

OPERATING MEMORANDUM NUMBER ONE
BETWEEN
THE CITY OF SAN LUIS OBISPO
AND MI SAN LUIS RANCH, LLC

The Development Agreement by and among the City of San Luis Obispo (the “City”) and MI San Luis Ranch LLC (“SLR”) adopted by the City Council by Ordinance No. 1649 (2018 Series) (the “Development Agreement”), provides in Section 9.03 of the Development Agreement that compliance with the requirements of the San Luis Ranch Specific Plan (the “Specific Plan”), the Conditions of Approval (the “Conditions of Approval”) for the San Luis Ranch Project (the “Project”), the conditions of approval for Vesting Tentative Tract Map. No. 3096 (the “VTTM”), and provisions of the Development Agreement (collectively, the Specific Plan, the Conditions of Approval, the VTTM, and the Development Agreement may be referred to collectively as the “Project Approvals”) require a close degree of cooperation between the City and SLR and refinements and further development of the Project may demonstrate that clarifications are appropriate with respect to the details of performance. The Development Agreement further provides that if and when City and Owner agree that such clarifications are necessary or appropriate, they may effect such clarifications through operating memoranda approved by the City and SLR.

With this Operating Memorandum, City and SLR wish to clarify certain conditions in the Project Approvals in order to carry out the intent of the City and SLR with respect to the design and development of the Project. Capitalized terms used in this Operating Memorandum shall carry the same definitions as those set forth in the Development Agreement.

A. PURPOSE:

The purpose of this Operating Memorandum is to identify a basic framework between the City and SLR, for allowing SLR to proceed with the recording of a Final Map with respect to the VTTM and to facilitate the construction of the improvements as contemplated under the terms of the Development Agreement. This Operating Memorandum will reduce certain uncertainties associated with the orderly development of the Project, provide for the effective and efficient development of public facilities, infrastructure and services, a wide range of housing types, densities and affordable housing options, and provide significant public benefits to the City and its residents. The parties acknowledge that a credit and reimbursement agreement will be duly approved and executed between the parties prior to the recording of the Final Map.

B. CLARIFICATIONS:

1) The Intersection of Dalidio Drive and:

a) **Froom Ranch Way** - In accordance with Section 6.03.1(c) of the Development Agreement, the City hereby allows as an interim design alternative the conceptual intersection as depicted in the attached Exhibit A. The interim design alternative will be shown as an acceptable alternative on the Final Map prior to recording.

Following January 1, 2020, and upon 60-day notice from City, SLR agrees to complete necessary acquisitions and begin construction of the Multilane Roundabout at Prado & Froom as approved in the Public Improvement Plans, prior to City Submission of the Draft Final Environmental Determination and Project Report to CalTrans. Following the 60-day notice from City, SLR agrees to substantially complete construction of the roundabout (such that there are no conflicts with interchange construction) on or before October 1, 2020.

The City's agreement hereunder shall be conditioned upon SLR posting a bond with the City in the amount reasonably estimated for the acquisition and construction of the ultimate roundabout improvements contemplated for said location. Nothing herein shall relieve SLR of the responsibility of constructing such improvements, including any costs associated with removal of any interim improvements, if necessary.

b) **Adjacent Off-Site Parking** - The City and SLR contemplate that off-site right of way acquisitions from either or both of the adjacent Embassy Suites and Madonna Plaza properties may impact existing parking on such properties, and the parties anticipate currently that such acquisitions are not likely to create a conflict with current zoning code minimum parking space requirements. In the event that a future conflict is identified, the City shall diligently review a Minor Use Permit submitted to (i) reduce the parking requirements for such properties and/or Lot 9 of the VTTM and/or (ii) allow shared parking between such properties with the goal that such off-site acquisitions will not inhibit future development of those properties or otherwise affect their development value. Nothing herein shall be deemed to be a pre-committal on the part of the City to approval such Minor Use Permit.

c) **Madonna Road** - The City will allow interim improvements to be constructed at the intersection of Dalidio Drive and Madonna Road that do not require off-site acquisitions from the adjoining U.S. Postal Office as the processing time for acquisition of federal property could unreasonably delay the project. Prior to approval of such interim improvements SLR shall complete the intersection design in accordance with its mitigation measures and conditions of approval and enter into an off-site acquisition agreement with the City which shall include an estimated schedule on-time performance measures.

