Lease Agreement, and the posting of such legal notices as Lessor may deem necessary or convenient.

(a) Lessor and its agents may enter the Leased Premises at any reasonable time upon reasonable notice to City, or immediately in the case of an emergency, for the purpose of: (i) inspecting the Leased Premises; (ii) posting notices of nonresponsibility; (iii) supplying any service to be provided by Lessor to City; (iv) showing the Leased Premises to prospective purchasers, mortgagees, or tenants (v) making necessary alterations, additions, or repairs as required by this Lease Agreement or to otherwise perform Lessor's duties under this Lease Agreement; (vi) determining whether City is complying with the terms of this Lease Agreement; (vii) performing City's obligations when City has failed to do so after written notice from Lessor, if required by the terms of this Lease Agreement; (viii) placing on the Leased Premises ordinary for lease signs or for sale signs; (ix) doing of other lawful acts that may be necessary to protect Lessor's interest in the Leased Premises under this Lease Agreement; (x) responding to an emergency; and (xi) performing any predevelopment activities reasonably necessary to develop the Project as contemplated under the DDLA.

(b) Lessor shall have the right to use any means Lessor deems necessary and proper to enter the Leased Premises in an emergency. Any entry into the Leased Premises obtained by Lessor in accordance with this section shall not be a forcible or unlawful entry into, or a detainer of, the Leased Premises, or an eviction, actual or constructive, of City from the Leased Premises, nor shall such entry give rise to a claim for rent abatement.

22. **Notices.** Wherever in this Lease Agreement it shall be required or permitted that notice or demand be given or served by either party to this Lease Agreement to or on the other, such notice or demand shall be given or served in writing and forwarded by registered mail, addressed as follows, though any party may change such address or contact person by written notice by registered mail to the other:

City: Community Development Director
City of Livermore
1052 South Livermore Avenue
Livermore, California 94550

DocuSign Envelope ID: FA6C0401-9A2E-4AFE-8235-4A3F31941446

Lessor: [NAME OF PROJECT OWNER L.P. TO BE INSERTED]

Attn:

23. Holding Over. Any holding over without the Lessor's prior written consent shall be prohibited.

24. Modification. This Lease Agreement may only be modified or amended by written agreement signed by both parties hereto.

25. General Provisions.

(a) Time of Essence. Time is of the essence for each provision of this Lease Agreement.

(b) Relationship of the Parties. Nothing contained in this Lease Agreement shall be deemed or construed by the parties or by a third party to create the relationship of principal and agent, and/or of partnership, and/or of joint venture, and/or of any association between the parties, other than the relationship of Lessor and Lessee.

(c) Entire Agreement. This instrument, including any attachments hereto, constitutes the entire agreement of the parties relating to the subject matter of this Lease Agreement and correctly sets forth the rights, duties, and obligations of each party to the other, but this Lease Agreement does not supersede any provision in the DDLA.

(d) Partial Invalidity. If any provision or portion of this Lease Agreement shall be deemed invalid, it is agreed that such invalidity shall affect only such provision or portion thereof, and the remainder of this Lease Agreement shall remain in force and effect.

(e) California Law. This Lease Agreement shall be governed by and construed in accordance with the laws of the State of California.

(f) Review of Lease. Each party to this Lease Agreement declares that prior to the execution of this Lease Agreement, each party had the opportunity to seek the independent advice of counsel and that they apprised themselves of sufficient relevant information in order that they might intelligently exercise their own judgment in deciding whether to execute this Lease Agreement. Each party agrees that they have completely read and understood the Lease Agreement, know the contents thereof, and have signed the Lease Agreement of their own free will and free of any duress. No single party has drafted this Lease Agreement and it shall not be interpreted against any party as the drafting party.

(g) Performance Excused. The parties shall be excused from performance, as hereunder agreed to, if such performance is rendered impossible, impractical, or unreasonably difficult by, but not limited to, any strike, lockout, labor disturbance of any

DocuSign Envelope ID: FA6C0401-9A2E-4AFE-8235-4A3F31941446

kind, civil commotion, war, acts of terrorism, shortage of any supply or labor, shortage of water, weather, act of government authority, enactment or change in laws or regulations, breakdown of facilities or any cause outside of the parties' control.

(h) Mutual Termination. This Lease Agreement may be terminated at any time concerning the rights and responsibilities of the parties who, between them, agree to such a termination.

(i) Headings. The headings used in this Lease Agreement are intended for reference only and do not define or limit the scope or meaning of any provision of this Lease Agreement.

(j) Waiver. A term or condition of this Lease Agreement may be waived at any time by the party entitled to the benefit thereof, but no such waiver shall affect the right of the waiving party to require observance, performance or satisfaction either of that term or condition as it applies on a subsequent occasion or of any other term or condition. City shall not be excused from complying with any of the terms and conditions of this Lease Agreement by any failure of the City upon any one or more occasions to insist upon or to seek compliance with any such terms and conditions.

(k) Attachments. All attachments referred to in and attached to this Lease Agreement are incorporated by reference as though set forth in full.

(l) Attorney's Fees and Costs. If either party commences an action against the other party to enforce this Lease Agreement, the prevailing party is entitled to reasonable attorney's fees, costs of suit, investigation costs and discovery costs, including costs of appeal.

************Signatures and Attachment List On Next Page************

DocuSign Envelope ID: FA6C0401-9A2E-4AFE-8235-4A3F31941446

IN WITNESS WHEREOF, the parties to this Lease Agreement have executed this Lease Agreement as of the dates set forth below.

[NAME OF OWNER][ENTITY TYPE]
Lessor
By: _____
[Signer's Name]
[Signer's Title]

City or Lessee

Dated: _____

City of Livermore
A Municipal Corporation

By: _____ Dated: _____

City Manager

Approved as to Form:

By: _____
Assistant/City Attorney

(Signatures must be Notarized)

Attachments:

Exhibit A – Undivided Parcel (Exhibit A to the DDLA)

Exhibit B – Insurance Requirements
(Insurance to be provided at time of execution of Lease Agreement)

DocuSign Envelope ID: FA6C0401-9A2E-4AFE-8235-4A3F31941446

COX CASTLE NICHOLSON

Cox, Castle & Nicholson LLP
50 California Street, Suite 3200
San Francisco, California 94111-4710
P: 415.262.5100 F: 415.262.5199

Scott B. Birkey
415.262.5162
sbirkey@coxcastle.com

File No. 88889

April 4, 2022

VIA E-MAIL

Paul Spence
Community Development Director
Community Development Department
Livermore, CA 94550

Re: Request for Stay of Expiration Date for Eden Downtown Housing Project Entitlements and Approvals

Dear Mr. Spence:

On behalf of Eden Housing, Inc. ("Eden"), we request a stay of the expiration date of the entitlements and approvals for Eden's Downtown Housing Project. Those entitlements and approvals were granted by the City of Livermore City Council on May 24, 2021.

Eden makes this request in connection with the following entitlements and approvals:

- Vesting Tentative Parcel Map (VTPM) 11186, which would expire on May 24, 2023 unless its expiration date is stayed;
- Downtown Design Review (DDR) 20-019, which would expire on May 24, 2023 unless its expiration date is stayed;
- Non-discretionary Use of State Density Bonus Law, Including a Density Bonus, Relief from Parking Standards, an Increase in Building Height, and an Incentive to Reduce Applicable Setbacks, which has no expiration date; and
- An Amendment to the Disposition, Development, and Loan Agreement, which has no expiration date.

On June 24, 2021, a Petition for Writ of Mandate was filed by Save Livermore Downtown in *Save Livermore Downtown v. City of Livermore, et al.*, Alameda County Superior Court, Case No. RG21102761. On February 14, 2022, the Court entered judgment denying the petition for writ of mandate with prejudice. Pursuant to Section 1049 of the California Code of Civil Procedure, "An action is deemed to be pending from the time of its commencement until its final determination upon appeal, or until the time for appeal has passed, unless the judgment is

DocuSign Envelope ID: FA6C0401-9A2E-4AFE-8235-4A3F31941446

sooner satisfied." As such, litigation against the Project is still pending because at this time, the time for an appeal of the Alameda County Superior Court decision has not yet passed.

Government Code Section 66452.6(a)(1) provides that an approved or conditionally approved tentative map shall expire 24 months after its approval or conditional approval, or after any additional period of time as may be prescribed by local ordinance, not to exceed an additional 24 months. (*See also* Livermore Development Code Section 10.02.110(C)(1)(a).)

Section 66452.6(c) provides that the period of time specified in Section 66452.6(a)(1) shall not include the period of time during which a lawsuit involving the approval or conditional approval of the tentative map is or was pending in a court of competent jurisdiction, if the stay of time period is approved by the local agency pursuant to this section. The subdivider may apply to the local agency for a stay pursuant to the local agency's adopted procedures. The local agency shall either stay the time period for up to five years or deny the requested stay.

Livermore Development Code Section 10.02.110(C)(2)(c)(1) provides that if a lawsuit is pending in a court of competent jurisdiction, and a subdivider requests a stay of the time in which a parcel map or tentative map will expire, the Director may stay the map's expiration date until final conclusion of the action, if the Director determines that the action affects the validity of the parcel map or tentative map approval. Because Section 10.02.110(A) of the Livermore Development Code allows by mutual consent of both the subdivider and the City to extend the time limits for acting on a map, the City may exercise its discretion to grant such a stay request at any time during the pendency of that lawsuit so long as both the subdivider and the City mutually agree as to when a stay request can be made.

Moreover, the Livermore Development Code contemplates that the expiration date of other approvals related to a map may also be extended when the expiration date of a map is being extended. For example, Section 10.02.110(B) of the Livermore Development Code allows the City to make certain modifications to time limits if necessary "to permit concurrent processing of related approvals." As such, an extension of the expiration date of the Project's Vesting Tentative Parcel Map allows for an extension of the Project's other related approvals, including the Projects' approval of the Downtown Design Review.

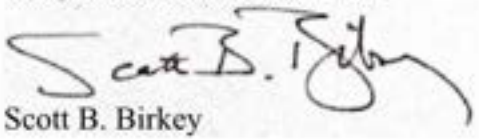
Accordingly, pursuant to Section 66452.6 of the Government Code and Section 10.02.110(C)(2)(c)(1), we request that the Community Development Director stay the expiration date of the Vesting Tentative Parcel Map and the Downtown Design Review until final conclusion of *Save Livermore Downtown v. City of Livermore, et al.* litigation.

DocuSign Envelope ID: FA6C0401-9A2E-4AFE-8235-4A3F31941446

Please contact me should you have questions regarding this request. Thank you for your consideration.

Sincerely,

Cox, Castle & Nicholson LLP



Scott B. Birkey

SBB:/mtn

088889\14613495v1

DocuSign Envelope ID: FA6C0401-9A2E-4AFE-8235-4A3F31941446

LIVERMORE
CALIFORNIA

May 9, 2022

Linda Mandolini
President
Eden Housing
22645 Grand Street
Hayward, CA 94541

RE: Stay Request filed by Eden Housing

Dear Ms. Mandolini:

On April 4, 2022, Scott Birkey, on behalf of Eden Housing, requested a stay of the vesting tentative map and development entitlements for the Eden Housing Downtown project. Granting this request would stay the following entitlements and approvals (the "Project"):

- Vesting Tentative Parcel Map (VTPM) 11186
- Downtown Design Review (DDR) 20-019
- Non-discretionary Use of State Density Bonus Law (including relief from parking standards and building height, and an Incentive to reduce setback); and
- An Amendment to the Disposition, Development, and Loan Agreement

Unless stayed, the project Vesting Tentative Parcel Map, the Downtown Design Review, and the incentives or concessions granted under State Density Bonus Law would expire on May 25, 2023.

Background

On May 25, 2021, the Livermore City Council adopted resolutions finding the Project exempt from the provisions of the California Environmental Quality Act (CEQA) and approving the Project.

On June 24, 2021, a Petition for Writ of Mandate was filed by Save Livermore Downtown in *Save Livermore Downtown v. City of Livermore, et al.*, Alameda County Superior Court, Case No. RG21102761. On February 14, 2022, the Court entered judgment denying the petition for writ of mandate with prejudice.

DocuSign Envelope ID: FA6C0401-9A2E-4AFE-8235-4A3F31941446

On April 13, 2022, an appeal was filed by Save Livermore Downtown in *Save Livermore Downtown v. City of Livermore, et al.* in the Court of Appeal, Case No. RG21102761. As of the writing of this letter, the case is pending.

City and State Standards

Government Code Section 66452.6(a)(1) provides that an approved or conditionally approved tentative map shall expire 24 months after its approval or conditional approval, or after any additional period of time as may be prescribed by local ordinance, not to exceed an additional 12 months.

Government Code Section 66452.6(c) provides that the period of time specified in subdivision (a) (above), shall not include the period of time during which a lawsuit involving the approval or conditional approval of the tentative map is or was pending in a court of competent jurisdiction, if the stay of time period is approved by the local agency pursuant to this section. The subdivider may apply to the local agency for a stay pursuant to the local agency's adopted procedures. The local agency shall either stay the time period for up to five years or deny the requested stay.

Livermore Development Code Section 10.02.110(C)2(c)(1) provides that if a lawsuit is pending in a court of competent jurisdiction, and a subdivider requests a stay of the time in which a parcel map or tentative map will expire, the Director may stay the map's expiration date until final conclusion of the action, if the Director determines that the action affects the validity of the parcel map or tentative map approval.

Determination

Pursuant to Government Code Section 66452.6 (c) and Livermore Development Code Section 10.02.110(C)2(c)(1), the Director stays the expiration date of the Project until final conclusion of *Save Livermore Downtown v. City of Livermore, et al.*, up to a maximum of five years, or May 25, 2028.

If you have any questions, please call me at (925) 960-4400.

Sincerely,

Paul Spence
Community Development Director
Community Development Department
City of Livermore
(925) 960-4400

DocuSign Envelope ID: FA6C0401-9A2E-4AFE-8235-4A3F31941446

EXHIBIT Q

LONG TERM LEASE AGREEMENT

THIS LONG TERM LEASE AGREEMENT ("**Agreement**") is made as of [_____] ("**Effective Date**"), by and between [the City of Livermore] ("**Lessor**"), and [_____] ("**Leasee**").

BASIC LEASE PROVISIONS

1.	Garage:	That certain parking garage containing approximately 452 parking stalls located approximately at First Street and L Street
2.	Address of Lessor:	
3.	Address of Leasee:	[_____]
4.	Address for Payment:	All payments payable to Lessor under this Agreement shall be sent to the following address or to such other address as Lessor may from time to time designate: [City of Livermore, 1052 S. Livermore Avenue, Livermore, CA 94550]
5.	Premises:	16 parking stalls within the area of the Garage depicted on the plan attached hereto as Exhibit A and made a part hereof.

DocuSign Envelope ID: FA6C0401-9A2E-4AFE-8235-4A3F31941446

6. Term: A period of 55 years commencing on [_____] ("**Commencement Date**") and ending on the day prior to the [_____] anniversary of the Commencement Date ("**Expiration Date**").

7. Basic Fee:

Period	Per Parking Stall Per Year	Total Fee Per Year
[Year 1 beginning at project lease up]	[$300.00]	[4,800]
[Years 2 -55]	[$300.00 plus 2.5% annual escalator]	[4,920 (Year 2)]
[_____]	[_____]	[_____]

8. Permitted Use: 16 Reserved spaces for residents of Eden's Downtown Livermore Apartments

9. Permitted Users: Defined in Section 1 of this Agreement, below.

This Agreement shall consist of the foregoing Basic Lease Provisions and the provisions of the Standard Lease Provisions (which follow) and Exhibits A through C, inclusive, all of which are incorporated herein by this reference as of the Effective Date. In the event of any conflict between the provisions of the Basic Lease Provisions and the provisions of the Standard Lease Provisions, the Standard Lease Provisions shall control. Any initially capitalized terms used herein and not otherwise defined shall have the meanings set forth in the Basic Lease Provisions.

DocuSign Envelope ID: FA6C0401-9A2E-4AFE-8235-4A3F31941446

STANDARD LEASE PROVISIONS

1. **Lease of Premises**. Lessor hereby grants to Leasee an irrevocable and exclusive Lease (the "**Lease**") to use the Premises and all [_____] parking stalls comprising the Premises, and Leasee hereby accepts such Lease for use of the Premises and all [_____] parking stalls comprising the Premises from Lessor, for the Term of this Agreement (as provided below and as such Term may be extended as provided herein), and upon all of the terms, covenants and conditions contained in this Agreement. Lessor acknowledges and agrees that (i) Leasee is the [_____] to certain real property located [_____] and described on Exhibit C attached hereto (the "**Benefitted Parcels**"), (ii) the Lease rights granted to Leasee in this Agreement are appurtenant to and benefit the Benefitted Parcels, shall run with the lands comprising the Benefitted Parcels, and shall inure to the benefit of Leasee and its designated successors and assigns in interest as [_____] of the Benefited Parcels, and (iii) Leasee shall have the right to subLease and grant rights of use of the Premises and all [_____] parking stalls comprising the Premises to any employees of Leasee as well as to any and all tenants and occupants of any portion of the Benefitted Parcels, all as may be designated by Leasee, its successors and assigns in interest as to the Benefitted Parcels (each and all such designated third parties together with Leasee and its successors and assigns as [_____] of the Benefitted Parcels, being individually a "**Permitted User**" and collectively, "**Permitted Users**") for the Term of this Lease, as the same may be extended as provided in this Agreement. Leasee acknowledges that Lessor has not made any representations or warranties with respect to the condition of the Premises or the Garage or with respect to the suitability or fitness of any of the same for Leasee's Permitted Use other than for the parking of vehicles therein. Lessor shall have no obligation to construct improvements for Leasee or to repair or refurbish the Premises except as set forth in this Agreement, and the Premises will be delivered to Leasee in its "AS IS" condition. The taking of possession of the Premises by Leasee shall be conclusive evidence that Leasee accepts the Premises "AS IS" and that the Premises is suited for Leasee's Permitted Use (subject to the completion of certain improvements to be completed by Leasee as provided herein which are intended to provide exclusive use of the Premises and parking stalls therein for the Term of this Agreement, as extended), and the Premises is in good and satisfactory condition at the time such possession is taken.

2. **Term and Commencement Date**. Unless earlier terminated in accordance with the provisions hereof, the initial Term of this Agreement shall be the period set forth in Item 6 of the Basic Lease Provisions. The Term of this Agreement shall commence on the Commencement Date set forth in Item 6 of the Basic Lease Provisions.

3. **Purpose**. Leasee hereby acknowledges and agrees that this Agreement provides Leasee and Permitted Users designated by Leasee only with the right to use only the Premises and all parking stalls comprising the Premises for the Permitted Use set forth in Item 8 of the Basic Lease Provisions and that Leasee and such designated Permitted Users shall have no right to use the Premises for any use other than the Permitted Use or to use any other portion of the Garage for the Permitted Use, other than such portions of the Garage including the main entry gates, ramps and drive aisles as are necessary to access the Premises and all parking stalls comprising the Premises. In order to enforce the restriction on Leasee and its designated Permitted Users to use only the Premises for the Permitted Use and the prohibition on Leasee and its designated Permitted Users from using any other portion of the Garage other than as

DocuSign Envelope ID: FA6C0401-9A2E-4AFE-8235-4A3F31941446

necessary to access the Premises and all parking stalls comprising the Premises, Lessor shall, at Leasee's sole cost and expense, install a scanning system at the Garage, and/or a card key access gate to limit access to the Premises and parking stalls comprising the Premises to solely those designated Permitted Users identified by Leasee to Lessor as to whom Leasee has provided access cards to the Garage and the Premises parking gate. The card key access gate shall be designed by Lessor's parking garage operator for the Garage and shall be subject to Lessor's and Leasee's review and approval of the plans and specifications for the card key access gate, which approval shall not be unreasonably withheld, conditioned or delayed by either Lessor or Leasee). In addition, the cost of the card key access gate (to be paid for by Leasee) shall be subject to approval by Leasee, not to be unreasonably withheld. Leasee shall reimburse Lessor for the previously approved cost incurred by Lessor to install either the scanning system or card key access gate within ten (10) business days of receipt by Leasee of written notice from Lessor and copies of invoices therefor. In the event of the failure by any individual Permitted User to park only in the Premises, such individual Permitted User shall be required to pay the maximum daily rate then being charged by Landlord at the Garage, and the continued failure by such individual Permitted User to park only in the Premises after written notice from Lessor shall provide Lessor with the right to refuse entry into the Garage by such individual Permitted User in the same manner and subject to compliance with the same laws as are applicable to public parking garage users. In no event shall any default or breach by any individual Permitted User constitute a default by Leasee or result in the loss of any parking stalls comprising the Premises or result in any termination of this Lease Agreement or diminution in the total number of parking stalls that are to be provided to Leasee hereunder.

So long as Leasee and all Permitted Users comply with any commercially reasonable security rules and regulations that Lessor may reasonably deem necessary for the safety of the Garage or the Premises, Leasee and all Permitted Users shall have access to the Garage and the Premises 24 hours per day, 7 days per week. Such access shall be subject to full or partial closures which may be required from time to time for construction, maintenance, repairs, actual or threatened emergency or other events or circumstances which make it reasonably necessary to temporarily deny, restrict or limit access in an equitable and non-discriminatory fashion as among all users of the Garage including Permitted Users under this Agreement.

4. **Rent**.

(a) **Basic Fee**. Leasee shall pay to Lessor the Basic Fee set forth in Item 7 of the Basic Lease Provisions. Leasee shall pay, without notice or demand, to Lessor or Lessor's agent at the address set forth in Item 4 of the Basic Lease Provisions, or at such other place as Lessor may from time to time designate in writing, in currency or a check for currency which, at the time of payment, is legal tender for private or public debts in the United States of America, the Basic Fee as set forth in Item 7 of the Basic Lease Provisions, payable in advance on or before the first day of each and every month during the Term of this Agreement, without any setoff or deduction whatsoever, except as provided in this Agreement. The Basic Fee for any fractional month shall be a prorated. Leasee shall pay the first full month's Basic Fee set forth in Item 7 of the Basic Lease Provisions upon execution of this Agreement prior to any use of the Premises. All other fees and expenses incurred will be invoiced by Lessor and are due and payable within

thirty (30) days of the date of the invoice. Basic Fee and all other fees shall collectively be referred to as "Rent" in this Agreement.

(b) **Late Charge**. If any installment of the Basic Fee or any other amount due from Leasee shall not be received by Lessor or Lessor's designee within five (5) days after said amount is due, then Leasee shall pay to Lessor a late charge equal to [_____] percent of the amount due; provided, however that the foregoing late charge shall be waived for the first such late payment of the Basic Fee or any other amount due from Leasee during each twelve (12) month period of the Term of this Agreement, provided, that, such payment is made by Leasee within ten (10) days of the date such payment is due. The right to require the late charge shall be in addition to all of Lessor's other rights and remedies hereunder or at law and shall not be construed as liquidated damages or as limiting Lessor's remedies in any manner. In addition to the late charge described above, any Basic Fee or other amount owing hereunder which is not paid within five (5) days after the date they are due shall thereafter bear interest until paid at a rate equal to [_____].

(c) **All Payments as Rent**. Any and all payments of Basic Fee, and any and all fees, charges, costs, expenses, insurance obligations and all other payments, disbursements or reimbursements which are attributable to, payable by or the responsibility of Leasee under and by reason of this Agreement are payable as additional rent and shall constitute "rent" within the meaning of California Civil Code Section 1951(a) whether or not the same are designated as such; and shall be due and payable within ten (10) days following demand or together with the next succeeding installment of Basic Fee, whichever shall first occur, and Lessor shall have the same remedies therefor as for a default in the payment of Basic Fee.

5. **Interruption**. Leasee agrees that Lessor shall not be liable for damages, for any failure by Lessor to comply with the terms and conditions of this Agreement, when such failure or delay or diminution is not occasioned by Lessor's negligence or willful misconduct, but is occasioned, in whole or in part, by necessary repairs, replacements, or improvements, by any strike, lockout or other labor trouble, or by inability to secure electricity for lighting of the Garage, after reasonable effort to do so, by any accident or casualty whatsoever, by act or default of Leasee or other parties, or by any other cause beyond Lessor's reasonable control; and such failures or delays or diminution shall never be deemed to constitute an eviction or disturbance of Leasee's use and possession of the Premises or relieve Leasee from paying any fees due hereunder or performing any of its obligations under this Agreement; provided, however, if for any of the foregoing reasons or any other reasons not due to the negligence or willful misconduct of Leasee and/or the Permitted Users, any portion of the Premises or any parking stalls therein shall not be available for use by any Permitted Users during normal business hours of 7:00 a.m. to 6:00 p.m. Mondays through Fridays for five (5) consecutive business days, then Lessor shall use its commercially reasonable efforts to provide replacement parking within the Garage for each displaced/unavailable parking stall of the Premises at no additional charge to Leasee or any Permitted Users, or Leasee shall receive a credit against the Basic Fee for each such business day or portion thereof (following the expiration of the first five (5) business days thereof) that the total number of parking stalls comprising the Premises are not available to Leasee and the Permitted Users, such credit to be based upon the ratio that the number of parking stalls which

are not available to Leasee and the Permitted Users bears to the [_____] parking stalls in the Premises to be provided to Leasee and the Permitted Users.

6. **Insurance**. Leasee shall, at its expense, procure and keep in full force and effect during the entire Term the following insurance policies, providing the following coverage to Leasee and Lessor, and their respective property managers, trustees, beneficiaries, directors, officers, employees, partners, agents and other representatives:

(a) Workers' compensation insurance in accordance with the laws of the State of California to the extent required with waiver of subrogation;

(b) Employer's liability insurance for occupational accidents or diseases, for limits of not less than [_____] Dollars for any one occurrence;

(c) Commercial general liability insurance (or commercial garage liability) on an occurrence form basis with limits of not less than [_____] per occurrence (provided Leasee shall carry a minimum annual aggregate limit of [_____] and Umbrella liability insurance, in excess following form, with an annual aggregate limit of not less than [_____]); provided, however that so long as Leasee carries Umbrella liability insurance, in excess following form, with an annual aggregate limit of not less than [_____], individual tenant entities which are Permitted Users will not be required to carry any such Umbrella liability insurance;

(d) Automobile liability insurance covering losses for owned, non-owned or hired vehicles including comprehensive and collision coverage with a limit of not less than [_____] per occurrence.

All expenses incurred by Leasee and any third-party tenants in obtaining insurance policies required under this Section 6 shall be paid by Leasee or such third party tenants.

Lessor shall, at its expense, procure and keep in full force and effect during the entire Term and any subsequent term created by any extension or renewal of this Agreement, and shall cause its parking garage operator for the Garage and any valet parking operator or other concessionaire for the Garage to procure and keep in force at all times, the following insurance policies, providing the following coverage to Lessor, and its property managers, trustees, beneficiaries, directors, officers, employees, partners, agents and its other representatives:

(e) Workers' compensation insurance in accordance with the laws of the State of California to the extent required;

(f) Employer's liability insurance for occupational accidents or diseases, for limits of not less than [_____] Dollars for any one occurrence; and

(g) Commercial general liability insurance, or, with respect to the Garage operator, Commercial garage keepers liability (including coverage for damage to automobiles in the care, custody or control of the Garage operator, manager and any concessionaires of the Garage), each on an occurrence form basis with limits of not less

than [_____] per occurrence (provided Lessor shall carry a minimum annual aggregate limit of [_____] and umbrella liability insurance, in excess following form, with an annual aggregate limit of not less than [_____]).

All expenses incurred by Lessor and any third-party parking garage operators, valet parking operators and other concessionaires in obtaining insurance policies required under this Section 8 shall be paid by Lessor or such third parties.

All insurance required under Sections 8(a) through (d) shall be in such companies as shall be reasonably satisfactory to Lessor, and all such policies shall provide that they may not be canceled or altered without at least ten (10) days' prior written notice to Lessor. All insurance carried by Leasee and its tenants or any other Permitted Users shall be primary and non-contributory as respects the Premises. All insurance carried by Lessor shall be primary and non-contributory as respects the Garage exclusive of the Premises. Leasee shall promptly deliver commercially reasonable, satisfactory certificates of such insurance to Lessor and certificates for any renewal policies shall be obtained and delivered to Lessor at least ten (10) days prior to the expiration of any policies furnished hereunder. In addition to the requirements set forth in this Section 8, the insurance required under this Sections 8(a) through (d) must be issued by an insurance company with a rating of no less than [_____] or that is otherwise acceptable to Lessor, and admitted to engage in the business of insurance in the State in which the Building is located.

Lessor agrees to have its insurance company issuing property damage insurance and workers compensation insurance waive any rights of subrogation that such company may have against Leasee, and Lessor hereby waives any right that it may have against Leasee on account of any loss or damage to the Garage or any other Lessor's property to the extent such loss or damage is insurable under policies of insurance for fire and all risk coverage, theft, public liability or other similar insurance and as to any workers compensation claims.

Leasee agrees to have its insurance company issuing property damage insurance and workers compensation insurance waive any rights of subrogation that such company may have against Lessor, and Leasee hereby waives any right that it may have against Lessor on account of any loss or damage to Leasee's property to the extent such loss or damage is insurable under policies of insurance for fire and all risk coverage, theft, public liability, or other similar insurance and as to any workers compensation claims.

7. **Waiver of Claims and Indemnity**.

(a) **Waiver of Claims**. To the extent permitted by applicable law, Lessor and the Lessor Indemnified Parties shall not be liable for any damage to any of Leasee's personal property entrusted to Lessor, and its employees or agents, nor for loss of damage to any of Leasee's personal property (including without limitation, the personal property of any Permitted User) by theft or otherwise, except to the extent arising out of the gross negligence or willful misconduct of Lessor or any Lessor Indemnified Parties. The foregoing shall not constitute a release or waiver by Leasee or any Leasee Indemnified Parties (as defined below) as to any parking garage operator of the Garage, any valet parking operator or other concessionaire of the Garage respecting the negligence or

DocuSign Envelope ID: FA6C0401-9A2E-4AFE-8235-4A3F31941446

willful misconduct of any such parties. Lessor and the Lessor Indemnified Parties shall not be liable for any latent or patent defects in the Premises or the Garage or for any consequential damages arising out of any loss of use of the Premises. Leasee shall look solely to Lessor to enforce Lessor's obligations hereunder and shall not seek any damages against any of the Lessor Indemnified Parties (provided, however, nothing contained in this Section will preclude any Permitted Users from seeking separately damages or any other remedy as against Lessor or any parking garage operator of the Garage, any valet parking operator or other concessionaire of the Garage respecting the negligence or willful misconduct of any such parties). As used herein, "**Lessor Indemnified Parties**" shall mean Lessor's managing agent and Lessor's and its managing agent's respective parent companies and/or corporations, their respective controlled, associated, affiliated and subsidiary companies and/or corporations and their respective representatives, members, partners, shareholders, officers, directors, employees, agents, representatives, trustees, consultants, successors, assigns or lenders of any type.

(b) To the extent permitted by applicable law, neither Leasee nor any Leasee Indemnified Parties shall be liable for any damage to the Garage or any of Lessor's personal property (including without limitation, by actions of any individual Permitted Users or by theft or otherwise) except to the extent arising out of the gross negligence or willful misconduct of Leasee or any Leasee Indemnified Parties. The foregoing shall not constitute a release or waiver by Lessor or any Lessor Indemnified Parties (as defined below) as to any Permitted Users respecting the negligence or willful misconduct of any such Permitted Users. Lessor shall look solely to Leasee to enforce Leasee's obligations hereunder and shall not seek any damages against any of the Leasee Indemnified Parties (provided, however, nothing contained in this Section will preclude Lessor from seeking separately damages or any other remedy as against any Permitted Users arising out of the use of the Garage by any such Permitted Users including, without limitations as respects any negligence or willful misconduct of any such Permitted Users). As used herein, "**Leasee Indemnified Parties**" shall mean Leasee's property manager, managing agent and Leasee's and its property manager and managing agent's respective parent companies and/or corporations, their respective controlled, associated, affiliated and subsidiary companies and/or corporations and their respective representatives, members, partners, shareholders, officers, directors, employees, agents, representatives, trustees, consultants, successors, assigns or lenders of any type, and any tenants of Leasee who Lease use of parking spaces in the Garage to any employees of such tenants.

(c) **Indemnification**.

(i) Lessor to the fullest extent permitted by law, agrees to indemnify, protect, defend and hold Leasee and the Leasee Indemnified Parties harmless from and against any and all claims, damages, costs, losses and liabilities: (1) arising from or out of the gross negligence or willful misconduct of Lessor or its agents, contractors or employees, or (2) arising from or out of any breach, infringement, violation or non-performance of any term, covenant or condition of this Agreement on the part of Lessor to be performed and observed hereunder. Leasee to the fullest extent permitted by law, agrees to indemnify, protect, defend and hold Lessor and the Lessor Indemnified Parties

DocuSign Envelope ID: FA6C0401-9A2E-4AFE-8235-4A3F31941446

harmless from and against any and all claims, damages, costs, losses and liabilities: (1) arising from or out of any occurrence in, upon, around or at the Premises or the occupancy or use of the Premises or any part thereof by, through or under Leasee or its authorized agents, employees, contractors and/or direct tenant entity sublessees (but not as to any individual Permitted Users which do not qualify as Leasee's authorized agents, employees, contractors and/or direct tenant entity sublessees), (2) arising from or out of all acts, failures, errors, omissions, willful misconduct or negligence of Leasee, its authorized agents, employees, contractors and/or, direct tenant entity sublessees (but not as to any individual Permitted Users which do not qualify as Leasee's authorized agents, employees, contractors and/or direct tenant entity sublessees) which occur in or about the Premises or anywhere else within or about the Garage, or (3) arising from or out of any breach, infringement, violation or non-performance of any term, covenant or condition of this Agreement on the part of Leasee to be performed and observed hereunder.

(ii) In the event Leasee or any of Leasee's Indemnified Parties are involved in any litigation covered by Lessor's indemnity as herein provided, Lessor shall defend Leasee and/or Leasee's Indemnified Parties, as applicable, and shall pay all judgments, claims, damages, liabilities and expenses (including without limitation, attorneys' fees and disbursements) in connection with the litigation, unless it is determined that Leasee has breached its obligations hereunder or is otherwise liable under Leasee's indemnity of Lessor herein. Lessor shall advise Leasee promptly, in writing of the service upon Leasee or Leasee's Indemnified Parties of any summons, notices, letters or other communications alleging any claim or liability against Leasee's Indemnified Parties or with respect to the property or its surrounding area. In the event Lessor or any of Lessor's Indemnified Parties are involved in any litigation covered by Leasee's indemnity as herein provided, Leasee shall defend Lessor and/or Lessor's Indemnified Parties, as applicable, and shall pay all judgments, claims, damages, liabilities and expenses (including without limitation, attorneys' fees and disbursements) in connection with the litigation, unless it is determined that Lessor has breached its obligations hereunder, or is otherwise liable under Lessor's indemnity of Leasee herein. Leasee shall advise Lessor promptly, in writing of the service upon Lessor or Lessor's Indemnified Parties of any summons, notices, letters or other communications alleging any claim or liability against Lessor's Indemnified Parties or with respect to the property or its surrounding area.

(iii) The provisions of this Section 9 shall survive the expiration or sooner termination of this Agreement. Leasee shall give prompt notice to Lessor of any occurrence within the Premises or the Garage for which Leasee may be liable to Lessor. Lessor shall give prompt notice to Leasee of any occurrence within the Premises or the Garage for which Lessor may be liable to Leasee. Any indemnity contained in this Agreement for the benefit of Lessor shall be deemed to inure to the benefit of Lessor's Indemnified Parties as well. Any indemnity contained in this Agreement for the benefit of Leasee shall be deemed to inure to the benefit of Leasee's Indemnified Parties as well.

(d) **Survival of Indemnities**. The provisions of Sections 9 (a) and (b) together with any other indemnification provisions of this Agreement shall survive the

expiration or termination of this Agreement with respect to any claims, expenses or liability occurring prior to such expiration or termination. Lessor's and Leasee's covenants, agreements and indemnification obligations in Sections 9(a) and (b) above are not intended to and shall not relieve any insurance carrier of its obligations under policies required to be carried by Lessor or Leasee pursuant to the provisions of this Agreement

8. **Attorneys' Fees**. If either Lessor or Leasee shall commence any action or other proceeding against the other arising out of, or relating to, this Agreement or the Premises, the prevailing party shall be entitled to recover from the losing party, in addition to any other relief, its actual attorneys' fees and costs irrespective of whether or not the action or other proceeding is prosecuted to judgment and irrespective of any court schedule of reasonable attorneys' fees.

9. **Surrender of Premises; Holding Over**. Upon the expiration or earlier termination of this Agreement, Lessor shall have the right to turn off all card keys issued to Leasee and all Permitted Users under this Agreement which allow access to the Garage and to the Premises parking stalls and Leasee shall remove all of its property from the Premises (including all access gates and parking identification signs).

10. **Assignment and Sublicensing**. Leasee shall have the right to assign or subLease the Lease rights granted herein to any and all successors in interest to Leasee as [_____] of any of the Benefitted Parcels to which Leasee expressly assigns in writing such rights and to any and all tenants and occupants of the Benefitted Parcels noted in Section 1 of this Agreement which Leasee identifies to Lessor as Permitted Users and to whom Leasee issues access cards for access to the Garage and the Premises parking stalls as provided in this Agreement. Leasee shall also have the right to pledge its interest in this Agreement as security for any mortgage encumbering any Benefitted Parcels or any portion thereof, pursuant to a form prepared by Leasee's lender and to be subject to the reasonable approval of Lessor and Leasee, such Collateral Assignment to include a consent by Lessor to such pledge of Leasee's rights under this Agreement to Leasee's lender. Except as provided in the foregoing sentences, Leasee shall not assign or otherwise transfer this Agreement or any interest hereunder (all of the foregoing are hereinafter sometimes referred to collectively as "**Transfers**" and any person to whom any Transfer is made or sought to be made is hereinafter sometimes referred to as a "**Transferee**"). Upon any Transfer of this Lease to a designated successor owner of any of the Benefitted Parcels and assumption of such Transfer by the Transferee owner, such Transfer shall relieve Leasee of further obligation and liability under this Agreement.

11. **Rules and Regulations**. Lessor shall provide a copy of the rules and regulations set forth in Exhibit B hereto, as the same may from time to time be amended, to each Permitted User receiving access to the Garage from time to time under this Agreement.

12. **Estoppel Certificate**. At any time, within ten (10) business days following any written request which either party may make from time to time, Leasee or Lessor, as applicable, shall execute and deliver to the other (or to the Holders or any prospective holders of a Mortgage and/or purchasers or prospective purchasers or transferees) without charge, a written statement, duly acknowledged (an "**Estoppel Certificate**"): (a) ratifying this Agreement, (b) confirming the Commencement Date and Expiration Date, (c) certifying that this Agreement is in full force and effect and has not been assigned, modified, supplemented or amended, except by such

DocuSign Envelope ID: FA6C0401-9A2E-4AFE-8235-4A3F31941446

writings as shall be stated, (d) certifying that Lessor and Leasee have each fulfilled their respective obligations under this Agreement as of the date of such Estoppel Certificate, except such as shall be stated, (e) certifying that there are no defenses or offsets against enforcement of this Agreement by either party, except such as shall be stated; (f) reciting the amount of Basic Fee and additional rent then payable monthly and (g) certifying as to such other matters concerning this Agreement as may be reasonably required by either party or the holder of a Mortgage.

13. **Default by Leasee**.

(a) **Events of Default**. The occurrence of any of the following shall constitute a material default and breach of this Agreement on the part of Leasee (an "**Event of Default**"): (i) any failure by Leasee to pay any installment of Basic Fee or any other charge of item of rent required to be paid under this Agreement, or any part thereof, within fifteen (15) business days of notice that same is due, which notice shall be in lieu of and not in addition to any notice required under Section 1161 of the California Code of Civil Procedure or any similar or successor law, or (ii) the failure of Leasee to perform or breach of any obligations, agreement or covenant under this Agreement (other than as specified above), where such failure or breach continues for 30 days after Leasee's receipt of written notice of such failure; provided, however, that if the nature of the default is such that it cannot be cured within 30 days, Leasee shall not be in default of this Agreement if Leasee promptly after notice from Lessor commences to cure the default within the 30 day period and thereafter diligently prosecutes the same to completion. The 30 day notice described herein shall be in lieu of, and not in addition to, any notice required under Section 1161 of the California Code of Civil Procedure or any other law now or hereafter in effect requiring that notice of default be given prior to the commencement of an unlawful detainer or other legal proceeding. Any failure to pay Basic Fee and any other monetary obligation to be paid by Leasee under this Agreement which is specifically designated as "rent" in this Agreement shall be construed as a failure to perform the obligation for payment of rent.

(b) **Remedies**. Upon an Event of Default, in addition to any other remedies available to Lessor at law or in equity, Lessor shall have the immediate right to deny Leasee access to and/or use of the Premises and to terminate this Agreement and all rights of Leasee hereunder by giving Leasee written notice of such election to terminate.

14. **Damage By Fire or Other Casualty**.

(a) **Agreement Governs**. The provisions of this Agreement, including this Section 17, constitute an express agreement between Lessor and Leasee with respect to any and all damage to, or destruction of, all or any part of the Premises or any other portion of the Garage by fire or other casualty ("**Damage**") and no statute or regulation which is inconsistent with this Section 17, now or hereafter in effect, including without limitation, Sections 1932(2) and 1933(4) of the California Civil Code, shall have any application to this Agreement with respect to any damage or destruction to all or any part of the Premises or any other portion of the Garage.

DocuSign Envelope ID: FA6C0401-9A2E-4AFE-8235-4A3F31941446

(b) **Damage to the Premises and/or the Garage**. If the Premises and/or the Garage or any portion thereof required for Leasee and the Permitted Users to access and use the Premises and the [_____] parking stalls comprising the Premises suffer Damage, then Lessor shall have the option, to be exercised by written notice to Leasee within thirty (30) days after the date Lessor is informed of the Damage, either (i) if more than one-half (1/2) of the Garage is subject to Damage, to terminate this Agreement as of the date not less than thirty (30) days nor more than sixty (60) days after Lessor's notice to Leasee (although rent shall be abated until such termination in the manner and to the extent provided in Section 17(c)), or (ii) to repair the base building portion of the Garage due to such Damage with reasonable diligence and subject to reasonable delays for insurance adjustment and other matters beyond Lessor's reasonable control, in which event this Agreement shall continue in full force and effect, and the Basic Fee shall be abated in the manner and to the extent provided in Section 17(c).

(c) **Abatement of Basic Fee**. If the Premises and/or the Garage or any portion thereof is rendered untenantable or inaccessible and is not used by Leasee and the Permitted Users as a result of Damage, the Basic Fee pro rated as to the number of parking stalls comprising the Premises as are rendered untenantable or inaccessible shall be abated for such time as the Premises and/or the Garage or any portion thereof remain untenantable and are not used by Leasee and the Permitted Users, in the proportion that the number of parking stalls allocated to Leasee that are rendered untenantable or inaccessible and are not used by Leasee and the Permitted Users bears to the [_____] parking stalls in the Premises; provided, however, there shall be no abatement of Basic Fee if Lessor provides to Leasee replacement parking stalls in the Garage for all or any parking stalls which are rendered untenantable or inaccessible by reason of such Damage.

(d) **Destruction of Leasee's Personal Property**. In the event of any Damage to or destruction of the Premises or the Garage, under no circumstances shall Lessor be required to repair any injury, or damage to, or make any repairs to or replacements of any of Leasee's equipment, vehicles and other property or effects of Leasee placed in the Premises by or on behalf of Leasee. Lessor shall have no responsibility for any contents placed or kept in or on the Premises and/or the Garage by Leasee or Leasee's employees, agents, contractors or any Permitted Users, except to the extent of the gross negligence or willful misconduct of Lessor or its agents, employees, Leasees or contractors.

Lessor shall not be liable for any loss of business, inconvenience or annoyance to Leasee arising from any Damage or any repair or restoration of any portion of the Premises and/or the Garage as a result of any Damage.

(e) **Property Damage**. Any Garage employee to whom any property shall be entrusted by or on behalf of Leasee shall be deemed to be acting as Leasee's agent with respect to such property and neither Lessor nor its agents shall be liable for any damage to property of Leasee or others entrusted to employees of the Garage, nor for the loss of or damage to any property of Leasee by theft or otherwise. Neither Lessor nor its agents shall be liable for any injury or damage to persons or property or interruption of Leasee's business resulting from fire, explosion, falling plaster, steam, gas, electricity, water, rain or snow, leaks or other perils from any part of the Garage or from the pipes, appliances or

DocuSign Envelope ID: FA6C0401-9A2E-4AFE-8235-4A3F31941446

plumbing works or from the roof, street or subsurface or from any other place or by dampness or by any other cause of whatsoever nature, except to the extent of the gross negligence or willful misconduct of Lessor or any of its agents, employees, Leasees or contractors; nor shall Lessor or its agents be liable for any such damage caused by other persons in the Garage or caused by construction of any private, public or quasi public work; nor shall Lessor be liable for any latent defect in the Premises or in the Garage.

15. **Eminent Domain**.

(a) **Total or Partial Taking**. If all or any portion of the Premises and/or the Garage is taken or appropriated under the power of eminent domain or conveyed in lieu thereof, such that any of Leasee's [_____] parking stalls are rendered untenantable or inaccessible, and provided Lessor is unable to relocate any such parking stalls to other locations of the Garage which are tenantable and accessible, then Lessor shall have the right to terminate this Agreement at its option as to all such parking stalls rendered untenantable or inaccessible, exercisable within sixty (60) days of such taking or conveyance, in which event the Basic Fee payable hereunder shall be reduced pro rata based the number of parking stalls which are rendered untenantable or inaccessible as compared to Leasee's total of [_____] parking stalls. This Agreement shall remain in effect in the event that and to the extent that the effectiveness of this Agreement is necessary under applicable laws to allow Lessor to obtain or receive any award of compensation in connection with the exercise of such power of eminent domain. In such events, Lessor shall receive (and Leasee shall assign to Lessor upon demand from Lessor) any income, rent, award or any interest therein which may be paid in connection with the exercise of such power of eminent domain and Leasee shall have no claim against Lessor for any part of the sums paid by virtue of such proceedings or for the value of the unexpired portion of the Term, it being the intent of the parties hereto that Leasee shall have no right to recover or make any claim upon any such sums. Leasee hereby waives any and all rights it might otherwise have pursuant to 1265.130 of the California Code of Civil Procedures.

(b) **Temporary Taking**. Notwithstanding anything to the contrary contained in this Section 18, if the temporary use of any part of the Premises shall be taken or appropriated under the power of eminent domain during the Term, this Agreement shall be and remain unaffected by such taking or appropriation provided the Basic Fee shall abate for any and all parking stalls within the Premises which are taken or appropriated.

16. **Impossibility of Performance**. Neither Lessor nor Leasee shall be bound to the terms and conditions of this contract if failure to perform pursuant to this Agreement is due to fire, flood, strike, storms, disasters, or the acts of God, or any other cause beyond the control of the parties.

17. **Non-Waiver**. Lessor's decision not to enforce any provision of this Agreement, including any exhibit, shall not mean that Lessor has waived its rights to do so at any time.

18. **Notices**. Except as otherwise in this Agreement provided, notice or communication which Lessor may desire or be required to give to Leasee shall be deemed

DocuSign Envelope ID: FA6C0401-9A2E-4AFE-8235-4A3F31941446

sufficiently given or rendered if, in writing, delivered to Leasee personally or sent by registered or certified mail addressed to Leasee at the address set forth in Item 5 of the Basic Lease Provisions and shall be deemed to be at the time when the same is delivered to Leasee or mailed. Any notice by Leasee to Lessor must be served by registered or certified mail addressed to Lessor at the address set forth in Item 3 of the Basic Lease Provisions.

19. **Binding Agreement**. Each party hereto represents and warrants to the other that this Agreement is duly executed by such party and is a valid, binding obligation of each such party.

20. **No Amendments**. This Agreement, including all attachments and exhibits hereto sets forth the entire understanding between the parties and may not be altered or amended except by another writing executed by both parties.

21. **Alterations**. Following the Commencement Date, Leasee will not make or cause to be made any alterations, installations, improvements, additions or other physical changes in or about the Premises without obtaining the prior written consent of Lessor thereto, which Lessor shall have the right to withhold in its sole and absolute discretion.

22. **Maintenance**. Lessor, at its sole cost and expense, will maintain and repair the Garage and all portions thereof, consistent with the manner in which it stands as of the date hereof; provided, however, if such maintenance and repairs are caused in whole or in part by the act, neglect, fault or omission by Leasee, its agents, contractors, employees, or Permitted Users, Leasee shall pay to Lessor, as additional rent, the reasonable cost of such maintenance and repairs. Subject to Section 7 of this Agreement, Lessor shall not be liable to Leasee for any failure to make any such repairs, or to perform any maintenance hereunder, and there shall be no abatement of rent and no liability of Lessor by reason of any injury to or interference with Leasee's business arising from the making of or a failure to make any repairs, alterations or improvements in or to any portion of the Premises or the Project or in or to fixtures, appurtenances and equipment therein. Leasee hereby waives and releases its right to make repairs at Lessor's expense under Sections 1941 and 1942 of the California Civil Code; or under any similar law, statute, or ordinance now or hereafter in effect. Leasee shall advise Lessor of the need for any repairs or replacements to the Premises and/or the Garage which are Lessor's responsibility under this Agreement.

Leasee shall at its cost, repair all damages to the Premises caused by any installations made by Leasee or the moving or removing of Leasee's property in or to the Premises.

23. **Requirements of Law**. Except with respect to customary quantities of hazardous materials commonly found in automobiles, including, without limitation, gasoline and petroleum and petroleum by-products ("**Automotive Haz Mats**"), Leasee shall not transport, use, store, maintain, generate, manufacture, handle, dispose, release or discharge any hazardous material (as defined by any applicable law) upon or about the Premises and/or the Garage, nor permit Leasee's employees, invitees or Leasees or other occupants of the Premises to engage in such activities upon or about the Premises and/or the Garage. If any hazardous material other than Automotive Haz Mats is released, discharged or disposed of by Leasee, Leasee's employees, invitees or Leasees or any other occupant of the Premises, on or about the Premises and/or the

DocuSign Envelope ID: FA6C0401-9A2E-4AFE-8235-4A3F31941446

Garage, Leasee shall immediately, properly and in compliance with applicable laws clean up and remove, or cause the Permitted User responsible for such hazardous material to remove, the hazardous material from the Premises and/or the Garage and any other affected property and clean or replace any affected personal property (whether or not owned by Lessor), at Leasee's expense. Such clean up and removal work shall be subject to Lessor's prior written approval (except in emergencies), not to be unreasonably withheld, and shall include, without limitation, any testing, investigation, and the preparation and implementation of any remedial action plan required by any governmental body having jurisdiction or reasonably required by Lessor. If Leasee shall fail to comply with the provisions of this Section 26 within five (5) days after written notice by Lessor, or such shorter time as may be required by applicable law or in order to minimize any hazard to persons or property, Lessor may (but shall not be obligated to) arrange for such compliance directly or as Leasee's agent through contractors or other parties selected by Lessor, at Leasee's expense (without limiting Lessor's other remedies under this Agreement or applicable law).

24. **Limitation of Liability**.

(a) Lessor's obligations under this Agreement will not be binding upon Lessor after the sale, conveyance, assignment or transfer by Lessor of its interest in the Premises, and in the event of any such sale, conveyance, assignment or transfer, Lessor will be and hereby is entirely freed and relieved of all covenants and obligations of Lessor hereunder to the extent that such transferee assumes Lessor's obligations under this Agreement, subject to the terms hereof. None of Lessor's Indemnified Parties shall be liable for the performance of Lessor's obligations under this Agreement. Leasee will look solely to Lessor to enforce Lessor's obligations hereunder and shall not seek any damages against any of Lessor's Indemnified Parties. Lessor's liability for its obligations under this Agreement will be limited to Lessor's interest in the Garage and Leasee will not look to any other property or assets of Lessor or the property or assets of any of the Lessor's Indemnified Parties in seeking either to enforce Lessor's obligations under this Agreement or to satisfy a judgment for Lessor's failure to perform such obligations. In no event shall Lessor (or any Lessor Indemnified Parties) ever be liable for incidental or consequential damages.

(b) Leasee's obligations under this Agreement will not be binding upon Leasee after the Transfer by Leasee of its interest in this Agreement pursuant to the terms and conditions of Section 12, and in the event of any such Transfer, Leasee will be and hereby is entirely freed and relieved of all covenants and obligations of Leasee hereunder to the extent that the Transferee assumes Leasee's obligations under this Agreement, subject to the terms hereof. None of Leasee's Indemnified parties shall be liable for the performance of Leasee's obligations under this Agreement. Lessor will look solely to Leasee to enforce Leasee's obligations hereunder and shall not seek any damages against any of Leasee's Indemnified Parties or any Permitted Users for performance of this Agreement by Leasee (provided, however, nothing contained in this Section 28(b) will preclude Lessor from seeking separately damages or any other remedy as against any Permitted Users arising out of the use of the Garage by any such Permitted Users). Leasee's liability for its obligations under this Agreement will be limited to Leasee's interest in the Benefitted Parcels and Lessor will not look to any other property or assets of Leasee or the property or assets of any of the Leasee's Indemnified Parties in seeking either to enforce Leasee's obligations under this Agreement or to satisfy a judgment for Leasee's

DocuSign Envelope ID: FA6C0401-9A2E-4AFE-8235-4A3F31941446

failure to perform such obligations. In no event shall Leasee (or any Leasee Indemnified Parties) ever be liable for incidental or consequential damages).

25. **Entry**. Lessor reserves the right at all reasonable times to enter the Premises to (a) inspect them; (b) show the Premises to prospective purchasers, mortgagees or Leasees, or to the ground or underlying lessors; (c) post notices of nonresponsibility; or (d) alter, improve or repair the Premises or the Garage if necessary to comply with current building codes or other applicable laws, or for structural alterations, repairs or improvements to the Garage. In addition to the foregoing, Lessor may enter the Premises at any time to (i) perform services required of Lessor; (ii) take possession due to any breach of this Agreement in the manner provided herein; and (iii) perform any covenants of Leasee which Leasee fails to perform. Any such entries shall be without the abatement of the Basic Fee and shall include the right to take such reasonable steps as required to accomplish the stated purposes. Leasee hereby waives any claims for damages or for any injuries or inconvenience to or interference with Leasee's business, lost profits, any loss of occupancy or quiet enjoyment of the Premises, and any other loss occasioned thereby, except to the extent attributable to the gross negligence or willful misconduct of Lessor or any employee, agent or contractor of Lessor. Any entry into the Premises in the manner herein before described shall not be deemed to be a forcible or unlawful entry into, or a detainer of, the Premises, or an actual or constructive eviction of Leasee from any portion of the Premises.

26. **Partial Invalidity**. If any term, provision or condition contained in this Agreement shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such term, provision or condition to persons or circumstances other than those with respect to which it is invalid or unenforceable, shall not be affected thereby, and each and every other term, provision and condition of this Agreement shall be valid and enforceable to the fullest extent possible permitted by law.

27. **No Warranty**. In executing and delivering this Agreement, Leasee has not relied on any representation or any warranty or any statement of Lessor which is not set forth herein or in one or more of the exhibits attached hereto.

28. **Governing Law**. This Agreement shall be construed and enforced in accordance with the laws of the State of California.

29. **Signage**. Except to the extent expressly provided in this Section 36, Leasee shall not place or install (or permit to be placed or installed) any signs, advertisements, logos, identifying materials, pictures or names of any type on the Premises or the Garage. Subject to the compliance with applicable laws and such Garage signage criteria as Lessor shall apply from time to time and subject to receipt of Lessor's prior written consent, which shall not be unreasonably withheld, conditioned or delayed, Leasee may at its sole cost and expense install appropriate directional and identification signage for the Premises (including reserved parking signage and markings) and for any or all parking stalls comprising the Premises. The exact location, size, style, color, materials and lighting of Leasee's signage shall be consistent and compatible with the Garage's signage criteria and the cost of installation, maintenance, insurance, removal and utilities for all such Leasee identification signs shall be at Leasee's sole cost and expense.

DocuSign Envelope ID: FA6C0401-9A2E-4AFE-8235-4A3F31941446

30. **No Liens**. Leasee has no authority or power to cause or permit any lien or encumbrance of any kind whatsoever, whether created by act of Leasee, operation of law or otherwise, to attach to or be placed upon the Garage or Premises, and any and all liens and encumbrances created by Leasee shall attach to Leasee's interest only. Lessor shall have the right at all times to post and keep posted on the Premises any notice which it deems necessary for protection from such liens. Leasee covenants and agrees not to suffer or permit any lien of mechanics or materialmen or others to be placed against the Garage or the Premises with respect to work or services claimed to have been performed for or materials claimed to have been furnished to Leasee or the Premises, and, in case of any such lien attaching or notice of any lien, Leasee covenants and agrees to cause it to be immediately released and removed of record. Notwithstanding anything to the contrary set forth in this Agreement, in the event that such lien is not released and removed on or before the date which is five (5) business days following notice of such lien is delivered by Lessor to Leasee, Lessor, at its sole option, may immediately take all action necessary to release and remove such lien, without any duty to investigate the validity thereof, and all reasonable, actual and documented sums, costs and expenses, including reasonable attorneys' fees and costs, incurred by Lessor in connection with such lien shall be deemed immediately due and payable by Leasee.

31. **Recordation**. Each party shall have the right to require that the other execute and deliver for recordation a memorandum of Lease to provide notice that the Garage and the Benefitted Parcels are subject to the terms and conditions of this Agreement ("**Memo of Lease**"), which shall be recorded against the title of both the Garage and the Benefitted Parcels. Upon the expiration or earlier termination of this Agreement, the party who shall have recorded the Memo of Lease ("**Recording Party**") shall, at its sole cost and expense, remove the Memo of Lease from title of the Garage and the Benefitted Parcels, failing which the Recording Party hereby authorizes the other party to so remove the Memo of Lease from title of the Garage and the Benefitted Parcels.

32. **Entire Agreement**. It is understood and acknowledged that there are no oral agreements between the parties hereto affecting this Agreement and this Agreement supersedes and cancels any and all previous negotiations, arrangements, brochures, agreements and understandings, if any, between the parties hereto or displayed by Lessor to Leasee with respect to the subject matter thereof, and none thereof shall be used to interpret or construe this Agreement. This Agreement and any side letter or separate agreement executed by Lessor and Leasee in connection with this Agreement and dated of even date herewith contain all of the terms, covenants, conditions, warranties and agreements of the parties relating in any manner to the rental, use and occupancy of the Premises, shall be considered to be the only agreement between the parties hereto and their representatives and agents, and none of the terms, covenants, conditions or provisions of this Agreement can be modified, deleted or added to except in writing signed by the parties hereto. All negotiations and oral agreements acceptable to both parties have been merged into and are included herein. There are no other representations or warranties between the parties, and all reliance with respect to representations is based totally upon the representations and agreements contained in this Agreement.

*[*SIGNATURES ON NEXT PAGE*]*

DocuSign Envelope ID: FA6C0401-9A2E-4AFE-8235-4A3F31941446

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first above written.

Leasee:

[_____]

By: _____
Name: _____
Title: _____

Lessor:

[_____]

By: _____
Name: _____
Title: _____

DocuSign Envelope ID: FA6C0401-9A2E-4AFE-8235-4A3F31941446

EXHIBIT A

PREMISES

DocuSign Envelope ID: FA6C0401-9A2E-4AFE-8235-4A3F31941446

655 EXHIBIT B

656

657 RULES AND REGULATIONS

658

659 EXHIBIT C

660 [BENEFITTED PARCELS LEGAL DESCRIPTION]

661

LANGUAGE FROM AGREEMENT FOR THE CONSTRUCTION OF AND IMPROVEMENTS TO VETERANS PARK

Resolution No. 2022-085 approved the following language in the *Amended and Restated Disposition, Development and Loan Agreement* for the construction of and improvements to Veterans Park

Section 2.1 Definitions

(hhh) “Veterans Park Improvements” is defined as the constructed improvements within the Veterans Park Parcel which shall be entitled and designed at the sole discretion of the City.

Section 3.5 Construction and Financing for Veterans Park Improvements.

The Parties agree that the Developer will manage the construction of the Veterans Park Improvements but that the City will pay for the costs of the Veterans Park Improvements at its sole expense. City and Developer will negotiate a future construction management and reimbursement agreement to coordinate the construction of the Veterans Park Improvements. The Agreement shall authorize reimbursement for the construction of the park, per the designs and specifications issued by the City, and shall not exceed Five Million Five Hundred Thousand Dollars ($ 5,500,000) (not including any grants obtained by Developer to help fund the construction costs), without additional approval of the City Council. The Agreement and the procurement of the contractor who will build the park shall comply with all applicable local, state, and federal procurement laws to the extent such laws apply. These improvements would be exclusive of any development loan provided by the City for development of the Project.

Similarly, Resolution No. 2022-085 approved minor language in two other sections in the *Amended and Restated Disposition, Development and Loan Agreement* that contain language related to the construction of and improvements to Veterans Park (underlined):

Section 7.3 City Review.

Except for the activities to be performed by or on behalf of the City as otherwise contemplated herein, the Developer shall be solely responsible for all aspects of the Developer's conduct in connection with the Project, including, but not limited to, the quality and suitability of the Project Documents, the supervision of construction work for the Project and the

Veterans Park Improvements, and the qualifications, financial condition, and performance of all architects, engineers, contractors, subcontractors, suppliers, consultants, and property managers. Except for the activities to be performed by or on behalf of the City as otherwise contemplated herein, 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 8.2 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, subject to Force Majeure requirements in Section 13.4 of this Agreement. As between the City and the Developer, except for, Veterans Park Improvements, and work contemplated by the Cooperation and Indemnity Agreement referenced in section 6.2, above, the Developer shall be solely responsible for the construction of the Improvements, including all costs of construction (except for the EVA Improvement Reimbursables referenced in Section 3.4).

Approved Impartial Summary of Referendum Against Resolution No. 2022-085 Passed by the City Council of the City of Livermore Authorizing Execution of an Amended and Restated Disposition, Development and Loan Agreement ("DDLA") with Eden Housing, Inc. for Development of the Downtown Multi-Family Housing Site

(Elections Code Section 9238(b)(2)(B)(i))

Introduction. This resolution implements the City Council's prior legislative acts to approve the development of affordable workforce housing on an approximately 2.0 acre parcel of property owned by the City of Livermore ("City") in the Downtown Core Area of the Downtown Specific plan (the "Property).

The Property is listed as a City housing asset in the Long-Range Property Management Plan proposed by the City and approved the State of California on December 28, 2015, for the development of affordable housing.

Background. This resolution approves an amendment to a 2018 contract for the City to sell the Property to Eden Housing, Inc. ("Eden") for development of the affordable workforce housing component of the Downtown Plan approved by the City Council in January 2018.

On January 29, 2009, a State of California required deed restriction was recorded to require the Property's use for the development of affordable housing.

On November 27, 2017, the City Council received the Final Report for the Downtown Public Engagement Program that was the culmination of the Downtown Steering Committee's Public Engagement Plan. The City Council accepted the report and directed the downtown redevelopment of the City's properties provide 130 workforce housing units on the Property if the City's property on the east side of Livermore Avenue was selected for the development of hotel.

On January 29, 2018, the City Council approved a Downtown Plan that selected the east side of Livermore Avenue for the hotel and placed the affordable workforce housing component on the Property. The affordable workforce housing component planned for 130 affordable workforce housing units to be located on the Property.

In May of 2018, the City issued a request for qualifications to identify a qualified developer for the 130-unit workforce housing component of the approved Downtown Plan for the Property.

On November 27, 2018, the City and Eden entered into a Disposition, Development and Loan Agreement ("Original DDLA") with respect to the Property to enable the future development of a 130-unit affordable workforce housing project (the "Project").

On May 25, 2021, the City approved land use entitlements for the Project, including Downtown Design Review 20-019 and Vesting Tentative Parcel Map 11186 – Subdivision 21-003, subject to conditions of approval (the "Approvals").

On May 26, 2021, the City and Eden entered into a First Amendment to the Original DDLA to define the development and financial obligations for the proposed Veterans Park, allow for reimbursement by City to Eden for certain emergency vehicle access road improvements adjacent to the Project, and to update the entitlement, financing, and development timeline in the Schedule of Performance in the Original DDLA.

On June 24, 2021, a Petition for Writ of Mandate was filed in Alameda County Superior Court by Save Livermore Downtown against the City and Eden, challenging the Approvals and the City's compliance with the California Environmental Quality Act. On February 14, 2022, the Superior Court entered judgment denying the Petition for Writ of Mandate. On April 13, 2022, Save Livermore Downtown appealed the judgment to the California Court of Appeal, and the appeal is still pending (the "Litigation").

On May 24, 2022, the City Council adopted Resolution No. 2022-085 (the "Resolution"), authorizing the City's execution of an Amended and Restated DDLA with Eden for development of the Project to further amend the previously amended Original DDLA. The Resolution states that "the City and Eden desire to enter into an Amended and Restated DDLA and make several modifications and additions that will facilitate the development process, enumerate specific financial contributions and agreements that would be under the authority of the City Manager to execute, and modify the Schedule of Performance to extend the time period for Eden to complete development of the project in light of the pending Litigation."

The purpose of the Amended and Restated DDLA is to amend the DDLA and update its terms and conditions for Eden to prepare or cause to be prepared all required documents necessary to receive development approvals for the Project, to obtain title to the Property, and to develop the Project. The Amended and Restated DDLA also amends the DDLA and updates its terms and conditions for the City to sell the Property to Eden for the purpose of developing, building, and operating the Project and contribute certain funds for the acquisition and predevelopment of the Property.

Financial Provisions. The Amended and Restated DDLA acknowledges that pursuant to the original DDLA, the City previously provided a predevelopment loan of five-hundred thousand dollars ($500,000) to Eden for predevelopment costs for the Project, including architecture and design costs, legal and specialty consultant fees, site feasibility analysis, title review, due diligence, and preconstruction costs (the "Predevelopment Loan"). Eden is responsible for payment of the principal of, and interest on, the Predevelopment Loan.

The Amended and Restated DDLA also requires the City to make an acquisition loan to Eden for the purchase price of the Property, which shall be seven-million eight-hundred thousand dollars ($7,800,000) (the "Site Acquisition Loan"). The Site Acquisition Loan shall be evidenced and secured by a Seller Take-Back Note and Seller-Take Back Acquisition Deed of Trust recorded against the Property. Eden shall be responsible for the payment of principal and interest on the Site Acquisition Loan.

In addition, the Amended and Restated DDLA requires the City, at its sole expense, to pay for the costs of improvements to Veterans Park, with Eden managing construction of such improvements. Eden and the City must negotiate a future construction management and reimbursement agreement to coordinate the construction of improvements to Veterans Park,

which shall not exceed five-million five-hundred thousand dollars ($5,500,000) without additional City Council approval.

Predisposition Requirements. The Amended and Restated DDLA establishes conditions that must be satisfied by Eden in order for Eden to acquire title to the Property. The City may waive satisfaction of the conditions.

The conditions include: (1) Eden providing the City with a preliminary development Pro Forma, setting forth Eden's estimate of sources and uses of funds for development of the Project; (2) Eden obtaining all entitlements necessary for the Project; (3) the City approving Eden's organizational documents; (4) the City providing Eden with written notification that (a) it has completed a federally required environmental review pursuant to the National Environmental Policy Act ("NEPA") and the City's request for release of funds has been approved and the purchase may proceed; or (b) it has determined the purchase is exempt from federal environmental review pursuant to NEPA and a request for release of funds is not required; (5) Eden furnishing to the City the types and amounts of insurance specified in the Amended and Restated DDLA; (6) the parties entering into a temporary parking lease for the Property wherein public parking will be available on the Property until construction of the first phase of the Project commences; and (7) the parties taking the necessary steps to ensure that the City will receive air rights to Parcels 1 and 3 on the Property to ensure that the Project as constructed does not exceed 52 feet above the surface elevation.

Disposition of the Property. The Amended and Restated DDLA requires the City to sell to Eden, and Eden to purchase from the City, the Property provided that the predisposition requirements and additional closing conditions have been satisfied. To accomplish the conveyance of the Property from the City to Eden, the parties must establish an escrow and provide the escrow holder with written instructions consistent with the Amended and Restated DDLA.

The additional closing conditions that must be satisfied prior to conveyance of the Property include (1) completion of the predisposition requirements, (2) Eden depositing all required documents and its share of closing costs, (3) there being no events of default by Eden, (4) Eden's representations and warranties remaining true and correct, (5) the title company being prepared to issue a title policy, and (6) the City having deposited a grant deed and other required documents to the escrow holder.

Upon satisfaction or waiver of all the required predisposition conditions and the deposit of all required documents into escrow, the escrow officer must cause to be recorded with the Official Records of Alameda County the grant deed conveying the Property to Eden as well as other documents required to be recorded under the Amended and Restated DDLA. The Schedule of Performance attached to the Amended and Restated DDLA requires close of escrow on the Property to occur on or before September 30, 2022.

Hazardous Materials. Prior to the close of escrow for the Property, the Amended and Restated DDLA requires the City and Eden to enter into an indemnity and cooperation agreement to apportion costs and any potential liability related to hazardous materials at, on, in, beneath or from the Property from and after the date of the close of escrow. The Amended and Restated DDLA authorizes the City Manager to negotiate and execute the indemnity and

cooperation agreement in an amount not to exceed four-million three-hundred thousand dollars ($4,300,000), subject to the City Attorney's approval of the agreement as to form. The obligations of the City under the indemnity and cooperation agreement shall not exceed $4,300,000, without further City Council approval.

Design and Construction. The Amended and Restated DDLA requires that Eden obtain all ministerial permits and approvals necessary to construct the Project within the time specified in the Schedule of Performance attached to the Amended and Restated DDLA. Eden shall be solely responsible for all aspects of Eden's conduct in connection with the Project, including, but not limited to, the quality and suitability of project documents, the supervision of construction work for the Project and the Veterans Park Improvements, and the qualifications, financial condition, and performance of all architects, engineers, contractors, subcontractors, suppliers, consultants, and property managers.

The Amended and Restated DDLA obligates Eden to commence preconstruction activities and the construction of the Project within the times set forth in the Schedule of Performance. Eden shall diligently prosecute to completion the construction of the Project, and shall complete construction of the Project within the time set forth in the Schedule of Performance, subject to Force Majeure requirements set forth in the Amended and Restated DDLA. Moreover, Eden must construct the Project in accordance with approved final construction drawings, and the terms and conditions of all City and other governmental approvals, and in compliance with 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 (2) all directions, rules and regulations of any fire marshal, health officer, building inspector, or other officer of every governmental agency having or hereafter acquiring jurisdiction.

The Amended and Restated DDLA also requires Eden to pay and shall cause its contractor and subcontractors to pay prevailing wages in the construction of the Project as those wages are determined pursuant to California Labor Code Section 1720 et seq., and to employ

apprentices as required by California Labor Code Sections 1777.5 et seq., and the implementing regulations of the Department of Industrial Relations.

The Amended and Restated DDLA requires Eden to permit the City, upon reasonable prior notice not less than 48 hours, to enter the Property during normal business hours to inspect the construction work to determine that such work is in substantial conformity with the approved final construction drawings or to inspect the Property for compliance with the Amended and Restated DDLA.

Upon recordation of the Final Map and construction finance closing for the first phase of the Project, at the time specified in the Schedule of Performance, Eden must dedicate the Veterans Park Parcel (Parcel 2) back to the City. Parcel 2 shall have air rights over Parcels 1 and 3, as described in the Amended and Restated DDLA, and Parcel 2 shall be dedicated to the City free and clear of any encumbrances created by Eden that have not been authorized by the City.

The Amended and Restated DDLA requires the City to enter into an irrevocable parking

space lease with Eden for 16 reserved parking spaces for Project residents in the L Street Garage, which will be constructed and owned by the City to serve the Project. The spaces will be leased at $300 per space per year, for an annual cost of $4,800, for a 55-year term with a 2.5% escalator. The term will commence from lease-up of the first phase of the Project.

Additional Ongoing Obligations. The Amended and Restated DDLA requires Eden to covenant to use the Property for affordable housing for a period not less than 55 years. Eden agrees to maintain the Property in a neat and orderly condition during construction in accordance with industry health and safety standards, and that, once the Project is completed, to maintain the Project as to both external and internal appearance of the buildings, the common areas, and the parking areas. The Amended and Restated DDLA requires Eden to maintain or cause to be maintained the Property in good repair and working order, and in a neat, clean and orderly condition, including the walkways, driveways, parking areas and landscaping, and from time to time to make all necessary and proper repairs, renewals, and replacements.

The Amended and Restated DDLA requires Eden to indemnify, defend, and hold harmless the City and its elected officials, officers, employees, agents, consultants, designated volunteers, and contractors 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 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 the Amended and Restated DDLA and/or the Project; (ii) performance of the Amended and Restated DDLA on the part of Eden or any contractor or subcontractor of Eden; and/or (iii) the development, operation, maintenance or management of the Project,

Default and Remedies. The Amended and Restated DDLA contains provisions governing the parties' remedies for breach of the Amended and Restated DDLA, including events of default by the City and events of default by Eden. If a specified event of default occurs, the non-defaulting party must first notify the defaulting party of the purported breach or failure, giving the defaulting party thirty (30) days from receipt of such notice to cure such breach or failure. If the defaulting party fails to commence the cure during such 30-day period and thereafter to prosecute the cure diligently to completion, the non-defaulting party shall be afforded the right to take any or all of the following remedies: (1) terminating the Amended and Restated DDLA; (2) prosecuting an action for damages; or (3) seeking specific performance or any other remedy available at law or in equity.

The Amended and Restated DDLA provides that following the close of escrow of the Property, (1) if Eden fails to commence the pre-construction activities or construction of the Project by the dates listed in the Schedule of Performance (as such dates may be extended), or (2) if the City does not prevail in the Litigation; then the City may, in addition to other rights granted in the Amended and Restated DDLA, re-enter and take possession of the Property with all improvements thereon, and revest in the City the estate previously conveyed to Eden by the City. The City's rights to repossess the Property terminate once Eden closes on construction financing for the first phase of the Project.

Upon revesting in the City of title to the Property, 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. In addition, upon revesting in the City of title to the Property, the Predevelopment Loan and Site Acquisition Loan shall be deemed paid in full and cancelled. If the City's rights to repossess the property are triggered because the City does not prevail in Litigation, the City shall reimburse Eden for actual costs incurred and paid as a result of its ownership of the Property, and not already reimbursed.

