

## MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding (“this MOU”) is entered into by and between the City of Lompoc, a municipal corporation (“City”) and the Lompoc Valley Park, Recreation and Pool Foundation, Inc., a California public benefit non-profit corporation (“LVPRPF”).

### RECITALS

A. City desires to have a public park and community building designed, constructed, maintained and operated on property it owns at 119 South H Street (the “Property”) to assist with revitalization of City’s downtown and to enhance the quality of life in the general community (the “Park Project”).

B. LVPRPF has indicated its willingness to assist City and community with the design and construction of the Park Project.

C. The parties desire to enter into this MOU to establish a framework for a productive working relationship for the design and construction of the Park Project in a quality and timely manner.

D. At its meeting of \_\_\_\_\_, **2011**, the City Council approved this MOU.

### MOU

1. Scope of Development. The parties agree to negotiate, in good faith, to finalize a program, including funding, for a Scope of Development for the Park Project that meets the criteria, milestones and efforts described in Exhibit A. To assist with LVPRPF’s funding program for the Park Project, which will consist of volunteer workers organized and coordinated by LVPRPF and donations of cash and materials from the community and other interested persons, the parties understand the Park Project is proposed to be constructed in two phases. The first phase shall consist of the Park Improvements, as described in Exhibit A (“Phase 1”). The second phase shall consist of the Building Improvements as described in Exhibit A (“Phase 2”).

2. Schedule of Performance. The parties agree to negotiation, in good faith, to finalize a Schedule of Performance for the timely completion of the Park Project, within the parameters set forth in Exhibits A and B. The parties understand a portion of Exhibit B establishes timelines expressly applicable to this MOU, as well as proposed timelines for completion of the Park Project, the latter of which are the subject of the negotiations described in this paragraph.

3. Design and Construction Agreement. Within the time established in the applicable portions of Exhibit B, the parties will enter into a mutually agreeable Design and Construction Agreement (the “DCA”).

4. No Commitment to Approve a DCA. By entering into this MOU neither party is committing to approving a DCA of any sort; and the parties understand City may only enter into a DCA after review and approval of the same by the City Council at a duly noticed public meeting.

5. City Administrator Authority. Unless otherwise specifically stated, whenever this MOU requires an approval of City, such approval, at her sole discretion, may be given by City's City Administrator or her designee, if so designated in writing; provided, that the City Administrator, in her sole discretion, may decide to bring any matter to the City Council,; and provided, further, that the City Council reserves the right to determine whether to terminate this MOU as described in Paragraph 7.

6. LIMITATION ON REMEDIES FOR BREACH OR DEFAULT AND RELEASE OF CLAIMS

A. Neither party would have agreed to any part of this MOU if it were to be liable to the other party for any amount of monetary damages. Accordingly, both parties acknowledge and agree each party's exclusive right and remedy upon any breach or default of the other party to negotiate in good faith, as set forth in this MOU, is to terminate this MOU.

B. Each party acknowledges it is aware of the meaning and legal effect of California Civil Code Section 1542, which provides:

A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him would have materially affected his settlement with the debtor.

C. Civil Code Section 1542 notwithstanding, it is the parties' intention to be bound by the limitation on remedies set forth in this Section, and each party hereby releases any and all claims against the other party for monetary damages or other legal or equitable relief, whether or not such released claims were known or unknown to the releasing party as of its entry into this MOU. Each party hereby waives the benefits of Civil Code Section 1542 and all other statutes and judicial decisions (whether state or federal) of similar effect.

\_\_\_\_\_  
City Initials

\_\_\_\_\_  
LVPRPF

7. Termination by City. City shall have the right to terminate this MOU in the event LVPRPF (i) proposes any provision in the proposed DCA, which varies from the terms of the Scope of Development or Schedule of Performance or (ii) fails to meet any of the requirements in the Schedule of Performance, unless the delay is caused by City. City's right of termination shall be subject to a fifteen-day (15-day) notice.

8. Termination by LVPRPF. LVPRPF shall have the right to terminate this MOU in the event City proposes any provision in the proposed DCA, which varies from those described in this MOU. LVPRPF's right of termination shall be subject to a fifteen-day (15-day) formal notice.

