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No Fee ~ Gov't Code § 6103

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES – CENTRAL DISTRICT**

Fix the City, Inc., a California Nonprofit
Corporation,

Petitioner,

vs.

City of Los Angeles, a Municipal
Corporation; The City of Los Angeles City
Council; and Does 1 Through 10, inclusive,

Respondent.

Case No.: 23STCP04410

*Honorable James C. Chalfant
Department 85*

Respondent's Trial Brief

Action Filed: December 5, 2023

Respondent City of Los Angeles (“City”) submits the following memorandum of law in opposition to Petitioner’s August 27, 2024 Trial Brief. The City’s Trial Brief is supported by the Declaration of Robert M. Mahlowitz and Exhibits 31 through 76, presented in three volumes. **The City begins numbering exhibits to Mr. Mahlowitz’s declaration at number 31** to distinguish them from the exhibits attached to “Stipulation Regarding Authentication of Petitioner’s Exhibits for Opening Trial Brief” that Petitioner filed August 27, 2024. (“Pet. Exh. Stip.”). As a result, the parties’ trial briefs discuss numbered exhibits. Exhibits to other declarations submitted by other individuals bear letter designations.

1 The City's Trial Brief is also supported by all the exhibits attached to the Pet. Exh. Stip. except
2 the exhibits to which the City files objections herewith, all the documents in the Court's files of this
3 action, documents of which the Court has previously taken judicial notice in this action, the City's
4 Objections to Petitioner's Trial Evidence, and the following declarations and attached exhibits that the
5 City files October 7, 2024: (1) the September 12, 2024, Declaration of **Yolanda Chavez, Assistant**
6 **City Administrative Officer**; (2) the October 1, 2024, Declaration of **LifeArk CEO Charles Wee**;
7 (3) September 12, 2024, Declaration of **Kelsey Madigan, LAHSA Director of Interim Housing**; (4)
8 the September 27, 2024, Declaration of **Marina Quiñónez, City BOE Senior Architect**; (5) the
9 October 1, 2024, Declaration of **Lucy Lin, LAHSA Director of Contracts & Procurement**; and (6)
10 the September 13, 2024 Declaration of **Roy Cervantes, LADOT Chief Management Analyst**.

11 Dated: October 7, 2024

Hydee Feldstein Soto, City Attorney
Valerie L. Flores, Chief Deputy City Attorney
John W. Heath, Chief Assistant City Attorney

12
13
14 By: _____



Robert M. Mahlowitz, Deputy City Attorney
Attorney for Respondent, City of Los Angeles

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1. Exhibits, Briefs, And Court Filings

16 17 18 19 20 21 22 23 24 25	SX	Exhibits 1 - 29 attached to the August 27, 2024 “Stipulation Regarding Authentication of Petitioner’s Exhibits for Opening Trial Brief”
	CX	Exhibits 31 – 76 attached to the October 7, 2024, Declaration of Robert M. Mahlowitz (“RMM Decl.”) in support of the City’s Opening Trial Brief
	POB	Petitioner’s August 27, 2024, Opening Trial Brief
	Pet. Exh. Stip.	August 27, 2024 “Stipulation Regarding Authentication of Petitioner’s Exhibits for Opening Trial Brief”

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2. City of Los Angeles Departments

16 17 18 19 20 21 22 23 24 25	BOE	City Bureau of Engineering
	CAO	City Chief Administrative Officer
	City	City of Los Angeles
	GSD	City of Los Angeles General Services Department
	HHC	The Los Angeles City Council Housing and Homelessness Commission
	HPC	The Los Angeles City Council Homelessness and Poverty Commission
	LADBS	City of Los Angeles Department of Building and Safety
	LADOT	City of Los Angeles Department of Transportation
	LADOT Board	Los Angeles Department of Transportation Board of Transportation Commissioners

3. Los Angeles County Superior Court Cases

16 17 18	FTC-1	The Writ Action <i>Fix the City v City of Los Angeles</i> , LASC Case No. 23STCP03519 (Department 82), filed September 25, 2023, with trial court judgment entered June 5, 2024 (CX 74)
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1 **FTC-2** This Writ Action, filed December 5, 2023, *Fix the City v City of Los Angeles*,
2 LASC Case No. 23STCP04410 (Department 85)

3 **4. Midvale Project**

4 **Midvale Project,** The City homelessness shelter development project approved by the City
5 **Midvale Shelter,** Council on October 20, 2023, and by the Mayor on October 27, 2023,
6 **Project, or** located on two parcels that comprise LADOT Parking Lot 707 (CX 49 – 52)
7 **Shelter**

8 **Lot 707** The LADOT parking lot located at Midvale Ave and Pico Blvd on which the
9 Midvale Shelter is being developed by the City.

10 **5. California and City Law Citations**

11 **CCFA** Community Care Facilities Act, Health & Safety Code §§ 1500 et. seq

12 **CCF** Community Care Facility as defined by Health & Safety Code § 1502

13 **ECTNP** Exposition Corridor Transit Neighborhood Plan (Specific Plan) (SX 8)

14 **ED-1** Mayor Karen Bass’ Executive Directive No. 1, as issued 12/16/2022, as
15 amended 6/12/2023, July 7, 2023, and July 1, 2024 (CX 47)

16 **ED-3** Mayor Karen Bass’ Executive Directive No. 3, as issued 2/10/2023, and as
17 amended 7/7/2023, July 27, 2023, and March 27, 2024 (CX 48)

18 **ECNTP** Exposition Corridor Transit Neighborhood Plan (SX 8)

19 **LAAC** Los Angeles Administrative Code

20 **LAAC 8.33** Los Angeles Administrative Code, Section 8.33 (SX 19)

21 **LAMC** Los Angeles Municipal Code

22 **LAMC 12.03** Los Angeles Municipal Code, Section 12.03 (SX 26)

23 **LAMC 12.80** Los Angeles Municipal Code, Section 12.80 (SX 26)

24 **PCC** California Public Contract Code

25 **Section 8698.4** California Government Code Section 8698 et. seq. and Section 8698.4

26 **SFTH** “Shelter for the Homeless” (LAMC § 12.03 (SX 26))

27 **6. Declarations**

28 **Cervantes Decl.** September 13, 2024, **Declaration of Roy Cervantes, LADOT Chief
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Trial Brief

Chavez Decl. September 12, 2024, **Declaration of Yolanda Chavez, Assistant City
Administrative Officer**, filed October 7, 2024, in support of the City’s Opening
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- Lin Decl.** October 1, 2024, Declaration of **Lucy Lin, LAHSA Director of Contracts & Procurement** filed October 7, 2024, in support of the City’s Opening Trial Brief

- Madigan Decl.** September 12, 2024, Declaration of **Kelsey Madigan, LAHSA Director of Interim Housing** filed October 7, 2024, in support of the City’s Opening Trial Brief

- Quiñónez Decl.** September 27, 2024, Declaration of **Marina Quiñónez, City BOE Senior Architect** filed October 7, 2024, in support of the City’s Opening Trial Brief

- RMM Decl.** October 7, 2024, Declaration of **Robert M. Mahlowitz** and attached City Exhibits 31 - 72 in support of the City’s Opening Trial Brief

- Silverstein Decl.** August 27, 2024, Declaration of **Petitioner Counsel Robert S. Silverstein** filed August 27, 2024 in support of Petitioner’s Opening Trial Brief.