The Amended and Restated DDLA contains provisions regarding damages, including an acknowledgment from the City that the exercise of its legislative authority for a land use action, such as but not limited to a General Plan Amendment, Specific Plan Amendment, or zoning action (collectively, a "Land Use Action") that prevents the Project from being developed does not constitute a compensable taking absent extraordinary circumstances. The Amended and Restated DDLA provides examples of extraordinary circumstances that could subject the City to a taking without payment of compensation, including, but not limited to, eliminating all value from the Property, the denial of due process, and reclassifying the Property in a manner to prevent its improvement so that it might be acquired at a lesser price.

The City acknowledges that Eden has expended significant resources to develop the Project that could have been used to develop affordable housing elsewhere and that could be lost, and obtained grant and/or loan funding that would need to be repaid, if the City subsequently exercises its legislative authority for a Land Use Action that prevents the Project from being developed. The City and Eden agree that they would be able to quantify the losses equal to the grant and/or loan funding that would need to be repaid should a Land Use Action by the City prevent the Project from being developed. The City and Eden also agree that quantifying the scope of the economic and noneconomic losses arising from a Land Use Action that prevents the Project from being developed is inherently difficult insofar as the action results in the loss of affordable housing opportunities, negatively impacts Eden's reputation, and cannot adequately capture the soft costs expended on the Project.

The Amended and Restated DDLA states that the City and Eden agree and stipulate that the repayment of Project grant and/or loan funds already expended for the Project that are not available for repayment and the agreed upon sum of two-million three-hundred thousand dollars ($2,300,000) is a reasonable measure of the damages based upon their experience in the affordable housing industry and given the nature of the losses that may result from a Land Use Action that prevents the Project from being developed.

Thus, the Amended and Restated DDLA states that in the event the City exercises its legislative authority for a Land Use Action that prevents the Project from being developed, then the City shall pay damages to Eden as follows:

(1) An amount equal to the grant and/or loan funds that were expended by Eden prior to the date of that Land Use Action that is not available for repayment in the event the awarding/loaning agency demands Eden repay the expended funds; and

(2) The stipulated amount of $2,300,000 for the losses that cannot be quantified.

General Provisions. The Amended and Restated DDLA also contains general

contractual provisions, including notice provisions; non-liability of officials, employees and agents; inspection rights; a severability provision; a Force Majeure provision; and an integration clause. The Amended and Restated DDLA states that its terms shall run with the land, and shall bind all successors in title to the Property until the termination of the Amended and Restated DDLA, except that those provisions that are specified to survive termination of the Amended and Restated DDLA shall run with the land in perpetuity and remain in full force and effect following such termination.

The Amended and Restated DDLA states that it may be amended from time to time as the Parties find is necessary. The City Manager shall have the authority to make minor amendments to effectuate the intent of the Amended and Restated DDLA. The City Manager shall also have the authority to execute the final documents and agreements referenced in the Amended and Restated DDLA and other related documents to implement the intent and terms of the agreement, as well as the specific delegations of authority set forth herein as approved by the Resolution.

The full text of the Resolution that includes the Amended and Restated DDLA as an exhibit can be found in the City's records at this link: https://livermoreca.gov/2022-085.

////
////

Approved by the City Attorney for the City of Livermore on June 9, 2009

Jason R. Alcala
City Attorney
City of Livermore

IN THE CITY COUNCIL OF THE CITY OF LIVERMORE, CALIFORNIA

A RESOLUTION ACCOMPANYING THE ACTION TAKEN BY THE CITY COUNCIL IN RESPONSE TO THE REFERENDUM AGAINST RESOLUTION 2022-085, AND TO RATIFY, REAFFIRM, AND READOPT THE *AMENDED AND RESTATED DISPOSITION, DEVELOPMENT AND LOAN AGREEMENT* APPROVED BY THAT RESOLUTION, WITH THE EXCEPTION OF THE LEGISLATIVE ACTS APPROVING THE CONSTRUCTION OF AND IMPROVEMENTS TO VETERANS PARK, AND TO ACKNOWLEDGE THE AGREEMENT OTHERWISE REMAINS IN EFFECT FROM THE DATE IT WAS SIGNED

On May 24, 2022, the City Council adopted Resolution No. 2022-085 authorizing the execution of an *Amended and Restated Disposition, Development and Loan Agreement* with Eden Housing, Inc. (Exhibit A) for the development of the downtown multi-family housing site. That agreement amended the then existing agreement with Eden Housing, Inc. ("Eden Housing") for the affordable housing project that was first approved by the City Council on November 26, 2018, (Resolution No. 2018-197), and that was later amended by the City Council on May 25, 2021, (Resolution No. 2021-073). Resolution No. 2022-085 also approved the language in the agreement for the construction of and improvements to Veterans Park, which language has been pulled from the agreement and set forth in Exhibit B to this resolution for clarity.

On March 6, 2024, in the matter of *Move Eden Housing v. City of Livermore*, 100 Cal.App.5th 263 (2024), the Appellate Court determined the following with regard to the *Amended and Restated Disposition, Development and Loan Agreement*:

1. Resolution No. 2022-085 is subject to referendum because it approved "the construction of and improvements to" Veterans Park as part of the City's agreement with Eden Housing. The Appellate Court determined that the prior agreement merely contained an option for that work, and that the 2022 agreement for the first time authorized that work.

2. All other portions of Resolution No. 2022-085, and the agreement, that were protested by the petitioner were administrative, not legislative acts, and therefore not subject to referendum.

3. The primary substantive decisions relating to the housing aspects of the agreement were not subject to referendum because they were made years before the 2022 resolution was adopted.

Pursuant to the authority *In re: Stratham, (1920) 45 Cal.App.* 436 and *Reagan v. Sausalito, (1962) 210 Cal.App.2d 618,* the City Council intends this resolution to hereby deal further with the subject matter of the *Amended and Restated Disposition, Development and Loan Agreement* that was not subject to referendum.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Livermore that it hereby ratifies, reaffirms, and readopts the City of Livermore's ("City") execution of the *Amended and Restated Disposition, Development and Loan Agreement*, except for the language for the construction of and improvement to Veterans park, and hereby

acknowledges that the remaining language of the agreement remains in full force and effect as of the date the agreement was signed.

BE IT FURTHER RESOLVED by the City Council of the City of Livermore that staff is authorized to take the necessary administrative steps to memorialize the effect of section 13.9 in the *Amended and Restated Disposition, Development and Loan Agreement* in response to the determination of the Court of Appeals in the matter of *Move Eden Housing v. Livermore, (2024) 318 Cal.Rptr.3d 826,* and reflect that the language in the agreement for the construction of and improvements to Veterans Park were severed from that agreement by operation of law because it is invalid, void, and unenforceable for a period of one year as a result of that decision and the City Council's action in response to the referendum.

BE IT FURTHER RESOLVED by the City Council of the City of Livermore that the ratification, reaffirmation and readoption of the non-legislative elements of the *Amended and Restated Disposition, Development and Loan Agreement* is within the scope of the Specific Plan EIR, dated February 9, 2004 (SCH No.: 2003032038), the Specific Plan Subsequent EIR, dated March 30, 2009 (SCH No.: 2008092085), and the Specific Plan Subsequent EIR Addenda 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. The *Amended and Restated Disposition, Development and Loan Agreement* is also exempt from the provisions of CEQA pursuant to CEQA Guidelines Sections 15182 (c), 15332, 15304 (a)(b) and 15308 and none of the exceptions to the categorical exemptions in CEQA Guidelines Section 15300.2 apply, as described in the Eden Housing Project resolution, dated May 26, 2021 (Resolution 2021-071).

On motion of Council Member _____, seconded by Council Member _____, the foregoing resolution was passed and adopted on June 24, 2024, by the following vote:

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

ATTEST:

_____
Deborah L. Elam
Acting City Clerk

APPROVED AS TO FORM:

/s/ Jason R. Alcala
Jason R. Alcala
City Attorney

Exhibit A – Resolution No. 2022-085
Exhibit B – Language from Agreement for the Construction of and Improvement to Veterans Park

DocuSign Envelope ID: FA6C0401-9A2E-4AFE-8235-4A3F31941446

EXHIBIT A

IN THE CITY COUNCIL OF THE CITY OF LIVERMORE, CALIFORNIA

A RESOLUTION AUTHORIZING EXECUTION OF AN AMENDED AND RESTATED DISPOSITION, DEVELOPMENT AND LOAN AGREEMENT ("DDLA") WITH EDEN HOUSING, INC. FOR DEVELOPMENT OF THE DOWNTOWN MULTI-FAMILY HOUSING SITE

(APN 098-0289-022-00)

On February 9, 2004, the City Council certified the General Plan and Downtown Specific Plan Environmental Impact Report ("Specific Plan EIR") (SCH No.: 2003032038).

On March 30, 2009, the City Council certified the Downtown Specific Plan Amendments and Regional Performing Arts Theater Subsequent Environmental Impact Report ("Specific Plan Subsequent EIR") (SCH No.: 2008092085).

On September 10, 2018, May 13, 2019, and October 26, 2020, the City Council adopted addenda to the Downtown Specific Plan Subsequent Environmental Impact Report by Resolution Nos: 2018-153, 2019-064, and 2020-178.

On November 27, 2018, the City of Livermore ("City") and Eden Housing, Inc. ("Eden") entered into a Disposition, Development and Loan Agreement ("DDLA") with respect to the approximately 2.0-acre City owned site for the 130-unit, affordable, multi-family, "workforce" housing component of the Downtown Plan.

On May 26, 2021, the City and Eden entered into a First Amendment to the DDLA to define the development and financial obligations for Veteran's Park, allow for reimbursement by City to Developer for certain emergency vehicle access road improvements adjacent to the Project, and to update the entitlement, financing, and development timeline in the Schedule of Development.

On June 24, 2021, a Petition for Writ of Mandate was filed by Save Livermore Downtown, challenging the City's CEQA determination (the "Litigation"). On February 14, 2022, the Court entered judgment denying the Petition for Writ of Mandate with prejudice. On April 13, 2022, a further appeal was filed by Save Livermore Downtown. The case is currently still pending.

Now, the City and Eden desire to enter into an Amended and Restated DDLA and make several modifications and additions that will facilitate the development process, enumerate specific financial contributions and agreements that would be under the authority of the City Manager to execute, and modify the Schedule of Performance to extend the time period for Eden to complete development of the project in light of the pending Litigation.

DocuSign Envelope ID: FA6C0401-9A2E-4AFE-8235-4A3F31941446

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Livermore finds that the Amended and Restated Disposition, Development and Loan Agreement with Eden Housing, Inc. is within the scope of the Specific Plan EIR, dated February 9, 2004 (SCH No.: 2003032038), the Specific Plan Subsequent EIR, dated March 30, 2009 (SCH No.: 2008092085), and the Specific Plan Subsequent EIR Addenda 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.

The DDLA is also exempt from the provisions of CEQA pursuant to CEQA Guidelines Sections 15182 (c), 15332, 15304 (a)(b) and 15308 and none of the exceptions to the categorical exemptions in CEQA Guidelines Section 15300.2 apply, as described in the Eden Housing Project resolution, dated May 26, 2021 (Resolution 2021-071).

BE IT FURTHER RESOLVED by the City Council of the City of Livermore that the City Manager is authorized to execute the Amended and Restated Disposition, Development and Loan Agreement, attached hereto as Exhibit A, and is granted the authority to execute the final documents and agreements referenced in the Agreement and other related documents to implement the intent and terms of the Agreement, as well as the specific delegations of authority set forth in the Agreement.

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

AYES:	Council Members Carling, Kiick, Munro, Vice Mayor Bonanno, and Mayor Woerner
NOES:	None
ABSENT:	None
ABSTAIN:	None

ATTEST:

DocuSigned by:
Marie Weber
803794820BC4488...

Marie Weber
City Clerk
5/27/2022 | 10:16 AM PDT

APPROVED AS TO FORM:

DocuSigned by:
Kelly Trujillo
09CTF9AD0C44A8...

Kelly Trujillo
Assistant City Attorney

Exhibit A – Amended and Restated Disposition, Development, and Loan Agreement

DocuSign Envelope ID: FA6C0401-9A2E-4AFE-8235-4A3F31941446

AMENDED AND RESTATED
DISPOSITION AND DEVELOPMENT AND LOAN AGREEMENT

by and between

CITY OF LIVERMORE

and

EDEN HOUSING, INC.
May 24, 2022

Prior Agreements:

1. Disposition and Development Agreement, dated November 27, 2018, approved by City Council Resolution No. 2018-197.

2. First Amendment to the DDLA, dated May 26, 2021 approved by City Council Resolution No. 2021-073.

DocuSign Envelope ID: FA6C0401-9A2E-4AFE-8235-4A3F31941446

TABLE OF CONTENTS

ARTICLE 1. SUBJECT OF THE AGREEMENT	**3**
Section 1.1 Purpose of this Agreement	3
Section 1.2 Parties to the Agreement	4
ARTICLE 2. DEFINITIONS	**4**
Section 2.1 Definitions	4
Section 2.2 Exhibits	10
ARTICLE 3. CITY FINANCIAL ASSISTANCE	**11**
Section 3.1 Predevelopment Loan	11
Section 3.2 Acquisition Loan	12
Section 3.3 Development Loan/*Contribution*	15
Section 3.4 Financing for EVA Improvements	15
Section 3.5 Construction and Financing for Veterans Park Improvements	15
ARTICLE 4. PREDISPOSITION REQUIREMENTS	**16**
Section 4.1 City's Conditions Precedent to Close of Escrow	16
Section 4.2 Financing Commitment	16
Section 4.3 City Approvals	16
Section 4.4 Organizational Documents	16
Section 4.5 Federal Environmental Review and Clearance	16
Section 4.6 Insurance	17
Section 4.7 Time Extensions	17
Section 4.8 Lease Back of the Undivided Parcel	17
ARTICLE 5. DISPOSITION OF THE UNDIVIDED PARCEL	**17**
Section 5.1 Purchase and Sale	18
Section 5.2 Purchase Price	18
Section 5.3 Opening Escrow	18
Section 5.4 Additional Closing Conditions	18
Section 5.5 Deposit of Documents	19
Section 5.6 Close of Escrow	19

DocuSign Envelope ID: FA6C0401-9A2E-4AFE-8235-4A3F31941446

Section 5.7 Additional Escrow Instructions 20
Section 5.8 Condition of Title to the Property 20
Section 5.9 Condition of the Property 20
Section 5.10 Inspections; Condition of Site 22
Section 5.11 Right of Entry 22
Section 5.12 Real Estate Commissions 23

ARTICLE 6. HAZARDOUS MATERIALS REPRESENTATIONS **23**
Section 6.1 Existing Hazardous Materials 23
Section 6.2 Indemnification and Cooperation 24

ARTICLE 7. DESIGN REQUIREMENTS **25**
Section 7.1 Project Design 25
Section 7.2 Additional Permits and Approvals 25
Section 7.3 City Review 25

ARTICLE 8. PRE-CONSTRUCTION AND CONSTRUCTION OF THE IMPROVEMENTS **25**
Section 8.1 Commencement of Construction 25
Section 8.2 Completion of Construction 25
Section 8.3 Construction Pursuant to Scope and Plans 26
Section 8.4 Mechanics' Liens 26
Section 8.5 Compliance with Applicable Law 26
Section 8.6 Progress Reports 28
Section 8.7 Entry by City 28
Section 8.8 Non-Discrimination During Construction; Equal Opportunity. 28
Section 8.9 Insurance Requirements 29
Section 8.10 Dedication of Veterans Park Parcel 29
Section 8.11 Reserved Parking for the Project's Residents 29

ARTICLE 9. OBLIGATIONS WHICH CONTINUE THROUGH AND BEYOND THE COMPLETION OF CONSTRUCTION **30**
Section 9.1 Affordable Housing Use 30
Section 9.2 Downtown Landscape Maintenance District 30
Section 9.3 Maintenance 30

DocuSign Envelope ID: FA6C0401-9A2E-4AFE-8235-4A3F31941446

Section 9.4 Developer To Indemnify City 30
Section 9.5 Hazardous Materials 31
Section 9.6 Non-Discrimination 33

ARTICLE 10. ASSIGNMENT AND TRANSFERS **33**
Section 10.1 Definitions 33
Section 10.2 Purpose of Restrictions on Transfer 34
Section 10.3 Prohibited Transfers 34
Section 10.4 Permitted Transfers 34
Section 10.5 Effectuation of Permitted Transfers 35

ARTICLE 11. SECURITY FINANCING AND RIGHTS OF HOLDERS **36**
Section 11.1 No Encumbrances Except for Development Purposes 36
Section 11.2 Holder Not Obligated to Construct 36
Section 11.3 Notice of Default and Right to Cure 36
Section 11.4 Cure of Developer Defaults 37
Section 11.5 Failure of Holder to Complete Development 38
Section 11.6 Right of City to Cure 38
Section 11.7 Right of City to Satisfy Other Liens 39
Section 11.8 Holder to be Notified 39
Section 11.9 Modifications 39

ARTICLE 12. DEFAULT AND REMEDIES **39**
Section 12.1 Application of Remedies 39
Section 12.2 Fault of City 39
Section 12.3 Fault of Developer 40
Section 12.4 Right of Reverter 430
Section 12.5 Damages 431
Section 12.6 Rights and Remedies Cumulative 42
Section 12.7 Survival 42

ARTICLE 13. GENERAL PROVISIONS **43**
Section 13.1 Identity of Developer 43
Section 13.2 Notices, Demands and Communications 44

DocuSign Envelope ID: FA6C0401-9A2E-4AFE-8235-4A3F31941446

Section 13.3 Non-Liability of Officials, Employees and Agents 45
Section 13.4 Enforced Delay 45
Section 13.5 Intentionally Omitted 45
Section 13.6 Inspection of Books and Records 46
Section 13.7 Title of Parts and Sections 46
Section 13.8 Applicable Law 46
Section 13.9 Severability 46
Section 13.10 Legal Actions 46
Section 13.11 Binding Upon Successors; Covenants to Run With Land 46
Section 13.12 Parties Not Co-Venturers 46
Section 13.13 Entire Understanding of the Parties 46
Section 13.14 Counterparts 47
Section 13.15 Amendments 47
Section 13.16 Recordation of Memo of DDLA 47
Section 13.17 Standard of Approval 47
Section 13.18 Effectiveness of Agreement 47
Section 13.19 Delegation of Authority to City Manager 46

DocuSign Envelope ID: FA6C0401-9A2E-4AFE-8235-4A3F31941446

AMENDED AND RESTATED
DISPOSITION AND DEVELOPMENT AND LOAN AGREEMENT

THIS AMENDED AND RESTATED DISPOSITION AND DEVELOPMENT AND LOAN AGREEMENT (this "Agreement") is made as of May 24, 2022, by and between the City of Livermore, a municipal corporation (the "City"), and Eden Housing, Inc. a California public benefit corporation (the "Developer"), with reference to the following facts, purposes, and understandings.

RECITALS

A. These Recitals refer to and utilize certain capitalized terms that are defined in Article 2 and various other areas of this Agreement. The Parties intend to refer to those definitions in connection with their use in these Recitals.

B. City is the owner of a certain property that is approximately 5.5 acres, bound by Railroad Avenue, Livermore Avenue, First Street, and L Street. This property is commonly referred to as the "Livermore Village Site".

C. In 2008, the former Redevelopment Agency acquired the Livermore Village Site from Livermore Village I, LLC for approximately $10,100,000 from City inclusionary housing funds (Fund 611). A portion of this amount was refinanced using a loan from the State Residential Development Loan Program, which required a deed restriction on the property to require low-income and moderate-income housing units be developed on the property. Both of these sources restrict the use of the site to a residential development with an affordable component. In 2010 the Livermore Village Site was subdivided into three parcels for the purpose of separate public community uses, private community uses, and housing. Upon dissolution of the Livermore Redevelopment Agency, the Undivided Parcel was identified as a housing asset in the Long Range Property Management Plan, which was approved by the Livermore Successor Agency Oversight Board and California Department of Finance, and was transferred to the City as the Housing Successor to the Livermore Redevelopment Agency.

D. On January 29, 2018, the City Council approved the development of the Livermore Village Site to include a public park, up to 130 units of workforce housing, a science center, a black box theater, and retail space.

E. The City selected Eden Housing, Inc. as the Developer of the Undivided Parcel through a Request for Qualifications to develop the Undivided Parcel, more particularly described in Exhibit A, attached hereto. Through a competitive process in response to the City's goals and objectives for the Undivided Parcel, the Developer proposed to develop low-income and workforce housing on the Property.

F. The Developer obtained Entitlements from the City to construct the Project consistent of workforce housing, which will be comprised of up to 130 units of non-age restricted, multi-family rental housing over two phases of development, which will be affordable

DocuSign Envelope ID: FA6C0401-9A2E-4AFE-8235-4A3F31941446

for households with a range of incomes no greater than 110% of Area Median Income for Alameda County, on the Property.

G. On May 24, 2021, Developer obtained approval from the City for Vesting Tentative Parcel Map No. 11186 on behalf of the City for recordation of the Parcel Map in the Official Records of Alameda County (the "Tentative Map"), subdividing the Undivided Parcel into the following three parcels: (i) Parcel 1, as shown on the Tentative Map (the "Housing Parcel North"); (ii) Parcel 2, as shown on the Tentative Map (the "Veterans Park Parcel"); and (iii) Parcel 3, as shown on the Tentative Map (the "Housing Parcel South"). Parcels 1 and 3 are also referred to collectively as the Property and more fully depicted in Exhibit M, attached hereto and Parcel 2 is more fully depicted in Exhibit N, attached hereto.

H. The City has concluded that the Developer has the necessary expertise, skill, and ability to carry out the commitments contained in this Agreement.

I. Upon satisfaction of the conditions precedent set forth in this Agreement, City will convey the Undivided Parcel to Developer upon the terms and conditions set forth herein, and City will provide a loan to assist in financing Developer's acquisition of the Property. City has additionally provided a predevelopment loan to the Developer in an amount up to Five Hundred Thousand Dollars ($500,000) (the "Predevelopment Loan") that helped finance the initial predevelopment and expenses necessary to assess and determine the final scope of development and obtain entitlements to develop the Project. City and Developer agree that City may, but is not obligated to, provide a future development loan and/or other financial contribution to fund development and/or operations of the Project in an amount that will be determined through the activities provided for herein. Approval of any future development loan amounts shall be subject to approval of a final financing plan by the City and the timely submittal of items described in this Agreement.

J. Developer intends to assign this Agreement and the obligations contained herein to its Affiliate DTLM, L.P. ("Housing North Developer") to develop the Housing Parcel North with 79 affordable units (the "Housing North Phase") and to thereafter assign a portion of this Agreement its Affiliate DTLM South, L.P. (the "Housing South Developer"), which will develop the Housing Parcel South with 51 affordable units (the "Housing South Phase"), as more particularly described herein.

K. The City and Developer intend to continue in good faith discussions and negotiations of the Project Objectives attached hereto as Exhibit B. To facilitate development of a public park on the Veterans Park Parcel, the Developer will dedicate that Parcel back to the City upon the closing of construction financing for the first phase of the Project and in accordance with the Schedule of Performance.

L. Pursuant to CEQA, the City (in its capacity as "lead agency") approved on September 10, 2018 an Addendum to the Downtown Specific Plan 2009 Subsequent Environmental Impact Report.

DocuSign Envelope ID: FA6C0401-9A2E-4AFE-8235-4A3F31941446

M. On November 27, 2018, the City and Developer entered into a Disposition and Development and Loan Agreement, which was subsequently amended by a First Amendment to the DDLA dated May 26, 2021, which updated certain definitions, exhibits and provisions (as amended, the "Original Agreement"). This Agreement is intended to amend and restate and supersede the Original Agreement and will capture all necessary changes to the Original Agreement.

N. The Developer has subsequently formed the Housing North Developer entity to serve as the developer of the Project. All of Eden Housing Inc., rights and obligations under the Agreement shall be assigned to the Housing North Developer through execution of an assignment upon approval of this Agreement.

O. On June 24, 2021, Save Livermore Downtown filed a Petition for Writ of Mandate in Alameda County Superior Court, challenging the City's approval of the Project. Litigation ensued and on February 14, 2022, Alameda County Superior Court Judge Roesch denied the petition and entered judgment in favor of the City of Livermore. SLD filed an appeal on April 13, 2022 and the appeal is still pending (the "Litigation").

P. On April 4, 2022, a Request for Stay of Expiration Date for the Project Entitlements and Approvals during the pendency of the above-referenced litigation, including any appeals, was submitted to the City by the Developer. On May 9, 2022, the City granted the request. Those documents are attached hereto as Exhibit P.

Q. Now, to ensure the Project continues to move forward in a timely manner, the parties desire to update this Agreement to allow for transfer of the Undivided Parcel upon completion of federal environmental review and clearance, to make arrangements for an interim use of public parking prior to construction of the housing and cooperation between the parties regarding the environmental condition of the Undivided Parcel, and update the entitlement, financing, and development timeline in the Schedule of Performance.

NOW, THEREFORE, in consideration of the mutual covenants herein, the City and the Developer agree that the recitals are true and correct and further agree as follows:

ARTICLE 1. SUBJECT OF THE AGREEMENT

Section 1.1 Purpose of this Agreement. The purpose of this Agreement is to provide the terms and conditions under which the Developer shall: prepare or cause to be prepared all required documents necessary to receive development approvals for the Project, to obtain title to the Property, and develop the Project. This Agreement shall also provide terms and conditions under which the City shall convey the Undivided Parcel to the Developer for the purpose of developing, building, and operating affordable Workforce Housing at rents that are for households earning up to 110% of Area Median Income, in accordance with the Project Objectives, attached hereto as Exhibit B, and the City to contribute certain funds for the acquisition and predevelopment of the Property.

DocuSign Envelope ID: FA6C0401-9A2E-4AFE-8235-4A3F31941446

Section 1.2 Parties to the Agreement.

(a) The City. The City is a municipal corporation, organized and existing under the laws of the State of California. The office of the City is located at 1052 S. Livermore Avenue, Livermore, California 94550.

(b) The Developer. The Developer is Eden Housing, Inc., a California nonprofit public benefit corporation. For purposes of this Agreement, the principal address of Developer is 22645 Grand Street, Hayward, California 94541.

The qualifications and identity of Developer are of particular concern to the City, and it is because of such qualifications and identity that the City has entered into this Agreement with Developer. No voluntary or involuntary successor in interest of Developer shall acquire any rights or powers under this Agreement except as expressly set forth herein.

Notwithstanding anything to the contrary contained herein, this Agreement is assignable and transferable to Housing North Developer and/or Housing South Developer, so long as any such assignment or other document evidencing such assignment is acceptable to the City. Following any such assignment, the Housing North Developer and/or Housing South Developer may transfer limited partner interests to a tax credit investor ("Investor"), and such Investor may further transfer its limited partner interests, and the Investor may remove a general partner of the Housing North Developer and/or Housing South Developer (as applicable) pursuant to the terms of its limited partnership agreement, without the consent of the City.

ARTICLE 2. DEFINITIONS

Section 2.1 Definitions. In addition to the terms defined elsewhere in this Agreement, the following capitalized words shall have the following meanings:

(a) "Affiliate" means any Person which (1) directly or indirectly through one or more intermediaries, (i) Controls, or (ii) is Controlled by, or (iii) is under common Control with, Developer.

(b) "Agreement" shall mean this Amended and Restated Disposition and Development and Loan Agreement.

(c) "Area Median Income" shall have the meaning set forth in the form of the Regulatory Agreement attached to this Agreement as Exhibit H.

(d) "Building Permit" shall mean an excavation, foundation or other building permit issued by the City ministerially 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.

DocuSign Envelope ID: FA6C0401-9A2E-4AFE-8235-4A3F31941446

(f) "Certificate of Occupancy" shall mean that certificate issued by the City to the Developer to allow occupancy of the Project.

(g) "Close of Escrow" shall have the meaning set forth in Section 5.6.

(h) "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.

(i) "City" shall mean the City of Livermore.

(j) "City Documents" shall mean collectively, this Agreement, the Seller Take-Back Property Acquisition Note (Exhibit F), the Seller Take-Back Property Acquisition Deed of Trust (Exhibit G), the Predevelopment Loan Promissory Note (Exhibit E), the Predevelopment Loan Note Assignment and Amendment, the Predevelopment Loan Deed of Trust (Exhibit G), and the Regulatory Agreement (Exhibit H).

(k) "City Event of Default" shall mean any event of default by the City as set forth in Section 12.2, subject to any applicable notice and cure rights set forth therein.

(l) "City Impact Fees" shall mean all fees set forth in the schedule of fees adopted by the City on July 1, 2018, with the exception of those fees that are paid to the City on behalf of and passed through to a third party agency.

(m) "Deed of Trust" shall mean the deed of trust to be recorded against the Undivided Parcel and subsequently the Property to secure repayment of the Pre-Development and Site Acquisition Loans. A form of Deed of Trust is attached to this Agreement as Exhibit G.

(n) "Developer" shall mean Eden Housing, Inc., or any permitted transferee of the Developer in accordance with Article 10.

(o) "Developer Event of Default" shall mean any event of default by the Developer as set forth in Section 12.3 or 12.4, 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.

(q) "Eligible Household" shall have the meaning set forth in the Regulatory Agreement, attached to this Agreement as Exhibit H.

DocuSign Envelope ID: FA6C0401-9A2E-4AFE-8235-4A3F31941446

(r) "Entitlements" shall mean, collectively, zoning approvals, conditional use permit and any other discretionary approvals required for construction of the Project. For definitional purposes in this Agreement, "Entitlements" do not include the Building Permit, the Final Map, or any other ministerial approvals.

(s) "Escrow" shall mean the escrow opened with the Escrow Holder to close the transactions described in Article 5.

(t) "Escrow Holder" shall mean Old Republic Title Company.

(u) "Final Construction Drawings" shall mean final drawings for the construction of the Improvements used to obtain a Building Permit from the City.

(v) "Final Map" shall mean Final Parcel Map 11186.

(w) "Force Majeure" shall have the meaning set forth in Section 13.4.

(x) "Grant Deed" shall mean the grant deed by which the City conveys its fee estate in the Undivided Parcel to the Developer. A form of the Grant Deed is attached to this Agreement as Exhibit L.

(y) "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

DocuSign Envelope ID: FA6C0401-9A2E-4AFE-8235-4A3F31941446

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, medical supplies and equipment or janitorial supply products customarily used in the construction, maintenance, rehabilitation, use, occupancy or management of a medical office building and its supporting parking structure, and which are used and stored in accordance with all applicable environmental ordinances and regulations.

(z) "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.

(aa) "Housing North Developer" has the meaning set forth in Recital J

(bb) "Housing North Phase" has the meaning set forth in Recital J.

(cc) "Housing South Developer" has the meaning set forth in Recital J.

(dd) "Housing South Phase" has the meaning set forth in Recital J.

(ee) "Improvements" shall mean up to 130 units of multi-family rental housing to be constructed in accordance with the Project Documents. As the context requires, the term "Improvements" shall refer to the 79 units of housing to be constructed on the Housing North Phase and the 51 units of housing to be constructed on the Housing South Phase individually.

(ff) "Indemnitees" shall have the meaning set forth in Section 9.4.

(gg) [Intentionally deleted].

(hh) "Official Records" means the Official Records of Alameda County.

(ii) [Intentionally deleted].

(jj) [Intentionally deleted].

(kk) "Parties" shall mean the City and the Developer.

(ll) "Party" shall mean either the City or the Developer depending on the context.

(mm) "Permitted Exceptions" shall mean the following exceptions to title with respect to the Property:

DocuSign Envelope ID: FA6C0401-9A2E-4AFE-8235-4A3F31941446

(1) the lien of any non-delinquent property taxes and assessments;

(2) all 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.

(nn) "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.

(oo) Intentionally Omitted.

(pp) "Pro Forma" shall mean the preliminary sources and uses of funds for the development of the Project on the Housing Parcel North and Housing Parcel South , which will be submitted to the City in accordance with the Schedule of Performance and subject to approval by the City.

(qq) "Project" shall mean (i) the Property and (ii) the Improvements, as more fully set forth in the Project Objectives. As the context requires, the term "Project" shall refer to the Housing North Phase and Housing South Phase individually.

(rr) "Project Documents" shall mean the site plan, elevations and landscaping plans submitted by the Developer to enable the Developer to obtain the Entitlements or other City permits, approvals, or authorizations for development of the Project.

(ss) "Project Objectives" shall mean the description of preliminary characteristics of the Project, desired items the Parties will strive to achieve, and shall serve as the basis to inform application documents for the Entitlements, attached hereto as Exhibit B.

(tt) "Property" shall collectively mean the City-owned parcels defined as Parcel 1 ("Housing Parcel North") and 3 ("Housing Parcel South") on Vesting Tentative Parcel Map 11186, as more particularly described in Exhibit M, attached to this Agreement.

(uu) "Purchase Price" shall have the meaning set forth in Section 5.2.

DocuSign Envelope ID: FA6C0401-9A2E-4AFE-8235-4A3F31941446

(vv) "Regulatory Agreement" shall have the meaning set forth in Section 9.1, and a form of which is attached as Exhibit H.

(ww) "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 Undivided Parcel to the Developer and the construction of the Improvements. The Schedule of Performance is attached to this Agreement as Exhibit C.

(xx) "Security Financing Interests" has the meaning set forth in Section 11.1.

(yy) "Seller Take-Back Property Acquisition Note" has the meaning set forth in Section 3.2(a), a form of which is attached as Exhibit F.

(zz) "Site Acquisition Loan" has the meaning set forth in Section 3.2(a).

(aaa) "TCAC" shall mean the California Tax Credit Allocation Committee, which administers the low income tax credit financing program.

(bbb) "Title Company" shall mean Old Republic Title Company.

(ccc) "Title Policy" has the meaning set forth in Section 5.3.

(ddd) "Transfer" shall mean a transfer of this Agreement or an interest in the Developer, as more particularly described in Article 10.

(eee) "Workforce Housing" shall mean non age-restricted housing that is targeted to a broad range of working incomes, up to 110% Area Median Income. To the extent permitted by law and consistent with the program regulations for funding sources used for development of the Project, selection priority will be provided first to Livermore Valley Joint Unified School District school teachers, employees working for businesses in the Livermore Downtown, first responders employed in Livermore (including emergency medical personnel), professional artists working in Livermore, and then to all other persons who live or work in Livermore. Notwithstanding the foregoing, in the event of a conflict between this provision and the provisions of Section 42 or Section 142 of the Internal Revenue Code of 1986, as amended, the provisions of such Section 42 or Section 142, as applicable, shall control.

(fff) "EVA Improvements" is defined as the Emergency Vehicle Access Improvements which are identified on Vesting Tentative Parcel Map 11186 and in the associated Engineering Conditions (Sections 7.c & d) for the Project approval.

(ggg) "Veterans Park Parcel" is defined as Parcel 2 on Vesting Tentative Parcel Map 11186, as more particularly described in Exhibit N, attached to this Agreement. This parcel will be dedicated back to the City upon construction financing closing for the first phase of the Project and in accordance with the Schedule of Performance.

DocuSign Envelope ID: FA6C0401-9A2E-4AFE-8235-4A3F31941446

(hhh) "Veterans Park Improvements" is defined as the constructed improvements within the Veterans Park Parcel which shall be entitled and designed at the sole discretion of the City.

(iii) "Undivided Parcel" is defined as that real property in the City of Livermore known as Lot 1 of Tract Map No. 8574, recorded December 23, 2020, in Book 365 of Maps at pages 15-19, in Alameda County Records, as more particularly described in Exhibit A.

Section 2.2 Exhibits. The following exhibits are attached to and incorporated into this Agreement:

Exhibit A: Description of the Undivided Parcel

Exhibit B: Project Objectives

Exhibit C: Schedule of Performance

Exhibit D: Intentionally Omitted

Exhibit E: Predevelopment Loan Promissory Note dated November 27, 2018

Exhibit F: Form of Seller Take-Back Property Acquisition Loan Promissory Note

Exhibit G: Form of City Deed of Trust for both Predevelopment Loan and Seller Take-Back Property Acquisition Deed of Trust

Exhibit H: Form of Regulatory Agreement

Exhibit I: Insurance Requirements

Exhibit J: City Impact Fee Schedule dated July 1, 2018

Exhibit K: Form of Memo of DDLA

Exhibit L: Form of Grant Deed

Exhibit M: Description of the Property – Housing Parcel North and Housing Parcel South

Exhibit N: Description of the Veterans Park Parcel

Exhibit O: Form of Temporary Parking Lease Agreement

Exhibit P: Request for Stay of Expiration Date for the Project Entitlements and Approvals and Approval by City of Livermore

DocuSign Envelope ID: FA6C0401-9A2E-4AFE-8235-4A3F31941446

Exhibit Q: Form of Irrevocable Parking Spaces Lease

ARTICLE 3. CITY FINANCIAL ASSISTANCE

Section 3.1 Predevelopment Loan.

(a) Loan amount. The City provided a predevelopment loan of Five Hundred Thousand Dollars ($500,000) for predevelopment costs including architecture and design costs, legal and specialty consultant fees, site feasibility analysis, title review, due diligence, and preconstruction costs. The Predevelopment Loan is evidenced by the Predevelopment Note between Developer and City dated November 27, 2018, attached as Exhibit E. Prior to transfer of the Undivided Parcel, the City, Developer and Housing North Developer shall enter into an assignment and amendment of the Predevelopment Note to: (i) assign the Note from Developer to Housing North Developer as contemplated in Recital J; and (ii) to amend the Predevelopment Loan Term set forth in the Note attached as Exhibit E to 65 years.

(b) Interest. The City Predevelopment Loan shall bear three percent (3%) annual interest.

(c) Loan repayment. The City Predevelopment Loan shall have a term that expires on the sooner of the date fifty-five (55) years from either the conversion of the permanent financing (the "Predevelopment Loan Term") or 65 years from the date of this Agreement, unless otherwise terminated for infeasibility as described herein. The City Predevelopment Loan repayment shall be deferred during development of the Project. Upon issuance of a certificate of occupancy, payment on the City Predevelopment Loan shall be made from a pro rata share of residual receipts, the terms of which are described in the Predevelopment Loan Note.

Developer shall have the right to prepay the City Predevelopment Loan at any time, with no prepayment penalty. However, this DDLA shall remain in effect for the duration of the Predevelopment Loan Term, regardless of any prepayment or timely payment of the City Predevelopment Loan.

All principal and interest on the City Predevelopment Loan shall, at the option of the City, be due and payable upon the earliest of: (i) the occurrence of an Event of Default, as described in Section 3.2(e), for which the City exercises its right to cause the indebtedness to become immediately due and payable; or (ii) subject to the terms of Section 3.1(e) below.

Developer shall be responsible for payment of the principal of, or interest on, the City Predevelopment Loan as described in the Predevelopment Loan Promissory Note, attached hereto as Exhibit E. The sole recourse of the City with respect to principal of, or interest on, the Predevelopment Loan shall be as described in the Predevelopment Loan Promissory Note.

Upon the transfer of the Undivided Parcel to Developer, the Predevelopment Loan shall be secured by a deed of trust recorded against the Undivided Parcel (the "Predevelopment Loan

DocuSign Envelope ID: FA6C0401-9A2E-4AFE-8235-4A3F31941446

Deed of Trust", form of which is attached to this Agreement as Exhibit G). Once the Final Map is recorded and in accordance with the Schedule of Performance, and upon the close of construction financing for the first phase of the Project, the Veterans Park Parcel shall be dedicated back to the City, free and clear of any encumbrances (except as otherwise provided herein). The parties shall execute necessary documents to remove any encumbrances from the Veterans Park Parcel, including but not limited to a partial reconveyance of the Predevelopment Loan Deed of Trust and partial termination of the Regulatory Agreement.

(d) In the event that this Agreement is partially assigned to the Housing South Developer as contemplated in Section 1.2, at Developer's option in its sole discretion, the Predevelopment Loan shall be partially assigned to Housing South Developer and the Predevelopment Loan documents will be modified accordingly. In such an event, the City hereby acknowledges and agrees that there shall be no cross defaults between the Predevelopment Loan and applicable loan documents for the Housing North Developer and the Predevelopment Loan and applicable loan documents for the Housing South Developer.

(e) Termination for Infeasibility. Predevelopment Loan shall terminate if during the predevelopment analysis the Project is determined to be infeasible. City shall have no obligations to disburse additional funds. In the event that, prior to Developer's construction finance closing, the Project is determined by Developer or City to be infeasible through no fault of Developer, or if Developer terminates pursuant to Section 5.10, the Predevelopment Loan shall terminate and Developer's obligation to repay such Predevelopment Loan shall be forgiven.

Section 3.2 Site Acquisition Loan.

(a) Loan amount. City shall make an acquisition loan to the Developer in the amount of the Purchase Price of the Property ("Site Acquisition Loan"). The purchase price of the property shall be Seven Million Eight Hundred Thousand Dollars ($7.8M). The Site Acquisition Loan shall be evidenced and secured by the Seller Take-Back Note and Seller-Take Back Site Acquisition Deed of Trust recorded against the Undivided Parcel, the forms of which are attached as Exhibit F and Exhibit G.

(b) Interest. The Site Acquisition Loan shall bear interest at 3% annual simple interest.

(c) Loan conditions to disbursement. Disbursement of Site Acquisition Loan shall be contingent on the Developer entering into a Regulatory Agreement to provide for affordable rents in no more than forty-nine percent (49%) of units in the Project in the form attached hereto as Exhibit H.

(d) Loan repayment. Annual payments on the Seller Take-Back Note shall be due and payable on a pro-rata residual receipts basis in accordance with the formula set forth in the Seller Take-Back Note. The annual loan payments shall commence upon conversion of the project to permanent financing and continue for fifty-five years. The entire outstanding principal balance of the Site Acquisition Loan, together with interest accrued thereon and all other sums accrued, shall be payable in full on the date Maturity Date, as defined in the Seller Take-Back

DocuSign Envelope ID: FA6C0401-9A2E-4AFE-8235-4A3F31941446

Note. City shall have the right to accelerate the Maturity Date and declare all sums payable under the Seller Take-Back Note immediately due and payable upon the expiration of all applicable cure periods following the occurrence of an event of borrower default, as described in Section 3.2(e).

Upon the transfer of the Undivided Parcel to Developer, the Site Acquisition Loan shall be secured by a deed of trust recorded against the Undivided Parcel, a form of which is attached to this Agreement as Exhibit G. The Veterans Park Parcel shall be dedicated back to the City, free and clear of any encumbrances (except as otherwise provided herein), upon close of construction financing for the first phase of the Project on the timeframe specified by the Schedule of Performance. The parties shall execute necessary documents to remove any unauthorized encumbrances from the Veterans Park Parcel including but not limited to a partial reconveyance of the Seller-Take Back Site Acquisition Deed of Trust and partial termination of the Regulatory Agreement.

(e) Event of Site Acquisition Loan Default. The following events shall constitute an event of default under the Site Acquisition Loan:

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

(2) A transfer occurs in violation of Article 10;

(3) Developer fails to maintain insurance, as required in Section 4.6 and fails to cure such default within five days;

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

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

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

(7) If, pursuant to or within the meaning of the United States Bankruptcy Code or any other federal or state law relating to insolvency or relief of debtors ("Bankruptcy Law"), Developer or any general partner thereof (i) commences a voluntary case

DocuSign Envelope ID: FA6C0401-9A2E-4AFE-8235-4A3F31941446

or proceeding; (ii) consents to the entry of an order for relief against Borrower or any general partner thereof in an involuntary case; (iii) consents to the appointment of a trustee, receiver, assignee, liquidator or similar official for Developer or any general partner thereof; (iv) makes an assignment for the benefit of its creditors; or (v) admits in writing its inability to pay its debts as they become due;

(8) A court of competent jurisdiction shall have made or entered any decree or order (i) adjudging the Developer to be bankrupt or insolvent, (ii) approving as properly filed a petition seeking reorganization of the Developer or seeking any arrangement for Developer under bankruptcy law or any other applicable debtor's relief law or statute of the United States or any state or other jurisdiction, (iii) appointing a receiver, trustee, liquidator, or assignee of the Developer in bankruptcy or insolvency or for any of its properties, or (iv) directing the winding up or liquidation of the Developer, in each case if such decree, order, petition, or appointment is not removed or rescinded within ninety (90) days;

(9) Developer shall have assigned its assets for the benefit of its creditors (other than pursuant to a mortgage loan) or suffered a sequestration or attachment of or execution on any substantial part of its property, unless the property so assigned, sequestered, attached or executed upon shall have been returned or released within ninety (90) days after such event (unless a lesser time period is permitted for cure pursuant to paragraphs (7) or (8) above or pursuant to any other mortgage on the Property, in which event such lesser time period shall apply under this subsection as well) or prior to any sooner sale pursuant to such sequestration, attachment, or execution;

(10) Developer shall have voluntarily suspended its business or Developer shall have been dissolved or terminated;

(11) A material breach of this Agreement or any City Document and remains uncured beyond any applicable cure period.

(f) If, in the City's sole discretion, the Developer fails to observe or perform any condition contained in Section 3.2(d) or (e), or take diligent action towards the cure or remedy of such event, for a period of sixty (60) days after written notice from the City specifying such failure and requesting that it be cured, such event shall be deemed a default under the Site Acquisition Loan and the City shall be entitled, and in addition to all other remedies provided by law or in equity, to compel specific performance by the Developer of its obligations under the Site Acquisition Loan. Any investor or limited partner of Developer or Developer's assignee shall have the same notice and cure rights granted to Developer, and any cure tendered by such investor shall be accepted or rejected on the same basis as if tendered by Developer.

(g) City and Developer acknowledge and agree that the City is conveying the Undivided Parcel prior to recordation of the Final Map. In the event that the Property Undivided Parcel and Project are subdivided into more than one parcel and/or ownership structure, the Site Acquisition Loan may be divided into multiple loans, to be allocated proportionally amongst some or all of the subdivided Property and Project as mutually determined by the City and Developer, each with terms in accordance with this Section 3.2. If requested by either City or

DocuSign Envelope ID: FA6C0401-9A2E-4AFE-8235-4A3F31941446

Developer, this Agreement, the Site Acquisition Loan documents, and the Regulatory Agreement may be amended to reflect any such changes.

The City hereby acknowledges and agrees that there shall be no cross defaults between the Site Acquisition Loan and applicable loan documents (including the Regulatory Agreement) once those are divided and assigned to the Affiliated limited partnership.

Section 3.3 Development Loan/Contribution. Subject to approval of a final finance plan, the City may, but is not obligated to, make a future development loan and/or other financial contribution ("Development Loan/Contribution") to be disbursed to pay for development and/or operations costs in connection with the Project. The Development Loan/Contribution shall be contingent upon the City and Developer agreeing to terms for each phase of development. Development Loan/Contribution will only be disbursed following approval of the finance plan, and the necessary land use, environmental, and permit approvals. A Development Loan/Contribution agreement, the form of which shall be mutually agreed upon by City and Developer and be consistent with this Agreement, will control the specific terms of the Development Loan/Contribution. The amount of the Predevelopment Loan allocated to each phase may be included in the Development Loan/Contribution for such phase and be deemed to have been previously disbursed.

Section 3.4 Financing for EVA Improvements. As set forth in this subsection and subject to the conditions set forth herein, the City will reimburse Developer for the approved costs associated with constructing EVA Improvements solely consisting of the installation of retractable bollards described in 7c of the City's Engineering Conditions ("EVA Improvement Reimbursables") that are approved by the City. Developer shall first provide the City with a cost proposal for the EVA Improvement Reimbursables, including design and construction, and City shall maintain the right to approve or disapprove costs. Reimbursement of City-approved costs will not be included as part of City's loan assistance to develop the Project. Improvements shall be constructed in compliance with all applicable laws as described in Sections 8.5 and in Exhibit B. Developer will submit actual invoices to City only for that portion of work which is approved for reimbursement by City.

Section 3.5 Construction and Financing for Veterans Park Improvements. The Parties agree that the Developer will manage the construction of the Veterans Park Improvements but that the City will pay for the costs of the Veterans Park Improvements at its sole expense. City and Developer will negotiate a future construction management and reimbursement agreement to coordinate the construction of the Veterans Park Improvements. The Agreement shall authorize reimbursement for the construction of the park, per the designs and specifications issued by the City, and shall not exceed Five Million Five Hundred Thousand Dollars ($5,500,000) (not including any grants obtained by Developer to help fund the construction costs), without additional approval of the City Council. The Agreement and the procurement of the contractor

DocuSign Envelope ID: FA6C0401-9A2E-4AFE-8235-4A3F31941446

who will build the park shall comply with all applicable local, state, and federal procurement laws to the extent such laws apply.

These improvements would be exclusive of any development loan provided by the City for development of the Project.

ARTICLE 4. PREDISPOSITION REQUIREMENTS

Section 4.1 City's Conditions Precedent to Close of Escrow. As conditions precedent to the Close of Escrow for the Undivided Parcel, the conditions set forth in this Article 4 and Section 6.2 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 4.7) 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 Article 4 and Section 6.2.

Section 4.2 Financing Commitment. The Developer shall provide the City with a preliminary development Pro Forma, setting forth the Developer's estimate of sources and uses of funds for development of the Project. No later than the time specified in the Schedule of Performance, but not as a condition to Close of Escrow, the Developer will submit a true copy of each letter of interest from lenders, TCAC, and/or equity partners to provide funds in the amounts necessary to fully finance the projected costs of development of the Improvements, each of which shall be approved by the City. Prior to conveyance of the Housing South Parcel as contemplated in Recital J and section 1.2(b), but not as a condition to Close of Escrow on the Undivided Parcel, Developer shall have either (i) obtained all financing necessary to build the Improvements, or (ii) will close on the financing necessary to build the Improvements.

Section 4.3 City Approvals. The Developer shall obtain all Entitlements necessary for the Improvements. Developer and City acknowledge that the Litigation is pending, and therefore the Parties agree that Entitlements issued by the City during the pendency of the Litigation shall be deemed to have been obtained.

Section 4.4 Organizational Documents. The City shall approve the Developer's organizational documents in the time specified in the Schedule of Performance.

Section 4.5 Federal Environmental Review and Clearance. Notwithstanding any other provision in this Agreement, the City shall have no obligation to sell the Undivided Parcel, the Developer shall have no obligation to purchase the Undivided Parcel, and no transfer of title to the Developer may occur, unless and until the City has provided the Developer with written notification that: (1) the City has completed a federally required environmental review pursuant to the National Environmental Policy Act ("NEPA") and the City's request for release of funds has been approved and, subject to any other conditions in this Article 4, (a) the purchase may proceed, or (b) the purchase may proceed only if certain conditions to address issues in the environmental review are satisfied before or after the purchase of the Undivided Parcel; or (2) it has determined the purchase is exempt from federal environmental review pursuant to NEPA and

DocuSign Envelope ID: FA6C0401-9A2E-4AFE-8235-4A3F31941446

a request for release of funds is not required. The City shall use its best efforts to conclude the environmental review pursuant to NEPA of the Undivided Parcel expeditiously.

Section 4.6 Insurance. 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 I, which may be modified from time to time by the City's Risk Manager upon written notice, provided that such modifications are commercially reasonable and reasonably financially feasible.

Section 4.7 Time Extensions. The City Manager shall have the authority to approve two extensions of the Schedule of Performance, as mutually agreed upon in writing between the Parties and which the City Manager deems reasonable and appropriate.

Section 4.8 Lease Back of the Undivided Parcel. Prior to the Close of Escrow on the Undivided Parcel, the parties shall enter into a Temporary Parking Lease for the Undivided Parcel in substantial conformance with Exhibit O wherein parking will be available for public parking until construction of the first phase of the Project commences and shall deposit an executed counterpart of the Temporary Parking Lease Agreement for the Undivided Parcel with the Escrow Holder. As further set forth in the Temporary Parking Lease Agreement, the lease shall be a triple net lease, with City responsible for payment of all costs it incurs during its lease of the Undivided Parcel. In addition, in consideration for the use of the Undivided Parcel during the lease period, City shall either pay directly or reimburse Developer for all third party costs incurred as a result of Developer's ownership of the property, including insurance, property taxes and assessments and any other expenses which are required to be paid directly by the Developer as part of the operation of the Undivided Parcel as temporary public parking. Any other expenses that the City shall be responsible for under the Temporary Parking Lease Agreement other than insurance, property taxes and assessments shall be subject to review and approval by the City prior to commitment or obligation by the Developer. City's obligations to reimburse Developer for insurance, property taxes and assessments under the Lease shall not exceed One Hundred Twenty Thousand ($120,000) per year, for the term of the lease, increasing 3% annually, or further Council approval shall be required.

Section 4.9 Air Rights to Housing Parcels. Prior to the Close of Escrow on the disposition of the Undivided Parcel the parties shall have taken the necessary steps to ensure that the City will receive the air rights to Parcels 1 and 3 at and above the elevation of 534 feet by modifying the Veterans Park Parcel accordingly. The intent of this paragraph is to ensure that the Project shall not exceed the entitled height elevation of 534, or 52 feet above the surface elevation (the benchmark elevation is 482 feet, measured from a monument at the corner of Railroad Avenue and L Street), provided, however, that the City shall provide Developer with a temporary access easement to access the air rights above Parcels 1 and 3 during construction of the Project. Veterans Park Parcel shall be dedicated back to the City as described in Section 8.10.

ARTICLE 5. DISPOSITION OF THE UNDIVIDED PARCEL

DocuSign Envelope ID: FA6C0401-9A2E-4AFE-8235-4A3F31941446

Section 5.1 Purchase and Sale. Provided the predisposition requirements set forth in Article 4 and the additional closing conditions set forth in Section 5.4 have been satisfied, the City shall sell to the Developer, and the Developer shall purchase from the City, the Undivided Parcel pursuant to the terms, covenants, and conditions of this Agreement.

Section 5.2 Purchase Price. The Purchase Price for the Property shall be $7,800,000 (Seven Million Eight Hundred Thousand Dollars).

Section 5.3 Opening Escrow. To accomplish the conveyance of the Undivided Parcel from the City to the Developer, in accordance with 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. At Close of Escrow, Title Company shall provide Developer (at Developer's sole cost and expense) an ALTA owner's policy of title insurance issued by the Title Company insuring fee title to the Property vested in Developer subject only to the Permitted Exceptions (the "Title Policy").

Section 5.4 Additional Closing Conditions. Subject to the satisfaction of all predisposition conditions to the Close of Escrow set forth in this section, the Close of Escrow shall occur and the City shall convey, and the Developer shall accept conveyance of, a fee interest in the Property pursuant to the Grant Deed, a form of which is attached to this Agreement as Exhibit L.

The following shall constitute conditions to the completion of the Close of Escrow:

(a) The conditions precedent set forth in Article 4 above shall have been satisfied.

(b) The Developer shall have deposited the following with the Escrow Holder: (i) City Documents, executed and acknowledged as applicable, (ii) Developer's share of closing costs, and (iii) any other documents required by Article 4 and Section 6.2 and 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.

(c) 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.

(d) The representations and warranties of Developer as set forth in Section 13.1 remain true and correct in all material respects. There has been no material adverse change in the financial condition of the Developer as of the date of the Close of Escrow.

(e) Title Company shall be prepared to issue the Title Policy without any exceptions other than the Permitted Exceptions.

(f) Reserved.

DocuSign Envelope ID: FA6C0401-9A2E-4AFE-8235-4A3F31941446

(g) The City shall have deposited the following with the Escrow Holder (i) the Grant Deed, in recordable form, (ii) an owner's affidavit as reasonably and customarily required by the Title Company, and (iii) any other documents required by Article 4 and Section 6.2 and 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.

Section 5.5 Deposit of Documents. Within ten (10) business days after the satisfaction or waiver of all of the conditions set forth in Article 4, the Parties shall deposit into Escrow any and all documents and funds necessary to effectuate the Close of Escrow. Each such agreement, instrument and document shall be duly executed, and in recordable form if it is to be recorded.

Section 5.6 Close of Escrow. Provided that all of the conditions set forth in Article 4 have been satisfied or waived and all of the documents set forth in Section 5.5 have been deposited into Escrow, Escrow Holder shall do all of the following:

(a) Complete all blank spaces, if any, in the Grant Deed, including the effective dates thereof;

(b) Attach thereto final and accurate legal descriptions consistent with the title policies required under this Agreement;

(c) Deliver copies of fully executed originals of Grant Deed to the appropriate parties; and

(d) Cause to be recorded or distributed (as set forth 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 Seller Take-Back Site Acquisition Deed of Trust and Predevelopment Loan Deed of Trust;

(3) Record in the Official Records the Regulatory Agreement;

(4) File any informational reports required by Internal Revenue Code Section 6045(e), as amended, and any other applicable requirements;

(5) 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 into Escrow, with such recording and filing date and information endorsed thereon;

(6) Provide the Title Policy to Developer; and

DocuSign Envelope ID: FA6C0401-9A2E-4AFE-8235-4A3F31941446

(7) Distribute or record such other documents as may be specified in the Parties' escrow instructions, if any.

The date on which the Escrow Holder records the last of the above items shall be the "Close of Escrow."

Section 5.7 Additional Escrow Instructions. The Parties shall execute such further escrow instructions as Escrow Holder may require; provided that Escrow Holder shall not require the imposition of any additional obligations or liabilities on the Parties. Such further escrow instructions shall not modify the provisions of this Agreement unless the Parties otherwise expressly provide for such modification in such additional instructions.

Section 5.8 Condition of Title to the Property. The City shall convey the fee interest in the Undivided Parcel to the Developer free of all liens, encumbrances, clouds, conditions, and rights of occupancy and possession, except the (a) the Permitted Exceptions, (b) reservations, licenses, easements and rights of way in, to, over or affecting the Property for any purpose whatsoever that are existing as of the date of this Agreement and have been disclosed to Developer in writing or are otherwise known to Developer or would be apparent or discoverable by an ALTA survey of the Property. Notwithstanding the foregoing, City acknowledges and hereby agrees to remove that certain easement dated November 7, 1978 and recorded May 18, 1979, as Instrument No 79-095080 prior to conveyance of the Undivided Parcel.

Section 5.9 Condition of the Undivided Parcel.

(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, EXPRESS (EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT) OR IMPLIED, FROM 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

DocuSign Envelope ID: FA6C0401-9A2E-4AFE-8235-4A3F31941446

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, EXCEPT AS PROVIDED IN ARTICLE 6, 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 RESPECTIVE AGENTS, EMPLOYEES OR CONTRACTORS 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 as provided in Section 6.2, 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, employees, officers, directors, representatives, and agents (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 5.9(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

DocuSign Envelope ID: FA6C0401-9A2E-4AFE-8235-4A3F31941446

hereafter give rise to 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 THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY."

Developer's Initials: _____

(b) The provisions of this section shall survive the termination of this Agreement.

Section 5.10 Inspections; Condition of Site. Developer shall conduct its own investigation of the Property, its physical condition, the soils and environmental conditions of the Property and all other matters which, in Developer's sole and absolute judgment, affect or influence Developer's willingness to develop the Property pursuant to this Agreement. Within the time set forth in the Schedule of Performance, Developer shall provide written notice to City of Developer's determinations concerning the suitability of the physical condition of the Property and its economic feasibility for development and intended use. If, in the Developer's sole and absolute discretion, the physical condition of the Property is unsuitable for the use or uses to which the Property will be put, or that it is not economically feasible for Developer to develop the Project pursuant to this Agreement, then Developer shall have the option to (a) take any action necessary to place the Property in a condition suitable for development, at no cost to City; or (b) terminate this Agreement pursuant to the provisions in Section 3.1(e). If Developer has not given written notice to City of its determination concerning the suitability of Property within the time set forth in the Schedule of Performance, Developer shall be deemed to have waived its right to terminate this Agreement pursuant to this Section.

Section 5.11 Right of Entry. Prior to the Close of Escrow, City will grant to the Developer and the Developer's agents the right to enter upon the Property for the exclusive purpose of conducting studies and investigations that will assist the Developer in performing its due diligence investigation. 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 Housing Programs Manager.

DocuSign Envelope ID: FA6C0401-9A2E-4AFE-8235-4A3F31941446

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 to the levels required by the City's Risk Manager.

The Developer shall indemnify, defend and hold the City of Livermore, Indemnitees, as defined in Section 9.4 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 Indemnitee, 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.

Section 5.12 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.

ARTICLE 6. HAZARDOUS MATERIALS REPRESENTATIONS

Section 6.1 Existing Hazardous Materials. Environmental investigations conducted at the Undivided Parcel found limited areas of metals (lead, arsenic) in shallow soil, total petroleum hydrocarbons (TPH) in soil and groundwater, and volatile organic compounds (VOCs) in groundwater and soil gas (air in between soil particles). Environmental investigations conducted to support development off-property, at adjacent properties, found VOCs associated with former dry-cleaning operations to the south of the Undivided Parcel.
Data from the recent investigation and prior sampling events indicate the following:

- Soil: Metals were confirmed in shallow soil within the areas proposed for excavation during the proposed development of the Undivided Parcel. The detected metals concentrations are generally within the range of naturally occurring (background) levels or, when evaluated as a whole, less than Water Board Tier 1 environmental screening levels.
- Groundwater: Chemicals detected in groundwater include tetrachloroethene (PCE), total petroleum hydrocarbons (TPH) as diesel, and chloroform. Based on historical site use and known use of neighboring properties, these chemicals are a result of releases from upgradient sources and concentrations have been decreasing over time.
- Soil Vapor: Chemicals detected in soil vapor include PCE and benzene. VOCs detected in soil vapor at the Property are likely the result of one or more VOCs release(s) from historical dry-cleaning operations at the, adjacent, former Quality Cleaners located south of the Property at 2048 First Street, rather than the result of past use of the Property.

DocuSign Envelope ID: FA6C0401-9A2E-4AFE-8235-4A3F31941446

Data was used to evaluate potential health risks to future occupants of the planned residential buildings. Based on this assessment, using conservative (health protective) assumptions, the estimated risks are well within levels considered by the California and United States Environmental Protection Agencies to be protective of human health and do not warrant further remediation or mitigation as part of the proposed development of the Property.

The San Francisco Bay Regional Water Quality Control Board ("Water Board") has required submittal of a Site Management Plan ("SMP") prior to the start of construction on the Property. The SMP is intended to ensure protection of human health at the property by establishing procedures and protocols to be followed during construction and post-construction. The SMP includes procedures to help ensure that chemicals (e.g., petroleum and metals) in soil and groundwater from historical site uses and uses at other nearby sites are safely managed and disposed of should they be encountered during site development. The SMP will also include protocols for confirmation testing to demonstrate that volatile organic compounds in soil gas do not pose a risk to future occupants.

Once completed and approved by the Water Board, the SMP will be provided to the Developer in accordance with the Schedule of Performance.

Section 6.2 Indemnification and Cooperation. After Developer completes analysis of the SMP and the environmental condition of the Property, and prior to the close of escrow for the Undivided Parcel, the Developer and City shall enter into an indemnity and cooperation agreement to apportion costs and any potential liability related to Hazardous Materials at, on, in, beneath, or from the Property from and after the date of the close of escrow between the Parties.

The Parties acknowledge that no remediation or mitigation is required for the Undivided Parcel in order to develop the Project as more particularly described in section 6.1, above. The indemnity and cooperation agreement between the parties will delineate each party's responsibilities regarding the following:

- Soil Handling Protocols for the development of the Project;
- Post Construction Confirmation Testing to Confirm Results of the City's Human Health Assessment; and
- Operation and Maintenance of the HVAC system in the Project's garage.

The indemnity and cooperation agreement shall also address any action items resulting from the City's remedial work plan to be submitted for Water Board review and approval; and access issues related to neighboring sites, including any need for access to install groundwater monitoring or soil vapor wells to the south of the Housing Parcel South, should the City be unable to place the wells in the Public Right of Way.

The City Manager is authorized to negotiate and execute the indemnity and cooperation agreement in an amount not to exceed $4,300,000, subject to the City Attorney's approval of the agreement as to form. The obligations of the City under the indemnity and cooperation agreement shall not exceed $4,300,000, without further council approval.

DocuSign Envelope ID: FA6C0401-9A2E-4AFE-8235-4A3F31941446

Furthermore, Developer shall have no responsibility for any environmental compliance costs resulting from the City's other open Water Board cases applicable to other city-owned properties near the Project site.

ARTICLE 7. DESIGN REQUIREMENTS

Section 7.1 Project Design. The Parties acknowledge that the Developer worked with City in designing the Project to standards that are acceptable to City and that met the objectives identified in the Project Objective, attached as Exhibit B. To the extent any further Entitlements are required for the Project, Developer acknowledges and agrees that the City has full authority and discretion to grant or deny applications for Entitlements.

Section 7.2 Additional Permits and Approvals. Within the time specified in the Schedule of Performance (as such times may be extended pursuant to Section 4.7 or by mutual agreement of the Parties), Developer shall obtain all ministerial permits and approvals necessary to construct the Improvements. All applications for such ministerial 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 ministerial permits or approvals, and in no way limits the City's approval process for any such permit and approval. The City shall provide reasonable assistance to the Developer in securing such ministerial permits and approvals.

Section 7.3 City Review. Except for the activities to be performed by or on behalf of the City as otherwise contemplated herein, the Developer shall be solely responsible for all aspects of the Developer's conduct in connection with the Project, including, but not limited to, the quality and suitability of the Project Documents, the supervision of construction work for the Project and the Veterans Park Improvements, and the qualifications, financial condition, and performance of all architects, engineers, contractors, subcontractors, suppliers, consultants, and property managers. Except for the activities to be performed by or on behalf of the City as otherwise contemplated herein, 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.

ARTICLE 8. PRE-CONSTRUCTION AND CONSTRUCTION OF THE IMPROVEMENTS

Section 8.1 Commencement of Construction. The Developer shall commence pre-construction activities and the construction of the Improvements within the times set forth in the Schedule of Performance. Construction shall be deemed to commence on the date the Developer issues a notice to proceed pursuant to a valid Building Permit from the City.

Section 8.2 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, subject to Force Majeure

DocuSign Envelope ID: FA6C0401-9A2E-4AFE-8235-4A3F31941446

requirements in Section 13.4 of this Agreement. As between the City and the Developer, except for, Veterans Park Improvements, and work contemplated by the Cooperation and Indemnity Agreement referenced in section 6.2, above, the Developer shall be solely responsible for the construction of the Improvements, including all costs of construction (except for the EVA Improvement Reimbursables referenced in Section 3.4).

Section 8.3 Construction Pursuant to Scope and Plans.

(a) The Developer shall construct the Improvements in accordance with 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 approval 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 City Approval prior to making such change. The City, through the City Manager or his/her designee, shall reasonably approve or disapprove a proposed material change within fifteen (15) days after receipt by the City. If City does not approve or disapprove within fifteen (15) days after receipt by the City, such non-response shall be deemed approval. If the City rejects the proposed material change, then, upon request of Developer, the City shall provide the Developer with the specific reasons therefor, and the approved Final Construction Drawings shall continue to control.

The obligations of the City pursuant to this section are separate from the rights the City may have in exercising its municipal regulatory authority and nothing contained herein shall limit the City's rights under its regulatory authority.

(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 8.4 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 8.5 Compliance with Applicable Law; Prevailing Wage Requirement.

DocuSign Envelope ID: FA6C0401-9A2E-4AFE-8235-4A3F31941446

a) The Developer shall cause all construction to be performed in compliance with: 1) 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. (2) 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 the payment of all applicable fees, procurement of each permit, license, or other authorization that may be required by any governmental agency having jurisdiction, and the Developer shall be responsible to the City for the procurement and maintenance thereof, as may be required of the Developer and all entities engaged in work on the Property.

b) The Developer shall pay and shall cause the contractor and subcontractors to pay prevailing wages in the construction of the Development as those wages are determined pursuant to California Labor Code Section 1720 et seq., to employ apprentices as required by California Labor Code Sections 1777.5 et seq., and the implementing regulations of the Department of Industrial Relations (the "DIR"). In addition, as applicable, the Developer shall cause its respective contractors and subcontractors in the construction of the Project to do all the following: 1) all calls for bids, bidding materials and the construction contract documents for the Project must specify that (A) no contractor or subcontractor may be listed on a bid proposal nor be awarded a contract for the Project unless registered with the DIR pursuant to Labor Code Section 1725.5, and (B) the Project is subject to compliance monitoring and enforcement by the DIR; 2) the Developer is required to provide the City all information required by Labor Code Section 1773.3 as set forth in the DIR's online form PWC-100 within 2 days of the award of the contract (https://www.dir.ca.gov/pwc100ext/); 3) the Developer shall cause its respective contractors to post job site notices, as prescribed by regulation by the DIR; or 3) the Developer shall cause its respective contractors to furnish payroll records required by Labor Code Section 1776 directly to the Labor Commissioner, at least monthly in the electronic format prescribed by the Labor Commissioner. Developer shall indemnify, hold harmless and defend (with counsel reasonably acceptable to the City) the City against any claim for damages, compensation, fines, penalties or other amounts arising out of the failure or alleged failure of any person or entity (including Developer, its contractor and subcontractors) to pay prevailing wages in accordance with the terms of this Agreement as determined pursuant to California Labor Code Section 1720 et seq., to employ apprentices pursuant to California Labor Code Section 1777.5 et seq., and implementing regulations of the DIR or to comply with the other applicable provisions of California Labor Code Sections 1720 et seq., 1777.5 et seq., and the implementing regulations of the DIR in connection with the construction of the Development. The requirements in this Subsection survive the repayment of the City Loans, the reconveyance of the Deed of Trust, and the expiration of the Regulatory Agreement.

DocuSign Envelope ID: FA6C0401-9A2E-4AFE-8235-4A3F31941446

c) The Developer shall defend (with counsel reasonably acceptable to the City) the City against any claim for damages, compensation, fines, penalties or other amounts arising out of the failure or alleged failure of any person or entity (including the Developer, its contractor and subcontractors) to pay prevailing wages in accordance with this Agreement as determined pursuant to Labor Code Sections 1720 et seq., and implementing regulations of the Department of Industrial Relations or comply with the other applicable provisions of Labor Code Sections 1720 et seq., to employ apprentices pursuant to Labor Code Sections 1777.5 et seq., and implementing regulations of the Department of Industrial Relations in connection with the construction, pursuant to this Agreement, of the Project and shall indemnify and hold the City harmless against any damages, compensation, fines, penalties or other amounts resulting from the successful prosecution of such claim.

d) The Developer shall construct the Project to comply with all applicable federal and state disabled persons accessibility requirements including but not limited to the Federal Fair Housing Act, Section 504 of the Construction Act of 1973, Title II and/or Title III of the Americans with Disabilities Act of 1990, Title 24 of the California Code of Regulations and the Uniform Federal Accessibility Standards, and in compliance with Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794, et seq.).

Section 8.6 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 8.7 Entry by City. After the expiration of the Temporary Parking Lease Agreement and the City's issuance of a Building Permit for the Project, but prior to the City's issuance of a Certificate of Occupancy has been issued by the City, the Developer shall permit the City, upon reasonable prior notice (which shall in no event be less than 48 hours), 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 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 are in addition to any rights of entry and inspection the City may have in exercising its municipal regulatory authority.

Section 8.8 Non-Discrimination During Construction; Equal Opportunity. The Developer (for purposes of this Section 8.8, the term "Developer" shall include Developer's

DocuSign Envelope ID: FA6C0401-9A2E-4AFE-8235-4A3F31941446

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, 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 agrees to 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 solicitations or advertisements for employment are in compliance with the aforementioned nondiscrimination factors; and

Section 8.9 Insurance Requirements. Developer, its contractors, subcontractors and/or agents shall furnish or cause to be furnished to the City duplicate originals of insurance policies, complete with additional insured and loss payee endorsement, as applicable pursuant to this Agreement. Developer shall, until Developer's obligations under this Agreement are paid and discharged in full, maintain and keep in full force and effect any insurance required by City, issued by companies approved and regulated by the State Department of Insurance in the amounts and terms set forth in Exhibit I. Upon reasonable written notice, Developer shall comply with any changes to the amounts and terms of insurance as may be required from time to time by the City's Risk Manager, provided that such changes are commercially reasonable and reasonably financially feasible.

Section 8.10 Dedication of Veterans Park Parcel. Developer shall dedicate the Veterans Park Parcel (Parcel 2) back to the City upon recordation of the Final Map and upon construction finance closing for the first phase of the Project, at the time specified in the Schedule of Performance. Parcel 2 shall have air rights over Parcels 1 and 3, as described in Section 4.10 above. Parcel 2 shall also be dedicated to the City free and clear of any encumbrances created by the Developer that have not been authorized by the City. Notwithstanding the foregoing, City hereby acknowledges and agrees that City will grant certain temporary construction easements to Housing North Developer and Housing South Developer necessary for the construction of the Project, in form and substance as mutually agreed upon by the Parties.

The parties hereto agree that irreparable damage would occur in the event Section 8.10 of this Agreement was not performed in accordance with the terms hereof and that the parties shall be entitled to specific performance of the terms hereof, in addition to any other remedy at law or in equity.

DocuSign Envelope ID: FA6C0401-9A2E-4AFE-8235-4A3F31941446

Section 8.11 Reserved Parking for the Project's Residents. The City agrees to enter into an irrevocable parking space lease, in a form substantially compliant with Exhibit Q, with the Developer for 16 reserved parking spaces for Project residents in the L Street Garage, which will be constructed and owned by the City to serve the Project. The spaces will be leased at $300 per space per year, for an annual cost of $4,800, for a 55-year term with a 2.5% escalator. The term will commence from lease-up of the first phase of the Project. The lease can be assumed by a future owner of the Project subject to any existing encumbrances, so long as the Project remains in compliance with its permanent affordable housing covenants.

ARTICLE 9. OBLIGATIONS WHICH CONTINUE THROUGH AND BEYOND THE COMPLETION OF CONSTRUCTION

Section 9.1 Affordable Housing Use. The Developer covenants to use the Property for affordable housing for a period of not less than 55 years, in conformance with the regulatory agreement ("Regulatory Agreement"), the form of which is attached hereto as Exhibit H. As further set forth herein, upon conveyance of the Housing South Parcel, the Regulatory Agreement shall be modified to reflect the correct unit count and mix for the Housing North Parcel, and a new regulatory agreement shall be executed by the Housing South Developer that will be specific to the Housing South Project.