9. Notices.

- A. Any formal notice, request, approval or other communication to be provided by either party shall be in writing and dispatched by first class mail, registered or certified mail, postage prepaid, return-receipt requested, or by electronic facsimile transmission followed by delivery of a "hard" copy, or by personal delivery (including by means of professional messenger service, courier service such as United Parcel Service or Federal Express, or by U.S. Postal Service), to the addresses of City and LVPRPF set forth below. Such written notices, requests, approvals or other communication may be sent in the same manner to such other addresses as either party may from time to time designate.
- B. Any notice that is transmitted by electronic facsimile transmission followed by delivery of a "hard" copy, shall be deemed delivered upon its transmission; any notice personally delivered (including by means of professional messenger service, courier service such as United Parcel Service or Federal Express, or by U.S. Postal Service), shall be deemed received on the documented date of receipt; and any notice that is sent by registered or certified mail, postage prepaid, return-receipt requested shall be deemed received on the date of receipt thereof.
- C. If to City:

City of Lompoc  
Attn: City Administrator  
100 Civic Center Plaza  
P.O. Box 8001  
Lompoc, CA 93438-8001  
Telephone 805.875.8212  
Facsimile 805.875.8302

With a copy to:

Aleshire & Wynder, LLP  
Attn: Joseph W. Pannone  
1515 W. 190<sup>th</sup> Street, Suite 565  
Gardena, California 90248  
Telephone 310.527.6660  
Facsimile 310.532.7395

D. If to LVPRPF:

\_\_\_\_\_  
\_\_\_\_\_  
Lompoc, CA 93436  
Telephone 805.\_\_\_\_.\_\_\_\_  
Fax: 805.\_\_\_\_.\_\_\_\_  
Cell: 805.\_\_\_\_.\_\_\_\_

10. Litigation Costs. If any legal action or any mediation or arbitration or other proceeding is brought for the enforcement or interpretation of this MOU, or because of an alleged dispute, breach, default, or misrepresentation in connection with any provision of this MOU, then the successful or prevailing party or parties will be entitled to recover reasonable attorneys' fees and other costs (including experts' fees and costs) incurred in that action or proceeding, in addition to any other relief to which it or they may be entitled.

11. Successors. The terms and conditions, covenants, and agreements set forth herein shall apply to and bind the heirs, executors, administrators, assigns and successors of the parties hereto.

12. Governing Law. This MOU shall be governed, construed, interpreted and enforced in accordance with and under the laws of the State of California.

13. Entire Agreement. This MOU represents the entire agreement of the parties and supersedes all negotiations or previous agreements between the parties with respect to development of the Park Project Site. This MOU may not be amended unless agreed as such in writing and certified by the signatures of the parties hereunder.

14. Effective Date. It is understood and agreed this MOU shall not be effective until it has been signed by all parties and shall be effective as of the date it is signed on behalf of City.

THE CITY OF LOMPOC, a municipal corporation

Dated: \_\_\_\_\_, 2011

By: \_\_\_\_\_  
Laurel Barcelona, City Administrator

ATTEST

APPROVED AS TO FORM:

Aleshire & Wynder. LLP

\_\_\_\_\_  
Stacey Alvarez,  
City Clerk

By: \_\_\_\_\_  
Joseph W. Pannone, City Attorney

[Signatures continued on page 5]

[Signatures continued from page 4]

LOMPOC VALLEY PARK, RECREATION AND  
POOL FOUNDATION, INC., a California public  
benefit non-profit corporation

Dated: \_\_\_\_\_, 2011

By: \_\_\_\_\_  
\_\_\_\_\_, President

Dated: \_\_\_\_\_, 2011

By: \_\_\_\_\_  
\_\_\_\_\_, Secretary

## EXHIBIT A

### SCOPE OF DEVELOPMENT

#### I. GENERAL DESCRIPTION

The Park Project shall be designed and developed as a first class, state-of-the-art, aesthetically pleasing public park with landscaping, fountain, benches, walkways, decorative fencing, planters, pavers, concrete work and other amenities (the “Park Improvements”) and general-use, community building (the “Building Improvements”) as described below, in which the Park and Building Improvements will have architectural excellence, consistent with the approved Conceptual Drawings, the Lompoc Municipal Code, standard City conditions for discretionary actions and those conditions reasonably imposed through the entitlement process.

The Building Improvements shall consist of a general-use, one-story, community building with a height that provides a two-story volume with approximately 1,500 gross square feet and 900 leasable square feet. It shall include public restrooms of a size necessary to meet the needs of all the proposed uses for the Park and Building Improvements. The Building Improvements shall include walls of extended heights, or other architectural features, to create safe, secure and effective wind blocks on the westerly and northerly facing sides of the Property. The Building Improvements shall be placed at the rear of the Property. Appropriate and enclosed trash receptacle areas shall be provided at the rear of the Property, which will be accessible to other commercial uses in the downtown area from the alley at the back of the Property. There shall be a securable pedestrian walkway from the Park Improvements to the alley at the back of the Property.

