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October 18, 2016

Members of the City Council
Charles S. Bryant, Community Development Director
1333 Park Ave.
Emeryville, CA 94608

RE: Impact Fee Credit

Dear Honorable Members of the City Council and Mr. Bryant:

We are writing to request formally the adoption by the City Council of a resolution awarding the Sherwin Williams site mixed-use project ("Project") a park fee credit to partially offset the millions of dollars that we expect to spend for the design and construction of a more than 3 acre public park plus green spaces and pathways, all of which make up a crucial and long-awaited element of the Emeryville Greenway. This letter will outline the basis for the park fee credit. We ask that the City Council review and approve this fee credit application, concurrent with project approval, to ensure the economic viability of the Project.

On July 15, 2014, the Emeryville City Council enacted a fee ordinance (the "Impact Fee Ordinance") which subjects all projects in Emeryville to an impact fee. The purpose of the fee is to mitigate a development's impacts on City parks and recreational facilities. The Impact Fee Ordinance also provides for a fee credit, subject to City Council approval, where a project directly furnishes "a specified public facility to the City." (Planning Code Section 9-5.1911). Our counsel, Anna Shimko, has informed us that based on our Project's implementation of the Emeryville Greenway extension and improvements to park and recreation facilities, the Project is eligible for the fee credit. Anna has discussed this matter with City Attorney Michael Guina and Community Development Director Charles S. Bryant, and it is our understanding that they agree with such view.

Background

The City of Emeryville adopted the Impact Fee Ordinance in 2014. The resolution adopting the impact fee states that it is based on a nexus study prepared by Willdan Financial Services (the "Willdan Park Impact Study"), dated April 24, 2014. The Willdan Park Impact Study specifically references, and is based upon, the City's Parks and Recreation Strategic Plan (the "Strategic Plan"). The study assigned cost estimates to each of the planned and proposed park facilities set forth in the Strategic Plan, and then determined the cost per capita to provide those facilities. The City Council relied on those calculations when it approved the Impact Fee schedule that would be levied on each development. Both the Willdan Park Impact Study and the Strategic Plan include the expansion of the Emeryville Greenway as a priority project, and it was clear that the proceeds garnered from the Impact Fee Ordinance would be used, in part, to fund these improvements.

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Attachment 1



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The Project's Eligibility for a Fee Credit

The Project incorporates significant improvements to park and recreation facilities contemplated in the City's Strategic Plan with respect to the Emeryville Greenway. As part of the 2.08 acres of zoned open space on the Sherwin Williams property and the 1.45 acres of open space on the City property, the Project extends the Emeryville Greenway through the site and from Horton Landing Park to Halleck Street. The proposed park includes City-owned land and part of the Sherwin Williams site, and will connect with the Emeryville Greenway that will run through the Project. We have offered to undertake the design and construction for improvements to both City-owned land and on the Sherwin property.

By implementing projects that form the basis of the Impact Fee Ordinance with respect to the Emeryville Greenway, the Project directly effectuates the purposes of the fee, and thus, must logically and fairly be eligible for a fee credit. If the City did not grant the credit, the Project would be required to bear more than its fair share of the costs of providing the set of park facilities identified in the Strategic Plan, in contravention of the California Mitigation Fee Act. In light of this, a fee credit would conform to the law.

Fee Credit Application

Planning Code Section 9-5.1911 specifies that "[a]n applicant may be eligible for a credit against impact fees otherwise owed, in return for providing a specified public facility to the City." The application must demonstrate compliance with six requirements to the satisfaction of the City Council as listed in Planning Code Section 9-5.1911 (a)-(f). Each of such requirements is addressed below, with sufficient and substantial evidence that the criteria for the fee credit are met with ease in this case.

I. Describe the public facilities (or portion thereof) proposed to be provided by the applicant, with a cross-reference to the description of specified public facilities in the relevant implementing resolution.

The Project encompasses the development of the 8.55-acre Sherwin Williams property and the adjacent 1.45-acre City-owned right-of-way/park/open space site, for an approximate 10 acres. The site is located to the south of the future Horton Landing Park and the Novartis surface parking lot, north of Sherwin Avenue and adjacent residential and transitioning industrial/commercial buildings at the ends of Halleck and Hubbard Streets, east of the rail tracks and west of Horton Street and the mixture of adjacent uses within the Park Avenue District.

As described in greater detail below, the Project incorporates the expansion of, and improvements to, the Emeryville Greenway, as contemplated by the Strategic Plan. Planning Code Section 9-5.1924 defines a "public facility" as "any public improvements, public services, or community amenities... for which the City has adopted an implementing resolution."

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Accordingly, we are claiming a fee credit under the City's July 15, 2014 Resolution enacting the Impact Fee Ordinance, which was intended to further "the General Plan's goals with respect to parks and recreational facilities."