Section 9.2 Downtown Landscape Maintenance District. The Parties acknowledge that the City's Downtown Landscape Maintenance District LL-859 applies to the Property upon completion of the construction of the Project. The parties agree that no other existing Community Facility District applies to the Project.

Section 9.3 Maintenance. The Developer hereby agrees that, after the Close of Escrow and prior to completion of construction of the Improvements, the Property shall be maintained in a neat and orderly condition and in accordance with industry health and safety standards, and that, once the Project is completed, the Project shall be well maintained as to both external and internal appearance of the buildings, the common areas, and the parking areas. 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, driveways, parking areas and landscaping, 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 9.4 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, employees, agents,

DocuSign Envelope ID: FA6C0401-9A2E-4AFE-8235-4A3F31941446

consultants, designated volunteers, and contractors (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 or the Property. 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. Developer's indemnification obligations set forth in this Section 9.4 shall not apply to Claims to the extent arising from the gross negligence or willful misconduct of the Indemnitees.

Section 9.5 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 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, except to the extent of any Existing Contamination (defined in Article 9.5(b)) and as further acknowledged in Article 7 herein;

(2) The Developer shall keep and maintain the Project and each portion thereof in material compliance with, and shall not cause or permit the Project or any portion thereof to be in violation of, any Hazardous Materials Laws;

DocuSign Envelope ID: FA6C0401-9A2E-4AFE-8235-4A3F31941446

(3) Upon receiving actual knowledge of any material lack of compliance in relation Hazardous Materials Laws, 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 Project pursuant to any applicable Hazardous Materials Laws; (B) any and all claims made or threatened by any third party, including without limitation the Water Board and any adjacent landowners, against the Developer or the Project 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 Project or to be otherwise subject to any restrictions on the ownership, occupancy, transferability or use of the Project under any Hazardous Materials Laws.

(b) Indemnity. Without limiting the generality of the indemnification set forth in Section 9.4, and subject to Section 6.2, and excepting any liability or Hazardous Materials Claims relating to the presence of any Hazardous Materials in environmental media at the Property as of Closing (collectively, "Existing Contamination"), , the Developer hereby agrees to indemnify, protect, hold harmless and defend (by counsel reasonably satisfactory to the City) the City, its elected officials, officers, employees, 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 Project; (2) the presence in, on or under the Project 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 Project, subsequent to the conveyance of the Property to the Developer, 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 Existing Contamination on or under the Property, or affecting any natural resources, unless and to the extent Developer materially exacerbates such Existing Contamination, but shall 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 by Developer or any employees, agents, contractors or subcontractors of the Developer, 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 9.5(b) shall not apply to any Indemnification Claims to the extent arising from the gross negligence or willful misconduct of the City, it's elected officials, officers, employees, and designated volunteers.. Solely in relation to the Existing

DocuSign Envelope ID: FA6C0401-9A2E-4AFE-8235-4A3F31941446

Contamination, the City hereby agrees to indemnify, protect, hold harmless and defend (by counsel reasonably satisfactory to the Developer) the Developer and its officers, contractors, employees, agents, tenants, and invitees 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 City, 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 Project,; and (2) the presence in, on or under the Project of any Hazardous Materials or any releases or discharges of any Hazardous Materials into, on, under or from the Property (collectively "City Indemnification Claims"). For avoidance of doubt nothing herein shall abrogate any of the Developer's responsibilities under the SMP, except as provided by the cooperation and indemnity agreement contemplated in section 6.2.

(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 9.5(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 9.6 Non-Discrimination.

(a) The Developer covenants and agrees for itself, its successors and its assigns in interest to the Site 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 Site 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).

ARTICLE 10. ASSIGNMENT AND TRANSFERS

Section 10.1 Definitions. As used in this Article 10, the term "Transfer" means:

DocuSign Envelope ID: FA6C0401-9A2E-4AFE-8235-4A3F31941446

(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 Project 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 fifty percent (50%) ownership interest in the Developer, or any contract or agreement to do any of the same.

Section 10.2 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 its subsequent use in accordance with the terms of this Agreement and the Regulatory 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 10.1 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 10.3 Prohibited Transfers. The limitations on Transfers set forth in this Article 11 shall apply from the Effective Date of this Agreement until the issuance of a Certificate of Occupancy by the City. 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 10.3. 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 10.4 Permitted Transfers. Notwithstanding the provisions of Section 10.3, the following Transfers shall be permitted (subject to satisfaction of the conditions of Section 10.5), 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 11.1).

(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.

DocuSign Envelope ID: FA6C0401-9A2E-4AFE-8235-4A3F31941446

(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 Improvements.

(e) The granting of temporary or permanent easements or permits to facilitate development of the Project.

(f) A Transfer to an Affiliate of Developer, provided that such Transfer does not result in a change of Control.

(g) A Transfer otherwise approved by the City.

(h) A Transfer permitted under Article 1 of this Agreement.

As a condition of the City approval of a Transfer described in Section 10.4(f),10.4(g), and 10.4(h) 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 10.4(f), the City must review and approve the transferee's organizational documents for the purposes of determining that such transferee is controlled by the Developer.

Section 10.5 Effectuation of Permitted Transfers.

(a) Other than as permitted in Section 10.4, 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 10.5 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

DocuSign Envelope ID: FA6C0401-9A2E-4AFE-8235-4A3F31941446

specifically assumes pursuant to the Assumption Agreement the obligations under this Agreement to indemnify the City with respect to the Project, 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.

(c) Notwithstanding the foregoing, the City and Developer acknowledge agree that, in accordance with Section 1.2 above, this Agreement and the rights and obligations hereunder shall be partially assigned to Housing South Developer upon the conveyance of the Housing Parcel South. The partial assignment shall be in writing, executed by the City, Developer and Housing South Developer, and shall include a partial assignment of all rights and obligations applicable to the Housing South Parcel hereunder (and under any other documents contemplated by this Agreement, including but not limited to the indemnity and cooperation agreement contemplated in Section 6.2) as well as language whereby City shall acknowledge and agree that there shall be no cross defaults under this Agreement between the Housing South Project and the Housing North Project.

ARTICLE 11. SECURITY FINANCING AND RIGHTS OF HOLDERS

Section 11.1 No Encumbrances Except for Development Purposes. Prior to the City's issuance of a Certificate of Occupancy, mortgages, deeds of trust, assignment of rents and security agreements, and other real property security instruments to secure the funds necessary for the construction and permanent financing of the Improvements as shown in the Financing Plan are permitted to be placed upon the Property only as permitted pursuant to this Section 12.1. 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 interest in the Property.

Until the Developer is entitled to issuance of a Certificate of Occupancy, the Developer may place mortgages, deeds of trust, or other reasonable methods of security on Developer's fee interest in the Property only for the purpose of securing acquisition of the fee interest and for predevelopment, construction and permanent financing approved by the City as part of the approved Financing Plan. City hereby acknowledges and agrees that Developer intends to obtain a predevelopment loan from the County of Alameda and that in the event such loan is obtained, the County may secure such loan with a deed of trust and regulatory agreement recorded against the Property, and which time such instruments will be deemed "Security Financing Interests" hereunder.

Section 11.2 Holder Not Obligated to Construct. The holder of any Security Financing Interest authorized by this Agreement is not obligated to construct or complete any improvements or to guarantee such construction or completion. However, nothing in this Agreement shall be deemed to permit or authorize any such holder 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.

Section 11.3 Notice of Default and Right to Cure. Whenever the City pursuant to its rights set forth in Article 12 delivers any notice to the Developer of the occurrence of a

DocuSign Envelope ID: FA6C0401-9A2E-4AFE-8235-4A3F31941446

Developer Event of Default (a "Cure Notice"), the City shall not exercise any remedy available to it unless and until each of the following have occurred: (a) written notice of the Developer Event of Default is provided to each and every then-existing holder of record of any Security Financing Interest (each an "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 12.3. 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 12. 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 12.3 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 such Encumbrance Holder to undertake or continue the construction or completion of the Improvements (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 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 11.4 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) thirty (30) 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 Article 12 to cure such Developer Event of Default if such Developer Event of Default can reasonably be cured by an Encumbrance Holder within such thirty (30)-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 (for example, by foreclosure of a Security Financing Interest), 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 thirty (30) days after its receipt of an 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

DocuSign Envelope ID: FA6C0401-9A2E-4AFE-8235-4A3F31941446

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 11.4 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.

As used herein, a "Foreclosure Transfer" shall mean any transfer of the entire fee interest of Developer in the Property 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 other transfer in lieu thereof. A "Foreclosure Transferee" shall mean any transferee (including without limitation an Encumbrance Holder) which acquires title to the fee interest of Developer in the Property pursuant to a Foreclosure Transfer.

Section 11.5 Failure of Holder to Complete Development. Subject to Section 11.4(b), in any case where six (6) months after default by the Developer in completion of construction of the Improvements under this Agreement, the holder of record of any Security Financing Interest, having first exercised its option to construct, has not proceeded diligently with construction, the City shall be afforded those rights against such holder it would otherwise have against the Developer under this Agreement.

Section 11.6 Right of 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 holder has not exercised its option to complete the construction of the Improvements, the City may, upon prior written notice to the Developer, cure the default, prior to the completion of any foreclosure. In such event the City shall be entitled to reimbursement from the Developer of all costs and expenses incurred by the City in curing the default. The City shall also be entitled to a lien upon the Developer's fee interest in the Property to the extent of such costs and disbursements. The City agrees that such lien shall be subordinate to any Security Financing Interest, and the City shall execute from time to time any and all documentation reasonably requested by the Developer to effect such subordination.

DocuSign Envelope ID: FA6C0401-9A2E-4AFE-8235-4A3F31941446

Section 11.7 Right of 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 11.8 Holder to be Notified. To the extent deemed necessary by the City, the Developer shall insert each term contained in this Article 11 into each Security Financing Interest or shall procure acknowledgement of such terms by each prospective holder of a Security Financing Interest prior to its coming into any security right or interest in the Property or portion thereof.

Section 11.9 Modifications. If a holder of a Security Financing Interest should, as a condition of providing financing or funding for development of all or a portion of the Improvements, request any modification of this Agreement in order to protect its interests in the Project or this Agreement, 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.

ARTICLE 12. DEFAULT AND REMEDIES

Section 12.1 Application of Remedies. The provisions of this Article shall govern the Parties' remedies for breach of this Agreement.

Section 12.2 Fault of City.

(a) Event of Default. Following notice and cure as set forth in subsection (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 a fee interest in 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

DocuSign Envelope ID: FA6C0401-9A2E-4AFE-8235-4A3F31941446

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 (excluding punitive damages and consequential damages); or (3) seeking specific performance or any other remedy available at law or in equity (excluding punitive damages and consequential damages).

Section 12.3 Fault of Developer.

(a) Event of Default. Following notice and cure as set forth in subsection (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 all conditions in Article 4 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 the manner and by the deadline set forth in Article 8 and the Schedule of Performance.

(3) The Developer breaches any provision of Article 7.

(4) The Developer attempts or completes a Transfer except as permitted under Article 10.

(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; or (5) failure, inability or admission in writing of its inability to pay its debts as they become due.

(6) The Developer defaults under any Security Financing Interest and has not cured such default within the applicable cure period contained in such agreement.

(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

DocuSign Envelope ID: FA6C0401-9A2E-4AFE-8235-4A3F31941446

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 (excluding, punitive damages and consequential damages); or (3) seeking specific performance or 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. Any investor limited partner of Developer's assignee shall have the same notice and cure rights granted to Developer, and any cure tendered by such investor shall be accepted or rejected on the same basis as if tendered by Developer.

Section 12.4 Right of Reverter. Following the Close of Escrow of the Undivided Parcel, (1) if the Developer fails to commence the pre-construction activities or construction of the Improvements by the dates listed in the Schedule of Performance (as such dates may be extended), or (2) if the City does not prevail in the Litigation; then the City may, in addition to other rights granted in this Agreement, re-enter and take possession of the Undivided Parcel or Property as the case may be with all improvements thereon, and revest in the City the estate previously conveyed to the Developer by the City with respect to the Undivided Parcel subject to the provisions set forth below.

The City's rights under this Section 12.4 shall terminate and be of no further force and effect once the Developer closes on construction financing for the first phase of the Project.

The interest created pursuant to this Section 12.4 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 Undivided Parcel or 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 Undivided Parcel or Property.

(c) Any leases affecting the Undivided Parcel or Property as of the date of such termination.

Upon revesting in the City of title to the Undivided Parcel as provided in this Section 12.4, the City shall, pursuant to its responsibilities under state law, use its best efforts to resell the Undivided Parcel 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. In addition, upon revesting in the City of title to the Undivided Parcel as provided in this Section 12.4, the Predevelopment Loan and Site Acquisition Loan shall be deemed paid in full and cancelled. It is anticipated that the sale of the

DocuSign Envelope ID: FA6C0401-9A2E-4AFE-8235-4A3F31941446

Undivided Parcel to a new buyer would be on substantially the same terms and that the payment price would be paid in in the form of an Acquisition Loan from the City evidence by a Seller Take Back Note and Deed of Trust.

If this clause is triggered because the City did not prevail in Litigation, the City shall reimburse Developer for actual costs incurred and paid as a result of its ownership of the Undivided Parcel, and not already reimbursed through the Lease Back provisions.

The rights established in this Section 12.4 are to be interpreted in light of the fact that the City will convey the Undivided Parcel to the Developer for development of the Project and not for speculation.

Section 12.5 Damages. This Agreement does not and shall not be interpreted in any manner to restrict, limit, or otherwise impair the City's governmental power. Developer acknowledges that the City's execution of this Agreement in no way limits the City's discretion in the permit and approval process in connection with development of the Project. Likewise, Developer acknowledges that the City's execution of this Agreement cannot and does not limit the City's ability to exercise its legislative authority.

City acknowledges the exercise of its legislative authority for a land use action, such as but not limited to a General Plan Amendment, Specific Plan Amendment, or zoning action (collectively, a "Land Use Action") that prevents the Project from being developed does not constitute a compensable taking absent extraordinary circumstances. Examples of extraordinary circumstances that could subject the City to a taking without payment of compensation include, but are not limited to, eliminating all value from the property, the denial of due process, and reclassifying the property in a manner to prevent its improvement so that it might be acquired at a lesser price.

The City acknowledges that Developer has expended significant resources to develop the Project that could have been used to develop affordable housing elsewhere and that could be lost, and obtained grant and/or loan funding that would need to be repaid, if the City subsequently exercises its legislative authority for a Land Use Action that prevents the Project from being developed. The City and Developer agree that they would be able to quantify the losses equal to the grant and/or loan funding that would need to be repaid should a Land Use Action by the City prevent the Project from being developed. The City and Developer also agree that quantifying the scope of the economic and noneconomic losses arising from a Land Use Action that prevents the Project from being developed is inherently difficult insofar as the action results in the loss of affordable housing opportunities, negatively impacts Developer's reputation, and cannot adequately capture the soft costs expended on the Project.

The City and Developer agree and stipulate that the repayment of Project grant and/or loan funds already expended for the Project that are not available for repayment and the agreed upon sum of $2,300,000 is a reasonable measure of the damages based upon their experience in the affordable housing industry and given the nature of the losses that may result from a Land Use Action that prevents the Project from being developed.

DocuSign Envelope ID: FA6C0401-9A2E-4AFE-8235-4A3F31941446

Therefore, in the event the City exercises is legislative authority for a Land Use Action that prevents the Project from being developed, then the City shall pay damages to Developer as follows:

(1) An amount equal to the grant and/or loan funds that were expended by Developer prior to the date of that Land Use Action that is not available for repayment in the event the awarding/loaning agency demands Developer repay the expended funds; and

(2) The stipulated amount of $2,300,000 for the losses that cannot be quantified.

The City and Developer further agree that these agreed upon sums are not penalties, and further agree that they are a reasonable measure of Developer's damages given the nature of the losses that may result from a Land Use Action by the City that prevents the Project from being developed.

This provision shall not apply in the event Developer or its successor applies to the City for a new Land Use Action for the Project site or for a different Project. The parties further agree that this provision shall not apply in the event an action by Developer, its successor, a court of competent jurisdiction, or the State of California prevents the Project from being developed.

Section 12.6 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 12.7 Survival. Upon termination of this Agreement under this Article 12, the following provisions of this Agreement shall survive: 5.9, 5.12, 8.4, 8.5, and 9.4, 9.5, 11.1, 13.3. This Section 12.7 exists for reference purposes only, and does not alter the scope or nature of the surviving provisions.

ARTICLE 13. GENERAL PROVISIONS

Section 13.1 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 California limited partnership duly organized, validly existing and in good standing under the laws of the State 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

DocuSign Envelope ID: FA6C0401-9A2E-4AFE-8235-4A3F31941446

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.

(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. Aside from the Litigation and unless otherwise disclosed in writing to the City prior to the date of this Agreement, there is no existing or, to the Developer's actual knowledge, pending or threatened litigation, suit, action or proceeding before any court or administrative agency affecting the Developer or the Undivided Parcel that would, if adversely determined, materially and adversely affect the Developer or the Undivided Parcel 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 under any agreement materially related to the development or operation of the Project, 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 Section 13.1 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 13.2 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 Attn: City Manager 1052 S. Livermore Avenue Livermore CA 94550
Developer	DTLM, L.P.

DocuSign Envelope ID: FA6C0401-9A2E-4AFE-8235-4A3F31941446

C/o Eden Housing, Inc.
22645 Grand Avenue
Hayward, CA 94541
Attn: Sr. VP of Development
KLeichner@edenhousing.org
Jeremy.Hoffman@edenhousing.org
Matt.Graves@edenhousing.org

with copies to:

Gubb & Barshay LLP
505 14th Street, Suite 450
Oakland, CA 94612
Attn: Evan Gross

Notices to Developer shall be sent by electronic mail in addition to other means of communication described above. 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 13.2. Delivery shall be deemed to have occurred at the time indicated on the receipt for delivery or refusal of delivery.

Section 13.3 Non-Liability of Officials, Employees and Agents. No member, official, employee, consultant, counsel, or agent 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 13.4 Enforced Delay. In addition to specific provisions of this Agreement, performance by any Party hereunder shall not be deemed to be in default where delays or defaults are due any of the following items that constitute Force Majeure for purposes of this Agreement: 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); unusually severe weather; inability to secure necessary labor, materials or tools; acts or the failure to act of any public or governmental agency or entity (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).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 13.4 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 13.5 Intentionally Omitted.

DocuSign Envelope ID: FA6C0401-9A2E-4AFE-8235-4A3F31941446

Section 13.6 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.

Section 13.7 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 13.8 Applicable Law. This Agreement shall be interpreted under and pursuant to the laws of the State of California.

Section 13.9 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 13.10 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 13.11 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 Section 10.4. 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 Undivided Parcel, 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 Undivided Parcel, or the applicable portion of the Undivided Parcel, from the requirements of this Agreement.

Section 13.12 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 13.13 Entire Understanding of the Parties. This Agreement constitutes the entire understanding and agreement of the Parties with respect to the conveyance of the Undivided

DocuSign Envelope ID: FA6C0401-9A2E-4AFE-8235-4A3F31941446

Parcel and the development of the Project. This Agreement supersedes the Disposition, Development and Loan Agreement dated November 11, 2018, as it was amended on May 16, 2021, but this agreement is also intended to fulfill and complete those agreements. In the event a court of competent jurisdiction determines that Government Code section 54234 prevents the sale and disposition of the Undivided Parcel or that a decision by the California Department of Housing and Community Development should prevent the sale and disposition of the Undivided Parcel, the Parties hereby express their intent that either of those situations will work to automatically revive the Development and Loan Agreement dated November 11, 2018, as it was amended on May 16, 2018, which may then be reinstated by the Parties in their collective discretion.

Section 13.14 Counterparts. This Agreement may be executed in counterparts and multiple originals.

Section 13.15 Amendments. The Parties can amend this Agreement only by means of a writing signed by both Parties.

Section 13.16 Recordation of Memo of DDLA. The Parties consents to the recordation of the memorandum of this Agreement, in the form attached as Exhibit K in the Official Records against Developer's interest in the Property.

Section 13.17 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 13.18 Effectiveness of Agreement. This Agreement is dated for convenience only and shall only become effective on the Effective Date.

Section 13.19 Delegation of Authority to City Manager. This Agreement may be amended from time to time as the Parties find is necessary. The City Manager shall have the authority to make minor amendments to effectuate the intent of this Agreement. Upon approval of this Agreement by the City Council, the City Manager shall also have the authority to execute the final documents and agreements referenced in this Agreement and other related documents to implement the intent and terms of this Agreement, as well as the specific delegations of authority set forth herein as approved by the City Council's resolution approving this Agreement.

DocuSign Envelope ID: FA6C0401-9A2E-4AFE-8235-4A3F31941446

WHEREFORE, the Parties have executed this Agreement as of the date first above written.

City:
City of Livermore, a municipal corporation

By: _____
Marc Roberts
Its: City Manager

Date: _____

APPROVED AS TO FORM

By: _____
Assistant City Attorney

DEVELOPER:

By: Eden Housing, Inc.,
a California nonprofit public benefit corporation,
its manager

By: _____
Name: Andrea Osgood
Title: Senior Vice President of Real Estate Development

DocuSign Envelope ID: FA6C0401-9A2E-4AFE-8235-4A3F31941446

EXHIBIT A

LEGAL DESCRIPTION UNDIVIDED PARCEL

REAL PROPERTY SITUATED IN THE CITY OF LIVERMORE, COUNTY OF ALAMEDA, STATE OF CALIFORNIA, AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

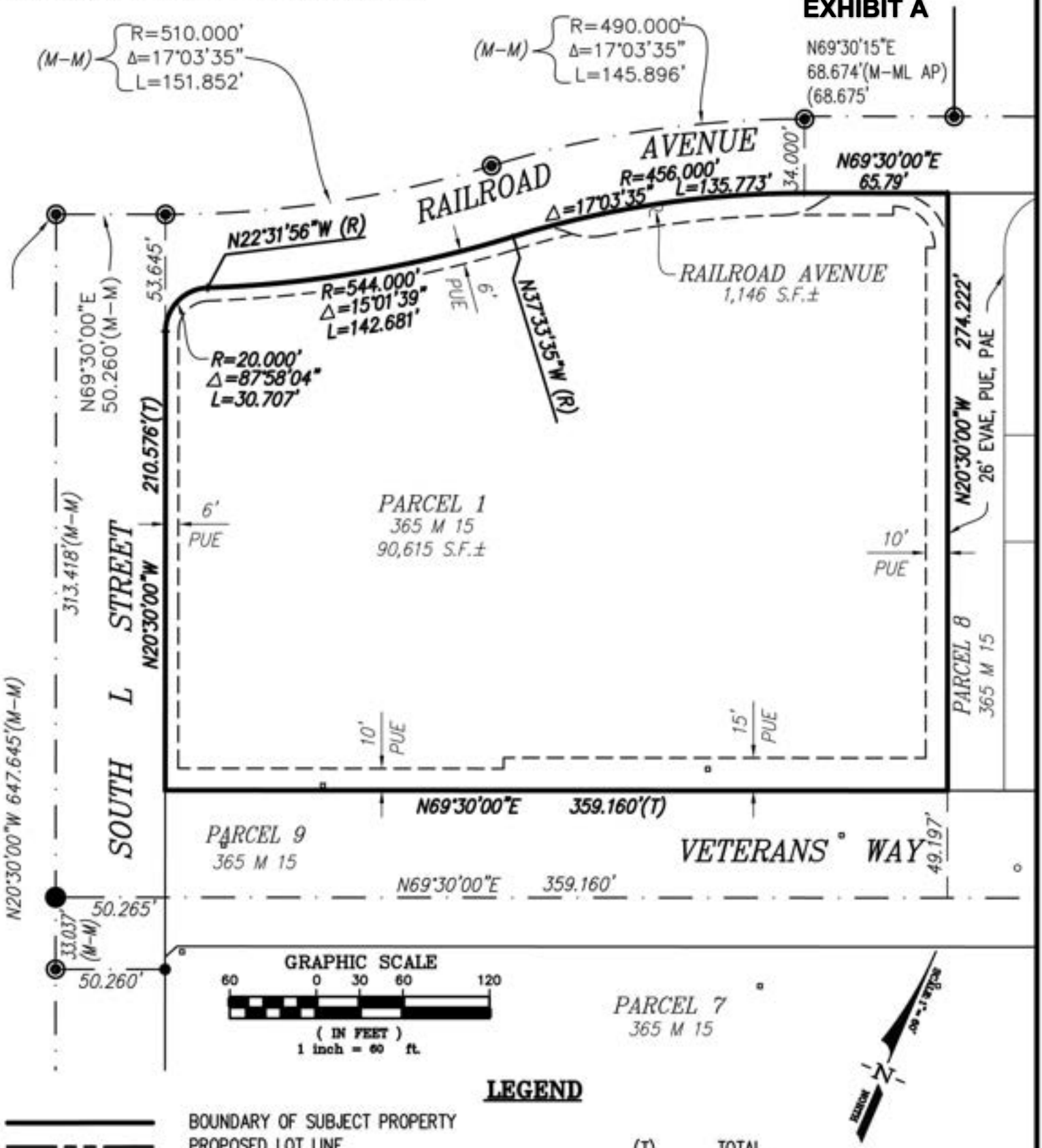
BEING ALL OF PARCEL 1 OF TRACT MAP NO. 8574, RECORDED DECEMBER 23, 2020, IN BOOK 365 OF MAPS AT PAGES 15-19, ALAMEDA COUNTY RECORDS.

CONTAINING 90,615 SQUARE FEET OF LAND MORE OR LESS

APN: 098-0289-22

DocuSign Envelope ID: FA6C0401-9A2E-4AFE-8235-4A3F31941446

EXHIBIT A



LEGEND

- BOUNDARY OF SUBJECT PROPERTY
- PROPOSED LOT LINE
- RIGHT OF WAY LINE
- MONUMENT LINE
- EXISTING PUBLIC UTILITY EASEMENT (PUE)
- ADJOINER LOT LINE
- 1/4" PIN WITH CUT CROSS IN CONC. MONUMENT WELL

(T)	TOTAL
(M-CL)	MONUMENT TO CENTERLINE
(CL-CL)	CENTERLINE TO CENTERLINE
(ML-ML)	MONUMENT LINE TO MONUMENT LINE
S.F.	SQUARE FEET
±	MORE OR LESS

EXHIBIT A

PLAT TO ACCOMPANY LEGAL DESCRIPTION

DocuSign Envelope ID: FA6C0401-9A2E-4AFE-8235-4A3F31941446

Exhibit B

Project Objectives

The Property shall be developed as multi-family affordable rental housing with up to 130 units. The Project was approved by City Council for entitlement May 24, 2021 and as part of the design and development of the Improvements, the Project shall make way for and accommodate the development of an open green/publicly accessible City-owned park space and pedestrian access path (Veterans Park) as generally depicted in the approved Downtown Concept Plan and described in the Downtown Core Landscape Design Guidelines.

Parties have satisfied through the Project entitlements, completion of environmental studies and as described herein the DDLA, the following elements:

- Configuration of the Property and potential Property subdivision
- Environmental Condition of the Property at Transfer
- Developer's contribution to the Downtown Landscape Maintenance District LL-859
- Design elements, which shall be consistent with zoning and downtown specific plan requirements.
- Integration with adjacent planned uses including, Stockman's Park, a Science and Society Center, Black Box Theater, and Veterans Park.
- Parking accommodations on the site
- A housing selection process to give application preferences for renting to local workers, including teachers, emergency responders (including emergency medical response), employees of businesses downtown, and professional artists as permitted by federal law.
- Unit sizes and mix of unit types
- Affordability levels, which shall, at a minimum, satisfy the restrictions in the First Amendment to a Notice of Affordability Restrictions on Transfer of Property and Declaration of Restrictive Covenants, recorded in the Official Records of Alameda County, document number 2018227103

Parties shall negotiate in good faith to finalize the following additional Project elements:

- A plan for ongoing operations and maintenance of the Improvements
- Financing of the Improvements

DocuSign Envelope ID: FA6C0401-9A2E-4AFE-8235-4A3F31941446

Schedule of Performance

#	Milestone	Due Date/Completion Date
Pre-Development		
1	Insurance Requirements Fulfilled	Completed
2	Organization Documents	Completed
3	Complete Site Due Diligence	Completed
4	Obtain Planning Approval/Development Entitlements	Completed
5	Preliminary Pro Forma	Completed
6	Appraisal	Completed
7	Predevelopment Loan	Completed
Prior to Close of Escrow on Undivided Parcel		
8	Final approved Regulatory Agreement and Prommissory Note For A&R DDLA	23-May-22
9	CC Approval of Amended and Restated DDLA	23-May-22
10	Federal Environmental Review and Clearance	22-Jul-22
11	Submit Application for Minor Amendment to Tentative Map	1-Jun-22
Close of Escrow on Undivided Parcel		30-Sep-22
Pre-Construction		
12	Financing Commitments	2 years post-litigation
13	Final Pro Forma	2 years post-litigation
14	Developer Submit Draft Final Map and Public Improvement Plans for review	2 years, 3 months post-litigation
15	Developer Submit draft Building Permit Plans for review	2 years, 3 months post-litigation
16	City Council Approval of Final Parcel Map, including acceptance of Veterans Park Parcel, Subdivision Improvement Agreement, & Public Improvement Plans	5 months post submittal (line 14)
17	Developer Dedicates Veterans Park Parcel to City via Final Map	On or before first phase construction financing closing
18	Close of Escrow on all Construction Financing	2 years + 194 days post-litigation
Commence Construction Phases 1 & 2		Within 60 days of City Issuance of Final Building Permit Plans for each phase
Complete Constructions Phases 1 & 2		3 years post commencement of each phase

DocuSign Envelope ID: FA6C0401-9A2E-4AFE-8235-4A3F31941446

EXHIBIT D

(INTENTIONALLY OMITTED)

DocuSign Envelope ID: FA6C0401-9A2E-4AFE-8235-4A3F31941446

EXHIBIT E

EXHIBIT A

NOTICE TO BORROWER:

THIS DOCUMENT CONTAINS PROVISIONS
RESTRICTING RESALE AND ASSUMPTIONS

PROMISSORY NOTE
Downtown Housing Predevelopment Loan

Principal Amount: $500,000

November
~~September~~ 27, 2018
Portion of APN 098-0289-021-00

FOR VALUE RECEIVED, the undersigned Eden Housing, Inc. a California nonprofit public benefit corporation ("Borrower") whose address is 22645 Grand Street, Hayward California 94541, hereby promise(s) to pay to the order of the City of Livermore, a municipal corporation ("City"), at 1052 South Livermore Avenue, Livermore, California 94550, the principal amount of [FIVE HUNDRED THOUSAND Dollars ($500,000)], together with interest accrued thereon, as set forth in this Promissory Note ("Note").

Pursuant to that certain Disposition, Development and Loan Agreement ("DDLA") dated November ~~September~~ 27, 2018 by and between City and Borrower (the "Developer"), the Developer agreed to prepare a development plan for 130 units of affordable workforce housing (the "Project") on the Property (defined below).

In accordance with the DDLA, the property is a portion of APN 098-0289-021-00 located approximately at Railroad Avenue and L Street in the City of Livermore, Alameda County, California as depicted in Exhibit A attached hereto (the "Property").

In accordance with the DDLA, the Borrower intends to purchase, develop, own and operate the Project on the Property. Pursuant to the DDLA, the City has made an predevelopment loan to Borrower in the original principal amount of [FIVE HUNDRED THOUSAND] Dollars ($500,000) (the "Predevelopment Loan") to fund certain predevelopment costs associated with the proposed Project.

This Note is made and delivered pursuant to and in conjunction with the DDLA entered into by and between the City and Borrower dated as of even date herewith. All capitalized terms not otherwise defined in this Note shall have the meanings set forth in the DDLA.

1. Borrower's Obligation. This Note evidences the Borrower's obligation to pay the City the Principal Amount, as that term is subsequently defined, loaned to the Borrower by the City to finance Project predevelopment costs, as set forth in the DDLA. As a condition of receiving the Principal Amount, the Borrower promises and agrees to comply will all terms and conditions of this Note.

2. Principal. The principal amount of this Note, $500,000 ("Principal Amount"), loaned to the Borrower by the City to finance Project predevelopment costs, as set forth in the DDLA.

3. Interest. The Note shall bear simple interest at three percent (3%) annual interest as of the date of this Note.

DocuSign Envelope ID: FA6C0401-9A2E-4AFE-8235-4A3F31941446

4. Term. The entire indebtedness evidenced by this Note shall be repaid to the City by no later than the date that is the earlier of: (i) fifty-five (55) years from the date the Project's financing converts to permanent financing, or (ii) the sixtieth (60th) anniversary of the date hereof (the "Maturity Date"); unless otherwise terminated for infeasibility in accordance with Section 3.1(e) of the DDLA.

5. Repayment. The Borrower shall make payments towards principal and accrued interest due on the Predevelopment Loan from residual receipts pari passu with other City financing as described in the DDLA during the Term of this Note. This Note becomes due and payable in full on (a) the date the Property is sold or transferred in a manner which is ineligible under the terms of the DDLA, or (b) an Event of Default by Borrower which has not been cured as provided for in this Agreement, but in any event (c) no later than the Maturity Date. Any payments made by Borrower pursuant to this section shall be applied first to current annual interest due, and then to reduce the principal amount of the Predevelopment Loan. All payments by the Borrower shall be paid to the City in currency of the United States of America, which at the time of the payment is lawful for the payment of public and private debts.

All payments on this Note shall be made payable to the City of Livermore, and shall be delivered to the City at 1052 South Livermore Avenue, Livermore, California, 94550, or to such other place as the City may from time-to-time designate.

All payments on this Note shall be without expense to the City, and the Borrower agrees to pay all costs and expenses incurred in connection with the payment.

5.1 Annual Payments from Surplus Cash. By not later than July 1 of each year, Borrower shall pay to City fifty percent (50%) of Surplus Cash split pro rata with all other soft lenders approved by the City, generated by the Property during the previous calendar year to reduce the indebtedness owed under this Note.

By not later than June 1 of each year, Borrower shall provide to City Borrower's calculation of Surplus Cash for the previous calendar year, accompanied by such supporting documentation as City may reasonably request to substantiate Borrower's calculation of Surplus Cash. City shall have the right to inspect and audit Borrower's books and records concerning the calculation of Surplus Cash, and to object within ninety (90) days from receipt of Borrower's statement. Failure to timely object shall be deemed acceptance. If City does object, City shall specify the reasons for disapproval. Borrower shall have thirty (30) days to reconcile any disapproved item.

No later than November 1 of each year, Borrower shall provide to City a projected budget for the following calendar year which shall include an estimate of Surplus Cash. City will review the proposed budget and, if acceptable, approve it, which approval shall not be unreasonably withheld, provided, however, if the proposed budget has not been rejected by City within 30 days of receipt, City shall be deemed to have accepted the budget. If the budget is not acceptable, City shall specify the reasons for disapproval. Once approved, any changes to the budget that exceed ten percent (10%) of the total budget shall require City's prior written consent, which consent shall not be unreasonably withheld.

5.1.1 "Surplus Cash" shall mean for each calendar year during the term hereof, the amount by which Gross Revenue (defined below) exceeds Annual Operating Expenses

(defined below) for the Property. Surplus Cash shall also include net cash proceeds realized from any refinancing of the Property, less fees and closing costs reasonably incurred in connection with such refinancing, and any City-approved uses of the net cash proceeds of the refinancing.

5.1.2 "Gross Revenue" shall mean for each calendar year during the term hereof, all revenue, income, receipts and other consideration actually received from the operation and leasing of the Property. Gross Revenue shall include, but not be limited to: all rents, fees and charges paid by tenants; Section 8 payments or other rental subsidy payments received for the dwelling units; deposits forfeited by tenants; all cancellation fees, price index adjustments and any other rental adjustments to leases or rental agreements; and the proceeds of casualty insurance not required to be paid to the holders of Approved Senior Loans (provided however, expenditure of such proceeds for repair or restoration of the Property shall be included within Annual Operating Expenses in the year of the expenditure). Gross Revenue shall not include tenant security deposits, loan proceeds, capital contributions or similar advances, or interest earned on restricted reserve accounts.

5.1.3 "Annual Operating Expenses" shall mean for each calendar year during the term hereof, the following costs reasonably and actually incurred for the operation and maintenance of the Property to the extent that they are substantiated by such documentation as City may reasonably require: property taxes and assessments; debt service currently due and payable on a non-optional basis (excluding debt service due from residual receipts or surplus cash of the Property) on loans which have been approved in writing by the City and which are secured by deeds of trust senior in priority to the Deed of Trust ("Approved Senior Loans"); property management fees and reimbursements in amounts in accordance with industry standards for similar residential projects and paid pursuant to a property management agreement approved by City; premiums for property damage and liability insurance; utility service costs not paid for directly or indirectly by tenants; maintenance and repair costs; fees for licenses and permits required for the operation of the Property; expenses for security services; advertising and marketing costs; accounting costs; payment of deductibles in connection with casualty insurance claims not paid from reserves; tenant services; the amount of uninsured losses actually replaced, repaired or restored and not paid from reserves; cash deposits into reserves for capital replacements and operating expenses in the amount specified in the Regulatory Agreement or reasonably approved by the City; annual monitoring fees, if any, payable to the City or other public agencies in connection with loans provided for the Property; and other ordinary and reasonable operating expenses approved by City.

5.1.4 Exclusions from Annual Operating Expenses. Annual Operating Expenses shall exclude the following: contributions to Property operating or replacement reserves, except as provided in Section 5.1.3; debt service payments on any loan which is not an Approved Senior Loan, including without limitation, unsecured loans or loans secured by deeds of trust which are subordinate to the Deed of Trust; depreciation, amortization, depletion and other non-cash expenses; expenses paid for with disbursements from any reserve account; any amount paid to Borrower, or any entity controlled by the persons or entities in control of Borrower. Notwithstanding the foregoing limitation regarding payments to Borrower and related parties, the following fees shall be included in Annual Operating Expenses, subject to applicable limitations set forth in Section 5.1.3 above, even if paid to Borrower or an affiliate of Borrower: fees paid to a property management agent, resident

services agent, or social services agent; deferred developer fees; annual asset management fees paid to Borrower's limited partner; an annual partnership management fee paid to Borrower's general partner in an annual amount of up to $25,000 increasing no more than 3% annually; and subject to Section 5.1.5, repayment of cash advances by Borrower to cover Property operating expense deficits or emergency cash needs of the Property. Payments to Borrower or affiliates in excess of the limitations set forth in Section 5.1.3 shall not be counted toward Annual Operating Expenses for the purpose of calculating Surplus Cash.

5.1.5 Adjustments to Annual Operating Expenses. Notwithstanding anything to the contrary set forth herein, for the purpose of calculating Surplus Cash, Annual Operating Expenses shall include the repayment of operating deficit loans provided by Borrower provided however, interest payable on such loans may be included in Annual Operating Expenses only in an amount equivalent to the lesser of (i) interest accrued at the actual interest rate charged for the loan, or (ii) interest accrued at a rate equal to the Applicable Federal Rate.

6. Prepayment. At its option and without any premium or penalty, Borrower may pay all or a portion of the outstanding Principal Amount prior to the amount becoming due. The Borrower may make such prepayments at any time, or from time-to-time, before the prepaid amount is due. All prepayments shall be applied by the City to reduce the amount of the outstanding Principal Amount owed under this Note.

7. Encumbrances. The Borrower shall not encumber the Property, permit the covenancy, transfer, or encumbrance of the Property, allow the placement of any liens, notes or deeds on the Property, or use the Property as security for any note or loan, without the City's prior written approval; provided, however, that the approval of encumbrances consistent with the approved Financing Plan included in the DDLA shall not be unreasonably withheld. Any written approval by the City shall be consistent with the requirements of Section 12 below.

8. Payment Acceleration. The Principal Amount of this Note, together with all accrued interest and other outstanding payments and penalties, shall become immediately due and payable upon the occurrence of any of the following events, each subject to any applicable notice and cure periods:

A. The Borrower fails to use the Property in accordance with the DDLA, Loan Agreement or Regulatory Agreement;

B. The Borrower fails to cure a default consistent with the requirements of Section 9 below;

C. The transfer of the Property or this Note in violation of Section 11, and without the City's written approval consistent with the requirements of Sections 12 and 13 below;

D. The encumbrance of the Property in violation of Section 7, without the City's written approval consistent with the requirements of Sections 7 and 13;

E. Borrower is found to be in Default of the DDLA

9. Default – Notice & Opportunity to Cure. If, in the City's sole discretion, the Borrower fails to observe or perform any condition contained herein, or take diligent action towards the cure or remedy of such event, for a period of sixty (60) days after written notice from the City specifying such failure and requesting that it be cured, such event shall be deemed a default and the City shall be entitled, and in addition to all other remedies provided by law or in equity,

to compel specific performance by the Borrower of its obligations under this Note. Any investor limited partner of Borrower or Borrower's assignee shall have the same notice and cure rights granted to Borrower, and any cure tendered by such investor shall be accepted or rejected on the same basis as if tendered by Borrower.

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

11. Prohibited Transfers. Except as otherwise permitted by the terms of this Note or the DDLA, the Borrower is prohibited from transferring by sale, lease, trade, exchange, rental, gift, assignment, conveyance, the Property or any part thereof, or any trust or power, or any transfer in any other mode or form, of the Property or any part thereof or any interest therein; provided, however, that the Borrower may transfer any or all of its interest in the Property to a subsidiary or affiliate controlled by Borrower. Notwithstanding anything to the contrary contained herein, this Note shall be assignable and transferable in whole or in part to one or more limited partnerships affiliated with Borrower, so long as any such assignment or other document evidencing such assignment is acceptable to the City. Borrower may transfer limited partner interests to a tax credit investor (the "Investor"), and such Investor may further transfer its limited partner interests, and the Investor may remove Borrower's general partner pursuant to the terms of the Borrower's limited partnership agreement, with the City's consent, which consent will not be unreasonably withheld.

12. Permitted Transfers. Under the following limited circumstances, the City may give its prior written approval for the transfer of the Property: The Property is to be transferred to another qualified developer, as pre-determined by the City, which is a non-profit serving the same mission to provide housing under the DDLA, Loan Agreement and Regulatory Agreement and will assume the Borrower's rights and obligations under the Deed of Trust, this Note, and the DDLA, Loan Agreement and Regulatory Agreement.

13. Prior Written Approval. The City shall not unreasonably withhold its written approval of permitted transfers, encumbrances and refinancing by the Borrower. However, the City may only give written approval of those transfers, encumbrances, and refinancing authorized by this Note. The Borrower must request the City's written approval prior to pursuing any transfer, encumbrance, or refinancing. If not approved, or in violation of this Note, any unapproved transfer, encumbrance, or refinancing shall be null and void and the Borrower must deliver to the City any profits or benefit received from the transaction consistent with the requirements of Section 22.

14. Audit and Inspection. To the extent permissible under laws and regulations protecting individual confidentiality, the City shall have access to, and is hereby authorized by the Borrower to inspect, make copies or photographs of, the Property, books, utility accounts, and records of the Borrower pertaining to this Note and the Borrower's use of the Property.

15. Notices. Any demand or notice which either party desires to deliver to the other, shall be in writing and shall be delivered by hand, sent by a recognized overnight courier, deposited in the United States mail with a first-class prepaid postage and a return receipt requested, to ensure timely and complete delivery to the other party at the addresses noted above.

16. Attorney Fees and Costs. Borrower agrees that if any amounts due under this Note are not paid when due, to pay all costs and expenses of collection and reasonable attorney fees paid or incurred in connection with the collection or enforcement of this Note, whether or not suit is filed.

17. Severability. Every provision of this Note is intended to be severable. If any provision is held by a court of competent jurisdiction to be invalid, illegal, and unenforceable, the validity, legality, and enforceability, of the remaining provisions shall not in any way be affected or impaired.

18. Interpretation. The provisions of this Note have been arrived at through negotiation and each party had a full and fair opportunity to revise the provisions and have them reviewed by legal counsel. The parties agree that any ambiguities in construing or interpreting this Note shall not be resolved against either party as the drafting party. In the event of an inconsistency or conflict between the language of this Note and the DDLA, the language of the DDLA shall control.

19. Joint and Several Obligations. This Note is the joint and several obligations of all makers, sureties, guarantors and endorsers, and shall be binding upon them and their successors and assigns.

20. Negotiability. Except as otherwise provided herein, this Note is non-negotiable and not transferable by the Borrower. The City, in its sole discretion, may, in the event of an Event of Default by the Borrower that is not cured as provided for in the DDLA, negotiate a transfer, assignment, or assumption of this Note to any person and upon a minimum ninety (90) day written notice to the Borrower by the City.

21. Binding Upon Successors. All provisions of this Note shall be binding upon and inure to the benefit of the successors-in-interest, transferees, and assigns of the Borrower and the City, respectively.

22. Nonrecourse. Except as expressly provided in this Section 22, Borrower shall have no personal liability for payment of the principal of, or interest on, this Note, and the sole recourse of City with respect to the payment of the principal of, and interest on, this Note shall be to the Property and any other collateral held by City as security for this Note; provided however, nothing contained in the foregoing limitation of liability shall: (A) impair the enforcement against all such security for the Loan of all the rights and remedies of the City under the Deed of Trust as such may be amended, modified, or restated from time to time; (B) impair the right of City to bring a foreclosure action, action for specific performance or other appropriate action or proceeding to enable City to enforce and realize upon the Deed of Trust, the interest in the Property created thereby and any other collateral given to City in connection with the indebtedness evidenced hereby and to name the Borrower as party defendant in any such action; (C) be deemed in any way to impair the right of the City to assert the unpaid principal amount of the Loan as a demand for money within the meaning of Section 431.70 of the California Code of Civil Procedure or any successor provision thereto; (D) constitute a waiver of any right which City may have under any bankruptcy law to file a claim for the full amount of the indebtedness owed to City hereunder or to require that the Property shall continue to secure all of the indebtedness owed to City hereunder in

accordance with this Note and the Deed of Trust; or (E) limit or restrict the ability of City to seek or obtain a judgment against Borrower to (1) recover under any provision of the City Documents that obligates Borrower to indemnify City, or (2) recover from Borrower compensatory damages as well as other costs and expenses incurred by City (including without limitation reasonable attorneys' fees and expenses) arising as a result of the occurrence of any of the following: (a) any fraud or intentional misrepresentation on the part of the Borrower or any officer, director or authorized representative of Borrower in connection with the request for or creation of the Loan, or in any City Document, or in connection with any request for any action or consent by City in connection with the Loan; (b) any failure to maintain insurance as required pursuant to the City Documents; (c) failure to pay taxes, assessments or other charges which may become liens on the Property (subject to the right to contest as set forth in the DDLA); (d) the violation of the Borrower's obligations under Article I of the DDLA, except as limited by the provisions of such agreement; (e) the occurrence of any act or omission of Borrower that results in waste to or of the Property and which has a material adverse effect on the value of the Property; (f) the removal or disposal of any personal property or fixtures or the retention of rents, insurance proceeds, or condemnation awards in violation of the Deed of Trust; (g) the material misapplication of the proceeds of any insurance policy or award resulting from condemnation or the exercise of the power of eminent domain or by reason of damage, loss or destruction to any portion of the Property; and (h) the failure of Borrower to pay all amounts payable under this Note in full if Borrower Transfers the Property in violation of the DDLA or the Regulatory Agreement.

[Signature Page to Follow]

DocuSign Envelope ID: FA6C0401-9A2E-4AFE-8235-4A3F31941446

EXHIBIT A

DATE:

BORROWER

By: Andre H. McIntyre
Its: Senior Vice President

DocuSign Envelope ID: FA6C0401-9A2E-4AFE-8235-4A3F31941446

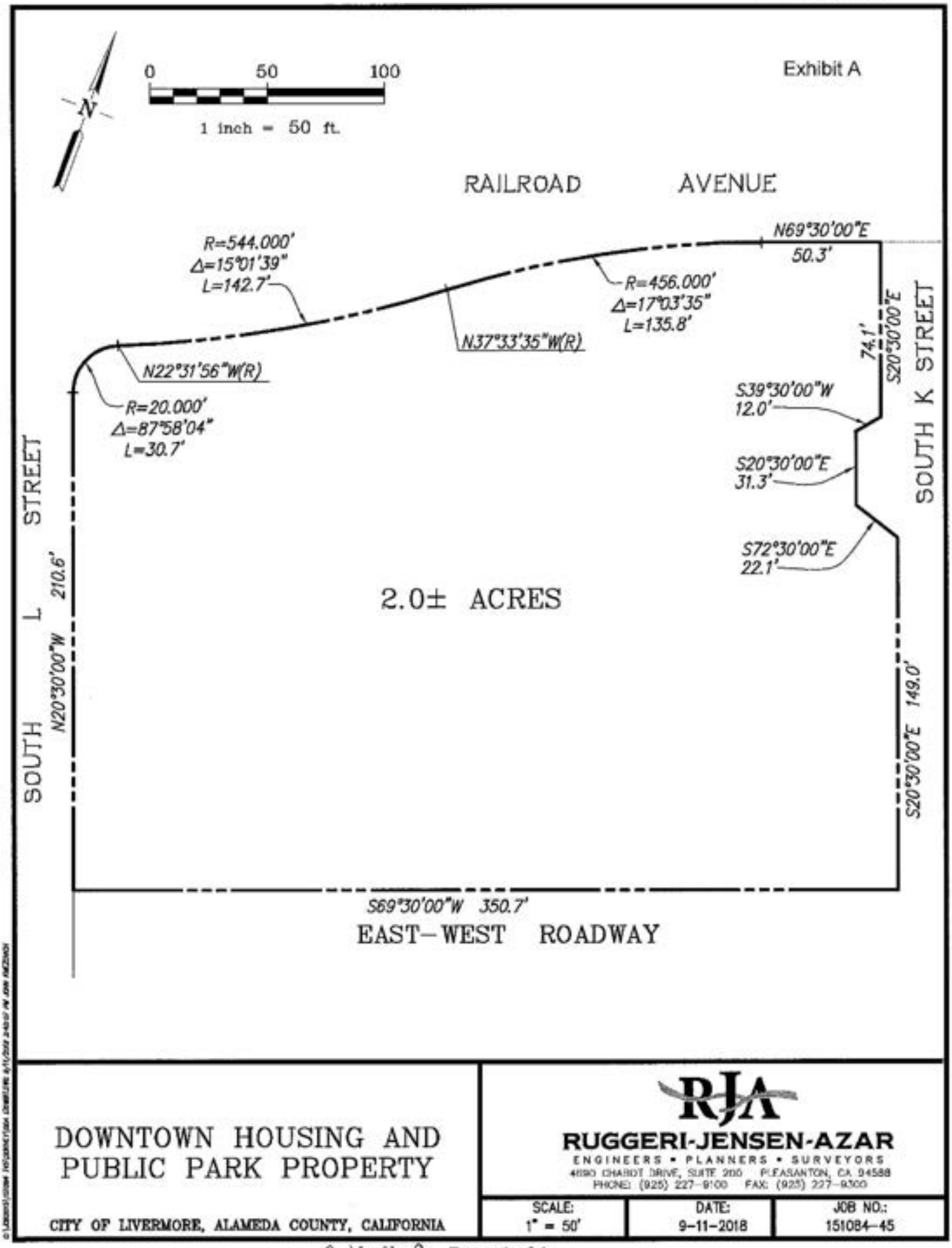
EXHIBIT A

Property Description

See attached

DocuSign Envelope ID: FA6C0401-9A2E-4AFE-8235-4A3F31941446

EXHIBIT A



DOWNTOWN HOUSING AND PUBLIC PARK PROPERTY

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" = 50'	9-11-2018	151084-45

DocuSign Envelope ID: FA6C0401-9A2E-4AFE-8235-4A3F31941446

NOTICE TO BORROWER:

THIS DOCUMENT CONTAINS PROVISIONS
RESTRICTING RESALE AND ASSUMPTIONS

PROMISSORY NOTE
Downtown Housing Project Site Acquisition
Secured by a Deed of Trust

Principal Amount: $7,800,000

[DATE]
[ADDRESS/APN: 098-0289-22]

FOR VALUE RECEIVED, the undersigned [NAME OF OWNER L.P.], [ENTITY TYPE] ("Borrower") whose address is [ ], hereby promise(s) to pay to the order of the City of Livermore, a municipal corporation ("City"), at 1052 South Livermore Avenue, Livermore, California 94550, the principal amount of Seven Million Eight Hundred Thousand Dollars ($7,800,000), together with interest accrued thereon, as set forth in this Promissory Note (the "Seller Take Back Note" or "Note").

Pursuant to that certain Amended and Restated Disposition, Development and Loan Agreement ("DDLA") dated May __ , 2022 by and between City and Borrower (the "Developer"), the Developer agreed to develop the "Undivided Parcel" as described in Exhibit A, attached hereto, into three parcels, and more particularly to develop 130 units of affordable workforce housing (the "Project") on the property as described in Exhibit B, attached hereto (the "Property").

In accordance with the DDLA, the Borrower intends to purchase, develop, own and operate the Project on the Property. Pursuant to the DDLA, the City has made an acquisition loan to Borrower in the original principal amount of Seven Million Eight Hundred Thousand Dollars ($7,800,000)(the "Site Acquisition Loan") to purchase the Property.

This Note is made and delivered pursuant to and in conjunction with the DDLA and that certain Affordable Housing Regulatory Agreement and Declaration of Restrictive Covenants entered into by and between the City and Borrower dated as of even date herewith (the "Regulatory Agreement"). All capitalized terms not otherwise defined in this Note shall have the meanings set forth in the DDLA. The Borrower's obligations with respect to this Note are secured by that certain Deed of Trust and Assignment of Rents (Short Form) entered into by Borrower for the benefit of the City as of even date herewith (the "Seller Take Back Site Acquisition Deed of Trust" or "Deed of Trust") executed by the Borrower concurrently herewith.

1. Borrower's Obligation. This Note evidences the Borrower's obligation to pay the City the Principal Amount, as that term is subsequently defined, loaned to the Borrower by the City to finance the Property's purchase, as set forth in the DDLA. As a condition of receiving the Principal Amount, the Borrower promises and agrees to comply will all terms and conditions of this Note.

DocuSign Envelope ID: FA6C0401-9A2E-4AFE-8235-4A3F31941446

2. Principal. The principal amount of this Note, $7,800,000("Principal Amount"), is loaned to the Borrower by the City to finance acquisition of the Property, as set forth in the DDLA.

3. Interest. The Note shall bear simple interest at three percent (3%)] annual interest as of the date of this Note.

4. Term. The entire indebtedness evidenced by this Note shall be repaid to the City by no later than the date that is the earlier of: (i) fifty-five (55) years from the date the Project's financing converts to permanent financing; or (ii) the sixty fifth (65th) anniversary of the date hereof (the "Maturity Date").

5. Repayment. The Borrower shall make payments towards principal and accrued interest due on the Property Acquisition Loan from residual receipts pari passu with other City and other soft lender financing from a pro rata share of Surplus Cash as described in 5.1 during the Term of this Note. This Note becomes due and payable in full on (a) the date the Property is sold or transferred in a manner which is ineligible under the terms of the DDLA, Loan Agreement, or Regulatory Agreement, or (b) an Event of Default by Borrower which has not been cured as provided for in this Agreement, but in any event (c) no later than the Maturity Date. Any payments made by Borrower pursuant to this section shall be applied first to pay current annual interest due, and then to reduce the principal amount of the Property Acquisition Loan. All payments by the Borrower shall be paid to the City in currency of the United States of America, which at the time of the payment is lawful for the payment of public and private debts.

All payments on this Note shall be made payable to the City of Livermore, and shall be delivered to the City at 1052 South Livermore Avenue, Livermore, California, 94550, or to such other place as the City may from time-to-time designate.

All payments on this Note shall be without expense to the City, and the Borrower agrees to pay all costs and expenses incurred in connection with the payment.

5.1 Annual Payments from Surplus Cash. By not later than July 1 of each year, Borrower shall pay to City fifty percent (50%) of Surplus Cash split pro rata with all other soft lenders approved by the City, generated by the Property during the previous calendar year to reduce the indebtedness owed under this Note.

By not later than June 1 of each year, Borrower shall provide to City Borrower's calculation of Surplus Cash for the previous calendar year, accompanied by such supporting documentation as City may reasonably request to substantiate Borrower's calculation of Surplus Cash. City shall have the right to inspect and audit Borrower's books and records concerning the calculation of Surplus Cash, and to object within ninety (90) days from receipt of Borrower's statement. Failure to timely object shall be deemed acceptance. If City does object, City shall specify the reasons for disapproval. Borrower shall have thirty (30) days to reconcile any disapproved item.

No later than November 1 of each year, Borrower shall provide to City a projected budget for the following calendar year which shall include an estimate of Surplus Cash. City will review the proposed budget and, if acceptable, approve it, which approval shall not be unreasonably withheld, provided, however, if the proposed budget has not been rejected by City within 30 days of receipt, City shall be deemed to have accepted the budget. If the budget is not acceptable, City shall specify the reasons for disapproval. Once approved, any

DocuSign Envelope ID: FA6C0401-9A2E-4AFE-8235-4A3F31941446

changes to the budget that exceed ten percent (10%) of the total budget shall require City's prior written consent, which consent shall not be unreasonably withheld.

5.1.1 "Surplus Cash" shall mean for each calendar year during the term hereof, the amount by which Gross Revenue (defined below) exceeds Annual Operating Expenses (defined below) for the Property. Surplus Cash shall also include net cash proceeds realized from any refinancing of the Property, less fees and closing costs reasonably incurred in connection with such refinancing, and any City-approved uses of the net cash proceeds of the refinancing.

5.1.2 "Gross Revenue" shall mean for each calendar year during the term hereof, all revenue, income, receipts and other consideration actually received from the operation and leasing of the Property. Gross Revenue shall include, but not be limited to: all rents, fees and charges paid by tenants; Section 8 payments or other rental subsidy payments received for the dwelling units; deposits forfeited by tenants; all cancellation fees, price index adjustments and any other rental adjustments to leases or rental agreements; and the proceeds of casualty insurance not required to be paid to the holders of Approved Senior Loans (provided however, expenditure of such proceeds for repair or restoration of the Property shall be included within Annual Operating Expenses in the year of the expenditure). Gross Revenue shall not include tenant security deposits, loan proceeds, capital contributions or similar advances, or interest earned on restricted reserve accounts.

5.1.3 "Annual Operating Expenses" shall mean for each calendar year during the term hereof, the following costs reasonably and actually incurred for the operation and maintenance of the Property to the extent that they are substantiated by such documentation as City may reasonably require: property taxes and assessments; debt service currently due and payable on a non-optional basis (excluding debt service due from residual receipts or surplus cash of the Property) on loans which have been approved in writing by the City and which are secured by deeds of trust senior in priority to the Deed of Trust ("Approved Senior Loans"); property management fees and reimbursements in amounts in accordance with industry standards for similar residential projects and paid pursuant to a property management agreement approved by City; premiums for property damage and liability insurance; utility service costs not paid for directly or indirectly by tenants; maintenance and repair costs; fees for licenses and permits required for the operation of the Property; expenses for security services; advertising and marketing costs; accounting costs; payment of deductibles in connection with casualty insurance claims not paid from reserves; tenant services; the amount of uninsured losses actually replaced, repaired or restored and not paid from reserves; cash deposits into reserves for capital replacements and operating expenses in the amount specified in the Regulatory Agreement or reasonably approved by the City; annual monitoring fees, if any, payable to the City or other public agencies in connection with loans provided for the Property; and other ordinary and reasonable operating expenses approved by City.

5.1.4 Exclusions from Annual Operating Expenses. Annual Operating Expenses shall exclude the following: contributions to Property operating or replacement reserves, except as provided in Section 5.1.3; debt service payments on any loan which is not an Approved Senior Loan, including without limitation, unsecured loans or loans secured by deeds of trust which are subordinate to the Deed of Trust; depreciation, amortization, depletion and other non-cash expenses; expenses paid for with disbursements from any reserve account; any amount paid to Borrower, or any entity controlled by the persons or

DocuSign Envelope ID: FA6C0401-9A2E-4AFE-8235-4A3F31941446

entities in control of Borrower. Notwithstanding the foregoing limitation regarding payments to Borrower and related parties, the following fees shall be included in Annual Operating Expenses, subject to applicable limitations set forth in Section 5.1.3 above, even if paid to Borrower or an affiliate of Borrower: fees paid to a property management agent, resident services agent, or social services agent; deferred developer fees; annual asset management fees paid to Borrower's limited partner; an annual partnership management fee paid to Borrower's general partner in an annual amount of up to $25,000 increasing no more than 3% annually; and subject to Section 5.1.5, repayment of cash advances by Borrower to cover Property operating expense deficits or emergency cash needs of the Property. Payments to Borrower or affiliates in excess of the limitations set forth in Section 5.1.3 shall not be counted toward Annual Operating Expenses for the purpose of calculating Surplus Cash.

5.1.5 Adjustments to Annual Operating Expenses. Notwithstanding anything to the contrary set forth herein, for the purpose of calculating Surplus Cash, Annual Operating Expenses shall include the repayment of operating deficit loans provided by Borrower provided however, interest payable on such loans may be included in Annual Operating Expenses only in an amount equivalent to the lesser of (i) interest accrued at the actual interest rate charged for the loan, or (ii) interest accrued at a rate equal to the Applicable Federal Rate.

6. Prepayment. At its option and without any premium or penalty, Borrower may pay all or a portion of the outstanding Principal Amount prior to the amount becoming due. The Borrower may make such prepayments at any time, or from time-to-time, before the prepaid amount is due. All prepayments shall be applied by the City to reduce the amount of the outstanding Principal Amount owed under this Note.

7. Encumbrances. The Borrower shall not encumber the Property, permit the covenancy, transfer, or encumbrance of the Property, allow the placement of any liens, notes or deeds on the Property, or use the Property as security for any note or loan, without the City's prior written approval; provided, however, that the approval of encumbrances consistent with the approved Financing Plan included in the DDLA shall not be unreasonably withheld. Any written approval by the City shall be consistent with the requirements of Section 12 below.

8. Payment Acceleration. The Principal Amount of this Note, together with all accrued interest and other outstanding payments and penalties, shall become immediately due and payable upon the occurrence of any of the following events, each subject to any applicable notice and cure periods:

A. The Borrower fails to use the Property in accordance with the DDLA, Loan Agreement or Regulatory Agreement;

B. The Borrower fails to cure a default consistent with the requirements of Section 9 below;

C. The transfer of the Property or this Note in violation of Section 11, and without the City's written approval consistent with the requirements of Sections 12 and 13 below;

D. The encumbrance of the Property in violation of Section 7, without the City's written approval consistent with the requirements of Sections 7 and 13;

E. Borrower is found to be in Default of the DDLA

DocuSign Envelope ID: FA6C0401-9A2E-4AFE-8235-4A3F31941446

9. Default – Notice & Opportunity to Cure. If, in the City's sole discretion, the Borrower fails to observe or perform any condition contained herein, or take diligent action towards the cure or remedy of such event, for a period of sixty (60) days after written notice from the City specifying such failure and requesting that it be cured, such event shall be deemed a default and the City shall be entitled, and in addition to all other remedies provided by law or in equity, to compel specific performance by the Borrower of its obligations under this Note. Any investor limited partner of Borrower or Borrower's assignee shall have the same notice and cure rights granted to Borrower, and any cure tendered by such investor shall be accepted or rejected on the same basis as if tendered by Borrower.

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

11. Prohibited Transfers. Except as otherwise permitted by the terms of this Note or the DDLA, the Borrower is prohibited from transferring by sale, lease, trade, exchange, rental, gift, assignment, conveyance, the Property or any part thereof, or any trust or power, or any transfer in any other mode or form, of the Property or any part thereof or any interest therein; provided, however, that the Borrower may transfer any or all of its interest in the Property to a subsidiary or affiliate controlled by Borrower. Notwithstanding anything to the contrary contained herein, this Note shall be assignable and transferable in whole or in part to one or more limited partnerships affiliated with Borrower, so long as any such assignment or other document evidencing such assignment is acceptable to the City. Borrower may transfer limited partner interests to a tax credit investor (the "Investor"), and such Investor may further transfer its limited partner interests, and the Investor may remove Borrower's general partner pursuant to the terms of the Borrower's limited partnership agreement, with the City's consent, which consent will not be unreasonably withheld.

12. Permitted Transfers. Under the following limited circumstances, the City may give its prior written approval for the transfer of the Property: The Property is to be transferred to another qualified developer, as pre-determined by the City, which is a non-profit serving the same mission to provide housing under the DDLA, Loan Agreement and Regulatory Agreement and will assume the Borrower's rights and obligations under the Deed of Trust, this Note, and the DDLA, Loan Agreement and Regulatory Agreement.

13. Prior Written Approval. The City shall not unreasonably withhold its written approval of permitted transfers, encumbrances and refinancing by the Borrower. However, the City may only give written approval of those transfers, encumbrances, and refinancing authorized by this Note. The Borrower must request the City's written approval prior to pursuing any transfer, encumbrance, or refinancing. If not approved, or in violation of this Note, any unapproved transfer, encumbrance, or refinancing shall be null and void and the Borrower must deliver to the City any profits or benefit received from the transaction consistent with the requirements of Section 22.

DocuSign Envelope ID: FA6C0401-9A2E-4AFE-8235-4A3F31941446

14. Audit and Inspection. To the extent permissible under laws and regulations protecting individual confidentiality, the City shall have access to, and is hereby authorized by the Borrower to inspect, make copies or photographs of, the Property, books, utility accounts, and records of the Borrower pertaining to this Note and the Borrower's use of the Property.

15. Notices. Any demand or notice which either party desires to deliver to the other, shall be in writing and shall be delivered by hand, sent by a recognized overnight courier, deposited in the United States mail with a first-class prepaid postage and a return receipt requested, to ensure timely and complete delivery to the other party at the addresses noted above.

16. Attorney Fees and Costs. Borrower agrees that if any amounts due under this Note are not paid when due, to pay all costs and expenses of collection and reasonable attorney fees paid or incurred in connection with the collection or enforcement of this Note, whether or not suit is filed.

17. Severability. Every provision of this Note is intended to be severable. If any provision is held by a court of competent jurisdiction to be invalid, illegal, and unenforceable, the validity, legality, and enforceability, of the remaining provisions shall not in any way be affected or impaired.

18. Interpretation. The provisions of this Note have been arrived at through negotiation and each party had a full and fair opportunity to revise the provisions and have them reviewed by legal counsel. The parties agree that any ambiguities in construing or interpreting this Note shall not be resolved against either party as the drafting party. In the event of an inconsistency or conflict between the language of this Note and the DDLA, the language of the DDLA shall control.

19. Joint and Several Obligations. This Note is the joint and several obligations of all makers, sureties, guarantors and endorsers, and shall be binding upon them and their successors and assigns.

20.. Negotiability. Except as otherwise provided herein, this Note is non-negotiable and not transferable by the Borrower. The City, in its sole discretion, may, in the event of an Event of Default by the Borrower that is not cured as provided for in the DDLA, negotiate a transfer, assignment, or assumption of this Note to any person and upon a minimum ninety (90) day written notice to the Borrower by the City.

21. Binding Upon Successors. All provisions of this Note shall be binding upon and inure to the benefit of the successors-in-interest, transferees, and assigns of the Borrower and the City, respectively.

22. Nonrecourse. Except as expressly provided in this Section 22, Borrower shall have no personal liability for payment of the principal of, or interest on, this Note, and the sole recourse of City with respect to the payment of the principal of, and interest on, this Note shall be to the Property and any other collateral held by City as security for this Note; provided however, nothing contained in the foregoing limitation of liability shall: (A) impair the enforcement against all such security for the Loan of all the rights and remedies of the City under the Deed of Trust as such may be amended, modified, or restated from time to time; (B) impair the right of City to bring a foreclosure action, action for specific performance or other appropriate action or proceeding to enable City to enforce and realize upon the Deed of Trust, the interest in the Property created thereby and any other collateral given to City in connection with the indebtedness evidenced hereby and to name the Borrower as party defendant in any such action; (C) be deemed in any way to impair the right of the City to assert the unpaid principal

DocuSign Envelope ID: FA6C0401-9A2E-4AFE-8235-4A3F31941446

amount of the Loan as a demand for money within the meaning of Section 431.70 of the California Code of Civil Procedure or any successor provision thereto; (D) constitute a waiver of any right which City may have under any bankruptcy law to file a claim for the full amount of the indebtedness owed to City hereunder or to require that the Property shall continue to secure all of the indebtedness owed to City hereunder in accordance with this Note and the Deed of Trust; or (E) limit or restrict the ability of City to seek or obtain a judgment against Borrower to (1) recover under any provision of the City Documents that obligates Borrower to indemnify City, or (2) recover from Borrower compensatory damages as well as other costs and expenses incurred by City (including without limitation reasonable attorneys' fees and expenses) arising as a result of the occurrence of any of the following: (a) any fraud or intentional misrepresentation on the part of the Borrower or any officer, director or authorized representative of Borrower in connection with the request for or creation of the Loan, or in any City Document, or in connection with any request for any action or consent by City in connection with the Loan; (b) any failure to maintain insurance as required pursuant to the City Documents; (c) failure to pay taxes, assessments or other charges which may become liens on the Property (subject to the right to contest as set forth in the DDLA); (d) the violation of the Borrower's obligations under Article I of the DDLA, except as limited by the provisions of such agreement; (e) the occurrence of any act or omission of Borrower that results in waste to or of the Property and which has a material adverse effect on the value of the Property; (f) the removal or disposal of any personal property or fixtures or the retention of rents, insurance proceeds, or condemnation awards in violation of the Deed of Trust; (g) the material misapplication of the proceeds of any insurance policy or award resulting from condemnation or the exercise of the power of eminent domain or by reason of damage, loss or destruction to any portion of the Property; and (h) the failure of Borrower to pay all amounts payable under this Note in full if Borrower Transfers the Property in violation of the DDLA or the Regulatory Agreement.

23. Amendment Contemplated by DDLA. Notwithstanding anything to the contrary contained herein, upon the conveyance as contemplated in Section 3.2 of the DDLA, this Note shall be modified as further set forth therein.

[Signature Page to Follow]

DocuSign Envelope ID: FA6C0401-9A2E-4AFE-8235-4A3F31941446

DATE:

BORROWER

By: [NAME]
[ENTITY TYPE]

By: _____
[NAME]
[TITLE]

Attachments

EXHIBIT A - Legal Description of Undivided Parcel

EXHIBIT B - Description of Property

DocuSign Envelope ID: FA6C0401-9A2E-4AFE-8235-4A3F31941446

EXHIBIT G

EXHIBIT A

RECORDING REQUESTED BY
Old Republic Title Company

AND WHEN RECORDED MAIL TO

City of Livermore
1052 S. Livermore Avenue
Livermore, Ca. 94550-4899

Loan No.:

A.P.N.: [098-0289-22]

Space Above This Line for Recorder's Use Only

File No.:

DEED OF TRUST AND ASSIGNMENT OF RENTS

(Short Form)

THIS DEED OF TRUST, made this _____ , 2022 between

TRUSTOR: [NAME OF OWNER L.P.], [ENTITY TYPE] whose address [ ]

TRUSTEE: Old Republic Title Company

and BENEFICIARY: City of Livermore, a Municipal Corporation

Witnesseth: That Trustor IRREVOCABLY GRANTS, TRANSFERS AND ASSIGNS to TRUSTEE IN TRUST, WITH POWER OF SALE, that property in the City of Livermore, Alameda County, State of California, described as:

SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF

If the Trustor/Grantor shall sell, convey or alienate said property, or any part thereof, or any interest therein, or shall be divested of his title or any interest therein in any manner or way, whether voluntarily or involuntarily, without the written consent of the Beneficiary being first had and obtained, Beneficiary shall have the right, at its option, except as prohibited by law, to declare any indebtedness or obligations secured hereby, irrespective of the maturity date specified in any Note evidencing the same, immediately due and payable.

TOGETHER WITH the rents, issues, and profits thereof, SUBJECT, HOWEVER, to the right, power and authority given to and conferred upon Beneficiary by paragraph 10 of the provisions, incorporated by reference, to collect and apply such rents, issues and profits.
FOR THE PURPOSE OF SECURING: 1. Performance of each agreement of Trustor, incorporated by reference or contained herein. 2. Payment of the indebtedness evidenced by one Promissory Note of even date herewith, and any extension or renewal thereof, in the principal sum of **$**_____, executed by Trustor in favor of Beneficiary or order. 3. Payment of such further sums as the then record Owner of said property hereafter may borrow from Beneficiary, when evidenced by another Note (or Notes) reciting it is so secured
TO PROTECT THE SECURITY OF THIS DEED OF TRUST, TRUSTOR AGREES: By the execution and delivery of this Deed of Trust and the Note secured hereby, that provisions (1) to (14), inclusive, of the fictitious deed of trust recorded in Santa Barbara County and Sonoma County on October 18, 1961, and in all other counties on October 23, 1961, in the book and page of the Official Records in the office of the county recorder of the county where said property is located, noted below and opposite the name of such county, viz:

DocuSign Envelope ID: FA6C0401-9A2E-4AFE-8235-4A3F31941446

EXHIBIT A

County	Book	Page	County	Book	Page	County	Book	Page	County	Book	Page	County	Book	Page
Alameda	435	684	Imperial	1091	501	Merced	1547	538	San Benito	271	383	Siskiyou	468	181
Alpine	1	250	Inyo	147	598	Modoc	184	851	San Bernadino	5567	61	Solano	1105	182
Amador	104	348	Kern	3427	60	Mono	52	429	San Francisco	A332	905	Sonoma	1851	689
Butte	1145	1	Kings	792	833	Monterey	2194	538	San Joaquin	2470	311	Stanislaus	1715	456
Calaveras	145	152	Lake	362	39	Napa	639	86	San Luis Obispo	1151	12	Sutter	572	297
Colusa	296	617	Lassen	171	471	Nevada	305	320	San Mateo	4078	420	Tehama	401	289
Contra Costa	3978	47	Los Angeles	T2055	899	Orange	5889	611	Santa Barbara	1878	860	Trinity	93	366
Del Norte	78	414	Madera	810	170	Placer	895	301	Santa Clara	5336	01	Tulare	2294	275
El Dorado	568	456	Marin	1508	339	Plumas	151	5	Santa Cruz	1431	494	Tuolumne	135	47
Fresno	4626	572	Mariposa	77	292	Riverside	3005	523	Shasta	684	528	Ventura	2062	386
Glenn	422	184	Mendocino	579	530	Sacramento	4331	62	Sierra	29	335	Yolo	653	245
Humboldt	657	527				San Diego Series 2 Book 1961, Page 183887						Yuba	334	486

2.

which provisions, identical in all counties, are printed below) hereby are adopted and incorporated herein and made a part hereof as fully as though set forth herein at length; that he will observe and perform said provisions; and that the references to property, obligations, and parties in said provisions shall be construed to refer to the property, obligations, and parties set forth in this Deed of Trust.

