

## MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding (“MOU”) is entered into this \_\_\_ day of April, 2022, by and among the City of Lompoc, a municipal corporation (“CITY”), the Mission Hills Community Services District, a California special district (“DISTRICT”) and The Towbes Group, Inc., a California corporation, MJ Land, LLC, a California limited liability company and Harris Grade Partners, LP, a California limited partnership (collectively “DEVELOPER”). (Each of the foregoing being sometimes referred to herein as a “Party” and collectively referred to herein as “Parties”).

### RECITALS

- A. WHEREAS, DEVELOPER, proposes to develop Burton Ranch with up to 476 residential units, including single family and multi-family homes, and desires to begin construction on or about 2023; and
- B. WHEREAS, in or around 2000, CITY and DISTRICT entered into an Annexation Agreement, which provided DISTRICT shall provide water and wastewater service to Burton Ranch; and
- C. WHEREAS, in 2019, a dispute arose between the Parties regarding whether the DISTRICT has the ability to provide water and wastewater services to Burton Ranch; and
- D. WHEREAS, on or about July 2, 2020, CITY filed a civil complaint against DISTRICT in the Santa Barbara County Superior Court, case number 20CV02225 (the “Action”), alleging, *inter alia*, DISTRICT does not have the capacity to provide potable water and wastewater services to the proposed Burton Ranch project and sought to provide said services itself; and
- E. WHEREAS, on or about February 9, 2021, CITY filed a Second Amended (and currently operative) Complaint; and
- F. WHEREAS, DISTRICT categorically disputes each and every one of CITY’s contentions in the Action and asserts it can provide potable water and wastewater services to Burton Ranch as needed; and
- G. WHEREAS, the Parties have engaged in litigation and formal discovery; and
- H. WHEREAS, CITY, DISTRICT and DEVELOPER have engaged in extensive and good faith negotiations regarding the District providing water and wastewater services to the Burton Ranch while subcontracting with the City to treat the wastewater from Burton Ranch; and
- I. WHEREAS, CITY owns, operates and maintains a Regional Wastewater Reclamation Plant (“Treatment Plant”) in order to provide services to properties within its service area, and if available capacity exists, then to others by agreement; and

- J. WHEREAS, DEVELOPER and CITY are investigating what, if any, additional infrastructure may be needed for CITY's Treatment Plant to contract with the District for purposes of treating wastewater from anticipated, full development of Burton Ranch; and
- K. WHEREAS, DISTRICT owns and operates potable water wells and water and wastewater treatment facilities and desires to provide water and wastewater services to Burton Ranch; and
- L. WHEREAS, DISTRICT and DEVELOPER continue to evaluate and define infrastructure requirements related to DISTRICT providing DEVELOPER water and wastewater service; and
- M. WHEREAS, CITY, DEVELOPER and DISTRICT desire to enter into this Memorandum of Understanding to confirm all Parties are working in good faith to attempt to settle the matters set forth above while taking the time needed to study and craft further details of settlement.

NOW, THEREFORE, for good and valuable consideration, CITY, DEVELOPER and DISTRICT mutually agree that they will continue to work in good faith and attempt to settle the above matters based upon the outline of the deal points set forth below with the understanding that this is not a legally binding agreement but rather a show of good faith by the parties to attempt to resolve the disputes set forth above and to provide water and wastewater services to Burton Ranch.

1. Recitals. The Parties hereby fully incorporate by this reference the recitals set forth above.

2. Wastewater Service.

a. The DISTRICT will provide wastewater services to the DEVELOPER and will subcontract with the CITY for purposes of the CITY treating the wastewater from Burton Ranch at its Treatment Plant. However, the parties are investigating what, if any, additional infrastructure may be needed for CITY's Treatment Plant to provide wastewater treatment for anticipated, full development of Burton Ranch. DEVELOPER will design and construct the collection system for the wastewater from each parcel within Burton Ranch to the single point of connection to the CITY's Treatment Plant.

b. DEVELOPER will fund such investigation to be conducted by the CITY's consultant in two phases. The first phase of the investigation is expected to take approximately sixty (60) to ninety (90) days to complete once initiated. The first phase of the investigation is to determine whether the potable water that would be provided by the District is compatible with the CITY's Treatment Plant. The parties anticipate that this will not be an issue since the DISTRICT treats its potable water to the same or higher standard as Vandenberg Village.

c. In the event such investigation determines the use of CITY's Treatment Plant for Burton Ranch wastewater flow using water provided by the DISTRICT is acceptable to CITY and DEVELOPER, the Parties intend as follows:

(i) CITY will make the Treatment Plant available to DISTRICT to treat Burton Ranch wastewater subject to mutual agreement regarding required Treatment Plant improvements, if any, and costs of connection and ongoing treatment, it being the intent both initial infrastructure and connection costs will be borne by DEVELOPER;

(ii) the Burton Ranch development would connect to the Treatment Plant via a single point of connection with infrastructure necessary to measure and convey the wastewater from the Burton Ranch development to the Treatment Plant, including use of existing infrastructure when feasible;

(iii) the Parties agree time is of the essence and accordingly, will work cooperatively and diligently to finalize settlement terms to enable execution of a Settlement Agreement, including continuing to draft and negotiate an agreement similar to the agreement the CITY has with Vandenberg Village; and

(iv) DISTRICT and CITY will continue to negotiate and revise and ultimately enter into a Wastewater Treatment Agreement.

d. In the event CITY or DEVELOPER do not accept treatment of Burton Ranch wastewater flow at CITY's Treatment Plant, the parties will discuss whether to continue with settlement communications or resume litigation.

