

ENVIRONMENTAL DOCUMENT AND ENTITLEMENT

PROCESSING REIMBURSEMENT AGREEMENT

THIS AGREEMENT IS MADE AND ENTERED INTO this ____ day of _____, 2021 ("Effective Date") at Rocklin, County of Placer, California, by and between the City of Rocklin, a municipal corporation ("City"), and Towne Development of Sacramento Inc., a corporation registered to conduct business in California ("Applicant").

RECITALS

A. This Agreement is authorized and made under the provisions of the California Environmental Quality Act (Public Resources Code, section 21000 *et seq.*) ("CEQA"), including sections 21082.1, 21151, 21 153, and 21165 and the related CEQA guidelines (California Code Regulation, Title 14, Chapter 3 (commencing at section 15000) ("CEQA guidelines"), including section 15084; the provisions of the Political Reform Act of 1974 (Government Code, section 81000 *et seq.*, including section 87103.6) and related California Code of Regulations, Title 2 (commencing at section 18100); and the provisions of Government Code section 31000.

B. City is considering the approval of the Estia at Rocklin Project generally located between West Oaks Boulevard and Atherton Drive west of Lonetree Boulevard, Rocklin, California.

C. Applicant owns or controls the development of all property that is the subject of the Project. The Applicant is the beneficiary of the Project.

D. City requires for the Project the preparation of a Traffic Impact Study in support of its environmental review process.

E. City desires to retain the services of a traffic consultant to provide services for the Project. City requires Applicant to deposit full payment of \$51,900 with the City to cover the anticipated costs necessary to prepare the Traffic Impact Study for the Project ("Environmental Services").

F. Applicant has no objection to the City retaining a traffic consultant to provide Environmental Services on behalf of the City.

G. Execution of this Agreement by Applicant and City is a condition precedent to City entering into a separate agreement or agreements for Environmental Services ("TIS Agreement"). Applicant is not and shall not be a party to the TIS Agreement.

H. Applicant shall pay the entire cost for TIS Agreement. Except for funds paid by Applicant under this Agreement, no other City General Fund money shall be paid for any service or act related to the TIS Agreement on behalf of the City, including any service or act by Contractor or consultant¹ under the terms of the Agreement. Applicant acknowledges that City is not responsible or liable for any costs or damages which may arise in the preparation or use of the Traffic Impact Study including any cost or damages arising under the TIS Agreement.

I. City shall pay Consultant(s) for the cost of preparing the Traffic Impact Study, to the extent that City has received funds from Applicant for payment of such services.

NOW, THEREFORE, IT IS AGREED BY AND BETWEEN THE PARTIES AS FOLLOWS:

Section 1. DURATION OF AGREEMENT

This Agreement shall commence on the effective date and shall continue in effect until (i) the environmental document prepared for the Project which relies on the Traffic Impact Study prepared by CONSULTANT is accepted by City as complete subject to CEQA, (ii) City takes action to approve or deny the Project, or (iii) until terminated otherwise pursuant to this Agreement, whichever is earlier.

Section 2. FUNDS FOR FEE.

- (1) Applicant shall pay the entire cost of the following services performed under the terms of this agreement:
 - (a) Preparation of a Traffic Impact Study for the Project ("Environmental Services").
- (2) With execution of this Agreement, Applicant agrees to make a Deposit in the amount of \$51,900.00 for the cost of retaining the Traffic Consultant under the terms and conditions of the TIS Agreement. City and Applicant anticipate that the Deposit is adequate to fund the total cost of the Environmental Services to be provided pursuant to this Agreement. Any unused portion of the funds deposited with City by Applicant shall be returned to the Applicant.

¹The terms "Contractor" and "Consultant" shall have the same meaning under this Agreement.