In accordance with Section 2924b, Civil Code, request is hereby made that a copy of any Notice of Default and a copy of any Notice of Sale be mailed to Trustor at Trustor's address hereinbefore set forth, or if none shown, to Trustor at property address.

FURTHERMORE, in the event of foreclosure or deed in lieu of foreclosure, any provisions herein or any provisions in any other collateral agreement restricting the use of the Property to low or moderate-income households or otherwise restricting the Trustor's ability to sell the Property shall have no further force or effect. Any person (including successors or assigns thereto) receiving title to the Property through a foreclosure or deed in lieu of foreclosure shall receive title to the Property free and clear from such restrictions.

NOTICE: A COPY OF ANY NOTICE OF DEFAULT AND OF ANY NOTICE OF SALE WILL BE SENT TO THE ADDRESS CONTAINED IN THIS RECORDED REQUEST. IF YOUR ADDRESS CHANGES, A NEW REQUEST MUST BE RECORDED.

Signature of Trustor(s)

_____

Dated: _____ , _____

_____

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

STATE OF California }
}ss.
COUNTY OF _____ }

On ___, before me, _____, Notary Public, personally appeared____, who proved to me 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.

_____ (Seal)
Signature of Notary Public

DocuSign Envelope ID: FA6C0401-9A2E-4AFE-8235-4A3F31941446

EXHIBIT A

DO NOT RECORD

The following is a copy of provisions (1) to (14), inclusive, of the fictitious Deed of Trust, recorded in each county in California, as stated in the foregoing Deed of Trust and incorporated by reference in said Deed of Trust as being a part thereof as if set forth at length therein.

TO PROTECT THE SECURITY OF THIS DEED OF TRUST, TRUSTOR AGREES:

(1) To keep said property in good condition and repair; not to remove or demolish any building thereon; to complete or restore promptly and in good and workmanlike manner any building which may be constructed, damaged or destroyed thereon, and to pay when due all claims for labor performed and materials furnished therefore; to comply with all laws affecting said property or requiring any alterations or improvements to be made thereon; not to commit or permit waste thereof; not to commit, suffer or permit any act upon said property in violation of law; to cultivate, irrigate, fertilize, fumigate, prune and do all other acts which from the character or use of said property may be reasonably necessary, the specific enumerations herein not excluding the general.

(2) To provide, maintain and deliver to Beneficiary fire insurance satisfactory to and with loss payable to Beneficiary. The amount collected under any fire or other insurance policy may be applied by Beneficiary upon indebtedness secured hereby and in such order as Beneficiary may determine, or at option of Beneficiary the entire amount so collected or any part thereof may be released to Trustor. Such application or release shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice.

(3) To appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee; and to pay all costs and expenses, including cost of evidence of title and attorneys' fees in a reasonable sum, in any such action or proceeding in which Beneficiary or Trustee may appear, and in any suit brought by Beneficiary to foreclose this Deed.

(4) To pay: at least ten days before delinquency, all taxes and assessments affecting said property, including assessments on appurtenant water stock; when due, all encumbrances, charges and liens, with interest, on said property or any part thereof, which appear to be prior or superior hereto; all costs, fees and expenses of this Trust. Should Trustor fail to make any payment or to do any act as herein provided, then Beneficiary or Trustee, but without obligation so to do and without notice to or demand upon Trustor and without releasing Trustor from any obligation hereof, may: make or do the same in such manner and to such extent as either may deem necessary to protect the security hereof, Beneficiary or Trustee being authorized to enter upon said property for such purposes; appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee; pay, purchase, contest or compromise any encumbrance, charge or lien which in the judgment of either appears to be prior or superior hereto; and, in exercising any such powers, pay necessary expenses, employ counsel and pay his reasonable fees.

(5) To pay immediately and without demand all sums so expended by Beneficiary or Trustee, with interest from date of expenditure at the rate called for in the note secured hereby, or at the amount allowed by law at date of expenditure, whichever is greater, and to pay for any statement provided for by law in effect at the date hereof regarding the obligation secured hereby any amount demanded by the Beneficiary not to exceed the maximum allowed by law at the time when said statement is demanded.

(6) That any award of damages in connection with any condemnation for public use of or injury to said property or any part thereof is hereby assigned and shall be paid to Beneficiary who may apply or release such moneys received by him in this same manner and with the same effect as above provided for disposition of proceeds of fire or other insurance.

(7) That by accepting payment of any sum secured hereby after its due date, Beneficiary does not waive his right either to require prompt payment when due of all other sums so secured or to declare default for failure so to pay.

(8) That at any time or from time to time, without liability therefore and without notice, upon written request of Beneficiary and presentation of this Deed of Trust and said note for endorsement, and without affecting the personal liability of any person for payment of the indebtedness secured hereby, Trustee may: reconvey any part of said property; consent to the making of any map or plat thereof; join in granting any easement thereon; or join in any extension agreement or any agreement subordinating the lien or charge hereof.

(9) That upon written request of Beneficiary stating that all sums secured hereby have been paid, and upon surrender of this Deed of Trust and said Note to Trustee for cancellation and retention and upon payment of its fees, Trustee shall reconvey, without warranty, the property then held hereunder. The recitals in such reconveyance of any matters or facts shall be conclusive proof of the truthfulness thereof. The Grantee is such reconveyance may be described as "the person or persons legally entitled thereto. Five years after issuance of such full reconveyance, Trustee may destroy said Note and this Deed of Trust (unless directed in such request to retain them.)

(10) That as additional security, Trustor hereby gives to and confers upon Beneficiary the right, power and authority, during the continuance of these Trusts, to collect the rents, issues and profits of said property, reserving unto Trustor the right, prior to any default by Trustor in payment of any indebtedness secured hereby or in performance of any agreement hereunder, to collect and retain such rents, issues and profits as they become due and payable. Upon any such default, Beneficiary may at any time without notice, either in person, by agent, or by a receiver to be appointed by a court, and without regard to the adequacy of any security for the indebtedness hereby secured, enter upon and take possession of said property or any part thereof, in his own name sue for or otherwise collect such rents, issues and profits, including those past due and unpaid, and apply the same, less costs and expenses of operation and collection, including reasonable attorneys' fees, upon any indebtedness secured hereby, and in such order as Beneficiary may determine. The entering upon and taking possession of said property, the collection of such rents, issues and profits and the application thereof as aforesaid, shall not cure or waive any default or notice of default hereunder or invalidate any act pursuant to such notice.

(11) That upon default by Trustor in payment of any indebtedness secured hereby or in performance of any agreement hereunder, Beneficiary may declare all sums secured hereby immediately due and payable by delivery to Trustee of written declaration of default and demand for sale and of written notice of default and of election to cause to be sold said property, which notice Trustee shall cause to be filed for record. Beneficiary also shall deposit with Trustee this Deed of Trust, said Note(s) and all documents evidencing expenditures secured hereby.

After the lapse of such time as may then be required by law following the recordation of said notice of default, and notice of sale having been given as then required by law, Trustee, without demand on Trustor, shall sell said property at the time and place fixed by it in said notice of sale, either as a whole or in separate parcels, and in such order as it may determine, at public auction to the highest bidder for cash in lawful money of the United States, payable at time of sale. Trustee may postpone sale of all or any portion of said property by public announcement at such time and place of sale, and from time to time thereafter may postpone such sale by public announcement at the time fixed by the preceding postponement. Trustee shall deliver to such purchaser its deed conveying the property so sold, but without any covenant or warranty, express or implied. The recitals in such deed of matters or facts shall be conclusive proof of the truthfulness thereof. Any person, including Trustor, Trustee, or Beneficiary as hereinafter defined, may purchase at such sale.

After deducting all costs, fees and expenses of Trustee and of this Trust, including cost of evidence of title in connection with sale, Trustee shall apply the proceeds of sale to payment of: all sums expended under the terms hereof, not then repaid, with accrued interest at the amount allowed by law in effect at the date hereof; all other sums then secured hereby; and the remainder, if any, to the persons or persons legally entitled thereto.

(12) Beneficiary, or any successor in ownership of any indebtedness secured hereby may, from time to time, by instrument in writing, substitute a successor or successors to any Trustee named herein or acting hereunder, which instrument, executed by the Beneficiary and duly acknowledged and recorded in the office of the recorder of the county or counties where said property is situated, shall be conclusive proof of proper substitution of such successor Trustee or Trustees, who shall, without conveyance from the Trustee predecessor, succeed to all its title, estate, rights, powers and duties, must contain the name of the original Trustor, Trustee and Beneficiary hereunder, the book and page where this Deed of Trust is recorded and the name and address of the new Trustee.

(13) That this Deed of Trust applies to, insures to the benefit of, and binds all parties hereto, their heirs, legatees, devisees, administrators, executors, successors and assigns. The term Beneficiary shall mean the owner and holder, including pledgees, of the Note secured hereby, whether or not named as Beneficiary herein. In this Deed of Trust, whenever the context so required, the masculine gender includes the feminine and/or neuter, and the singular number includes the plural.

(14) That Trustee accepts this Trust when this Deed of Trust, duly executed and acknowledged, is made a public record as provided by law. Trustee is not obligated to notify any party hereto of pending sale under any other Deed of Trust or of any action or proceeding in which Trustor, Beneficiary or Trustee shall be party unless brought by Trustee.

APN: File No.

DocuSign Envelope ID: FA6C0401-9A2E-4AFE-8235-4A3F31941446

EXHIBIT A

----------DO NOT RECORD----------

REQUEST FOR FULL RECONVEYANCE

To be used only when note has been paid.

To: _____, a California Corporation, **Trustee** Dated: _____

The undersigned is the legal owner and holder of all indebtedness secured by the within Deed of Trust. All sums secured by said Deed of Trust have been fully paid and satisfied; and you are hereby requested and directed, on payment to you of any sums owing to you under the terms of said Deed of Trust, to cancel all evidences of indebtedness, secured by said Deed of Trust, delivered to you herewith together with said Deed of Trust, to reconvey, without warranty, to the parties designated by the terms of said Deed of Trust, the estate now held by you under the same.

Mail Reconveyance to: _____

_____

_____

_____

_____ By _____

_____ By _____

Do not lose or destroy this Deed of Trust OR THE NOTE which it secures.
Both must be delivered to the Trustee for cancellation before reconveyance will be made.

Short Form
DEED OF TRUST
WITH POWER OF SALE
INDIVIDUAL

_____ **TITLE COMPANY, A CALIFORNIA CORPORATION**

APN: File No.

DocuSign Envelope ID: FA6C0401-9A2E-4AFE-8235-4A3F31941446

EXHIBIT A

The land referred to is situated in the County of Alameda, City of Livermore, State of California, and is described as follows:

[TITLE COMPANY TO ATTACH]

APN: File No.

DocuSign Envelope ID: FA6C0401-9A2E-4AFE-8235-4A3F31941446

EXHIBIT H

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

Space above this line for Recorder's use.

AFFORDABLE HOUSING REGULATORY AGREEMENT

AND

DECLARATION OF RESTRICTIVE COVENANTS

by and between

THE CITY OF LIVERMORE

and

[NAME OF PROJECT OWNER L.P. TO BE INSERTED]

_____, 2022

DocuSign Envelope ID: FA6C0401-9A2E-4AFE-8235-4A3F31941446

This Affordable Housing Regulatory Agreement and Declaration of Restrictive Covenants (this "**Agreement**") is entered into effective as of _____, 2022 ("**Effective Date**") by and between the City of Livermore, a municipal corporation ("**City**") and [NAME OF PROJECT OWNER L.P. TO BE INSERTED], a California [ENTITY TYPE] ("**Owner**"). The City and the Owner are collectively referred to herein as the "**Parties**."

RECITALS

A. Owner owns the real property located in the City of Livermore, Alameda County, California, at _____, known as Alameda County Assessor Parcel Nos. _____, and more particularly described in **Exhibit A** attached hereto (the "**Property**").

B. On ____, the City entered into an Amended and Restated Disposition, Development and Loan ("**DDLA**"), whereby City describes the terms for development and conveyance of the Property and provides for a predevelopment loan in the amount of $500,000 (the "**Predevelopment Loan"**) which is secured by a Predevelopment Promissory Note and Deed of Trust. Pursuant to the DDLA, Owner will develop, own, and operate an affordable housing development consisting of one hundred thirty (130) units of affordable workforce housing for families (the "**Project**").

C. Pursuant to the DDLA, the City has also agreed to provide a loan to Owner in the amount of $7,800,000 (the "**Site Acquisition Loan**") to assist in financing acquisition of the Property which is secured by a Seller Take Back Acquisition Promissory Note to evidence Owner's obligation to repay the Loan, and a Seller Take Back Acquisition Deed of Trust to be executed by Owner for the benefit of City and recorded substantially concurrently herewith. As a condition precedent to the funding of the Site Acquisition Loan, City requires the Project to be subject to the terms, conditions and restrictions set forth herein.

Capitalized terms used without definition herein shall have the meaning ascribed to such terms in the DDLA.

D. The DDLA provides that the Restricted Units to be developed on the Property will be required to be available to Eligible Households at Affordable Rents in accordance with this Agreement for a period of not less than the term of fifty-five (55) years.

E. The City recognizes there is a shortage of affordable housing and, in particular, and, in particular, lower and middle-income households face barriers which inhibit equal access to housing. Therefore, reserving affordable units for persons working in the community which allow them to live locally is needed to offer equal access to housing.

G. The purpose of this Agreement is to satisfy the affordability requirements of the City's affordable housing program and to regulate and restrict the occupancy and rents of the Project's Restricted Units for the benefit of the Project occupants and set forth the use and maintenance of the community buildings. The Parties intend the covenants set forth in this Agreement to run with the land and to be binding upon Owner and Owner's successors and assigns for the full term of this Agreement.

DocuSign Envelope ID: FA6C0401-9A2E-4AFE-8235-4A3F31941446

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

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

"**Actual Household Size**" means the actual number of persons in the applicable household.

"**Adjusted for Family Size Appropriate for the Unit**" shall be determined consistent with Section 50052.5(h) of the California Health and Safety Code, subject to the application of federal rules and regulations applicable to Project financing sources, including Section 42(g)(2) of the Internal Revenue Code of 1986 as amended (or successor provision).

"**Affordable Rent**" means for units that are restricted for rental to households with incomes of not more than one hundred ten percent (110%) of AMI, a monthly rent that does not exceed one-twelfth of thirty percent (30%) of one hundred ten percent (110%) of Area Median Income, Adjusted for Family Size Appropriate for the Unit, less a utility allowance and other fees and charges required to be paid by tenants of the Project on a non-optional basis which have been approved by the City.

"**Area Median Income**" **or** "**AMI**" means the median income for Alameda County, California, adjusted for Actual Household Size, as determined pursuant to California Tax Credit Allocation (**"TCAC"**) regulations.

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

"City Documents" means collectively, this Agreement, the DDLA, the City Notes, the City Deeds of Trust.

"**Claims**" is defined in Section 2.10.

"City Amended and Restated **Disposition, Development and Loan Agreement**" is defined in recital B-D.

"City **Pre-Development Deed of Trust"** is defined in Recital B.

"City **Pre-Development Note**" is defined in Recital B.

"Seller Take Back **Acquisition Deed of Trust**" is defined in Recital C.

"Site Acquisition Loan" is defined in Recital C.

"Seller Take Back Acquisition Note" is defined in Recital C.

"**City Deeds of Trust**" is defined as that City Predevelopment Deed of Trust and City Acquisition Deed of Trust.

DocuSign Envelope ID: FA6C0401-9A2E-4AFE-8235-4A3F31941446

"City Notes" is defined as the City Predevelopment Note and Seller Take Back Acquisition Note.

"**Eligible Household**" means a household for which gross household income upon initial occupancy does not exceed the maximum income level for a Restricted Unit as specified in Section 2.3.

"**Indemnitees"** is defined in Section 2.10.

"**Marketing and Tenant Selection Plan"** is defined in Section 6.5.

"**Rent**" means the total of monthly payments by the Tenant of a Unit for the following: use and occupancy of the Unit and land and associated facilities, including parking; any separately charged fees or service charges assessed by Owner that are customarily charged in rental housing and required of all Tenants, other than security deposits; an allowance for the cost of an adequate level of service for utilities paid by the Tenant, including garbage collection, sewer, water, electricity, gas and other heating, cooking and refrigeration fuel, but not telephone service or cable TV; and any other interest, taxes, fees or charges for use of the land or associated facilities and assessed by a public or private entity other than Owner, and paid by the Tenant.

"**Rent Restricted"** means limited to an Affordable Rent.

"Residential Project" means an affordable housing development on the Property consisting of 130 apartments (including up to 2 unrestricted manager's units) as described in Recital B.

"**Restricted Unit**" means a dwelling unit that is restricted by the City pursuant to this Agreement pursuant to 2.3.

"**Project**" is defined in Recital B.

"**Tenant**" means a household legally occupying a Unit pursuant to a valid lease with Owner.

"**Unit**" means one of the one hundred thirty (130) units in the Project, including the manager's unit(s).

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

A Legal Description of Property

B Insurance Requirements

C Form of Annual Report

2. Use and Affordability Restrictions. Owner hereby covenants and agrees, for itself and its successors and assigns, that pursuant to this Agreement the Residential Project shall be used solely

for the operation of a multifamily rental housing development of which sixty-three (63), which is no more than 49% of the total units, shall be Restricted Units. The Restricted Units shall consist of ___ studios, ___ 1-bedroom units, and ___ 2-bedroom units. Owner represents and warrants that it has not entered into any agreement that would restrict or compromise its ability to comply with the occupancy and affordability restrictions set forth in this Agreement, and Owner covenants that it shall not enter into any agreement that is inconsistent with such restrictions without the express written consent of City.

2.1 Intentionally Omitted.

2.2 Intentionally Omitted.

2.3 Affordability and Occupancy Requirements. Throughout the term of this Agreement (as defined in Section 4.1 below) Owner agrees that: (i) not less than Sixty Three (63) of the residential units shall be both Rent Restricted and occupied (or if vacant, available for occupancy) by Eligible Households whose gross household income is no greater than one hundred ten percent (110%) of AMI; and, (ii) all other units, except for two (2) of the residential units in the Project which shall be manager's units for which rent will not be restricted, will be restricted by the TCAC restrictive covenant to be recorded when the units are placed-in-service by TCAC's definition ("TCAC Units"). For the purpose of determining whether a household is an Eligible Household, gross household income shall be determined in accordance with TCAC regulations and federal regulations applicable to low-income housing tax credits. The Restricted Units shall generally reflect the unit bedroom mix of all of the units in the Project. Maximum unit occupancy standards shall be established according to TCAC regulations or in the absence of such regulations shall be two persons per bedroom plus one additional person. To the extent permitted by law and consistent with the program regulations for funding sources used for development of the Project, Owner shall give a preference in the rental of the residential units in the Project to Eligible Households who are Livermore Valley Joint Unified School District school teachers, employees working for businesses in the Livermore Downtown, first responders employed in Livermore (including emergency medical personnel), professional artists working in Livermore, and then to all other persons who live or work in Livermore. Notwithstanding the foregoing, in the event of a conflict between this provision and the provisions of Section 42 or Section 142 of the Internal Revenue Code of 1986, as amended, the provisions of such Section 42 or Section 142, as applicable, shall control. Owner shall develop marketing policies or other rental policies and procedures approved by the City, as may be amended from time to time, to ensure that residents and people who live or work in Livermore who qualify for the Project are provided adequate notice and opportunity to rent units in the Project.

(a) In the event that recertification of tenant incomes indicates that the number of Restricted Units actually occupied by Eligible Households falls below the number reserved for each income group as specified in this Section 2.3, Owner shall rectify the condition by renting the next available dwelling unit(s) in the Project to Eligible Household(s) until the required income mix is achieved. A dwelling unit shall qualify as "Rent Restricted" if the gross rent charged for such unit does not exceed the Affordable Rent for the applicable household income category as set forth in Section 2.3.

(b) Notwithstanding anything to the contrary contained in this Agreement, if other Project lenders, Project investors, or regulatory agencies restrict a greater number of units than restricted by this Agreement or require stricter household income eligibility or affordability requirements than those imposed hereby, the requirements of such other lenders, investors or regulatory agencies shall prevail, including without limitation, the rent and occupancy requirements imposed in connection with the use of project based vouchers or other rent subsidies.

2.4 Rents for Restricted Units. For all Restricted Units rents shall be limited to Affordable Rents for households of the applicable income limit and presumed household size in accordance with Section 2.3. A household which at initial occupancy qualifies in a particular income category shall be treated as continuing to be of such income category so long as the household's gross income does not exceed one hundred forty percent (140%) of the applicable income limit.

(a) For the purpose of determining whether a household is an Eligible Household , gross household income shall be determined in accordance with TCAC regulations and federal regulations applicable to low-income housing tax credits. In the event that TCAC no longer publishes the income and rent information that this Agreement contemplates that TCAC will publish, respectively, the City shall provide Owner with other income and rent determinations which are reasonably similar with respect to methods of calculation to those previously published by TCAC, as applicable.

(b) Subject to Section 2.3, if, upon recertification of the income of a tenant of a Restricted Unit, Owner determines that a Tenant of a Restricted Unit has an income exceeding the maximum qualifying income, such Tenant shall be permitted to continue occupying the Restricted Unit and upon sixty (60) days written notice, the Rent may be increased to one-twelfth (1/12th) of thirty percent (30%) of the actual adjusted income of the Tenant or the current fair market rent for that unit, whichever is less, and Owner shall rent the next available Unit of the appropriate size to an Eligible Household at a Rent not exceeding the maximum Rent specified in this Section, or designate another Unit in the Residential Project with a as a Restricted Unit, at a Rent not exceeding the maximum Rent specified in this Section.

(c) Initial Rents are subject to City approval. Rents may not be increased more often than once every twelve (12) months and by no more than five percent (5%) per year, except as otherwise provided in Sections 2.4(a), 2.5(b) or 2.6(c). Owner shall provide each Tenant with at least sixty (60) days written notice of any increase in Rent applicable to such Tenant. Owner shall comply with California rent control laws and tenant notification to the extent applicable. If there are any overlaps between this Agreement and the law, the more restrictive limits and noticing requirements shall govern.

2.5 Loss of Subsidy. It is anticipated that certain Units in the Development (the "Subsidy Units") will receive Project-Based Section 8 or other rental subsidies (the "Rental Subsidy") throughout the Term, as reflected in the Financing Plan for the Project. If any change in federal law occurs, or any action (or inaction) by Congress or any federal or state agency occurs, which results in a material reduction, termination or nonrenewal of the Rental Subsidy through no fault

DocuSign Envelope ID: FA6C0401-9A2E-4AFE-8235-4A3F31941446

of the Owner, such that the Rental Subsidy shown on the Finance Plan for the Development approved by the City is no longer available, Owner shall, in anticipation of such loss in Rental Subsidy, use good faith efforts for a period of ninety (90) days, to identify and obtain alternative sources of rental subsidies and shall provide the City progress reports on Owner's efforts to identify and obtain alternative sources of rental subsidies. If at the end of such ninety (90) day period Owner is unable to secure an alternate source of rental subsidy, notwithstanding Section 2.4, Owner may increase the rent on one or more of the City Restricted Units that overlap with a Subsidy Unit, up to sixty percent (60%) of AMI ("TCAC Maximum Rent Limit"), subject to the following requirements:

(a) Any such rent increase must be pursuant to a transition plan approved by the City showing how the rent increase will be implemented, and which Restricted Units will be subject to the increase, and, if applicable, be consistent with remedial measures set forth in California Code of Regulations Title 4, Division 17, Chapter 1, Section 10337(a)(3) or successor regulation applicable to California's Federal and State Low Income Housing Tax Credit Program;

(b) At the time Owner requests an increase in the Restricted Unit rent, Owner shall provide the City with a copy of the proposed Annual Operating Budget showing the impact of the loss or reduction of the Rental Subsidy;

(c) Any subsequent rent increases remain subject to Section 2.4 above; and,

(d) The number of Restricted Units subject to the rent increase and the level of rent increase may not be greater than the amount required to ensure that the Residential Project generates sufficient income to cover its operating costs and debt service as shown on the Annual Operating Budget, and as is necessary to maintain the financial stability of the Development.

(e) Upon receipt of any alternative rental subsidies, Owner shall reduce the rents on the Restricted Units back to the Affordable Rent, to the extent that the alternative rental subsidies provide sufficient income to cover the operating costs and debt service of the Development as shown on the Annual Operating Budget.

2.6 Rent Increases on Foreclosure.

Notwithstanding this Section 2.6, in the event that a senior lender foreclosures on the Project (or receives a deed in lieu of foreclosure), the Rents on one or more of the Restricted Units may be increased up to the TCAC Maximum Rent Limit to maintain the financial feasibility of the Project, subject to the following requirements:

(a) Any such rent increase must be pursuant to a transition plan approved by the City showing: (i) how the rent increase will be phased-in; (ii) which Restricted Units will be subject to the increase; and (iii) the operating income and expenses for the Residential Project comparing the current rent structure to the proposed rent structure;

DocuSign Envelope ID: FA6C0401-9A2E-4AFE-8235-4A3F31941446

(b) The number of Restricted Units subject to the rent increase and the level of rent increase may not be greater than the amount required to ensure that the Residential Project generates sufficient income to cover its operating costs and debt service, and as is necessary to maintain the financial stability of the Development; and

(c) The rent increase may occur only at the time of renewal of the term of the lease of an existing Tenant or the time of leasing a Restricted Unit to a new tenant. Any subsequent rent increases remain subject to Section 2.4 above.

2.7 Manager's Unit. Two (2) dwelling units in the Residential Project may be used as resident manager's units, and shall be exempt from the occupancy and rent restrictions set forth in this Agreement.

2.8 No Condominium Conversion. Owner shall not convert the Residential Project to condominium or cooperative ownership or sell condominium or cooperative rights to the Residential Project or any part thereof during the term of this Agreement.

2.9 Nondiscrimination; Compliance with Fair Housing Laws.

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

2.9.2 Non-Discrimination. Owner shall not restrict the rental, sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Property, or any portion thereof, on the basis of race, color, religion, creed, sex, sexual orientation, disability, marital status, ancestry, or national origin of any person. Owner covenants for itself and all persons claiming under or through it, and this Agreement is made and accepted upon and subject to the condition that there shall be no discrimination against or segregation of any person or group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Property or part thereof, nor shall Owner or any person claiming under or through Owner establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees in, of, or for the Property or part thereof. Owner shall include such provision in all deeds, leases, contracts and other instruments executed by Owner, and shall enforce the same diligently and in good faith.

All deeds, leases, and contracts pertaining to management of the Residential Project, made or entered into by Owner, its successors or assigns, as to any portion of the Property or the Improvements shall contain the following language:

(a) (1) In Deeds, the following language shall appear:

DocuSign Envelope ID: FA6C0401-9A2E-4AFE-8235-4A3F31941446

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

(b) (1) In Leases, the following language shall appear:

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

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

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

2.10 Relocation. Notwithstanding eviction, persons residing on the Property shall not be displaced before suitable replacement housing is available. Owner shall ensure that all occupants of the Property receive all notices, benefits and assistance to which they are entitled. All costs incurred in connection with the temporary and/or permanent displacement and/or

DocuSign Envelope ID: FA6C0401-9A2E-4AFE-8235-4A3F31941446

relocation of occupants of the Property, including without limitation payments to a relocation consultant, moving expenses, and payments for temporary and permanent relocation benefits pursuant to any applicable relocation laws shall be paid by Owner, and City shall have no responsibility for payment therefor. Owner shall be liable for any and all claims for applicable relocation benefits sought by any current, former or future tenant of the Residential Project.

To the greatest extent permitted by law, Owner shall indemnify, defend (with counsel approved by City) and hold the City and its elected and appointed officers, officials, employees, agents, consultants, contractors and representatives (collectively, the "**Indemnitees**") harmless from and against all liability, loss, cost, expense (including without limitation attorneys' fees and costs of litigation), claim, demand, action, suit, judicial or administrative proceeding, penalty, deficiency, fine, order, and damage (all of the foregoing collectively "**Claims**") arising from the breach of Owner's obligations set forth in this Section whether or not any insurance policies shall have been determined to be applicable to any such Claims. Owner's indemnification obligations set forth in this Section (i) shall survive the expiration or earlier termination of this Agreement, and (ii) shall not extend to Claims to the extent arising from the gross negligence or willful misconduct of the Indemnitees. City does not and shall not waive any rights against Owner that it may have by reason of any indemnity and hold harmless provision set forth in this Agreement because of the acceptance by City, or the deposit with City by Owner, of any of the insurance policies described in this Agreement.

2.11 Disabled Persons Occupancy.

(a) Owner shall cause the Residential Project to be operated at all times in compliance with all applicable federal, state, and local disabled persons accessibility requirements including, but not limited to the applicable provisions of: (i) the Unruh Act, (ii) the California Fair Employment and Housing Act, (iii) Section 504 of the Rehabilitation Act of 1973, (iv) the United States Fair Housing Act, as amended, (v) the Americans With Disabilities Act of 1990, and (vi) Chapters 11A and 11B of Title 24 of the California Code of Regulations, which relate to disabled persons access (collectively, the "Accessibility Requirements").

(b) Owner shall indemnify, protect, hold harmless and defend (with counsel reasonably satisfactory to the City) the City, and its board members, officers and employees, from all suits, actions, claims, causes of action, costs, demands, judgments and liens arising out of Owner's failure to comply with the Accessibility Requirements. This obligation to indemnify survives termination of this Agreement, repayment of the City Loans and the reconveyance of the Deeds of Trust.

3. Tenant Income Certifications; Reporting Requirements; Access to Information; Inspections.

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

DocuSign Envelope ID: FA6C0401-9A2E-4AFE-8235-4A3F31941446

(a) The identity of each household member;

(b) The total gross household income (as determined pursuant to Section 2.3); and

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

3.2 Annual Report; Inspections. Following completion of construction of the Project, by not later than March 1 of each year during the term of this Agreement, Owner shall submit an annual report ("**Annual Report**") to the City in form satisfactory to City, together with a certification that the Residential Project is in compliance with the requirements of this Agreement. Notwithstanding the Annual report requirements, Owner shall submit to the City an initial lease up report containing the tenant certification and occupancy information described in this section. The Annual Report shall, at a minimum, include the following information for each dwelling unit in the Residential Project: (i) unit number; (ii) number of bedrooms; (iii) current rent and other charges; (iv) dates of any vacancies during the previous year; (v) number of people residing in the unit; (vi) total gross household income of residents; (vii) documentation of source of household income; and (viii) the information required by Section 3.1.

Owner shall include with the Annual Report, an income recertification for each household, documentation verifying tenant eligibility, and such additional information as City may reasonably request from time to time in order to demonstrate compliance with this Agreement. The Annual Report shall conform to the format requested by City; provided however, during such time that the Residential Project is subject to a regulatory agreement restricting occupancy and/or rents pursuant to requirements imposed in connection with the use of state or federal low-income housing tax credits, Owner may satisfy the requirements of this Section that pertain to tenant income certification and rents by providing City with a copy of compliance reports required in connection with such financing.

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

(a) A Residential Project income and expense statement for the reporting period;

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

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

(d) Information on the status of the waiting list for units, including the number of households on the list and the number of persons qualifying for each of the City's selection preference categories on the list; and

DocuSign Envelope ID: FA6C0401-9A2E-4AFE-8235-4A3F31941446

(e) A financial audit of the books and records of the Residential Project prepared in accordance with generally accepted auditing standards by an independent certified public accountant. City may require the audit to be accompanied by a supplemental report prepared in accordance with City's requirements.

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

3.3. Maintenance of Records.

3.3.1 Owner shall maintain all records regarding the construction of the Project for five (5) years after final payment and all other pending matters are closed. Owner shall also maintain tenant leases, income certifications and other matters related to the leasing of the affordable units for a period of five (5) years after the final date of occupancy by the tenant.

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

3.4 Access to Records; Inspections.

3.4.1 Owner shall provide City and its authorized agents and representatives access to any books, documents, papers and records of the Residential Project for the purpose of making audits, examinations, excerpts and transcriptions.

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

4. Term of Agreement.

4.1 Term of Restrictions. This Agreement shall remain in effect until the fifty-fifth (55th) anniversary of the City's issuance of a final certificate of occupancy for the Project.

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

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

DocuSign Envelope ID: FA6C0401-9A2E-4AFE-8235-4A3F31941446

5. Binding Upon Successors; Covenants to Run with the Land. Owner hereby subjects its interest in the Property and the Project to the covenants and restrictions set forth in this Agreement. The City and Owner hereby declare their express intent that the covenants and restrictions set forth herein shall be deemed covenants running with the land and shall be binding upon and inure to the benefit of the heirs, administrators, executors, successors in interest, transferees, and assigns of Owner and City, regardless of any sale, assignment, conveyance or transfer of the Property, the Project or any part thereof or interest therein. Any successor-in-interest to Owner, including without limitation any purchaser, transferee or lessee of the Property or the Project (other than the tenants of the individual dwelling units within the Project) shall be subject to all of the duties and obligations imposed hereby for the full term of this Agreement. Each and every contract, deed, ground lease or other instrument affecting or conveying the Property or the Project or any part thereof, shall conclusively be held to have been executed, delivered and accepted subject to the covenants, restrictions, duties and obligations set forth herein, regardless of whether such covenants, restrictions, duties and obligations are set forth in such contract, deed, ground lease or other instrument. If any such contract, deed, ground lease or other instrument has been executed prior to the date hereof, Owner hereby covenants to obtain and deliver to City an instrument in recordable form signed by the parties to such contract, deed, ground lease or other instrument pursuant to which such parties acknowledge and accept this Agreement and agree to be bound hereby. Owner agrees for itself and for its successors that in the event that a court of competent jurisdiction determines that the covenants herein do not run with the land, such covenants shall be enforced as equitable servitudes against the Property and the Project in favor of City.

6. Property Management; Repair and Maintenance; Marketing.

6.1 Management Responsibilities. Owner shall be responsible for all management functions with respect to the Property and the Residential Project, including without limitation the selection of tenants, certification and recertification of household income and eligibility, evictions, collection of rents and deposits, maintenance, landscaping, routine and extraordinary repairs, replacement of capital items, and security. City shall have no responsibility for management or maintenance of the Property or the Residential Project. Owner shall submit its written management policies with respect to the Residential Project (the "Management Plan") to the City for its review and shall amend such policies in any way reasonably necessary to ensure that such policies comply with the provisions of this Agreement. The Management Plan shall minimally include the following:

(a) A parking management plan which details, among other things, how parking spaces will be allocated, assigned and how parking will be managed to encourage tenants, services providers and guests to use parking in accordance with the plan;

(b) Procedures for maintenance and management of the Residential Project;

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

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

(e) Such other requirements and criteria/procedures as City may determine

DocuSign Envelope ID: FA6C0401-9A2E-4AFE-8235-4A3F31941446

reasonably appropriate to comply with the terms of this Agreement.

6.2 Management Entity and Replacement of Management Agent. City shall have the right to review and approve the qualifications of the management entity proposed by Owner for the Residential Project, and shall have the right to review and approve any agreement executed between Owner and the management entity, which approval shall not be unreasonably withheld. The contracting of management services to a management entity shall not relieve Owner of its primary responsibility for proper performance of management duties. City hereby approves Eden Housing Management, Inc., a California nonprofit public benefit corporation, as the initial management entity for the Residential Project. Any subsequent management entity shall be subject to City review and approval, which shall not be unreasonably withheld or delayed. Upon City determination and delivery of written notice to Owner that Owner has failed to operate the Residential Project in accordance with this Agreement, subject to any applicable cure period and the approval of the Project lenders and equity investors, City may require Owner to contract with a qualified management agent selected by City and approved by the Project lender and equity investor, to operate the Residential Project, or to make such other arrangements as City deems necessary to ensure performance of the required functions. An on-site property management representative is required to reside on the property. If the on-site property management representative is not also the assigned property management staff for the Residential Project, then the representative shall still be available to address resident issues and to serve as the point of contact for City business and the public after regular business hours at the Property.

6.3 Repair, Maintenance and Security. Throughout the term of this Agreement, Owner shall at its own expense, maintain the Property and the Residential Project in good physical condition, in good repair, and in decent, safe, sanitary, habitable and tenantable living conditions in conformity with all applicable state, federal, and local laws, ordinances, codes, and regulations. Without limiting the foregoing, Owner agrees to maintain the Residential Project and the Property (including without limitation, the residential units, common areas, meeting rooms, landscaping, driveways, parking areas and walkways) in a condition free of all waste, nuisance, debris, unmaintained landscaping, graffiti, disrepair, abandoned vehicles/appliances, and illegal activity, and shall take all reasonable steps to prevent the same from occurring on the Property or at the Residential Project. Owner shall prevent and/or rectify any physical deterioration of the Property and the Residential Project and shall make all repairs, renewals and replacements necessary to keep the Property and the improvements located thereon in good condition and repair. Owner shall provide adequate security measures for the Residential Project, including without limitation, the installation of adequate lighting and deadbolt locks.

6.3.1 Additional Requirements. All construction work and professional services for the Residential Project shall be performed by persons or entities licensed or otherwise authorized to perform the applicable work or service in the State of California and shall have a current City of Livermore business license if required under local law. To the extent allowed by state and federal laws, Owner shall limit the installation of satellite dish, antenna and other such equipment to screened locations on the Property as approved by the City. Owner shall diligently work to resolve complaints related to noise, parking, litter or other neighborhood concerns.

6.4 City's Right to Perform Maintenance. In the event that Owner breaches any of the covenants contained in Section 6.3, and such default continues for a period of ten (10) days after

DocuSign Envelope ID: FA6C0401-9A2E-4AFE-8235-4A3F31941446

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

6.5 Marketing and Tenant Selection Plan. Not later than ninety (90) days following commencement of construction work on the Project, Owner shall submit for City review and approval, a plan for marketing and tenant selection for the Property ("**Marketing and Tenant Selection Plan**" or "**Plan**"). The Plan shall address in detail how Owner plans to market the Restricted Units to prospective Eligible Households, in accordance with fair housing laws and this Agreement, Owner's tenant selection criteria, City preferences, and how Owner plans to certify the eligibility of Eligible Households. The Plan shall include the proposed form of application, marketing materials and the form of rental agreement that Owner proposes to enter into with Residential Project tenants. Owner shall abide by the terms of the Marketing and Tenant Selection Plan in marketing and selecting tenants for the Property and the Residential Project, including implementation of the City's workforce selection preferences, and throughout the term of this Agreement, shall submit proposed modifications to City for review and approval.

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

(a) The actions to be taken by Owner to affirmatively market units in compliance with fair housing laws and in compliance with City's policies and procedures, including the policies described in Section 2.9 above;

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

(c) A requirement that eligible tenants be selected based on order of application, selection preference, lottery or other reasonable method approved by City and incorporates a method of prioritizing and establishing a screening order for applications. The preference system shall assign a priority order to Eligible Households for Restricted Units as described in section 2.3.

(d) A requirement that eligible applicants be notified of eligibility and, when possible, be provided an estimate regarding when a unit may be available;

DocuSign Envelope ID: FA6C0401-9A2E-4AFE-8235-4A3F31941446

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

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

(g) Maintenance of a waiting list of eligible applicants, including specific procedures for screening Project Based Section 8 eligible applicants in coordination with the Housing Authority of the City of Livermore;

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

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

(j) A requirement that a written rental agreement (subject to City approval) be executed with each eligible household selected to occupy a unit;

(k) Such other requirements and criteria/procedures as City may determine reasonably appropriate to comply with the terms of this Agreement.

6.6 Residential Lease Provisions. No later than four (4) months prior to the date construction of the Project is projected to be complete, Owner shall submit to the City Owner's proposed form of residential lease agreement for the City's review and approval, which approval shall not be unreasonably withheld or delayed. The form of lease must comply with all requirements of this Agreement, the other Loan Documents and must, among other matters:

(a) Provide for termination of the lease for failure: (i) to provide any information required under this Agreement or reasonably requested by Owner to establish or recertify the Tenant's qualification, or the qualification of the Tenant's household, for occupancy in the Residential Project in accordance with the standards set forth in this Agreement, or (ii) to qualify as a an Eligible household, as applicable, as a result of any material misrepresentation made by such Tenant with respect to the income computation.

(b) Be for an initial term of not less than one (1) year, unless by mutual agreement between the Tenant and Owner, and provide for no increase in Rent during such year. Notwithstanding the above, any Rent increases shall be subject to the requirements of Section 2.4.

(c) Include any provisions necessary to comply with the requirements of the Violence Against Women Reauthorization Act of 2013 (Pub. L. 113–4, 127 Stat. 54) applicable to HUD-funded programs. 5) Any termination of a lease or refusal to renew a lease for a Restricted Unit within the Development must be preceded by not less than sixty (60) days written notice to the Tenant by Owner specifying the grounds for the action. 6) Include a detailed listing of reasonable rules of conduct and occupancy which shall be in writing, shall be consistent with federal and state law, and shall be provided to each tenant

DocuSign Envelope ID: FA6C0401-9A2E-4AFE-8235-4A3F31941446

upon occupancy;

(d) Include a requirement that there be no storage on balconies and patios and that tenants must keep all balconies, patios and other exterior areas neat, clean and clutter free, including no clotheslines or laundry.

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

6.8 Resident Services Plan and Budget.

(a) No later than six (6) months prior to the projected date of the completion of the Project, Owner shall submit to the City a plan for providing supportive services to the Tenants (the "Resident Services Plan") and a budget for providing those services (the "Resident Services Budget") for the initial year of operation of the Residential Project. The Resident Services Plan must identify service provider(s) and staffing levels, and describe the services provided. The Resident Services Plan must include copies of contracts and/or memoranda of understanding for the provision of services by service providers, along with any annual compliance certifications. The Resident Services Budget must state the dollar value of the services, and the funding source(s) for the services (cash or in-kind).

(b) Upon receipt by the City of the proposed Resident Services Plan and Resident Services Budget, the City shall promptly review the same and approve or disapprove it within fifteen (15) days, provided that such approval shall not be unreasonably denied. If the Resident Services Plan and/or Resident Services Budget are not approved by the City, the City shall set forth in writing and notify Owner of the City's reasons for withholding such approval, which may include a request by the City for a change in the nature or scope of resident services or a change in service provider. Owner shall, within fifteen (15) days thereafter, submit a revised Resident Services Plan and/or Resident Services Budget for City approval in accordance with this subsection. If the City does not approve the revised Resident Service Plan, Owner shall be in Default hereunder.

(c) Owner shall thereafter submit to the City annual updates to the Resident Services Plan and Resident Services Budget by October 1st of each year of operation of the Development, identifying any changes made to the previously approved Resident Services Plan and Resident Services Budget. Any revisions to the Resident Services Plan and Resident Services Budget shall be subject to the City's review and approval and the process for timing and review of such revisions shall be subject to the process identified in Section 6.7.

6.9 Fees, Taxes, and Other Levies. Owner shall be responsible for payment of all fees, assessments, taxes, charges, liens and levies applicable to the Property or the Project, including

DocuSign Envelope ID: FA6C0401-9A2E-4AFE-8235-4A3F31941446

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

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

6.11 Property Damage or Destruction. If any part of the Residential Project is damaged or destroyed, Owner shall repair or restore the same, consistent with the occupancy and rent restriction requirements set forth in this Agreement. Such work shall be commenced as soon as reasonably practicable after the damage or loss occurs and shall be completed within one year thereafter or as soon as reasonably practicable, provided that insurance proceeds are available to be applied to such repairs or restoration within such period and the repair or restoration is financially feasible. During such time that lenders or low-income housing tax credit investors providing financing for the Project impose requirements that differ from the requirements of this Section the requirements of such lenders and investors shall prevail.

7. Recordation; Subordination. This Agreement shall be recorded in the Official Records of Alameda County. The City agrees that the City will not withhold consent to reasonable requests for subordination of this Agreement to deeds of trust provided for the benefit of lenders identified in the financing plan submitted to City for the Project, as such plan may be updated with City approval, provided that the instruments effecting such subordination include reasonable protections to the City in the event of default, including without limitation, extended notice and cure rights.

8. Transfer and Encumbrance.

8.1 Restrictions on Transfer and Encumbrance. During the term of this Agreement, except as permitted pursuant to the DDLA or this Agreement, Owner shall not directly or indirectly, voluntarily, involuntarily or by operation of law make or attempt any total or partial sale, transfer, conveyance, assignment or lease (collectively, "**Transfer**") of the whole or any part of the Property, the Project, or the improvements located on the Property, without the prior written consent of the City, which approval shall not be unreasonably withheld. In addition, prior to the expiration of the term of this Agreement, except as expressly permitted by this Agreement or the Loan Agreement, Owner shall not undergo any significant change of ownership without the prior written approval of City. For purposes of this Agreement, a "significant change of ownership" shall mean a transfer of the beneficial interest of more than twenty-five percent (25%) in aggregate of the present ownership and /or control of Owner, taking all transfers into account on a cumulative basis; provided however, neither the admission of an investor limited partner, nor the transfer by the investor limited partner to subsequent limited partners shall be restricted by this provision.

DocuSign Envelope ID: FA6C0401-9A2E-4AFE-8235-4A3F31941446

8.2 Permitted Transfers. Notwithstanding any contrary provision of the City Documents, the prohibitions on Transfer set forth herein shall not be deemed to prevent: (i) the granting of easements or permits to facilitate development of the Property; (ii) the dedication of any property required pursuant to the Loan Agreement; (iii) the lease of individual dwelling units to tenants for occupancy as their principal residence in accordance with this Agreement; (iv) assignments creating security interests for the purpose of financing the acquisition, construction, or permanent financing of the Project or the Property in accordance with the Loan Agreement, or Transfers directly resulting from the foreclosure of, or granting of a deed in lieu of foreclosure of, such a security interest; (v) the admission of limited partners and any transfer of limited partnership interests in accordance with Owner's, or the Approved Partnership's, as applicable, agreement of limited partnership (the "Partnership Agreement"); (vi) the removal of the general partner by the investor limited partner for cause in accordance with the terms of the Partnership Agreement, provided that the replacement general partner is an entity reasonably satisfactory to City or is an affiliate of the investor limited partner that will serve as general partner for an interim period of no more than 180 days; or (vii) the transfer of the managing partner's interest in a limited partnership to a nonprofit entity that is tax-exempt under Section 501(c)(3) of the Internal Revenue Code of 1986 as amended (or to an entity wholly-owned thereby), provided such replacement general partner is reasonably satisfactory to City.

8.3 Requirements for Proposed Transfers. The City may, in the exercise of its sole discretion, consent to a proposed Transfer of this Agreement, the Property, the Improvements or part thereof if all of the following requirements are met (provided however, the requirements of this Section 8.3 shall not apply to Transfers described in clauses (i), (ii), (iii), (iv)(v) and (vii) of Section 8.2, and solely with respect to the removal of the general partner by the investor limited partner for a default under the Partnership Agreement, clause (vi) of Section 8.2, provided that the provisions of this Section 8.3 shall apply to the selection of a replacement general partner in the event of a removal of the general partner in accordance with clause (vi) of Section 8.2.

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

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

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

(d) Except in the case of partnership interest Transfers, the Transfer shall be

DocuSign Envelope ID: FA6C0401-9A2E-4AFE-8235-4A3F31941446

effectuated pursuant to a written instrument satisfactory to the City in form recordable in the Official Records.

(e) Consent to any proposed Transfer may be given by the City's Authorized Representative unless the City's Authorized Representative, in his or her discretion, refers the matter of approval to the City Council. If the City has not rejected a proposed Transfer or requested additional information regarding a proposed Transfer in writing within forty-five (45) days following City's receipt of written request by Owner, the proposed Transfer shall be deemed approved.

8.4 Effect of Transfer without City Consent. In the absence of specific written agreement by the City, no Transfer of the Property or the Project shall be deemed to relieve the Owner or any other party from any obligation under this Agreement. It shall be an Event of Default hereunder entitling City to pursue remedies including without limitation, acceleration of the Loan and/or foreclosure under the Deed of Trust if without the prior written approval of the City, Owner assigns or Transfers this Agreement, the Improvements, or the Property in violation of Section 8. This Section 8.4 shall not apply to Transfers described in clauses (i), (ii), (iii), (iv), (v) and (vii) of Section 8.2., and solely with respect to the removal of the general partner by the investor limited partner for a default under the Partnership Agreement, provided that the provisions of this Section 8.4 shall apply to the selection of a replacement general partner in the event of a removal of the general partner in accordance with clause (v) of Section 8.2.

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

8.6 Encumbrances. Owner agrees to use good faith commercially reasonable efforts to ensure that all deeds of trust or other security instruments and any applicable subordination agreement recorded against the Property, the Project or part thereof in accordance with the DDLA for the benefit of a lender other than City ("**Third-Party Lender**") shall contain each of the following provisions: (i) Third-Party Lender shall use its best efforts to provide to City a copy of any notice of default issued to Owner concurrently with provision of such notice to Owner; (ii) City shall have the reasonable right, but not the obligation, to cure any default by Owner within the same period of time provided to Owner for such cure extended by an additional ninety (90) days; (iii) provided that City has cured any default under Third-Party Lender's deed of trust and other loan documents, City shall have the right to foreclose the Deed of Trust, and take title to the Project without acceleration of Third-Party Lender's debt; and (iv) City shall have the right to transfer the Project without acceleration of Third-Party Lender's debt to a nonprofit corporation or other entity which shall own and operate the Project as an affordable rental housing Project, subject to the prior written consent of the Third-Party Lender. Owner agrees to provide to City a copy of any notice of default Owner receives from any Third-Party Lender within five (5) business days following Owner's receipt thereof.

8.7 Mortgagee Protection. No violation of any provision contained herein shall defeat or render invalid the lien of any mortgage or deed of trust made in good faith and for value upon

DocuSign Envelope ID: FA6C0401-9A2E-4AFE-8235-4A3F31941446

all or any portion of the Project or the Property, and the purchaser at any trustee's sale or foreclosure sale shall not be liable for any violation of any provision hereof occurring prior to the acquisition of title by such purchaser. Such purchaser shall be bound by and subject to this Agreement from and after such trustee's sale or foreclosure sale. Promptly upon determining that a violation of this Agreement has occurred, City shall give written notice to the holders of record of any mortgages or deeds of trust encumbering the Project or the Property that such violation has occurred.

9. Default and Remedies.

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

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

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

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

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

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

(f) Owner's default in the performance of any term, provision or covenant under this Agreement (other than an obligation enumerated in this Section 9.1), and unless such provision specifies a shorter cure period for such default, the continuation of such default for ten (10) days in the event of a monetary default or thirty (30) days in the event of a non-monetary default following the date upon which City shall have given written notice of the default to Owner, or if the nature of any such non-monetary default is such that it cannot be cured within thirty (30) days, Owner's failure to commence to cure the default within thirty (30) days and thereafter prosecute the curing of such default with due diligence and in good faith to completion, provided that Owner's due diligence and good faith shall be determined in the City's reasonable discretion and shall be demonstrated through efforts reported to the City no less frequently than monthly following the notice of default, but in no event longer than 180 days from receipt of the notice of default.

The limited partners of Owner shall have the right to cure any default of Owner hereunder upon the same terms and conditions afforded to Owner; provided however, if the default is of such nature that the limited partners reasonably determine that it is necessary to replace the general

DocuSign Envelope ID: FA6C0401-9A2E-4AFE-8235-4A3F31941446

partner of Developer in order to cure such default, then the cure period shall be extended by an additional sixty (60) days after the removal and replacement of such general partner, provided that the limited partners have promptly commenced and diligently proceeded with all requisite actions to effect such removal and replacement. City shall provide a copy of any notice of default hereunder to the limited partners at the address set forth in Section 11.3 hereof, or to such other address provided to the City in writing, concurrently with the provision of such notice to Owner.

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

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

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

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

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

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

10. Indemnity. To the greatest extent permitted by law, Owner shall indemnify, defend (with counsel approved by City) and hold the Indemnitees harmless from and against all Claims arising directly or indirectly, in whole or in part, as a result of or in connection with Owner's construction, management, or operation of the Property and the Project or any failure to perform any obligation as and when required by this Agreement. Owner's indemnification obligations under this Section 10 shall not extend to Claims to the extent resulting from the gross negligence or willful misconduct of Indemnitees. The provisions of this Section 10 shall survive the expiration or earlier termination of this Agreement. City does not and shall not waive any rights against Owner that it may have by reason of any indemnity and hold harmless provision set forth in this Agreement because of the acceptance by City, or the deposit with City by Owner, of any of the insurance policies described in this Agreement.

10.1 Terms Applicable to Indemnity Provisions. The terms set forth in this Section 10.1 shall apply to all provisions of this Agreement that pertain to Owner's obligations to indemnify

City and the other Indemnitees, including without limitation, Sections 2.10 and 10. In connection with each such provision, all of the following shall apply:

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

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

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

11. Miscellaneous.

11.1 Amendments. This Agreement may be amended or modified only by a written instrument signed by both Parties.

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

11.3 Notices. Except as otherwise specified herein, all notices to be sent pursuant to this Agreement shall be made in writing, and sent to the Parties at their respective addresses specified below or to such other address as a Party may designate by written notice delivered to the other parties in accordance with this Section. All such notices shall be sent by: (i) personal delivery, in which case notice is effective upon delivery; (ii) certified or registered mail, return receipt

DocuSign Envelope ID: FA6C0401-9A2E-4AFE-8235-4A3F31941446

requested, in which case notice shall be deemed delivered upon receipt if delivery is confirmed by a return receipt; or (iii) nationally recognized overnight courier, with charges prepaid or charged to the sender's account, in which case notice is effective on delivery if delivery is confirmed by the delivery service.

City: City of Livermore
1052 S. Livermore Avenue
Livermore, CA 94550
Attention: City Manager

Owner: Eden Housing, Inc.
22645 Grand Street
Hayward, CA 94541
Attention: VP of Real Estate Development

11.4 Notice of Expiration of Term.

(a) At least six (6) months prior to the expiration of the Term, Owner shall provide by first-class mail, postage prepaid, a notice to all Tenants containing (i) the anticipated date of the expiration of the Term, (ii) any anticipated increase in Rent upon the expiration of the Term, (iii) a statement that a copy of such notice will be sent to the City, and (iv) a statement that a public hearing may be held by the City on the issue and that the Tenant will receive notice of the hearing at least fifteen (15) days in advance of any such hearing. Owner shall also file a copy of the above-described notice with the City Manager.

(b) In addition to the notice required above, Owner shall comply with the requirements set forth in California Government Code Sections 65863.10 and 65863.11. Such notice requirements include: (i) a twelve (12) month notice to existing tenants, prospective tenants and Affected Public Agencies (as defined in California Government Code Section 65863.10(a), which would include the City Manager) prior to the expiration of the Term, (ii) a six (6) month notice requirement to existing tenants, prospective tenants and Affected Public Agencies prior to the expiration of the Term; (iii) a notice of an offer to purchase the Development to "qualified entities" (as defined in California Government Code Section 65863.11(d)), if the Development is to be sold within five (5) years of the end of the Term; (iv) a notice of right of first refusal within the one hundred eighty (180) day period that qualified entities may purchase the Development.

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

11.6 Parties Not Co-Venturers; Independent Contractor; No Agency Relationship. Nothing in this Agreement is intended to or shall establish the Parties as partners, co-venturers, or principal and agent with one another. The relationship of Owner and City shall not be construed as a joint venture, equity venture, partnership or any other relationship. City neither undertakes nor assumes any responsibility or duty to Owner (except as expressly provided in this Agreement)

DocuSign Envelope ID: FA6C0401-9A2E-4AFE-8235-4A3F31941446

or to any third party with respect to the Project. Owner and its employees are not employees of City but rather are, and shall always be considered independent contractors. Furthermore, Owner and its employees shall at no time pretend to be or hold themselves out as employees or agents of City. Except as City may specify in writing, Owner shall not have any authority to act as an agent of City or to bind City to any obligation.

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

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

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

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

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

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

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

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

DocuSign Envelope ID: FA6C0401-9A2E-4AFE-8235-4A3F31941446

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

11.16 Amendment Contemplated by DDLA. Notwithstanding anything to the contrary contained herein, upon the conveyance as contemplated in Section 3.2 of the DDLA, this Agreement shall be modified as further set forth therein.

SIGNATURES ON FOLLOWING PAGE(S).

DocuSign Envelope ID: FA6C0401-9A2E-4AFE-8235-4A3F31941446

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

CITY:

CITY OF LIVERMORE, a California municipal corporation

By:_____

Print Name: _____

Title: City Manager

ATTEST:

By:_____

APPROVED AS TO FORM:

_____
Assistant City Attorney

OWNER:

By: _____

Print Name: _____
Title: _____

SIGNATURES MUST BE NOTARIZED.

DocuSign Envelope ID: FA6C0401-9A2E-4AFE-8235-4A3F31941446

ACKNOWLEDGMENT

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

State of California)
) ss
County of _____)

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

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

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

WITNESS my hand and official seal.

_____
(Notary Signature)

DocuSign Envelope ID: FA6C0401-9A2E-4AFE-8235-4A3F31941446

ACKNOWLEDGMENT

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

State of California)
) ss
County of _____)

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

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

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

_____
(Notary Signature)

DocuSign Envelope ID: FA6C0401-9A2E-4AFE-8235-4A3F31941446

Exhibit A

LEGAL DESCRIPTION OF THE PROPERTY

(Legal Description Attached)

DocuSign Envelope ID: FA6C0401-9A2E-4AFE-8235-4A3F31941446

Exhibit B

Insurance Requirements

(Insurance Requirements to be attached.)

DocuSign Envelope ID: FA6C0401-9A2E-4AFE-8235-4A3F31941446

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

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

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

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

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

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

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

DocuSign Envelope ID: FA6C0401-9A2E-4AFE-8235-4A3F31941446

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

Verification of Coverage

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

DocuSign Envelope ID: FA6C0401-9A2E-4AFE-8235-4A3F31941446

Exhibit C

Form of Annual Report

(Form of Annual Report Attached)

DocuSign Envelope ID: FA6C0401-9A2E-4AFE-8235-4A3F31941446

Exhibit C to Regulatory Agreement

LIVERMORE

MULTI-FAMILY RENTAL PROJECT ANNUAL REPORT

PROJECT CONTACT INFORMATION

Property Information

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

Owner Information

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

Management Agent Information

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

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

DocuSign Envelope ID: FA6C0401-9A2E-4AFE-8235-4A3F31941446

LIVERMORE

MULTI-FAMILY RENTAL PROJECT ANNUAL REPORT

Property Name & Address	
Person Completing Report	
Date	
Report Period	

Compliance with Required Number of Low Income Units

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

Compliance with Rent Limits

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

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

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

Name of Project Owner or Authorized Agent	Title

DocuSign Envelope ID: FA6C0401-9A2E-4AFE-8235-4A3F31941446

Restricted Unit Occupant Information

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

DocuSign Envelope ID: FA6C0401-9A2E-4AFE-8235-4A3F31941446

LIVERMORE

MULTI-FAMILY RENTAL PROJECT ANNUAL REPORT

PROPERTY CONDITION REPORT

Property Name	
Address	
Name of Person Completing Report	
Reporting Period	

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

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

DocuSign Envelope ID: FA6C0401-9A2E-4AFE-8235-4A3F31941446

EXHIBIT A

INSURANCE REQUIREMENTS
REGULATORY / LOAN AGREEMENTS

Minimum Scope and Limits of Insurance

Owner/Borrower shall maintain limits no less than:

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

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

Deductibles and Self-Insured Retention

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

Acceptability of Insurers

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

Other Insurance Provisions

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

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

DocuSign Envelope ID: FA6C0401-9A2E-4AFE-8235-4A3F31941446

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

Verification of Coverage

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

DocuSign Envelope ID: FA6C0401-9A2E-4AFE-8235-4A3F31941446

CITY OF LIVERMORE COMMUNITY DEVELOPMENT DEPARTMENT

EXHIBIT J

EXHIBIT A

PLANNING APPLICATION FEES

Effective July 1, 2018

A. CEQA	
County Clerk Filing Fee – NOE, NOD, Other	$50.00
Notice of Exemption (NOE) – City Fee	$173.00
Negative Declaration (NOD) – City Fee	$5,796.00
Negative Declaration – Fish & Game §711.4 Fee (if applicable)	$2,280.75
Environmental Impact Report – City Fee *(Required deposit of 20 percent of contract amount)*	T&M
Environmental Impact Report – Setup, RFP, etc. "to establish base fee"	$8,424.00
Environmental Impact Report – Fish & Game §711.4 Fee (if applicable)	$3,168.00
B. Downtown Design Review	
Downtown Minor Design Review – Staff Level *(Fencing, painting, permanent and temporary signs, lighting, landscaping, hardscape, streetscape, etc. Applies to commercial, historic, and residential [duplex & multi-family.])*	No Fee
Downtown Administrative Design Review – Staff Level *(Exterior building modifications, including awnings, windows, doors, trim, and Master Sign Programs. Applies to commercial, historic, and residential.)*	$1,382.00
Downtown Design Review Amendment – Planning Commission, Project Review	$9,091.00
Downtown Design Review – Small Additions *(Additions or modifications between 0-1,500 square feet or 15 percent of existing building area. Applies to commercial, historic, and residential [duplex & multi-family.])*	$4,318.00
Downtown Design Review – Large Additions, Staff Level *(Additions between 1,501-29,999 square feet or over 15 percent of existing building area; commercial, retail or office structures up to 29,999 square feet; residential projects of 39 or less units, etc. Applies to commercial, historic, and residential [duplex & multi-family.])*	$7,484.00
Downtown Design Review – Planning Commission *(Commercial, retail, office structures, and additions of 30,001 square feet or more, residential projects of 40 or more units, etc. Applies to commercial, historic, and residential [duplex & multi-family])*	$10,440.00
C. Legislative Acts	
Annexation/Pre-Zoning	$26,395.00
Out of Area Service Agreement	$21,067.00
Rezoning *(Development Code Amendment or Zoning Map Amendment)*	$10,008.00
Development Agreement – No Policy Change	$15,688.00
Development Agreement – Policy/Ordinance Change	$21,060.00
Development Agreement – Minor Amendment *(Staff Level)*	$8,918.00
General Plan Amendment/Specific Plan Amendment	$17,348.00
Housing Implementation Program	$13,624.00
Housing Implementation Program Amendment	$9,180.00
Planned Development District	$11,601.00
Planned Unit Development *(SLVSP)*	$11,601.00
Planned Unit Development Amendment	$10,478.00
Planned Development District Amendment (via DCA)	$10,478.00
Policy Proposal	T&M
Policy Proposal Amendment	T&M
Municipal Code Amendment	$25,158.00
D. Miscellaneous	
Appeal	$3,597.00
Temporary Sign Registration Fee – Commercial	$57.00
Williamson Act Contract Creation	$7,772.00
Williamson Act Contract Cancellation	$10,333.00
Consistency Determination	$7,762.00
Staff Research Time, per hour – including Zoning Use Verification (ZUV)	$173.00
E. Permits	
Conditional Use Permit (Public Hearing) [1]	$10,674.00

DocuSign Envelope ID: FA6C0401-9A2E-4AFE-8235-4A3F31941446

Conditional Use Permit – Residential and Minor Non-Residential (*Existing building with non-residential General Plan designation of 3,000 square feet or less with no significant traffic, parking, noise, odor, or other environmental considerations).*	$5,181.00
Conditional Use Permit Amendment	$8,304.00
Home Occupation Permit	$90.00
Sign Design Review	$510.00
New or Amended Master Sign Program	$2,055.00
Master Sign Approval	No Fee
Variance – General	$10,819.00
Variance – Developed Residential	$1,573.00
Variance, Minor – General	$4,649.00
Variance, Minor – Developed Residential	$812.00
Reasonable Accommodations (*Livermore Development Code Chapter 9.06)*	$173.00
Temporary Use Permit – Temporary Uses, seasonal *(e.g., Christmas tree lots, rallies, and carnivals)*	$500.00
Temporary Use Permit – Temporary Uses, seasonal (Non-profit organization)	$61.00
Temporary Use Permit – Model Home Complex *(including construction trailer, sales office, and homes)*	$3,150.00
Zoning Use Permit	$432.00
Large Family Day Care	$367.00
Certificate of Appropriateness – Historic Preservation Commission	$500.00
Certificate of Appropriateness – Staff Level	$100.00
Zoning Clearance – Level 1 *(Exterior building modifications, including awnings, windows, doors, and trim)*	$423.00
Zoning Clearance – Level 2 *(New single-family residence or significant remodel [e.g. additions, changes to building form] of existing single-family residence in Transect Zone)*	$658.00
Secondary Dwelling Unit	$600.00
Tree Removal Permit – Commercial *(for Residential Tree Removal see Ordinance)*	$734.00
F. Site Plan Design Review	
Site Plan Design Review – Public Hearing *(Construction of new non-residential development or residential development containing five or more units.)*	$25,727.00
Site Plan Design Review – Staff Level *(Construction of new condominium, duplex, or multi-family residential containing four or less units.)*	$14,514.00
Site Plan Design Review Modification – Major Addition, Planning Commission *(Major additions to non-residential development or additions of five or more units to a residential development.)*	$18,955.00
Site Plan Design Review Modification – Minor Addition, Staff Level *(Minor non-residential additions or additions to a condominium, duplex, or multi-family residence containing four or less units.)*	$9,139.00
Site Plan Design Review Modification – Major Modification, Staff Level *(Major exterior building, landscaping, or parking modifications.)*	$2,446.00
Site Plan Design Review Modification – Minor Modification, Staff Level *(Minor exterior building and landscape modifications such as new awnings, windows, doors, and trim.)*	$903.00
G. Subdivisions	
Open Space Agricultural Easements/Amendments	$7,930.00
Lot Line Adjustment/Certificate of Compliance - Application	$3,215.00
Parcel Map Waiver or Parcel Merger *(Staff Level)*	$5,023.00
Tentative Parcel Map *(Public Hearing)*	$13,935.00
Parcel Map Amendment – Public Hearing	$11,543.00
Parcel Map Amendment – Staff Level Review *(Extension)*	$2,730.00
Tentative Tract Map *(Base fee plus $94 per lot or unit)*	$18,210.00
Tentative Tract Map Amendment – Public Hearing	$12,050.00
Tentative Tract Map Amendment – Staff Level *(Extension)*	$6,636.00
City Wide - Transferrable Development Credits (TDC) Program In-Lieu Fee Ordinance 1979, Development Code Section 4.02.06D	

DocuSign Envelope ID: FA6C0401-9A2E-4AFE-8235-4A3F31941446

1.5 Credits per single-family detached dwelling, in excess of baseline density within a density range of 1-7 du/acre, 1.25 credits per single family detached dwelling in excess of baseline density within a density range of 8-14 du/acre and 1/2 credit per multi-family attached dwelling - Current In-Lieu credit is $16,352.31. TDC Ordinance does not apply to residential projects in Downtown Specific Plan, affordable units covered by an agreement and residential projects that have received housing units through the City's Housing Implementation Program (HIP).
Applications involving multiple processes in Sections C, E, F, or G above can be reduced by 10 percent.
Notes: ➢ *T&M – Applicant shall be charged on a time and materials basis.* ➢ *Projects that do not fit any category or are otherwise extraordinary may be charged on a T&M basis at the Director's discretion.* ➢ *Staff time required on a project, post entitlement, and not part of another formal application (e.g., Final Map, plot plan) will be recovered on a T&M basis at the Director's discretion.* ➢ *The fees calculated above reflect standard processing time. Projects requiring excessive review time will be recovered on a T&M basis.*
(1) For new construction or additions, Conditional Use Permit fee must be combined with applicable Site Plan Design Review fee. Applications involving both Conditional Use Permit and Site Plan Design Review fees can be reduced by 10 percent. (2) All projects with in the Downtown Specfic Plan are subject to both City Wide General Plan & Downtown Specific Plan - cost

DocuSign Envelope ID: FA6C0401-9A2E-4AFE-8235-4A3F31941446

BUILDING PERMITS

TYPE OF FEE	CITY RESOLUTION	AMOUNT OF FEE
Building Permit	Title 15.04.070	FEE VARIES ACCORDING TO BUILDING TYPE, BUILDING USE, AND BUILDING SIZE
Change of Address	Resolution 2008-123	$490

ENCROACHMENT PERMITS

TYPE OF FEE	CITY CODE, RESOLUTION, AND WHEN PAYABLE		AMOUNT OF FEE		
Encroachment Permit	Title 12.08.090 Ord. 345 Title 3.20.010 Reso. 2017-151	With Encroachment Permit Application, or Building Permit (site plans)	Encroachment Permit Simple Plan Check/Processing Encroachment Inspection	 Simple Major	$156.00 $402.00 $649.00
Telecommunication Encroachment Permit	Reso. 2017-151	With Encroachment Permit Application	Encroachment Permit Processing Fee *(All Telecomm permits)* Encroachment Permit Simple Plan Check Simple Inspection (with up to 2 days inspection)		$492.00 $691.00 $156.00
Telecommunication Plan Check Fee	Reso . 2017-151	When first submitted with adjustment upon plan approval	Telecommunication Plan Check Fee: 8.35% 4.22% 3.34%	 Up to $250,000 Project Valuation $250,001 - $1,000,000 $1,000,001 and over	
Encroachment and Telecommunication Inspection (Project Valuation)	Reso 2017-151	With Encroachment Permit Application	Encroachment Inspection Fee: minimum $402 25.42% 9.11% 5.08%	 Up to $5,000 $5,001 - $25,000 $25,001 +	
Encroachment Permit - Traffic Control (Use for simple, major, and Telecomm permits)	Reso 2017-151	With Encroachment Permit Application	Traffic Control = one hour per day or T&M		$337.00
New Technology Encroachment Permit	Reso. 2008-123	With Encroachment Permit Application	$510		

TRANSPORTATION PERMITS

TYPE OF FEE	CITY RESOLUTION	AMOUNT OF FEE
Transportation Permit - Single Trip	Reso 2017-151	$16
Transportation Permit - Annual	Reso 2017-151	$90
Transportation Permit - Repetitive	Reso 2017-151	$90

DocuSign Envelope ID: FA6C0401-9A2E-4AFE-8235-4A3F31941446

CITY OF LIVERMORE COMMUNITY DEVELOPMENT DEPARTMENT

ENGINEERING AND MAP FEES

EXHIBIT A

Effective July 1, 2018

MAP AND PLAN CHECK FEES

TYPE OF FEE	CITY CODE AND RESOLUTION	WHEN PAYABLE	AMOUNT OF FEE		
Tract Map, Parcel Map and Surveys Checking Fees	Title 18.08.050 Title 18.12.020 Reso. 2017-	When map is first submitted	Deposit plus time and materials, (City Staff).	Tract/Parcel Map Parcel Map Waiver Each additional lot over 10	$9,233.00 $5,834.00 $117.00
Improvement Plan Check Fee	Reso . 2017-151	When first submitted with adjustment upon plan approval	Improvement Plan Check Fee: 8.35% 4.22% 3.34%	 Up to $250,000 Project Valuation $250,001 - $1,000,000 $1,000,001 and over	
Inspection for Public Improvements	Title 12.08.090 Ord. 345 Title 3.20.010 Reso. 2017-151	With Final Map approval (Tract Maps)	Public Improvement Inspection Fee: 9.71% 8.95% 6.57%	 Up to $250,000 Project Valuation $250,001 - $1,000,000 $1,000,001 and over	
Certificate of Compliance	Reso. 2008-123	With Application	$760	(Engineering Fee Only, see Planning Application Fee.)	
Abandonment/Vacation	Reso 2017-151	With Application	$12,466.00		
O&M Agreement/ Stormwater Plan check	Reso 2017-151	With Application	*If separate from map plan check*	$9,994.00	
Stormwater Inspection Fee	Reso 2017-151	With Application	*If inspected seperately from tract*	$1,607.00	
Benefit District		With Building Permit or Tract Acceptance	CHECK TO SEE IF AREA IS WITHIN A BENEFIT DISTRICT		
Tax on Construction	Title 3.08.640 Ord. 959 Ord. 1135	With Building Permit	1-3/4% of Estimated Construction Cost or $650 per Residential Unit (Greater Amount)		Ind. Only 1-3/4% of Estimated Construction Cost
Additional Plan Check	Reso. 2017-151	Additional Plan Check after 3 reviews (collected prior to each additional check)	$782.00		
Subdivision Improvement Agreement Amendment/Extension	Reso 2017-151	With Application	$781.00		
Research/Map Creation Fee	Reso. 2008-123	At time of request	Hourly	$140	

FEMA FLOOD PLAIN DETEMINATION / LETTER OF MAP REVISION

TYPE OF FEE	CITY RESOLUTION	AMOUNT OF FEE
Floodplain Determination - Written deterninants on FEMA form	Reso 2017-151	$94.00
FEMA Flood Plain Determination/LOMR	Reso 2017-151	$3,123
FEMA Flood Plain Determination/LOMA	Reso 2017-151	$312

SOUTH LIVERMORE VALLEY SPECIFIC PLAN DEVELOPMENT FEES (1)

TYPE OF FEE	CITY CODE AND RESOLUTION	FEE PER RESIDENTIAL UNIT
Plan preparation fee	Resolution 2003-114	$1,383
Recycled water fee	Resolution 98-175	20% of the current Alameda County Water Connection Fee
Major attraction fee	Resolution 2003-114	$1,267
South Livermore Road Improvement fee	Resolution 2003-114	$11,069

DocuSign Envelope ID: FA6C0401-9A2E-4AFE-8235-4A3F31941446

CITY OF LIVERMORE COMMUNITY DEVELOPMENT DEPARTMENT

DEVELOPMENT IMPACT AND CONNECTION FEES

EXHIBIT A

Effective July 1, 2018

TYPE OF FEE	CITY CODE AND RESOLUTION	WHEN PAYABLE	AMOUNT OF FEE
City Storm Drainage (1)	Title 13.44.020,050,100 Ord. 1923 Reso. 2010-177	With Building Permit	$0.45/SF Impervious Surface
County Storm Drainage Building Zone 7	ACFC & WCD Co. Ord. 0-2010-001 Reso. R-2001-4	With Building Permit	$1.00/SF Impervious Surface
County Storm Drainage Public Improvements e.g. streets, sidewalks, trails, etc.	ACFC & WCD Co. Ord. 0-2010-001 Reso. R-2001-4	With filing of Final Map or approval of Improvement Plans	$1.00/SF Impervious Surface
County Storm Drainage - Capital Improvements	ACFC & WCD Co. Ord. 0-2010-001 Reso. R-2001-4	With award of contract	$1.00/SF Impervious Surface
Sanitary Sewer Connection	Title 13.28.050 Ord. 1740 Reso. 2010-177	With Building Permit	See Attached Exhibit "A"
Park Land Dedication	Title18.32.020 Ord. 1744 Reso. 2004-259	Concurrently with, or before the filing of the first parcel or final map	The City may approve a credit against the Park Facilities Fee for park land dedication made under LMC 18.32.020. The credit may not exceed the value of the dedication requirement. See LMC 12.60.070 for credit details N/A for Non-Residential
Park Facilities Fee	Title 12.60 Ord. 1743 Reso. 2005-152	With Building Permit	See Attached Exhibit "B"
City Water Connection (2)	Title 13.20.020 Ord. 1507 Reso. 2010-177	With Building Permit	5/8" $4,467 3/4" $6,701 1" $11,168 1-1/2" $22,337 2" $35,739 Price per User for Meter Size, FOR LARGER METERS, INQUIRE
Alameda County Water Connection Zone 7	Ord. FC 72-1 as amended by FC-96-1792 and updated 10-20-10	With Building Permit See Zone 7 Attachment	5/8" $28,170 3/4" $42,255 1" $70,425 Price per User for Meter Size, FOR LARGER METERS, INQUIRE
In-Lieu Low Income Housing Fee (Residential) For Sale & Neighborhood Plan Areas	Title 3.26 Reso. 2016-142 Ord. 1988 and 1989	With Building Permit **(Effective 1/12/2018)**	$25.37/SF for all residential housing developments 10 units or less. Projects more than 10 units are subject to must-build requirement of ordinance. Rental exempt from In-Lieu with exception of Neighborhood Plan Areas (Pell & Brisa)
Low Income Housing Impact Fee (Commercial and Industrial)	Title 3.26 Reso. 99-18 Ord. 1549	With Building Permit	**Commercial** — **Unit** — **KSF Fee per Unit** Retail Commercial — KSF — $1,384 Discount/Service Retail — KSF — $1,042 Office Commercial — KSF — $889 Hotels/Motels — Room — $679 **Industrial** Manufacturing — KSF — $427 Warehouse/Storage — KSF — $124 Business/Commercial — KSF — $883 Industrial, High Intensity — KSF — $438 Industrial, Low Intensity — KSF — $277
City Wide General Plan - cost recovery (2)	Resolution 2008-123		$0.39/sf

(1) Subject to adjustment each year per Construction Cost Index

(2) Areas within the California Water Service Area do not pay a City water connection fee. Areas within the Greenville/Vasco Assessment District or within Triad Park do not pay a City water connection fee. The fee for a single family residential unit is the 5/8 inch meter fee.