Proposed Public Facilities

The Project extends the Emeryville Greenway through the Sherwin site from Horton Landing Park to Halleck Street. The proposed park includes City-owned land and part of the Sherwin Williams site, and will connect with the Emeryville Greenway that will run through the Project.

The Strategic Plan contemplates park and recreation facilities surrounding the Emeryville Greenway to be a part of the Emeryville Greenway expansion. The Strategic Plan shows three different concept plans for the Emeryville Greenway expansion, illustrating possible layouts for surrounding parkland. Clearly, the Strategic Plan recognized that the ultimate location of the park and recreation facilities were flexible. Accordingly, our Preliminary Development Plan ("PDP") submitted on September 8, 2016, proposes a slightly different layout than the plan concepts set forth in the Strategic Plan, which came about as a result of City and community input. Therefore, because our Project encompasses the expansion of the Emeryville Greenway as contemplated by the Willdan Park Impact Study, those elements constitute a "public facility" under the law.

II. Identify the estimated cost of providing the specified public facilities (including construction, design, and/or land acquisition) for which the applicant is requesting credit.

We estimate that the total hard and soft costs associated with the improvements to the Emeryville Greenway will amount to \$3,497,340 (please see below for cost break-down). However, we are naturally seeking a fee credit no greater than the amount that the Project would otherwise be assessed under the Impact Fee Ordinance, which is currently estimated to be \$2,132,600 according to the 2015-2016 Impact Fee schedule (please see below for detailed estimate). Thus, we propose that the City Council at this time approve a credit of park fees in an amount not to exceed the park fee that would otherwise be borne by the Project, with implementation accomplished by our supplying evidence of our design and construction costs; to the (unexpected) extent that our costs are less than the park fees that the Project would otherwise be charged, we will pay the difference in park fees. As noted, we anticipate that the combined hard and soft costs will outweigh any Impact Fee Credit that the Project might receive.

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Estimated Park Costs - Soft and Hard Costs			
Area	Size (ac.)	Soft Cost Est.	Hard Cost Est.
City Park Parcel	1.45	\$ 75,000	\$ 1,579,050
Project Open Space Adj. to Greenway	0.99	\$ 50,000	\$ 1,078,110
Project Open Space Adj. to City Park Parcel	0.62	\$ 40,000	\$ 675,180
Total	3.06	\$ 165,000	\$ 3,332,340

Park and Recreation Fee Estimate

Based on Fiscal Year 2015-2016 Fee Schedule

Use	Units/Size	Park and Rec Fee Per Unit/Per SF	Total Est.	Notes
Residential	500	\$ 3,691	\$ 1,845,500	Rental Apt. in Fee Schedule
Building 1-31	72,000	3.75	\$ 270,000	Based on Offices - Corporate HQ in Fee Schedule
Retail	8,000	2.06	\$ 16,480	
Public Gallery	2,000	0.31	\$ 620	
Total Est.			\$ 2,132,600	

III. Describe the project or projects to which the fee credit is requested to apply. The description shall be limited to all or a portion of the project for which specified public facilities are a condition of approval.

We seek credits for the following, each of which is depicted in the attached Land Use Diagram Exhibit (as reflected in PDP Submittal dated 9.13.16):

- 1) Improvements to the 1.45-acre City-owned Park parcel;
- 2) .62-acre extension of the City-owned park along Sherwin Avenue and
- 3) .99-acre expansion of the Greenway.

IV. Document that either: (1) the applicant is required, as a condition of approval for the project, to construct the public facilities; or (2) the applicant requests to build one or more specified public facilities which benefit the project, and the City Council determines by resolution prior to the commencement of construction that it is in the City's best interest for the specified public facilities to be built by the applicant.

The PDP submitted on September 8, 2016, demonstrates our request to build the public park and recreational facilities; construction of these facilities is in the City's best interest as it implements the Strategic Plan. Furthermore, once the facilities are identified within the approved PDP, any development will have to be consistent with the PDP, at least as regards the Sherwin site; thus, construction of them will be required by the project approvals.

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V. To the extent that credit for land acquisition costs are requested, document that (1) the location of the land is advantageous to the public facility needs of the City; and (2) the amount of credit for the land acquisition is equal to a reasonable estimate of the fair market value of the land based upon either: (a) the documentation provided by the applicant to the City, or (b) in the event that the City determines that the documentation provided by the applicant does not provide a reasonable basis for determining the fair market value of the land, the applicant shall pay for the costs of a property appraisal by an expert selected by the City which is qualified to express an opinion as to the value of the property (pursuant to California Civil Procedure Code 1255.010).

The Project does not seek credit for land acquisition costs.

VI. Notwithstanding the foregoing, no credit shall be provided against impact fees otherwise owed if an applicant has received a development bonus in accordance with Section 9-4.204 of these planning regulations for providing the specified public facility.

We have not sought a development bonus in exchange for the expansion of the Emeryville Greenway. We therefore qualify in full for the park fee credit.