- (3) The City shall maintain accurate records of the expenditures made in connection with the processing of the Project. The City shall maintain records and document the time spent and rates charged by the Consultant, and such records shall be available for Applicant's review on a reasonable basis. The City shall provide to Applicant on a monthly basis a statement reflecting the prior month's expenditures of funds deposited pursuant to this Agreement. Should Applicant object to any such expenditure it shall notify the City in writing and the parties shall meet and confer to resolve any objections by Applicant.
- (4) Applicant shall also pay to City any additional cost(s) associated with change of scope which may arise under the agreement, provided that such change of scope is required in order to process Applicant's Project. City shall provide Applicant with thirty (30) days advance written notice of the anticipated change in scope and the reasons therefore prior to authorizing a change of scope in the TIS Agreement. Upon request of the Applicant, the parties shall meet and confer prior to the authorization by the City of a change in scope for any agreement. Following the final authorization of a change in scope (following written notice as required herein), Applicant shall deposit to the City the additional fee(s) within thirty (30) days of service of such writing.
- (5) City shall have sole discretion:
 - (a) To determine which person(s) the City will hire, which employees are assigned, and which Contractor(s) or Contractor(s)' firms are retained to prepare review and process the Traffic Impact Study and related documents and the applications for the Project;
 - (b) To direct the work and evaluate the performance of the employees and Contractor(s) of the City who prepare, review and process the Traffic Impact Study and related documents and the applications for the Project; and
 - (c) To establish the amount of compensation paid to the Contractor(s) or the Contractor(s)'s firms that are hired by the City to prepare the Traffic Impact Study and any related documents for the Project provided, however, that the amount of fees paid to the Contractor(s) are consistent with the rates set forth in the TIS Agreement.
- (6) City shall further:
 - (a) Pay the Contractor(s) and the Contractor(s)'s firm(s) that are hired by the City to prepare the Traffic Impact Study and any related documents for the Project only from a City account under the exclusive control of the City; and

- (b) Be the only source of payment to the Contractor(s) and the Contractor(s)' firm(s) with respect to the work performed on the Traffic Impact Study and any related documents for the Project.
- (7) All agreements entered into between the City and Consultants providing services shall be reduced to writing and shall:
 - (a) Be separate from this Agreement;
 - (b) Include the terms of compensation paid to the Contractor or the Contractor's firm, which terms shall not be dependent upon the City's approval or disapproval of the application or upon the result of any agency action; and
 - (c) Be a written public record of the City.
- (8) The following shall apply under this Agreement:
 - (a) The payment by Applicant of the fee or additional fee shall not be contingent on the hiring or use of any specific employee or firm;
 - (b) The payment by Applicant of the fee(s) or additional fee(s) shall not be dependent upon the City's approval or disapproval of the application for the Project or upon the result of any action; and
 - (c) All service agreements shall be public records of the City.
- (9) Copies of all fully executed agreements (including amendments, modifications, and change orders) shall be provided to Applicant.

Section 3. WORK PRODUCT CONFIDENTIAL/PROPERTY OF CITY

All reports, information, data, work product, findings and conclusions collected, prepared, assembled, and/or made by Contractor and Contractor's agents under the separate Agreement ("TIS Agreement") shall be the property of City, shall be confidential until City makes the Work Product available for public inspection, and shall not be made available by the Contractor to the Applicant or any other person or entity or published by the Contractor without the prior written authorization of the City. The City agrees that its City Attorney shall review and advise the City on the legal adequacy of the Traffic Impact Study prior to its release to the public.

Section 4. INDEMNIFICATION.

Applicant shall indemnify and hold harmless City and City's officers, officials, employees, independent contractors, volunteers, and agents from and against:

- (1) Any and all claims, actions, and proceedings relating to:
 - (a) Any breach or default in the performance of, or the omission to perform, any obligation on Applicant's part under any term or condition of this Agreement; and/or
 - (b) Any negligent act or omission to act by Applicant or Applicant's agents, representatives, employees, contractors or subcontractors relating to the performance of, or the omission to perform, any term or condition of this Agreement; and/or
 - (c) Any litigation challenging the legal sufficiency or adequacy of the environmental document that relies upon the Traffic Impact Study; and
- (2) All costs, attorneys' fees, expenses, and liabilities incurred in the defense of any such claim, action, or proceeding brought thereon.