### 3. Water Service.

a. DISTRICT owns and operates potable water wells and water facilities.

b. DEVELOPER and DISTRICT are developing terms mutually agreeable to both parties regarding required infrastructure and connection fees related to the DISTRICT providing Burton Ranch water service. A draft development agreement has been prepared for this purpose and is being actively negotiated.

c. DEVELOPER and DISTRICT understand time is of the essence and will continue to work diligently and in good faith to finalize terms related to water service, including completion of any studies required to develop infrastructure specifications. DISTRICT and DEVELOPER have identified two areas which require further study: (i) location and sizing of a water storage tank, and (ii) reevaluation of DISTRICT water connection fees.

d. Provided a Settlement Agreement and Wastewater Treatment Agreement referred to in Section 2., above, are executed by CITY and DISTRICT, CITY is agreeable to DISTRICT providing water services to the Burton Ranch development if the terms and conditions of a Development Services Agreement are finalized.

4. Settlement Agreement and Release. While the wastewater and water service investigations referenced in Section 2., above, are conducted, the Parties will continue to negotiate and revise a Settlement Agreement and Release. The Wastewater Treatment Agreement contemplated above between the CITY and DISTRICT and Development Services Agreement

between the DISTRICT and DEVELOPER contemplated above, shall be exhibits to the settlement agreement.

5. No Promises. Each Party acknowledges that no agent, attorney or representative for the other Party has made any promises, representations or warranties, except as stated herein, to induce them to enter into this MOU.

6. Authority to Enter into MOU. Each Party hereto acknowledges and agrees it has the authority to execute and deliver this Agreement.

7. Counterparts and Electronic Signatures. This MOU may be executed by the Parties on any number of separate counterparts, and all such counterparts so executed constitute one agreement notwithstanding that all the Parties are not signatories to the same counterpart. In accordance with Government Code §16.5, the Parties agree this MOU, agreements ancillary to this MOU, and related documents to be entered into in connection with this MOU, will be considered signed when the signature of a party is delivered by electronic transmission, including by counterparts. Such electronic signature will be treated in all respects as having the same effect as an original signature.

8. Non-use of this MOU in litigation. The Parties to this MOU agree that this MOU, or any part thereof, as well as all communications between the Parties leading up to this agreement and related to attempting to come to settlement terms as contemplated herein shall not be referenced, referred to, proffered for evidence, or in any way used in the Action or any other litigation involving the provision of water and/or wastewater services to the Burton Ranch development, except as to Paragraph 9 herein.

9. Stay of Litigation. The Parties agree that until July 1, 2022, there will be a continued stay on all litigation proceedings, including without limitation discovery and all rights and obligations regarding discovery, including subpoenas, that were served prior to December 22, 2021, and that all of the parties have agreed that each party hereto has retained all of the rights and obligations they had regarding such discovery and subpoenas, including without limitation the right to object to or compel compliance with same, shall be the same rights and obligations as the parties had on December 22, 2021, and which continue to be tolled since that date under this stay. The parties shall have until thirty (30) days after the end of the litigation stay or any tolled deadline, whichever is greater, to exercise its rights and obligations. If necessary, the parties will seek the Court's approval of this stay.

[Signature Page Follows]

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WE HAVE EXECUTED THIS MOU ON THE DATE BELOW WRITTEN, EFFECTIVE UPON EXECUTION AND DELIVERY BY ALL PARTIES.

Date April \_\_, 2022

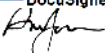
DEVELOPERS

Harris Grade Partners, LP, a California limited partnership

By: Martin Farrell Homes, Inc., a California corporation, its General Partner

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MJ Land, LLC, a California limited liability company

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By: 4F9893B50014419... en, Managing Member

The Towbes Group, Inc., a California corporation

By: Michelle Konoske, Chief Financial Officer

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Date April \_\_, 2022

DEVELOPERS

Harris Grade Partners, LP, a California limited partnership

By: Martin Farrell Homes, Inc., a California corporation, its General Partner

\_\_\_\_\_  
By: Jon Martin, President

MJ Land, LLC, a California limited liability company

\_\_\_\_\_  
By: Donald Jensen, Managing Member

The Towbes Group, Inc., a California corporation

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By: Michelle Konoske, Chief Financial Officer

CITY OF LOMPOC

Date: April \_\_, 2022

By: \_\_\_\_\_

Its: \_\_\_\_\_

ATTEST:

By: \_\_\_\_\_

Stacey Haddon, City Clerk

MISSION HILLS COMMUNITY SERVICES DISTRICT

Date: April \_\_, 2022

By: \_\_\_\_\_

Its: \_\_\_\_\_

**APPROVED AS TO FORM:**

ALESHIRE & WYNDER, LLP

Date: April \_\_, 2022

By: \_\_\_\_\_

Jeff M. Malawy  
Attorneys for the CITY of Lompoc

HENSLEY LAW GROUP

Date: April \_\_, 2022

By: \_\_\_\_\_

Mark D. Hensley  
Attorneys for Mission Hills Community Services District