- Wee Decl.** October 1, 2024 Declaration of **LifeArk CEO Charles Wee** filed October 7, 2024, in support of the City’s Opening Trial Brief

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I. INTRODUCTION

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2 Because the FAP here turns entirely on contentions that the City's own laws bar the City's
3 Midvale Project action, to prevail, Petitioner Fix the City (Fix) must, but cannot, demonstrate the City
4 Council doesn't understand its own laws. Fix's major contention is that the City's definition of LAMC
5 12.03 "Shelter for the Homeless" (SFTH) bars the Midvale Shelter based on the types of services to be
6 provided. The argument fails. The City submits evidence herewith of examples of 22 City Council
7 approvals of transitional shelters designed to provide the same services hoped for at the Midvale
8 Shelter, all subject to the same definition of "Shelter for the Homeless." (CX 55-68). By resolution
9 adopted in 2019, the City council has engaged in a multi-year program to develop this model of
10 transitional shelter throughout the City. (3/20/19 HPC Rpt., p. 1, CX 44). In the three most recent of its
11 22 approvals here in evidence, the City Council expressly identified and quoted the definition of
12 SFTH. (CX 55 & 56). Fix presents no reason to set aside the City Council's consistent application of a
13 law the City Council itself drafted. Further, because the Midvale Shelter site is an identified City
14 property qualified for the Mayor's Executive Directive 3 streamlined emergency shelter development
15 program (ED-3), City planning ordinances, including LAMC 12.03 and the City's SFTH definition, are
16 set aside. ED-3 provides that the State shelter crisis law governs; thus, the definition of "homeless
17 shelter" in Government Code section 8698.4(c) applies. The Midvale Shelter meets that definition.

18 Fix's argument, moreover, is not ripe, presenting a hypothetical set of facts. No service
19 agreement yet exists, and until that occurs, which of the City's desired services a qualified operator
20 will agree to perform is unknown. As a result, Fix's service-based arguments cannot be adjudicated.
21 This is so because to prevail, Fix must, but cannot, prove the Midvale Shelter is a Community Care
22 Facility (CCF), pursuant to the Community Care Facilities Act (CCFA), regulated by the Department
23 of Social Services (DSS). While the City here identifies 22 identical transitional shelters approved as
24 early as 2019 (CX 61), Fix identifies no proof DSS has deemed any to be an unlicensed CCF or that
25 DSS has established a program to regulate the State's transitional homeless shelters approved pursuant
26 to Section 8698. Further, no private right of action exists to enforce the Act, only DSS can make a CCF
27 determination, Fix did not seek or exhaust DSS review, and the Shelter is not a CCF.

28 Fix's 6th COA demanding the court set aside the sole-sourced LifeArk agreement for design

1 and fabrication of the project’s modular dwelling and program units also fails. The \$2,532,191.23
2 agreement is complete. Fix did not seek to stay LifeArk’s duty to perform; thus, Fix’s claim is moot
3 and unfair to consider as to LifeArk. Also, City Charter section 371 did not require bidding because the
4 agreement relied on numerous LifeArk patents and provided unique and specialized services. Finally,
5 if bidding was required, the Mayor’s Midvale approval, as also authorized by Council, specifically set
6 aside such requirements for the LifeArk contract. (CX 52 ¶ 10). The FAP fails.

7 II. FACTS AND PROCEDURAL HISTORY

8 A. The Midvale Shelter, a Homeless Emergency and Shelter Crisis Project

9 On October 27, 2023, the Mayor added her approval to the City Council’s authorization of the
10 Midvale Project to create a City-funded 33-bed low-barrier navigation center at City parking lot 707,
11 which spans two lots separated by an alley at the intersection of Midvale Ave and Pico Blvd. (SX 10:
12 LADOT Board Rpt, pp 2-3; Quiñónez Decl., ¶ 4). The approval states the Project is a response both to
13 the City’s declared shelter crisis and its declared homelessness emergency and, thus, is part of the
14 City’s established program to develop transitional shelters pursuant to Section 8698.4 detailed below.
15 (CX 205, NOE at pp. 8, 12 & 13). As a stated response to the Homeless Emergency, the Project also
16 qualifies for the Mayor’s ED-3 streamlined emergency development program available for City
17 projects on identified City land. (*Id.*, and Part III.C.2 below). The Midvale Shelter will be a unique
18 modular design with air conditioning and an ensuite bathroom for each dwelling designed and
19 fabricated by LifeArk SPC. (Wee Decl., ¶¶ 5 & 7). It will sit above the Lot 707 surface, with the
20 modular units creating a crawl space where pipes and wiring will be located rather than in the ground.
21 (Quiñónez Decl., ¶ 3; Wee Decl., ¶ 7). The Project aims to transition people to permanent housing with
22 90-day stays. (CX 51, NOE, p. 14 of 15). Because clients transition out of the Midvale Shelter to
23 permanent housing, the Shelter will serve many more than its 33-bed capacity suggests. As do all
24 City’s transitional shelters, the Midvale Project service providers will need to operate pursuant to the
25 standard rules of the Los Angeles Housing Services Authority. (“LAHSA”). (Midvale NOE p. 15, CX
26 51; RMM Decl., ¶ 16 & 21, CX 55-68 [shelters]).

27 Although the Charter set aside bidding, the Mayor specifically approved a \$2,532,191.23 sole-
28 sourced agreement, as authorized by LAAC 8.33, with LifeArk. (CAO Report, ¶ 10, CX 52; LifeArk

1 contract, p. 1, Wee Decl., Exh. B). LifeArk has fabricated and assembled all units, and it awaits site
2 readiness so the units may be installed. (*Id.* ¶ 6). The separate construction contract for the remaining
3 work was awarded via public bidding by BOE, and that contractor is obtaining permits from LADBS.
4 (Quiñónez Decl, ¶¶ 3 & 7, Exhs. A & B). Although LAHSA issued an RFP seeking operators for the
5 Midvale Shelter, because the Shelter’s opening date has been delayed, LAHSA will issue a revised
6 RFP in the future, which has not occurred. (Lin Decl., ¶ 4 - 6 & Exh. B); RMM Decl., ¶¶ 71 & 18 &
7 CX 53 & 54 [Instructions]). A service provider agreement will not be in place prior to trial. (*Id.*)

8 **B. Petitioner dismissed challenges to City regulations and law**

9 September 25, 2023, Fix filed a writ petition in *Fix the City v City of Los Angeles*, LASC Case
10 No. 23STCP03519 in Department 82, asserting facial challenges to LAAC 8.33 and the Mayor’s EDs.
11 (“FTC-1”). December 5, 2023, Fix filed its initial writ in this action (“FTC-2”), reasserting the same
12 facial attacks and alternatively arguing the Midvale Project failed to comply with them. January 2,
13 2024, Fix filed a FAP in FTC-1 alleging the identical facial attacks alleged in its initial FTC-2
14 petition. (RMM Decl., ¶ 29, CX 73). January 23, 2024, the City filed a demurrer and motion to strike
15 the FTC-2 initial petition in this court seeking, among other things, to stay this action pending
16 resolution of the Fix’s facial challenges in FTC-1. Rather than oppose, Fix filed its FAP in this action,
17 dismissing all facial challenges. In this action, the City then successfully demurred to FAP COA’s 7 -
18 10, including Fix’s CEQA claim, leaving only FAP COAs 1 - 6. In its demurrer opposition, Fix stated
19 the City’s request to stay was not warranted because Fix had dismissed its facial challenges. (4/1/2024
20 FAP Demurrer Opp., p. 5:4-13).¹ Ultimately, Department 82 denied Fix’s facial challenges. (CX 74).
21 Despite having dismissed its facial challenges, Fix’s trial brief continues to assert them, contending the
22 Public Contract Code preempts LAAC 8.33’s provision authorizing sole sourcing during a Homeless
23 Emergency. (See below Part IV.B).

24 **C. All but one of Fix’s claims are improperly alleged, and Fix cannot meet its burdens**

25 Fix’s trial brief presents no analysis of the proper burdens of proof or governing standard of
26 review. That is because only the 6th COA seeking 1085 mandamus review of the LifeArk contract is
27 properly pleaded. (*Michael Leslie Productions, Inc. v. City of Los Angeles* (2012) 207 Cal.App.4th

28 ¹ Fix wrote, “Petitioner need not, and does not, challenge LAAC 8.33 in FTC-2. Petitioner’s First Amended Petition (FAP) in FTC-2 removed any causes of action related to challenging LAAC 8.33. That is now solely in FTC-1.”

1 1011, 1020). Whether governmental action is reviewable via administrative mandate or traditional
2 mandate depends upon whether the action was quasi-legislative or quasi-judicial in nature. (*Beach &*
3 *Bluff Conservancy v. City of Solana Beach* (2018) 28 Cal.App.5th 244, 259) A quasi-legislative
4 decision concerns the formulation of a rule to be applied to all future cases, while a quasi-judicial
5 decision applies existing rules to a specific set of facts. (*Id.*) Section 1085 mandamus applies to quasi-
6 legislative decisions, and section 1094.5 administrative mandamus applies to quasi-judicial decisions.
7 (*Id.*) Here, the FAP’s 3rd COA seeks declaratory relief, and COAs 1, 2, 4, and 5 seek Section 1085
8 mandamus. All are improperly pleaded. These COAs do not challenge a City rule to be applied in all
9 future cases and instead challenge the one-time approval of the Midvale Shelter - a quasi-judicial act.
10 (See *Beach & Bluff, supra*, 28 Cal.App.5th at p. 259 [Section 1094.5 can apply even if no evidentiary
11 hearing was required].) Fix was required to proceed pursuant to Section 1094.5. Declaratory relief is
12 available only to facially challenge a legislative or quasi-legislative enactment of a public entity. (*Id.*;
13 Also, *Tejon Real Estate, LLC v. City of Los Angeles* (2014) 223 Cal.App.4th 149, 154-155).² Fix does
14 not assert any ordinance or regulation is unlawful and it dismissed all facial challenges to City
15 enactments when it filed its FAP. (See footnote 1). As such, COAs 1 to 5 must meet the burdens of
16 proof governing a 1094.5 claim.³

17 As to a Section 1094.5 claim, “[t]he petitioner in an administrative mandamus proceeding has
18 the burden of proving that the agency’s decision was invalid and should be set aside, because it is
19 presumed that the agency regularly performed its official duty. When the standard of review is the
20 substantial evidence test ... it is presumed that the findings and actions of the administrative agency
21 were supported by substantial evidence.” (*Young v. City of Coronado* (2017) 10 Cal.App.5th 408, 419).
22 A petitioner prosecuting a section 1085 writ challenging a discretionary determination bears the burden
23 of proving the agency has “abused its discretion, namely, whether its decision was arbitrary, capricious,
24

25 ² Fix takes out of context a sentence from *Action Apartment Assn., Inc. v. City of Santa Monica* (2007)
26 41 Cal.4th 1232 at n. 5, asserting the case authorizes declaratory relief here. (POB 11:8-11). *Action*
27 *Apartments* concerned a facial challenge to an ordinance of general application, not a challenge to a
28 quasi-judicial action such as the City’s Midvale approvals. Additionally, the *Action* footnote Fix cites
discusses the applicability of the challenged ordinance specifically as to the Plaintiff. Here, Fix does
not challenge a law that has been or might apply to it. *Action* provides no support to Fix.

³ Fix cannot obtain leave to amend at trial because the City demonstrates Fix cannot state a viable
claim, whether via declaratory relief or mandamus, pursuant to Sections 1085 or 1094.5. (See, e.g.,
Goodman v. Kennedy (1976) 18 Cal.3d 335, 349 [plaintiff must show amendment will cure defects]).

1 entirely lacking in evidentiary support, unlawful, or procedurally unfair.” (*Khan v. Los Angeles City*
2 *Employees’ Retirement System* (2010) 187 Cal.App.4th 98, 106). Finally, a declaratory relief claim
3 asserting a facial challenge to a City enactment (all of which Fix dismissed) is “the most difficult
4 challenge to mount successfully since the challenger must establish that no set of circumstances exists
5 under which the [law] would be valid.” (*Hatch v. Superior Court* (2000) 80 Cal.App.4th 170, 193).
6 Here, Fix has not met its burdens to warrant declaratory relief or mandamus.

7 III. THE MIDVALE APPROVAL

8 **Fix the City** improperly approved the Midvale Shelter because (1) The Shelter’s hoped-for
9 scope of services means it does not qualify as a **LAMC 12.03** SFTH, and (2) the City was required to
10 comply with a **specific plan**. Not so. The City Council has consistently applied LAMC 12.03 in the
11 **same manner** it did here. The City’s Homeless Emergency enactments and City and State shelter crisis
12 laws set aside LAMC 12.03 and the specific plan, Fix’s claim is not ripe, and is barred by a host of
13 other procedural defects.

14 A. The City’s consistent application of LAMC 12.03 shows the City acted properly

15 “The construction of a municipal ordinance or resolution is governed by the rules governing
16 construction of statutes.” (*Atchley v. City of Fresno* (1984) 151 Cal.App.3d 635, 647). “A court is more
17 likely to defer to an **agency’s interpretation of its own regulation** than to its interpretation of a statute,
18 since the **agency** is likely to be **intimately familiar** with regulations it authored and sensitive to the
19 practical implications of one interpretation over another.” (*Yamaha Corp. of America v. State Bd. of*
20 *Equalization* (1998) 19 Cal.4th 1, 11–13). “The Legislature is presumed to **know existing law when it**
21 **enacts a new statute . . .**” (*Arthur Andersen v. Superior Court* (1998) 67 Cal.App.4th 1481, 1500). “The
22 construction placed on a piece of legislation by the enacting body is of very persuasive significance.”
23 (*California Housing Finance Agency v. Patitucci* (1978) 22 Cal.3d 171, 175). The City’s consistent
24 application of its own SFTH ordinance shows the Midvale approval was proper.

25 The City Council drafted and enacted the definition of SFTH, amending it most recently March
26 28, **2017**, “to exercise the City’s full authority granted to a municipality in declaring a ‘shelter crisis’
27 under CA Government Code Section 8698 et seq., and thereby more effectively and swiftly allow for
28 the provision of emergency housing when health and safety are at risk.” (PC Rpt. p. A-4, CX 41).

1 Consistent with that, on March 27, 2019, the City Council resolved to pursue a policy “to pursue the
2 development of temporary homeless shelters under Government Code Section 8698.4.” (HPC report,
3 CX 44). LAMC 12.03 defines SFTH as,

4 A facility operated by a “provider” other than a “community care facility” as
5 defined in California Health and Safety Code Section 1502, which provides
6 temporary accommodations to homeless persons and/or families and which meets
7 the standards for shelters contained in Title 25, Division 1, Chapter 7 of the
8 California Code of Regulations. The term “temporary accommodations” means
9 that a homeless person or family will be allowed to reside at the shelter for a time
10 period not to exceed six months.

11 (SX 26). Herewith, the City submits evidence of 22 such City transitional homeless shelter approvals,
12 all of which must operate pursuant to the same LAHSA standard operating documents, and all
13 approved to provide the same services the City hopes will be provided by a Midvale Shelter operator.
14 (RMM Decl., ¶¶ 20 & 21 & CX 55-68). The City Council’s definition of SFTH was the same when the
15 City Council approved all of these projects. (CX 229, March 28, 2017: LAMC 12.03 amendment). The
16 Council’s three most recent approvals quote the entirety of the LAMC 12.03 SFTH definition, as well
17 as DSS’ definition of CCF. (CX 55 & 56). The City Council has never applied LAMC 12.03, which it
18 drafted, as a bar to the City’s model transitional shelter program developments, including Midvale. Just
19 as all the others, the Midvale Project qualifies as an SFTH. Fix presents no reason showing the City
20 Council is not aware of the laws it drafted (shown below). (*Arthur Andersen, supra*, 67 Cal.App.4th at
21 p. 1500). No reason exists to set aside the City Council’s longstanding application of a law it wrote.

22 Additionally, Fix’s assertion that Midvale Shelter clients (and all City transitional shelter
23 clients) will violate the SFTH six-month residency limit fails as a matter of evidence. Fix’s only
24 support for its contention is a blank “Interim Housing 90-Day Extension Form” it found on LAHSA’s
25 website. (POB 14:15-22; SX 17). LAHSA ceased using this form for any purpose July 2024 and has
26 not replaced it. (Madigan Decl., ¶ 2). The Midvale project approval (and all other City transitional
27 shelter approvals), moreover, states clients will be assisted to permanent housing within 90-days. (SX
28 13, p. 14 of 15). No evidence supports Fix’s durational contention. Further, although the City herein
does so, it need not demonstrate consistency with LAMC 12.03 because, as next explained, the
LAMC’s planning chapter ordinances do not apply to the Midvale Project.

1 **B. Fix’s proffered interpretation of “shelter for the homeless” as a bar to the Midvale**
2 **Shelter is contrary to all State and City action and legislative intent**

3 “Statutes must be read and considered in conjunction with the legislative intent, and then be
4 liberally construed with the object in view of giving effect to such intent. [citation omitted].” (*In re*
5 *Haines* (1925) 195 Cal. 605, 612–613). Fix seeks to construe LAMC 12.03 in a manner opposed to the
6 State and City’s well-documented intent, which is to set aside regulations and laws that “prevent,
7 hinder, or delay the mitigation of the effects of the shelter crisis” and the City’s intent to exercise the
8 full authority allowed pursuant to State shelter crisis laws at Section 8698 et. seq. Fix’s argument is
9 wrong and contrary to rules of statutory interpretation as shown by the following review of the history
10 of the State’s Section 8698 shelter crisis laws and the City’s shelter crisis ordinances.

11 **1. Initial State and City shelter crisis enactments (1987-1992)**

12 Anticipating the passage of AB 2210 (1987-1988) creating Section 8698, the City adopted
13 uncodified Ordinance 162279 on an urgency basis effective **April 28, 1987**, creating City procedures
14 for adding shelters during a declared shelter crisis. (CX 42, p. 2:18-20)(*Id.*). On **June 18, 1987**, the
15 City adopted LAMC 12.80, which provided, “Notwithstanding any provision of this Article to the
16 contrary, until November 30, 1987, a shelter for the homeless (as defined in Section 12.03 of this
17 Code) may be established and operated on property owned by a government agency in any zone as a
18 matter of right without regard to the number of beds or number of persons served [plus excusing
19 parking requirements].” (1987 Language) (CX 37). The State, on an urgency basis, then enacted AB
20 2210 effective **September 25, 1987**, adding Government Code sections 8698, 8698.1, and 8698.2
21 stating, “The provisions of any state or local regulatory statute, regulation, or ordinance prescribing
22 standards of housing, health, or safety shall be suspended to the extent that strict compliance would in
23 any way prevent, hinder, or delay the mitigation of the effects of the shelter crisis,” upon declaring a
24 shelter crisis, but applicable only to “additional public facilities open to the homeless.” (CX 31).

25 **April 13, 1988**, the City amended LAMC 12.80, extending its operative date for six months.
26 (CX 40). **April 20, 2018**, the City added LAMC 91.8605 to the City’s Building Code to provide
27 standards for shelters in new or existing buildings during a shelter crisis pursuant to LAMC 12.80 and
28 Section 8698 et. seq. (CX 43). **December 23, 1992**, the City again amended Section 12.80. (CX 39).

1 The amendment allowed the Mayor to trigger Section 12.80 and Section 8698 by declaring a shelter
2 crisis during the winter months for no more than 120 days and imposed additional procedural
3 requirements. (*Id.*) Section 12.80 retained the 1987 Language.

4 **2. Section 8698.4 and City shelter crisis ordinances (2017 forward)**

5 The Legislature added Section 8698.4, enacted October 14, 2017, effective **January 1, 2018**,
6 applicable to five cities and two counties, including the City. (CX 32). The **new Section** defined
7 “homeless shelter” as “a facility with overnight sleeping accommodations, the primary purpose of
8 which is to provide **temporary shelter for the homeless that is not in existence** after the declared shelter
9 crisis. A temporary homeless shelter community may include supportive and self-sufficiency
10 development services.” (*Id.*, at section (b)(1)). Although Section 8698.4 has been amended several
11 times, the definition of “homeless shelter” remains the same, with added language encompassing safe
12 parking shelters. (Section 8698.4(c)(1)). In contrast to Section 8698.2 which applies only to additional
13 City public facility shelters opened to the public, Section 8698.4 applies to any “homeless shelter”
14 during a declared shelter crisis **so long as the City enacts alternate public health and safety standards**
15 **approved by the State.** (CX 33 & Section 8698.4(a)(2)(A)(ii) [unchanged]). Doing so **sets aside “local**
16 **building approval procedures** or state housing, health, habitability, planning and zoning, or safety
17 standards, procedures, and laws, in existence at the time of that adoption would ***in any way prevent,***
18 ***hinder, or delay the mitigation of the effects of the shelter crisis.***” (*Id.*, emphasis added). Compared
19 to Section 8698.2, Section 8698.4 covers many more potential shelter developments and provides a
20 clearer set aside of laws and regulations.

21 **March 28, 2017**, the City Council adopted Ordinance No. 184836, which states its purpose as:
22 “amending Sections 12.03, 12.80 and 12.81 of the Los Angeles Municipal Code to ***expand*** the
23 definition of ‘shelter for the homeless’ and to ***align the City’s shelter crisis regulations with state law.***”
24 (CX 41, emphasis added). The Planning Commission stated the amendments, “would allow the City of
25 Los Angeles to exercise the full authority granted to a municipality in declaring a ‘shelter crisis’ under
26 CA Government Code Section 8698 et seq., and thereby more effectively and swiftly allow for the
27 provision of emergency housing when health and safety are at risk.” (PC Rpt. p. A-4, CX 41). The
28 **Ordinance** expanded the definition of SFTH to allow for more than residential shelters and to “expand

1 the definition of ‘provider’ to include religious and non-profit charitable organizations.” (CA Rpt. p. 2,
2 CX 41). The Planning Commission wrote, “Today’s definition needlessly limits groups that can
3 establish a shelter and the types of facilities they can operate in an emergency. The amendment would
4 widen the scope of what is considered a shelter to remedy this issue.” (PC Rpt. p. A-6, CX 41). The
5 City Council, thus, broadened the number and type of shelters qualifying as a SFTH and aligned the
6 City’s ability to develop its own “homeless shelters” as defined by Section 8698.4. The definition of
7 SFTH remains the same today. (Compare SX 26 to CX 41).