If any such claim, action, or proceedings is brought against City or City's officers, officials, employees, independent contractors, volunteers or agents, Applicant upon notice from City shall defend the same at Applicant's expense by counsel chosen by Applicant, and Applicant's choice shall be deemed satisfactory to City unless City objects on reasonable grounds conveyed in writing to Applicant within fifteen (15) days of City's receipt of written notice of Applicant's choice.

City shall promptly notify Applicant of any claim, action, or proceedings against City or City's officers, officials, employees, independent contractors, volunteers, or agents relating to the performance, or omission to perform, any term or condition of this Agreement. City shall cooperate fully in the defense of such claim, action or proceeding.

Applicant assumes all risk of damage to property or injury to persons resulting from the performance or omission to perform under this Agreement by Applicant or Applicant's agents, representatives, employees, contractors and subcontractors.

Section 5. ASSIGNMENT.

Applicant shall not voluntarily, by operation of law or through a change in the controlling interest of Applicant assign, transfer, sub-contract, or otherwise encumber all or any part of Applicant's duties, obligations or interest under this Agreement without City's prior

written consent, which consent shall not unreasonably be withheld. Any attempted assignment, transfer, encumbrance or subcontracting without such consent shall be void, and shall at the option of the City constitute a breach of this Agreement or automatic termination of the Agreement.

Section 6. SUCCESSORS AND ASSIGNS.

Subject to any provision concerning assignment hereinabove set forth, all terms and conditions of this Agreement shall be binding upon, inure to the benefit of, and be enforceable by, the parties hereto and their representatives, successors and assigns.

Section 7. BANKRUPTCY.

This Agreement, at the option of the City, shall be terminable in the case of bankruptcy, voluntary or involuntary, or insolvency of Applicant.

Section 8. RIGHT TO REQUIRE PERFORMANCE.

The failure of City at any time to require performance by Applicant of any of the provisions under this Agreement, shall in no way affect the right of City thereafter to enforce same nor shall waiver of any succeeding breach of such provision or as a waiver of any provision itself.

Section 9. NOTICES.

Unless otherwise specifically provided herein, all notices, demands or other communications given hereunder shall be in writing and any and all such notices or any payments shall be deemed to have been duly delivered upon personal delivery or as of the fifth calendar day after mailing by United States mail, certified, return receipt requested, postage prepaid, addressed as follows:

If to the City:	Director of Community Development City of Rocklin 3970 Rocklin Road Rocklin, CA 95677
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If to Applicant:	Towne Development of Sacramento, Inc. TBD
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or to such other address or to such other person as any party shall designate in writing to the other party for such purpose in the manner hereinabove set forth.

Section 10. NON-DISCRIMINATION

Throughout the duration of this Agreement, Applicant and Applicant's agents, representatives, employees, contractors and subcontractors ("Applicant" for this section) shall not unlawfully discriminate against any employee or applicant for employment or for treatment or any member of the public because of race, religion, color, national origin, ancestry, physical handicap, medical condition, marital status, age (over 40), sex or sexual orientation. Applicant shall not unlawfully discriminate in services provided under this Agreement. Applicant shall insure that the evaluation and treatment of its employees and applicants for employment are free of such unlawful discrimination. Applicant shall comply with the provisions of the Fair Employment Housing Commission implementing Government Code Section 12900, set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations are incorporated into this Agreement by reference and made a part hereof as if set forth in full. Applicant and its subcontractors shall also abide by the Federal Civil Rights Act of 1964 and all amendments thereto, and all administrative rules and regulations issued pursuant to said Act. Applicant shall give written notice of its obligations under this clause to labor organization with which it has a collective bargaining or other agreement. Applicant shall include the non-discrimination and compliance provisions of this paragraph in all subcontracts to perform work under this Agreement.