DocuSign Envelope ID: FA6C0401-9A2E-4AFE-8235-4A3F31941446

CITY OF LIVERMORE COMMUNITY DEVELOPMENT DEPARTMENT

DEVELOPMENT IMPACT AND CONNECTION FEES

EXHIBIT A

Effective July 1, 2018

TYPE OF FEE	CITY CODE AND RESOLUTION	WHEN PAYABLE	AMOUNT OF FEE
Traffic Impact Fee **NOTE:** If special Assessment District exists, special calculations are required	For info regarding the appropriate development categories see Section 12.30 of the City of Livermore Municipal Code Reso 2005-151 Ord. 1742	With Building Permit	See Attached Exhibit "C"
Tri-Valley Transportation Development (TVTD) Fee (1)	Title 12.24.050 Ord. 2012 Reso. 2014-184	With Building Permit	Residential — Fee Per Unit Single family — $4,613.65 Multi-family — $3,178.06 Secondary Dwelling — $1,845.46 Non Residential — Per KSF Retail — $3,410.00 Office — $7,840.00 Industrial — $4,570.00 Other — Average Peak Hour Trip $5,126.36
SCHOOL IMPACT FEES:			
The City of Livermore collects School Mitigation Development Fees (school fees) on behalf of the Livermore Valley Joint Unified School District. The fees must be paid for by cash or a check made out to the City of Livermore. Fees are due upon issuance of a qualifying building permit. *See Attached Exhibit "D"*			
SOCIAL / HUMAN SERVICES FACILITY			
Social/Human Services Facility Fee	Title 12.70 Ord. 1851	With Building Permit	See Attached Exhibit "E"
ART IN PUBLIC PLACES			
Art in Public Places Fee (3)	Ord. 1836 Title 12.51		0.33% of total project valuation
DOWNTOWN SPECIFIC PLAN DEVELOPMENT FEES			
TYPE OF FEE	**CITY RESOLUTION**		**AMOUNT OF FEE**
In-Lieu Payment for Public Open Space	Resolution 2005-041		$50 per square foot of required open space
In-Lieu Parking Fee	Resolution 2017-006		$18,500.00
In-lieu Parking Fee Subsidy - Vacant or underutilized Specific Plan Core Area parcel fronting First Street with a building addition.	Resolution 2017-137 *(Program expires July 24, 2019)*		Reduction in the in-lieu parking fee by 50%, from $18,500 to $9,250 per space, for up to 7 spaces per project.
In-lieu Parking Fee Subsidy - Vacant or underutilized Specific Plan Core Area parcel fronting First Street with a new building.	Resolution 2017-137 *(Program expires July 24, 2019)*		Reduction in the in-lieu parking fee by 50%, from $18,500 to $9,250 per space, for up to 10 parking spaces per project.
Downtown Revitalization Fee	Title 12.32		Residential — Fee Per Unit Dwelling Unit — $5,847 Non Residential (6) — Per SF Retail/Office — $18.02
Downtown Specific Plan - cost recovery	Resolution 2008-123		$0.31/SF

CITY OF LIVERMORE COMMUNITY
DEVELOPMENT DEPARTMENT

EXHIBIT A

EFFECTIVE 07/01/18

EXHIBIT A
Wastewater Connection Fee Schedule
(fees Calculated from base year)

User Classification	Avg Daily Wastewater Flow Factor Gallons Per Day/Unit	Unit[1]	Cost Per GPD	Cost Per Unit
Residential (BOD & SS = 285 mg/L)				
Single-family residential	180	House	$37.03	$6,665.40
Multi-family residential				
Studio	95	Residential Unit	$37.03	$3,517.85
One Bedroom	107	Residential Unit	$37.03	$3,962.21
Two Bedroom	138	Residential Unit	$37.03	$5,110.14
Three Bedroom	157	Residential Unit	$37.03	$5,813.71
Four Bedroom	180	Residential Unit	$37.03	$6,665.40
Commercial (BOD & SS = 285 mg/L unless otherwise shown)				
Auto repair shops/Auto dealers	0.11	Square Foot of Bldg	$37.03	$4.07
Assembly Facilities[2]	0.15	Square Foot of Bldg	$37.03	$5.55
Eating drinking facilities w/o cooking	0.35	Square Foot of Bldg	$37.03	$12.96
Gas Stations	0.47	Square Foot of Bldg	$37.03	$17.40
General Use	0.04	Square Foot of Bldg	$37.03	$1.48
Gyms, Health Clubs	0.30	Square Foot of Bldg	$37.03	$11.11
Hotels, Motels (excluding dining facilities)	0.15	Square Foot of Bldg	$37.03	$5.55
Markets	0.19	Square Foot of Bldg	$37.03	$7.04
Mixed Use[3]	0.10	Square Foot of Bldg	$37.03	$3.70
Medical/Dental Office/ Clinic	0.22	Square Foot of Bldg	$37.03	$8.15
Restaurants (1,000 mg/L BOD, 600 mg/L SS)	0.55	Square Foot of Bldg	$54.56	$30.01
Warehouse/Distribution	0.01	Square Foot of Bldg	$37.03	$0.37
Industrial/Other (Other Wastewater Customers Not Listed Above)				
Calculate Case-by-Case Based on Actual Flows/Strengths and Following Rates				
Connection Fee = (F x "Flow") + (B x "BOD") + (S x "SS")				
F = Flow cost $/gpd	$27.70			
B = BOD cost $/lb-day	$2,409.69			
S = SS cost $/lb-day	$980.90			
discharge				
flow, in				
"BOD" = The				
"SS" = The				

Governing Municipal Code Section: 13.28.050
Index Used: ENR 20- City Construction Cost Index

Indices:	*Base Year* (A)	*Previous Fee Update* (B)	*Current Fee Update* (C)	*% Change Previous Update to Current Update* (D) =(C/B)-1
Index Date	May-10	May-17	May-18	
Index Value	8,761.47	10,692.17	11,068.57	3.52%

Discussion:

The base year unit fees for Flow, BOD, and SS were determined in theMarch 2010 Wastewater, Water, Storm Drain Connection Fee Study for Expansion of Sanitary Sewer, Water Reclamation Plant, and Wastewater Disposal Facilities prepared for the City of Livermore by Craig R. Lawson Utility Management Consultant.

Notes:

1. Building square footage means the square footage sum of the floor area at each floor level included with the surrounding principal outside faces of exterior walls of a building or portions thereof, including mezzanines and lobbies. It does not include floor area devoted to vehicle parking, necessary interior driveways and ramps. The gross floor area of a building or portions thereof that doesn't have surrounding exterior walls shall include the usable area under the horizontal projection of the roof or floor above.

2. Theaters can alternately estimate daily flow based on 2 gallons per seat ($71.54 per seat)

3. Mixed Use applies to parcels with Mixed Use zoning and in the Downtown Core District only.

4. This value is based by formula on BOD

6. Adjustments. The city council may, by resolution, adjust the fee schedule, including the flow factors, from time to time. Once the fee is established, it shall automatically be increased annually based upon the Engineering News Record (ENR) 20- City construction Cost Index. In calculating the adjustment, the rate (in each use category, including the flow, BOD and SS costs) for the base year is multiplied by the index for the then-current year, divided by the base year index.

EXHIBIT A

EFFECTIVE 07/01/18

EXHIBIT B
Park Facilities Fee Schedule

LAND USE	TOTAL FEE
Residential (per dwelling unit)	
Single Family (& 4 bedroom multi-family)	$16,836
Multi-Family 3 bedrooms	$14,649
Multi-Family 2 bedrooms	$12,910
Multi-Family 1 bedroom	$9,990
Multi-Family Studio	$8,925
Senior Housing	$2,864
Non-Residential (per 1,000 sq ft)	
Commercial	$2,134
Office	$3,052
Industrial	$1,419
Warehouse	$1,066

Source - Park Facilities Fee Study (2004) Table 8; MuniFinancial

EXHIBIT C
Traffic Impact Fees Schedule

Land Uses	Units of Use	Fee Rates
Citywide Except Downtown		
Residential		
Single-Family	d.u.	$9,265
Multi-Family		
Studio	d.u.	$4,318
1 Bedroom	d.u.	$4,834
2 Bedroom	d.u.	$6,246
3 or more Bedroom	d.u.	$7,305
Senior Housing	d.u.	$2,843
Commercial	K s.f.	$25,163
Office	K s.f.	$16,108
Industrial	K s.f.	$10,001
Warehouse	K s.f.	$5,053
Hotel/Motel	per/room	$7,264
Downtown Specific Plan		
Multi-Family		
Studio	d.u.	$2,650
1 Bedroom	d.u.	$2,968
2 Bedroom	d.u.	$3,835
3 or more Bedroom	d.u.	$4,485
Commercial	K s.f.	$11,393
Other	Average Peak Hour Trip	$11,579

Exhibit "D"

LIVERMORE VALLEY JOINT UNIFIED SCHOOL DISTRICT
SUMMARY OF SCHOOL MITIGATION PROGRAM

INDUSTRIAL/COMMERCIAL:		$0.61/sq.ft.
RENTAL-SELF STORAGE SPACE:		$0.021/sq.ft.
RESIDENTIAL:		$3.79/sq.ft.
	ADDITIONS-	$3.79/sq.st. (501 sq.ft. or more) Residential additions 500 sq.ft. or less are exempt
HOTEL/MOTEL:		$0.356/sq.ft.

Livermore Valley Joint Unified School District Resolution: 045 - 17/18

* Additions are cumulative over time to a limit of 500 sf before fees are assesed. Once assessed, fees are paid on the entire added square footage.

** The fee owed is based upon the fee amount in effect at the time the fee is paid.

LIVERMORE VALLEY JOINT UNIFIED SCHOOL DISTRICT
685 East Jack London Blvd, Livermore, Ca 94551

FACILITIES PLANNING AND CONSTRUCTION
Jan Shipley, Construction Supervisor (925) 606-3390
Facilities Fax Number (925) 606-3327

EXHIBIT E Social and Human Service Facility Fee Schedule		
Land Uses	**Units of Use**	**Fee Rates**
Residential Uses		
Single-Family Detached	d.u.	$1,677
Single-Family Attached	d.u.	$1,415
Multi-Family	d.u.	$1,298
Mobile Home	d.u.	$996
Secondary Unit	d.u.	$996
Non-Residential Uses		
Commercial		
Office	K s.f.	$7
Retail	K s.f.	$5
Service	K s.f.	$5
Industrial		
Manufacturing/R&D	K s.f.	$3
Warehousing	K s.f.	$2
Office	K s.f.	$6
Construction/Repair/Wholesale	K s.f.	$3
Other Non-Residential	K s.f.	$5

DocuSign Envelope ID: FA6C0401-9A2E-4AFE-8235-4A3F31941446

EXHIBIT A

Zone 7 M&I Connection Fee Rate Schedule

Effective Janaury 1, 2018

Meter Size		Recommended Maximum Rate for Continuous Use (gpm)	Connection Fee Amount
5/8" & 1" FS*		10	$28,170
3/4"		15	$42,255
1"		25	$70,425
1 1/2"	(DISPLACEMENT TYPE)	50	$140,850
	Omni C2	160	$450,720
	Omni T2	160	$450,720
2"	(DISPLACEMENT TYPE)	80	$225,360
	Mueller MVR **Pleasanton Only**	115	$323,955
	Omni C2	160	$450,720
	Omni T2	200	$563,400
3" to 10"			**

* When the Fire Department requires fire sprinklers, a 1-inch meter may be obtained at the same rate as a 5/8-inch meter.

** Connection fees for meter sizes 3-inches and above will be determined by using the fee factor for maximum continuous flow rate.

Fees for meters other than those listed above will be determined based upon the maximum continuous flow rating for the brand and type of meter.

These fees are based on the Maximum Continuous Flow Rate through a 5/8" meter as defined by AWWA C700 for Cold-Water Meter -- Displacement Type, Bronze Case.
Any changes to meter capacities will affect the above connection fees.

Currently, the 2-inch Mueller MVR is only available in Pleasanton.

DocuSign Envelope ID: FA6C0401-9A2E-4AFE-8235-4A3F31941446

EXHIBIT A

ALAMEDA COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT, ZONE 7
100 NORTH CANYONS PARKWAY, LIVERMORE, CA 94551-9486 • PHONE (925) 454-5000

WATER CONNECTION FEE INFORMATION SHEET

Effective January 1, 2018

I. GENERAL BACKGROUND

A. The Water Connection Charge Ordinance No. FC 72-1 as amended for Zone 7 was established January 18, 1972. The ordinance is applicable over the Zone 7 area that includes Livermore, Pleasanton, Dublin, Sunol, and surrounding communities. The Ordinance requires a one-time water connection fee for all new water services from a water system that is directly connected to the Zone 7 water supply system. This fee is used for funding the costs of expanding the Zone 7 water treatment and distribution system to serve new development.

B. The amount charged for a water connection is determined by the size of the meter to be installed. The meter sizes and corresponding water connection fees are listed below.

II. PROCEDURES FOR PAYMENT OF WATER CONNECTION FEES IN LIVERMORE, PLEASANTON, & DUBLIN

The water connection fees are collected by the Building Departments of the Cities of Livermore and Pleasanton, and by the Dublin San Ramon Services District, which are agents for Zone 7.

III. WATER CONNECTION FEE SCHEDULE - FEES ARE REVIEWED AND SUBJECT TO PERIODIC MODIFICATION

Meter Size	Fee Factor	Connection Fee
5/8" (DISPLACEMENT TYPE)	1.0	$28,170
3/4" (DISPLACEMENT TYPE)	1.5	$42,255
1" (DISPLACEMENT TYPE)	2.5	$70,425
1½" (DISPLACEMENT TYPE)	5.0	$140,850
1½" (OMNI C2)	16.0	$450,720
1½" (OMNI T2)	16.0	$450,720
2" (DISPLACEMENT TYPE)	8.0	$225,360
2" Mueller MVR	11.5	$323,955
2" (OMNI C2)	16.0	$450,720
2" (OMNI T2)	20.0	$563,400

* Connection fees for meters 3-inch and larger and for meters with fee factors other than those listed above, will be determined by Zone 7, using the fee factor for Maximum Rate for Continuous Operation, as defined by AWWA. These fees are based on the Maximum Continuous Flow Rate through a 5/8" meter and are proportional based on flow ratings for the various sized meters. Flow ratings for displacement type meters are defined by AWWA C700 for Cold-Water Meter -- Displacement Type, Bronze Case. Flow ratings for turbine type meters are defined by AWWA C701 for Cold Water Meters -- Turbine Type, For Customer Service. Any changes to meter capacities will affect the above connection fees.

NOTE: This new fee schedule is effective January 1, 2018

DocuSign Envelope ID: FA6C0401-9A2E-4AFE-8235-4A3F31941446

IV. EXEMPTIONS

No fee will be collected for SEPARATE private fire service connections. See Section VI of the Ordinance (copy available upon request).

V. PARTIAL EXEMPTIONS

A partial exemption sometimes applies for domestic fire sprinkling systems up to 1" meter size. See Section VI of the Ordinance (copy available upon request).

VI. FOR FURTHER INFORMATION

Call Steven Ellis at (925) 454-5037 or e-mail at sellis@zone7water.com.

DocuSign Envelope ID: FA6C0401-9A2E-4AFE-8235-4A3F31941446

EXHIBIT K

RECORDING REQUESTED BY AND WHEN RECORDED MAIL TO:

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

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

Space above this line for Recorder's use.

MEMORANDUM OF AMENDED AND RESTATED DISPOSITION, DEVELOPMENT AND LOAN AGREEMENT

THIS MEMORANDUM OF AMENDED AND RESTATED DISPOSITION, DEVELOPMENT AND LOAN AGREEMENT (the "Memo of DDLA") is made as of _____, 2022, by and between the City of Livermore, a municipal corporation (the "City") and Eden Housing Inc., a California non-profit public benefit corporation ("Developer") to confirm that the City and the Developer are parties to that certain Amended and Restated Disposition, Development and Loan Agreement dated as of May _____, 2022, as may be amended from time to time (the "DDLA"). The DDLA concerns the sale of real property in Livermore, California, which real property is described in the attached Exhibit A and the development of an approximately one hundred thirty (130) unit multi-family housing project. The DDLA 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 DDLA are inconsistent with the terms or provisions of the DDLA, the terms and provisions of the DDLA 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: City Manager

Date: _____

APPROVED AS TO FORM

By: _____
Assistant City Attorney

DocuSign Envelope ID: FA6C0401-9A2E-4AFE-8235-4A3F31941446

DEVELOPER:

Eden Housing,
a California non profit public benefit corporation

By: _____

Name: _____
Title: _____

DocuSign Envelope ID: FA6C0401-9A2E-4AFE-8235-4A3F31941446

EXHIBIT A
Property Description

DocuSign Envelope ID: FA6C0401-9A2E-4AFE-8235-4A3F31941446

EXHIBIT L

EXHIBIT A

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:
Eden Housing
22654 Grand Avenue
Hayward, CA 94541

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 098-0289-22

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
[INSERT NAME OF OWNER, L.P.], a [STATUS] ("Grantee")

the real property in the City of Livermore
County of Alameda, State of California, as described in Exhibit A

FOR LEGAL DESCRIPTION
SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF

Subject to the Notice of Affordability Restrictions on Transfer of Property and Dedication of Covenants and Restrictions executed by the Cit of Livermore, a municipal corporation and Redevelopment Agency of the City of Livermore, a body politic and corporate Recorded on January 12, 2009 as Instrument No. 2009-028632, and modification ececuted by the City of Livermore, Recorded November 19, 2018 as Instrument No. 2018-227103, which shall be considered to be incorporated herein and be a part hereof.

City of Livermore, a municipal corporation

_____
Signature:

_____
Name: Title:

DocuSign Envelope ID: FA6C0401-9A2E-4AFE-8235-4A3F31941446

ACKNOWLEDGMENT

STATE OF CALIFORNIA)
) ss.
COUNTY OF ALAMEDA)

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.

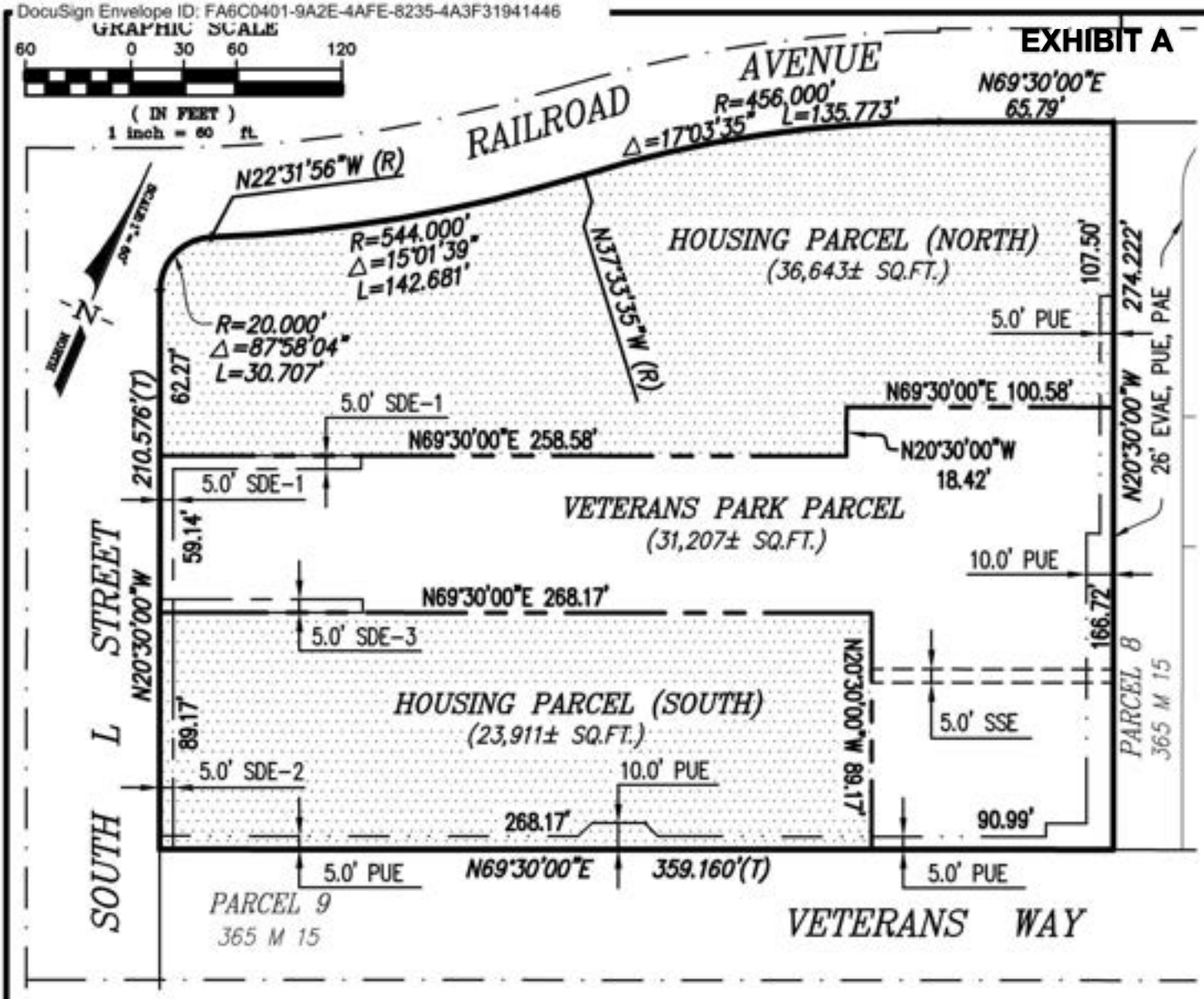
I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature_____ **(Seal)**

DocuSign Envelope ID: FA6C0401-9A2E-4AFE-8235-4A3F31941446

EXHIBIT A



LEGEND

———	BOUNDARY OF SUBJECT PROPERTY
— — —	PROPOSED LOT LINE
———	RIGHT OF WAY LINE
— · — · —	MONUMENT LINE
— — — —	PRIVATE SANITARY SEWER EASEMENT LINE (SSE)
——— - ———	PRIVATE STORM DRAIN EASEMENT (SDE)
——— · · ———	PUBLIC UTILITY EASEMENT (PUE)
———	ADJOINER LOT LINE
(T)	TOTAL
S.F.	SQUARE FEET
±	MORE OR LESS

PROPOSED EASEMENT NOTES

THE FOLLOWING EASEMENTS ARE PROPOSED ON THE SUBJECT PROPERTY:

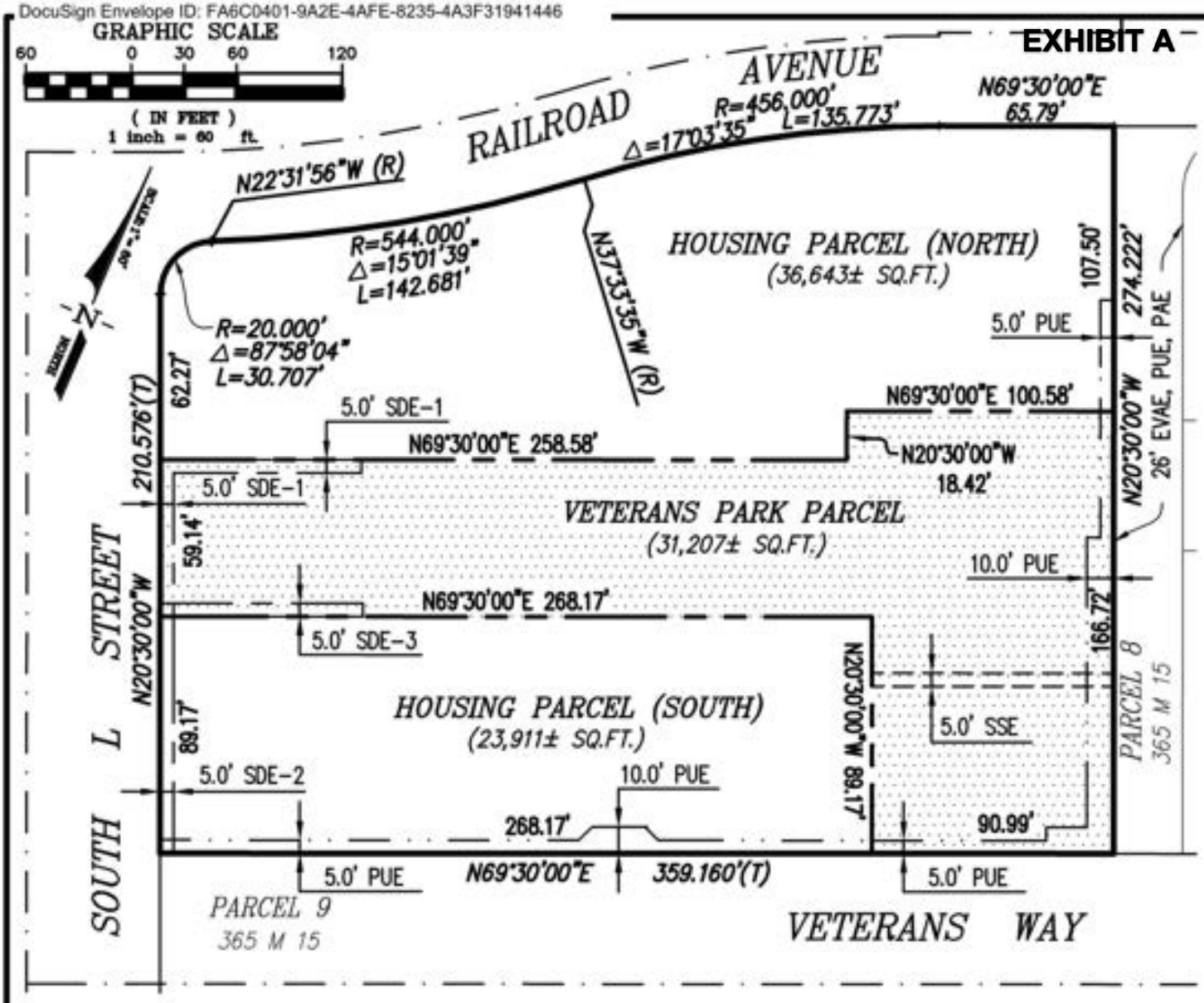
1. 5.0' WIDE PRIVATE SANITARY SEWER EASEMENT (SSE) ACROSS VETERANS PARK PARCEL FOR THE BENEFIT OF HOUSING PARCEL (SOUTH).
2. 5.0' WIDE PRIVATE STORM DRAIN EASEMENT (SDE-1) ACROSS VETERANS PARK PARCEL FOR THE BENEFIT OF HOUSING PARCEL (NORTH).
3. 5.0' WIDE PRIVATE STORM DRAIN EASEMENT (SDE-2) ACROSS HOUSING PARCEL (SOUTH) FOR THE BENEFIT OF HOUSING PARCEL (NORTH) & VETERANS PARK PARCEL.
4. 5.0' WIDE PRIVATE STORM DRAIN EASEMENT (SDE-3) ACROSS VETERANS PARK PARCEL FOR THE BENEFIT OF HOUSING PARCEL (SOUTH).
5. PUBLIC UTILITY EASEMENT OF VARYING WIDTH (BETWEEN 5.0' AND 10.0' WIDE) ALONG THE SOUTH AND EAST PROPERTY LINES, FOR PUBLIC PURPOSES.
6. VETERANS PARK PARCEL SHALL BE DESIGNATED AS A PARK AND OPEN SPACE WITH PUBLIC ACCESS THAT SHALL BE MAINTAINED BY THE CITY.

EXHIBIT M

HOUSING PARCELS

DocuSign Envelope ID: FA6C0401-9A2E-4AFE-8235-4A3F31941446

EXHIBIT A



LEGEND

———	BOUNDARY OF SUBJECT PROPERTY
— — —	PROPOSED LOT LINE
———	RIGHT OF WAY LINE
— · — · —	MONUMENT LINE
— — — —	PRIVATE SANITARY SEWER EASEMENT LINE (SSE)
— - —	PRIVATE STORM DRAIN EASEMENT (SDE)
— · · —	PUBLIC UTILITY EASEMENT (PUE)
———	ADJOINER LOT LINE
(T)	TOTAL
S.F.	SQUARE FEET
±	MORE OR LESS

PROPOSED EASEMENT NOTES

THE FOLLOWING EASEMENTS ARE PROPOSED ON THE SUBJECT PROPERTY:

1. 5.0' WIDE PRIVATE SANITARY SEWER EASEMENT (SSE) ACROSS VETERANS PARK PARCEL FOR THE BENEFIT OF HOUSING PARCEL (SOUTH).
2. 5.0' WIDE PRIVATE STORM DRAIN EASEMENT (SDE-1) ACROSS VETERANS PARK PARCEL FOR THE BENEFIT OF HOUSING PARCEL (NORTH).
3. 5.0' WIDE PRIVATE STORM DRAIN EASEMENT (SDE-2) ACROSS HOUSING PARCEL (SOUTH) FOR THE BENEFIT OF HOUSING PARCEL (NORTH) & VETERANS PARK PARCEL.
4. 5.0' WIDE PRIVATE STORM DRAIN EASEMENT (SDE-3) ACROSS VETERANS PARK PARCEL FOR THE BENEFIT OF HOUSING PARCEL (SOUTH).
5. PUBLIC UTILITY EASEMENT OF VARYING WIDTH (BETWEEN 5.0' AND 10.0' WIDE) ALONG THE SOUTH AND EAST PROPERTY LINES, FOR PUBLIC PURPOSES.
6. VETERANS PARK PARCEL SHALL BE DESIGNATED AS A PARK AND OPEN SPACE WITH PUBLIC ACCESS THAT SHALL BE MAINTAINED BY THE CITY.

EXHIBIT N

PARK PARCEL

DocuSign Envelope ID: FA6C0401-9A2E-4AFE-8235-4A3F31941446

EXHIBIT O

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

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

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

Space above this line for Recorder's use.

TEMPORARY PARKING LEASE AGREEMENT
(Undivided Parcel)

THIS LEASE AGREEMENT ("Lease") dated as of this _____ day of _____, 2022, (the "Effective Date") is made and entered into by and between [NAME OF PROJECT OWNER L.P. TO BE INSERTED], a California [ENTITY TYPE] ("Lessor") and the City of Livermore, a municipal corporation ("City" or "Lessee").

RECITALS

A. On_____, the City and Lessor entered into an Amended and Restated Disposition, Development and Loan Agreement (the "DDLA"), wherein the City agreed to set forth the terms and conditions for the City to sell the Undivided Parcel (more particularly described in Exhibit A) for purposes of developing an affordable housing project consisting of two buildings and 130 units on portions of the property, referred to as the Housing Parcels. The Housing Parcels are more particularly described in Exhibit M to the DDLA and included herein by this reference.

B. Currently, the City is using the Undivided Parcel as a temporary paved surface public parking lot. Upon sale of the Undivided Parcel, Lessor has agreed to lease the Undivided Parcel back to City at the cost of actual third-party expenses incurred by Lessor for the City's continued use as a temporary paved surface public parking lot until the commencement of the Project on the Housing Parcels as further described herein.

C. The Lessor desires to lease the Leased Premises to City and City desires to lease from Lessor the Leased Premises on the terms and conditions contained in this Lease Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual promises contained herein, the parties hereby agree as follows:

1. Leased Premises. Lessor leases to City and City leases from Lessor, the entire Undivided Parcel, also known as the Leased Premises, as indicated on Exhibit A.

DocuSign Envelope ID: FA6C0401-9A2E-4AFE-8235-4A3F31941446

2. **Possession; Delay in Delivery of Possession.**

(a) Except as otherwise provided in this Lease Agreement, City agrees to accept possession of the Leased Premises in its existing "as is" condition, including, but not limited to, all patent and latent defects and subject to all applicable laws, ordinances, and regulations governing and regulating the use of the Leased Premises and any recorded covenants, conditions, restrictions, easements, licenses, or right of ways.

(b) If Lessor, for any reason whatsoever, cannot deliver possession of the Leased Premises to City on or before the Effective Date, this Lease Agreement shall not be void or voidable and no obligation of City shall be affected thereby, and neither Lessor nor Lessor's agents shall be liable to City for any loss or damage resulting therefrom.

3. **Rent; Triple Net Lease.** Lessor agrees to lease the Leased Premises to the City for no rent; provided, however, that this Lease is a triple net lease and the City will be responsible to pay actual costs, charges, taxes, impositions, and other obligations it incurs related to the Leased Premises accruing after the Effective Date for the duration of the Term. If the Lessor pays any such amounts, whether to cure a default or otherwise protect its interests hereunder, the Lessor will be entitled to be reimbursed by City the full amount of such payments as additional rent within thirty (30) days of written demand by the Lessor.

4. **Term.** This Lease Agreement shall commence on the Effective Date and terminate 30 days following written notice from Lessor to City that construction on the Housing Parcels shall begin within 60 days. Upon termination of the Lease, City agrees to execute a termination notice that shall be recorded against the Leased Premises. This Lease Agreement shall supersede and replace any other lease agreement between said parties, or their predecessors in interest, concerning the use of the Leased Premises, or any other space or area of the Housing Parcels.

5. **City's Use of Leased Premises.**

(a) **Use of Leased Premises.** City shall only use the Leased Premises for (i) the purpose of a temporary paved surface public parking lot and (2) for access to the site for the purposes of any environmental testing and monitoring requirements described in the DDLA and the indemnity and cooperation agreement (as described in the DDLA).

(b) **Rules Regarding Use.** City's use of the Leased Premises shall be subject to the following rules:

(i) City shall not allow, authorize, or permit the Leased Premises, or any part thereof, to be used for any use or any illegal activity or purpose in violation of federal or state laws and/or ordinances, regulations and requirements of County, City, or any other enforcement authority.

(ii) City shall not commit, allow, or permit to be used for any offensive or improper use or nuisance, the Leased Premises which may unreasonably or unlawfully disturb or damage the Hotel Parcel or Leased Premises.

DocuSign Envelope ID: FA6C0401-9A2E-4AFE-8235-4A3F31941446

(iii) City shall not leave or store any trash, garbage, or refuse of any kind in, on, or about the Leased Premises and shall cause any refuse, trash, or other waste deposited on the Leased Premises by any of its employees, agents, or representatives to be picked up and disposed of in the appropriate manner so as to keep the Leased Premises in a neat and clean condition.

(iv) City shall not use, commit, allow, or permit to be used or committed, any waste upon the Leased Premises.

(c) Hazardous Materials. City shall not cause or permit any Hazardous Materials to be permanently stored, used or disposed of in the Leased Premises, by City's agents, employees, contractors or invitees, without having obtained Lessor's prior, written consent. For purposes of this Lease Agreement, the following terms shall have the meanings set forth below:

"Hazardous Materials" shall mean any toxic or hazardous wastes, pollutants, materials or substances, including, without limitation, asbestos, PCB's, petroleum products, radioactive substances or their by-products, other substances defined or listed as "hazardous substances," "hazardous materials," "hazardous wastes" or "toxic substances in or pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. §§ 9601 et seq. ("CERCLA"); the Hazardous Materials Transportation Act, 49 U.S.C §§ 5101 et seq.; the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901 et seq.; the Toxic Substance Control Act of 1976, 15 U.S.C. §§ 2601 et seq.; any "toxic pollutant" under the Clean Water Act, 33 U.S.C. §§ 1251 et seq.; any hazardous air pollutant under the Clean Air Act, 42 U.S.C. §§ 7401 et seq.; the California Hazardous Substance Account Act, California Health & Safety Code ("HSC") §§ 25300 et seq., the Hazardous Waste Disposal Land Use Act, HSC §§ 25100 et seq.; in or pursuant to or identified as causing cancer or reproductive toxicity in the California Safe Drinking Water & Toxic Enforcement Act of 1986, HSC §§ 25249.5 et seq.; and HSC §§ 25117, 25316; all as such laws may be amended; any hazardous or toxic substance, material, chemical, waste, or pollutant now or hereafter regulated under any other applicable Federal, State, or local environmental laws, without limitation; and any other matter in the nature thereof arising pursuant to the jurisdiction of any public agency.

"Hazardous Discharge" and "Contamination" shall mean the happening of any event involving an emission, spill, release, or discharge ("Release") into or upon (i) the air, (ii) soils or any improvements located thereon, (iii) surface or ground water, (iv) the sewer, septic system, or waste treatment, storage, or disposal system servicing the Leased Premises, of any Hazardous Material, or (v) any other matter in the nature thereof arising pursuant to the jurisdiction of any public agency.

"Environmental Laws" shall mean all applicable Federal, State, and local laws, ordinances, regulations, orders, procedures, policies, and directives of every kind and nature whatsoever pertaining to Hazardous Materials in, at, on, under, or from the Leased Premises or any portion thereof.

6. City Obligations.

DocuSign Envelope ID: FA6C0401-9A2E-4AFE-8235-4A3F31941446

(a) Services and Utilities. City shall pay directly for basic electricity and power for the Leased Premises to support the public parking use.

(b) Maintenance. Except as otherwise provided herein or in the DDLA, City shall at its own cost and expense, maintain the Leased Premises, and every part thereof, in good and sanitary order, condition, and repair during the term of the Lease. City shall be responsible for the cost of any and all repairs or maintenance to the Leased Premises, caused by negligent, careless, or willful acts of City, its employees, agents, equipment, or invitees.

(c) Reimbursement of Third-Party Expenses: During the term of the Lease, City shall reimburse Lessor for Lessor-paid insurance, property taxes and County and City assessments, and other expenses which are required to be paid directly by Lessor as part of the operation of the Leased Premises as temporary public parking . City's reimbursement obligations under this Section 6(c) shall not exceed $120,000 dollars per year, increasing 3% annually, or further Council approval shall be required.

7. Condition of Leased Premises. City represents and warrants that it has made a thorough and complete inspection of the Leased Premises using qualified consultants and experts of its own choosing, and the Leased Premises is suitable for a temporary, surface public parking lot and in good and sanitary order, repair, and condition. City hereby accepts the Leased Premises in its present condition and, except as otherwise may be set forth herein, without representation or warranty by Lessor as to the condition of such Leased Premises or as to the use of the Leased Premises.

8. Construction and Repair.

(a) Mechanic's Lien. City shall pay, or cause to be paid, all costs and expenses for work done by City, or caused to be done by City, on the Leased Premises of a character which could result in any lien on the Housing Parcel, and City will keep the Leased Premises free and clear of any mechanic's lien and/or other lien on account of work done for City or at its request.

Should any claims of lien be filed and/or recorded against the Leased Premises, or any action affecting the title thereto commenced, City shall give Lessor written notice thereof as soon as it has knowledge of the action.

(b) Construction. City shall not build or construct any improvement, or make any structural change, addition, or remodeling to the Leased Premises without the Lessor's prior written consent. In the event that Lessor provides City with the required written consent, City shall at its own cost comply with any and all Federal, State, or local laws

and/or regulations applicable to any such construction, alteration, or remodeling to or within the Leased Premises to upgrade them to satisfy current standards.

9. Encumbrances. City shall keep the Leased Premises free and clear of all encumbrances except with the prior written approval of Lessor.**Destruction.** If the Leased Premises is totally destroyed during the term of this Lease Agreement by fire, flood,

DocuSign Envelope ID: FA6C0401-9A2E-4AFE-8235-4A3F31941446

earthquake, or other casualty, whether or not covered by insurance, this Lease Agreement shall terminate.

10. Condemnation. If all or part of the Leased Premises is taken by condemnation such that the Leased Premises is no longer usable for a temporary, paved surface public parking lot, this Lease Agreement shall terminate. City shall be entitled only to that portion of the proceeds of condemnation which is directly attributable to the value of City's interest in this Lease Agreement.

11. Compliance with Laws. City agrees to comply with all applicable zoning, municipal, county and state laws, ordinances and regulations governing the use of the Leased Premises. City agrees to secure and maintain throughout the Term and any Extended Term any federal, state or local licenses or permits required in order to use the Leased Premises for a temporary surface public parking lot. City's failure to do so shall be considered a material breach of this Lease Agreement. City is responsible for compliance with all Federal requirements for improvements, construction and/or repair work outside of the Lessor's obligations.

12. Assignment.

(a) Prohibition Against Assignment and Encumbrance. This Lease Agreement and any rights or obligations of City hereunder shall not be sold, assigned, transferred, leased, assigned, sublet, conveyed, hypothecated either in whole or in part, or in any manner, without Lessor's prior written consent. The City shall not allow any other person or entity to occupy or use all or any part of the Hotel Parcel or Leased Premises without first obtaining Lessor's written consent. Consent to any assignment shall not constitute a further waiver of the provisions of this section.

(b) Involuntary Assignment. No interest of Lessee in this Lease Agreement shall be assignable by operation of law, including, without limitation, the transfer of this Lease Agreement by testacy or intestacy. Each of the following acts shall be considered an involuntary assignment:

(i) If City is or becomes bankrupt or insolvent, makes an assignment for the benefit of creditors, or institutes a proceeding under the Bankruptcy Act in which City is the bankrupt party; or, if the City is a partnership or consists of more than one person or entity, if any partner of the partnership or other person or entity is or becomes bankrupt or insolvent, or makes an assignment for the benefit of creditors;

(ii) If a writ of attachment or execution is levied on this Lease Agreement;

(iii) If, in any proceeding or action to which Lessee is a party, a receiver is appointed with authority to take possession of the Leased Premises.

(iv) An involuntary assignment shall constitute a default by City and Lessor shall have the right to elect to terminate this Lease Agreement, in which case this Lease Agreement shall not be treated as an asset of City.

DocuSign Envelope ID: FA6C0401-9A2E-4AFE-8235-4A3F31941446

(v) If a writ of attachment or execution is levied on this Lease Agreement, City shall have ten (10) days in which to cause the attachment or execution to be removed. If any involuntary proceeding in bankruptcy is brought against Lessee, or if a receiver is appointed, Lessee shall have sixty (60) days in which to have the involuntary proceeding dismissed or the receiver removed.

13. Taxes. Except as otherwise provided in Section 3 above, Lessor shall pay during the term of this Lease Agreement, without abatement, deduction, or offset, any and all real and personal property taxes, general and special assessments, and other charges (including any increase caused by a change in the tax rate or by a change in assessed valuation) of any description levied or assessed during the term of this Lease Agreement by any governmental agency or entity on or against the Undivided Parcel, improvements located on the Housing Parcels, personal property located on or in the Housing Parcels or improvements, and the leasehold interest created by this Lease Agreement.

14. Indemnity. City agrees to and shall defend, indemnify, protect and hold harmless Lessor, its officers, directors, employees and agents harmless from and against any and all loss, damage, injury, accident, casualty, liability, claim, cost or expense (including, but not limited to, reasonable attorneys' fees) of any kind or character to any person or property arising from or related to any act or omission of City, its employees, agents or contractors, the City's use of the Leased Premises, or as a result of this Lease Agreement. To the greatest extent by law, City waives all claims or demands against Lessor for any loss, damage, or injury to City or City's property in connection with this Lease Agreement or the operation or use of the City's property by City or its agents, servants or contractors or employees and agrees to so indemnify and hold Lessor harmless.

15. Reserved.

16. Termination.

(a) Termination for Cause. In the event City engages in, or permits any other person to engage in, any illegal activities in, on, or about the Housing Parcel or the Leased Premises, whether with or without a criminal conviction, Lessor shall have the right to immediately terminate this Lease Agreement and demand City surrender the Leased Premises.

Except for immediate termination as provided for in this Lease Agreement, should City at any time during the term of this Lease Agreement be in default in the performance of any of the terms, conditions, rules, covenants, or requirements herein contained or otherwise agreed to by the parties, including the rules and regulations established by Lessor regarding the use of, or access to, the Housing Parcels and Leased Premises, and should such default continue for thirty (30) days after written notice thereof from Lessor to City specifying the particulars of such default, or should City vacate or abandon the Leased Premises, then in any such event it shall be at the option of the Lessor, the Lessor's right to declare this Lease Agreement terminated and re-enter the Leased Premises and take possession thereof and remove City's fixtures and furnishings, and City shall have no further claim thereon or hereunder.

DocuSign Envelope ID: FA6C0401-9A2E-4AFE-8235-4A3F31941446

(b) Lessor's remedies in this section shall be in addition and supplemental to any and all other rights or remedies which Lessor may have pursuant to this Lease Agreement and/or under the law.

(c) In the event that the County of Alameda ("County") provides a loan to Lessor, and so requires, this Lease may be terminated in the event of an uncured default under the County loan and/or subordinated to the County loan.

17. Default. Any of the following events or occurrences shall constitute a material breach of this Lease Agreement by City and, after the expiration of any applicable grace period, shall constitute an event of default (each an "Event of Default"):

(a) The failure by City to perform any obligation under this Lease Agreement, which by its nature City has no capacity to cure;

(b) The failure by City to perform any other obligation under this Lease Agreement, if the failure has continued for a period of ten (10) days after Lessor demands in writing that City cure the failure. If, however, by its nature the failure cannot be cured within ten (10) days, City may have a longer period as is necessary to cure the failure, but this is conditioned on City's promptly commencing to cure within the ten (10) day period and thereafter completing the cure within thirty (30) days after Lessor demands in writing that City cure the failure. City shall indemnify and defend Lessor against any liability, claim, damage, loss, or penalty that may be threatened or may in fact arise from that failure during the period the failure is uncured;

(c) Any of the following: a general assignment by City for the benefit of City's creditors; any voluntary filing, petition, or application by City under any law relating to insolvency or bankruptcy, whether for a declaration of bankruptcy, a reorganization, an arrangement, or otherwise; the abandonment, vacation, or surrender of the Leased Premises by Lessee without Lessor's prior written consent; or the dispossession of City from the Leased Premises (other than by Lessor) by process of law or otherwise;

(d) The abandonment of the Leased Premises by City.

18. Remedies. Upon the occurrence of an Event of Default, Lessor may pursue all rights or remedies available to Lessor at law or in equity.

19. Waiver. Any express or implied waiver of a breach of any term of this Lease Agreement shall not constitute a waiver of any further breach of the same or other term of this Lease Agreement.

20. Surrender of Leased Premises. Upon the expiration of this Lease Agreement, or no later than ten (10) days after its termination, City shall surrender the Leased Premises to Lessor, and all improvements and alterations thereto, in good condition except for ordinary wear and tear occurring after the last necessary maintenance made by City and/or destruction to the Leased Premises covered by Section 10 of this Lease Agreement.

Lessor may elect to retain or dispose of in any manner any alterations,

improvements, fixtures, or furnishings that City does not remove from the Leased Premises on expiration or termination of the Lease Agreement by giving at least ten (10) days' notice to City. Title to any such improvements, alterations, fixtures, or furnishings that Lessor elects to retain or dispose of on expiration of the ten (10) day period shall vest in Lessor. City waives all claims against Lessor for any damage to City resulting from Lessor's retention or disposition of any such improvements, alterations, fixtures, or furnishings. City shall be liable to Lessor for Lessor's costs for storing, removing, and disposing of any improvements, alterations, fixtures, or furnishings.

21. **Entry by Lessor.** City shall permit Lessor, its officers, employees, and agents to enter into and upon the Leased Premises upon reasonable notice for the purpose of inspecting the Leased Premises, predevelopment activities related to the Project, enforcing the rules and regulations under this Lease Agreement, and the posting of such legal notices as Lessor may deem necessary or convenient.

(a) Lessor and its agents may enter the Leased Premises at any reasonable time upon reasonable notice to City, or immediately in the case of an emergency, for the purpose of: (i) inspecting the Leased Premises; (ii) posting notices of nonresponsibility; (iii) supplying any service to be provided by Lessor to City; (iv) showing the Leased Premises to prospective purchasers, mortgagees, or tenants (v) making necessary alterations, additions, or repairs as required by this Lease Agreement or to otherwise perform Lessor's duties under this Lease Agreement; (vi) determining whether City is complying with the terms of this Lease Agreement; (vii) performing City's obligations when City has failed to do so after written notice from Lessor, if required by the terms of this Lease Agreement; (viii) placing on the Leased Premises ordinary for lease signs or for sale signs; (ix) doing of other lawful acts that may be necessary to protect Lessor's interest in the Leased Premises under this Lease Agreement; (x) responding to an emergency; and (xi) performing any predevelopment activities reasonably necessary to develop the Project as contemplated under the DDLA.

(b) Lessor shall have the right to use any means Lessor deems necessary and proper to enter the Leased Premises in an emergency. Any entry into the Leased Premises obtained by Lessor in accordance with this section shall not be a forcible or unlawful entry into, or a detainer of, the Leased Premises, or an eviction, actual or constructive, of City from the Leased Premises, nor shall such entry give rise to a claim for rent abatement.

22. **Notices.** Wherever in this Lease Agreement it shall be required or permitted that notice or demand be given or served by either party to this Lease Agreement to or on the other, such notice or demand shall be given or served in writing and forwarded by registered mail, addressed as follows, though any party may change such address or contact person by written notice by registered mail to the other:

City: Community Development Director
City of Livermore
1052 South Livermore Avenue
Livermore, California 94550

DocuSign Envelope ID: FA6C0401-9A2E-4AFE-8235-4A3F31941446

Lessor: [NAME OF PROJECT OWNER L.P. TO BE INSERTED]

Attn:

23. Holding Over. Any holding over without the Lessor's prior written consent shall be prohibited.

24. Modification. This Lease Agreement may only be modified or amended by written agreement signed by both parties hereto.

25. General Provisions.

(a) Time of Essence. Time is of the essence for each provision of this Lease Agreement.

(b) Relationship of the Parties. Nothing contained in this Lease Agreement shall be deemed or construed by the parties or by a third party to create the relationship of principal and agent, and/or of partnership, and/or of joint venture, and/or of any association between the parties, other than the relationship of Lessor and Lessee.

(c) Entire Agreement. This instrument, including any attachments hereto, constitutes the entire agreement of the parties relating to the subject matter of this Lease Agreement and correctly sets forth the rights, duties, and obligations of each party to the other, but this Lease Agreement does not supersede any provision in the DDLA.

(d) Partial Invalidity. If any provision or portion of this Lease Agreement shall be deemed invalid, it is agreed that such invalidity shall affect only such provision or portion thereof, and the remainder of this Lease Agreement shall remain in force and effect.

(e) California Law. This Lease Agreement shall be governed by and construed in accordance with the laws of the State of California.

(f) Review of Lease. Each party to this Lease Agreement declares that prior to the execution of this Lease Agreement, each party had the opportunity to seek the independent advice of counsel and that they apprised themselves of sufficient relevant information in order that they might intelligently exercise their own judgment in deciding whether to execute this Lease Agreement. Each party agrees that they have completely read and understood the Lease Agreement, know the contents thereof, and have signed the Lease Agreement of their own free will and free of any duress. No single party has drafted this Lease Agreement and it shall not be interpreted against any party as the drafting party.

(g) Performance Excused. The parties shall be excused from performance, as hereunder agreed to, if such performance is rendered impossible, impractical, or unreasonably difficult by, but not limited to, any strike, lockout, labor disturbance of any

DocuSign Envelope ID: FA6C0401-9A2E-4AFE-8235-4A3F31941446

kind, civil commotion, war, acts of terrorism, shortage of any supply or labor, shortage of water, weather, act of government authority, enactment or change in laws or regulations, breakdown of facilities or any cause outside of the parties' control.

(h) Mutual Termination. This Lease Agreement may be terminated at any time concerning the rights and responsibilities of the parties who, between them, agree to such a termination.

(i) Headings. The headings used in this Lease Agreement are intended for reference only and do not define or limit the scope or meaning of any provision of this Lease Agreement.

(j) Waiver. A term or condition of this Lease Agreement may be waived at any time by the party entitled to the benefit thereof, but no such waiver shall affect the right of the waiving party to require observance, performance or satisfaction either of that term or condition as it applies on a subsequent occasion or of any other term or condition. City shall not be excused from complying with any of the terms and conditions of this Lease Agreement by any failure of the City upon any one or more occasions to insist upon or to seek compliance with any such terms and conditions.

(k) Attachments. All attachments referred to in and attached to this Lease Agreement are incorporated by reference as though set forth in full.

(l) Attorney's Fees and Costs. If either party commences an action against the other party to enforce this Lease Agreement, the prevailing party is entitled to reasonable attorney's fees, costs of suit, investigation costs and discovery costs, including costs of appeal.

************Signatures and Attachment List On Next Page************

DocuSign Envelope ID: FA6C0401-9A2E-4AFE-8235-4A3F31941446

IN WITNESS WHEREOF, the parties to this Lease Agreement have executed this Lease Agreement as of the dates set forth below.

[NAME OF OWNER][ENTITY TYPE]
Lessor
By: _____
[Signer's Name]
[Signer's Title]

City or Lessee

Dated: _____

City of Livermore
A Municipal Corporation

By: _____ Dated: _____

City Manager

Approved as to Form:

By: _____
Assistant/City Attorney

(Signatures must be Notarized)

Attachments:

Exhibit A – Undivided Parcel (Exhibit A to the DDLA)

Exhibit B – Insurance Requirements
(Insurance to be provided at time of execution of Lease Agreement)

DocuSign Envelope ID: FA6C0401-9A2E-4AFE-8235-4A3F31941446

COX CASTLE NICHOLSON

Cox, Castle & Nicholson LLP
50 California Street, Suite 3200
San Francisco, California 94111-4710
P: 415.262.5100 F: 415.262.5199

Scott B. Birkey
415.262.5162
sbirkey@coxcastle.com

File No. 88889

April 4, 2022

VIA E-MAIL

Paul Spence
Community Development Director
Community Development Department
Livermore, CA 94550

Re: Request for Stay of Expiration Date for Eden Downtown Housing Project Entitlements and Approvals

Dear Mr. Spence:

On behalf of Eden Housing, Inc. ("Eden"), we request a stay of the expiration date of the entitlements and approvals for Eden's Downtown Housing Project. Those entitlements and approvals were granted by the City of Livermore City Council on May 24, 2021.

Eden makes this request in connection with the following entitlements and approvals:

- Vesting Tentative Parcel Map (VTPM) 11186, which would expire on May 24, 2023 unless its expiration date is stayed;
- Downtown Design Review (DDR) 20-019, which would expire on May 24, 2023 unless its expiration date is stayed;
- Non-discretionary Use of State Density Bonus Law, Including a Density Bonus, Relief from Parking Standards, an Increase in Building Height, and an Incentive to Reduce Applicable Setbacks, which has no expiration date; and
- An Amendment to the Disposition, Development, and Loan Agreement, which has no expiration date.

On June 24, 2021, a Petition for Writ of Mandate was filed by Save Livermore Downtown in *Save Livermore Downtown v. City of Livermore, et al.*, Alameda County Superior Court, Case No. RG21102761. On February 14, 2022, the Court entered judgment denying the petition for writ of mandate with prejudice. Pursuant to Section 1049 of the California Code of Civil Procedure, "An action is deemed to be pending from the time of its commencement until its final determination upon appeal, or until the time for appeal has passed, unless the judgment is

DocuSign Envelope ID: FA6C0401-9A2E-4AFE-8235-4A3F31941446

sooner satisfied." As such, litigation against the Project is still pending because at this time, the time for an appeal of the Alameda County Superior Court decision has not yet passed.

Government Code Section 66452.6(a)(1) provides that an approved or conditionally approved tentative map shall expire 24 months after its approval or conditional approval, or after any additional period of time as may be prescribed by local ordinance, not to exceed an additional 24 months. (*See also* Livermore Development Code Section 10.02.110(C)(1)(a).)

Section 66452.6(c) provides that the period of time specified in Section 66452.6(a)(1) shall not include the period of time during which a lawsuit involving the approval or conditional approval of the tentative map is or was pending in a court of competent jurisdiction, if the stay of time period is approved by the local agency pursuant to this section. The subdivider may apply to the local agency for a stay pursuant to the local agency's adopted procedures. The local agency shall either stay the time period for up to five years or deny the requested stay.

Livermore Development Code Section 10.02.110(C)(2)(c)(1) provides that if a lawsuit is pending in a court of competent jurisdiction, and a subdivider requests a stay of the time in which a parcel map or tentative map will expire, the Director may stay the map's expiration date until final conclusion of the action, if the Director determines that the action affects the validity of the parcel map or tentative map approval. Because Section 10.02.110(A) of the Livermore Development Code allows by mutual consent of both the subdivider and the City to extend the time limits for acting on a map, the City may exercise its discretion to grant such a stay request at any time during the pendency of that lawsuit so long as both the subdivider and the City mutually agree as to when a stay request can be made.

Moreover, the Livermore Development Code contemplates that the expiration date of other approvals related to a map may also be extended when the expiration date of a map is being extended. For example, Section 10.02.110(B) of the Livermore Development Code allows the City to make certain modifications to time limits if necessary "to permit concurrent processing of related approvals." As such, an extension of the expiration date of the Project's Vesting Tentative Parcel Map allows for an extension of the Project's other related approvals, including the Projects' approval of the Downtown Design Review.

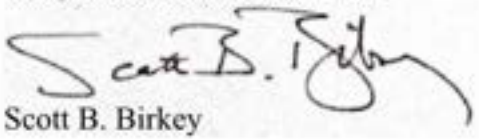
Accordingly, pursuant to Section 66452.6 of the Government Code and Section 10.02.110(C)(2)(c)(1), we request that the Community Development Director stay the expiration date of the Vesting Tentative Parcel Map and the Downtown Design Review until final conclusion of *Save Livermore Downtown v. City of Livermore, et al.* litigation.

DocuSign Envelope ID: FA6C0401-9A2E-4AFE-8235-4A3F31941446

Please contact me should you have questions regarding this request. Thank you for your consideration.

Sincerely,

Cox, Castle & Nicholson LLP



Scott B. Birkey

SBB:/mtn

088889\14613495v1

DocuSign Envelope ID: FA6C0401-9A2E-4AFE-8235-4A3F31941446

LIVERMORE
CALIFORNIA

May 9, 2022

Linda Mandolini
President
Eden Housing
22645 Grand Street
Hayward, CA 94541

RE: Stay Request filed by Eden Housing

Dear Ms. Mandolini:

On April 4, 2022, Scott Birkey, on behalf of Eden Housing, requested a stay of the vesting tentative map and development entitlements for the Eden Housing Downtown project. Granting this request would stay the following entitlements and approvals (the "Project"):

- Vesting Tentative Parcel Map (VTPM) 11186
- Downtown Design Review (DDR) 20-019
- Non-discretionary Use of State Density Bonus Law (including relief from parking standards and building height, and an Incentive to reduce setback); and
- An Amendment to the Disposition, Development, and Loan Agreement

Unless stayed, the project Vesting Tentative Parcel Map, the Downtown Design Review, and the incentives or concessions granted under State Density Bonus Law would expire on May 25, 2023.

Background

On May 25, 2021, the Livermore City Council adopted resolutions finding the Project exempt from the provisions of the California Environmental Quality Act (CEQA) and approving the Project.

On June 24, 2021, a Petition for Writ of Mandate was filed by Save Livermore Downtown in *Save Livermore Downtown v. City of Livermore, et al.*, Alameda County Superior Court, Case No. RG21102761. On February 14, 2022, the Court entered judgment denying the petition for writ of mandate with prejudice.

DocuSign Envelope ID: FA6C0401-9A2E-4AFE-8235-4A3F31941446

On April 13, 2022, an appeal was filed by Save Livermore Downtown in *Save Livermore Downtown v. City of Livermore, et al.* in the Court of Appeal, Case No. RG21102761. As of the writing of this letter, the case is pending.

City and State Standards

Government Code Section 66452.6(a)(1) provides that an approved or conditionally approved tentative map shall expire 24 months after its approval or conditional approval, or after any additional period of time as may be prescribed by local ordinance, not to exceed an additional 12 months.

Government Code Section 66452.6(c) provides that the period of time specified in subdivision (a) (above), shall not include the period of time during which a lawsuit involving the approval or conditional approval of the tentative map is or was pending in a court of competent jurisdiction, if the stay of time period is approved by the local agency pursuant to this section. The subdivider may apply to the local agency for a stay pursuant to the local agency's adopted procedures. The local agency shall either stay the time period for up to five years or deny the requested stay.

Livermore Development Code Section 10.02.110(C)2(c)(1) provides that if a lawsuit is pending in a court of competent jurisdiction, and a subdivider requests a stay of the time in which a parcel map or tentative map will expire, the Director may stay the map's expiration date until final conclusion of the action, if the Director determines that the action affects the validity of the parcel map or tentative map approval.

Determination

Pursuant to Government Code Section 66452.6 (c) and Livermore Development Code Section 10.02.110(C)2(c)(1), the Director stays the expiration date of the Project until final conclusion of *Save Livermore Downtown v. City of Livermore, et al.*, up to a maximum of five years, or May 25, 2028.

If you have any questions, please call me at (925) 960-4400.

Sincerely,

Paul Spence
Community Development Director
Community Development Department
City of Livermore
(925) 960-4400

DocuSign Envelope ID: FA6C0401-9A2E-4AFE-8235-4A3F31941446

EXHIBIT Q

LONG TERM LEASE AGREEMENT

THIS LONG TERM LEASE AGREEMENT ("**Agreement**") is made as of [_____] ("**Effective Date**"), by and between [the City of Livermore] ("**Lessor**"), and [_____] ("**Leasee**").

BASIC LEASE PROVISIONS

1.	Garage:	That certain parking garage containing approximately 452 parking stalls located approximately at First Street and L Street
2.	Address of Lessor:	
3.	Address of Leasee:	[_____]
4.	Address for Payment:	All payments payable to Lessor under this Agreement shall be sent to the following address or to such other address as Lessor may from time to time designate: [City of Livermore, 1052 S. Livermore Avenue, Livermore, CA 94550]
5.	Premises:	16 parking stalls within the area of the Garage depicted on the plan attached hereto as Exhibit A and made a part hereof.

DocuSign Envelope ID: FA6C0401-9A2E-4AFE-8235-4A3F31941446

6. Term: A period of 55 years commencing on [_____] ("**Commencement Date**") and ending on the day prior to the [_____] anniversary of the Commencement Date ("**Expiration Date**").

7. Basic Fee:

Period	Per Parking Stall Per Year	Total Fee Per Year
[Year 1 beginning at project lease up]	[$300.00]	[4,800]
[Years 2 -55]	[$300.00 plus 2.5% annual escalator]	[4,920 (Year 2)]
[_____]	[_____]	[_____]

8. Permitted Use: 16 Reserved spaces for residents of Eden's Downtown Livermore Apartments

9. Permitted Users: Defined in Section 1 of this Agreement, below.

This Agreement shall consist of the foregoing Basic Lease Provisions and the provisions of the Standard Lease Provisions (which follow) and Exhibits A through C, inclusive, all of which are incorporated herein by this reference as of the Effective Date. In the event of any conflict between the provisions of the Basic Lease Provisions and the provisions of the Standard Lease Provisions, the Standard Lease Provisions shall control. Any initially capitalized terms used herein and not otherwise defined shall have the meanings set forth in the Basic Lease Provisions.

DocuSign Envelope ID: FA6C0401-9A2E-4AFE-8235-4A3F31941446

STANDARD LEASE PROVISIONS

1. **Lease of Premises**. Lessor hereby grants to Leasee an irrevocable and exclusive Lease (the "**Lease**") to use the Premises and all [_____] parking stalls comprising the Premises, and Leasee hereby accepts such Lease for use of the Premises and all [_____] parking stalls comprising the Premises from Lessor, for the Term of this Agreement (as provided below and as such Term may be extended as provided herein), and upon all of the terms, covenants and conditions contained in this Agreement. Lessor acknowledges and agrees that (i) Leasee is the [_____] to certain real property located [_____] and described on Exhibit C attached hereto (the "**Benefitted Parcels**"), (ii) the Lease rights granted to Leasee in this Agreement are appurtenant to and benefit the Benefitted Parcels, shall run with the lands comprising the Benefitted Parcels, and shall inure to the benefit of Leasee and its designated successors and assigns in interest as [_____] of the Benefited Parcels, and (iii) Leasee shall have the right to subLease and grant rights of use of the Premises and all [_____] parking stalls comprising the Premises to any employees of Leasee as well as to any and all tenants and occupants of any portion of the Benefitted Parcels, all as may be designated by Leasee, its successors and assigns in interest as to the Benefitted Parcels (each and all such designated third parties together with Leasee and its successors and assigns as [_____] of the Benefitted Parcels, being individually a "**Permitted User**" and collectively, "**Permitted Users**") for the Term of this Lease, as the same may be extended as provided in this Agreement. Leasee acknowledges that Lessor has not made any representations or warranties with respect to the condition of the Premises or the Garage or with respect to the suitability or fitness of any of the same for Leasee's Permitted Use other than for the parking of vehicles therein. Lessor shall have no obligation to construct improvements for Leasee or to repair or refurbish the Premises except as set forth in this Agreement, and the Premises will be delivered to Leasee in its "AS IS" condition. The taking of possession of the Premises by Leasee shall be conclusive evidence that Leasee accepts the Premises "AS IS" and that the Premises is suited for Leasee's Permitted Use (subject to the completion of certain improvements to be completed by Leasee as provided herein which are intended to provide exclusive use of the Premises and parking stalls therein for the Term of this Agreement, as extended), and the Premises is in good and satisfactory condition at the time such possession is taken.

2. **Term and Commencement Date**. Unless earlier terminated in accordance with the provisions hereof, the initial Term of this Agreement shall be the period set forth in Item 6 of the Basic Lease Provisions. The Term of this Agreement shall commence on the Commencement Date set forth in Item 6 of the Basic Lease Provisions.

3. **Purpose**. Leasee hereby acknowledges and agrees that this Agreement provides Leasee and Permitted Users designated by Leasee only with the right to use only the Premises and all parking stalls comprising the Premises for the Permitted Use set forth in Item 8 of the Basic Lease Provisions and that Leasee and such designated Permitted Users shall have no right to use the Premises for any use other than the Permitted Use or to use any other portion of the Garage for the Permitted Use, other than such portions of the Garage including the main entry gates, ramps and drive aisles as are necessary to access the Premises and all parking stalls comprising the Premises. In order to enforce the restriction on Leasee and its designated Permitted Users to use only the Premises for the Permitted Use and the prohibition on Leasee and its designated Permitted Users from using any other portion of the Garage other than as

necessary to access the Premises and all parking stalls comprising the Premises, Lessor shall, at Leasee's sole cost and expense, install a scanning system at the Garage, and/or a card key access gate to limit access to the Premises and parking stalls comprising the Premises to solely those designated Permitted Users identified by Leasee to Lessor as to whom Leasee has provided access cards to the Garage and the Premises parking gate. The card key access gate shall be designed by Lessor's parking garage operator for the Garage and shall be subject to Lessor's and Leasee's review and approval of the plans and specifications for the card key access gate, which approval shall not be unreasonably withheld, conditioned or delayed by either Lessor or Leasee). In addition, the cost of the card key access gate (to be paid for by Leasee) shall be subject to approval by Leasee, not to be unreasonably withheld. Leasee shall reimburse Lessor for the previously approved cost incurred by Lessor to install either the scanning system or card key access gate within ten (10) business days of receipt by Leasee of written notice from Lessor and copies of invoices therefor. In the event of the failure by any individual Permitted User to park only in the Premises, such individual Permitted User shall be required to pay the maximum daily rate then being charged by Landlord at the Garage, and the continued failure by such individual Permitted User to park only in the Premises after written notice from Lessor shall provide Lessor with the right to refuse entry into the Garage by such individual Permitted User in the same manner and subject to compliance with the same laws as are applicable to public parking garage users. In no event shall any default or breach by any individual Permitted User constitute a default by Leasee or result in the loss of any parking stalls comprising the Premises or result in any termination of this Lease Agreement or diminution in the total number of parking stalls that are to be provided to Leasee hereunder.

So long as Leasee and all Permitted Users comply with any commercially reasonable security rules and regulations that Lessor may reasonably deem necessary for the safety of the Garage or the Premises, Leasee and all Permitted Users shall have access to the Garage and the Premises 24 hours per day, 7 days per week. Such access shall be subject to full or partial closures which may be required from time to time for construction, maintenance, repairs, actual or threatened emergency or other events or circumstances which make it reasonably necessary to temporarily deny, restrict or limit access in an equitable and non-discriminatory fashion as among all users of the Garage including Permitted Users under this Agreement.

4. **Rent**.

(a) **Basic Fee**. Leasee shall pay to Lessor the Basic Fee set forth in Item 7 of the Basic Lease Provisions. Leasee shall pay, without notice or demand, to Lessor or Lessor's agent at the address set forth in Item 4 of the Basic Lease Provisions, or at such other place as Lessor may from time to time designate in writing, in currency or a check for currency which, at the time of payment, is legal tender for private or public debts in the United States of America, the Basic Fee as set forth in Item 7 of the Basic Lease Provisions, payable in advance on or before the first day of each and every month during the Term of this Agreement, without any setoff or deduction whatsoever, except as provided in this Agreement. The Basic Fee for any fractional month shall be a prorated. Leasee shall pay the first full month's Basic Fee set forth in Item 7 of the Basic Lease Provisions upon execution of this Agreement prior to any use of the Premises. All other fees and expenses incurred will be invoiced by Lessor and are due and payable within

DocuSign Envelope ID: FA6C0401-9A2E-4AFE-8235-4A3F31941446

thirty (30) days of the date of the invoice. Basic Fee and all other fees shall collectively be referred to as "Rent" in this Agreement.

(b) **Late Charge**. If any installment of the Basic Fee or any other amount due from Leasee shall not be received by Lessor or Lessor's designee within five (5) days after said amount is due, then Leasee shall pay to Lessor a late charge equal to [_____] percent of the amount due; provided, however that the foregoing late charge shall be waived for the first such late payment of the Basic Fee or any other amount due from Leasee during each twelve (12) month period of the Term of this Agreement, provided, that, such payment is made by Leasee within ten (10) days of the date such payment is due. The right to require the late charge shall be in addition to all of Lessor's other rights and remedies hereunder or at law and shall not be construed as liquidated damages or as limiting Lessor's remedies in any manner. In addition to the late charge described above, any Basic Fee or other amount owing hereunder which is not paid within five (5) days after the date they are due shall thereafter bear interest until paid at a rate equal to [_____].

(c) **All Payments as Rent**. Any and all payments of Basic Fee, and any and all fees, charges, costs, expenses, insurance obligations and all other payments, disbursements or reimbursements which are attributable to, payable by or the responsibility of Leasee under and by reason of this Agreement are payable as additional rent and shall constitute "rent" within the meaning of California Civil Code Section 1951(a) whether or not the same are designated as such; and shall be due and payable within ten (10) days following demand or together with the next succeeding installment of Basic Fee, whichever shall first occur, and Lessor shall have the same remedies therefor as for a default in the payment of Basic Fee.

5. **Interruption**. Leasee agrees that Lessor shall not be liable for damages, for any failure by Lessor to comply with the terms and conditions of this Agreement, when such failure or delay or diminution is not occasioned by Lessor's negligence or willful misconduct, but is occasioned, in whole or in part, by necessary repairs, replacements, or improvements, by any strike, lockout or other labor trouble, or by inability to secure electricity for lighting of the Garage, after reasonable effort to do so, by any accident or casualty whatsoever, by act or default of Leasee or other parties, or by any other cause beyond Lessor's reasonable control; and such failures or delays or diminution shall never be deemed to constitute an eviction or disturbance of Leasee's use and possession of the Premises or relieve Leasee from paying any fees due hereunder or performing any of its obligations under this Agreement; provided, however, if for any of the foregoing reasons or any other reasons not due to the negligence or willful misconduct of Leasee and/or the Permitted Users, any portion of the Premises or any parking stalls therein shall not be available for use by any Permitted Users during normal business hours of 7:00 a.m. to 6:00 p.m. Mondays through Fridays for five (5) consecutive business days, then Lessor shall use its commercially reasonable efforts to provide replacement parking within the Garage for each displaced/unavailable parking stall of the Premises at no additional charge to Leasee or any Permitted Users, or Leasee shall receive a credit against the Basic Fee for each such business day or portion thereof (following the expiration of the first five (5) business days thereof) that the total number of parking stalls comprising the Premises are not available to Leasee and the Permitted Users, such credit to be based upon the ratio that the number of parking stalls which

are not available to Leasee and the Permitted Users bears to the [_____] parking stalls in the Premises to be provided to Leasee and the Permitted Users.