8 Consistent with this purpose, the 2017 ordinance also deleted procedural limitations previously
9 found in LAMC 12.80, described by the Planning Commission as “regulations on shelters that go well
10 beyond state law in establishing an approval process and certain requirements that slow down
11 approvals.” (PC Rpt. p. A-4, CX 41). “The amendments to LAMC 12.80 and 12.81 (see Exhibit A)
12 streamline the process and remove unnecessary limitations that may prevent the establishment and
13 operation of temporary shelters in a timely manner, per City Council direction.” (*Id.*) The City Council
14 revised Section 12.80, “to reflect the full authority granted to the City by the state.” (*Id.*, at p. A-7).

15 **April 17, 2018**, the City Council declared a shelter crisis pursuant to Section 8698 et seq. and
16 LAMC 12.80. (CX 38). On the same date, effective **April 20, 2018**, the City Council updated LAMC
17 91.8605’s alternate minimum health and safety requirements in response to the State’s January 1,
18 2018, amendment of Section 8698.4. (CA Rpt, p. 1, CX 74). The State approved LAMC 91.8605. (*Id.*)
19 **March, 27, 2019**, the City Council renewed the shelter crisis declaration and requested the City
20 Attorney prepare another revision of LAMC 12.80, “that would align the LAMC with State
21 Government Code Section 8698 relative to the shelter crisis declaration, to ensure that the LAMC is
22 not in conflict with existing State and local laws or regulations.” (CX 44, 3/20/19 HPC Rpt, p. 1). In
23 the same resolution, the Council established City policy to develop shelters pursuant to the State’s
24 shelter crisis law, as follows: “**RESOLVE to pursue the development of temporary homeless shelters**
25 **under Government Code Section 8698.4.**” (*Id.*, emphasis added). The City has pursued that program,
26 as shown by 22 transitional shelters it has approved (CX 55-68), as well as the Midvale Shelter.

27 Effective **January 1, 2019**, the Legislature amended Section 8698.4 to add a CEQA
28 exemption, among other things. (CX 34). Also, effective **September 26, 2019**, the Legislature

1 expanded 8698.4 to cover more counties and cities. (CX 33). Adopting the ordinance it had requested
2 of the City Attorney on March 27, 2019, on **October 23, 2019**, the City Council amended LAMC
3 12.80. (CX 45). The City Attorney’s Report explained, “The draft ordinance amends Sections 12.80
4 and 12.81 of the Los Angeles Municipal Code (LAMC) to **eliminate extraneous requirements** and align
5 the City’s shelter crisis regulations with Government Code Section 8698, et seq.” (CA Rpt. p. 1, CX
6 45)⁴. LAMC 12.80 has not been amended since. (SX 27). The above history demonstrates that since at
7 least 2019, the City has intended its ordinances, including its definition of SFTH, to allow it to develop
8 of as many City transitional shelters as are allowed by Section 8968.4 and that statute’s definition of
9 “homeless shelter.” This, too, is consistent with City Council approvals of the 22 identical transitional
10 shelters governed by the same laws applicable to the Midvale approval. (CX 55-68).

11 **C. The local Homeless Emergency and ED-3 also defeat Fix’s SFTH contention**

12 The City’s independent Homeless Emergency enactments present another reason Fix’s
13 assertion of the definition of SFTH fails. July 5, 2023, the Council adopted LAAC 8.33, empowering
14 the Mayor to declare a Local Housing and/or Homelessness Emergency. (Homeless Emergency). (CX
15 46). During a declared Homeless Emergency, LAAC 8.33(d)(i) “empowers the Mayor to: (i)
16 Promulgate, issue and enforce rules, regulations, orders and directives which the Mayor
17 considers necessary to address the emergency.” (SX 19). On July 7, 2023, the Mayor declared such an
18 emergency. (SX 28, p. 2). As empowered, the Mayor issued ED-3 creating a streamlined Homeless
19 Emergency development program available for City shelter projects on identified City land. (CX 48).
20 ED-3 sets aside the City’s planning ordinances, including the definition of SFTH at LAMC 12.03, and
21 instead applies only Section 8698 to City projects qualifying for the ED-3 program. The City identified
22 Lot 707 as an ED-3-qualified site; another reason Fix’s claims fail. (Chavez Decl., ¶¶ 2-4 & Exh. A).

23 **1. The ED-1 program is irrelevant to the Midvale Project approval**

24 Fix asserts ED-1 as a bar to the Midvale Project but it is irrelevant. ED-3, detailed below,
25 applies. December 16, 2022, the Mayor first issued ED-1, creating a streamlined approval program
26 available to any developer **so long as the project requires no zone change, variance, or general plan**
27 **amendment.** (SX 1, ¶ 1). The Mayor revised ED-1 on June 12, 2023, further excluding from the
28 program developments on land zoned for single-family use. (SX 5 ¶ 1). July 1, 2024, the Mayor

⁴ LAMC § 12.81 concerns shelters on private property.

1 revised it again, adding more program exclusions. (CX 47. ¶ 1A-1E).⁵ The ED-1 development program
2 is not available for the Midvale Project because one of Lot 707’s parcels is zoned for single-family use
3 (even though used as a parking lot since 1990). **Fix misrepresents the ED-1 program as banning any**
4 **shelter in any single-family zone.** (POB 17:9-12).⁶ That is not the case. ED-1 merely includes
5 locational exclusions from its emergency development program. Fix’s argument is of no merit.

6 **2. The ED-3 program shows the Midvale Project was properly approved**

7 In contrast to ED-1, ED-3 creates a streamlining program available only to the City and
8 development on City property. (CX 47 [all versions]). Mayoral ED-3 was first issued February 10,
9 2023, establishing a streamlined development program calling for the City to identify its properties
10 suitable for City homeless developments. (SX 2 [initial ED3]; CX 47 [All versions]).⁷ Upon being
11 **identified** as an available City property, the ED-3 program sets aside all local land use regulations
12 **(including the definition of SFTH at LAMC 12.03)** and provides that City development of a shelter on
13 such identified properties is governed by **Section 8698**, *et. seq. (Id.)* Midvale Lot 707 was identified
14 and **listed** as qualifying for the ED-3 program. (Chavez Decl., ¶¶ 2-4 & Exh. A). The ED-3 program
15 provides,

16 The construction, emergency installation, use, and operation of temporary or
17 permanent housing *on such designated sites* shall be and hereby are deemed
18 exempt for the duration of this order from discretionary review processes
19 otherwise required by *either the zoning provisions of Chapter I of the LAMC or*
20 *Project Review as described in LAMC Section 16.05 and LAMC Section*
13B.2.4; or other ordinance; provided, however, that any temporary or
permanent housing shall comply with applicable state law including *Government*
Code Section 8698, et seq., to the extent those sections apply.

21 (CX 47 ¶ 5) (emphasis added). For the Midvale Project, thus, ED-3 set aside LAMC 12.03 and 12.80
22 because those provisions are found within Chapter I of the LAMC. (CX 75). According to the ED-3
23 program, the Midvale Project approval proceeds solely pursuant to the requirements of Section 8698.
24 Fix’s SFTH definition argument, thus, has no application. Instead, the State’s Section 8698.4 definition
25

26 ⁵ The newest ED-1 exclusions cover land in a manufacturing zone not allowing multifamily residential
27 uses, hazardous waste sites, gas or oil well sites without a Phase 2 environmental assessment, property
28 in a Very High Fire Hazard Severity Zone, and historically significant parcels. (CX 47).

⁶ Fix’s citation to the comment of a mid-level engineer on a draft electrical bridging plan identifying
ED-1, a year after the Council’s action, shows only that a person lacking **foundation made an error.**
(POB p. 13:27-14:1, 9:16-17 citing SX 15) (Quiñónez Decl., ¶¶ 7 & 8) (City Objs to Evidence, No. 4).

⁷ The Mayor has since extended the program for projects of other public agencies. (CX 47.)

1 of “homeless shelter” governs. As explained above, the Midvale Shelter is such a “homeless shelter,”
2 and no basis exists to set aside the City’s approval.

3 **3. The ED-3 program and Section 8698.4 set aside specific plans**

4 Fix’s contention that the Midvale Project was required to comply with the specific plan
5 entitled, Exposition Corridor Transit Neighborhood Plan (“ECTNP”) also fails. (FAP COA 1; POB pp.
6 11-13) (SX 8). Section 8698.4 and ED-3 both set it aside. Section 8698.4, which governs the Midvale
7 Project as explained above, states, “During the shelter crisis, the local and state law requirements for
8 homeless shelters to be consistent with the local land use plans, including the general plan, shall be
9 suspended.” (Gov’t Code § 8698.4(a)(2)(A)(ii)). A general plan is mandated by state law and requires
10 every city to adopt a comprehensive, long-term plan for the use and physical development of land
11 within the city, operating as a constitution for all development. (Gov. Code, § 65300; *Friends of “B”*
12 *Street v. City of Hayward* (1980) 106 Cal.App.3d 988, 997). Immediately beneath the general plan are
13 specific plans, which a city *may* adopt to implement the general plan with more detailed provisions that
14 must be consistent with the general plan. (Gov. Code, § 65450). Because Section 8698.4 sets aside the
15 City’s general plan, it sets aside specific plans because those plans exist only in relation to a general
16 plan. Further, ED-3 sets aside all planning “ordinances” during the Homeless Emergency for the
17 Midvale Project, and like all specific plans, the ECTNP is a planning ordinance. (CX 70 & 71).
18 Moreover, as the ECTNP and the specific plans submitted by the City demonstrate, to function, they
19 all require the application of a variety of ordinances housed in the Planning Chapter of the LAMC, set
20 aside by ED-3. (SX 8 & CX 69 [ECTNP], RMM Decl., ¶¶ 22-27 & CX 70 & 71 [other specific plans]).
21 As explained, ED-3 sets aside the LAMC Planning Chapter – thus, Fix makes the absurdist argument
22 that the Mayor intended to leave in place non-functional specific plans that cannot be complied with
23 because they depend on City laws the Mayor set aside. “Absurd or unjust results will never be ascribed
24 to the Legislature, and it will not be presumed to have used inconsistent provisions as to the same
25 subject in the immediate context.” (*In re Haines, supra*, 195 Cal. at p. 613). “While the intention of the
26 Legislature must be ascertained from the words used to express it, the manifest reason and the obvious
27 purpose of the law should not be sacrificed to a literal interpretation of such words. Words or clauses
28 may be enlarged or restricted to effectuate the intention or to harmonize them with other expressed

1 provisions.” (*Id.*) Fix’s contentions, which literally make no sense, cannot prevail.

2 **4. The Midvale Shelter meets Section 8698’s irrelevant “public facility” definition**

3 Fix’s contention that the Midvale approval was improper because it is not a Section 8698
4 “public facility” is both irrelevant and wrong. (POB 18:18-25). Section 8698.4(a)(1)(B) states, “This
5 section applies only to a public facility *or* homeless shelters reserved entirely for the homeless
6 pursuant to this chapter.” (emphasis added). Fix ignores the disjunctive, which means the Midvale
7 Shelter need not qualify as a “public facility” because it is a homeless shelter. Moreover, Lot 707 is a
8 public facility as defined by Section 8698(c). That statute defines a “public facility” as public property
9 “operated, leased, or maintained, or any combination thereof, by the political subdivision through
10 money derived by taxation or assessment.” Lot 707’s parking enforcement operations are paid for with
11 City general funds – taxation. (Cervantes Decl., ¶ 3). Fix’s assertion that operations are entirely paid
12 for only by “parking revenue (user fees)” is wrong and not supported by evidence. (POB 18:22-24).⁸

13 **D. Fix has not, and cannot, demonstrate the Midvale Shelter is a Community Care Facility**

14 The Court need not address Fix’s CCF argument because, as explained above, the LAMC 12.03
15 definition of SFTH does not apply. Even if it did, Fix cannot establish it bars the Midvale Shelter. Fix
16 contends the hoped-for Midvale Shelter services establish it as a CCF, excluded from the definition of
17 SFTH (POB 14:23-22). As detailed above, the Council’s consistent approval of 22 transitional shelters
18 as early as 2019 governed by the same SFTH definition shows the Council has determined none are
19 CCFs. (CX 55-68). DSS determines whether a facility is a CCF, and Fix presents no evidence DSS has
20 ever found any of the City’s many identical transitional shelters here in evidence is a CCFs requiring a
21 DSS license. Nor does Fix provide proof suggesting DSS is regulating and licensing any of the State’s
22 transitional shelters created under Section 8698. Fix’s contention is also not ripe and fails for many
23 other reasons.

24 **1. Fix’s Community Care Facility claim is not ripe**

25 Although the City’s Midvale approval identifies the types of services the City hopes to provide
26 at the Shelter, no operator has yet to contract to provide services. While LAHSA did request provider
27 bids, due to project delays, that the RFP will be revised and rebid in the future. (Lin Decl., ¶ 5-6 &

28 ⁸ Fix’s cited evidence is LAAC § 5.117, the definition of “Special Parking Revenue Fund” (SPRF)
(Silverstein Decl., Exh. C) and the City’s 1990 purchase of Lot 707 with money from the SPRF. (SX
12). Fix presents no evidence of funding for Lot 707’s operations or maintenance. (City Objs 2 & 3).

1 Exh. B; CX 53 & 54). As such, the initial RFP is not evidence even of services LAHSA is asking
2 providers to include within bids. No service provider will exist before trial. (Lin Decl., ¶ 6). Fix’s
3 assertion that the City has for years not understood the requirements of its own laws and mistakenly
4 approved the Midvale Shelter, the 22 shelters approved to provide identical services shown in
5 evidence, and all other City transitional shelters not presented to the Court, thus, is a hypothetical
6 question that is not ripe for adjudication. (*Pacific Legal Foundation v. California Coastal Com.* (1982)
7 33 Cal.3d 158, 170). As with the Midvale Shelter, no evidence is before the Court, moreover of
8 services an operator actually agreed to provide at any City transitional shelter.