Section 11. NON-DISCRIMINATION-HANDICAPPED AND DISABLED PERSONS

In addition to application of the non-discrimination provision of this Agreement, above, Applicant agrees to comply with all provisions of section 504 et seq. of the Rehabilitation Act of 1973, and with all provisions of the Americans with Disabilities Act of 1990, and all amendments thereto, and all administrative rules and regulations issued pursuant to said Acts, pertaining to the prohibition of discrimination against qualified handicapped and disabled persons, in all programs or activities, as to employees or recipients of services.

Section 12. CONFLICT OF INTEREST.

Neither a City employee whose position in City enables such employee to influence the aware of this Agreement or any competing Agreement, nor a spouse or economic dependent of such an employee, shall be employed in any capacity by Applicant herein, or have any other direct or indirect financial interest in this Agreement.

Section 13. WAIVER OF DEFAULT.

No waiver of any default by any party to this Agreement shall be deemed to be a waiver of any subsequent default. Waiver of breach of any provision of this Agreement shall not be deemed to be a waiver of any other or subsequent breach, and shall not be construed to be a modification of the terms of this Agreement unless stated to be such, in writing, by all concerned parties and attached to the original Agreement. Consent to or approval of any act by a party shall not be deemed to render unnecessary the obtaining of the other party's consent to or approval of any subsequent act by the first party.

Section 14. SEVERABILITY.

If any portion of this Agreement or application thereof to any party or circumstances is declared invalid by a court of competent jurisdiction, or is in contravention of any federal, state or local statute, ordinance, or regulation, the remaining provisions of this Agreement or the application thereof shall not be invalidated thereby and shall remain in full force and effect, and to that extent the provisions of this Agreement are declared severable.

Section 15. EXHIBITS.

All exhibits referred to herein and attached hereto are a part hereof.

Section 16. ENTIRE AGREEMENT.

This Agreement contains the entire agreement between the parties relating to the transactions contemplated hereby and all prior or contemporaneous agreements, understanding, representations and statements, oral or written, are merged herein.

Section 17. MODIFICATION.

No modification, waiver, amendment, discharge or change of this Agreement shall be valid unless the same is in writing and signed by the party against which the enforcement of such modification, waiver, amendment, discharge or change is or may be sought. This section shall not apply to discharge of this Agreement by termination, cancellation, or rescission relating to a default in performing or omitting to perform any term or condition of this Agreement.

Section 18. ATTORNEY'S FEES

If any party hereto employs an attorney for the purpose of enforcing or construing this Agreement, or any judgment based on this Agreement, in any legal proceeding

whatsoever, including insolvency, bankruptcy, arbitration, declaratory relief or other litigation, including appeals or rehearing, the prevailing party shall be entitled to receive from the other party or parties thereto reimbursement for all attorneys' fees and all costs, including but not limited to service of process, filing fees, court and court reporter costs, investigative costs, expert witness fees, and the cost of any bonds, whether taxable or not. If any judgment or final order be issued in that proceeding, said reimbursement shall be specified therein.

Section 19. JOINT AND SEVERAL LIABILITY.

If any party consists of more than one person or entity, the liability of each person or entity signing this Agreement shall be joint and several.

Section 20. CAPTIONS.

Caption in this Agreement are inserted for convenience of reference only and do not define, describe or limit the scope or the intent of this Agreement or any of the terms hereof.

Section 21. LAW AND VENUE.

Any action at law or in equity brought by one or more of the parties hereto for the purpose of enforcing a term, condition, right or obligation provided for by this Agreement shall be governed by the laws of the State of California and shall be tried in a Court of competent jurisdiction in the County of Placer, State of California; and the parties hereby waive all provisions of law providing for a change of venue in such proceeding to any other county or state.

Section 22. GENDER AND NUMBER.

As used in this Agreement and whenever required by the context thereof, each number, both singular and plural, shall include all numbers, and each gender shall include all genders.

Section 23. DELEGATION OF AUTHORITY.

City hereby appoints the Director of Community Development, or his or her designee, as its authorized representative to administer the terms and conditions of this Agreement.

The terms and conditions of this Agreement shall constitute the standards by which the Director, or the Director's designee, shall administer this Agreement.