6. **Insurance**. Leasee shall, at its expense, procure and keep in full force and effect during the entire Term the following insurance policies, providing the following coverage to Leasee and Lessor, and their respective property managers, trustees, beneficiaries, directors, officers, employees, partners, agents and other representatives:

(a) Workers' compensation insurance in accordance with the laws of the State of California to the extent required with waiver of subrogation;

(b) Employer's liability insurance for occupational accidents or diseases, for limits of not less than [_____] Dollars for any one occurrence;

(c) Commercial general liability insurance (or commercial garage liability) on an occurrence form basis with limits of not less than [_____] per occurrence (provided Leasee shall carry a minimum annual aggregate limit of [_____] and Umbrella liability insurance, in excess following form, with an annual aggregate limit of not less than [_____]); provided, however that so long as Leasee carries Umbrella liability insurance, in excess following form, with an annual aggregate limit of not less than [_____], individual tenant entities which are Permitted Users will not be required to carry any such Umbrella liability insurance;

(d) Automobile liability insurance covering losses for owned, non-owned or hired vehicles including comprehensive and collision coverage with a limit of not less than [_____] per occurrence.

All expenses incurred by Leasee and any third-party tenants in obtaining insurance policies required under this Section 6 shall be paid by Leasee or such third party tenants.

Lessor shall, at its expense, procure and keep in full force and effect during the entire Term and any subsequent term created by any extension or renewal of this Agreement, and shall cause its parking garage operator for the Garage and any valet parking operator or other concessionaire for the Garage to procure and keep in force at all times, the following insurance policies, providing the following coverage to Lessor, and its property managers, trustees, beneficiaries, directors, officers, employees, partners, agents and its other representatives:

(e) Workers' compensation insurance in accordance with the laws of the State of California to the extent required;

(f) Employer's liability insurance for occupational accidents or diseases, for limits of not less than [_____] Dollars for any one occurrence; and

(g) Commercial general liability insurance, or, with respect to the Garage operator, Commercial garage keepers liability (including coverage for damage to automobiles in the care, custody or control of the Garage operator, manager and any concessionaires of the Garage), each on an occurrence form basis with limits of not less

DocuSign Envelope ID: FA6C0401-9A2E-4AFE-8235-4A3F31941446

than [_____] per occurrence (provided Lessor shall carry a minimum annual aggregate limit of [_____] and umbrella liability insurance, in excess following form, with an annual aggregate limit of not less than [_____]).

All expenses incurred by Lessor and any third-party parking garage operators, valet parking operators and other concessionaires in obtaining insurance policies required under this Section 8 shall be paid by Lessor or such third parties.

All insurance required under Sections 8(a) through (d) shall be in such companies as shall be reasonably satisfactory to Lessor, and all such policies shall provide that they may not be canceled or altered without at least ten (10) days' prior written notice to Lessor. All insurance carried by Leasee and its tenants or any other Permitted Users shall be primary and non-contributory as respects the Premises. All insurance carried by Lessor shall be primary and non-contributory as respects the Garage exclusive of the Premises. Leasee shall promptly deliver commercially reasonable, satisfactory certificates of such insurance to Lessor and certificates for any renewal policies shall be obtained and delivered to Lessor at least ten (10) days prior to the expiration of any policies furnished hereunder. In addition to the requirements set forth in this Section 8, the insurance required under this Sections 8(a) through (d) must be issued by an insurance company with a rating of no less than [_____] or that is otherwise acceptable to Lessor, and admitted to engage in the business of insurance in the State in which the Building is located.

Lessor agrees to have its insurance company issuing property damage insurance and workers compensation insurance waive any rights of subrogation that such company may have against Leasee, and Lessor hereby waives any right that it may have against Leasee on account of any loss or damage to the Garage or any other Lessor's property to the extent such loss or damage is insurable under policies of insurance for fire and all risk coverage, theft, public liability or other similar insurance and as to any workers compensation claims.

Leasee agrees to have its insurance company issuing property damage insurance and workers compensation insurance waive any rights of subrogation that such company may have against Lessor, and Leasee hereby waives any right that it may have against Lessor on account of any loss or damage to Leasee's property to the extent such loss or damage is insurable under policies of insurance for fire and all risk coverage, theft, public liability, or other similar insurance and as to any workers compensation claims.

7. **Waiver of Claims and Indemnity**.

(a) **Waiver of Claims**. To the extent permitted by applicable law, Lessor and the Lessor Indemnified Parties shall not be liable for any damage to any of Leasee's personal property entrusted to Lessor, and its employees or agents, nor for loss of damage to any of Leasee's personal property (including without limitation, the personal property of any Permitted User) by theft or otherwise, except to the extent arising out of the gross negligence or willful misconduct of Lessor or any Lessor Indemnified Parties. The foregoing shall not constitute a release or waiver by Leasee or any Leasee Indemnified Parties (as defined below) as to any parking garage operator of the Garage, any valet parking operator or other concessionaire of the Garage respecting the negligence or

DocuSign Envelope ID: FA6C0401-9A2E-4AFE-8235-4A3F31941446

willful misconduct of any such parties. Lessor and the Lessor Indemnified Parties shall not be liable for any latent or patent defects in the Premises or the Garage or for any consequential damages arising out of any loss of use of the Premises. Leasee shall look solely to Lessor to enforce Lessor's obligations hereunder and shall not seek any damages against any of the Lessor Indemnified Parties (provided, however, nothing contained in this Section will preclude any Permitted Users from seeking separately damages or any other remedy as against Lessor or any parking garage operator of the Garage, any valet parking operator or other concessionaire of the Garage respecting the negligence or willful misconduct of any such parties). As used herein, "**Lessor Indemnified Parties**" shall mean Lessor's managing agent and Lessor's and its managing agent's respective parent companies and/or corporations, their respective controlled, associated, affiliated and subsidiary companies and/or corporations and their respective representatives, members, partners, shareholders, officers, directors, employees, agents, representatives, trustees, consultants, successors, assigns or lenders of any type.

(b) To the extent permitted by applicable law, neither Leasee nor any Leasee Indemnified Parties shall be liable for any damage to the Garage or any of Lessor's personal property (including without limitation, by actions of any individual Permitted Users or by theft or otherwise) except to the extent arising out of the gross negligence or willful misconduct of Leasee or any Leasee Indemnified Parties. The foregoing shall not constitute a release or waiver by Lessor or any Lessor Indemnified Parties (as defined below) as to any Permitted Users respecting the negligence or willful misconduct of any such Permitted Users. Lessor shall look solely to Leasee to enforce Leasee's obligations hereunder and shall not seek any damages against any of the Leasee Indemnified Parties (provided, however, nothing contained in this Section will preclude Lessor from seeking separately damages or any other remedy as against any Permitted Users arising out of the use of the Garage by any such Permitted Users including, without limitations as respects any negligence or willful misconduct of any such Permitted Users). As used herein, "**Leasee Indemnified Parties**" shall mean Leasee's property manager, managing agent and Leasee's and its property manager and managing agent's respective parent companies and/or corporations, their respective controlled, associated, affiliated and subsidiary companies and/or corporations and their respective representatives, members, partners, shareholders, officers, directors, employees, agents, representatives, trustees, consultants, successors, assigns or lenders of any type, and any tenants of Leasee who Lease use of parking spaces in the Garage to any employees of such tenants.

(c) **Indemnification**.

(i) Lessor to the fullest extent permitted by law, agrees to indemnify, protect, defend and hold Leasee and the Leasee Indemnified Parties harmless from and against any and all claims, damages, costs, losses and liabilities: (1) arising from or out of the gross negligence or willful misconduct of Lessor or its agents, contractors or employees, or (2) arising from or out of any breach, infringement, violation or non-performance of any term, covenant or condition of this Agreement on the part of Lessor to be performed and observed hereunder. Leasee to the fullest extent permitted by law, agrees to indemnify, protect, defend and hold Lessor and the Lessor Indemnified Parties

DocuSign Envelope ID: FA6C0401-9A2E-4AFE-8235-4A3F31941446

harmless from and against any and all claims, damages, costs, losses and liabilities: (1) arising from or out of any occurrence in, upon, around or at the Premises or the occupancy or use of the Premises or any part thereof by, through or under Leasee or its authorized agents, employees, contractors and/or direct tenant entity sublessees (but not as to any individual Permitted Users which do not qualify as Leasee's authorized agents, employees, contractors and/or direct tenant entity sublessees), (2) arising from or out of all acts, failures, errors, omissions, willful misconduct or negligence of Leasee, its authorized agents, employees, contractors and/or, direct tenant entity sublessees (but not as to any individual Permitted Users which do not qualify as Leasee's authorized agents, employees, contractors and/or direct tenant entity sublessees) which occur in or about the Premises or anywhere else within or about the Garage, or (3) arising from or out of any breach, infringement, violation or non-performance of any term, covenant or condition of this Agreement on the part of Leasee to be performed and observed hereunder.

(ii) In the event Leasee or any of Leasee's Indemnified Parties are involved in any litigation covered by Lessor's indemnity as herein provided, Lessor shall defend Leasee and/or Leasee's Indemnified Parties, as applicable, and shall pay all judgments, claims, damages, liabilities and expenses (including without limitation, attorneys' fees and disbursements) in connection with the litigation, unless it is determined that Leasee has breached its obligations hereunder or is otherwise liable under Leasee's indemnity of Lessor herein. Lessor shall advise Leasee promptly, in writing of the service upon Leasee or Leasee's Indemnified Parties of any summons, notices, letters or other communications alleging any claim or liability against Leasee's Indemnified Parties or with respect to the property or its surrounding area. In the event Lessor or any of Lessor's Indemnified Parties are involved in any litigation covered by Leasee's indemnity as herein provided, Leasee shall defend Lessor and/or Lessor's Indemnified Parties, as applicable, and shall pay all judgments, claims, damages, liabilities and expenses (including without limitation, attorneys' fees and disbursements) in connection with the litigation, unless it is determined that Lessor has breached its obligations hereunder, or is otherwise liable under Lessor's indemnity of Leasee herein. Leasee shall advise Lessor promptly, in writing of the service upon Lessor or Lessor's Indemnified Parties of any summons, notices, letters or other communications alleging any claim or liability against Lessor's Indemnified Parties or with respect to the property or its surrounding area.

(iii) The provisions of this Section 9 shall survive the expiration or sooner termination of this Agreement. Leasee shall give prompt notice to Lessor of any occurrence within the Premises or the Garage for which Leasee may be liable to Lessor. Lessor shall give prompt notice to Leasee of any occurrence within the Premises or the Garage for which Lessor may be liable to Leasee. Any indemnity contained in this Agreement for the benefit of Lessor shall be deemed to inure to the benefit of Lessor's Indemnified Parties as well. Any indemnity contained in this Agreement for the benefit of Leasee shall be deemed to inure to the benefit of Leasee's Indemnified Parties as well.

(d) **Survival of Indemnities**. The provisions of Sections 9 (a) and (b) together with any other indemnification provisions of this Agreement shall survive the

DocuSign Envelope ID: FA6C0401-9A2E-4AFE-8235-4A3F31941446

expiration or termination of this Agreement with respect to any claims, expenses or liability occurring prior to such expiration or termination. Lessor's and Leasee's covenants, agreements and indemnification obligations in Sections 9(a) and (b) above are not intended to and shall not relieve any insurance carrier of its obligations under policies required to be carried by Lessor or Leasee pursuant to the provisions of this Agreement

8. **Attorneys' Fees**. If either Lessor or Leasee shall commence any action or other proceeding against the other arising out of, or relating to, this Agreement or the Premises, the prevailing party shall be entitled to recover from the losing party, in addition to any other relief, its actual attorneys' fees and costs irrespective of whether or not the action or other proceeding is prosecuted to judgment and irrespective of any court schedule of reasonable attorneys' fees.

9. **Surrender of Premises; Holding Over**. Upon the expiration or earlier termination of this Agreement, Lessor shall have the right to turn off all card keys issued to Leasee and all Permitted Users under this Agreement which allow access to the Garage and to the Premises parking stalls and Leasee shall remove all of its property from the Premises (including all access gates and parking identification signs).

10. **Assignment and Sublicensing**. Leasee shall have the right to assign or subLease the Lease rights granted herein to any and all successors in interest to Leasee as [_____] of any of the Benefitted Parcels to which Leasee expressly assigns in writing such rights and to any and all tenants and occupants of the Benefitted Parcels noted in Section 1 of this Agreement which Leasee identifies to Lessor as Permitted Users and to whom Leasee issues access cards for access to the Garage and the Premises parking stalls as provided in this Agreement. Leasee shall also have the right to pledge its interest in this Agreement as security for any mortgage encumbering any Benefitted Parcels or any portion thereof, pursuant to a form prepared by Leasee's lender and to be subject to the reasonable approval of Lessor and Leasee, such Collateral Assignment to include a consent by Lessor to such pledge of Leasee's rights under this Agreement to Leasee's lender. Except as provided in the foregoing sentences, Leasee shall not assign or otherwise transfer this Agreement or any interest hereunder (all of the foregoing are hereinafter sometimes referred to collectively as "**Transfers**" and any person to whom any Transfer is made or sought to be made is hereinafter sometimes referred to as a "**Transferee**"). Upon any Transfer of this Lease to a designated successor owner of any of the Benefitted Parcels and assumption of such Transfer by the Transferee owner, such Transfer shall relieve Leasee of further obligation and liability under this Agreement.

11. **Rules and Regulations**. Lessor shall provide a copy of the rules and regulations set forth in Exhibit B hereto, as the same may from time to time be amended, to each Permitted User receiving access to the Garage from time to time under this Agreement.

12. **Estoppel Certificate**. At any time, within ten (10) business days following any written request which either party may make from time to time, Leasee or Lessor, as applicable, shall execute and deliver to the other (or to the Holders or any prospective holders of a Mortgage and/or purchasers or prospective purchasers or transferees) without charge, a written statement, duly acknowledged (an "**Estoppel Certificate**"): (a) ratifying this Agreement, (b) confirming the Commencement Date and Expiration Date, (c) certifying that this Agreement is in full force and effect and has not been assigned, modified, supplemented or amended, except by such

DocuSign Envelope ID: FA6C0401-9A2E-4AFE-8235-4A3F31941446

writings as shall be stated, (d) certifying that Lessor and Leasee have each fulfilled their respective obligations under this Agreement as of the date of such Estoppel Certificate, except such as shall be stated, (e) certifying that there are no defenses or offsets against enforcement of this Agreement by either party, except such as shall be stated; (f) reciting the amount of Basic Fee and additional rent then payable monthly and (g) certifying as to such other matters concerning this Agreement as may be reasonably required by either party or the holder of a Mortgage.

13. **Default by Leasee**.

(a) **Events of Default**. The occurrence of any of the following shall constitute a material default and breach of this Agreement on the part of Leasee (an "**Event of Default**"): (i) any failure by Leasee to pay any installment of Basic Fee or any other charge of item of rent required to be paid under this Agreement, or any part thereof, within fifteen (15) business days of notice that same is due, which notice shall be in lieu of and not in addition to any notice required under Section 1161 of the California Code of Civil Procedure or any similar or successor law, or (ii) the failure of Leasee to perform or breach of any obligations, agreement or covenant under this Agreement (other than as specified above), where such failure or breach continues for 30 days after Leasee's receipt of written notice of such failure; provided, however, that if the nature of the default is such that it cannot be cured within 30 days, Leasee shall not be in default of this Agreement if Leasee promptly after notice from Lessor commences to cure the default within the 30 day period and thereafter diligently prosecutes the same to completion. The 30 day notice described herein shall be in lieu of, and not in addition to, any notice required under Section 1161 of the California Code of Civil Procedure or any other law now or hereafter in effect requiring that notice of default be given prior to the commencement of an unlawful detainer or other legal proceeding. Any failure to pay Basic Fee and any other monetary obligation to be paid by Leasee under this Agreement which is specifically designated as "rent" in this Agreement shall be construed as a failure to perform the obligation for payment of rent.

(b) **Remedies**. Upon an Event of Default, in addition to any other remedies available to Lessor at law or in equity, Lessor shall have the immediate right to deny Leasee access to and/or use of the Premises and to terminate this Agreement and all rights of Leasee hereunder by giving Leasee written notice of such election to terminate.

14. **Damage By Fire or Other Casualty**.

(a) **Agreement Governs**. The provisions of this Agreement, including this Section 17, constitute an express agreement between Lessor and Leasee with respect to any and all damage to, or destruction of, all or any part of the Premises or any other portion of the Garage by fire or other casualty ("**Damage**") and no statute or regulation which is inconsistent with this Section 17, now or hereafter in effect, including without limitation, Sections 1932(2) and 1933(4) of the California Civil Code, shall have any application to this Agreement with respect to any damage or destruction to all or any part of the Premises or any other portion of the Garage.

(b) **Damage to the Premises and/or the Garage**. If the Premises and/or the Garage or any portion thereof required for Leasee and the Permitted Users to access and use the Premises and the [_____] parking stalls comprising the Premises suffer Damage, then Lessor shall have the option, to be exercised by written notice to Leasee within thirty (30) days after the date Lessor is informed of the Damage, either (i) if more than one-half (1/2) of the Garage is subject to Damage, to terminate this Agreement as of the date not less than thirty (30) days nor more than sixty (60) days after Lessor's notice to Leasee (although rent shall be abated until such termination in the manner and to the extent provided in Section 17(c)), or (ii) to repair the base building portion of the Garage due to such Damage with reasonable diligence and subject to reasonable delays for insurance adjustment and other matters beyond Lessor's reasonable control, in which event this Agreement shall continue in full force and effect, and the Basic Fee shall be abated in the manner and to the extent provided in Section 17(c).

(c) **Abatement of Basic Fee**. If the Premises and/or the Garage or any portion thereof is rendered untenantable or inaccessible and is not used by Leasee and the Permitted Users as a result of Damage, the Basic Fee pro rated as to the number of parking stalls comprising the Premises as are rendered untenantable or inaccessible shall be abated for such time as the Premises and/or the Garage or any portion thereof remain untenantable and are not used by Leasee and the Permitted Users, in the proportion that the number of parking stalls allocated to Leasee that are rendered untenantable or inaccessible and are not used by Leasee and the Permitted Users bears to the [_____] parking stalls in the Premises; provided, however, there shall be no abatement of Basic Fee if Lessor provides to Leasee replacement parking stalls in the Garage for all or any parking stalls which are rendered untenantable or inaccessible by reason of such Damage.

(d) **Destruction of Leasee's Personal Property**. In the event of any Damage to or destruction of the Premises or the Garage, under no circumstances shall Lessor be required to repair any injury, or damage to, or make any repairs to or replacements of any of Leasee's equipment, vehicles and other property or effects of Leasee placed in the Premises by or on behalf of Leasee. Lessor shall have no responsibility for any contents placed or kept in or on the Premises and/or the Garage by Leasee or Leasee's employees, agents, contractors or any Permitted Users, except to the extent of the gross negligence or willful misconduct of Lessor or its agents, employees, Leasees or contractors.

Lessor shall not be liable for any loss of business, inconvenience or annoyance to Leasee arising from any Damage or any repair or restoration of any portion of the Premises and/or the Garage as a result of any Damage.

(e) **Property Damage**. Any Garage employee to whom any property shall be entrusted by or on behalf of Leasee shall be deemed to be acting as Leasee's agent with respect to such property and neither Lessor nor its agents shall be liable for any damage to property of Leasee or others entrusted to employees of the Garage, nor for the loss of or damage to any property of Leasee by theft or otherwise. Neither Lessor nor its agents shall be liable for any injury or damage to persons or property or interruption of Leasee's business resulting from fire, explosion, falling plaster, steam, gas, electricity, water, rain or snow, leaks or other perils from any part of the Garage or from the pipes, appliances or

DocuSign Envelope ID: FA6C0401-9A2E-4AFE-8235-4A3F31941446

plumbing works or from the roof, street or subsurface or from any other place or by dampness or by any other cause of whatsoever nature, except to the extent of the gross negligence or willful misconduct of Lessor or any of its agents, employees, Leasees or contractors; nor shall Lessor or its agents be liable for any such damage caused by other persons in the Garage or caused by construction of any private, public or quasi public work; nor shall Lessor be liable for any latent defect in the Premises or in the Garage.

15. **Eminent Domain**.

(a) **Total or Partial Taking**. If all or any portion of the Premises and/or the Garage is taken or appropriated under the power of eminent domain or conveyed in lieu thereof, such that any of Leasee's [_____] parking stalls are rendered untenantable or inaccessible, and provided Lessor is unable to relocate any such parking stalls to other locations of the Garage which are tenantable and accessible, then Lessor shall have the right to terminate this Agreement at its option as to all such parking stalls rendered untenantable or inaccessible, exercisable within sixty (60) days of such taking or conveyance, in which event the Basic Fee payable hereunder shall be reduced pro rata based the number of parking stalls which are rendered untenantable or inaccessible as compared to Leasee's total of [_____] parking stalls. This Agreement shall remain in effect in the event that and to the extent that the effectiveness of this Agreement is necessary under applicable laws to allow Lessor to obtain or receive any award of compensation in connection with the exercise of such power of eminent domain. In such events, Lessor shall receive (and Leasee shall assign to Lessor upon demand from Lessor) any income, rent, award or any interest therein which may be paid in connection with the exercise of such power of eminent domain and Leasee shall have no claim against Lessor for any part of the sums paid by virtue of such proceedings or for the value of the unexpired portion of the Term, it being the intent of the parties hereto that Leasee shall have no right to recover or make any claim upon any such sums. Leasee hereby waives any and all rights it might otherwise have pursuant to 1265.130 of the California Code of Civil Procedures.

(b) **Temporary Taking**. Notwithstanding anything to the contrary contained in this Section 18, if the temporary use of any part of the Premises shall be taken or appropriated under the power of eminent domain during the Term, this Agreement shall be and remain unaffected by such taking or appropriation provided the Basic Fee shall abate for any and all parking stalls within the Premises which are taken or appropriated.

16. **Impossibility of Performance**. Neither Lessor nor Leasee shall be bound to the terms and conditions of this contract if failure to perform pursuant to this Agreement is due to fire, flood, strike, storms, disasters, or the acts of God, or any other cause beyond the control of the parties.

17. **Non-Waiver**. Lessor's decision not to enforce any provision of this Agreement, including any exhibit, shall not mean that Lessor has waived its rights to do so at any time.

18. **Notices**. Except as otherwise in this Agreement provided, notice or communication which Lessor may desire or be required to give to Leasee shall be deemed

DocuSign Envelope ID: FA6C0401-9A2E-4AFE-8235-4A3F31941446

sufficiently given or rendered if, in writing, delivered to Leasee personally or sent by registered or certified mail addressed to Leasee at the address set forth in Item 5 of the Basic Lease Provisions and shall be deemed to be at the time when the same is delivered to Leasee or mailed. Any notice by Leasee to Lessor must be served by registered or certified mail addressed to Lessor at the address set forth in Item 3 of the Basic Lease Provisions.

19. **Binding Agreement**. Each party hereto represents and warrants to the other that this Agreement is duly executed by such party and is a valid, binding obligation of each such party.

20. **No Amendments**. This Agreement, including all attachments and exhibits hereto sets forth the entire understanding between the parties and may not be altered or amended except by another writing executed by both parties.

21. **Alterations**. Following the Commencement Date, Leasee will not make or cause to be made any alterations, installations, improvements, additions or other physical changes in or about the Premises without obtaining the prior written consent of Lessor thereto, which Lessor shall have the right to withhold in its sole and absolute discretion.

22. **Maintenance**. Lessor, at its sole cost and expense, will maintain and repair the Garage and all portions thereof, consistent with the manner in which it stands as of the date hereof; provided, however, if such maintenance and repairs are caused in whole or in part by the act, neglect, fault or omission by Leasee, its agents, contractors, employees, or Permitted Users, Leasee shall pay to Lessor, as additional rent, the reasonable cost of such maintenance and repairs. Subject to Section 7 of this Agreement, Lessor shall not be liable to Leasee for any failure to make any such repairs, or to perform any maintenance hereunder, and there shall be no abatement of rent and no liability of Lessor by reason of any injury to or interference with Leasee's business arising from the making of or a failure to make any repairs, alterations or improvements in or to any portion of the Premises or the Project or in or to fixtures, appurtenances and equipment therein. Leasee hereby waives and releases its right to make repairs at Lessor's expense under Sections 1941 and 1942 of the California Civil Code; or under any similar law, statute, or ordinance now or hereafter in effect. Leasee shall advise Lessor of the need for any repairs or replacements to the Premises and/or the Garage which are Lessor's responsibility under this Agreement.

Leasee shall at its cost, repair all damages to the Premises caused by any installations made by Leasee or the moving or removing of Leasee's property in or to the Premises.

23. **Requirements of Law**. Except with respect to customary quantities of hazardous materials commonly found in automobiles, including, without limitation, gasoline and petroleum and petroleum by-products ("**Automotive Haz Mats**"), Leasee shall not transport, use, store, maintain, generate, manufacture, handle, dispose, release or discharge any hazardous material (as defined by any applicable law) upon or about the Premises and/or the Garage, nor permit Leasee's employees, invitees or Leasees or other occupants of the Premises to engage in such activities upon or about the Premises and/or the Garage. If any hazardous material other than Automotive Haz Mats is released, discharged or disposed of by Leasee, Leasee's employees, invitees or Leasees or any other occupant of the Premises, on or about the Premises and/or the

DocuSign Envelope ID: FA6C0401-9A2E-4AFE-8235-4A3F31941446

Garage, Leasee shall immediately, properly and in compliance with applicable laws clean up and remove, or cause the Permitted User responsible for such hazardous material to remove, the hazardous material from the Premises and/or the Garage and any other affected property and clean or replace any affected personal property (whether or not owned by Lessor), at Leasee's expense. Such clean up and removal work shall be subject to Lessor's prior written approval (except in emergencies), not to be unreasonably withheld, and shall include, without limitation, any testing, investigation, and the preparation and implementation of any remedial action plan required by any governmental body having jurisdiction or reasonably required by Lessor. If Leasee shall fail to comply with the provisions of this Section 26 within five (5) days after written notice by Lessor, or such shorter time as may be required by applicable law or in order to minimize any hazard to persons or property, Lessor may (but shall not be obligated to) arrange for such compliance directly or as Leasee's agent through contractors or other parties selected by Lessor, at Leasee's expense (without limiting Lessor's other remedies under this Agreement or applicable law).

24. **Limitation of Liability**.

(a) Lessor's obligations under this Agreement will not be binding upon Lessor after the sale, conveyance, assignment or transfer by Lessor of its interest in the Premises, and in the event of any such sale, conveyance, assignment or transfer, Lessor will be and hereby is entirely freed and relieved of all covenants and obligations of Lessor hereunder to the extent that such transferee assumes Lessor's obligations under this Agreement, subject to the terms hereof. None of Lessor's Indemnified Parties shall be liable for the performance of Lessor's obligations under this Agreement. Leasee will look solely to Lessor to enforce Lessor's obligations hereunder and shall not seek any damages against any of Lessor's Indemnified Parties. Lessor's liability for its obligations under this Agreement will be limited to Lessor's interest in the Garage and Leasee will not look to any other property or assets of Lessor or the property or assets of any of the Lessor's Indemnified Parties in seeking either to enforce Lessor's obligations under this Agreement or to satisfy a judgment for Lessor's failure to perform such obligations. In no event shall Lessor (or any Lessor Indemnified Parties) ever be liable for incidental or consequential damages.

(b) Leasee's obligations under this Agreement will not be binding upon Leasee after the Transfer by Leasee of its interest in this Agreement pursuant to the terms and conditions of Section 12, and in the event of any such Transfer, Leasee will be and hereby is entirely freed and relieved of all covenants and obligations of Leasee hereunder to the extent that the Transferee assumes Leasee's obligations under this Agreement, subject to the terms hereof. None of Leasee's Indemnified parties shall be liable for the performance of Leasee's obligations under this Agreement. Lessor will look solely to Leasee to enforce Leasee's obligations hereunder and shall not seek any damages against any of Leasee's Indemnified Parties or any Permitted Users for performance of this Agreement by Leasee (provided, however, nothing contained in this Section 28(b) will preclude Lessor from seeking separately damages or any other remedy as against any Permitted Users arising out of the use of the Garage by any such Permitted Users). Leasee's liability for its obligations under this Agreement will be limited to Leasee's interest in the Benefitted Parcels and Lessor will not look to any other property or assets of Leasee or the property or assets of any of the Leasee's Indemnified Parties in seeking either to enforce Leasee's obligations under this Agreement or to satisfy a judgment for Leasee's

DocuSign Envelope ID: FA6C0401-9A2E-4AFE-8235-4A3F31941446

failure to perform such obligations. In no event shall Leasee (or any Leasee Indemnified Parties) ever be liable for incidental or consequential damages).

25. **Entry**. Lessor reserves the right at all reasonable times to enter the Premises to (a) inspect them; (b) show the Premises to prospective purchasers, mortgagees or Leasees, or to the ground or underlying lessors; (c) post notices of nonresponsibility; or (d) alter, improve or repair the Premises or the Garage if necessary to comply with current building codes or other applicable laws, or for structural alterations, repairs or improvements to the Garage. In addition to the foregoing, Lessor may enter the Premises at any time to (i) perform services required of Lessor; (ii) take possession due to any breach of this Agreement in the manner provided herein; and (iii) perform any covenants of Leasee which Leasee fails to perform. Any such entries shall be without the abatement of the Basic Fee and shall include the right to take such reasonable steps as required to accomplish the stated purposes. Leasee hereby waives any claims for damages or for any injuries or inconvenience to or interference with Leasee's business, lost profits, any loss of occupancy or quiet enjoyment of the Premises, and any other loss occasioned thereby, except to the extent attributable to the gross negligence or willful misconduct of Lessor or any employee, agent or contractor of Lessor. Any entry into the Premises in the manner herein before described shall not be deemed to be a forcible or unlawful entry into, or a detainer of, the Premises, or an actual or constructive eviction of Leasee from any portion of the Premises.

26. **Partial Invalidity**. If any term, provision or condition contained in this Agreement shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such term, provision or condition to persons or circumstances other than those with respect to which it is invalid or unenforceable, shall not be affected thereby, and each and every other term, provision and condition of this Agreement shall be valid and enforceable to the fullest extent possible permitted by law.

27. **No Warranty**. In executing and delivering this Agreement, Leasee has not relied on any representation or any warranty or any statement of Lessor which is not set forth herein or in one or more of the exhibits attached hereto.

28. **Governing Law**. This Agreement shall be construed and enforced in accordance with the laws of the State of California.

29. **Signage**. Except to the extent expressly provided in this Section 36, Leasee shall not place or install (or permit to be placed or installed) any signs, advertisements, logos, identifying materials, pictures or names of any type on the Premises or the Garage. Subject to the compliance with applicable laws and such Garage signage criteria as Lessor shall apply from time to time and subject to receipt of Lessor's prior written consent, which shall not be unreasonably withheld, conditioned or delayed, Leasee may at its sole cost and expense install appropriate directional and identification signage for the Premises (including reserved parking signage and markings) and for any or all parking stalls comprising the Premises. The exact location, size, style, color, materials and lighting of Leasee's signage shall be consistent and compatible with the Garage's signage criteria and the cost of installation, maintenance, insurance, removal and utilities for all such Leasee identification signs shall be at Leasee's sole cost and expense.

DocuSign Envelope ID: FA6C0401-9A2E-4AFE-8235-4A3F31941446

30. **No Liens**. Leasee has no authority or power to cause or permit any lien or encumbrance of any kind whatsoever, whether created by act of Leasee, operation of law or otherwise, to attach to or be placed upon the Garage or Premises, and any and all liens and encumbrances created by Leasee shall attach to Leasee's interest only. Lessor shall have the right at all times to post and keep posted on the Premises any notice which it deems necessary for protection from such liens. Leasee covenants and agrees not to suffer or permit any lien of mechanics or materialmen or others to be placed against the Garage or the Premises with respect to work or services claimed to have been performed for or materials claimed to have been furnished to Leasee or the Premises, and, in case of any such lien attaching or notice of any lien, Leasee covenants and agrees to cause it to be immediately released and removed of record. Notwithstanding anything to the contrary set forth in this Agreement, in the event that such lien is not released and removed on or before the date which is five (5) business days following notice of such lien is delivered by Lessor to Leasee, Lessor, at its sole option, may immediately take all action necessary to release and remove such lien, without any duty to investigate the validity thereof, and all reasonable, actual and documented sums, costs and expenses, including reasonable attorneys' fees and costs, incurred by Lessor in connection with such lien shall be deemed immediately due and payable by Leasee.

31. **Recordation**. Each party shall have the right to require that the other execute and deliver for recordation a memorandum of Lease to provide notice that the Garage and the Benefitted Parcels are subject to the terms and conditions of this Agreement ("**Memo of Lease**"), which shall be recorded against the title of both the Garage and the Benefitted Parcels. Upon the expiration or earlier termination of this Agreement, the party who shall have recorded the Memo of Lease ("**Recording Party**") shall, at its sole cost and expense, remove the Memo of Lease from title of the Garage and the Benefitted Parcels, failing which the Recording Party hereby authorizes the other party to so remove the Memo of Lease from title of the Garage and the Benefitted Parcels.

32. **Entire Agreement**. It is understood and acknowledged that there are no oral agreements between the parties hereto affecting this Agreement and this Agreement supersedes and cancels any and all previous negotiations, arrangements, brochures, agreements and understandings, if any, between the parties hereto or displayed by Lessor to Leasee with respect to the subject matter thereof, and none thereof shall be used to interpret or construe this Agreement. This Agreement and any side letter or separate agreement executed by Lessor and Leasee in connection with this Agreement and dated of even date herewith contain all of the terms, covenants, conditions, warranties and agreements of the parties relating in any manner to the rental, use and occupancy of the Premises, shall be considered to be the only agreement between the parties hereto and their representatives and agents, and none of the terms, covenants, conditions or provisions of this Agreement can be modified, deleted or added to except in writing signed by the parties hereto. All negotiations and oral agreements acceptable to both parties have been merged into and are included herein. There are no other representations or warranties between the parties, and all reliance with respect to representations is based totally upon the representations and agreements contained in this Agreement.

*[*SIGNATURES ON NEXT PAGE*]*

DocuSign Envelope ID: FA6C0401-9A2E-4AFE-8235-4A3F31941446

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first above written.

Leasee:

[_____]

By: _____
Name: _____
Title: _____

Lessor:

[_____]

By: _____
Name: _____
Title: _____

DocuSign Envelope ID: FA6C0401-9A2E-4AFE-8235-4A3F31941446

EXHIBIT A

PREMISES

DocuSign Envelope ID: FA6C0401-9A2E-4AFE-8235-4A3F31941446

655 EXHIBIT B

656

657 RULES AND REGULATIONS

DocuSign Envelope ID: FA6C0401-9A2E-4AFE-8235-4A3F31941446

658

659 EXHIBIT C

660 [BENEFITTED PARCELS LEGAL DESCRIPTION]

661

LANGUAGE FROM AGREEMENT FOR THE CONSTRUCTION OF AND IMPROVEMENTS TO VETERANS PARK

Resolution No. 2022-085 approved the following language in the *Amended and Restated Disposition, Development and Loan Agreement* for the construction of and improvements to Veterans Park

Section 2.1 Definitions

(hhh) “Veterans Park Improvements” is defined as the constructed improvements within the Veterans Park Parcel which shall be entitled and designed at the sole discretion of the City.

Section 3.5 Construction and Financing for Veterans Park Improvements.

The Parties agree that the Developer will manage the construction of the Veterans Park Improvements but that the City will pay for the costs of the Veterans Park Improvements at its sole expense. City and Developer will negotiate a future construction management and reimbursement agreement to coordinate the construction of the Veterans Park Improvements. The Agreement shall authorize reimbursement for the construction of the park, per the designs and specifications issued by the City, and shall not exceed Five Million Five Hundred Thousand Dollars ($ 5,500,000) (not including any grants obtained by Developer to help fund the construction costs), without additional approval of the City Council. The Agreement and the procurement of the contractor who will build the park shall comply with all applicable local, state, and federal procurement laws to the extent such laws apply. These improvements would be exclusive of any development loan provided by the City for development of the Project.

Similarly, Resolution No. 2022-085 approved minor language in two other sections in the *Amended and Restated Disposition, Development and Loan Agreement* that contain language related to the construction of and improvements to Veterans Park (underlined):

Section 7.3 City Review.

Except for the activities to be performed by or on behalf of the City as otherwise contemplated herein, the Developer shall be solely responsible for all aspects of the Developer's conduct in connection with the Project, including, but not limited to, the quality and suitability of the Project Documents, the supervision of construction work for the Project and the Veterans Park Improvements, and the qualifications, financial condition,

and performance of all architects, engineers, contractors, subcontractors, suppliers, consultants, and property managers. Except for the activities to be performed by or on behalf of the City as otherwise contemplated herein, 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 8.2 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, subject to Force Majeure requirements in Section 13.4 of this Agreement. As between the City and the Developer, except for, Veterans Park Improvements, and work contemplated by the Cooperation and Indemnity Agreement referenced in section 6.2, above, the Developer shall be solely responsible for the construction of the Improvements, including all costs of construction (except for the EVA Improvement Reimbursables referenced in Section 3.4).

LIVERMORE
CALIFORNIA

CITY COUNCIL STAFF REPORT **ITEM NO. 10.1**

DATE: June 24, 2024

TO: Honorable Mayor and City Council

FROM: Marianna Marysheva, City Manager

SUBJECT: Supplemental materials received prior to the meeting.

RECOMMENDED ACTION

SUMMARY

These materials were posted online and made available to the public at the same time that they were distributed to the City Council.

5.5	Resolution approving Final Tract Map 8657; authorizing execution of a Subdivision Improvement Agreement for the Triad Drive East Development (Amarone); and accepting on behalf of the public all real property offered for dedication within the Final Tract Map 8657 except for the certain easements which City Council reserves the right to accept at a future date. Material: Memo and Revised Exhibit B Subdivision Improvement Agreement
5.11	Resolution adopting the Police Tow Service Franchise Fee Schedule. Material: Public Comment
6.1	Hearing to receive and consider all evidence and reports regarding the adoption of a Master Fee Schedule. The Master Fee Schedule establishes fees for City services. The fee resolution and accompanying justification includes new, increased, and decreased fees into one document. Material: PowerPoint Presentation
6.2	Hearing on Police Department Tow Franchise Proposals for RFP & Q No. 4262 to grant a non-exclusive tow franchise agreement, for a five-year term, from July 1, 2024 - June 30, 2029 Material: PowerPoint Presentation

7.1	Appointment of Council Members to the City Council Subcommittee on Advisory Bodies for the period of July 1, 2024 - December 31, 2024. Material: PowerPoint Presentation
7.2	Certification of referendum petition against Resolution No. 2022-085, action to either repeal the resolution, or call for an election for the voters to approve or set aside the legislative acts in the resolution for the construction of and improvements to Veterans Park, and consideration of a companion resolution ratifying the Amended and Restated Disposition, Development and Loan Agreement with Eden Housing, Inc. Materials: PowerPoint Presentation, Memo, Revised Exhibit C to the Resolution Calling for Election. Exhibit C now contains the language from the Petition signed by the citers that accompanied the summary, and Public Comment
8.0	Council Committee Reports and Matters Initiated by City Manager, City Attorney, Staff, and Council Members Material: Council Reports

DISCUSSION

ATTACHMENTS

1. Supplemental Materials

Prepared by: Helena Graves
Deputy City Clerk

Approved by:

Marianna Marysheva
City Manager

Fiscal Review by:

Tina Olson
Administrative Services Director

CITY OF LIVERMORE CALIFORNIA

INTEROFFICE MEMORANDUM

Date: June 24, 2024

To: Honorable Mayor and City Council

From: Brent Smith, Community Development Director
Jarrett Rasmussen, Assistant Civil Engineer
Farnoush Levers, Assistant City Engineer

Subject: Item 5.5: Resolution approving Final Tract Map 8657 and Subdivision Improvement Agreement for the Triad East project at the northeast corner of North Canyons Parkway & Triad Drive.

This memo is to notify that there has been a change to the uploaded Subdivision Improvement Agreement, Exhibit B to the resolution.

Additional exhibits were removed from the document and the page numbering and exhibit labeling was revised to meet the County's recording standard.

No fee for recording pursuant to
Government Code Section 27383 and 27388.1

RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:

City Clerk
City of Livermore
1052 So. Livermore Avenue
Livermore, California 94550

24-0211

SUBDIVISION IMPROVEMENT AGREEMENT

THIS AGREEMENT is entered into by and between Civic Triad East, LLC ("Developer") and the City of Livermore, a municipal corporation ("City").

RECITALS

A. 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, Tract Map No. 8657 Recorded under Series No. , dated , Official Records of Alameda County, California.

B. The City requires, as a condition precedent to the acceptance and approval of the map, the dedication of public ways shown on the map. In addition, the City requires improvement of the streets, and public ways by the construction and installation of grading, paving, landscaping, curbs, gutters, sidewalks, storm drains, sanitary sewers, street name signs, survey monuments, water pipes and mains, fire hydrants, and all appurtenances thereto.

C. The Developer has asked the City to accept the dedication of the public improvements and approve the map. Public improvements have not yet been completed according to the requirements of the map and the City. As consideration for the acceptance of the final map and offer of dedication, the parties desire to establish an agreement binding the Developer to complete the public improvements prior to occupancy of the first residential dwelling unit other than a model home but in any event no later than one year after the date this Agreement is executed, excepting those improvements with a different completion date as outlined in the attached Exhibit A, or Section 3 Special Conditions of this Agreement, if applicable.

AGREEMENT

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

1. Approval of Map - The City approves the subdivision of Tract No. 8657 and agrees to accept the dedication of the related public works improvements for future maintenance.

2. Performance of Improvements - The Developer shall perform all work as specified in the Engineering Considerations at Exhibit "A", attached and incorporated herein by this reference, in strict accordance with all specifications, plans, applicable City standards, and to the satisfaction of the City Engineer. The work shall be performed, and all materials and labor shall be provided,

at the Developer's sole cost and expense. The Developer has 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 May 2024, sheets 1-71), and current City standard specifications and details all of which are on file in the office of the City Engineer.

3. Special Conditions - The Developer shall be required to comply with the special conditions as follows:

A. The Developer shall provide final approved PG&E plans prior to occupancy.

B. Following construction and prior to tract acceptance by the City Council, the Developer shall provide CASp certification for all pedestrian improvements within public right-of-way as outlined in the conditions of approval.

C. The Developer shall submit a Traffic control plan for City review and encroachment permit within 30 days of City Council Final Map approval and prior to the pre-construction meeting for the project.

D. Prior to occupancy, the Developer shall record deed notification provided in the Livermore Executive Airport – Airport Land Use Compatibility Plan, Chapter 3.3.4.6, on the parcels for which this discretionary development permit is issued.

E. In the event a Specific Plan Transportation Management Association (TMA) is formed for the Isabel Neighborhood, Tract Map No. 8657 project shall annex into the association (Specific Plan Policy TRA-22).

F. In the event a programmatic Specific Plan parking management plan is created, Tract Map No. 8657 shall be subject to the parking management plan (Specific Plan Policy TRA-26).

G. In the event a programmatic Specific Plan wayfinding signage plan is created, Tract Map No. 8657 shall be subject to the signage plan (Specific Plan Policy DS-24).

H. On April 18, 2023, Developer submitted a completed preliminary application pursuant to SB 330 and as a result was subject to the City's development standards and fees that were in place as of the submittal date. However, the City may apply fee increases that result from an automatic annual adjustment based on an independently published cost index as referenced in the ordinance or resolution establishing the fee or other monetary exaction.

4. Time for Completion - All required improvements shall be complete and ready for acceptance by City Council as determined by the City Engineer prior to the occupancy of the first residential dwelling unit other than a model home but in any event no later than two years after the of execution of this Agreement, except those improvements for which another completion date is stated in Exhibit "A" or Section 3, Special Conditions, of this Agreement, if applicable.

5. Permits, Licenses, and Compliance with the Law - The Developer shall, at the Developer's expense, obtain and maintain all necessary permits and licenses for the performance of the work specified in this Agreement. The Developer shall also comply with all local, state, and federal laws, whether or not said laws are expressly stated in this Agreement.

6. Acceptance by City - The City shall accept for maintenance the public works improvements required by this Agreement after City has determined the Developer has caused all improvements to have been made in accordance with the requirements of Paragraph 2 above. All public works improvements required by this Agreement shall become the sole property of the City when the City accepts such improvements for permanent maintenance.

7. Continued Maintenance For One Year - The Developer shall maintain all improvements required by this Agreement, as outlined in Section 2 above, for one year following the completion by the Developer, and acceptance of the improvements by City Council. All public works improvements required by this Agreement shall become the sole property of the City when the City accepts such improvements for permanent maintenance.

8. Inspection by City – All work done by the Developer shall be inspected by an inspector employed by the City at the cost and expense of the Developer. The Developer shall pay the City, on demand, the cost of the inspection in accordance with City ordinances. In order to permit the City to inspect the Work, the Developer shall provide to the City proper and safe access to the Project site at all times, and all portions of the Work, and to all shops wherein portions of the Work are in preparation.

9. Payment of Outstanding Fees - Prior to acceptance of the on-tract and off-tract public works improvements for permanent maintenance by the City, the Developer shall pay all outstanding fees that are due in accordance with City Ordinances or this Agreement. In the event the fees are not paid within one year of the date of execution of this Agreement, the Developer shall pay interest at seven percent (7%) per annum from that date until the fees are paid, whether or not any conditions of this Agreement are extended or modified.

10. Reversion to Acreage - If the Developer fails to perform its obligations under this Agreement, Developer consents to the reversion to acreage of the land, which is the subject to this Agreement pursuant to Government Code section 66499.16 and to bear all applicable costs.

11. Property Acquisition - If the Developer is unable to acquire property required for the construction of required improvements, the Developer agrees to execute an agreement drafted by the City enabling the City to provide for acquisition through eminent domain.

12. Bonds Required - The Developer shall provide to the City surety bonds of a form satisfactory to the City Attorney issued by a company authorized to issue surety bonds in the State of California as follows:

(a) At the time of signing this Agreement, the following bonds shall be provided:

i. Faithful Performance – in the amount of 100 percent of the total estimated construction costs, or $7,860,743, to secure faithful performance of this Agreement by the Developer.

ii. Labor and Materials – in the amount of fifty percent of the estimated construction costs, or $3,930,372, to secure payment by the Developer of laborers and material engaged pursuant to this Agreement, and further to secure payment as required by the Unemployment Insurance Act.

(b) At the time of signing this Agreement, or before the City accepts the improvements,

the Developer shall also provide a Warranty Bond for maintenance in the amount of fifteen percent of the cost of the improvements, or $1,179,112, to secure performance of Section 7 above. This bond shall remain in effect for one (1) year after the date of acceptance by the City Council of the improvements required by this Agreement.

13. Alternate Security - In lieu of the bonds required by paragraph 12 above, alternative security in the form outlined by City Ordinance, compliant with the Government Code, and approved by the City Attorney may be provided.

14. Reporting Damages - If any damage (including personal injury, death, or property damage) occurs in connection with the performance of this Agreement, the Developer shall immediately notify the City Risk Manager's office by telephone at (925) 960-4172, and Developer shall promptly submit to the City's Risk Manager a written report, in a form acceptable to the City, with the following information: (a) a detailed description of the damage (including the name and address of the injured or deceased person(s), and a description of the damaged property, if any), (b) the name(s) and address(es) of witnesses, and (c) the name(s) and address(es) of any potential insurance companies.

15. Indemnification - The Developer shall indemnify, defend, and hold the City, its officers, officials, employees, agents, and volunteers harmless against any and all claims, injuries, damages, losses, and suits, including attorney fees and legal costs, arising out of or in connection with the performance of this Agreement, except for injuries and damages caused solely by the negligence of the City.

16. Insurance Required - Developer shall procure and maintain insurance for the duration of the contract in the amounts and under the terms set forth in Exhibit "B" against claims for injuries to persons or damages to property, which may arise from or in connection with the performance of the work hereunder by the Developer, his agents, representatives, employees, or subcontractors.

17. Participation in Benefit Districts - The Developer shall participate in all Benefit Districts formed by the City prior to the execution of this Agreement and shall pay the prorata fee due the City under the terms of Benefit District(s) as applied to the real property covered by this Agreement.

18. Attorney's Fees to Prevailing Party - If any action at law or in equity, including an action for declaratory relief, is brought to challenge, enforce, or interpret the provisions of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees, expert witness fees, and costs, in addition to any other relief to which they may be entitled.

19. Developer Obligations to Pay City Expenses to Defend Agreement - If the City chooses to defend any third party claim or suit challenging any action taken by the City with regard to any procedure or aspect of this agreement, including the environmental review process for the project, the Property Owner agrees to reimburse the City for attorneys' fees, expert witness fees, and other 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. City has the right to choose and retain such legal counsel, as the City deems appropriate. After expenses reach $100,000 and for 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 regarding the allocation of expenses among the parties.

20. Agreement Binds Successors - This Agreement pertains to and runs with the land benefited by the privileges it grants and binds the successors in interest of the parties to this Agreement. This Agreement shall be recorded in the Official Records of Alameda County.

21. Severability - If any term of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, the Agreement shall be construed as not containing that term, and the remainder of this Agreement shall remain in full force and effect; provided, however, this paragraph shall not be applied to the extent that it would result in a frustration of the parties' intent under this Agreement.

22. Modifications - This Agreement may not be modified unless by written instrument signed by both parties.

23. Governing Law - The interpretation, validity and enforcement of this Agreement shall be governed by and interpreted in accordance with the laws of the State of California. Any suit, claim, or legal proceeding of any kind related to this Agreement shall be filed and heard in a court of competent jurisdiction in the County of Alameda.

****

Signatures and Attachment List on the Next Page

DEVELOPER:
CIVIC TRIAD EAST, LLC

Dated:

4/29/2024

By: Ryan Parlett
Title: President

Mailing Address:
1500 Willow Pass Court
Concord, CA, 94520

(ALL SIGNATURES MUST BE NOTARIZED)

CITY OF LIVERMORE,
a municipal corporation

Dated:

MAYOR

ATTEST:

City Clerk

APPROVED AS TO FORM:

Assistant/City Attorney

Attachments:
Exhibit A – Engineering Considerations
Exhibit B – Insurance Requirements

CALIFORNIA ALL-PURPOSE CERTIFICATE OF 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 Contra Costa

On April 29, 2024 before me, Laurel Nunez, Notary Public,
(Here insert name and title of the officer)

personally appeared Ryan Parlett,

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.

Laurel Nunez
Signature of Notary Public

LAUREL NUNEZ
Notary Public - California
Contra Costa County
Commission # 2425856
My Comm. Expires Nov 8, 2026
(Notary Seal)

ADDITIONAL OPTIONAL INFORMATION

DESCRIPTION OF THE ATTACHED DOCUMENT

(Title or description of attached document)

(Title or description of attached document continued)

Number of Pages ____ Document Date_____

(Additional information)

CAPACITY CLAIMED BY THE SIGNER

- ☐ Individual (s)
- ☐ Corporate Officer

(Title)

- ☐ Partner(s)
- ☐ Attorney-in-Fact
- ☐ Trustee(s)
- ☐ Other _____

INSTRUCTIONS FOR COMPLETING THIS FORM

Any acknowledgment completed in California must contain verbiage exactly as appears above in the notary section or a separate acknowledgment form must be properly completed and attached to that document. The only exception is if a document is to be recorded outside of California. In such instances, any alternative acknowledgment verbiage as may be printed on such a document so long as the verbiage does not require the notary to do something that is illegal for a notary in California (i.e. certifying the authorized capacity of the signer). Please check the document carefully for proper notarial wording and attach this form if required.

- State and County information must be the State and County where the document signer(s) personally appeared before the notary public for acknowledgment.
- Date of notarization must be the date that the signer(s) personally appeared which must also be the same date the acknowledgment is completed.
- The notary public must print his or her name as it appears within his or her commission followed by a comma and then your title (notary public).
- Print the name(s) of document signer(s) who personally appear at the time of notarization.
- Indicate the correct singular or plural forms by crossing off incorrect forms (i.e. ~~he~~/she/~~they,~~ is /~~are~~) or circling the correct forms. Failure to correctly indicate this information may lead to rejection of document recording.
- The notary seal impression must be clear and photographically reproducible. Impression must not cover text or lines. If seal impression smudges, re-seal if a sufficient area permits, otherwise complete a different acknowledgment form.
- Signature of the notary public must match the signature on file with the office of the county clerk.
  - Additional information is not required but could help to ensure this acknowledgment is not misused or attached to a different document.
  - Indicate title or type of attached document, number of pages and date.
  - Indicate the capacity claimed by the signer. If the claimed capacity is a corporate officer, indicate the title (i.e. CEO, CFO, Secretary).
- Securely attach this document to the signed document

© 2004-2015 ProLink Signing Service, Inc. – All Rights Reserved www.TheProLink.com – Nationwide Notary Service

DATE: March 30, 2023

ENGINEERING CONSIDERATIONS - EXHIBIT "A"
(Subject to revision prior to final approval
by Planning Commission and City Council)

TENTATIVE TRACT: 8657 (SUB22-005)

LOCATION: East Corner of Portola and Triad Place

APPLICANT: Denova Homes

Note: Special conditions are shown in standard type. Standard conditions that apply to this project are shown in italics. In addition, standard conditions of approval for this project are listed in Section II of the Development Plan Check and Procedures Manual.

1. DEFINITIONS

For the purpose of this agreement, the following words shall have the meanings respectively ascribed to them by this section:

Developer :	*Person(s) or Corporation(s) signing final map(s) and subdivision agreement(s)*
Improvement Plans:	*Construction drawings for required public and private improvements*
Services:	*Utility lateral, or any portions of a conduit cable or duct, between a utility distribution line and the site it serves*
Project:	*The work to be performed by Developer*

2. VESTING TENTATIVE MAP

Approval or conditional approval of this vesting tentative map shall not limit the City Engineer's ability to require workable designs on future grading and improvement plans based upon these Engineering Considerations and the City's standard engineering specifications and details.

3. GENERAL

The project shall be in conformance with all City Ordinances, rules, regulations, and policies. The conditions listed below are particularly pertinent to this permit and shall not be construed to permit violation of other laws and policies not so listed.

All required improvements shall be constructed prior to occupancy of the new residential units on this site.

A. IMPROVEMENT PLANS - Exhibit A-1

An engineered improvement plan shall be prepared by the Developer for approval by the City's Departments (including the Community Development, Public Services, Fire, and Police Department), which shall include, but not necessarily be limited to, existing site conditions, dedications, grading plans, street design and grades, curb, gutter, sidewalk and driveway grades, and type, size and location of all public works improvements as herein required. Approval of this tentative map does not constitute approval of the details shown thereon. If there is any conflict between the tentative map and these Engineering Considerations, the Engineering Considerations shall govern.

No specific phased development plan has been submitted with this tentative tract application. Therefore, all required improvements for this tentative map shall be constructed as one phase. A phased map could only be considered if a specific phasing plan is submitted for consideration as a tentative map amendment.

B. STANDARDS FOR IMPROVEMENT PLANS AND MAPS

All improvement plans and maps shall conform to the following City of Livermore documents except as modified by these engineering considerations:

1. *City of Livermore Standard Specifications and Details*
2. *Development Plan Check and Procedures Manual*

Completed final map and improvement plan checklists from the manual entitled "City of Livermore, Development Plan Check and Procedures Manual" shall be submitted with the first plan check submittal for each phase.

Prior to approval of the improvement plans by the City, the Developer shall provide signed and approved plans from outside utilities, including joint trench plans. Outside utilities include but are not limited to PG&E, CalWater, and Comcast.

C. STANDARD CONDITIONS OF APPROVAL IN THE DEVELOPMENT PLAN CHECK AND PROCEDURES MANUAL

All of the standard conditions of approval for subdivisions and major projects as listed in Part II of the City of Livermore Development Plan Check and Procedures Manual apply except for the following: A-2, A-4, A-10, B-7, B-8, B-9, B-10, B-11, B-13, B-14, B-16, K-1, K-2, K-3

D. WORK IN OTHER JURISDICTIONS

The Developer is responsible for obtaining permits and approvals for construction work and property acquisition that are required by agencies other than the City of Livermore. Other agencies may include but are not limited to Alameda County Zone 7, Livermore Area Recreation and Park District, Caltrans, FHWA, FEMA, Army Corps of Engineers, Alameda County Environmental Health. Any work required by other agencies must be shown on the final set of improvement plans and approved by the subject agency prior to approval of the improvement plan set for the project by

the City.

4. STREETS

A. SPECIFIC REQUIREMENTS:

The Developer shall offer easements and dedications for, and shall improve his share of the ultimate street widths for the following named streets in accordance with the City's General Plan:

North Canyons Parkway

North Canyons Parkway is a major street in the General Plan. Along the project frontage North Canyons Parkway is a 4 lane road with a landscaped median to accommodate turning lanes and a Class 2 bike lane in each direction.

The Isabel Neighborhood Specific Plan (INSP) requires that the existing bike lane at the project location be replaced with a new Class 4 separated bike lane with separated buffer along the project frontage. Installation of this Class 4 bike lane shall include a physical raised barrier.

To accommodate the Class 4 bike lane the westbound lanes of North Canyons Parkway along the project frontage shall be reconfigured as follows:

8' bike lane
8' buffer area
11' travel lane
11' travel lane
11' left turn lane at Triad Place

The Class 4 bike lane will be comprised of an 8' bike lane and 8' buffer area. The buffer area shall be designed with a combination of median buffer planters and open segments to provide cyclists with both a travel lane separated from traffic and periodic openings with breakaway bollards to enter and exit the buffered bike lane. The median buffer planters shall be approximately 60' in length and 8' wide and have 6" deep curbs. Each median buffer planter shall be planted with 3 street trees per standard detail L-3G with groundcover and/or hardscape per standard detail L-2B. Median buffer planting shall be reviewed and approved by the Community Development Department. City Engineer may modify the final lane widths shown above as needed to fit within available right-of-way.

Final design of the Class 4 bike lane shall include but is not limited to appropriate transitions to and from the existing Class 2a to the Class 4 bike lane; modifications to signing and striping; traffic signal timing, irrigation of planter area, any surface treatments and/or structures, and any necessary utility services needed for the maintenance of the median buffer planter.

Triad Drive

Triad Drive is a local street and is fully improved along the project frontage. To coordinate with the main entry on Triad Drive for the project, the Developer shall shorten the southbound left turn

lane on Triad Drive to 150 feet at the North Canyons Parkway intersection and modify the detection zones for the southbound left turn lane to accommodate the new turn lane length.

Relinquishment of abutter's rights shall be provided on the final map for the project where none exists today, except where the project entrance is located.

Interior Streets

Interior Streets A, B, C and D are local private streets which shall be 26 feet wide with no on-street parking except where guest parking stalls are located. Interior alleys are local private streets which shall be 20 feet wide with no on street parking. All private interior streets will be designated as Commons to distinguish them from public streets.

CASp Certification for Public Walkways/Sidewalks

The Developer shall have a certified CASp Specialist review and certify that the design for all pedestrian improvements within the public right-of-way or a public easement complies with the following applicable regulations: American with Disabilities Act (ADA) requirements, the Public Rights-of-Way Accessibility Guidelines (PROWAG), and the requirements found in Chapter 11B of the 2019 California Building Code. If an accessibility design cannot meet the above listed applicable standards, the Developer shall propose and the CASp Specialist shall concur with a design exception request for approval by the City Engineer or their designee. In addition, the Developer shall have the certified CASp Specialist inspect and certify that pedestrian improvements are installed per the CASp certified design. Pedestrian improvements include new trails, walkways, sidewalks, accessible ramps, connections between existing and new pedestrian improvements, and modifications to existing pedestrian improvements within or adjacent to the project site, as shown on the approved plans.

Developer shall upgrade or install new pedestrian access ramps at all pedestrian crossings of public streets or driveways within or adjacent to the project.

Emergency Vehicle Access

The proposed emergency vehicle access shall be designed to be an all weather access for emergency vehicles and must be able to withstand a vehicle loading of 75,000 lbs. The Developer shall dedicate and Emergency Vehicle Access Easement on the map and shall enter into an maintenance agreement with the City to ensure the ensure the long term maintenance of the emergency vehicle access. It will not be necessary to require abutters rights at this location because the easement will provide ingress and egress rights for emergency vehicles only.

5. TRAFFIC SIGNALS – N/A

6. TRAFFIC IMPACT FEE CREDITS AND REIMBURSEMENTS: N/A

7. SANITARY SEWERS

Because the Developer has chosen to install the City standard asphalt street section for the private streets with only specialty paving (i.e. pavers, stamped concrete, stamped asphalt, etc.) in a few areas to act as "accents" to the project entry or other areas as approved by the City Engineer, the sanitary sewer may be publicly maintained. However, in order to facilitate the maintenance and repair of the public sanitary sewer lines in the future, the Developer shall install a casing for the pipe or other pipe protective measures as approved by the City Engineer, in all locations where the pipe runs under specialty paving. Additionally, no pipe joints will be allowed in specialty paving areas.

Sewer shall be extended across all frontages of each phase.

Sewer laterals with two-way cleanouts behind the curb shall be installed to each lot or site before the streets are surfaced.

8. STORM WATER DRAINAGE AND TREATMENT REQUIREMENTS

A. General

1. This site is subject to the National Pollutant Discharge Elimination System (NPDES) Program. Prior to the issuance of the initial grading or building permit, the Developer shall provide evidence that the site is covered by the statewide General Permit to Discharge Storm Water associated with construction activity. This requires confirmation that a Notice of Intent (NOI) and the applicable fee was sent to the State Water Resources Control Board. In addition, the grading plans need to state: "All grading shall be in accordance with the Storm Water Pollution Prevention Plan prepared by the Developer per the Notice of Intent on file with the State Water Resources Control Board".

2. Necessary interceptor ditches shall be concrete. Field inlets and storm drainage pipe may be necessary in conjunction with concrete interceptor ditches as secondary drainage releases. All interceptor ditches shall be privately maintained.

B. Storm Drainage Requirements

Per the City's Facilities Planning Guidelines (dated June 2005), the flows must have the following characteristics:

> *For a 10-year design discharge: a hydraulic grade line (HGL) is no higher than 1.25 feet below the top of curb elevation at any manhole or inlet.*
>
> *For a 100-year design discharge: a HGL does not exceed the top of curb elevation. (This is required for item 3 above.)*

For additional detail on these guidelines, the applicant should refer to the following resources: City of Livermore Storm Drain Master Plan & City of Livermore Facilities Planning Guidelines (both available at the Engineering counter at City Hall).

Since the Developer has chosen to build private streets, the storm drain system will be privately owned and maintained by a homeowner's association and maintained to the property line. In order to differentiate the ownership of public and private facilities, the Developer shall provide the additional structures (manholes and or catchbasins) to be installed at the property line.

C. Stormwater Infrastructure Maintenance Funding

The cost to maintain all private storm water infrastructure installed with this project shall be funded by the Developer.

D. Channels N/A

E. Storm Water Treatment, Detention and Low Impact Development Requirements

1. *The Developer shall treat the storm water runoff from this site prior to having the storm water enter the City's storm water distribution system. Stormwater Treatment, Low Impact Development, and Trash Capture is required by the Regional Water Quality Control Board. The Developer shall complete and or update the Stormwater Requirements Checklist. The Developer shall provide a storm water treatment plan with calculations indicating treatment that meets the latest requirements described in Section C.3 of the City's NPDES Permit with the Regional Water Quality Control Board. City approval of this plan and calculations is required prior to the approval of the improvement plans.*

2. *The Developer shall install trash capture devices on catch basins, as needed, to minimize the flow of trash into the City's storm drain system.*

3. *If this project is greater than one acre, the Developer shall provide a Hydrograph Modification Plan (HMP) with calculations in accordance with the Alameda Countywide Cleanwater Program (ACCWP) Bay Area Hydrology Model (BAHM) guidelines. The software for the design of control measures to meet the Flow Duration Control is available to download from* www.bayareamodel.org. *For additional information you may contact Debbie Salgado in the City's Engineering Department at (925-960-4558)*

4. *Prior to final map approval, the applicant shall enter into a maintenance agreement with the City of Livermore for all storm water treatment devices deemed necessary on this site. If the stormwater treatment devices will be maintained by the individual homeowners a cleanout will be necessary at the property lines to allow the residents to maintain their portion of the private stormdrain underdrain. If the stormwater treatment device will be maintained by a Homeowners Association then the cleanouts at each of the property lines may not be needed. The stormdrain treatment devices shall be shown on the plot plans and included in the Operations and Maintenance Agreement. The Operations and Maintenance Agreement(s) shall be recorded prior to recordation of the Final Map.*

F. Stormwater Treatment Infrastructure Maintenance Funding

The cost to maintain all storm water treatment, detention and low impact development infrastructure installed with this project shall be funded by the Developer.

9. REQUIRED SOURCE CONTROL STORMWATER MEASURES

The Regional Water Quality Control Board adopted Order R2-2015-0049 issuing the Alameda Countywide NPDES municipal storm water permit for the Alameda Countywide Clean Water Program. The 17 member agencies, including Livermore, are subject to this permit and all its requirements including the following:

> *"The Permittees shall, as part of their continuous improvement process, submit enhanced new development and significant redevelopment Performance Standards that summarize source control requirements for such projects to limit pollutant generation, discharge, and runoff, to the maximum extent practicable..."*

In accordance with this requirement, the following source control measures, included as part of these Conditions of Approval, shall be implemented as a part of this project.

A. Structural Control Measures

1. Illegal Dumping to Storm Drain Inlets and Waterways

On-site storm drain inlets, except inlets located in landscaped areas, shall be clearly marked with the words "No Dumping! Flows to Bay" on a plastic marker. The plastic markers are available for purchase from the Water Resources Division. For ordering information, please call 925-960-8100. For projects with newly-developed, privately-maintained streets, agency staff will verify that storm drain inlets have been marked before the final sign-off on the project's building permit or encroachment permit.

2. Interior Floor Drains

Approved interior floor drains shall be plumbed to the sanitary sewer system and shall not be connected to the storm drain system. The applicant shall contact the Water Resources Division for specific connection and discharge requirements.

3. Parking Garages

Interior level parking garage floor drains shall be connected to a sand/oil interceptor or equivalent water treatment device approved by the Water Resources Division prior to discharging to the sanitary sewer system.

4. Pesticide/Fertilizer Application and Irrigation

a. Landscaping shall be designed to minimize irrigation and runoff, promote surface infiltration where possible, minimize the use of fertilizers and pesticides that can contribute to storm water pollution, and incorporate appropriate Bay-Friendly Landscaping principles.

b. If a landscaping plan is required as part of a development project application, the plan shall meet the following conditions related to reduction of pesticide use on the project site:

I. Where feasible, landscaping shall be designed and operated to treat storm water runoff by incorporating elements that collect, detain, and infiltrate runoff. In areas that provide detention of water, plants that are tolerant of saturated soil conditions and prolonged exposure to water shall be specified.

II. Plant materials selected shall be appropriate to site specific characteristics such as soil type, topography, climate, amount and timing of sunlight, prevailing winds, rainfall, air movement, patterns of land use, ecological consistency and plant interactions to ensure successful establishment.

III. Existing native trees, shrubs, and ground cover shall be retained and incorporated into the landscape plan to the maximum extent practicable.

IV. Unless otherwise specified, proper maintenance of landscaping shall be the responsibility of the property owner.

V. Integrated pest management (IPM) principles and techniques shall be encouraged as part of the landscaping design. Some examples of IPM principles and techniques include the following:

i. Select plants that are well adapted to soil conditions at the site.

ii. Select plants that are well adapted to sun and shade conditions at the site. Consider future conditions when plants reach maturity. Consider seasonal changes and time of day.

iii. Provide irrigation appropriate to the water requirements of the selected plants.

iv. Select pest and disease resistant plants.

v. Plant a diversity of species to prevent a potential pest infestation from affecting the entire landscaping plan.

vi. Use "insectary" plants in the landscaping to attract and keep beneficial insects.

VI. Landscaping shall also comply with City of Livermore's "Water Efficient Landscape Ordinance". However, areas of a site used for bio-swales or other

landscaped areas that function as a storm water treatment measure shall be exempt from the Water Efficient Landscaping requirements.

VII. An efficient irrigation system shall be installed in areas requiring irrigation. An example of an efficient irrigation system is one that includes a weather-based (automatic, self-adjusting) irrigation controller with a moisture and/or rain sensor shutoff, and in which sprinkler and spray heads are not permitted in areas less than 8 feet wide.

5. Pool, Spa, and Fountain Discharges

a. New or rebuilt swimming pools, hot tubs, spas and fountains must have a connection to the sanitary sewer to facilitate draining. This connection could be a drain in the pool to the sanitary sewer or a cleanout located close enough to the pool so that a hose can readily direct the pool discharge into the sanitary sewer cleanout.

b. When draining is necessary, a hose or other temporary system shall be directed into a sanitary sewer cleanout, or vegetated areas that are large enough to accommodate the volume without allowing the discharged water to flow to the storm drain system or receiving water body.

6. Food Service Equipment Cleaning

a. Food service facilities (including grocery stores) shall have a sink or other container for cleaning floor mats, equipment, and hood filters, which is connected to a grease interceptor prior to discharging to the sanitary sewer system. The cleaning area shall be large enough to allow for the largest type of equipment that must be cleaned at the facility. The cleaning area shall be indoors or in a roofed area outdoors and must be plumbed to the sanitary sewer. The discharge of wastewater from these washing activities to the storm drain system is prohibited. Outdoor cleaning areas shall be designed to prevent storm water run-on from entering the sanitary sewer and to prevent wastewater runoff to the storm drain from washing activities. Signs shall be posted indicating that all food service equipment washing activities shall be conducted in this area.

b. An oil and grease interceptor with a minimum size of 750 gallons is required for all food service facilities (including restaurants and grocery stores). Facilities that do not have any cooking or any other grease generating processes may request an exemption from this requirement.

7. Refuse Areas

a. New or redevelopment projects shall provide a roofed and enclosed area for dumpsters, recycling containers, compactors, and food waste containers. The area shall be designed to prevent water run-on to the area, to prevent runoff from the refuse area and to properly contain litter and trash. Dumpster leakage from covered trash and food compactor

enclosures shall drain to the sanitary sewer via connection to an approved oil and grease interceptor device.

b. Runoff from trash enclosures, recycling areas, and/or food compactor enclosures or similar facilities shall not discharge to the storm drain system. Trash enclosure areas shall be designed to avoid run-on to the trash enclosure area. In most cases, drains are not permitted within trash enclosure areas. A drain, however, must be provided for compactors. If a drain is required in or beneath dumpsters, compactors, and tallow bin areas, it shall be connected to a grease removal device prior to discharging to the sanitary sewer.

8. Outdoor Process Activities/Equipment[1]

a. Process activities shall be performed either indoors or in roofed outdoor areas. If performed outdoors, the area shall be designed to prevent the "run-on" of storm water drainage, as well, as the runoff from the area with process activities.

b. Process equipment areas shall drain to the sanitary sewer system. The applicant shall contact the Water Resources Division for specific connection and discharge requirements.

9. Outdoor Equipment/Materials Storage

a. All outdoor equipment and materials storage areas shall be covered and/or bermed, or shall be designed with Best Management Practices (BMP) that effectively minimize the potential runoff and contact of storm water to pollutants.

b. Storage areas containing non-hazardous liquids shall be covered by a roof and be contained by berms, dikes, liners, vaults or similar spill containment devices.

c. All on-site hazardous materials and wastes, as defined and/or regulated by the California Public Health Code must be used, managed, and stored in compliance with the applicable Livermore Pleasanton Fire Department's requirements and regulations.

10. Vehicle/Equipment and Commercial/Industrial Cleaning

a. Wastewater from vehicle and equipment washing operations shall not be discharged to the storm drain system. Auto dealerships, however, may rinse off vehicle exterior surfaces for appearance purposes, provided only a minimum volume of water is used without soap or other cleaning agents.

b. Commercial/industrial facilities having vehicle/equipment cleaning needs shall either provide a roofed, bermed area for washing activities or discourage vehicle/equipment washing by removing hose bibs (faucets) and installing signs prohibiting such uses.

---

[1] Examples of businesses that may have outdoor process activities and equipment include machine shops and auto repair shops, and industries that have pretreatment facilities.

Vehicle/equipment washing areas shall be paved, designed to prevent run-on to or runoff from the area, and plumbed to drain to the sanitary sewer via an oil water separator with a minimum size of 750-gallons or an approved equivalent pretreatment device.

c. Commercial car wash facilities shall be designed and operated such that no runoff from the facility is discharged to the storm drain system. Wastewater from the facility shall discharge to the sanitary sewer via an oil water separator with a minimum size of 750-gallons or an approved equivalent pretreatment device.

d. All facilities, which discharge wastewater generated from vehicle or equipment washing, must obtain a wastewater discharge permit from the City of Livermore's Water Resources Division prior to the commencement of the discharge.

11. Vehicle/Equipment Repair and Maintenance

a. Vehicle/equipment repair and maintenance shall be performed in a designated area indoors, or if such services must be performed outdoors, in an area designed to prevent the run-on and runoff of storm water. Oil and other automotive fluid change service must always be performed indoors.

b. Secondary containment shall be provided for exterior work areas where hazardous materials or hazardous wastes are used or stored. Drains shall not be installed within the secondary containment areas.

c. Vehicle service facilities shall not contain floor drains.

d. Tanks, containers, or sinks used for parts cleaning or rinsing shall not be connected to the storm drain system. Tanks, containers, or sinks used for such purposes shall not be directly connected to the sanitary sewer. Discharges to the sanitary sewer from such operations require prior approval from the Water Resources Division. The applicant shall contact the Water Resources Division for specific connection and discharge requirements.