The Park and Building Improvements shall be of high architectural quality, well landscaped, and effectively and aesthetically designed. To the extent required or feasible, the Building Improvements will include solar panels, reclaimed rain water and energy efficient and sustainable materials.

Except as otherwise provided herein, no public money shall be used for any of the Park or Building Improvements.

The Conceptual Drawings, Design and Development Drawings and Construction Plans shall be reviewed and approved by the City Council, Planning Commission, Parks and Recreation Commission and City staff as set forth in the Schedule of Performance.

#### II. LVPRPF TEAM

LVPRPF shall put together a team of California licensed professionals to design and construct the Park Project, who may or may not be assisted by volunteers. That team shall include an architect, civil engineer, Class A, B or appropriate C specialty contractors, licensed as required by law. LVPRPF shall provide City with a list of all those professionals to be so used and their license numbers, certifications and identification data and the materials each may be donating to the Park Project (the “Consultant/Contractor List”) for approval. Once the

Consultant/Contractor List has been approved by City, no change can be made to those working on the Park Project without prior written approval from City, which it can grant or deny in its sole discretion. LVPRPF shall remain responsible for project progress, compliance with the DCA and other performance requirements.

### III. IMPROVEMENTS TO THE PROPERTY

#### A. General Development

LVPRPF shall develop the Park Project in compliance with City-approved Conceptual Drawings, Design and Development Drawings and Final Construction Plans, the latter of which shall include all necessary grading, drainage, landscaping, storm water management and other plans required for a public works project similar to the Park Project. All drawings and plans shall be stamped and signed by a California Professional Engineer (PE) or Registered Architect (RA). Unless prior written approval by City, no change to any approved plan may be made in the field or otherwise. All drawings, and plans prepared, including drafts, are the property of City, no matter what stage they are in and even if this MOU is terminated; and each professional engaged by LVPRPF shall sign a document agreeing to the status of the drawings and plans prepared by them.

#### B. Environmental Remediation; On- and Off-site Work; Utilities; Barricades

1. Environmental Remediation: City shall be responsible, at its cost and expense, for curing any adverse soil or water conditions on the Property (whether due to environmental contamination, the nature of the soil, geology, or subsurface obstructions) not caused by any action or omission of LVPRPF or its officers, employees, agents, contractors, volunteers or invitees. LVPRPF shall be responsible, at its cost and expense, for curing any adverse soil or water conditions on the Property (whether due to environmental contamination, the nature of the soil, geology, or subsurface obstructions) caused by any action or omission of LVPRPF or its officers, employees, agents, contractors, volunteers or invitees; and LVPRPF shall promptly perform any such work related to environmental contamination through a duly licensed qualified contractor.

2. On- and Off-Site Work: LVPRPF shall be responsible for all on-site improvements related to the Park Project and any off-site improvement requested by LVPRPF, unless otherwise specifically stated in subparagraph 3 below. City shall be responsible for all other off-site improvements and may be required to award that contract by competitive bids.

3. Utilities: City shall be responsible to provide for all primary utility stub-outs necessary to serve the Park Project. Beyond that, LVPRPF shall be responsible for providing all necessary on-site utility improvements; provided, that City hereby acknowledges sufficient capacity will be available in infrastructure, service and utility systems, including, without limitation, traffic circulation, sewer collection, sanitation service and, except for reasons beyond

City's control, sewer treatment, flood control, water supply, treatment distribution and service, gas service, telephone service and electrical service, to accommodate the Park Project.

4. Barricades; Cooperation: LVPRPF shall be responsible for construction barricades which may be required for pedestrian protection and temporary security fencing and dust control during LVPRPF's grading operations and construction improvements within the Property. LVPRPF shall work with City coordinate its development activities with those of City in order to minimize inconvenience, disruption and cost.

C. Urban Design Standards, Controls and Restrictions

Standards, controls and restrictions regarding construction and development, including, but not limited to, maximum land coverage, setbacks and building construction, shall be consistent with the approved Development Plan and those conditions reasonably imposed through the entitlement process.

IV. EVIDENCE OF FINANCING

LVPRPF shall provide assurance it has or can construct the Park Project, at no cost to City, except for the items described in Subsections II. B. 1. and 2., above, and Section X, below. Such evidence could include cash committed to the Park Project, donations of materials and labor committed to the Park Project; provided, that the commitments must reasonably ensure completion of the Park Project once commenced ("Evidence of Financing"). Evidence of Financing for cash committed to the Park Project shall be limited to moneys deposited into a trust account opened by LVPRPF, which can only be used to fund the Park Project.