Nothing herein shall relieve SLR of the responsibility for construction of its mitigation and conditions of approval requirements, including any costs associated with removal of any such interim improvement, if actually constructed and shall post bonds in an amount sufficient to construct SLR's approved PIP improvements.

d) **Prado Road Interchange: Various Access/Drainage/Aesthetic area reservations on Hotel and Office Lots** - There shall be a reservation of easements, both temporary and permanent, to construct and maintain necessary structures, access easements, maintenance easements, flood control and treatments infrastructure and the Prado Road interchange, which shall minimize to the greatest extent feasible any permanent easements on the Hotel (VTTM Lot 8) and Office (VTTM Lot 9) Lots. No slopes shall be constructed and no slope easements shall be reserved or required on VTTM Lots 8 or 9 with respect to the support of the contemplated Prado interchange/bridge improvements. SLR shall work cooperatively with the City and

CalTrans for the design and construction of the structures required for the Prado interchange/bridge improvements, which such costs shall be included in the cost of the bridge and overpass improvements. The City shall reasonably consider SLR's reservation of parking and access easements to Lot 303 under the proposed overpass unless the area is needed for implementation of the Prado Road Interchange or if such reservations would impair necessary flood conveyance/treatment, and subject to approval by CalTrans. SLR shall have the right to reserve easements for parking and access to Lot 303 under the proposed overpass if reasonably feasible.

Regarding the Prado Road Interchange, the City agrees to notify and meet with SLR if any material changes occur that may affect the interface between the interchange and SLR properties, at key project mile stones, and City shall include SLR in the review of the Draft Environmental Determination, Draft Project Report, and Project Plans & Specification materials. The City agrees to accommodate meeting, status updates, and information requests from SLR that are within its authority. The City will endeavor to include SLR in all relevant meetings it hosts with CalTrans, however nothing in this agreement should be construed to commit or obligate the State to attendance.

2) Left Turn Access to Retail and Hotel Lots - Mitigation measure T1(i) requires access restrictions on Prado/Dalidio and Map Condition #10 requires dedication of access rights to the City along Madonna, Dalidio, Prado, and Froom Ranch Way. The City agrees to reasonably consider the approval of design exceptions for left turn in only lanes/pockets submitted by SLR, which shall not be unreasonably withheld, delayed, or conditioned except as required within the context of public health and safety and applicable standards and design guidelines.

3) Oversizing of Facilities & Infrastructure, including Off-Site and On-Site Roundabout Design and Protected Bike Intersections: Per Section 6.02.2 Oversizing of project Facilities & Infrastructure of the San Luis Ranch Development Agreement, the City will reasonably consider reimbursement and/or fee credits for costs & expenses associated with oversized public facilities, including without limitation, Roundabouts and/or Protected Bike Intersections design elements required by the City that are above and beyond the applicable express standards and/or design guidelines.

For each design element, request for reimbursement and/or fee credits shall be made in writing and include the following:

- a. Identify FMAP #, Submittal #, & City Comment #.
- b. Identify the applicable mitigation measure/condition of approval, and the standard and/or design guideline document associated with the oversized design element.
- c. Identify the FMAP #, Page #, and provide a brief description of where and how the associated changes have been made.
- d. Provide supporting explanation on how the design element is oversized.
- e. Provide a line item accounting of the cost difference between baseline requirement and oversized requirement.

