

TRI-VALLEY TRANSPORTATION COUNCIL

RESOLUTION NO. 2015-04

**A RESOLUTION OF THE TRI-VALLEY TRANSPORTATION COUNCIL
APPROVING THE CHARGING OF A TRI-VALLEY TRANSPORTATION
DEVELOPMENT FEE BASED ON THE "OTHER" USE FEE CATEGORY FOR A
PROPOSED DEVELOPMENT IN THE CITY OF LIVERMORE**

WHEREAS, the Tri-Valley Transportation Council (TVTC) oversees the Tri-Valley Transportation Development Fee (TVTDF); and

WHEREAS, the 2008 Tri-Valley Transportation Council Nexus Study determined that the TVTDF is based on peak-hour trips because peak hour traffic is the controlling factor for determining traffic mitigation requirements; and

WHEREAS, the City of Livermore (City) received application SPDR14-018 from Ware Malcomb (Applicant) to build a manufacturing facility (Facility) on property owned by Arkay Properties, LLC (Owner) and Owner requested consideration as an "other" use rather than an "industrial" use based on their intent to use a shift work schedule; and

WHEREAS, the "other" use category is intended for land uses that do not fit the standard residential, commercial, or industrial categories; and

WHEREAS, Owner's operation is currently located in another jurisdiction and operates under a shift work schedule where all employees arrive at work either (1) prior to 7:00 am with the majority of employees arriving prior to 5:00 am or (2) at 2:00 pm and work until 10:30 pm; and

WHEREAS, a trip generation study conducted at Owner's current location on November 20, 2014 indicated a total of 42 vehicles entering/exiting between 8:00-9:00 am and 29 vehicles entering/exiting between 4:45-5:45 pm for an average of 36 peak-hour trips; and

WHEREAS, due to the use of a shift work schedule, the proposed Facility will generate significantly fewer peak-hour trips than a similarly-sized typical industrial development; and

WHEREAS, Owner has agreed to enter into an agreement ("Agreement") with the City that will be recorded against the property whereby if commute conditions at the Facility change, such that the Facility generates more than 36 peak-hour trips or the property is sold, then Owner will pay additional fees in accordance with the terms of the Agreement; such Agreement will be substantially in the form of the attached Exhibit A.

NOW, THEREFORE, BE IT RESOLVED as follows:

1. The Tri-Valley Transportation Council approves charging Owner a TVTDF for the proposed Facility based on the "other" land use category rather than the "industrial" land use category.
2. This approval is contingent upon the City and Owner entering into an Agreement that will be recorded against the property, substantially in the form of the Agreement attached hereto as Exhibit A.

PASSED, APPROVED AND ADOPTED at the meeting of January 26, 2015, by the following votes:

AYES: 6

NOES: 0

ABSENT: 1

ABSTAIN: 0



Candace Andersen, Chair
Chair, Tri-Valley Transportation Council

ATTEST:



Jamar Stamps, TVTC Administrative Staff

EXHIBIT A

Recorded by and When Recorded Return to:
City Clerk, City of Livermore
1052 South Livermore Avenue
Livermore, CA 94550

AGREEMENT FOR DELAYED OBLIGATION OF VARIOUS CITY DEVELOPMENT IMPACT FEES DUE UPON THE CHANGE IN OPERATION OF FACILITY

This Agreement is entered into on _____, 2015 between the City of Livermore, a municipal corporation (City) and Arkay Properties, LLC (“Property Owner” or “Owner”).

Recitals. This Agreement is based on the following facts:

A. Property Owner owns real property in the City of Livermore, Alameda County, located at xxx Discovery Drive (Parcel 15 of PM 8470, Parcels 4 and 5 of PM 10256; APN: 904-xxx-xxx) and described more specifically in Exhibit A attached (the “Property”).

B. Property Owner has applied for a building permit, TI15xxx, to construct a Warehouse and Manufacturing Facility at the Property. The facility will be built to accommodate a warehouse use which has 0.48 peak-hour trips per 1,000 square feet and parking of no more than one per 1,000 square feet. The total building square footage is 506,000 square feet.

C. Property Owner has an existing facility in Hayward, CA. TJKM performed a trip generation study of the existing facility and determined that it generates 36 peak-hour trips per day (AM and PM average). Property Owner plans to operate the Livermore facility the same as their existing facility, with no more than 36 peak-hour trips per day on average. All other trips will occur during non-peak hours.