V. LICENSE AGREEMENT AND ENCROACHMENT PERMIT

City shall grant a license agreement and encroachment permit to allow LVPRPF, its volunteers and those on the Consultant/Contractors List access to the Property to design and complete the Park Project.

VI. USE OF COMPLETED PARK PROJECT

LVPRPF shall not have any implied or express right, access or advantage to use the Park Project or any portion thereof. However, the parties agree LVPRPF may continue to sell and install dedication pavers in the areas within the Park Improvements designated by City, subject to any necessary additional governmental approvals and rules and regulations. The net revenue generated by those sales shall be paid to City for use solely to maintain and improve the Park Project, as reasonably determined by City. Net revenue shall mean the amount paid by the purchaser for the paver, minus the direct amount LVPRPF paid to purchase and ship that paver and any inscription on that paver and for the materials directly needed to install that paver.

## VII. INSURANCE

LVPRPF shall provide proof of general liability insurance in a minimum single limit amount of \$1,000,000. All those on the Consultant/Contractor List shall carry general liability insurance in a minimum single limit amount of \$1,000,000 or be added as an additional insured to LVPRPF's insurance. City and its officers, employees and agents shall be named as additional insureds on all general liability insurance provided. In addition, each professional shall have professional liability insurance coverage of a minimum single limit amount of \$1,000,000. Also, the Park Project shall be covered by an All-Risk Builder's policy provided by or through LVPRPF in an amount appropriate for the Park Project as reasonably determined by City.

## VIII. UNFORESEEN DELAYS

Neither party shall be responsible for delays outside their reasonable control.

## IX. GUARANTEE

Once commenced by it, LVPRPF must guarantee the Park Project will be completed within the allotted time and must provide some backing for that guarantee. Also, at a minimum, all donated materials must be placed at the Property and shall become City's property when so placed, without any costs. In addition, all materials noted as a donation on the Consultant/Contractor List shall become City's property immediately upon City's approval of that list.

## X. CITY RESPONSIBILITIES

City shall:

- provide at least one collection bin while the Building Improvements are being constructed which shall be used only for construction waste from the Park Project and provide periodic removal that waste,
- waive or provide for alternative payment of application, permit, landfill and governmentally required mitigation fees,
- process and pay for CEQA review, and
- pursue any other governmental approvals.

## EXHIBIT B

### SCHEDULE OF PERFORMANCE

1. Execution and Delivery of MOU by City.  
City shall execute this MOU, and shall deliver one duplicate original of this MOU to LVPRPF, if signed by LVPRPF. Within five (5) business days after approval by the City Council
2. Submittal of Conceptual Drawings.  
LVPRPF shall prepare and submit to City's Planning Manager a completed Development Review application and Conceptual Drawings for the Park Project. Within sixty (60) business days after LVPRPF's receipt of a fully executed duplicate original of the MOU.
3. Review/Comment re Conceptual Drawings. Appropriate City staff shall review and comment on the Conceptual Drawings. Within twenty (20) business days after LVPRPF's submission pursuant to Item 2, above.
4. Submittal of Amended Conceptual Drawings. LVPRPF shall prepare and submit Amended Conceptual Drawings to City's Planning Manager, if required. Within twenty (20) business days after LVPRPF's receipt of City staff's comments.
5. Review/Comment re Amended Conceptual Drawings. Appropriate City staff shall review, comment on or approve the Amended Conceptual Drawings, if submitted. Within ten (10) business days after LVPRPF's submission pursuant to Item 4, above. (Items 4 and 5 may need to be repeated depending on the need for further staff comments.)
6. City Council Review/Approval/Rejection of Final Conceptual Drawings.  
City Council shall review and approve, conditionally approve or reject the Final Conceptual Drawings. If at all, within twenty (20) business days after City staff approval; provided, that the parties understand due to scheduling conflicts and reasonable governmental decision making procedures the above schedule is an estimate.