4) Reimbursement of excess costs above SLR Fair Share Obligations – LOVR/Froom Ranch Way and Tank Farm and Higuera Right Turn – Section 5.03.2(e)

provides that in the event that SLR installs infrastructure improvements beyond its “fair share” obligations, then the City would “provide credits against any fees charged by the City for such improvements beyond the Project’s “fair share” obligation and to provide reimbursements, funded by Development Impact Fees paid by other developers, including traffic impact fees, or funded from other sources, but excluding sewer and water connection fees.” With regard to Froom Ranch Way and LOVR Intersection Widening, SLR’s fair share is 20%, and with regard to Higuera & Tank Farm Road, SLR’s fair share is 5%. With respect to Higuera & Tank Farm Road, Mitigation measure T-1(g) requires a channelized 230’ NB right turn pocket to be constructed as part of SLR offsite mitigation requirements. The parties acknowledge that it is unlikely that others shall construct such improvements. SLR has agreed that it will design, acquire right-of-way, and construct such improvements. The City, however, has concluded that these improvements were not included within the City’s Citywide Transportation Impact Fee in a manner that would allow the City to provide fee credits as contemplated by Section 5.03.2(e) of the Development Agreement. In light of the foregoing the parties agree as follows:

a) With the exception of Improvements at Froom & LOVR, the City shall present to City Council for consideration an update of the Citywide Transportation Impact Fee program incorporating the above described improvements and their costs, currently scheduled for July 2, 2019.

(i) Costs for consideration of inclusion in the fee program shall be limited to engineering, right of way acquisition, and construction.

(ii) Any general fund reimbursements that may arise as a result of inclusion in the fee program shall not be recommended for appropriation before fiscal year 2024-25.

b) For Improvements at Froom & LOVR the City shall prepare the necessary Travel demand modeling & AB1600 nexus studies and present to Council for consideration of inclusion into the fee program and corresponding development agreement amendments, currently scheduled for October 1, 2019, to include the following:

(i) Costs for consideration of inclusion in the fee program shall be limited to only engineering, construction, and right of way acquisition of mitigation measure T-2(f). All costs associated with the protected bicycle intersection elements shall not be considered for inclusion in the fee program.

(ii) SLR shall provide line item construction cost estimates and corresponding schematic of improvements specific to mitigation measure T-2(f) excluding bicycle protected intersection elements.

(iii) SLR shall fund, via a development services agreement, the necessary travel demand modeling & AB1600 nexus studies.

(iv) Any general fund reimbursements that may arise as a result of inclusion in the fee program shall not be recommended for appropriation before fiscal year 2024-25.

c) If the Council Adopts the impact fee amendments as described above, SLR agrees to process an amendment of Sections 5.03.2(b)(1)(i) and 5.03.2(b)(2)(i) of the Development Agreement to include the amount of the increase in the Transportation DIF fee resulting from the City's inclusion of such improvements in the Citywide Transportation Impact Fees as contemplated in section 4(a) of this Operating Memorandum (i.e., the amount of change in the Transportation Impact Fees from the 2018 DIF Update to the amount of the new Transportation Impact Fees resulting from the City's inclusion of such improvements in the Transportation Impact Fees) as an element of the Vested DIF (i.e., the amount of the Vested DIF shall be increased by the change resulting from the inclusion of such improvements in the Citywide Transportation Fees).

d) If the Council Adopts the transportation impact fee amendment as described above SLR shall be entitled to transportation impact fee crediting for project costs as adopted within the updated transportation impact fee program.

e) Any further requests for additions of eligible costs into the Citywide Transportation Impact Fee program shall require renegotiation of the Development Agreement.

5) Off-Site Dedications: The City agrees that the completion, bonding, or waiver, as provided in the Development Agreement, of Off-Site Dedications for purposes of the contemplated construction of improvements at the property shall be deemed, in all instances, to be a condition for the issuance of occupancy permits, and not building or construction permits as allowed under the Development Agreement, and to avoid undue delay, prejudice and additional costs to SLR. Further, for purposes of completion of such Off-Site Dedications, SLR shall be deemed to have satisfied the same if: (i) the Off-Site areas to be acquired for dedication have been appraised; (ii) a reasonable purchase offer has been made to the landowner based upon such appraisal; and (iii) the purchase offer has been rejected, refused or ignored. For avoidance of doubt, SLR agrees that (i) no rental units shall be rented and (ii) there shall be no close of escrow to a future homebuyer of any for sale residential unit until the construction of such improvements has been completed, bonded for, or waived in accordance with the Development Agreement. SLR shall include such restriction in any sales of undeveloped land to any future builders.

6) Extension of 101 off-ramp at LOVR: SLR EIR mitigation measure T-2(g) requires the extension of the SB left turn pocket at LOVR & US 101 SB Ramps, as described in the EIR. SLR has agreed to submit to CalTrans an alternative configuration of a two-lane offramp configuration in lieu of mitigation measure T-2(g) provided CalTrans accepts design exceptions as necessary to make a two-lane offramp configuration cost comparable to the improvements contemplated by mitigation measure T-2(g). If CalTrans does not accept the design exceptions necessary to make the two-lane offramp configuration cost comparable to the improvements described in mitigation measure T-2(g) as submitted by SLR (the "Submission"), the City shall accept implementation of the Submission as SLR's full and complete satisfaction of such mitigation measure.

7) Relocation of Small Billboards for Prado Interchange: SLR and City agree that under the terms of the Agricultural Conservation Easement approved by the City, that the small billboards located at the site of the proposed Prado Interchange are Improvements which the terms of the easement allowed to be relocated. To the extent that such relocation requires further review and approval of the City under City Ordinance Section 15.40.600, the City shall

not unreasonably delay such review by the Community Development Director under Section 15.40.480 and/or the Architectural Review Commission if so required.

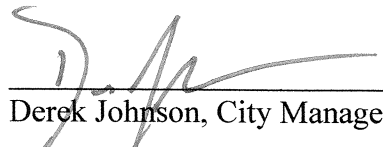
8) Offer of Dedication Large Billboard Location: SLR shall dedicate the portion of Lot 309 required for the Prado Interchange/Southbound ramp in accordance with the express provisions of Section 6.02.3(b) of the Development Agreement. SLR agrees to submit a draft ordinance for City Attorney and City Manager review, and for Council consideration for the sole and limited purpose of relocating the Large Billboard on the Dalidio property.

9) Relocation of Very Low Income Residential Units: SLR proposes to work with Peoples' Self-Help Housing for construction of the Project's affordable housing units, as follows: the 26 units proposed to be located on NG-30 would be relocated to VTTM Lot 7 and constructed in conjunction with 34 units proposed thereon as part of mixed use project on VTTM Lot 7. The City shall reasonably consider and diligently process an application to facilitate such proposal. In the event that SLR determines that such proposal is infeasible or if the City does not approve the moving of the 26 affordable units from the NG-30 site, then SLR will build the 26 affordable units on NG-30 and shall either (i) pay the affordable housing fee in lieu of construction of the 34 units or (ii) construct the 34 units on or offsite as allowed by the Development Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this agreement as of the last written date below.

FOR City:

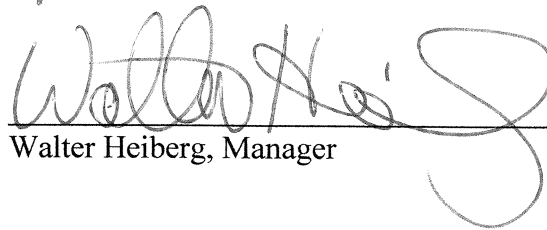
Date: 5-8-19



Derek Johnson, City Manager

FOR SLR:

Date: 5-7-19



Walter Heiberg, Manager

APPROVED AS TO FORM:



J. CHRISTINE DIETRICK
City Attorney

"Exhibit A"

ROUNDABOUT / HOOK RAMP ACCESS

4-4-19

EMBASSY SUITES
EXISTING ACCESS

OFFICE PARCEL

DALIDIO

FROM