Section 24. CALIFORNIA TORT CLAIMS ACT.

Notwithstanding any term or condition of the Agreement, the provisions, and related provisions, of the California Tort Claims Act, Division 3.6 (commencing at section 810) of Title 1 of the Government Code, are not waived by City and shall apply to any claims against City arising out of any acts or conduct by any party under the terms and conditions of this Agreement.

Section 25. PARTY.

The word "party" or "parties" means Applicant, and/or City, as the context may require.

Section 26. AUTHORITY.

- (1) If Applicant is a corporation or partnership, each individual executing this Agreement on behalf of Applicant represents and warrants:
 - (a) that such individual is duly authorized to execute and deliver this Agreement on behalf of Applicant in accordance with a duly adopted resolution of the Board of Directors of the Applicant, if Applicant is a corporation, or a duly adopted resolution of the partners of Applicant, if Applicant is a partnership, or in accordance with the rules and regulations of the Applicant, including bylaws, if Applicant is a corporation, or partnership agreement, if Applicant is a partnership, and
 - (b) that this Agreement is binding upon the Applicant.
- (2) If Applicant is a corporation or partnership, Applicant shall within thirty (30) days after execution of this Agreement deliver to the person designated by this Agreement to receive notices for the City a certified copy of a resolution of the Board of Directors of the Applicant, if Applicant is a corporation, or a certified copy of a resolution of the partners if Applicant is a partnership, authorizing or ratifying the execution of this Agreement.

Section 27. ACKNOWLEDGMENTS.

City's legal representative is the City Attorney. Applicant acknowledges that Applicant is represented by independent legal counsel in the negotiation and drafting of this Agreement, that the Agreement was freely and voluntarily entered into by the Applicant, that legal counsel for the Applicant has reviewed and approved the Agreement, and that there are no warranties or promises other than those contained in this Agreement upon which the Applicant relies in entering into the Agreement.

Section 28. AMBIGUITIES NOT HELD AGAINST DRAFTER.

This Agreement having been freely and voluntarily negotiated by all parties, the rule of contract construction that ambiguities, if any, in any term or condition of an agreement are held against the drafter of the agreement is not applicable to this Agreement.

Section 29. DEFAULT AND TERMINATION.

- (1) Upon the occurrence of any default of the provisions of this Agreement, a party shall give written notice of said default to the party in default (notice). If the party in default does not cure the default within ten (10) days of the date of notice (time to cure), then such party shall be in default. The time to cure may be extended in the discretion of the party giving notice. Any extension of time to cure must be in writing, prepared by the party in default for signature by the party giving notice and must specify the reason(s) for the extension and the date in which the extension of time to cure expires.
- (2) Notice given under this section shall specify the alleged default and the applicable Agreement provision and shall demand that the party in default perform the provisions of this Agreement within the applicable period of time. No such notice shall be deemed a termination, cancellation or rescission of this Agreement unless the party giving notice so elects in this notice, or the party giving notice so elects in a subsequent written notice after the time to cure has expired.
- (3) Notwithstanding subdivisions (1) and (2),

- (a) City may terminate or cancel this Agreement in the event Applicant ceases to operate as a business, or otherwise becomes unable to substantially perform any term or condition of this Agreement.
- (b) Applicant may terminate this Agreement without cause with fifteen (15) days written notice to City. Upon receipt of such notice from Applicant, City and Contractors shall immediately cease all work on the TIS Agreement, and following City's payment of any Environmental Services rendered (pursuant to the terms of the TIS Agreement), the City shall return any remaining funds on deposit to Applicant along with a final accounting statement (as such statement described in paragraph 3 of Section 2 of this Agreement).

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on

_____, 2021.

CITY OF ROCKLIN

By: _____
Aly Zimmermann, City Manager

ATTEST:

By: _____
Hope Ithurnburn, City Clerk

APPROVED AS TO FORM:

By: _____
Sheri Chapman, City Attorney

TOWNE DEVELOPMENT OF SACRAMENTO
INC

By: _____
Title:

By: _____
Title:

