



CITY COUNCIL STAFF REPORT

ITEM NO. 3.2

DATE: August 20, 2026

TO: Honorable Mayor and City Council

FROM: Brent Smith, Community Development Director

SUBJECT: A resolution rescinding Resolution No. 2026-125 and authorizing a supplemental appropriation of Low-Income Housing Funds (Fund 200) in the amount of \$75,000; authorizing a budget reduction of \$75,000 from the Human Services Facility Fees (Fund 290) to replace Human Services Facility Fees; awarding a construction contract to Bay Cities Paving & Grading, Inc., in the amount of \$2,285,985 for the Livermore Village Remediation Project DR202118

RECOMMENDED ACTION

Staff recommends the City Council adopt a resolution for the Livermore Village Remediation Project DR202118, which is necessary for the implementation of the Downtown Workforce Housing Project:

1. Rescinding Resolution No. 2026-125 in its entirety;
2. Finding the project exempt from the California Environmental Quality Act pursuant to Government Code Section 65457 and CEQA Guidelines Section 15182(c) and within the scope of the 2004 Downtown Specific Plan EIR, the 2009 Subsequent EIR, and Addenda. Pursuant to Public Resources Code Section 21166 and CEQA Guidelines Section 15162, no additional environmental review is required.
3. Authorizing a supplemental appropriation of \$75,000 from the Low-Income Housing Fund (200) to the budget for the Livermore Village Remediation Project DR202118;
4. Authorizing a budget reduction of \$75,000 in Human Services Facility Fees (Fund 290) to the budget for the Livermore Village Remediation Project DR202118;
5. Awarding and authorizing the City Manager to execute a contract with Bay Cities Paving & Grading, Inc., in the amount of \$2,285,985, for construction of the Livermore Village Remediation Project DR202118, pursuant to Livermore Municipal Code Section 2.68.570(C);
6. Rejecting all other bids or proposals;
7. Authorizing the City Manager to approve and execute change orders up to a cumulative amount of ten percent (10%) of the construction contract value of \$2,285,985; and
8. Authorizing the City Manager to take whatever actions are necessary and appropriate to carry out the purpose and intent of this resolution.

SUMMARY

On January 29, 2018, the City Council approved the 2018 Downtown Plan for the development of portions of the Livermore Village Site, including the Downtown Workforce Housing Project, which consists of Veterans Park and up to 130 units of workforce housing, which was the subject of a certified Subsequent Environmental Impact Report (SEIR). The City Council approved the Downtown Workforce Housing Project on May 25, 2021, finding that the Downtown Workforce Housing Project was consistent with a Specific Plan for which an EIR was certified, that the Downtown Workforce Housing Project was within the scope of the previously certified EIR, and that none of the criteria triggering subsequent environmental review were present. Therefore, the Downtown Workforce Housing Project was exempt from further review under the California Environmental Quality Act (CEQA). This determination was upheld by the California Court of Appeal in *Save Livermore Downtown v. City of Livermore* (2022) 87 Cal. App. 5th 1116. The California Supreme Court denied review. (*Save Livermore Downtown v. City of Livermore* (2023) Cal. LEXIS 2167.)

Prior to the City of Livermore (City) purchasing the site, historic property use impacted shallow soil. As contemplated in the SEIR, the San Francisco Bay Regional Water Quality Control Board (Water Board) approved a Site Management Plan that identifies soil handling requirements during development of the Downtown Workforce Housing Project at the site. The current action, the Livermore Village Remediation Project DR202118 (Project), involves the next step in the approved remediation and development plan: soil removal in compliance with the Site Management Plan to facilitate subsequent construction of the Downtown Workforce Housing Project.

On June 24, 2026, eleven (11) bids were received for the Project. A timely bid protest was received from Goodfellow Bros. California, LLC (GBI), the second lowest bidder, claiming that the bid proposal from Bay Cities Paving & Grading, Inc., (Bay Cities) was non-responsive. After detailed review by staff in coordination with the City Attorney's Office, staff ultimately determined that Bay Cities' bid proposal is responsive.

On July 27, 2026, City Council passed and adopted Resolution No. 2026-125 awarding and authorizing the City Manager to execute a construction contract with Bay Cities, the lowest responsible and responsive bidder, in an amount of \$2,285,985, and authorizing a supplemental appropriation in the amount of \$75,000 from the Low-Income Housing Fund (Fund 200) to replace Human Services Facility Fees (Fund 290).

On August 3, 2026, the City received a Ralph M. Brown Act Demand to Cure and Correct Under Government Code section 54960.1, related to the noticing of the July 27, 2026, Agenda Item No. 6.8, the Livermore Village Remediation Project DR202118. The Demand alleged that the City violated the Brown Act because the noticing did not identify the City's proposed pathway for complying with CEQA along with the substantive actions the City Council was considering. The City maintains that the agenda description substantively complied with the Brown Act's requirements; however, for the avoidance of doubt and to promote transparency in the public process, staff has revised the agenda description to expressly identify the relevant CEQA exemptions applicable to the current action and recommends the City Council adopt the recommended actions. To avoid confusion regarding the operative date of the construction contract, staff recommends the City Council rescind the prior actions taken in Resolution No. 2026-125.

In accordance with the revised agenda description, staff recommends the City Council award and authorize the City Manager to execute a construction contract with Bay Cities, the lowest responsible and responsive bidder, pursuant to Section 2.68.570(C) of the Livermore Municipal Code (LMC), in an amount of \$2,285,985. Staff also recommends the City Council authorize a supplemental appropriation in the amount of \$75,000 from the Low-Income Housing Fund (Fund 200) to replace Human Services Facility Fees (Fund 290).

Staff further recommends the City Council find that the construction contract is exempt from the California Environmental Quality Act pursuant to Government Code Section 65457 and CEQA Guidelines Section 15182(c). Additionally, the construction contract is within the scope of the Specific Plan EIR, dated February 9, 2004 (SCH No. 2003032038), the Specific Plan Subsequent EIR, dated March 30, 2009 (SCH No. 2008092085), and the Specific Plan Subsequent EIR Addenda adopted by City Council by Resolution 2018-153, Resolution 2019-064, and Resolution 2020-178. In accordance with Public Resources Code Section 21166 and CEQA Guidelines section 15162, no additional environmental review is required.

DISCUSSION

In 2008, the City Redevelopment Agency purchased the property bounded by First Street, L Street, Railroad Avenue, and South Livermore Avenue, generally referred to as the Livermore Village Site, and the City subsequently purchased the property in 2011.

On January 29, 2018, the City Council approved the 2018 Downtown Specific Plan for the development of portions of the Livermore Village Site to include:

- Stockmen's Park
- Up to 130 units of workforce housing
- A science center
- A black box theater
- Retail space
- A linear public park (that would come to be known as Veterans Park)

To comply with CEQA, the Downtown Specific Plan relies on the certified SEIR. On November 26, 2018, the City Council approved the Disposition, Development and Loan Agreement to sell a portion of the Livermore Village Site to Eden Housing, Inc., to develop a multifamily affordable housing project with up to 130 units of workforce housing on an approximately 2-acre parcel located southeast of the Railroad Avenue and L Street intersection (the Downtown Workforce Housing Project; see Location Map - Attachment 1). The City Council approved project-specific entitlements for the Downtown Workforce Housing Project on May 25, 2021, and found the action to be exempt from CEQA.

The Disposition, Development and Loan Agreement was further amended and restated on May 26, 2021, and May 24, 2022, and supplemented with an Indemnity and Cooperation Agreement on September 2, 2022. These latter two amendments provide details regarding the responsibilities related to management of existing environmental conditions at the site. The site was sold to Eden Housing in 2022 in preparation for the development of the Downtown Workforce Housing Project.

As set forth in the SEIR, due to historic commercial activities at the site, the Water Board requested characterization of soil and groundwater throughout the Livermore Village Site. Site investigations and

testing have been ongoing since the early 2000's. Pursuant to the SEIR's mitigation monitoring and reporting program, the City submitted the testing results to the Water Board, which is overseeing the cleanup of various sites throughout the Livermore Village area. Environmental testing results and reports are readily available to the public on the Water Board's GeoTracker website. Information specifically addressing the location of the Project can be found using the GeoTracker website link included in Attachment 4.

In 2022, a Site Management Plan was prepared to inform future construction and maintenance workers of site environmental conditions; provide guidelines for appropriate health and safety precautions; establish protocols for managing soil and groundwater disturbed during construction; and define post-construction testing and reporting procedures to verify compliance with Water Board requirements. The Site Management Plan was approved by the Water Board in 2022. The Site Management Plan is included as Attachment 5.

The scope of the current action includes excavation, removal, profiling, transportation, and disposal of soil materials containing elevated concentrations of heavy metals; backfill and compaction with clean import; and site grading and restoration to stabilize the site ahead of the Downtown Workforce Housing Project construction as required by the Site Management Plan and consistent with the SEIR. The work is funded by a grant from the State of California Department of Toxic Substances Control (DTSC). The grant terminates on February 26, 2027, so time is of the essence in completing the Project.

Staff advertised the Project on June 3, 2026. On June 24, 2026, the City received eleven (11) bids for the Project. The following is a list of the bids received and the Engineer's Estimate for the Project:

Contractor Name	City	Base Bid
Bay Cities Paving & Grading, Inc.	Concord, CA	\$932,235
Goodfellow Bros. California, LLC	Livermore, CA	\$971,092
Innovative Construction Solutions	Concord, CA	\$987,592
Mountain Cascade Inc.	Livermore, CA	\$1,230,116
Grade Tech Inc.	Livermore, CA	\$1,237,045
ETIC	Pleasant Hill, CA	\$1,258,408
Pacific States	Dublin, CA	\$1,293,101
Brannon Corporation	Morgan Hill, CA	\$1,335,560
McGuire and Hester	Oakland, CA	\$1,385,100
Engineering/Remediation Resources Group, Inc.	Martinez, CA	\$1,602,812
Clean Harbors Environmental Services, Inc.	Norwell, MA	\$2,416,484
	Engineer's Estimate	\$2,200,000

Ten (10) of the eleven (11) bid results represent significant savings from the previously estimated Project construction cost. Based on feedback from the design consultant and prospective bidders, the cost savings are attributed to the aggressive bidding climate associated with this Project. The pre-bid conference was well-attended, and several inquiries were received during the bidding period expressing detailed interest in winning the Project.

Bay Cities Paving & Grading, Inc. (Bay Cities) was the apparent lowest bidder at the time the bids were received. The City acknowledged the receipt of a timely protest letter from Goodfellow Bros. California,

LLC (GBI), dated June 25, 2026, and a timely protest letter response from Bay Cities, dated June 29, 2026. Staff conducted a detailed review of the individual Bid Proposals and bid protest letters. As a result of this review, staff deemed Bay Cities' Bid Proposal to be responsive based on the following reasons:

- The bid protest identifies discrepancies in the Base Bid and Bid Alternate amounts indicated on Bay Cities' Bid Proposal and Bid Schedule. The Base Bid discrepancy is governed and resolved by Paragraph 12.1.1 of the Instructions to Bidders. The Bid Alternate discrepancies are governed by Paragraph 12.1.4 of the Instructions to Bidders and are immaterial to the award, which is based on the Base Bid amount. Neither discrepancy reaches the threshold for non-responsiveness identified in Paragraph 12.2 of the Instructions to Bidders.
- The bid protest asserts that Bay Cities' bid must be rejected as non-responsive because project summaries were provided in a different format than required for the Bidder's Questionnaire and certain project summaries did not identify the name and/or contact for the Architect/Engineer. These irregularities do not constitute material deviations from the bidding requirements, do not affect the competitive bidding process, and do not require rejection of Bay Cities' bid as non-responsive. The City therefore retains discretion to waive these irregularities as immaterial. Staff was able to contact references identified on the project sheets and received consistently positive endorsements of Bay Cities' performance. The provided project sheets did not pose an impediment or source of additional effort in reviewing Bay Cities' qualifications. Accordingly, staff deems these bid irregularities to be immaterial, in accordance with Paragraph 22 of the Instructions to Bidders.
- The bid protest acknowledges that Bay Cities submitted a Subcontractor List with no subcontractors listed and was not initialed. Bay Cities did, however, indicate in writing "No Subcontractors." Moreover, Bay Cities signed and submitted the Bid Proposal, verifying under oath that Bay Cities would self-perform all work. Bay Cities receives no competitive advantage from this omission. No other bidder's position is affected. There is no uncertainty about Bay Cities' self-performance representation since it is written on the form in plain English. This irregularity does not constitute a material deviation from the bidding requirements, does not affect the competitive bidding process, and does not require rejection of Bay Cities' bid as non-responsive. The City therefore retains discretion to waive this irregularity as immaterial. Accordingly, the City deems this bid irregularity to be immaterial, in accordance with Paragraph 22 of the Instructions to Bidders.

Staff determined that these bid irregularities can be waived as inconsequential and that Bay Cities' Bid Proposal is responsive. A letter dated July 1, 2026, was sent to GBI by the City Engineer containing staff analysis of the bid protest. Staff recommends the City Council authorize a construction contract with Bay Cities, the lowest responsible and responsive bidder. Bay Cities has extensive experience completing earthwork projects for public agencies throughout Northern California and has worked on projects for the City with satisfactory performance. Staff contacted references included in Bay Cities' bid and received consistently positive endorsements of Bay Cities' performance.

The Base Bid scope of work involves removal of soil to a depth of two (2) feet below ground surface. Staff recommends adding Bid Alternate 2 to the contract. Bid Alternate 2 includes additional excavation to extend the depth of soil removal by three (3) feet to a total of five (5) feet below ground surface, with associated off haul, backfill, and compaction. The benefits of Bid Alternate 2 includes removing additional soil containing elevated concentrations of heavy metals in advance of the park and housing developments, thereby reducing the amount of landfill off hauling required during construction of the park and housing developments, improving worker health and safety during construction and future routine maintenance activities, and minimizing the potential for delays that may be associated with the earthwork

activities. Bay Cities submitted a Base Bid amount of \$932,235 with the Bid Alternate 2 work totaling \$1,353,750. The total amount of the Base Bid and Bid Alternate 2, \$2,285,985, is less than the Engineer's Estimate and within the DTSC grant amount. The current budget covers this contract award of \$2,285,985.

On July 27, 2026, City Council passed and adopted Resolution No. 2026-125 awarding and authorizing the City Manager to execute a construction contract with Bay Cities in an amount of \$2,285,985 and authorizing a supplemental appropriation in the amount of \$75,000 from the Low-Income Housing Fund (Fund 200) to replace Human Services Facility Fees (Fund 290). On August 3, 2026, the City received a Ralph M. Brown Act Demand to Cure and Correct Under Government Code section 54960.1, related to the noticing of the July 27, 2026, Agenda Item No. 6.8, the Livermore Village Remediation Project DR202118. The Demand alleged that the City's notice did not comply with the Brown Act, because the notice did not disclose the actions the City may take to comply with CEQA in connection with action on the contract itself. Although the City finds that the noticing for the agenda item substantively complied with the Brown Act's requirements, for the avoidance of doubt and to promote transparency in the public process, staff revised the agenda description and recommends the City Council reconsider the item. To avoid confusion regarding the operative date of the construction contract, staff recommends the City Council rescind the prior actions taken in Resolution No. 2026-125; award and authorize the City Manager to execute a construction contract with Bay Cities, the lowest responsible and responsive bidder, pursuant to Section 2.68.570(C) of the LMC, in an amount of \$2,285,985; and reauthorize a supplemental appropriation in the amount of \$75,000 from the Low-Income Housing Fund (Fund 200) to replace Human Services Facility Fees (Fund 290).