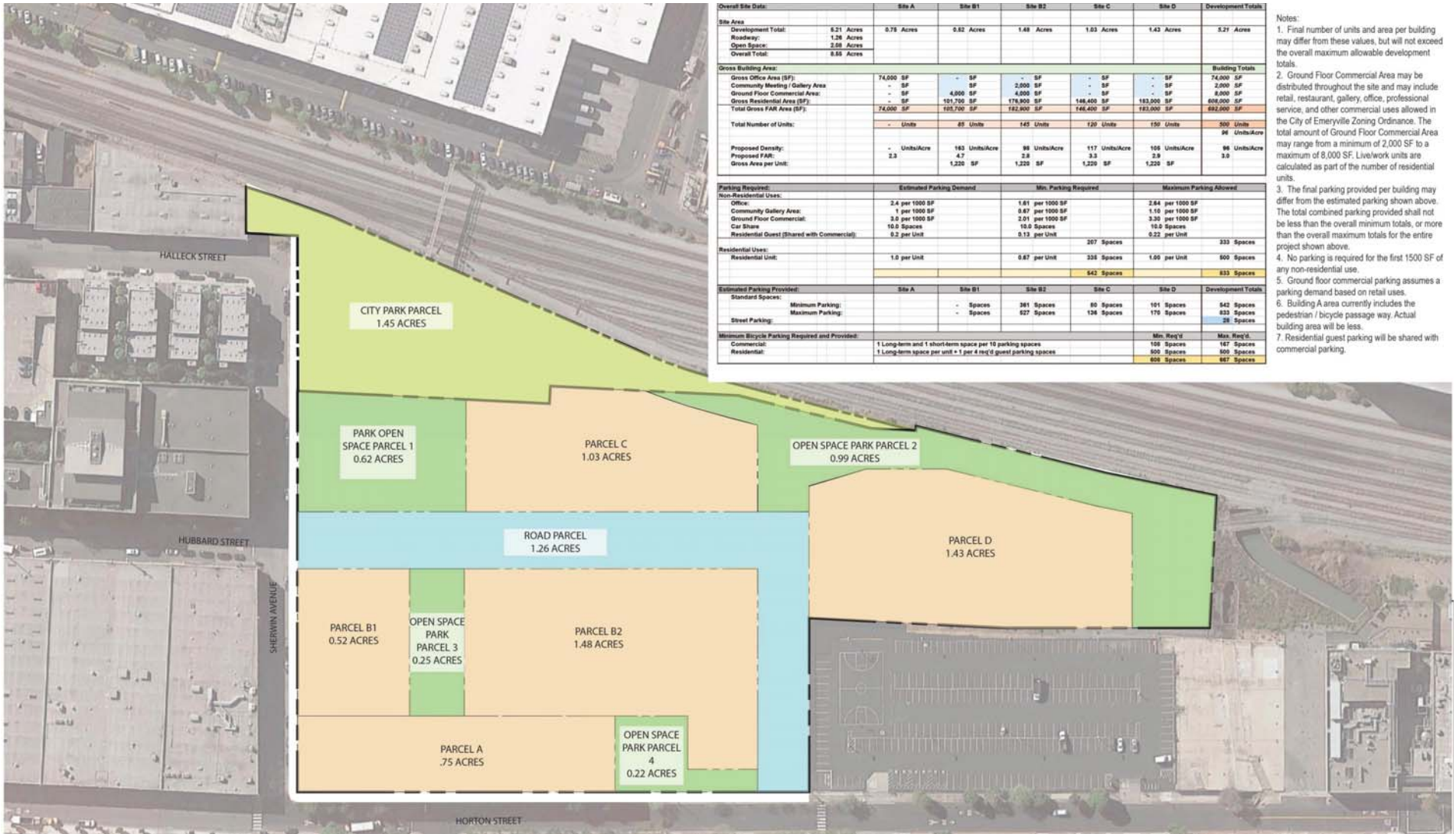
As demonstrated above, a park fee credit not to exceed the actual costs incurred to build the public park/Emeryville Greenway elements of the Project is mandated by basic fairness in general (so as to avoid double-dipping through any requirement to build facilities and to pay for them via park fees) and by the clear terms of the Impact Fee Ordinance specifically. We therefore respectfully request that the City Council adopt an additional resolution in addressing our Project approvals on October 18, to approve this park fee credit application. Please do not hesitate to contact me in the interim to further discuss this request. We look forward to bringing to fruition these park and recreational facilities that have been contemplated and in the planning stages for many years.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Kevin Ma'.

Kevin Ma
VP Development, LMC

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LAND USE DIAGRAM

SHERWIN WILLIAMS PRELIMINARY DEVELOPMENT PLAN
 SEPTEMBER 13 2016, PREPARED FOR LMC EMERYVILLE I INVESTOR LLC BY LPAS AND CBG