12. Fuel Dispensing Areas

a. Fueling areas[2] shall have impermeable surfaces (i.e., portland cement concrete or equivalent smooth impervious surface) that are: a) graded at the minimum slope necessary to prevent ponding; and b) separated from the rest of the site by a grade break that prevents run-on of storm water to the maximum extent practicable.

b. Fueling areas shall be covered by a canopy or roof that extends a minimum of ten feet in each direction from each pump. Roof downspouts from the canopy or roof shall not drain onto the fueling area.

---

[2] The fueling area shall be defined as the area extending a minimum of 6.5 feet from the corner of each fuel dispenser or the length at which the hose and nozzle assembly may be operated plus a minimum of one foot, whichever is greater.

13. Loading Docks

a. Loading docks shall be graded to minimize run-on to and runoff from the loading area. Roof downspouts shall be positioned to direct storm water away from the loading area. Storm water runoff from loading dock areas shall be connected to a post-construction storm water treatment measure(s) prior to discharge to the storm drain system.

b. Door skirts between the trailers and the building shall be installed to prevent exposure of loading activities to rain, unless one of the following conditions applies: the loading dock is covered, or the applicant demonstrates that rainfall will not result in an exposure of storm water to pollutants.

14. Fire Sprinkler Test Water

Provisions shall be made in the project design and construction to allow for the discharge of fire sprinkler test water to an onsite vegetated area. If this is not feasible, provide for discharge to the sanitary sewer in accordance with current plumbing codes.

15. Miscellaneous Drain or Wash Water

a. Boiler drain lines shall be connected to the sanitary sewer system and may not discharge to the storm drain system.

b. For small air conditioning units, air conditioning condensate shall be directed to landscaped areas as a minimum BMP. For large air conditioning units, in new developments or significant redevelopments, condensation lines shall be connected to the sanitary sewer system, wherever feasible.

c. Roof drains shall discharge and drain away from the building foundation to landscaped areas wherever feasible.

d. Washing and/or steam cleaning activities must be performed at an appropriately equipped facility that drains to the sanitary sewer as specified in Section J. Any outdoor washing or pressure washing must be in compliance with the City's Stormwater Management Program requirements and managed in such a way that there is no discharge of soaps or other pollutants to the storm drain system. The applicant shall contact the Water Resources Division for specific discharge requirements.

16. Architectural Copper Installation

Projects with architectural copper should, if possible, purchase copper materials that have been pre-patinated at the factor. Whether patination is done offsite or onsite, applicant should consider coating the copper materials with an impervious coating that prevents further corrosion and runoff. If patination is done on-site, implement one or both of the following:

a. Collect rinse water in a tank and pump to the sanitary sewer. Contact the City of Livermore Water Resources before discharging to the sanitary sewer.

b. Collect the rinse water in a tank and haul off-site for proper disposal.

B. II. OPERATIONAL BMPS

This section details Best Management Practices (BMP) that private property owners and/or the occupants of private property must implement following the construction of projects. Ultimately, the responsibility for implementation of these BMPs rests with the property owners. The City of Livermore's Source Control Program routinely performs inspections of industrial and commercial sites to verify BMP implementation and effectiveness.

1. Paved Sidewalks and Parking Lots

Sidewalks and parking lots shall be swept regularly to minimize the accumulation of litter and debris. Wash water resulting from the pressure washing of parking lots must be captured, pretreated (if necessary) to meet local discharge limits, and discharged to the sanitary sewer. Wash water resulting from the pressure washing of sidewalks may be allowed to drain to the storm drain system provided that (a) no soap or other cleaning agents are used, and (b) all debris are trapped and collected to prevent entry into the storm drain system. Under no circumstances shall washwater containing any soap or other cleaning agents be discharged to the storm drain system.

2. Private Streets, Utilities and Common Areas

a. The owner of private streets and storm drains shall prepare and implement a plan for street sweeping of paved private roads and cleaning of all storm drain inlets.

b. For residential developments, where other maintenance mechanisms are not applicable or otherwise in place, a Property Owners Association, Landscape& Lighting District, or an equivalent mechanism shall be created and shall be responsible for maintaining all private streets and private utilities and other privately owned common areas and facilities on the site including landscaping. These maintenance responsibilities shall include implementing and maintaining storm water BMPs associated with improvements and landscaping. CC&R's creating the association shall be reviewed and approved by the City prior to the recordation of the Final Map and recorded prior to the sale of the first residential unit. The CC&R's or Landscape & Lighting District shall describe how the storm water BMPs associated with privately owned improvements and landscaping shall be maintained and detail contact information for the entity responsible for such maintenance activities.

3. Vehicle/Equipment Repair and Maintenance

a. No person shall dispose of, or permit the disposal, directly or indirectly, of vehicle fluids, hazardous materials, or rinse water from parts cleaning operations into storm drains.

b. No vehicle fluid removal shall be performed outside a building, or on asphalt or ground surfaces, whether inside or outside a building, except in such a manner as to ensure that any spilled fluid will be in an area of secondary containment. Leaking vehicle fluids shall be contained or drained from the vehicle immediately.

c. No person shall leave unattended drip parts or other open containers containing vehicle fluid, unless such containers are in use or in an area that cannot discharge to the storm drain.

4. Fueling Areas

The property owner shall dry sweep the fueling area and spot clean leaks and drips on a routine basis. Fueling areas shall not be washed down with water unless the wash water is collected and prevented from discharging to the storm drain system. Wash water resulting from the pressure washing of fueling areas must be captured, pretreated (if necessary) to meet local discharge limits, and discharged to the sanitary sewer or hauled offsite for proper disposal through a licensed waste hauler.

5. Loading Docks

The property owner shall ensure that BMPs are implemented to prevent potential storm water pollution. These BMPs shall include, but are not limited to, a regular program of sweeping, litter control, and spill clean-up.

6. On-site Storm Drains

All on-site storm drains must be inspected and, if necessary, cleaned at least once a year immediately prior to the rainy season.

7. Architectural Copper Cleaning, Treating or Washing

When cleaning, treating or washing architectural copper features, implement one or both of the following:

a. Collect rinse water in a tank and pump to the sanitary sewer. Contact the City of Livermore Water Resources before discharging to the sanitary sewer.

b. Collect the rinse water in a tank and haul off-site for proper disposal.

10. WATER SUPPLY (CITY)

Because the Developer has chosen to install the City standard asphalt street section for the majority of the streets with only specialty paving (i.e. pavers, stamped concrete, stamped asphalt, etc.) in a few areas to act as "accents" to the project entry or other areas as approved by the City Engineer, the water lines may be publicly maintained. However, in order to facilitate the maintenance and repair of the water lines in the future, the Developer shall install a casing for the pipe or other pipe protective measures as approved by the City Engineer, in all locations where the pipe runs under specialty paving. Additionally, no pipe joints will be allowed in specialty paving areas.

Water mains shall be extended across all frontages of each phase and all waterline valves must notate "EPDM" on the valve body.

Because the project is located within the City of Livermore Water Zone 1, the developer shall install pressure reduction valves (PRVs), backflow prevention devices and appurtenances on the potable and reclaimed water services as directed by the City Engineer.

The fire service backflow preventer(s) shall be effectively screened from the public right-of-way while at the same time preserving ease of maintenance access to the backflow preventer(s). Screening shall be as specified on City Standard Detail W-10A, B and C. The fire service backflow preventer(s) shall meet the performance standards of the backflow preventer shown in City Standard Detail W-10A, B and C.

Because the project is located within a reclaimed water service area, the irrigation system shall be connected to the reclaimed water system. If the Reclaimed water main is not currently located along the sight frontage of this project, the Developer shall extend the water main as necessary to connect to the main along said project site frontage.

Furthermore the Developer shall Prepare a "Reclaimed Water Engineer's Report" for review and shall obtain City approval and State Department of Health Services approval of the "Reclaimed Water Engineer's Report" prior to the approval of the final map.

11. UNDERGROUNDING OF UTILITIES:

All existing and new electric (with the exception of any 60 KV and higher voltage wires) and communication lines along the project frontage and within the project shall be placed underground. Electric, gas, Comcast and SBC utilities are required and shall be placed in a common trench. All electric transformers shall be placed underground.

12. TRAILWAY/BIKEWAY REQUIREMENTS

Active Transportation Plan

Certain portions of this development are within the City of Livermore Active Transportation Plan established and adopted as part of the General Plan. The Developer will be required to dedicate and develop that certain land within and adjacent to this development for various trail and bike way transportation purposes.

13. MEDIANS AND OTHER LANDSCAPED AREAS

Since the City has a new centralized irrigation system with a computer terminal and modem located at the City's Maintenance Service Center, the Developer shall install a City standard centralized irrigation controller system with communication accessories as approved by the City. The City may exempt this requirement based on the limited size of the landscape area.

The developer shall not cut down or remove on site trees until a demolition permit is approved and issued by the City

14. HORTICULTURIST'S REPORT

A Horticulturist's report will be required if the site is located north of Highway I-580.

15. SPECIAL DISTRICTS

A. Landscaping and Lighting Maintenance and Operation N/A

B. Assessment District

This development shall annex into Community Facilities Maintenance District 2023-1 (Isabel Neighborhood Specific Plan) to provide for maintenance funds for their pro-rata share of public infrastructure and landscaping that is installed with the Isabel Neighborhood Specific Plan.

The Developer shall initiate and bear the costs for the annexation into CFD 2023-1.

Annexation documents shall be filed with the filing of the final map. The necessary documentation shall be submitted for City review with the first improvement plan submittal.

C. Mello Roos District

This development is within the Tri-Valley Technology Park Community Facilities District No. 99-1 and is subject to the charges and requirements thereof.

16. AIRPORT LOCATION

This development is located in the vicinity of the Livermore Municipal Airport. Aircraft operations

in the vicinity of the property may potentially create nuisances, including but not limited to noise, vibration or odors. The owner and or future buyer should be aware that operations and flight numbers at the Livermore Municipal Airport could increase in the future. A report must be filed with the Division of Real Estate relative to this matter.

An aviation easement shall be granted to the City prior to the filing of the final map. The grant shall be made on the City's "Aviation Easement" form.

17. SUBDIVISION AGREEMENT AND SECURITY

Following tentative map approval, the Subdivision Improvement Agreement will not be submitted to the City Council until the Developer has submitted all of the documents indicated in the "Final Approval of Tract Map Checklist" in the Development Plan Check and Procedures Manual (30) days prior to the city council meeting at which the final map will be considered for final approval by the City Council.

18. FEE AMOUNTS

The Developer will be required to pay the applicable development impact fees and project processing fees due in connection with this subdivision. The fee shall be the amount in effect at the time the fee is required to be paid.

19. VEHICLE ACCESS

Prior to or with the submittal for the first plan check of the tract improvement plans and final map, the Developer shall submit for review and approval a traffic control plan for providing safe entry to and exit from the site. The purpose of the plan is to insure that there will be safe entry and exit by construction and other vehicles prior to the installation of the required permanent improvements on North Canyons Parkway and Triad Place.

If this plan requires the construction of improvements on North Canyons Parkway and Triad Place, then these improvements shall be constructed prior to the beginning of any on-site work.

Access to the development by construction equipment, material delivery and other heavy loads shall be limited by the Developer to the following route:

I-580, Airway Blvd, North Canyons Parkway, Triad Place

Such heavy loads will not be allowed on existing residential streets in the vicinity of the development.

The wheel-loading on the above routes shall not exceed State load limits.

20. DEVELOPMENTS WITH PRIVATE ROADWAYS AND UTILITIES (Condominiums, Row Houses, Cluster, etc.)

The private improvements of the private street system are part of the improvements required of this subdivision. For this reason, the Developer shall pay Engineering Division plan check and construction inspection fees and the City Engineering Division will provide these services. The Developer will also provide subdivision security for the required private improvements.

JW:DES

VTTM 8657 (SUB22-005) Triad East Condos Denova Homes 3-30-23 -Final for PC.docx

EXHIBIT B

INSURANCE REQUIREMENTS

Minimum Scope and Limits of Insurance

Developer shall maintain limits no less than:

1. Commercial General Liability, including operations, products, and completed operations, as applicable:
   $5,000,000 per occurrence/**$10,000,000** aggregate for bodily injury, personal injury, and property damage. If Commercial General Liability or other form of insurance with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.
2. Automobile Liability:
   $2,000,000 per accident for bodily injury and property damage.
3. Workers' Compensation and Employer's Liability:
   Statutory limits as required by the State of California including **$1,000,000** Employers' Liability per accident, per employee for bodily injury or disease. A waiver of subrogation is required for Workers' Compensation insurance. If Developer is a sole proprietor, then they must sign "Contractor Release of Liability".
4. Pollution 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 Developer; or automobiles owned, leased, hired or borrowed by the Developer. 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 Developer'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 Developer'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

Completed Operations

Developer shall maintain insurance as required by this contract for a minimum of five years following the completion of this project. In the event the Developer 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 Developer. Completed Operations endorsement or coverage shall be at least as broad as Insurance Services Office CG 20 38. Developer 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 of 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. Developer shall include the following language in their agreements with Subcontractors: "Subcontractor agrees to be bound to Developer and City in the same manner and to the same extent as Developer 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 extend they apply to the scope of the Sub-subcontractor's work. A copy of the City Contract Document Indemnity and Insurance provisions will be furnished to the Subcontractor upon request." Developer shall provide proof of such compliance and verification to the City upon request.

Verification of Coverage

Developer 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.

Helena Graves

From: Rebel Essence [redacted]
Sent: Monday, June 24, 2024 10:20 AM
To: City Clerk
Subject: Public comment for meeting date June 24, 2024. for item 5.11 Resolution adopting the Police Tow Service Franchise Fee Schedule

Exercise Caution: This message is from outside the City email system. Do not open links or attachments from untrusted sources.

Mayor and City Council

MUNICIPAL CODE CHAPTER 5.44

The 2018 to current franchisee agreement between Joseph Eldam owner of San Ramon Tow & Repair Inc., dba Save Tow of Livermore and the City Of Livermore was sold/transferred to Victor Nomura owner of ITN Holdings LLC dba 1. Save Tow 2. San Ramon Tow. Fictitious business name statement for Save Tow & San Ramon tow was filed in Alameda County August 26, 2022 by Victor Nomura. San Ramon Tow & Repair Inc., dba Save Tow of Livermore terminated corp status on August 22, 2023 with the California Secretary of State. Was the new entity ITN Holdings LLC, dba Save Tow - San Ramon Tow granted a franchise transfer by the City Council pursuant to chapter 5.44.130 of the POLICE TOW SERVICE FRANCHISES? There are no past council minutes related to 5.44.130 for the transfer of original franchisee held by Joseph Eldam of San Ramon Tow & Repair inc. dba Save Tow of Livermore to Victor Nomura of ITN Holdings LLC dba 1. Save Tow 2. San Ramon Tow

5.44.130 Franchise transfer or assignment.

Any franchise agreement granted pursuant to this chapter is a privilege to be held in trust by the original franchisee. Such franchise shall not be sold, leased, transferred, assigned, or otherwise disposed of, either in whole or in part, whether by forced sale, merger, consolidation, bankruptcy, reorganization under bankruptcy laws or otherwise, without the prior consent of the City Council.

Sincerely
Sophie Bratton

Master Fee Schedule

June 24, 2024

Presented by Erik Peterson, Finance Manager

LIVERMORE CALIFORNIA

1

Overview and Fee Methodology

Overview:

- Annual update of fees for all City services to the public
- Most fees are adjusted by the annual change in CPI (February 2024 – 2.4%)
- The Master Fee Schedule does not include development impact fees, landscape maintenance district assessments, or franchise fees.

Fee Methodology:

- Fees initially established by external fee study
- Staff reviews and performs fee analyses annually
- Fees are intended to recover the actual cost of providing the service

LIVERMORE CALIFORNIA

2

New Fees

Community Development – Building

General Administration - Special Event Fees

- Recover some of the administrative costs
  - ✓ $50 for non-profit organization
  - ✓ $160 for-profit organization

Commercial/Residential Permit Fees – Misc. Items

- 433A-Recordation fee – required by State Law
- $22 fee - $11 to State; $11 to City

LIVERMORE CALIFORNIA

3

New Fees Continued

Community Development – Building cont.

Building Permit Fees – Mechanical, Plumbing, and Electrical

- Lists each type of permit
- Increases efficiency issuing permits

Airport

- Gate Remote fee - $75
- Conference room rental and related fees

LIVERMORE CALIFORNIA

4

New Fees Continued

Fire Prevention

Miscellaneous Administrative Fees

- Cost Recovery for HazMat Incidents and Standby teams

LIVERMORE CALIFORNIA

5

Recommendation

Staff recommends the City Council adopt a resolution adopting the City's master fee schedule, incorporating certain fee changes and superseding resolution 2023-128.

LIVERMORE CALIFORNIA

6

Police Department Tow Franchise Agreement

June 24, 2024

Presented by John Reynolds, Police Captain

LIVERMORE CALIFORNIA

1

Current Tow Franchise Agreement

- Contract termination date – June 30, 2024
- Five franchisees (tow companies) on rotation
- Limited equipment to tow recreation vehicles (RV) and boats
- Inequitable costs incurred for franchisees

LIVERMORE CALIFORNIA

2

New Franchise Agreement

- Pursuant to LMC 5.44 – Police Tow Service Franchises
- RFP & Q issued on March 26, 2024
- Closed April 18, 2024, with five proposals submitted
- Each company met the new equipment requirements
- Each equally capable of providing same service to the Police Department which is the best interest to the City and public
- Reimbursement up to $2,500 for towing of RV and/or boat longer than 15-feet

LIVERMORE CALIFORNIA

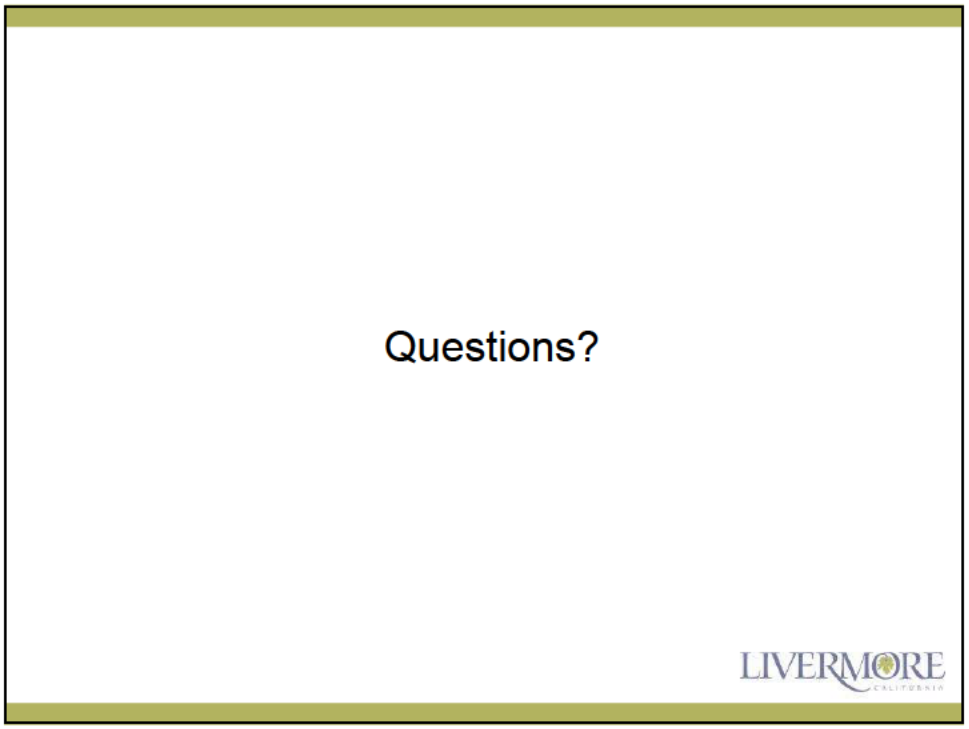
3

Recommendation

- Staff recommends that pursuant to LMC 5.44, City Council grant nonexclusive franchise agreements:
  - To the five tow companies who submitted proposals for RFP & Q No. 4262
  - Each for a five-year term commencing July 1, 2024, and ending June 30, 2029
  - And authorize the City Manager to execute the agreement and future amendments to the agreement

LIVERMORE CALIFORNIA

4



5

Appointment of City Council Members to the City Council Subcommittee on Advisory Bodies

June 24, 2024

Presented by

Debbie Elam, Acting City Clerk

LIVERMORE CALIFORNIA

1

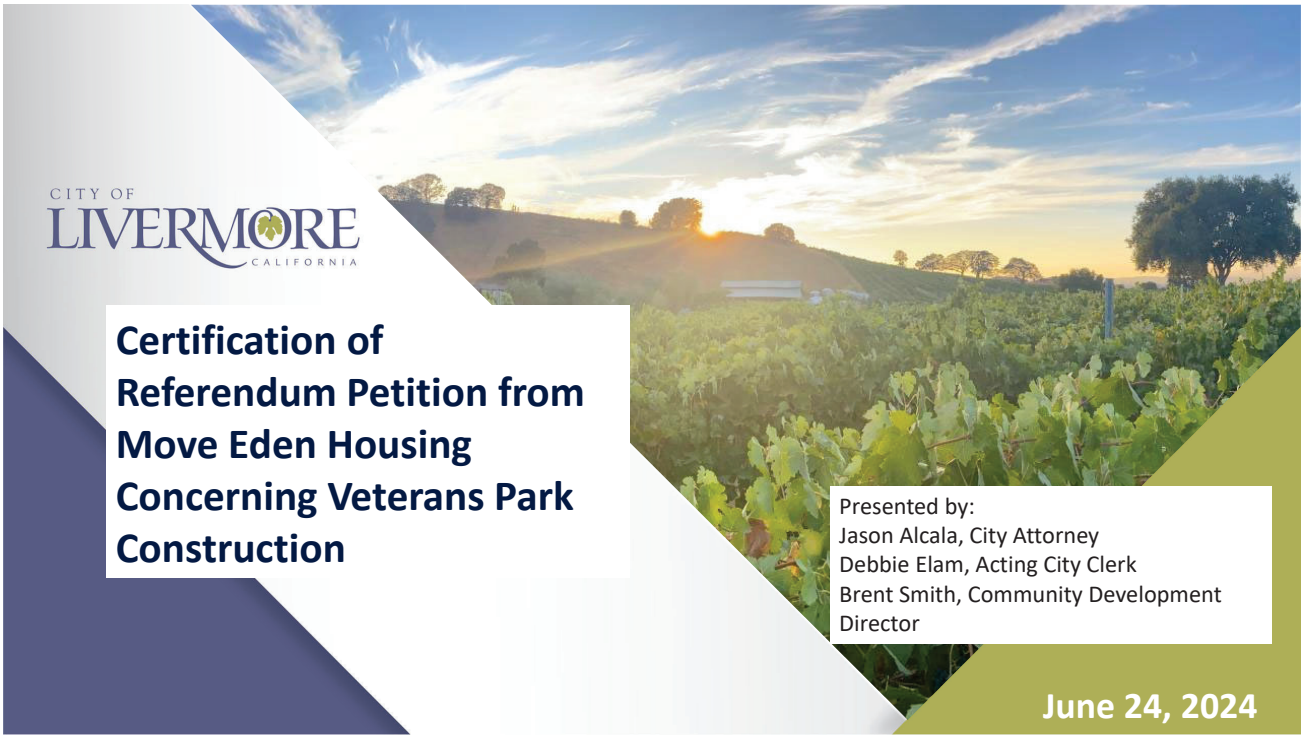
Staff Recommendation

- Two Council Members are needed to serve on the Subcommittee for the period of July 1 – December 31.
- Previous appointments are listed below:

Year	January 1 – June 30	July 1 – December 31
2024	CM Barrientos	
	CM Kiick	
2023	CM Carling	CM Barrientos
	CM Branning	CM Carling
2022	CM Kiick	Mayor Woerner
	VM Bonanno	VM Bonanno
2021	CM Carling	VM Munro
	VM Munro	CM Kiick

LIVERMORE CALIFORNIA

2



CITY OF LIVERMORE CALIFORNIA

Certification of Referendum Petition from Move Eden Housing Concerning Veterans Park Construction

Presented by:
Jason Alcala, City Attorney
Debbie Elam, Acting City Clerk
Brent Smith, Community Development Director

June 24, 2024

Referendum

Referendum

- Power reserved to the voters to challenge legislative (not administrative) acts by the City Council.
- If a referendum qualifies, the City Council must reconsider the protested legislative acts and either repeal the act or call for an election.

CITY OF LIVERMORE CALIFORNIA

Referendum

Background

- 2022: Petition by MEH not processed by former City Clerk, based upon legal advice, because the City Council resolution concerning an amended and restated agreement with Eden Housing did not contain a legislative act.
- 2024: Appellate Court determined that the approval of the construction of Veterans Park in the amended agreement was a legislative act.
- 2024: Petition processed as a referendum.
- 2024: Alameda County Registrar of Voters qualified the referendum. Now the City Council must certify the referendum and reconsider the 2022 resolution.

CITY OF LIVERMORE CALIFORNIA

Referendum

Referendum Language – From Petition

REFERENDUM AGAINST A RESOLUTION PASSED BY THE CITY COUNCIL

We, the signers of this petition, representing 10% or more of the registered, qualified voters of the City of Livermore hereby present this petition protesting the adoption by the City Council of the City of Livermore of RESOLUTION No. 2022-085 entitled:

A RESOLUTION AUTHORIZING EXECUTION OF AN AMENDED AND RESTATED DISPOSITION, DEVELOPMENT AND LOAN AGREEMENT ("DDLA") WITH EDEN HOUSING, INC. FOR DEVELOPMENT OF THE DOWNTOWN MULTI-FAMILY HOUSING SITE.

We request that the legislative acts contained in said RESOLUTION be entirely repealed by the City Council of the City of Livermore, or otherwise be submitted to a vote of the people, pursuant to the provisions of California Elections Code Section 9241.

The City Attorney, in accordance with Elections Code Section 9238, has prepared an impartial summary of Resolution No. 2022-085, which impartial summary is set forth on pages attached hereto. The text of Resolution No. 2022-085 and accompanying exhibits and attachments are available for viewing at websites described in the impartial summary and in the OFFICIAL TOP FUNDERS disclosure section of this petition.

Impartial Summary of Resolution No. 2022-085

CITY OF LIVERMORE CALIFORNIA

Referendum

Referendum Language – From Petition

We request that the legislative acts contained in said RESOLUTION be entirely repealed by the City Council of the City of Livermore, or otherwise be submitted to vote of the people, pursuant to the provisions of California Elections Code Section 9241.

CITY OF LIVERMORE CALIFORNIA

Referendum

Actions

Based upon certification and the Appellate Court's decision, the City Council must also take one of the following actions concerning the referendum:

- Repeal Resolution No. 2022-085.
- Call for an election for the voters to approve or set aside the language in the agreement for the City's construction of and improvements to Veterans Park.

CITY OF LIVERMORE CALIFORNIA

Referendum

What is the referendum about?

Appellate Court determined the legal effect of the referendum is to set aside the City Council's approval of language for the City's construction of and improvements to Veterans Park in the City's agreement with Eden Housing.

CITY OF LIVERMORE CALIFORNIA

Referendum

What is the referendum NOT about?

Appellate Court determined that the other terms and conditions in the City's agreement with Eden Housing were:

- Made prior to 2022
- Are not subject to referendum

CITY OF LIVERMORE CALIFORNIA

Referendum

Veterans Park

Council made numerous decisions to construct Veterans Park as a City Park before 2022.

Nevertheless, based upon the Appellate Court's decision, the City Council must take one of the following actions on the referendum:

- Repeal Resolution No. 2022-085
- Call for an election for the voters to approve or set aside the language in the agreement for the City's construction of and improvements to Veterans Park

CITY OF LIVERMORE CALIFORNIA

Referendum

Effect of resolution if repealed

What is the effect if the resolution is repealed, or the language is set aside by the voters:

- The City's construction of and improvements to Veterans Park cannot proceed as part of the City's agreement with Eden Housing for one year.
- Staff is prepared to delay work the City's work on Veterans Park for one year.

CITY OF LIVERMORE CALIFORNIA

Referendum

Companion Resolution

- Consistent with the Appellate Court's decision, ratifies and affirms the remainder of the agreement between the City and Eden Housing for the project.
- Appellate Court determined the remaining language was administrative and not subject to referendum.
- Appellate Court also rejected all other protests to the resolution and agreement.

CITY OF LIVERMORE CALIFORNIA

Referendum

Recommended Actions

1. Adopt resolution accepting certification of the referendum
2. Adopt a resolution for one of the following options:
   - Option 1 - Repeal Resolution No. 2022-085.
   - Option 2 - Call for an election for the voters to approve or set aside the language in the agreement for the construction of and improvements to Veterans Park.
3. Adopt the companion resolution to ratify and affirm the agreement with Eden Housing excluding the City's construction of Veterans Park.

CITY OF LIVERMORE CALIFORNIA

Questions

CITY OF LIVERMORE CALIFORNIA

LIVERMORE
CALIFORNIA

INTEROFFICE MEMORANDUM

Date: June 24, 2024

To: Honorable Mayor and City Council

From: Marianna Marysheva, City Manager
Brent Smith, Community Development Director
Jason Alcala, City Attorney

Subject: Item 7.2 – Replacement of Exhibit C – Referendum Measure to the Option 2 Resolution Calling for and Giving Notice of Election

For agenda item 7.2, the Exhibit C *Referendum Measure* attached to the Option 2 Resolution Calling for and Giving Notice of Election in the agenda packet is replaced with the Exhibit C attached to this supplemental memorandum. The difference is that the new Exhibit C now contains the language from the Petition signed by the voters that accompanied the summary.

Attachments
Exhibit C – Referendum Measure.

Revised Exhibit C to Resolution Calling for Election

REFERENDUM AGAINST A RESOLUTION PASSED BY THE CITY COUNCIL

We, the signers of this petition, representing 10% or more of the registered, qualified voters of the City of Livermore hereby present this petition protesting the adoption by the City Council of the City of Livermore of RESOLUTION No. 2022-085 entitled:

A RESOLUTION AUTHORIZING EXECUTION OF AN AMENDED AND RESTATED DISPOSITION, DEVELOPMENT AND LOAN AGREEMENT ("DDLA") WITH EDEN HOUSING, INC. FOR DEVELOPMENT OF THE DOWNTOWN MULTI-FAMILY HOUSING SITE.

We request that the legislative acts contained in said RESOLUTION be entirely repealed by the City Council of the City of Livermore, or otherwise be submitted to a vote of the people, pursuant to the provisions of California Elections Code Section 9241.

The City Attorney, in accordance with Elections Code Section 9238, has prepared an impartial summary of Resolution No. 2022-085, which impartial summary is set forth on pages attached hereto. The text of Resolution No. 2022-085 and accompanying exhibits and attachments are available for viewing at websites described in the impartial summary and in the OFFICIAL TOP FUNDERS disclosure section of this petition.

Impartial Summary of Resolution No. 2022-085

Approved Impartial Summary of Referendum Against Resolution No. 2022-085 Passed by the City Council of the City of Livermore Authorizing Execution of an Amended and Restated Disposition, Development and Loan Agreement ("DDLA") with Eden Housing, Inc. for Development of the Downtown Multi-Family Housing Site

(Elections Code Section 9238(b)(2)(B)(i))

Introduction. This resolution implements the City Council's prior legislative acts to approve the development of affordable workforce housing on an approximately 2.0 acre parcel of property owned by the City of Livermore ("City") in the Downtown Core Area of the Downtown Specific plan (the "Property).

The Property is listed as a City housing asset in the Long-Range Property Management Plan proposed by the City and approved the State of California on December 28, 2015, for the development of affordable housing.

Revised Exhibit C to Resolution Calling for Election

REFERENDUM AGAINST A RESOLUTION PASSED BY THE CITY COUNCIL

We, the signers of this petition, representing 10% or more of the registered, qualified voters of the City of Livermore hereby present this petition protesting the adoption by the City Council of the City of Livermore of RESOLUTION No. 2022-085 entitled:

A RESOLUTION AUTHORIZING EXECUTION OF AN AMENDED AND RESTATED DISPOSITION, DEVELOPMENT AND LOAN AGREEMENT ("DDLA") WITH EDEN HOUSING, INC. FOR DEVELOPMENT OF THE DOWNTOWN MULTI-FAMILY HOUSING SITE.

We request that the legislative acts contained in said RESOLUTION be entirely repealed by the City Council of the City of Livermore, or otherwise be submitted to a vote of the people, pursuant to the provisions of California Elections Code Section 9241.

The City Attorney, in accordance with Elections Code Section 9238, has prepared an impartial summary of Resolution No. 2022-085, which impartial summary is set forth on pages attached hereto. The text of Resolution No. 2022-085 and accompanying exhibits and attachments are available for viewing at websites described in the impartial summary and in the OFFICIAL TOP FUNDERS disclosure section of this petition.

OFFICIAL TOP FUNDERS. Valid only for June 2022

Petition circulation paid for by Move Eden Housing

Committee major funding from:

Committee has no current top funders

See website below for updated top funders sheet

Latest info: http://www.moveedenhousing.com

NOTICE TO THE PUBLIC: THIS PETITION MAY BE CIRCULATED BY A PAID SIGNATURE GATHERER OR A VOLUNTEER. YOU HAVE THE RIGHT TO ASK.

ALL SIGNERS OF THIS PETITION MUST BE REGISTERED VOTERS IN THE CITY OF LIVERMORE

LIVERMORE REGISTERED VOTERS ONLY

			Official Use Only
New Registration	19. Print Your Name Signature as Registered To Vote	Residence Address ONLY City Zip	
New Registration	20. Print Your Name Signature as Registered To Vote	Residence Address ONLY City Zip	
New Registration	21. Print Your Name Signature as Registered To Vote	Residence Address ONLY City Zip	
New Registration	22. Print Your Name Signature as Registered To Vote	Residence Address ONLY City Zip	
New Registration	23. Print Your Name Signature as Registered To Vote	Residence Address ONLY City Zip	
New Registration	24. Print Your Name Signature as Registered To Vote	Residence Address ONLY City Zip	

LIVERMORE REGISTERED VOTERS ONLY

REFERENDUM AGAINST A RESOLUTION PASSED BY THE CITY COUNCIL

We, the signers of this petition, representing 10% or more of the registered, qualified voters of the City of Livermore hereby present this petition protesting the adoption by the City Council of the City of Livermore of RESOLUTION No. 2022-085 entitled:

A RESOLUTION AUTHORIZING EXECUTION OF AN AMENDED AND RESTATED DISPOSITION, DEVELOPMENT AND LOAN AGREEMENT ("DDLA") WITH EDEN HOUSING, INC. FOR DEVELOPMENT OF THE DOWNTOWN MULTI-FAMILY HOUSING SITE.

We request that the legislative acts contained in said RESOLUTION be entirely repealed by the City Council of the City of Livermore, or otherwise be submitted to a vote of the people, pursuant to the provisions of California Elections Code Section 9241.

The City Attorney, in accordance with Elections Code Section 9238, has prepared an impartial summary of Resolution No. 2022-085, which impartial summary is set forth on pages attached hereto. The text of Resolution No. 2022-085 and accompanying exhibits and attachments are available for viewing at websites described in the impartial summary and in the OFFICIAL TOP FUNDERS disclosure section of this petition.

DECLARATION OF CIRCULATOR

To be completed in circulator's own hand after above signatures have been obtained. Use blue or black ink pen.
A circulator may sign this petition if registered as a City of Livermore voter.

I am 18 years of age or older. I circulated this petition section and witnessed each of the appended signatures on this petition section being written. Each signature on this petition section is, to the best of my information and belief, the genuine signature of the person whose name it purports to be. All signatures on this petition section were obtained between _____ (Month, Day, Year) and _____ (Month, Day, Year).

I declare (certify) under penalty of perjury under the laws of the State of California that the information in this Declaration is true and correct.

Executed at _____ (City) CA on _____ (Date) _____ (Sign Full Name, Including Middle Name or Initial)

_____ (Print Full Name, including Middle Name or Initial) _____ (Current Residence Address) _____ (City) _____ (State) _____ (Zip)

For Processing Use Only

CIRCULATOR INSTRUCTIONS

1. Use blue or black ink pen.
2. All signers must be registered voters of the City of Livermore.
3. Declaration of Circulator must be signed after signatures obtained.

Our Number

Approved Impartial Summary of Referendum Against Resolution No. 2022-085 Passed by the City Council of the City of Livermore Authorizing Execution of an Amended and Restated Disposition, Development and Loan Agreement ("DDLA") with Eden Housing, Inc. for Development of the Downtown Multi-Family Housing Site

(Elections Code Section 9238(b)(2)(B)(i))

Introduction. This resolution implements the City Council's prior legislative acts to approve the development of affordable workforce housing on an approximately 2.0 acre parcel of property owned by the City of Livermore ("City") in the Downtown Core Area of the Downtown Specific plan (the "Property).

The Property is listed as a City housing asset in the Long-Range Property Management Plan proposed by the City and approved the State of California on December 28, 2015, for the development of affordable housing.

Background. This resolution approves an amendment to a 2018 contract for the City to sell the Property to Eden Housing, Inc. ("Eden") for development of the affordable workforce housing component of the Downtown Plan approved by the City Council in January 2018.

On January 29, 2009, a State of California required deed restriction was recorded to require the Property's use for the development of affordable housing.

On November 27, 2017, the City Council received the Final Report for the Downtown Public Engagement Program that was the culmination of the Downtown Steering Committee's Public Engagement Plan. The City Council accepted the report and directed the downtown redevelopment of the City's properties provide 130 workforce housing units on the Property if the City's property on the east side of Livermore Avenue was selected for the development of hotel.

On January 29, 2018, the City Council approved a Downtown Plan that selected the east side of Livermore Avenue for the hotel and placed the affordable workforce housing component on the Property. The affordable workforce housing component planned for 130 affordable workforce housing units to be located on the Property.

In May of 2018, the City issued a request for qualifications to identify a qualified developer for the 130-unit workforce housing component of the approved Downtown Plan for the Property.

On November 27, 2018, the City and Eden entered into a Disposition, Development and Loan Agreement ("Original DDLA") with respect to the Property to enable the future development of a 130-unit affordable workforce housing project (the "Project").

On May 25, 2021, the City approved land use entitlements for the Project, including Downtown Design Review 20-019 and Vesting Tentative Parcel Map 11186 – Subdivision 21-003, subject to conditions of approval (the "Approvals").

On May 26, 2021, the City and Eden entered into a First Amendment to the Original DDLA to define the development and financial obligations for the proposed Veterans Park, allow for reimbursement by City to Eden for certain emergency vehicle access road improvements adjacent to the Project, and to update the entitlement, financing, and development timeline in the Schedule of Performance in the Original DDLA.

On June 24, 2021, a Petition for Writ of Mandate was filed in Alameda County Superior Court by Save Livermore Downtown against the City and Eden, challenging the Approvals and the City's compliance with the California Environmental Quality Act. On February 14, 2022, the Superior Court entered judgment denying the Petition for Writ of Mandate. On April 13, 2022, Save Livermore Downtown appealed the judgment to the California Court of Appeal, and the appeal is still pending (the "Litigation").

On May 24, 2022, the City Council adopted Resolution No. 2022-085 (the "Resolution"), authorizing the City's execution of an Amended and Restated DDLA with Eden for development of the Project to further amend the previously amended Original DDLA. The Resolution states that "the City and Eden desire to enter into an Amended and Restated DDLA and make several modifications and additions that will facilitate the development process, enumerate specific financial contributions and agreements that would be under the authority of the City Manager to execute, and modify the Schedule of Performance to extend the time period for Eden to complete development of the project in light of the pending Litigation."

The purpose of the Amended and Restated DDLA is to amend the DDLA and update its terms and conditions for Eden to prepare or cause to be prepared all required documents necessary to receive development approvals for the Project, to obtain title to the Property, and to develop the Project. The Amended and Restated DDLA also amends the DDLA and updates its terms and conditions for the City to sell the Property to Eden for the purpose of developing, building, and operating the Project and contribute certain funds for the acquisition and predevelopment of the Property.

Financial Provisions. The Amended and Restated DDLA acknowledges that pursuant to the original DDLA, the City previously provided a predevelopment loan of five-hundred thousand dollars ($500,000) to Eden for predevelopment costs for the Project, including architecture and design costs, legal and specialty consultant fees, site feasibility analysis, title review, due diligence, and preconstruction costs (the "Predevelopment Loan"). Eden is responsible for payment of the principal of, and interest on, the Predevelopment Loan.

The Amended and Restated DDLA also requires the City to make an acquisition loan to Eden for the purchase price of the Property, which shall be seven-million eight-hundred thousand dollars ($7,800,000) (the "Site Acquisition Loan"). The Site Acquisition Loan shall be evidenced and secured by a Seller Take-Back Note and Seller-Take Back Acquisition Deed of Trust recorded against the Property. Eden shall be responsible for the payment of principal and interest on the Site Acquisition Loan.

In addition, the Amended and Restated DDLA requires the City, at its sole expense, to pay for the costs of improvements to Veterans Park, with Eden managing construction of such improvements. Eden and the City must negotiate a future construction management and reimbursement agreement to coordinate the construction of improvements to Veterans Park,

which shall not exceed five-million five-hundred thousand dollars ($5,500,000) without additional City Council approval.

Predisposition Requirements. The Amended and Restated DDLA establishes conditions that must be satisfied by Eden in order for Eden to acquire title to the Property. The City may waive satisfaction of the conditions.

The conditions include: (1) Eden providing the City with a preliminary development Pro Forma, setting forth Eden's estimate of sources and uses of funds for development of the Project; (2) Eden obtaining all entitlements necessary for the Project; (3) the City approving Eden's organizational documents; (4) the City providing Eden with written notification that (a) it has completed a federally required environmental review pursuant to the National Environmental Policy Act ("NEPA") and the City's request for release of funds has been approved and the purchase may proceed; or (b) it has determined the purchase is exempt from federal environmental review pursuant to NEPA and a request for release of funds is not required; (5) Eden furnishing to the City the types and amounts of insurance specified in the Amended and Restated DDLA; (6) the parties entering into a temporary parking lease for the Property wherein public parking will be available on the Property until construction of the first phase of the Project commences; and (7) the parties taking the necessary steps to ensure that the City will receive air rights to Parcels 1 and 3 on the Property to ensure that the Project as constructed does not exceed 52 feet above the surface elevation.

Disposition of the Property. The Amended and Restated DDLA requires the City to sell to Eden, and Eden to purchase from the City, the Property provided that the predisposition requirements and additional closing conditions have been satisfied. To accomplish the conveyance of the Property from the City to Eden, the parties must establish an escrow and provide the escrow holder with written instructions consistent with the Amended and Restated DDLA.

The additional closing conditions that must be satisfied prior to conveyance of the Property include (1) completion of the predisposition requirements, (2) Eden depositing all required documents and its share of closing costs, (3) there being no events of default by Eden, (4) Eden's representations and warranties remaining true and correct, (5) the title company being prepared to issue a title policy, and (6) the City having deposited a grant deed and other required documents to the escrow holder.

Upon satisfaction or waiver of all the required predisposition conditions and the deposit of all required documents into escrow, the escrow officer must cause to be recorded with the Official Records of Alameda County the grant deed conveying the Property to Eden as well as other documents required to be recorded under the Amended and Restated DDLA. The Schedule of Performance attached to the Amended and Restated DDLA requires close of escrow on the Property to occur on or before September 30, 2022.

Hazardous Materials. Prior to the close of escrow for the Property, the Amended and Restated DDLA requires the City and Eden to enter into an indemnity and cooperation agreement to apportion costs and any potential liability related to hazardous materials at, on, in, beneath or from the Property from and after the date of the close of escrow. The Amended and Restated DDLA authorizes the City Manager to negotiate and execute the indemnity and

cooperation agreement in an amount not to exceed four-million three-hundred thousand dollars ($4,300,000), subject to the City Attorney's approval of the agreement as to form. The obligations of the City under the indemnity and cooperation agreement shall not exceed $4,300,000, without further City Council approval.

Design and Construction. The Amended and Restated DDLA requires that Eden obtain all ministerial permits and approvals necessary to construct the Project within the time specified in the Schedule of Performance attached to the Amended and Restated DDLA. Eden shall be solely responsible for all aspects of Eden's conduct in connection with the Project, including, but not limited to, the quality and suitability of project documents, the supervision of construction work for the Project and the Veterans Park Improvements, and the qualifications, financial condition, and performance of all architects, engineers, contractors, subcontractors, suppliers, consultants, and property managers.

The Amended and Restated DDLA obligates Eden to commence preconstruction activities and the construction of the Project within the times set forth in the Schedule of Performance. Eden shall diligently prosecute to completion the construction of the Project, and shall complete construction of the Project within the time set forth in the Schedule of Performance, subject to Force Majeure requirements set forth in the Amended and Restated DDLA. Moreover, Eden must construct the Project in accordance with approved final construction drawings, and the terms and conditions of all City and other governmental approvals, and in compliance with 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 (2) all directions, rules and regulations of any fire marshal, health officer, building inspector, or other officer of every governmental agency having or hereafter acquiring jurisdiction.

The Amended and Restated DDLA also requires Eden to pay and shall cause its contractor and subcontractors to pay prevailing wages in the construction of the Project as those wages are determined pursuant to California Labor Code Section 1720 et seq., and to employ

apprentices as required by California Labor Code Sections 1777.5 et seq., and the implementing regulations of the Department of Industrial Relations.

The Amended and Restated DDLA requires Eden to permit the City, upon reasonable prior notice not less than 48 hours, to enter the Property during normal business hours to inspect the construction work to determine that such work is in substantial conformity with the approved final construction drawings or to inspect the Property for compliance with the Amended and Restated DDLA.

Upon recordation of the Final Map and construction finance closing for the first phase of the Project, at the time specified in the Schedule of Performance, Eden must dedicate the Veterans Park Parcel (Parcel 2) back to the City. Parcel 2 shall have air rights over Parcels 1 and 3, as described in the Amended and Restated DDLA, and Parcel 2 shall be dedicated to the City free and clear of any encumbrances created by Eden that have not been authorized by the City.

The Amended and Restated DDLA requires the City to enter into an irrevocable parking

space lease with Eden for 16 reserved parking spaces for Project residents in the L Street Garage, which will be constructed and owned by the City to serve the Project. The spaces will be leased at $300 per space per year, for an annual cost of $4,800, for a 55-year term with a 2.5% escalator. The term will commence from lease-up of the first phase of the Project.

Additional Ongoing Obligations. The Amended and Restated DDLA requires Eden to covenant to use the Property for affordable housing for a period not less than 55 years. Eden agrees to maintain the Property in a neat and orderly condition during construction in accordance with industry health and safety standards, and that, once the Project is completed, to maintain the Project as to both external and internal appearance of the buildings, the common areas, and the parking areas. The Amended and Restated DDLA requires Eden to maintain or cause to be maintained the Property in good repair and working order, and in a neat, clean and orderly condition, including the walkways, driveways, parking areas and landscaping, and from time to time to make all necessary and proper repairs, renewals, and replacements.

The Amended and Restated DDLA requires Eden to indemnify, defend, and hold harmless the City and its elected officials, officers, employees, agents, consultants, designated volunteers, and contractors 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 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 the Amended and Restated DDLA and/or the Project; (ii) performance of the Amended and Restated DDLA on the part of Eden or any contractor or subcontractor of Eden; and/or (iii) the development, operation, maintenance or management of the Project,

Default and Remedies. The Amended and Restated DDLA contains provisions governing the parties' remedies for breach of the Amended and Restated DDLA, including events of default by the City and events of default by Eden. If a specified event of default occurs, the non-defaulting party must first notify the defaulting party of the purported breach or failure, giving the defaulting party thirty (30) days from receipt of such notice to cure such breach or failure. If the defaulting party fails to commence the cure during such 30-day period and thereafter to prosecute the cure diligently to completion, the non-defaulting party shall be afforded the right to take any or all of the following remedies: (1) terminating the Amended and Restated DDLA; (2) prosecuting an action for damages; or (3) seeking specific performance or any other remedy available at law or in equity.

The Amended and Restated DDLA provides that following the close of escrow of the Property, (1) if Eden fails to commence the pre-construction activities or construction of the Project by the dates listed in the Schedule of Performance (as such dates may be extended), or (2) if the City does not prevail in the Litigation; then the City may, in addition to other rights granted in the Amended and Restated DDLA, re-enter and take possession of the Property with all improvements thereon, and revest in the City the estate previously conveyed to Eden by the City. The City's rights to repossess the Property terminate once Eden closes on construction financing for the first phase of the Project.

Upon revesting in the City of title to the Property, 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. In addition, upon revesting in the City of title to the Property, the Predevelopment Loan and Site Acquisition Loan shall be deemed paid in full and cancelled. If the City's rights to repossess the property are triggered because the City does not prevail in Litigation, the City shall reimburse Eden for actual costs incurred and paid as a result of its ownership of the Property, and not already reimbursed.

The Amended and Restated DDLA contains provisions regarding damages, including an acknowledgment from the City that the exercise of its legislative authority for a land use action, such as but not limited to a General Plan Amendment, Specific Plan Amendment, or zoning action (collectively, a "Land Use Action") that prevents the Project from being developed does not constitute a compensable taking absent extraordinary circumstances. The Amended and Restated DDLA provides examples of extraordinary circumstances that could subject the City to a taking without payment of compensation, including, but not limited to, eliminating all value from the Property, the denial of due process, and reclassifying the Property in a manner to prevent its improvement so that it might be acquired at a lesser price.

The City acknowledges that Eden has expended significant resources to develop the Project that could have been used to develop affordable housing elsewhere and that could be lost, and obtained grant and/or loan funding that would need to be repaid, if the City subsequently exercises its legislative authority for a Land Use Action that prevents the Project from being developed. The City and Eden agree that they would be able to quantify the losses equal to the grant and/or loan funding that would need to be repaid should a Land Use Action by the City prevent the Project from being developed. The City and Eden also agree that quantifying the scope of the economic and noneconomic losses arising from a Land Use Action that prevents the Project from being developed is inherently difficult insofar as the action results in the loss of affordable housing opportunities, negatively impacts Eden's reputation, and cannot adequately capture the soft costs expended on the Project.

The Amended and Restated DDLA states that the City and Eden agree and stipulate that the repayment of Project grant and/or loan funds already expended for the Project that are not available for repayment and the agreed upon sum of two-million three-hundred thousand dollars ($2,300,000) is a reasonable measure of the damages based upon their experience in the affordable housing industry and given the nature of the losses that may result from a Land Use Action that prevents the Project from being developed.

Thus, the Amended and Restated DDLA states that in the event the City exercises its legislative authority for a Land Use Action that prevents the Project from being developed, then the City shall pay damages to Eden as follows:

(1) An amount equal to the grant and/or loan funds that were expended by Eden prior to the date of that Land Use Action that is not available for repayment in the event the awarding/loaning agency demands Eden repay the expended funds; and

(2) The stipulated amount of $2,300,000 for the losses that cannot be quantified.

General Provisions. The Amended and Restated DDLA also contains general

contractual provisions, including notice provisions; non-liability of officials, employees and agents; inspection rights; a severability provision; a Force Majeure provision; and an integration clause. The Amended and Restated DDLA states that its terms shall run with the land, and shall bind all successors in title to the Property until the termination of the Amended and Restated DDLA, except that those provisions that are specified to survive termination of the Amended and Restated DDLA shall run with the land in perpetuity and remain in full force and effect following such termination.

The Amended and Restated DDLA states that it may be amended from time to time as the Parties find is necessary. The City Manager shall have the authority to make minor amendments to effectuate the intent of the Amended and Restated DDLA. The City Manager shall also have the authority to execute the final documents and agreements referenced in the Amended and Restated DDLA and other related documents to implement the intent and terms of the agreement, as well as the specific delegations of authority set forth herein as approved by the Resolution.

The full text of the Resolution that includes the Amended and Restated DDLA as an exhibit can be found in the City's records at this link: https://livermoreca.gov/2022-085.

////
////

Approved by the City Attorney for the City of Livermore on June 9, 2009

Jason R. Alcala
City Attorney
City of Livermore

Helena Graves

From: Derek Sagehorn [redacted]
Sent: Wednesday, June 19, 2024 2:12 PM
To: City Clerk
Cc: East Bay for Everyone
Subject: 6/24/24 - Agenda Item 7.2 EB4E comment letter
Attachments: EB4E Livermore 6.24.24 comment letter.pdf

Categories: Helena

Exercise Caution: This message is from outside the City email system. Do not open links or attachments from untrusted sources.

Hello,

Please see the attached comment letter from East Bay for Everyone regarding 6/24/2024 City Council agenda item 7.2.

--
Derek Sagehorn
[redacted]

EAST BAY FOR EVERYONE

June 19, 2024

Livermore City Council
City of Livermore
1052 S. Livermore Avenue
Livermore, CA 94550

RE: 6/24/2024 Agenda Item 7.2

Councilmembers,

East Bay For Everyone writes to urge the City of Livermore to move forward with the Downtown Livermore Apartments at Railroad and L Street as proposed. This is a perfect opportunity to build affordable housing Livermore desperately needs. The project provides affordable housing for households earning 20-60% Area Median Income and its mix of up to three-bedrooms will make it appropriate to house working families.

The question of public park space for downtown need not be tied to the production of desperately needed for Livermore residents.

The need for affordable housing is especially acute in Livermore given the high rents under Fair Market Rent for a two-bedroom apartment. This development will also help reduce car dependence and commuting by locating worker housing near jobs in downtown and public transportation. While every proposal has strengths and weaknesses, we think this proposal is very strong and that further delays are not justified.

Sincerely,

John Minot
Co-Executive
East Bay For Everyone

Helena Graves

From: Jack Gardner <jgardner@jsco.net>
Sent: Thursday, June 20, 2024 3:00 PM
To: City Clerk
Subject: Support for Downtown Livermore Affordable Housing Project
Attachments: Support for Downtown Livermore Project 6-20-24.docx

Exercise Caution: This message is from outside the City email system. Do not open links or attachments from untrusted sources.

Thank you for your consideration!

Jack D. Gardner (he/him/his)
Chairman of the Board
DRE #02079818
The John Stewart Company
(415) 345-4400 (Main)
(415) 614-9175 (Fax)
www.jsco.net

THE JOHN STEWART COMPANY

June 20, 2024

Livermore City Council
Cityclerk@LivermoreCA.gov

Re: Support for Downtown Livermore Apartments

Dear Livermore City Council:

On behalf of the John Stewart Company (JSCo) and as a resident of Alameda County who both does business in and visits Livermore regularly, I am writing to support the "Downtown Livermore Apartments" affordable housing project.

The California Court of Appeal's recent decision clarifies that the housing project can proceed independently from the park. As one of the state's largest managers of multifamily rental housing, JSCo and I are delighted that this important project can move forward (please note that we have no business connection to the project whatsoever).

JSCo sees the pressing need for more affordable housing in California every day, whether it is the long waiting lists at our managed properties or the hundreds of phone calls we receive every week from people seeking help. I therefore urge the Council to take the necessary steps to remove the park components from the Disposition, Development, and Loan Agreement to facilitate the project's next steps.

The park, which is the subject of further deliberations, is an important part of downtown Livermore's future. It is our hope that the Council will proceed with plans for the park in a year's time.

I strongly urge the council to proceed as needed to move the proposed affordable housing forward **now** (and allow the park to be considered at a later date).

Sincerely,

Jack D. Gardner
Chairman of the Board
The John Stewart Company

Helena Graves

From: Nancy K. Keenan <nancy.keenan@dahlingroup.com>
Sent: Thursday, June 20, 2024 2:32 PM
To: City Clerk
Subject: Livermore Apartments

Exercise Caution: This message is from outside the City email system. Do not open links or attachments from untrusted sources.

Dear City Council,

My name is Nancy Keenan and I am a resident of Livermore. I am writing to express my gratitude for your unwavering support for the Downtown Livermore Apartments affordable housing project located a few blocks from my home near downtown.

The California Court of Appeal's recent decision clarifies that the housing project can proceed independently from the park. I am delighted that this important project can move forward. I urge the Council to take the necessary steps to remove the park components from the Disposition, Development, and Loan Agreement to facilitate these next steps.

The park, which is the subject of tonight's deliberation, is an important part of our downtown's future. It is our hope that the Council will proceed with plans for the park in a year's time.

I strongly urge the council to proceed as needed to move the housing forward and allow the park to be considered in the future.

Sincerely,

DAHLIN

NANCY K. KEENAN AIA, LEED AP (she/her)
President / Chief Executive Officer

DAHLIN ARCHITECTURE | PLANNING | INTERIORS
O: +1-925-251-7200
www.dahlingroup.com

PASSION FOR PLACE®

Helena Graves

From: LISA A TROMOVITCH [redacted]
Sent: Thursday, June 20, 2024 10:51 AM
To: City Clerk
Subject: Item 7.2 Matters for Consideration June 24th meeting

Categories: Debbie

Exercise Caution: This message is from outside the City email system. Do not open links or attachments from untrusted sources.

Dear City Clerk,

Please relay this message to the City Council.

Honorable Mayor Marchand and City Council Members,

RE: 7.2 Matters for Consideration on May 24th

Thank you for your support of affordable housing in our community and your interest in creating a shared park space for the whole community to share and enjoy.

I urge you to **accept the referendum** and proceed a year from now to construct the park to enhance the Eden Housing project in our wonderful downtown, a place that brings us all together.

Lisa

Lisa A Tromovitch
Executive Artistic Director
https://sparctheater.org
925.443.2273
[redacted]

"Foolery sir, does walk about the orb like the sun, it shines everywhere." -
Twelfth Night - Shakespeare in the Vineyards July 5-28 at Darcie Kent Vineyards!

Helena Graves

From: laura batti [redacted]
Sent: Thursday, June 20, 2024 3:45 PM
To: City Clerk
Subject: MEH ReferendumItem 7.2 Matters for Consideration

Exercise Caution: This message is from outside the City email system. Do not open links or attachments from untrusted sources.

Dear Honorable Mayor Marchand and City Council Members:

Congratulations to you and the Livermore community, as well as your affordable housing development partner Eden Housing, on getting confirmation from the courts that the much-needed affordable housing project planned for our downtown can proceed after six years of unnecessary litigation.

The only question before you Monday is how to accept the certification of the referendum circulated by Move Eden Housing. According to the courts, the referendum is legitimately about one, and only one, action taken by the city Council in 2022 – The construction of Veterans Park.

It is extremely unfortunate that the referendum signature gatherers misled our residents and got their support to delay Veterans Park to the detriment of the Eden Housing project and our entire community.

I urge you to accept the referendum Monday night and proceed a year from now to swiftly construct the park which will enhance the Eden Housing project in our beautiful downtown.

Sincerely,
Laura Batti
[redacted]
Livermore, Ca 94550
[redacted]

Helena Graves

From: Stewart Gary [redacted]
Sent: Thursday, June 20, 2024 8:47 PM
To: City Clerk
Subject: Matters for Consideration Item 7.2 - June 24th Agenda

Exercise Caution: This message is from outside the City email system. Do not open links or attachments from untrusted sources.

Honorable Mayor Marchand and City Council Members:

I urge you to accept the referendum here tonight and proceed a year from now to swiftly construct the park which will enhance the Eden Housing project in our beautiful downtown.

It is extremely unfortunate that the referendum signature gatherers misled our residents and got their support to delay Veterans Park to the detriment of the Eden Housing project and our entire community.

Sincerely
Stewart Gary
LPFD Fire Chief Retired
Former Livermore City Council Member

Helena Graves

From: Jan Palajac [redacted]
Sent: Friday, June 21, 2024 9:02 AM
To: City Clerk
Subject: Item 7.2 Matters for Consideration

Exercise Caution: This message is from outside the City email system. Do not open links or attachments from untrusted sources.

Honorable Mayor Marchand and City Council Members:

I urge you to adopt the staff recommended actions which allow the City to proceed with the Eden Housing project and which delays implementation of Veterans Park.

Jan Palajac

Sent from my iPad

Helena Graves

From: Mark Palajac [redacted]
Sent: Friday, June 21, 2024 9:04 AM
To: City Clerk
Subject: 2022-085 ./ Eden Housing

Exercise Caution: This message is from outside the City email system. Do not open links or attachments from untrusted sources.

Suggested Talking Points (or email content)

Honorable Mayor Marchand and City Council Members:

The start of the Eden Affordable Housing project on Railroad and L Street has been delayed too long in spite of the City's best efforts. Now that the court has ruled that the housing portion of Resolution Number 2022-085 was appropriate, I urge you to move expeditiously in beginning the Eden Affordable Housing project. I believe that means deciding how to accept the court's decision and the referendum. The court decided the referendum is legitimately about one, and only one, action taken by the city Council in 2022 – The construction of Veterans Park.

While I find it very unfortunate, I beleive it is necessary to delay the implementation of the Veterans Park.

Congratulations to you and the Livermore community, as well as your affordable housing development partner Eden Housing, on achieving this milestone despite efforts to thwart it by other parties who do not share the vision to accommodate those less fortunate.

I urge you to accept the referendum here tonight and proceed a year from now to swiftly construct the park which will enhance the Eden Housing project in our beautiful downtown.

Mark Palajac
Livermore Housing Authority Commission Chair

Helena Graves

From: Taryn Keenan [redacted]
Sent: Friday, June 21, 2024 10:23 AM
To: City Clerk
Subject: Livermore Apartments

Exercise Caution: This message is from outside the City email system. Do not open links or attachments from untrusted sources.

Dear City Council,

My name is Taryn Keenan and I am a homeowner and resident of Livermore. I am writing to express my gratitude for your unwavering support for the Downtown Livermore Apartments affordable housing project located a few blocks from my home near downtown.

The California Court of Appeal's recent decision clarifies that the housing project can proceed independently from the park. I am delighted that this important project can move forward. I urge the Council to take the necessary steps to remove the park components from the Disposition, Development, and Loan Agreement to facilitate these next steps.

The park, which is the subject of tonight's deliberation, is an important part of our downtown's future. It is our hope that the Council will proceed with plans for the park in a year's time.

I strongly urge the council to proceed as needed to move the housing forward and allow the park to be considered in the future.

Regards,

Taryn Keenan

Helena Graves

From: Deborah Finestone [redacted]
Sent: Friday, June 21, 2024 10:54 AM
To: City Clerk
Subject: letter regarding Eden Housing Referendum

Exercise Caution: This message is from outside the City email system. Do not open links or attachments from untrusted sources.

Honorable Mayor Marchand and City Council Members,

I've lived in Livermore for 10 years and was happy to learn that the Eden Housing development can proceed.

I support that, as this town needs affordable housing as soon as possible. I urge the Council to take the necessary steps to remove the park components from the agreement to facilitate that.

I also think it's worth considering how Veterans Park can be built in the future.

I urge you to accept the referendum here tonight and proceed a year from now to construct the park, which will enhance the Eden Housing project in our beautiful downtown.

Thank you,
Deborah Finestone

Helena Graves

From: Zoe Siegel <zsiegel@greenbelt.org>
Sent: Friday, June 21, 2024 11:48 AM
To: City Clerk
Subject: Re Item 7.2 6/24 Council Meeting
Attachments: Livermore Endorsement Letter GA 2024.pdf

Exercise Caution: This message is from outside the City email system. Do not open links or attachments from untrusted sources.

Hello,

In advance of the 6/24 Council meeting and in regards to item 7.2, Greenbelt Alliance would like express our support for the Downtown Livermore Apartments Project. Please see our attached letter of support to be included in the meeting packet.

Cheers,

Zoe

--
Zoe Siegel *(she/her/ella)*
Senior Director of Climate Resilience
Greenbelt Alliance
Schedule a meeting with me through Calendly | *Let's connect on LinkedIn*
827 Broadway Ste 310 | Oakland, CA 94607
Telephone: (510) 367-4464

The Resilience Playbook is your go-to guide for accelerating equitable adaptation to the climate crisis in the Bay Area. Check it out today!

greenbelt.org | Facebook | Instagram | X

GREENBELT ALLIANCE

June 20, 2024

Livermore City Council
1052 S. Livermore Ave.
Livermore, CA 94550

RE: Endorsement of Downtown Livermore Apartments

Dear Mayor and Livermore City Council,

For over 65 years, Greenbelt Alliance has helped create cities and neighborhoods that make the Bay Area a better place to live—healthy places where people can walk and bike; communities with parks, shops, transportation options; homes that are affordable and resilient to the impacts of climate change. Greenbelt Alliance's Climate SMART—Sustainable, Mixed, Affordable, Resilient, Transit-Oriented—Development Endorsement Program provides support for projects that advance the right kind of development in the right places.

After careful review, Greenbelt Alliance was pleased to endorse the proposed Downtown Livermore Apartments Project in 2021.

We would like to encourage the Council to proceed as needed to keep this project on track since it is separate from the park next door. We appreciate the value of open space and the myriad of benefits it provides and think that it is the right step for the Council to consider how the park can be moved forward in the future, but this is a separate issue than this housing project.

It is an absolute shame that an 100% affordable housing project on a downtown parcel designated for housing has seen so many setbacks and we hope you approve the project swiftly moving forward. This is a 130 unit, 2.1 acre residential development with 100% of the units designated for low-income families earning between 20% and 60% of Alameda County's Average Median Income. The traffic and environmental benefits that will be provided by this project are exactly what Livermore needs to grow smartly. This currently underutilized area will contribute to the City's vision for high quality, higher-density development. This project will encourage a walkable and vibrant community in Livermore for residents across the income spectrum, provide a public open space with its large public park, and offer a host of other environmental and quality of life benefits.

This is the kind of climate-smart development that we need in the Bay Area to meet our housing goals, reduce greenhouse gas emissions, and make sure that local residents are able to grow and thrive in their own communities. In closing, the development of the Downtown Livermore Apartments is another smart step for the City of Livermore to ensure the creation of homes and vibrant communities near jobs, retail, and transit. We hope its approval will inspire communities around the Bay Area to redouble their efforts to grow smartly.

Sincerely,
Zoe Siegel

Director of Climate Resilience, Greenbelt Alliance

Helena Graves

From: Peg Folta [redacted]
Sent: Friday, June 21, 2024 1:37 PM
To: City Clerk
Cc: [redacted]
Subject: comment for City June 25th Council meeting

Exercise Caution: This message is from outside the City email system. Do not open links or attachments from untrusted sources.

I would like to submit the comment below for Matters for Consideration 7.2.

As with the vast majority of citizens, I would like to resume progress on the approved downtown plan. I support the Council's ability to decide how best to move forward, but voting on Veterans Park may be the most straightforward way to approve it. It seems a waste of time and money (again) since all seem to support it, but that is where we are now. Most importantly, please put forward a resolution ratifying the Amended and Restated Disposition, Development and Loan Agreement with Eden Housing, Inc., so progress on Eden housing can begin again.
Thank you for fighting the good fight for the citizens of Livermore.
Peg Folta

Helena Graves

From: Winston.Stromberg@lw.com
Sent: Friday, June 21, 2024 6:14 PM
To: John Marchand; Robert Carling; Barrientos, Ben; Evan Branning; Brittni Kiick; City Clerk
Cc: Jason Alcala; Marianna Marysheva; [redacted] Michelle.Cornell-Davis@lw.com; Kevin.Homrighausen@lw.com
Subject: Livermore City Council, June 24 meeting, Agenda Item 7.2
Attachments: 6-24-24 Agenda Item 7.2 - Letter from MEH.pdf

Exercise Caution: This message is from outside the City email system. Do not open links or attachments from untrusted sources.

Please see the attached correspondence related to Agenda Item 7.2 on the June 24, 2024, City Council agenda.

Regards,

Winston P. Stromberg

LATHAM & WATKINS LLP
355 South Grand Avenue, Suite 100
Los Angeles, CA 90071-1560
Direct Dial: +1.213.891.8983
Email: winston.stromberg@lw.com
https://www.lw.com

This email may contain material that is confidential, privileged and/or attorney work product for the sole use of the intended recipient. Any review, disclosure, reliance or distribution by others or forwarding without express permission is strictly prohibited. If you are not the intended recipient, please contact the sender and delete all copies including any attachments.

Latham & Watkins LLP or any of its affiliates may monitor electronic communications sent or received by our networks in order to protect our business and verify compliance with our policies and relevant legal requirements. Any personal information contained or referred to within this electronic communication will be processed in accordance with the firm's privacy notices and Global Privacy Standards available at www.lw.com.

355 South Grand Avenue, Suite 100
Los Angeles, California 90071-1560
Tel: +1.213.485.1234 Fax: +1.213.891.8763
www.lw.com

LATHAM & WATKINS LLP

FIRM / AFFILIATE OFFICES

Austin	Milan
Beijing	Munich
Boston	New York
Brussels	Orange County
Century City	Paris
Chicago	Riyadh
Dubai	San Diego
Düsseldorf	San Francisco
Frankfurt	Seoul
Hamburg	Silicon Valley
Hong Kong	Singapore
Houston	Tel Aviv
London	Tokyo
Los Angeles	Washington, D.C.
Madrid	

June 21, 2024

VIA EMAIL (cityclerk@cityoflivermore.net**)**

Mayor Marchand and Members of the City Council
City of Livermore
City Hall
1052 S. Livermore Ave.
Livermore, CA 94550

Re: June 24, 2024, Livermore City Council Hearing, Agenda Item No. 7.2

Dear Mayor Marchand and Honorable Councilmembers:

On behalf of Move Eden Housing ("MEH"), this addresses Agenda Item No. 7.2, regarding the petition entitled *Referendum Against Resolution No. 2022-085 Passed by the City Council of the City of Livermore Authorizing Execution of an Amended and Restated Disposition, Development and Loan Agreement ("DDLA") with Eden Housing, Inc. for Development of the Downtown Multi-Family Housing Site* ("Referendum").

We have serious concerns about the proposals for City Council action outlined in the Staff Report for this item ("June 24 Staff Report"). Once again, it appears that the City is attempting to squash the will of the voters and take actions inconsistent with the City's obligations under the California Elections Code.

As the City knows, the First District Court of Appeal recently held that the City violated the Elections Code when it refused to process the Referendum based on legal advice that Resolution No. 2022-085 ("Resolution") was not subject to the referendum power. In doing so, the court also held that the City Council's adoption of the Resolution was a legislative act subject to referendum because the Amended DDLA "approved the construction and improvements to a new public park." (*Move Eden Housing v. City of Livermore* (2024) 100 Cal.App.5th 263, 269 (the "Opinion").)

Subsequent to the Court of Appeal's opinion, the City restarted processing the Referendum, and on June 4, the Alameda County Registrar of Voters certified that the Referendum contains sufficient valid signatures. In light of these events, Staff now recommends that City Council either repeal the *entire* Resolution or place the Resolution

on the ballot for the voters to approve or set aside, *but only* those provisions of the Amended DDLA that relate to Veterans Park. In either case, Staff recommends that the City Council also adopt a companion resolution ratifying and readopting the Amended DDLA without the Veterans Park provisions. Finally, the June 24 Staff Report also appropriately recommends accepting the County's certification of sufficiency of signatures on the Referendum petition.

We write to correct several mischaracterizations in the June 24 Staff Report and to clarify (1) the Referendum challenges ***the entire Resolution*** authorizing the City's execution of the Amended DDLA, not just the provisions related to Veterans Park,[1] and (2) the Opinion requires the City to process the Resolution as a whole rather than parse out the Veterans Park provisions. In accordance with the Opinion, City Council must either place the entire Resolution on the ballot or repeal the entire Resolution. In either case, for a period of one year, the City is limited by the Elections Code from adopting a resolution that is "essentially the same" as the Resolution which MEH has successfully petitioned for referendum, including the companion resolution proposed by Staff.

We therefore request that City Council (1) either put the entire Resolution to a vote or rescind the entire Resolution, and (2) decline to adopt the proposed companion resolution. We strongly urge the City to listen to the over 6,000 registered voters who signed the Referendum petition and not take further action that infringes their rights.

I. THE REFERENDUM CHALLENGES THE ENTIRE AMENDED DDLA

The June 24 Staff Report characterizes the Referendum as challenging only those portions of the Resolution related to the construction of and improvements to Veterans Park (and not the affordable housing project). Specifically, Staff writes that the Referendum "is not about whether a park should be built instead of affordable workforce housing. Rather, the referendum is about Veterans Park and whether it should be built as part of the City's agreement with Eden Housing." (Staff Report, p. 2.) This incorrect statement is blatant revisionist history.

The action challenged by MEH via referendum was the ***entire*** Resolution approving the ***entire*** Amended DDLA, not specific parts of the Amended DDLA. On May 25, 2022, one day after the City Council approved the Resolution, the law office of Fadem & Associates, LLC, sent the City Clerk a letter providing notice that several Livermore voters "intend to circulate a referendum petition to protest" the Resolution. (See Exhibit A attached hereto.) Two days later, on May 27, 2022, on behalf of Livermore voter and resident Richard Ryon, Fadem & Associates provided the City Clerk

[1] Although much of the Amended DDLA deals with development of Eden Housing's project, as MEH has stated in the past it supports affordable housing in downtown Livermore, but has proposed alternative locations for the project, including north of Railroad Avenue.

with a proposed impartial summary of a referendum to repeal the Resolution, as permitted by Elections Code section 9238(b)(2)(B)(i). (See Exhibit B attached hereto.) The proposed impartial summary summarizes the entirety of the Resolution—not just those provisions related to Veterans Park.

The official impartial summary approved by the City Attorney on June 9, 2022, also clearly addresses the entire Amended DDLA. This impartial summary served as the Referendum petition itself (in lieu of the entire Resolution and Amended DDLA), as permitted by Elections Code section 9238(b)(2)(B). It is therefore clear, that even from the very beginning, MEH and Mr. Ryon challenged the Resolution in its entirety, and not just certain portions.

II. THE CITY MAY NOT PARSE THE AMENDED DDLA FOR PURPOSES OF PROCESSING THE REFERENDUM

The June 24 Staff Report states that the Opinion "determined that the primary substantive decisions related to the housing aspects of the agreement were not subject to referendum." (Staff Report, pp. 2, 3.) The Staff Report thus concludes that only the Veterans Park provisions need to be placed on the ballot, rather than the entirety of the Resolution. (See *id*., p. 5 [stating Court of Appeal "determined that MEH's referendum was limited to those portions of Resolution No. 2022-085 that approved the construction of and improvements to Veterans Park"].) This conclusion, however, rests on a blatant mischaracterization of what the Opinion actually held.