D. The Traffic Impact Fee (TIF), Park Facilities Fee (Park Fee) and Tri-Valley Transportation Development Fee (TVTD) based upon 36 peak-hour trips per day are calculated as follows:

- TIF = \$9034 per peak-hour trip x 36 peak-hour trips = \$325,224
- Park Fee = \$1196 per peak-hour trip x 36 peak-hour trips = \$43,056
- TVTD = \$2433 per peak-hour trip x 36 peak-hour trips = \$87,588

E. Owner has agreed to enter into a Deferred Development Impact Fee Agreement with the City because of the potential for the project to generate more than 36 peak-hour trips or for the property to be sold. Owner shall submit to the City of Livermore Engineering Division an annual report which summarizes current peak-hour trips and shift operations. At the request of the City, owner shall submit a trip generation study to the City. Additionally, in the event of a mid-year

change in peak-hour trips, Owner shall have 30 days to notify the City and identify current peak-hour trips.

F. If, in the future, Owner changes the operation of the facility to generate more than 36 peak-hour trips Owner shall pay the additional fees due based on the additional peak-hour trips. If the owner sells the property or if peak-hour trips reach 30% or more of the average daily peak-hour rate for the TIF and Park Fee warehouse use and TVTD industrial use then the Property Owner shall then be obligated to pay the full fees (pursuant to LMC Chapter 12.30, Chapter 12.60, and Resolution 2003-752) based upon the square footage of building area at the time increased peak-hour trips. The amount due shall be based on the amount of the fees in effect at the time. As a result, the only development impact fees generated with building permit TI15XXX that are subject to this agreement are those listed in Section D.

G. As required by the Metropolitan Transportation Commission and the Bay Area Air Quality Management District (BAAQMD), all businesses with over 50 employees must register for the Bay Area Commuters Benefit program and submit an annual report. A copy of this annual report must also be sent to the City of Livermore Engineering Division within 30 days of submittal to BAAQMD.

NOW, THEREFORE, the parties agree as follows:

1. The Property. The Property which is the subject of this Agreement is that described in paragraph A above.
2. Payment of Current Fees. The Developer shall pay Traffic Impact, Park Impact, and Tri-Valley Transportation Development Impact fees based upon 36 peak-hour trips. The fee amounts listed in Section D are due with the other development impact fees prior to issuance of building permit TT15XXX.
3. Payment of Deferred Fees. If, in the future, Owner changes the operation of the facility to generate more than 36 peak-hour trips Owner shall pay the additional fees due based on the additional peak-hour trips. If the owner sells the property or if peak-hour trips reach 30% or more of the average daily peak-hour rate for the TIF and Park Fee warehouse use and TVTD industrial use then the Property Owner shall then be obligated to pay the full fees (pursuant to LMC Chapter 12.30, Chapter 12.60, and Resolution 2003-752) based upon the square footage of building area at the time of increased peak-hour trips. The amount due shall be based on the amount of the fees in effect at the time. Owner shall have 30 days to notify the City and pay the fees due from date of increased peak-hour trips as defined above.
4. Permission to Lien Property. The Property Owner is improving the Property for use as a warehouse with operations that have the potential to exceed 36 peak-hour trips. In the event of an increase from 36 peak-hour trips, the Property Owner shall have 30 days to notify the City and pay the fees due from date of increased peak-hour trips as defined above. Property Owner authorizes the City to place a lien on the property to cover any unpaid amount, after written notice to the Property Owner if payments are delinquent 60 days or more.

4. Escrow. Upon the opening of any escrow for the sale of the Property, the Property Owner shall provide appropriate notification and escrow instructions that the deferred fees are to be paid to the City from the sale proceeds in escrow before disbursing proceeds to the seller.

5. Recordation; Binding Effect. This Agreement shall be recorded in the office of the County Recorder (in the grantor-grantee index, with Property Owner as grantor and City as grantee), and shall be binding upon and inure to the benefit of successors in interest to the parties. Where there is more than one Property Owner, the obligations are joint and several.

6. Release of obligation. When the payment obligation is paid in full, the City shall record a release of obligation, signed by the Community and Economic Development Director.

7. Legal Action; Attorney's Fees. If there is any legal action to enforce this Agreement, the prevailing party is entitled to attorney's fees and related court costs.

IN WITNESS WHEREOF, the parties have signed this Agreement on the dates indicated below.

PROPERTY OWNER

By: _____ * Date: _____

Title (if Property Owner is a legal entity): _____

By: _____ * Date: _____

Title: _____

CITY OF LIVERMORE

By: _____ Date: _____

Stephan Kiefer, Community and Economic Development Director

Attest: _____

City Clerk

Approved as to form: _____

City Attorney

* Notary acknowledgment required. If the Property is owned jointly, both owners must sign. If the Property is owned by a partnership or corporation, the City requires proof of authorization for the person signing.

Exhibit A Property Description

For staff use only: Date of building permit _____

Revised: 12/1/02

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Exhibit A
Property Description

(Attach legal description of the Property, not the address or assessor's parcel number.)