In accordance with Livermore Municipal Code Section 2.68.590(B), a cumulative Change Order authorization of 10% of the contract value is allowed. Given the uncertainty associated with underground conditions and the potential for encountering additional contaminated materials, staff will return to City Council for additional Change Order authorization if needed.

Staff will coordinate with the Downtown businesses affected by the Project work and inform them of the planned construction activities. Advance notification will be provided regarding roadway closures, parking restrictions, and construction schedules before work commences. An updated schedule will be made available to the Downtown businesses on the City's website. Fencing will be installed around the perimeter of the construction site to exclude the public from the work area. The fencing will include informational banners to apprise the public of the work being performed.

ENVIRONMENTAL DETERMINATION

The construction contract with Bay Cities is a subsequent approval that implements the Downtown Workforce Housing Project and therefore it is exempt from the provisions of the California Environmental Quality Act ("CEQA") pursuant to Government Code section 65457 and CEQA Guidelines Section 15182(c). The construction contract is also within the scope of the 2004 Specific Plan EIR, the 2009 Subsequent EIR, and Addenda adopted by City Council. Pursuant to Public Resources Code section 21166 and CEQA Guidelines section 15162, none of the factors that would require additional environmental review are present. The findings in support of the environmental determination are set forth in the attached Resolution.

The record of project approval is available to the general public at: City of Livermore, 1052 South Livermore Avenue, Livermore, CA 94550. Documents are also available electronically using the links

included in Attachment 2. The Mitigation Monitoring and Reporting Program is included as Attachment 3.

FISCAL AND ADMINISTRATIVE IMPACTS

The Livermore Village Remediation Project DR202118 is included in the FY 2025-30 Capital Improvement Plan. The budget for the Project covers the cost of this \$2,285,985 construction contract with Bay Cities and all other associated Change Orders, construction management, materials testing, project management, and reporting. DTSC has approved funding for remediation activities at the site through February 26, 2027. Based on the contract time of completion, the work covered under this construction contract will be completed within the grant term and is eligible for grant reimbursements.

Human Services Facility Fees (Fund 290) are currently allocated in FY 2026-27 to fund expenses to support site closure tasks at the workforce housing site that may be required by the Water Board after the period covered by the DTSC grant. Human Services Facility Fees are not the appropriate funding source for tasks supporting workforce housing. To align the anticipated Project expenditures with the proper funding to account for housing-related costs, a supplemental appropriation from the Low-Income Housing Fund (Fund 200) will be made to the Project budget as follows:

- For Fund 200, add \$75,000
- For Fund 290, remove \$75,000

This project will not increase Operational and Maintenance (O&M) costs.

COMMUNITY PILLAR

4: Inclusive and Inviting Spaces and Places

GOAL

3: Continue to implement the Downtown Specific Plan

GUIDING DOCUMENT

5-Year Capital Improvement Plan Fiscal Years 2025-2030

ATTACHMENTS

1. [Location Map](#)
2. [Prior Environmental Review](#)
3. [Mitigation Monitoring and Reporting Program \(MMRP\)](#)
4. [Link to Water Board Documents](#)
5. [Site Management Plan](#)
6. [Resolution](#)
7. [Exhibit A - Bay Cities Paving and Grading Inc. Contract](#)
8. [Presentation](#)

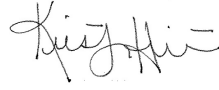
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