9 **2. The Midvale Shelter is not a CCF and only DSS can determine otherwise**

10 Even considering the hypothetical scope of Shelter services described in the Midvale approval,
11 Fix has not and cannot show it is a CCF – or somehow different from the 22 other transitional shelter
12 approvals presented into evidence. The Legislature adopted the CCFA, Health & Safety Code section
13 1500 et. seq. “to establish a coordinated and comprehensive statewide service system of quality
14 community care for mentally ill, developmentally and physically disabled, and children and adults who
15 require care or services by a facility or organization issued a license or special permit pursuant to this
16 chapter.” (H&S § 1501). On its face, the Legislature did not adopt the CCFA to address transitional
17 homeless facilities. Instead, a CCF is, “any facility, place, or building that is maintained and operated
18 to provide nonmedical residential care, day treatment, adult daycare, or foster family agency services
19 for children, adults, or children and adults, including, but not limited to, the physically handicapped,
20 mentally impaired, incompetent persons, and abused or neglected children.” (H&S § 1502.) DSS is
21 tasked with enacting all CCFA regulations, including creating and enforcing licensing rules. (*Id.*, §§
22 1502, 1530).

23 DSS regulations provide that CCF rules do not apply to a “homeless shelter, or other similar
24 place that supplies board and room only, or room only, or board only, which provides no element of
25 care and supervision, as defined in section 80001(c)(2)” (22 CCR § 80007(a) “Exemptions from
26 Licensure”). The DSS defines “Care and supervision” as,

27 any one or more of the following activities provided by a person or facility to
28 meet the needs of the clients: (A) Assistance in dressing, grooming, bathing and
other personal hygiene. (B) Assistance with taking medication, as specified in
section 80075. (C) Central storing and/or distribution of medications, as specified
in section 80075. (D) Arrangement of and assistance with medical and dental

1 care. (E) Maintenance of house rules for the protection of clients. (F) Supervision
2 of client schedules and activities. (G) Maintenance and/or supervision of client
3 cash resources or property. (H) Monitoring food intake or special diets. (I)
4 Providing basic services as defined in section 80001(b)(2).

5 (22 CCR § 80001). “Basic Services” means “those services required by applicable law and regulation
6 to be provided by the licensee in order to obtain and maintain a community care facility license.” (22
7 CCR § 80001(b)(2).) Even if all desired Midvale Shelter services are provided, it would not be a CCF.
8 The City hopes the facility will provide beds, showers, food, and a place for homeless persons to store
9 belongings for 90 days while Shelter staff connect residents to permanent homes and as well as other
10 services, including possible needed medical or mental health care. (9/29/23 Midvale NOE, pp. 13-16,
11 SX 13). The City’s project description also states Shelter residents are not required to participate in any
12 services, showing the Shelter does not provide “Care and Services” potentially regulated by DSS. (*Id.*
13 at pp. 14 & 15). Nor can Fix show DSS has established a program to license and regulate transitional
14 homeless shelters created pursuant to Section 8698 across the State because doing so is not within the
15 stated purposes of the CCFA.

16 Moreover, Fix holds no right to file a private action to enforce the CCFA. “A private party can
17 sue for a violation of a statute only where the statute in question allows it.” (*Mayron v. Google LLC*
18 (2020) 54 Cal.App.5th 566, 571.) “[T]here is a private right of action to enforce a statute ‘only if the
19 statutory language or legislative history affirmatively indicates such an intent.’” (*Julian v. Mission*
20 *Community Hospital* (2017) 11 Cal.App.5th 360, 379). Here, the CCFA and DSS regulations may be
21 enforced solely by the DSS, district attorneys, city attorneys that prosecute misdemeanors, and by
22 peace officers following a DSS directive. (H&S §§ 1547 & 1548, 1540.1, 1541, 1543; 22 CCR §§
23 80006(c) & 86558). Fix identified no statute that allows it to file a private right of action to determine
24 whether the Midvale shelter might be a CCF. It lacks standing.

25 Like its lack of standing, Fix cannot ask this Court to determine that the City has approved an
26 unlicensed CCF because Fix did not first seek a DSS investigation and pursue DSS administrative
27 review of such an investigation. Fix has not exhausted, thus cannot present its argument here for the
28 first time. (*Leff v. City of Monterey Park* (1990) 218 Cal.App.3d 674, 680). The CCFA and DSS
regulations establish an administrative remedy to determine whether a facility is a CCF. DSS
regulations require it investigate any facility alleged to be in violation of CCF licensing requirements.

1 (See 22 CCR section 80006(b)). The DSS website for CCFs allows anyone to trigger a DSS
2 investigation. (CX 72). DSS's determination may be appealed to DSS via an established appeal
3 process. (*Id.* §§ 1547 & 1548; 22 CCR §§ 80006, 86558). Thus, Fix could have, but did not, seek DSS
4 administrative review of its Midvale Shelter CCF contention. Of course, because the Shelter is not
5 operating and no service agreement even exists, such a complaint would not be any more ripe than
6 Fix's contentions before this Court. However, if Fix believes its contention is ripe, it is required to
7 present it first for adjudication by DSS. Fix could only proceed in court for review of DSS'
8 determination once DSS has acted. Here, Fix presents no evidence it sought DSS review, and no law
9 establishes a Court may determine a private party's request to apply the CCFA in the first instance.

10 IV. THE LIFEARK AGREEMENT

11 Fix alleges it was improper to for the City to sole-source the LifeArk agreement. (FAP COA 6;
12 POB pp. 19-20). Fix is wrong for many reasons.

13 A. The 6th COA is moot and inequitable. Fix did not seek to stay LifeArk's performance of 14 the \$2.53 million agreement.

15 First, the 6th COA is a claim independent of Fix's other arguments to set aside the entire
16 Midvale Project, because the Midvale project approval could be found valid, but not the LifeArk
17 contract. Fix's 6th COA is moot and should not be addressed. A writ to set aside a contract is moot
18 where performed before the action is final. (*E.g., Giles v. Horn* (2002) 100 Cal.App.4th 206, 228).
19 LifeArk has performed the \$2,532,191.23 agreement. (Wee Decl., ¶¶ 6-8). It designed and fabricated
20 all of the Midvale modular dwelling and program units. (*Id.*, ¶¶ 4-8). They cannot be used for any other
21 purpose. (*Id.*, ¶ 8). All that remains is for LifeArk to install the units, which it is ready to do. (*Id.*)

22 Further, Fix's decision not to seek a stay of LifeArk's duty to perform during Fix's litigation
23 supports a mootness determination. In the appellate context, where the petitioner "failed to take steps
24 to maintain the status quo pending resolution of its claims by seeking injunctive relief or a stay until
25 the appeal reached this court when the project was nearly complete." (*Santa Monica Baykeeper v. City*
26 *of Malibu* (2011) 193 Cal.App.4th 1538, 1511; Cf. *Bakersfield Citizens for Local Control v. City of*
27 *Bakersfield* (2004) 124 Cal.App.4th 1184 [project completion did not moot CEQA appeal where
28 petitioner sought injunction and mitigation options remained]). Here, the City publicly authorized the

1 LifeArk agreement on October 20, 2023. (CAO Rpt, ¶ 10, SX 14). Fix’s February 23, 2024, FAP
2 challenged the LifeArk approval, yet Fix opted not to seek to stay Fix’s obligation to perform.
3 “[T]hough mandate is ordinarily classed as a legal remedy it is largely controlled by equitable
4 principles.” (*Acosta v. Brown* (2013) 213 Cal.App.4th 234, 259 [omitted citations]). “[M]andamus
5 being a remedy essentially equitable, the writ should not be granted where its enforcement would work
6 an injustice.” (*Smith v. Kraitz* (1962) 201 Cal.App.2d 696, 700). LifeArk is a third party under
7 contractual obligations to perform. Fix’s August 2024 email – 8 months after Fix challenged the
8 LifeArk agreement – warning the City, it proceeded at its own risk came too late and could not operate
9 to excuse LifeArk’s nearly complete performance obligations. (Silverstein Decl., Exh. B). LifeArk is a
10 small start-up company, striking its agreement at this late date would impose a significant hardship.
11 (Wee Decl., ¶ 6). Fix’s 6th COA is moot and its inequitable demand to set aside LifeArk’s agreement
12 should not be considered.