7. Approval of DCA. If at all, LVPRPF and the City Council shall approve a DCA. Within thirty (30) days after the approval of the Final Conceptual Drawings.
8. Submittal of Design and Development Drawings. LVPRPF shall prepare and submit to City's Planning Manager Design and Development Drawings for the Park Project. Within sixty (60) business days after both parties sign the DCA.
9. Review/Comment on Design and Development Drawings. The City's Development Review Board shall review and comment on the Design and Development Drawings and develop Conditions of Approval. Within thirty (30) business days after LVPRPF's submission pursuant to Item 8, above.
10. Submittal of Amended Design and Development Drawings. LVPRPF shall prepare and submit Amended Design and Development Drawings to City's Planning Manager, if required. Within twenty (20) business days after LVPRPF's receipt of City staff's comments. (Items 9 and 10 may need to be repeated depending on the need for further staff comments.)
11. Review/Comment re Amended Design and Development Drawings. At a joint meeting, the Planning Commission and Parks and Recreation Commission shall review and approve, conditionally approve or reject the Final Design and Development Drawings. If at all, within thirty (30) business days after LVPRPF's submission pursuant to Item 10, above; provided, that the parties understand due to scheduling conflicts and reasonable governmental decision making procedures the above schedule is an estimate. Any determination shall be appealable to the City Council.
12. Submittal of Construction Plans. LVPRPF shall prepare and submit Construction Plans to City's Building Division for approval. Within sixty (60) business days after City staff approval of Design and Development Drawings.

13. Review/Comment/Approval re Construction Plans. Appropriate City staff and contract support, if needed, shall review and comment on or approve the Construction Plans. Within forty-five (45) business days after LVPRPF's submission pursuant to Item 12, above.
14. Submittal of Revised Construction Plans. LVPRPF shall prepare and submit revised Construction Plans to City's Building Division, if required. Within twenty (20) business days after LVPRPF's receipt of City staff's comments.
15. Review/Comment/Approval re Revised Construction Plans. Appropriate City staff and contract support, if needed, shall review and comment on or approve the Construction Plans. Within twenty (20) business days after LVPRPF's submission pursuant to Item 14, above. (Items 14 and 15 may need to be repeated depending on the need for further staff comments.)
16. LVPRPF to Provide the Consultant/Contractor List. LVPRPF shall deliver the Consultant/Contractor List. Prior to City's issuance of required building/grading permits.
17. Proof of Insurance. LVPRPF shall provide proof (i) All-Risk Builder's liability coverage in the amount appropriate for Phase 1 and 2 of the Park Project has been obtained and (ii) all those on the Consultant/Contractor List have general liability and professional liability insurance, as required. Prior to City's issuance of required any building/grading permits.
18. Evidence of Financing. LVPRPF shall submit to City Evidence of Financing referred to in the Scope of Development for Phase 1. Prior to City's issuance of required building/grading permits for Phase 1.
19. Evidence of Financing. LVPRPF shall submit to City Evidence of Financing referred to in the Scope of Development for Phase 2. Prior to City's issuance of required building/grading permits for Phase 2.

20. Approval of Financing. City shall approve or disapprove LVPRPF Evidence of Financing. Within ten (10) business days after receipt of a complete package of evidence of financing by City Staff.
21. City Permits. LVPRPF shall have completed all action necessary to obtain approval of all required City building permits with respect to the Project, including proof of All-Risk Builder's and liability coverage in the amount appropriate for the Park Project has been obtained. Within twenty (20) business days after approval of the final Construction Drawings and Evidence of Financing.
22. Issuance of City Permits. City shall issue the necessary building permits. As soon as possible, but no more than three (3) business days after LVPRPF satisfactorily completes Item 21.
23. Commence Construction of Phase 1. LVPRPF shall have commenced construction of Phase 1 the Park Project. LVPRPF shall be deemed to have commenced construction when work equal to at least \$25,000.00 of actual construction value for Phase 1 of the Park Project has been satisfactorily completed, excluding grading costs but including installed landscaping. Within \_\_\_\_ (\_\_) days after issuance of the required building permits, but no later than \_\_\_\_\_, 2012.\*
24. Commence Construction of Phase 2. LVPRPF shall have commenced construction of the Phase 2 of the Park Project. LVPRPF shall be deemed to have commenced construction when work equal to at least \$25,000.00 of actual construction value for Phase 2 of the Park Project has been satisfactorily completed, excluding grading costs. Within \_\_\_\_ (\_\_) days after issuance of the required building permits, but no later than \_\_\_\_\_, 2012.\*

25. Completion of Construction. LVPRPF shall complete construction of the Park Project, including all on-site improvements and only to the extent required by this Agreement all off-site improvements. Completion shall mean when the Park Project can be issued a full and final certificate of occupancy. Within ten (10) months after final construction drawings and issuance of building permits, but no later than \_\_\_\_\_, 2013.\*

\* The parties agree these dates will be identified as part of the DCA.