While the Court of Appeal determined that certain parts of the Amended DDLA—namely, "loan terms and an indemnity provision relating to hazardous waste"—were not legislative acts, the Court held that the agreement's requirement that the City fund construction of a public park was legislative. (Opinion at p. 269 & fn. 1.) Thus, the *entire* Resolution approving the Amended DDLA was a legislative act subject to referendum. The funding of the park in the Amended DDLA is what makes the Resolution a legislative act as a whole. (See *id*. at p. 275 ["Due to the policy decision to construct and improve Veteran's Park, *adoption of the Resolution was a legislative act*"] [emphasis added]; *id*., at p. 269 ["*Adoption of the challenged resolution was a legislative act* subject to the referendum power, *because* the development agreement at issue approved the construction of and improvements to a new public park] [emphasis added].)

Nowhere in the Opinion does the Court conclude that only the provisions rendering the Resolution a legislative act are subject to referendum. Indeed, the Court specifically declined the City's request to allow it to separate out the Amended DDLA provisions from the Referendum. At oral argument, the City argued that the court should only subject the legislative aspects of the DDLA to referendum, citing *Dye v. Council of*

City of Compton (1947) 80 Cal.App.2d 486. The Court rejected this argument on limiting the scope of the referendum, stating:

> At oral argument, respondents requested that this court direct the superior court to process the referendum only as to those parts of the 2022 Agreement that involved legislative determinations, citing *Dye v. Council of City of Compton*, 80 Cal.App.2d 486, 487. But the issue in *Dye* was whether the referendum power permitted a challenge to only parts of a city ordinance. (*Id.* at p. 488.) The court did not suggest that, where *a referendum petition challenges the whole of a resolution or ordinance, as in the present case*, it would be proper to limit the scope of the referendum. Given respondents' failure to present authority supporting their request, we decline it.

(June 24 Staff Report Attachment 3, p. 17 [footnote 9 of the Opinion] [emphasis added].)[2]

The Court clearly rejected exactly what the City now seeks to do – to limit the scope of the Referendum to only those parts of the Amended DDLA that the City believes are legislative actions.

Further, the June 24 Staff Report includes a summary of past actions related to Veterans Park, and Attachment 3 to the Staff Report recommends that "that information be assembled to clearly show that the location, design, and construction of Veterans Park as a City park was not first authorized by Resolution No. 2022-085 so that the administrative record for any subsequent review by the court is complete on that issue." (Staff Report, pp. 4-5; Attachment 3, p. 4.) This appears to be another attempt to circumvent the Opinion. Where there has been an appellate decision in a case, the trial court is reinvested with jurisdiction but only such jurisdiction as defined by the terms set out by the Court of Appeal. (*Snukal v. Flightways Mfg., Inc.* (2000) 23 Cal.4th 754, 774 fn 5.) As the trial court is empowered to act only in accordance with the direction of the Court of Appeal, any action which does not conform to that direction is void. (*Hampton v. Superior Ct.* (1952) 38 Cal.2d 652, 655.) The City must accept that here, the judgment rendered in the Opinion is the law of the case and is binding on the trial court.[3]

---

[2] Although this portion of the Opinion is "unpublished," that is irrelevant for purposes of the City's compliance with the Court of Appeal's directives. An unpublished opinion still binds the parties to the case and only means that his part of the Opinion cannot be cited in future litigation between *other* litigants.

[3] The June 24 Staff Report claims that the result in the Opinion would have been different if the record before the Court had contained information about the history of Veterans Park. Not only is this pure legal speculation, but the City had more than an ample opportunity to submit this

The City's flouting of the Opinion is astonishing. It is wholly inappropriate for the City to misread the Opinion for the proposition that the City may limit the scope of the Referendum – if put on the November ballot – to solely the Veterans Park-related provisions of the Amended DDLA. To comply with the Court's directives, the City must take action as to the Resolution in its entirety rather than parse out specific provisions for processing.[4]

III. SEPERATING VETERANS PARK FROM EDEN HOUSING'S PROJECT CONTRAVENES THE CITY'S ORIGINAL PROJECT APPROVALS

Separating Veterans Park from the affordable housing development is inconsistent with the City's original approval of Eden Housing's project. When the City approved Eden Housing's project in 2021, it was clear that the "project" included both the affordable housing development and Veterans Park elements. Bifurcating these elements, as the City now proposes, could lead to a circumstance where the City decides to move forward with the housing development, but the voters/City decide not to move forward with Veterans Park. This cannot occur because the City's approval of the housing portion of the project was *conditioned* on the dedication of Veterans Park.

For example, as the City noted in its May 2021 Staff Report, the "Downtown Specific Plan requires public and private open space to be incorporated into each development project," and "[r]esidential projects are required to provide 150 square feet of public open space" per unit. (May 24, 2021, City Council Staff Report Item No. 5.2, pp. 18-19.)[5] The City explained that the "development will provide approximately 0.7

---

information to the trial court when these issues were originally litigated in late 2022. It did not. It is too late for "reconsideration" by the trial court or Court of Appeal.

[4] Staff also notes that the Amended DDLA "contains a clause that removes any terms that are invalid, void, or unenforceable, and confirms that the remaining provisions remain in full force and effect. (Staff Report, p. 3.) First, the issue here is not one of contractual law, but rather whether the entirety of the Resolution is subject to referendum. Second, the Veterans Park provisions are not severable from the rest of the Amended DDLA as currently written. It is unclear that Eden Housing could comply with the Amended DDLA's requirement to transfer Veterans Park parcel back to the City when construction and improvements of the park may not move forward but remain a necessary component of the housing project.

[5] It is also worth noting that the City included Veterans Park when calculating the total project density. (See May 24, 2021, City Council Staff Report Item No. 5.2., p. 12 ["Taken together, all three proposed parcels total approximately 2.5 acres in size. This yields a residential density of 52 units per acre, consistent with the Downtown Specific Plan density range."]). The City then relied on this density when making its findings for the project. (See e.g., Resolution 2021-72, Exhibit A ["The gross acreage of the project site, which includes all three proposed parcels, is approximately 2.5 acres, which equates to a residential density of 52 units per acre, consistent with the Downtown Specific Plan."].) Without the park, these findings are no longer valid.

acres of publicly accessible open space on the project site as Veterans Park," and, "[a]t a proposed area of 240 square feet per unit, the area of Veterans Park exceeds the DSP's public open space requirements." (*Id.*) Because of Veterans Park, the City was able to find that the overall project conformed with the Specific Plan and applicable development standards. (See e.g., Resolution No. 2021-72, Exhibit A ["The project also conforms to all of the Downtown Core development standards with respect to . . . open space," noting the "project will dedicate an approximately 0.7-acre public park, exceeding the site's public open space requirements."].) But if Veterans Park never moves forward, then the housing development no longer satisfies the Specific Plan's open space requirement and the City's original findings are no longer valid. Because the City cannot allow such a circumstance to occur, it is improper for the City to progress the housing development and Veterans Park project components along two separate tracks.

IV. THE COMPANION RESOLUTION IS IMPROPER UNDER THE ELECTIONS CODE

Staff recommends that whether the City Council repeals the Resolution or places the park provisions on the ballot, City Council should also adopt a companion resolution to "ratify, reaffirm, and readopt the terms and conditions in the [Amended DDLA] with Eden Housing, Inc. for the housing project, other than construction of and improvements to Veterans Park, and acknowledge they remain in effect as of the date the agreement was signed." (Staff Report, p. 2.) Such an action would run afoul of Elections Code section 9241, which provides that if legislation is rescinded by the legislative body or put to a vote and not approved by the voters, a city must wait one year before it reapproves that legislation (also known as the "stay provision").

Under the "stay provision," the legislative body may not enact a new ordinance that is "essentially the same" as the challenged one, nor may it in bad faith or with the "intent to evade" the referendum petition when enacting new legislation. (*Lindelli v. Town of San Anselmo* (2003) 111 Cal.App.4th 1099, 1110-1111 [holding that two measures were "essentially the same" when the contract details remained the same except for the amount of time covered]; *Orange Citizens for Parks & Recreation v. Superior Ct.* (2016) 2 Cal.5th 141, 160 [holding that a city could not nullify the referendum power by making an "administrative correction" "to evade the effect of the referendum petition"] [quoting *Assembly v. Deukmejian* (1982) 30 Cal.3d 638, 678].) This is because "[t]he referendum process would be completely nullified if, when a referendum petition is filed against a legislative act, the legislative body could by merely amending it in a minor way and adding additional matters, then adopt in its entirety the legislative act objected to in the referendum petition." (*Martin v. Smith* (1959) 176 Cal.App.2d 115, 120.)

The companion resolution proposes to readopt the Amended DDLA in every way except for a few limited provisions related to Veterans Park. In other words, if City

Council adopts the companion resolution, it will be adopting legislation that is "essentially the same" and for the purpose of evading the Referendum. Moreover, given Staff's proposal that the City Council can limit the Referendum put on the ballot to the DDLA provisions regarding Veterans Park—in direct contradiction to the Opinion—MEH has no choice but to believe that the City is purposely acting in bad faith. Adoption of the companion resolution would be a blatant contravention of the law and the Opinion, and force MEH to go back to court to seek relief, once again, from the City's actions.[6]

In sum, under Elections Code section 9241 the only options the City Council has are to (1) put the entire Resolution to a vote this November; or (2) rescind the Resolution in its entirety. In either case, the City Council cannot, and should not, adopt the proposed companion resolution for at least one year in accordance with section 9241.

We urge the City to comply with its legal obligations under the Elections Code and the Opinion and not continue to ignore the rights of Livermore's voters. If you have any questions, please do not hesitate to call me at (213) 891-8983 or email me at winston.stromberg@lw.com.

Very truly yours,

Winston Stromberg
of LATHAM & WATKINS LLP

Attachments

cc: Jason Alcala, City Attorney
Marianna Marysheva, City Manager
Richard Ryon
Carol Silva, Move Eden Housing
Barry Fadem, Fadem & Associates, LLC
Michelle Cornell-Davis, Latham & Watkins LLP
Kevin Homrighausen, Latham & Watkins LLP

[6] The June 24 Staff Report also claims that MEH is litigious and likely to file a lawsuit challenging either decision by the City Council. Staff's disingenuous claim ignores that MEH was *forced* to file a lawsuit when the City violated the Elections Code by refusing to process the Referendum. As the Court stated, "It is revealing that, if the City Clerk had complied with her legal obligations and processed the referendum, *then plaintiffs would not have had to file the present action*. Instead, any challenge to the validity of the referendum could have been heard pursuant to a petition brought by the City." (Opinion, p. 285.)

EXHIBIT A

LAW OFFICE OF
FADEM & ASSOCIATES, LLC
3527 MT. DIABLO BOULEVARD
NO. 192
LAFAYETTE, CALIFORNIA 94549

BARRY FADEM

TELEPHONE
(925) 283-0581
E-MAIL
Bfadem1@aol.com

May 25, 2022

Marie Weber
City Clerk
1052 S. Livermore Ave.
Livermore, CA 94550

Dear Ms. Weber,

This firm serves as legal counsel to several Livermore voters. We are writing you on their behalf to place you on notice that they intend to circulate a referendum petition to protest a resolution that was passed by the City Council yesterday afternoon (Item 6.3 on the City Council Agenda--"A Resolution Authorizing Execution of an Amended and Restated Disposition, Development and Loan Agreement ("DDLA") with Eden Housing, Inc. for Development of the Downtown Multi-Family Housing Site").

Pursuant to California Elections Code section 9238 (b)(i), they intend to submit "within three business days" of the final passage of the resolution a proposed impartial summary that will appear on the petition. Therefore, please provide an attested copy of the aforementioned resolution as soon as possible.

As I am sure you are aware, once we submit a proposed summary, you are required by law to "immediately transmit a copy of the proposed summary to the City Attorney." The City Attorney then has 10 business days to issue an approved summary. We will then have 30 days from issuance of the approved summary by the City Attorney to gather and submit sufficient signatures to qualify the referendum for the ballot.

Since time is of the essence, we would greatly appreciate your cooperation in providing an attested copy of the resolution.

Please confirm receipt of this letter.

Sincerely,

Barry Fadem

Barry Fadem

EXHIBIT B

LAW OFFICE OF
FADEM & ASSOCIATES, LLC
3527 MT. DIABLO BOULEVARD
NO. 192
LAFAYETTE, CALIFORNIA 94549

BARRY FADEM

TELEPHONE
(925) 283-0581
E-MAIL
Bfadem1@aol.com

May 27, 2022

Marie Weber
City Clerk
1052 S. Livermore Ave.
Livermore, CA 94550

Dear Ms. Weber,

This firm serves as legal counsel to Richard Ryan, proponent for the referendum to protest a resolution that was passed by the City Council on May 24 (Item 6.3 on the City Council Agenda--"A Resolution Authorizing Execution of an Amended and Restated Disposition, Development and Loan Agreement ("DDLA") with Eden Housing, Inc. for Development of the Downtown Multi-Family Housing Site").

Pursuant to California Elections Code section 9238 (b)(2)(B)(i), please find a proposed impartial summary for the referendum petition. As required by law, please immediately transmit a copy of the proposed summary to the City Attorney.

Please confirm receipt of this letter.

Sincerely,

Barry Fadem

Barry Fadem

Proposed Impartial Summary of Referendum Against Resolution No. 2022-__ Passed by the City Council of the City of Livermore Authorizing Execution of an Amended and Restated Disposition, Development and Loan Agreement ("DDLA") with Eden Housing, Inc. for Development of the Downtown Multi-Family Housing Site

(Elections Code Section 9238(b)(2)(B)(i))

On November 27, 2018, the City of Livermore ("City") and Eden Housing, Inc. ("Eden") entered into a Disposition, Development and Loan Agreement ("DDLA") with respect to an approximately 2.0-acre City-owned site (the "Property") in the Downtown Core Area of the Downtown Specific Plan, to enable the future development of a 130-unit, affordable, multi-family, "workforce" housing project (the "Project").

On May 25, 2021, the City approved land use entitlements for the Project, including Downtown Design Review 20-019 and Vesting Tentative Parcel Map 11186 – Subdivision 21-003, subject to conditions of approval (the "Approvals").

On May 26, 2021, the City and Eden entered into a First Amendment to the DDLA to define the development and financial obligations for the proposed Veterans Park, allow for reimbursement by City to Eden for certain emergency vehicle access road improvements adjacent to the Project, and to update the entitlement, financing, and development timeline in the Schedule of Performance included with the DDLA.

On June 24, 2021, a Petition for Writ of Mandate was filed in Alameda County Superior Court by Save Livermore Downtown against the City and Eden, challenging the Approvals and the City's compliance with the California Environmental Quality Act. On February 14, 2022, the Superior Court entered judgment denying the Petition for Writ of Mandate. On April 13, 2022, Save Livermore Downtown appealed the judgment to the California Court of Appeal, and the appeal is still pending (the "Litigation").

On May 24, 2022, the City Council adopted Resolution No. 2022-__ (the "Resolution"), authorizing the City's execution of an Amended and Restated DDLA with Eden for development of the Project. The Resolution states that "the City and Eden desire to enter into an Amended and Restated DDLA and make several modifications and additions that will facilitate the development process, enumerate specific financial contributions and agreements that would be under the authority of the City Manager to execute, and modify the Schedule of Performance to extend the time period for Eden to complete development of the project in light of the pending Litigation."

The purpose of the Amended and Restated DDLA is to provide the terms and conditions under which Eden shall prepare or cause to be prepared all required documents necessary to receive development approvals for the Project, to obtain title to the Property, and to develop the Project. The Amended and Restated DDLA also provides terms and conditions under which the City shall convey the Property to Eden for the purpose of developing, building, and operating the Project and contribute certain funds for the acquisition and predevelopment of the Property.

Financial Provisions. The Amended and Restated DDLA acknowledges that pursuant to the original DDLA, the City provided a predevelopment loan of five-hundred thousand dollars

($500,000) to Eden for predevelopment costs for the Project, including architecture and design costs, legal and specialty consultant fees, site feasibility analysis, title review, due diligence, and preconstruction costs (the "Predevelopment Loan"). Eden is responsible for payment of the principal of, and interest on, the Predevelopment Loan.

The Amended and Restated DDLA also requires the City to make an acquisition loan to Eden for the purchase price of the Property, which shall be seven-million eight-hundred thousand dollars ($7,800,000) (the "Site Acquisition Loan"). The Site Acquisition Loan shall be evidenced and secured by a Seller Take-Back Note and Seller-Take Back Acquisition Deed of Trust recorded against the Property. Eden shall be responsible for the payment of principal and interest on the Site Acquisition Loan.

In addition, the Amended and Restated DDLA requires the City, at its sole expense, to pay for the costs of improvements to Veterans Park, with Eden managing construction of such improvements. Eden and the City must negotiate a future construction management and reimbursement agreement to coordinate the construction of improvements to Veterans Park, which shall not exceed five-million five-hundred thousand dollars ($5,500,000) without additional City Council approval.

Predisposition Requirements. The Amended and Restated DDLA establishes conditions that must be satisfied by Eden in order for Eden to acquire title to the Property. The City may waive satisfaction of the conditions.

The conditions include: (1) Eden providing the City with a preliminary development Pro Forma, setting forth Eden's estimate of sources and uses of funds for development of the Project; (2) Eden obtaining all entitlements necessary for the Project; (3) the City approving Eden's organizational documents; (4) the City providing Eden with written notification that (a) it has completed a federally required environmental review pursuant to the National Environmental Policy Act ("NEPA") and the City's request for release of funds has been approved and the purchase may proceed; or (b) it has determined the purchase is exempt from federal environmental review pursuant to NEPA and a request for release of funds is not required; (5) Eden furnishing to the City the types and amounts of insurance specified in the Amended and Restated DDLA; (6) the parties entering into a temporary parking lease for the Property wherein public parking will be available on the Property until construction of the first phase of the Project commences; and (7) the parties taking the necessary steps to ensure that the City will receive air rights to Parcels 1 and 3 on the Property to ensure that the Project as constructed does not exceed 52 feet above the surface elevation.

Disposition of the Property. The Amended and Restated DDLA requires the City to sell to Eden, and Eden to purchase from the City, the Property provided that the predisposition requirements and additional closing conditions have been satisfied. To accomplish the conveyance of the Property from the City to Eden, the parties must establish an escrow and provide the escrow holder with written instructions consistent with the Amended and Restated DDLA.

The additional closing conditions that must be satisfied prior to conveyance of the Property include (1) completion of the predisposition requirements, (2) Eden depositing all

required documents and its share of closing costs, (3) there being no events of default by Eden, (4) Eden's representations and warranties remaining true and correct, (5) the title company being prepared to issue a title policy, and (6) the City having deposited a grant deed and other required documents to the escrow holder.

Upon satisfaction or waiver of all the required predisposition conditions and the deposit of all required documents into escrow, the escrow officer must cause to be recorded with the Official Records of Alameda County the grant deed conveying the Property to Eden as well as other documents required to be recorded under the Amended and Restated DDLA. The Schedule of Performance attached to the Amended and Restated DDLA requires close of escrow on the Property to occur on or before September 30, 2022.

Hazardous Materials. Prior to the close of escrow for the Property, the Amended and Restated DDLA requires the City and Eden to enter into an indemnity and cooperation agreement to apportion costs and any potential liability related to hazardous materials at, on, in, beneath or from the Property from and after the date of the close of escrow. The Amended and Restated DDLA authorizes the City Manager to negotiate and execute the indemnity and cooperation agreement in an amount not to exceed four-million three-hundred thousand dollars ($4,300,000), subject to the City Attorney's approval of the agreement as to form. The obligations of the City under the indemnity and cooperation agreement shall not exceed $4,300,000, without further City Council approval.

Design and Construction. The Amended and Restated DDLA requires that Eden obtain all ministerial permits and approvals necessary to construct the Project within the time specified in the Schedule of Performance attached to the Amended and Restated DDLA. Eden shall be solely responsible for all aspects of Eden's conduct in connection with the Project, including, but not limited to, the quality and suitability of project documents, the supervision of construction work for the Project and the Veterans Park Improvements, and the qualifications, financial condition, and performance of all architects, engineers, contractors, subcontractors, suppliers, consultants, and property managers.

The Amended and Restated DDLA obligates Eden to commence preconstruction activities and the construction of the Project within the times set forth in the Schedule of Performance. Eden shall diligently prosecute to completion the construction of the Project, and shall complete construction of the Project within the time set forth in the Schedule of Performance, subject to Force Majeure requirements set forth in the Amended and Restated DDLA. Moreover, Eden must construct the Project in accordance with approved final construction drawings, and the terms and conditions of all City and other governmental approvals, and in compliance with 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 (2) all directions, rules and regulations of any fire marshal, health officer, building inspector, or other officer of every governmental agency having or hereafter acquiring jurisdiction.

The Amended and Restated DDLA also requires Eden to pay and shall cause its contractor and subcontractors to pay prevailing wages in the construction of the Project as those wages are determined pursuant to California Labor Code Section 1720 et seq., and to employ

apprentices as required by California Labor Code Sections 1777.5 et seq., and the implementing regulations of the Department of Industrial Relations.

The Amended and Restated DDLA requires Eden to permit the City, upon reasonable prior notice not less than 48 hours, to enter the Property during normal business hours to inspect the construction work to determine that such work is in substantial conformity with the approved final construction drawings or to inspect the Property for compliance with the Amended and Restated DDLA.

Upon recordation of the Final Map and construction finance closing for the first phase of the Project, at the time specified in the Schedule of Performance, Eden must dedicate the Veterans Park Parcel (Parcel 2) back to the City. Parcel 2 shall have air rights over Parcels 1 and 3, as described in the Amended and Restated DDLA, and Parcel 2 shall be dedicated to the City free and clear of any encumbrances created by Eden that have not been authorized by the City.

The Amended and Restated DDLA requires the City to enter into an irrevocable parking space lease with Eden for 16 reserved parking spaces for Project residents in the L Street Garage, which will be constructed and owned by the City to serve the Project. The spaces will be leased at $300 per space per year, for an annual cost of $4,800, for a 55-year term with a 2.5% escalator. The term will commence from lease-up of the first phase of the Project.

Additional Ongoing Obligations. The Amended and Restated DDLA requires Eden to covenant to use the Property for affordable housing for a period not less than 55 years. Eden agrees to maintain the Property in a neat and orderly condition during construction in accordance with industry health and safety standards, and that, once the Project is completed, to maintain the Project as to both external and internal appearance of the buildings, the common areas, and the parking areas. The Amended and Restated DDLA requires Eden to maintain or cause to be maintained the Property in good repair and working order, and in a neat, clean and orderly condition, including the walkways, driveways, parking areas and landscaping, and from time to time to make all necessary and proper repairs, renewals, and replacements.

The Amended and Restated DDLA requires Eden to indemnify, defend, and hold harmless the City and its elected officials, officers, employees, agents, consultants, designated volunteers, and contractors 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 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 the Amended and Restated DDLA and/or the Project; (ii) performance of the Amended and Restated DDLA on the part of Eden or any contractor or subcontractor of Eden; and/or (iii) the development, operation, maintenance or management of the Project,

Default and Remedies. The Amended and Restated DDLA contains provisions governing the parties' remedies for breach of the Amended and Restated DDLA, including events of default by the City and events of default by Eden. If a specified event of default occurs, the non-defaulting party must first notify the defaulting party of the purported breach or

failure, giving the defaulting party thirty (30) days from receipt of such notice to cure such breach or failure. If the defaulting party fails to commence the cure during such 30-day period and thereafter to prosecute the cure diligently to completion, the non-defaulting party shall be afforded the right to take any or all of the following remedies: (1) terminating the Amended and Restated DDLA; (2) prosecuting an action for damages; or (3) seeking specific performance or any other remedy available at law or in equity.

The Amended and Restated DDLA provides that following the close of escrow of the Property, (1) if Eden fails to commence the pre-construction activities or construction of the Project by the dates listed in the Schedule of Performance (as such dates may be extended), or (2) if the City does not prevail in the Litigation; then the City may, in addition to other rights granted in the Amended and Restated DDLA, re-enter and take possession of the Property with all improvements thereon, and revest in the City the estate previously conveyed to Eden by the City. The City's rights to repossess the Property terminate once Eden closes on construction financing for the first phase of the Project.

Upon revesting in the City of title to the Property, 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. In addition, upon revesting in the City of title to the Property, the Predevelopment Loan and Site Acquisition Loan shall be deemed paid in full and cancelled. If the City's rights to repossess the property are triggered because the City does not prevail in Litigation, the City shall reimburse Eden for actual costs incurred and paid as a result of its ownership of the Property, and not already reimbursed.

The Amended and Restated DDLA contains provisions regarding damages, including an acknowledgment from the City that the exercise of its legislative authority for a land use action, such as but not limited to a General Plan Amendment, Specific Plan Amendment, or zoning action (collectively, a "Land Use Action") that prevents the Project from being developed does not constitute a compensable taking absent extraordinary circumstances. The Amended and Restated DDLA provides examples of extraordinary circumstances that could subject the City to a taking without payment of compensation, including, but not limited to, eliminating all value from the Property, the denial of due process, and reclassifying the Property in a manner to prevent its improvement so that it might be acquired at a lesser price.

The City acknowledges that Eden has expended significant resources to develop the Project that could have been used to develop affordable housing elsewhere and that could be lost, and obtained grant and/or loan funding that would need to be repaid, if the City subsequently exercises its legislative authority for a Land Use Action that prevents the Project from being developed. The City and Eden agree that they would be able to quantify the losses equal to the grant and/or loan funding that would need to be repaid should a Land Use Action by the City prevent the Project from being developed. The City and Eden also agree that quantifying the scope of the economic and noneconomic losses arising from a Land Use Action that prevents the Project from being developed is inherently difficult insofar as the action results in the loss of

affordable housing opportunities, negatively impacts Eden's reputation, and cannot adequately capture the soft costs expended on the Project.

The Amended and Restated DDLA states that the City and Eden agree and stipulate that the repayment of Project grant and/or loan funds already expended for the Project that are not available for repayment and the agreed upon sum of two-million three-hundred thousand dollars ($2,300,000) is a reasonable measure of the damages based upon their experience in the affordable housing industry and given the nature of the losses that may result from a Land Use Action that prevents the Project from being developed.

Thus, the Amended and Restated DDLA states that in the event the City exercises its legislative authority for a Land Use Action that prevents the Project from being developed, then the City shall pay damages to Eden as follows:

(1) An amount equal to the grant and/or loan funds that were expended by Eden prior to the date of that Land Use Action that is not available for repayment in the event the awarding/loaning agency demands Eden repay the expended funds; and

(2) The stipulated amount of $2,300,000 for the losses that cannot be quantified.

General Provisions. The Amended and Restated DDLA also contains general contractual provisions, including notice provisions; non-liability of officials, employees and agents; inspection rights; a severability provision; a Force Majeure provision; and an integration clause. The Amended and Restated DDLA states that its terms shall run with the land, and shall bind all successors in title to the Property until the termination of the Amended and Restated DDLA, except that those provisions that are specified to survive termination of the Amended and Restated DDLA shall run with the land in perpetuity and remain in full force and effect following such termination.

The Amended and Restated DDLA states that it may be amended from time to time as the Parties find is necessary. The City Manager shall have the authority to make minor amendments to effectuate the intent of the Amended and Restated DDLA. The City Manager shall also have the authority to execute the final documents and agreements referenced in the Amended and Restated DDLA and other related documents to implement the intent and terms of the agreement, as well as the specific delegations of authority set forth herein as approved by the Resolution.

The full text of the Resolution, including the Amended and Restated DDLA can be found at this link: https://www.savelivermoredowntown.com/legal

Helena Graves

From: Nova Starling [redacted]
Sent: Saturday, June 22, 2024 10:13 AM
To: City Clerk
Subject: In regard to Agenda Item 7.2

Exercise Caution: This message is from outside the City email system. Do not open links or attachments from untrusted sources.

Honorable Mayor and Council Members:

In regard to Agenda Item 7.2

I support

- Reaffirming the administrative items that refined the agreement with Eden Housing to build the workforce housing project

- Working expeditiously as possible to construct Veterans Park

Thank you,

Nova Starling

Helena Graves

From: Bryan Balazs [redacted]
Sent: Saturday, June 22, 2024 10:21 AM
To: City Clerk
Subject: Letter for agenda item 7.2 on Council Agenda 6-24-24

Exercise Caution: This message is from outside the City email system. Do not open links or attachments from untrusted sources.

Hello,
I am submitting the letter below for consideration by Livermore Council at their Council meeting on Monday June 24, 2024.

Thank You,
Bryan Balazs

————————————

Dear City Council and Honorable Mayor Marchand,
As a resident of Livermore for over 30 years and a supporter of numerous downtown and community initiatives, I urge the City Council to adopt the three recommendations from Staff regarding Council agenda item 7.2 on Resolution 2022-085, and specifically for the second recommendation, to select Option 1 to "Adopt a resolution repealing Resolution No. 2022-085".

Thank You.
G. Bryan Balazs
[redacted] Livermore CA
Chair of the Board of Directors
Shakespeare and Performing Arts Regional Company

Helena Graves

From: Gina Bonanno [redacted]
Sent: Saturday, June 22, 2024 11:26 AM
To: City Clerk
Subject: Letter for 6/24 council meeting, item 7.2
Attachments: Bonanno comments_CC meeting 624.pdf

Exercise Caution: This message is from outside the City email system. Do not open links or attachments from untrusted sources.

Please see my attached letter related to matters for consideration, item 7.2 on the 6/24/24 City Council meeting agenda.

Thank you!

Best,
Gina Bonanno

Re: 6/24/24 City Council meeting agenda item 7.2

Mayor Marchand and members of the City Council,

I want to thank you for your continued support of the approved downtown plan including the affordable housing project. I have supported and participated in the development of this plan as a Planning Commissioner (2014-2020), as a member of the Downtown Steering Committee (2018), and as a Councilmember (2021-2022), during which time I voted to approve the amended DDA.

The court's recent decision allows the housing to proceed independently from the park. This much-needed housing can now move forward. Sadly, due to unnecessary and costly litigation the project comes years later and at much greater cost as compared to when it was first approved. The families and individuals who work in our community who could have had an affordable home for all these years have lost the most.

I urge you to 1) rescind the 2022 council action, 2) reaffirm the administrative items allowing Eden to proceed with construction of the housing, and 3) move forward with the construction of the park honoring our veterans one year from now.

Sincerely,
Gina Bonanno
Livermore, CA 94550

Helena Graves

From: [redacted]
Sent: Saturday, June 22, 2024 12:05 PM
To: City Clerk
Cc: Linda Mandolini; Bryan Balazs; 'Dyrell Foster'; Tim Sbranti
Subject: Downtown Livermore Affordable Housing and Park Resolution

Exercise Caution: This message is from outside the City email system. Do not open links or attachments from untrusted sources.

Dear Livermore City Council,

My name is Stephen Lanza, I am a resident of Livermore for twenty years and the Tri-Valley for thirty years. In addition to being a community member,
I am a retired senior executive at Lam Research, a significant employer in the area and Chair of a Business Peer Advisory Group with many Tri-Valley executives as members.

I am writing to express my gratitude for your unwavering support for the Downtown Livermore Apartments affordable housing project. This is an important step for the Livermore business community,
residents and workers in the area, our city plans for a vibrant Downtown and our students, faculty and staff at Las Positas College.

The California Court of Appeal's recent decision clarifies that the housing project can proceed independently from the park. I am pleased that this important project can move forward. I urge the Council to quickly take the necessary steps to remove the park components from the Disposition, Development, and Loan Agreement to facilitate these next steps.

The park, which is the subject of tonight's deliberation, is an important part of our downtown's future. It is our hope that the Council will proceed with plans for the park in a year's time. I strongly urge the council to proceed as needed to move the housing forward and allow the
park to be considered in the future by adopting a resolution repealing Resolution no. 2022-085.

Sincerely,

Steve Lanza
Member (prior Chair), Innovation Tri-Valley Leadership Group
Member (prior Chair), Las Positas College Foundation Board of Directors
Trustee, Chabot Las-Positas College Board
Member, SPARC Board of Directors
Prior Corporate Vice President, Lam Research

Stephen Lanza
Principal
Tri-Valley Advising
[redacted]

+1 510-734-4070

Helena Graves

From: Carolyn Owens [redacted]
Sent: Saturday, June 22, 2024 12:12 PM
To: City Clerk
Subject: 6/24/2024 City Council Meeting

Exercise Caution: This message is from outside the City email system. Do not open links or attachments from untrusted sources.

Honorable Mayor Marchand and City Council Members:

I want to congratulate you and the Livermore community, as well as your affordable housing development partner Eden Housing, on getting confirmation from the courts that the much-needed affordable housing project planned for our downtown can proceed after six years of unnecessary litigation.

The only question before you today is how to accept the certification of the referendum circulated by Move Eden Housing. According to the courts, the referendum is legitimately about one, and only one, action taken by the city Council in 2022 – The construction of Veterans Park.

It is extremely unfortunate that the referendum signature gatherers misled our residents and got their support to delay Veterans Park to the detriment of the Eden Housing project and our entire community.

I urge you to accept the referendum here tonight and proceed a year from now to swiftly construct the park which will enhance the Eden Housing project in our beautiful downtown.

Thank you.

Carolyn Owens
[redacted]
Livemore, CA 94550

Helena Graves

From: Robert Drach [redacted]
Sent: Saturday, June 22, 2024 12:48 PM
To: City Clerk
Subject: 6/24/2024 City Council Meeting

Exercise Caution: This message is from outside the City email system. Do not open links or attachments from untrusted sources.

Honorable Mayor Marchand and City Council Members:

I want to congratulate you and the Livermore community, as well as your affordable housing development partner Eden Housing, on getting confirmation from the courts that the much-needed affordable housing project planned for our downtown can proceed after six years of unnecessary litigation.

The only question before you today is how to accept the certification of the referendum circulated by Move Eden Housing. According to the courts, the referendum is legitimately about one, and only one, action taken by the city Council in 2022 – The construction of Veterans Park.

It is extremely unfortunate that the referendum signature gatherers misled our residents and got their support to delay Veterans Park to the detriment of the Eden Housing project and our entire community.

I urge you to accept the referendum here tonight and proceed a year from now to swiftly construct the park which will enhance the Eden Housing project in our beautiful downtown.

Thank you.

Robert Drach
[redacted]
Livermore, CA 94550

Helena Graves

From: Mary Beeve [redacted]
Sent: Saturday, June 22, 2024 3:46 PM
To: City Clerk
Subject: Fwd: Agenda Item 7.2

Exercise Caution: This message is from outside the City email system. Do not open links or attachments from untrusted sources.

Sent from my iPhone

Begin forwarded message:

From: Mary Beeve [redacted]
Date: June 22, 2024 at 1:44:57 PM PDT
To: CityClerk@livermore-ca.gov
Subject: Agenda Item 7.2

Honorable Mayor Marchand and City Council Members,

I support reaffirming the administrative items that refined the agreement with Eden Housing to build the workforce housing project, to work as expeditiously as possible to construct Veterans Park.

Sincerely,
Mary Beeve

Helena Graves

From: DONALD STAYSA [redacted]
Sent: Saturday, June 22, 2024 6:20 PM
To: City Clerk
Subject: veterans park

Exercise Caution: This message is from outside the City email system. Do not open links or attachments from untrusted sources.

Honorable Mayor and Council Members,
In regard to Agenda item 7.2, I support reaffirming the administrative items that refined the agreement with Eden Housing to build the workforce housing project, working expeditiously as possible to construct Veterans Park

Thank You,
Lynn Staysa

Helena Graves

From: RICK EDSON [redacted]
Sent: Sunday, June 23, 2024 9:00 AM
To: City Clerk
Subject: Jun 24 City Council Meeting 7.2

Exercise Caution: This message is from outside the City email system. Do not open links or attachments from untrusted sources.

Honorable Mayor Marchand and members of Livermore City Council,

I am Rick Edson. I came to live in Livermore in 1979. My wife Carol and I raised two daughters, now grown, one on the East coast, and one in the Bay Area. I love this town.

Over the years I've observed the contentious process of developing the downtown area and building affordable housing. The voters in each election cycle have properly chosen mayors and city council members who faithfully have served this community through the development process. As I viewed it, the development process for what I think of as 'Eden Housing' came about through the proper process. Public input and comment was received and considered to develop the mixed use on the old Lucky property for housing, wine country hotel, Veterans Park, public park, science center, increased parking spaces, and all the rest. I supported the plan.

As I understand today, the appeals court has confirmed that the building of housing on the property can proceed. However, there is perhaps a last question before the council: how to accept the certification of the referendum that Move Eden Housing circulated and the appeals court has allowed. I put my faith in you elected officials to show due care in handling this issue. I would like to see Veterans' Park be built and the long-ago approved City plan for the downtown site become a reality.

Thank you

Rick Edson

[redacted]

Helena Graves

From: Kanishka Bhutani [redacted]
Sent: Sunday, June 23, 2024 8:57 AM
To: City Clerk
Subject: Public Comment - Item 7.2 of the Agenda for the City Council Meeting on June 24, 2024

Exercise Caution: This message is from outside the City email system. Do not open links or attachments from untrusted sources.

Dear City Clerk:

Please register my support for Item 7.2 of the Agenda for the June 24 meeting. Please convey my comment to respected Mayor and the City Council in the following terms:

Honorable Mayor and Council Members: With regards to the next course of action in the Eden DT Housing and Veteran's Park matter, I support that your office:

A.: Reaffirms the administrative items that refined the agreement with Eden Housing to build the workforce housing project with no further delay.

B. Works expeditiously as possible to construct Veterans Park.

It is extremely unfortunate that the referendum signature gatherers misled Livermore residents and got their support to delay Veterans Park, all to the detriment of the much needed Eden Housing project and our entire community.

I urge you to accept the referendum here tonight and proceed a year from now to swiftly construct the Veterans Park, which will enhance the Eden Housing project in the beautiful and vibrant Livermore Downtown.

Thank you.

Sincerely,

Kanishka Bhutani

(Livermore Resident)

Helena Graves

From: frieders3 [redacted]
Sent: Sunday, June 23, 2024 10:59 AM
To: City Clerk
Subject: Downtown Livermore Apartments affordable housing project

Exercise Caution: This message is from outside the City email system. Do not open links or attachments from untrusted sources.

Dear City Council:

My name is Gene Frieders and I am a resident of Livermore. I am writing to express my gratitude for your unwavering support for the Downtown Livermore Apartments affordable housing project.
The California Court of Appeals' recent decision clarifies that the Eden housing project can proceed independently from the Veterans Park. I am delighted that this important project can move forward.
I urge the Council to take the necessary steps to remove the Veterans Park components from the Disposition, Development, and Loan Agreement to facilitate these next steps.
The Veterans Park, which is the subject of tonight's deliberation, is an important part of our Downtown's future. It is our hope that the Council will proceed with plans for the Park in a year's time. I strongly urge the Council to proceed as needed to move the housing forward and allow the Veterans Park to be considered in the future.

Sincerely,
Gene Frieders

Helena Graves

From: Mini Chopra [redacted]
Sent: Sunday, June 23, 2024 12:45 PM
To: City Clerk
Subject: Public Comment - Item 7.2 of the Agenda for the City Council Meeting on June 24, 2024

Exercise Caution: This message is from outside the City email system. Do not open links or attachments from untrusted sources.

Dear City Clerk:

Please register my support for Item 7.2 of the Agenda for the June 24 meeting. Please convey my comment to respected Mayor and the City Council in the following terms:

Honorable Mayor and Council Members:

I urge you to repeal the impugned Resolution No. 2022-085 - preserving and protecting, however, the Livermore City Council's administrative action of transferring the Downtown site to Eden Housing Developer.

I support and agree with the "Companion Resolution" (Attachment # 11, under Item 7.2, in the Agenda) that City officials have painstakingly put together, consistent with and in furtherance of the last appellate court decisions in Save Livermore Downtown and Move Eden Housing, respectively.

I also want to express my gratitude to the Livermore City Council, the City Attorney, and the City Manger and her team for acting fairly in this extremely contentious matter, and for taking steps in the best interests of our town.

Sincerely,

Mini Chopra

(Livermore Resident)

Helena Graves

From: Marsha Gillette [redacted]
Sent: Sunday, June 23, 2024 1:23 PM
To: City Clerk
Subject: Veterans Park

Exercise Caution: This message is from outside the City email system. Do not open links or attachments from untrusted sources.

Honorable Mayor and Council Members,

In regard to Agenda Item 7.2, I support reaffirming the administrative items that refined the agreement with Eden Housing to build the workforce housing project, working as expeditiously as possible to construct Veterans Park.

Thank you.

Marsha Gillette

Helena Graves

From: [redacted]
Sent: Sunday, June 23, 2024 4:18 PM
To: City Clerk
Cc: Vasko.Yorgov@edenhousing.org
Subject: Downtown Livermore Apartments affordable housing project

Exercise Caution: This message is from outside the City email system. Do not open links or attachments from untrusted sources.

Hello Livermore City Council,

My name is Jeff Escott. My wife, Katy, and I have been Livermore residents and registered and faithful voters here for just over 30 years, living within walking distance of downtown. We are writing to express our appreciation for your ongoing support for the Downtown Livermore Apartments affordable housing project. We were fortunate to move here and raise our family in more affordable times and know very well how difficult it is for the next generations to afford to live in the region, making projects like this all the more important.

The California Court of Appeal's recent decision clarifies that this housing project can proceed independently from the park. We are delighted that this much needed project can move forward and urge the Council to take the necessary steps to remove the park components from the Disposition, Development, and Loan Agreement to facilitate these next steps.

The park, which is the subject of Monday night's deliberation, is an important part of our downtown's future. It is our hope that the Council will proceed with plans for the park in a year's time.

We strongly urge the council to proceed as needed to move the housing forward and allow the park to be considered in the future.

Sincerely,

Jeff and Katy Escott

Helena Graves

From: Ken Boyden [redacted]
Sent: Sunday, June 23, 2024 6:02 PM
To: City Clerk
Subject: Veterans Park Agenda Support

Exercise Caution: This message is from outside the City email system. Do not open links or attachments from untrusted sources.

Dear City Council:

My name is Ken Boyden, and I have been a resident of Livermore for 43 years. I am writing to express my gratitude for your unwavering support for the Downtown Livermore Apartments affordable housing project.

The California Court of Appeals' recent decision clarifies that the Eden housing project can proceed independently from the Veterans Park. I am delighted that this important project can move forward.

I urge the Council to take the necessary steps to remove the Veterans Park components from the Disposition, Development, and Loan Agreement to facilitate these next steps.

The Veterans Park, which is the subject of tomorrow's deliberation, is an important part of our Downtown's future. It is our hope that the Council will proceed with plans for the Park in a year's time.

I strongly urge the Council to proceed as needed to move the housing forward and allow the Veterans Park to be considered in the future.

Sincerely, Ken Boyden

Helena Graves

From: Cindy Don [redacted]
Sent: Sunday, June 23, 2024 10:27 PM
To: City Clerk
Subject: Important

Exercise Caution: This message is from outside the City email system. Do not open links or attachments from untrusted sources.

Dear Livermore City Council:
My name is Cindy Don Chang, and I am a longtime resident of Livermore. I am writing to express my gratitude for your unwavering support for the Downtown Livermore Apartments affordable housing project. The California Court of Appeals' recent decision clarifies that the Eden housing project can proceed independently from the Veterans Park. I am delighted that this important project can move forward.

I urge the Council to take the necessary steps to remove the Veterans Park components from the Disposition, Development, and Loan Agreement to facilitate these next steps.The Veterans Park, which is the subject of tonight's deliberation, is an important part of our Downtown's future. It is our hope that the Council will proceed with plans for the Park in a year's time.

I strongly urge the Council to proceed as needed to move the housing forward and allow the Veterans Park to be considered in the future.

Warmly,
Cindy Don Chang

Sent from my iPhone

Helena Graves

From: Jay Davis [redacted]
Sent: Monday, June 24, 2024 6:26 AM
To: City Clerk
Subject: Delay of Veterans Park

Exercise Caution: This message is from outside the City email system. Do not open links or attachments from untrusted sources.

We would like to express our support for the City Council motion to delay the start of Veterans Park construction for a year. Though we live in the County and cannot vote on the various measures affecting downtown, we have been in Livermore over fifty years and are active users and enjoyers of all that our downtown offers. Letting the dust settle a bit as the Eden Housing matter comes to a close will impose no cost nor foreclose any opportunity.

Jay and Mary Davis
[redacted]

Helena Graves

From: Bob Pruett [redacted]
Sent: Monday, June 24, 2024 6:51 AM
To: City Clerk
Cc: Bob Pruett
Subject: Please support the MEH Referendum, Item 7.2 Matters for Consideration

Exercise Caution: This message is from outside the City email system. Do not open links or attachments from untrusted sources.

Honorable Mayor Marchand and City Council Members,

My wife and I very thoughtfully chose the town of Livermore in buying property here over 10 years ago. This was after living in Pleasanton and Danville and observing the choices those cities made in managing their growth. The work Livermore has done to create a fantastic culture and family environment is what drove our choice and our degree of commitment and support of this vibrant community.

Specific to current events which support the cultural journey of our city, I'd like to congratulate you and the Livermore community, as well as your affordable housing development partner Eden Housing, on getting confirmation from the courts that the much-needed affordable housing project planned for our downtown can proceed after six years of litigation.

The only question before you today is how to accept the certification of the referendum circulated by Move Eden Housing. According to the courts, the referendum is legitimately about one, and only one, action taken by the city Council in 2022 – The construction of Veterans Park. It is extremely unfortunate that the referendum signature gatherers misled our residents and got their support to delay Veterans Park to the detriment of the Eden Housing project and our entire community.

In continuing the work the community has done over the past 20 years creating an exceptional city, I urge you to accept the referendum Monday night and proceed a year from now to construct the park. This is another step of our town's journey to create a rich community and enhance the Eden Housing project in our beautiful downtown.

Bob Pruett
[redacted]

Helena Graves

From: Marc Ross [redacted]
Sent: Monday, June 24, 2024 7:33 AM
To: City Clerk
Subject: My comment for Item 7.2 Matters for Consideration on 06/24/24

Exercise Caution: This message is from outside the City email system. Do not open links or attachments from untrusted sources.

Hello, my name is Marc Ross and I'm a citizen of Livermore and live at [redacted] I am also a Board Member of Interfaith Housing and sit on Chief Young's Chief's Advisory Board. I fully support Eden Housing and their affordable housing project on the downtown property.

The California Court of Appeals' recent decision clarifies that Eden Housing's affordable housing project can proceed independently from the Veterans Park. This is very welcomed news and I fully support the decision. I urge the City Council to do what is necessary to allow the building of Eden Housing to begin and come back in a year and pass the construction of Veterans Park. Our residents have been wrongly misled by signature gathers, and our city's time and money has been wasted by the bad faith efforts of Move Eden Housing. It's time this comes to an end.

I will also take this opportunity and say that we need more housing generally and we need to start rethinking what housing means and how we provide it as a community. This should include all types of structures and sizes as well as innovative and thoughtful proposals and implementing the policy changes needed. Housing for me is a human right and should not be dictated on whether you can afford it or not. Thank you for your time.

--
[redacted]

Helena Graves

From: Bob Woerner [redacted]
Sent: Monday, June 24, 2024 8:12 AM
To: City Clerk
Subject: Comments re Agenda Item 7.2 for tonights City Council meeting

Exercise Caution: This message is from outside the City email system. Do not open links or attachments from untrusted sources.

After certifying the referendum as qualified, I'm in favor of the city council taking the following actions as the best path forward of all the options:

- Rescinding the May 2022 council action
- Reaffirming the administrative items that refined the agreement with Eden Housing to build the workforce housing project
- Working expeditiously as possible to construct Veterans Park

I am appalled that the small Group-Of-Many-Names, that is primarily directed and funded by the wealthy owner of the Independent, continues to stop at nothing to hinder progress in our downtown. They have spent inordinate sums to spread misinformation, buy petition signatures, influence elections and pursue frivolous lawsuits - resulting in an appalling waste of our community's precious resources and everyone's time.

The amount of harm they have done to our community in their latest incarnation as Move Eden Housing is truly reprehensible. We desperately need affordable housing so those who work helping our community can live in Livermore. Also, delaying a park dedicated to honoring those who have risked, and even sacrificed, their lives for us is unconscionable.

Once again, I find myself urging Joan Seppala and her small group of disgruntled followers to stop their baseless and divisive delaying tactics so that Livermore can finally finish the downtown as unanimously approved so long ago.

Bob Woerner

Helena Graves

From: Vaughn Draggoo <vdraggoo@quest-science.org>
Sent: Monday, June 24, 2024 8:25 AM
To: City Clerk
Subject: Accept the Referendum

Exercise Caution: This message is from outside the City email system. Do not open links or attachments from untrusted sources.

Honorable Mayor Marchand and City Council Members:

I want to congratulate you and the Livermore community, as well as your affordable housing development partner Eden Housing, on getting confirmation from the courts that the much-needed affordable housing project planned for our downtown can proceed after six years of unnecessary litigation.

The only question before you today is how to accept the certification of the referendum circulated by Move Eden Housing. According to the courts, the referendum is legitimately about one, and only one, action taken by the city Council in 2022 – The construction of Veterans Park.

It is extremely unfortunate that the referendum signature gatherers misled our residents and got their support to delay Veterans Park to the detriment of the Eden Housing project and our entire community.

I urge you to accept the referendum here tonight and proceed a year from now to swiftly construct the park which will enhance the Eden Housing project in our beautiful downtown.

--
Vaughn Draggoo
Member, Board of Directors
[redacted] | quest-science.org

Helena Graves

From: VAUGHN DRAGGOO [redacted]
Sent: Monday, June 24, 2024 8:38 AM
To: City Clerk
Subject: Accept the Referendum

Exercise Caution: This message is from outside the City email system. Do not open links or attachments from untrusted sources.

Honorable Mayor Marchand and City Council Members:

We want to congratulate you and the Livermore community, as well as your affordable housing development partner Eden Housing, on getting confirmation from the courts that the much-needed affordable housing project planned for our downtown can proceed after six years of unnecessary litigation.

The only question before you today is how to accept the certification of the referendum circulated by Move Eden Housing.According to the courts, the referendum is legitimately about one, and only one, action taken by the city Council in 2022 – The construction of Veterans Park.

It is extremely unfortunate that the referendum signature gatherers misled our residents and got their support to delay Veterans Park to the detriment of the Eden Housing project and our entire community.

We urge you to accept the referendum here tonight and proceed a year from now to swiftly construct the park which will enhance the Eden Housing project in our beautiful downtown.

Vaughn and Sharon Draggoo

Helena Graves

From: Isaiah Campbel [redacted]
Sent: Monday, June 24, 2024 8:47 AM
To: City Clerk
Subject: Eden Housing Park

Exercise Caution: This message is from outside the City email system. Do not open links or attachments from untrusted sources.

Hi there,

As an almost 20 year resident and educator in the Livermore community, I am continually disappointed to see the push for low-income housing being sabotaged and delayed.

The halting of the park by Eden Housing is nothing short of another tactic to delay the accessibility of affordable housing options in the Livermore area.

Housing is far too expensive in Livermore and as a result, I'll be forced to move out of the area this fall, possibly teaching elsewhere as well.

While it is likely too late for me, there are countless others who will continue to be forced to make difficult decisions like this. So fight for those who live here. Bring affordable housing to Livermore and separate the issues of the park and the housing project.

While the park may be delayed the housing doesn't have to. Don't force more long time residents to leave their home. Push housing forward and delay the park if you have to.

Thank you,

Isaiah Campbell

Helena Graves

From: Sherry Nigg [redacted]
Sent: Monday, June 24, 2024 9:21 AM
To: City Clerk
Subject: City Council Meeting 6.24.24

Exercise Caution: This message is from outside the City email system. Do not open links or attachments from untrusted sources.

Honorable Mayor Marchand and City Council Members:

I want to congratulate you and the Livermore community, as well as your affordable housing development partner Eden Housing, on getting confirmation from the courts that the much-needed affordable housing project planned for our downtown can proceed after six years of unnecessary litigation.

The only question before you today is how to accept the certification of the referendum circulated by Move Eden Housing. According to the courts, the referendum is legitimately about one, and only one, action taken by the city Council in 2022 – The construction of Veterans Park.

It is extremely unfortunate that the referendum signature gatherers misled our residents and got their support to delay Veterans Park to the detriment of the Eden Housing project and our entire community.

I urge you to accept the referendum here tonight and proceed a year from now to swiftly construct the park which will enhance the Eden Housing project in our beautiful Downtown.

As a Downtown property owner and local real estate agent I cannot stress enough how important these projects are to our Downtown.

--
Sherry Nigg
Re/Max Accord
(925) 640-0869
DRE: 01177147

Helena Graves

From: Beth Trutner [redacted]
Sent: Monday, June 24, 2024 9:31 AM
To: City Clerk
Subject: Item 7.2

Exercise Caution: This message is from outside the City email system. Do not open links or attachments from untrusted sources.

Dear Mayor Marchand and Council Members:

I work and live downtown, and am a longtime board member of SPARC. I am personally relieved by the court's recent ruling allowing the Eden Housing project to proceed after years of unnecessary litigation and delay. It is my understanding that the only question before you today is how to accept the certification of the referendum circulated by Move Eden Housing. According to the courts, the referendum now addresses only the construction of Veterans Park. I urge you to accept the now very narrow referendum before you to enable the long anticipated Eden Housing project to proceed.

My sincere thanks to you all for your dedication to our city.

Elizabeth (Beth) Trutner

Helena Graves

From: Patrick O'Brien [redacted]
Sent: Monday, June 24, 2024 9:40 AM
To: City Clerk
Subject: FW: Letter In support of Eden Housing
Attachments: SKM_C45824062114070.pdf

Exercise Caution: This message is from outside the City email system. Do not open links or attachments from untrusted sources.

Please accept this letter in support of Eden Housing and the Veterans Park

Item 7.2 on tonight's agenda

Pat

TRI-VALLEY REACH

June 21, 2024

Hon. John Marchand
Members of the Livermore City Council
1052 S. Livermore Ave.
Livermore, CA 94550

Re: Agenda Item 7.2 - Veterans Park and the Eden Housing Project

Dear Mayor Marchand and Members of the City Council

Tri-Valley REACH writes to lend our support to the Eden Housing Project. For 34 years REACH has worked with the City of Livermore to provide affordable housing for Individuals with Intellectual and Developmental Disabilities. We applaud the City for its ongoing effort to serve all the low-income populations in the community.

Whether the housing is single family homes located in neighborhoods or multi-unit projects, it is essential that the residents have easy access to needed services and to the vibrant areas in town that provide socialization opportunities for all. Inclusiveness is so important.

Veterans Park is a community amenity so in keeping with the goal of providing inclusive living environments which provide enjoyment to our residents.

For these reasons we strongly support the Eden Housing Project and Veterans Park in their current locations. The project will be an expression of the City and the Community's long-term goal of supporting the expansion of housing and recreational opportunities for all residents.

Thank you for the opportunity to express our support,

Patrick O'Brien
Treasurer
Tri-Valley REACH
P.O. Box 5564
Pleasanton, CA 94566
925-918-3211

Helena Graves

From: Matt Roberts [redacted]
Sent: Monday, June 24, 2024 10:08 AM
To: City Clerk
Subject: Support for downtown project

Exercise Caution: This message is from outside the City email system. Do not open links or attachments from untrusted sources.

Dear City Council:

Move Eden Housing can pound sand. They do not represent Livermore and certainly do not have our best interests in mind.

My name is Matt Roberts, and I have lived in Livermore for 10 years, working here for 7. My wife and I enjoy all that Livermore has to offer and look forward to raising our 2 young kids here.

We have been extremely frustrated that community groups (whatever their name is this week) funded by a few out of touch rich people have delayed such a necessary and exciting project.

I am writing to express my gratitude for your unwavering support for the Downtown Livermore Apartments affordable housing project.

The California Court of Appeals' recent decision clarifies that the Eden housing project can proceed independently from the Veterans Park. I am delighted that this important project can move forward. I urge the Council to take the necessary steps to remove the Veterans Park components from the Disposition, Development, and Loan Agreement to facilitate these next steps.

The Veterans Park, which is the subject of tonight's deliberation, is an important part of our Downtown's future. It is our hope that the Council will proceed with plans for the Park in a year's time. I strongly urge the Council to proceed as needed to move the housing forward and allow the Veterans Park to be considered in the future.

Sincerely,
Matt Roberts

Helena Graves

From: DE HUYNH [redacted]
Sent: Monday, June 24, 2024 10:22 AM
To: City Clerk
Cc: Vasko.Yorgov@edenhousing.org
Subject: Livermore City Council

Exercise Caution: This message is from outside the City email system. Do not open links or attachments from untrusted sources.

Dear Livermore City Council,

My name is De Huynh, and I am a resident at [redacted] Livermore 94550. I am writing to express my gratitude for your unwavering support for the Downtown Livermore Apartments affordable housing project.

The California Court of Appeal's recent decision clarifies that the housing project can proceed independently from the park. I am delighted that this important project can move forward. I urge the Council to take the necessary steps to remove the park components from the Disposition, Development, and Loan Agreement to facilitate these next steps.

The park, which is the subject of tonight's deliberation, is an important part of our downtown's future. It is our hope that the Council will proceed with plans for the park in a year's time.

I strongly urge the council to proceed as needed to move the housing forward and allow the park to be considered in the future.

Sincerely,

De Huynh

Helena Graves

From: Monya Lane [redacted]
Sent: Monday, June 24, 2024 10:35 AM
To: City Clerk
Subject: Support for Referendum certification and repeal of Veterans Park decision

Exercise Caution: This message is from outside the City email system. Do not open links or attachments from untrusted sources.

To Honorable Mayor and City Council,

Please consider my strong support for the staff recommendation on tonight's agenda that accepts the Referendum certification, as well as support for Option 1 which repeals the Veterans Park decision at this time. This delay is manageable, and we all want to see Veterans Park re-established in the City plan one year from now when it is legally permissible to do so.

Sincerely,
Monya Lane

Helena Graves

From: Mark Sweeney [redacted]
Sent: Monday, June 24, 2024 10:44 AM
To: City Clerk
Subject: Fwd: Item 7.2 City Council Meeting June 24th

Exercise Caution: This message is from outside the City email system. Do not open links or attachments from untrusted sources.

Mayor Marchand and City Council

Please adopt the staff's recommendation Option 1 to hopefully resolve this long ordeal regarding Veterans Park and the Eden Housing project. Considering how litigous the opponents of the project have been it seems prudent to also ratify the Companion Resolution that staff is recommending.

The Appellate Court has made it abundantly clear that only the decision to construct and improve Veterans Park was a legislative act by the city council and therefore could be subject to a referendum. The Appellate Court rejected the arguments in the lawsuit related to the Eden Housing project. The Eden project should therefore finally be able to proceed.

Workforce housing in our region is in very short supply. We need projects like the Eden project in all our Tri-Valley cities. Hopefully the Eden Housing project will proceed unimpeded now that the latest attempt to stop it has been decided by the court. Unfortunately, the community will have to wait another year to build a park to honor the veterans of our armed forces.

Thank you.

Mark Sweeney
[redacted]
Pleasanton

Helena Graves

From: Brett Bailey [redacted]
Sent: Monday, June 24, 2024 10:58 AM
To: City Clerk
Subject: Downtown Livermore Housing

Exercise Caution: This message is from outside the City email system. Do not open links or attachments from untrusted sources.

Dear Livermore City Council,

I am writing to you about the approved housing project that has been developed by the city and Eden Housing. My name is Brett Bailey. Our family moved to Livermore in 2004 and I participated in some of the early community meetings set up by the city's planning department to share ideas and express concerns related to the downtown plan, the downtown character and the path for providing affordable, workforce housing. I believe the city staff and the city council members, particularly Mayor Marchand and Mayor Woerner, have been thoughtful and fiscally responsible in representing the community's desire for affordable housing on the city-designated site on Railroad Avenue. They have stood firm in their commitment to supporting the Eden Housing project in spite of three years of frivolous lawsuits intended to stall the housing.

It is my understanding that in the process of the latest of these lawsuits, the California Court of Appeals has stated that the housing community can proceed independent of Veteran's Park. It has been over three years since the Eden Housing project was approved by the city council. I urge you to please modify the DDLA as necessary in order to make the housing possible and move forward with the housing.

The Veteran's Park is a very appealing component of this new housing community. The linkage of Veteran's Park to Stockmen's Park and the surrounding community buildings is an important vision not to be abandoned. It will strengthen and integrate the new housing community more fully into the downtown core.

Eden Housing has an outstanding track record for developing and managing housing communities of the highest caliber and that contribute positively to the larger communities in which they are a part.

I want to urge the council to move forward as expeditiously as possible with this new housing community and consider how Veteran's Park can be executed in the near future to complete the vision for this portion of the downtown.

Sincerely,

Brett Bailey
[redacted] Livermore

Helena Graves

From: Megan Nguyen <megan@ebho.org>
Sent: Monday, June 24, 2024 11:11 AM
To: City Clerk
Cc: Vasko Yorgov
Subject: EBHO's Comments on Item 7.2
Attachments: Item 7.2 - East Bay Housing Organizations (EBHO) Comments 6-24-24.pdf

Exercise Caution: This message is from outside the City email system. Do not open links or attachments from untrusted sources.

Dear Livermore City Council,

On behalf of East Bay Housing Organizations (EBHO), we thank you for your dedicated support to Eden Housing's Downtown Livermore Apartments. The park, the topic of tonight's deliberation, is an important aspect of the community and downtown's future.

We strongly urge the Council to continue honoring that the affordable housing and park are separate considerations - this will allow the urgently needed housing to proceed, and give the City the option to consider how the park will move forward.

Sincerely,
Megan Nguyen

--

Megan Nguyen
Policy Manager
EAST BAY HOUSING ORGANIZATIONS (EBHO)
megan@ebho.org
(510) 213-8337
she/her/hers

Celebrating 40 years of housing justice advocacy!

Helena Graves

From: Finster, David Christen <finster1@llnl.gov>
Sent: Monday, June 24, 2024 11:36 AM
To: City Clerk
Subject: FW: referendum

Exercise Caution: This message is from outside the City email system. Do not open links or attachments from untrusted sources.

Thank you,

Dave Finster

From: Finster, David Christen
Sent: Monday, June 24, 2024 11:08 AM
To: Dave Finster [redacted]
Subject: FW: referendum

Thank you,

Dave Finster

From: Finster, David Christen
Sent: Monday, June 24, 2024 11:06 AM
To: CityClerk@LivermoreCA.go
Subject: referendum

Honorable Mayor Marchand and City Council Members ,
As President of the Livermore Stockmen's Rodeo Association (LSRA) our board of Directors and I would like to congratulate you and the Livermore community on getting confirmation from the courts that the affordable housing project can proceed . We know that this has been a long six year battle . We also know that the battle continues with the referendum circulated by Move Eden housing . We urge you to accept the referendum and proceed a year from now to construct Veterans park . We are appalled that a small group of people funded by a person with deep pockets could delay the Eden Housing Project and Veterans Park . Thank you for hearing our views on these issues .

Sincerely
Dave Finster

President
Livermore Stockmen's Rodeo Association

Dave Finster
WCI Deployed Craft Supervisor
B1632 R1006 |L-793
Office: 925-423-1936
Cell: 925-724-8984
finster1@llnl.gov

Lawrence Livermore National Laboratory

INFRASTRUCTURE & OPERATIONS

WCI WEAPONS AND COMPLEX INTEGRATION

Helena Graves

From: Sblend Sblendorio [redacted]
Sent: Monday, June 24, 2024 11:35 AM
To: City Clerk
Subject: City Council Hearing for June 24 Item 7.2

Exercise Caution: This message is from outside the City email system. Do not open links or attachments from untrusted sources.

Dear Madam Clerk,
On behalf of Innovation Tri Valley Leadership Group and its Housing, Infrastructure and Transportation committee, we are pleased that the city and Eden Housing to hear you received confirmation from the courts that the much-needed affordable housing project planned for our downtown can proceed after years of litigation that denied housing to needy families.

We believe that the only question before you is how to accept the certification of the referendum circulated by Move Eden Housing. According to the courts, the referendum is about one, and only one, action taken by the city Council in 2022 – The construction of Veterans Park.

We urge you to accept the referendum and proceed in the future to construct the park which assuredly will enhance your beautiful downtown and become a destination for all residents and visitors.

Sblend A. Sblendorio, Chair of the Housing, Infrastructure and
Transportation committee of Innovation Tri Valley Leadership Group

Helena Graves

From: [redacted]
Sent: Monday, June 24, 2024 11:35 AM
To: City Clerk
Subject: Support for Referendum certification and repeal of Veterans Park decision

Exercise Caution: This message is from outside the City email system. Do not open links or attachments from untrusted sources.

To Honorable Mayor and City Council,

Please consider my strong support for the staff recommendation on tonight's agenda that accepts the Referendum certification, as well as support for Option 1 which repeals the Veterans Park decision at this time. This delay is manageable, and we all want to see Veterans Park re-established in the City plan one year from now when it is legally permissible to do so.

Thank you,
Robert Bryant

Helena Graves

From: Evan Branning
Sent: Monday, June 24, 2024 11:25 AM
To: City Clerk
Subject: Fwd: Supporting Eden housing

For the record

Get Outlook for iOS

From: Margot Platt [redacted]
Sent: Sunday, June 23, 2024 12:58:28 PM
To: Livermore City Council <LivermoreCityCouncil@LivermoreCA.gov>
Subject: Supporting Eden housing

[redacted]

Exercise Caution: This message is from outside the City email system. Do not open links or attachments from untrusted sources.

Dear City Council,

As long-time residents of Livermore, we thank you and support you in for your unwavering commitment to affordable housing in Livermore, especially the Eden housing project downtown. We heard that the California Court of Appeal's recent decision clarifies that the housing project can move forward independently from the park. Both the housing and the park are good additions to Livermore, but we think it is a good idea (as well as a legally prudent one) to separate the two issues. By all means, carry on with developing a park (with a referendum to the voters if necessary), but we urge you to also carry on with Eden's housing plans, for which the Court of Appeals has said no referendum is legally required. In other words, please proceed as needed to move the housing forward as quickly as possible and allow the park to be considered in the future.

Sincerely,

Margot & Spencer Platt
[redacted]
Livermore, CA 94550

Helena Graves

From: Evan Branning
Sent: Monday, June 24, 2024 11:25 AM
To: City Clerk
Subject: Fwd: Eden Housing Support

For the record

Get Outlook for iOS

From: Keith [redacted]
Sent: Sunday, June 23, 2024 4:12:37 PM
To: Livermore City Council <LivermoreCityCouncil@LivermoreCA.gov>
Subject: Eden Housing Support

[redacted]

Exercise Caution: This message is from outside the City email system. Do not open links or attachments from untrusted sources.

Dear City Council and Mayor Marchand:

I'm writing to express my support for the Eden Housing project to be completed where it has been planned and to take whatever next steps are required by law to respond to the referendum request. I'm confident that the majority of registered voters in Livermore support completing the affordable housing in our city center to help accommodate the hard working folks who serve our community and may be currently unable to afford any housing here in town.

Sincerely,

Keith Hatschek
District 2
[redacted]
Livermore CA 94551

Helena Graves

From: Erika Kiernan on behalf of info Service
Sent: Monday, June 24, 2024 2:03 PM
To: City Clerk
Subject: FW: Feedback for Livermore, CA

Please see the email below that was received through the City's Service Info. email and respond on behalf of the City with a **bcc** to info@livermoreca.gov so we can cross off the follow-up list.

From: City of Livermore govAccess CMS Site <info@LivermoreCA.gov>
Sent: Sunday, June 23, 2024 3:41 PM
To: info Service <info@cityoflivermore.net>
Subject: Feedback for Livermore, CA

Exercise Caution: This message is from outside the City email system. Do not open links or attachments from untrusted sources.

You have received this feedback from Don & Carol Hardesty <[redacted]> for the following page:

https://www.livermoreca.gov/Home/Components/News/News/1079/

Carol and I live at [redacted] Livermore We support the City Staff's Recommendation that the Council accept the Referendum on Veteran's Park at the City Council meeting on June 24. Specifically, (as stated in the meeting Agenda) to approve Option 2: Adopt a resolution calling for an election to place Resolution No. 2022-085 on the ballot for the voters to approve or set aside the legislative acts in the resolution for the construction of and improvements to Veterans Park; requesting that the Alameda County Registrar of Voters conduct the election; and establishing dates for ballot measure arguments.

Helena Graves

From: Stephanie [redacted]
Sent: Monday, June 24, 2024 11:55 AM
To: City Clerk
Subject: Veterans Park Referendum

Exercise Caution: This message is from outside the City email system. Do not open links or attachments from untrusted sources.

Honorable Mayor Marchand and City Council Members:

This is in reference to the Move Eden Housing referendum you'll be considering at tonight's City Council Meeting. Please accept the referendum with the understanding that the referendum only relates to the construction of Veterans Park, as per the courts.

As a 30-year resident of Livermore, I am fed up with a small group of entitled individuals making it their life's goal to delay, quash, or tear apart everything the City government has agreed to do. They continually boast that they are speaking for the people of Livermore. They are not, given that the majority of council members, all of whom are in favor of Eden Housing, have been elected by Livermore citizens. You represent the majority of Livermore and should continue to act and vote as our representatives, not as representatives of individuals who have consistently misled the public about your decisions.

Thank you,
Stephanie King
[redacted] Livemore

Helena Graves

From: Laning Thompson [redacted]
Sent: Monday, June 24, 2024 11:53 AM
To: City Clerk
Subject: Comment for tonight's council meeting

Exercise Caution: This message is from outside the City email system. Do not open links or attachments from untrusted sources.

In regard to item 7.2 on tonight's agenda, I would like to submit the following comment:

I, Laning Thompson, have been a Livermore resident for the last 18 years. As the current vice-president of Interfaith Housing, which provides affordable apartments for low-income seniors, I want to express my gratitude for the Council's unwavering support for the Downtown Livermore Apartments housing project.

The California Court of Appeals' recent decision clarifies that the Eden housing project can proceed independently from the Veterans Park, and I'm delighted that this important project can move forward. I strongly urge the Council to take the necessary steps to remove the Veterans Park components from the Disposition, Development, and Loan Agreement to facilitate these next steps.

The Veterans Park, which is the subject of tonight's deliberation, is an important part of our Downtown's future. I hope that the Council will proceed with plans for the park in a year's time.

Affordable apartments are desperately needed to prevent lower-income people from becoming homeless due to the high cost of market-rate rentals. It takes a long time and costs a lot to build such apartments even without opposition by local groups, so I think it's a shame that the Downtown Livermore Apartments were further delayed by this confusing referendum.

Thank you,

Laning Thompson

Helena Graves

From: Matt Regan <mregan@bayareacouncil.org>
Sent: Monday, June 24, 2024 11:52 AM
To: City Clerk
Subject: Downtown Livermore Affordable Housing
Attachments: image001.png; image002.png; image003.png; image004.png; image005.png; LivermoreEdenProject.pdf

Exercise Caution: This message is from outside the City email system. Do not open links or attachments from untrusted sources.

Dear Clerk

Please find attached the Bay Area Council's letter of support for the Eden Housing project that will be on the agenda for this evening's Council Meeting

Sincerely

Matt Regan

BAYAREA COUNCIL
HISTORIC KLAMATH BAY AREA COUNCIL

Matt Regan
Senior Vice President
Phone: 415 298 0330
The Klamath Pier 9, The Embarcadero, San Francisco
www.bayareacouncil.org

June 24, 2024

Dear Livermore City Council,

The Bay Area Council represents over 350 of the Bay Area's largest employers, public and private and for 80 years we have been striving to make this region as the best place in the world to live and work

We are writing to express our gratitude for your unwavering support for the Downtown Livermore Apartments affordable housing project. You know that the dire shortage of affordable housing is the most pressing challenge of our time and this project is part of the solution.

The California Court of Appeal's recent decision clarifies that the housing project can proceed independently from the park. I urge the Council to ignore efforts to further delay this critical project and take the necessary steps to remove the park components from the Disposition, Development, and Loan Agreement.

The park, which is the subject of tonight's deliberation, is an important part of our downtown's future. It is our hope that the Council will proceed with plans for the park in a year's time.
I strongly urge the council to proceed as needed to move the housing forward and allow the park to be considered in the future.

Sincerely

Matt Regan
Senior Vice President
Bay Area Council

Council Member	Date of Meeting or Event	Committee or Organization	Meeting or Event Type (ex. board meeting or ribbon cutting)	Summary of Meeting or Event
Mayor Marchand	6/17/2024	City of Livermore	Meeting and overview	Meeting with the participants of the Summer Teen Academy
Mayor Marchand	6/17/2024	Chamber of Commerce	Ribbon-cutting	Welcomed The Joint Chiropractic to its new location.
Mayor Marchand	6/20/2024	Chamber of Commerce	Business Mixer	Networked with local businesses
Mayor Marchand	6/20/2024	Innovation Tri-Valley	Presentation on the Hertz Effect	Heard from a number of Hertz scholars, their work and their impact.
Mayor Marchand	6/21/2024	LARPD Foundation	Fundraiser	Raised funds for the Foundation at Ravenswood.

Council Member	Date of Meeting or Event	Committee or Organization	Meeting or Event Type (ex. board meeting or ribbon cutting)
Vice Mayor Carling	6/11/2024		Ribbon cutting at the Club at Livermore
Vice Mayor Carling	6/12/2024	Alameda County Mayor's Conference	Attended for Mayor Marchand
Vice Mayor Carling	6/13/2024	StopWaste	Board Meeting
Vice Mayor Carling	6/18/2024	Livermore Downwown Inc	Attended for Councilmember Branning

Council Member	Date of Meeting or Event	Committee or Organization	Meeting or Event Type (ex. board meeting or ribbon cutting)	Summary of Meeting or Event
Council Member Barrientos	6/12/2024	Ava	Meeting of the Ava Board	Selected a new CEO of Ava Howard Chang
Council Member Barrientos	6/13/2024	Ava	Fare well to out going CEO	Good farewell for the out going CEO. Opportunity to meet Ava employees
Council Member Barrientos	6/21/2024	Association of Bay Areas Governments	Meeting of ABAG	Met at the Oakland Museum. Voted on the 24/25 budget. Note that at least 40% + of the 101 cities and 9 Counties were not present. A quorum was in question.
Council Member Barrientos	6/23/2024	Personal	Attended June Opera in the Vineyard	Shared food. Met people and listen to some singers

Council Member	Date of Meeting or Event	Committee or Organization	Meeting or Event Type (ex. board meeting or ribbon cutting)
Council Member Branning	6/24/2024	LAVTA	Projects and services committee.