13 **B. Competitive bidding of the LifeArk agreement was not required**

14 Even if not moot, Fix’s claim fails because the City Charter did not require bidding.⁹ The
15 Charter excuses bidding for the furnishing of articles covered by letters of U.S. patent (§ 371(e)(1))
16 and “Where the contracting authority finds that the use of competitive bidding would be undesirable,
17 impractical or impossible or where the common law otherwise excuses compliance with competitive
18 bidding requirements.” (Charter § 371(e)(10) (SX 21). LifeArk relied on seven of its U.S. Patents to
19 design and fabricate the Midvale units. (Wee Decl., ¶¶ 4-5 & Exh. B). Second, Common law holds,
20 “that where competitive proposals work an incongruity and are unavailing as affecting the final result,
21 or where competitive proposals do not produce any advantage, or where it is practically impossible to
22 obtain what is required and to observe such form, competitive bidding is not applicable.” (*Graydon v.*
23 *Pasadena Redevelopment Agency* (1980) 104 Cal.App.3d 631, 635–636; *San Diego Service Authority*
24 *for Freeway Emergencies v. Superior Court* (1988) 198 Cal.App.3d 1466, 1475 [no bidding of unique
25 freeway phone system needed]). Here, the above-ground and modular LifeArk system is unique
26 (proprietary patents), specially designed to meet the needs of Lot 707 both to avoid disturbing the

27 _____
28 ⁹ Nor are the staff emails cited by Fix relevant. (POB 20:3-6 citing SX 23). The emails discuss the
Project’s construction contract for which neither the Charter nor the Mayor set aside bidding
requirements, which was competitively bid, and which is not challenged by the FAP or Fix’s trial brief.
(Quiñónez Decl., ¶ 9 & Exh. B) (City Objection to Evidence, No. 6).

1 surface to allow for future parking uses and due to the shallow below-grade utility easement. (Wee
2 Decl., ¶ 7). Because no public benefit could be achieved by seeking competitive bids for this uniquely
3 designed, patented system, the Charter and common law excuse bidding.

4 **C. The Mayor excused bidding for the LifeArk agreement pursuant to LAAC 8.33**

5 If bidding was needed, the Mayor set it aside. LAAC 8.33(d)(v) empowers the Mayor to
6 “Suspend competitive bidding restrictions . . . for contracts entered into by City departments and
7 offices in response to the emergency and mitigation efforts related to the emergency.” (SX 19). The
8 Mayor’s Midvale Project approval specifically authorized sole sourcing of the LifeArk agreement.
9 (CAO Report, SX 14 ¶ 10 [“AUTHORIZE the GSD to negotiate and execute a sole source
10 Commodities Contract for one year, with LifeArk SPC for the acquisition of prefabricated modular
11 units for an interim housing facility to be located at the LADOT owned lot #707.”]). The agreement
12 recites the Mayor’s LAAC 8.33 authority. (Wee Decl., Exh. B, p. 1). LAAC 8.33 does not limit the
13 Mayor to solely a global executive directive setting aside competitive bidding as Fix suggests. (POB
14 19:12-15). Further, the City Council’s approval of Midvale project sole-sourcing authorization is
15 highly persuasive proof of how LAAC 8.33 operates. (See, *California Housing Finance Agency, supra*,
16 22 Cal.3d at p. 175 [respect for construction of legislation by enacting body]).

17 Finally, Fix’s assertion that PCC provisions override LAAC 8.33 and the City’s longstanding
18 Charter exemptions to bidding fail. As noted, Fix dismissed facial challenge to LAAC 8.33, and its
19 FAP does not challenge any City Charter provision. Fix’s assertion, moreover, gets the law backward.
20 (POB, pp. 19-20). PCC section 1100.7, effective January 1, 2002, provides, “With regard to charter
21 cities, this code applies in the absence of an express exemption or a city charter provision or ordinance
22 that conflicts with the relevant provision of this code.” LAAC 8.33 and the City Charter provisions are
23 City laws; thus, these specific City laws creating bidding exceptions not stated in the PCC control.¹⁰

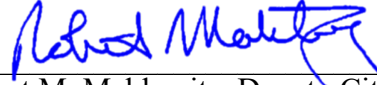
24 **V. CONCLUSION**

25 The City requests the Court deny the writ petition for all of the reasons stated above.

26 ¹⁰ The parties previously addressed these issues. (Pet. Opp. to 3/8/24 City MTS). Fix incorrectly
27 asserted *Howard Contracting, Inc. v. G.A. MacDonald Construction Co., Inc.* (1998) 71 Cal.App.4th
28 38, held the Charter cannot differ from PCC bidding requirements. (Pet. Opp., p. 6). Fix misstates the
holding. In *Howard*, the conflict did not concern City bidding laws; it concerned PCC delay damage
law conflicting with provisions of a City *contract*. (*Id.*, at p. 51). The Court held that a charter city’s
law prevails over PCC conflicts, but not provisions of a contract. (*Id.*) The Legislature later adopted
Section 1102.5, providing the same: a charter city’s *laws* prevail over conflicting PCC requirements.

1 Dated: October 7, 2024

Hydee Feldstein Soto, City Attorney
Valerie L. Flores, Chief Deputy City Attorney
John W. Heath, Chief Assistant City Attorney

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4 By: 
5 Robert M. Mahlowitz, Deputy City Attorney
6 Attorney for Respondent, City of Los Angeles

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1 **PROOF OF SERVICE**

2 I, the undersigned, say: I am over the age of 18 years and not a party to the within
3 action or proceeding. My business address is 200 North Main Street, 701 City Hall East, Los
4 Angeles, California 90012.

5 On October 7, 2024, I served the foregoing documents described as: **Respondent’s Trial**
6 **Brief** on all interested parties in this action as follows:

7 **SEE ATTACHED SERVICE LIST**

8
9 [] **BY MAIL** – I placed a copy thereof enclosed in a sealed envelope addressed to each
10 addressee stated above. I deposited such envelope for collection, processing and
11 mailing by United States mail by my office in the ordinary course of business. I am
12 readily familiar with the business practice of my office for collection, processing, and
13 mailing of correspondence by the United States mail. Under that practice, it is
14 collected and deposited with first class postage thereon fully prepaid with the United
15 States Postal Service on that same day, at Los Angeles, California. I am aware that on
16 motion of the party served, service is presumed invalid if postage cancellation date or
17 postage meter date is more than one (1) day after the date of deposit for mailing in
18 affidavit; and/or

19 [X] **BY ELECTRONIC MAIL** – I electronically transmitted the document listed above to
20 the email address stated above which has been confirmed for each addressee stated
21 above. My electronic service address is leilany.roman@lacity.org.

22 I declare that I am employed in the office of a member of the bar of this court at whose
23 direction the service was made. I declare under penalty of perjury under the laws of the State
24 of California that the foregoing is true and correct. Executed on October 7, 2024, at Los
25 Angeles, California.

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27 _____
28 Leilany Roman

SERVICE LIST

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Case Number: 23STCP04410
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